

CANADA

SUPERIOR COURT  
(Class Actions)

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PROVINCE OF QUEBEC  
DISTRICT OF MONTREAL

MARILENA MASELLA

No.: 500-06-000625-125

Plaintiff

v.

THE TORONTO-DOMINION BANK

Defendant

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COMPENSATION PROTOCOL

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**A. GENERAL**

1. Distribution of the Settlement Amount provided for by the Settlement Agreement to class members shall be governed by this Compensation Protocol (the "**Protocol**");
2. Class Counsel will give a mandate to a firm specialized in the administration of class action settlements (the "**Claims Administrator**"), and ask the Court to approve the Claims Administrator's appointment;
3. The judge of the Superior Court responsible for the management of this proceeding shall retain jurisdiction to resolve any issues relative to the implementation of this Protocol;

**B. PARTICIPATION OF THE DEFENDANT IN THE COMPENSATION PROTOCOL**

4. The Defendant's only participation in the implementation of the Protocol shall be to provide the Claims Administrator with the following information in its possession on class members ("**Class Member Information**"), it being understood that, where relevant, such information on former clients obtained by the Defendant through Equifax, pursuant to the Superior Court's judgment dated July 5, 2016, will be provided :
  - i. The name of all class members (where two or more class members are holders of a single HELOC account, the Class Member Information will reflect this);
  - ii. The last known main address per class members' HELOC account;
  - iii. The last known main phone number per class members' HELOC account;
  - iv. The last known main email address per class members' HELOC account;

- v. The outstanding balance per HELOC account, as per the August 2009 HELOC account statement;
  - vi. Where available, class members' date of birth – this information shall be provided for the sole purpose of attempting to locate class members whom the Claims Administrator was not capable of locating using the information listed above, following a request by the Claims Administrator or Class Counsel to the Court;
5. The Defendant will provide the Class Member Information to the Claims Administrator within 20 business days of the date upon which the judgment of the Superior Court approving the Settlement Agreement becomes final;
  6. The Class Member Information shall be provided in an Excel format;
  7. The Claims Administrator shall sign a confidentiality undertaking to be drafted mutually and agreed upon by both Parties, which will prohibit the Claims Administrator from using the information and namely the Class Member Information for any purposes other than those provided for in this Protocol and the Settlement Agreement, and from disclosing this information except in a case provided for by law or pursuant to a Court order, in which case the Parties and the Court will be informed without delay;
  8. The Parties will further ask the Court to order the Claims Administrator to preserve the confidentiality of the Class Member Information and prohibit the Claims Administrator from using the Class Member Information for any purposes other than those provided for in this Protocol and from disclosing this information except in a case provided for by law or pursuant to a Court order;

### C. CLASS MEMBERS' COMPENSATION

9. In order to claim compensation under this Settlement Agreement, class members are required to complete a form, made available exclusively via a website created by the Claims Administrator, confirming that they are a class member and that they wish to receive compensation (the "**Electronic Claim Form**");
10. Within 45 days of receiving the Class Member Information, the Claims Administrator shall mail a notice to each address described at para 4 ii) (the "**Compensation Notice**"), addressed to each holder of the HELOC account associated with this address – the content of the notice will be agreed upon by the Parties, and shall inform class members of the manner in which they must complete the Electronic Claim Form. Class counsel will advise by email the persons registered to its mailing list for this class action that the Compensation Notices were sent, and will instruct class members to contact the Claims Administrator if they do not receive a Compensation Notice;
11. Within 30 days after the mailing of the Compensation Notice, the Claims Administrator shall publish in *La Presse Plus* and *The Gazette* a notice whose content will be agreed upon by the Parties and which will inform class members of

the obligation to complete the Electronic Claim Form in order to be eligible to receive compensation under the present Settlement Agreement;

12. Within 60 days after mailing the Compensation Notices, the Claims Administrator shall make an inventory of the Compensation Notices which were returned because of incorrect addresses. For class members whose Outstanding Balance exceeds \$ 75 000, the Claims Administrator shall undertake additional measures, to be defined in the Claims Administrator's mandate, in order to attempt to identify the current addresses of the intended recipients of such returned letters in order to mail them another copy of the Compensation Notice ("collectively the **"Second Compensation Notices"**);
13. The deadline for completing the Electronic Claim Form (the **"Claims Deadline"**) shall be 60 days after the date upon which the Second Compensation Notices were sent;
14. Only class members who have completed the Electronic Claim Form by the Claims Deadline (**"Eligible Class Members"**) shall be eligible to receive compensation under the Settlement Agreement, except in the cases provided for at section 19. Where more than one class member are holders of a single HELOC account, all of these class members will be deemed Eligible Class Members so long as one of these class members has completed the Electronic Claim Form;
15. The compensation to be distributed among Eligible Class Members (the **"Compensation Amount"**) shall be calculated as follows: the Settlement Amount provided for in the Settlement Agreement, after subtraction of the amounts provided for at sections 7 i) – iii) of the Settlement Agreement and of an amount of 25 000 \$ to be set aside in case of unforeseen circumstances (the **"Contingency Fund"**) - the Contingency Fund shall, to the extent possible, be comprised of the interest accrued on the Settlement Amount;
16. Eligible Class Members' compensation shall be based upon the amount described in section 4 v) of this Protocol – this amount shall be termed this class member's **"Outstanding Balance"** for the purposes of this Protocol;
17. The Claims Administrator shall calculate the individual compensation due to each Eligible Class Member according the following formula (**"Individual Compensation"**) - where two or more class members are holders of a single account, these class members shall share equally in the Outstanding Balance of this account :

$$\begin{array}{r}
 \text{Eligible Class Member's} \\
 \text{Outstanding Balance} \\
 \hline
 \text{Sum of Outstanding Balances of all} \\
 \text{Eligible Class Members}
 \end{array}
 \times
 \begin{array}{r}
 \text{Compensation} \\
 \text{Amount}
 \end{array}$$

18. Within 45 days after expiry of the Claims Deadline, the Claims Administrator shall:

- a. Calculate Eligible Class Members' Individual Compensation;
  - b. Mail to the last known address in its possession a cheque representing the value of the Individual Compensation due to each Eligible Class Member – where two or more Eligible Class Members are the holders of a single account, the Claims Administrator will mail a single cheque, for the total amount of Individual Compensation due to these Eligible Class Members, made out in the name of all of these Eligible Class Members or, in cases where this would cause serious difficulties to these Eligible Class Members, pay these Eligible Class Members their Individual Compensation by any other means it deems reasonable.
19. The Claims Administrator shall retain sole discretion to pay any amount to any class member who is not an Eligible Class Member out of the Contingency Fund;
20. The Claims Administrator shall retain the Contingency Fund for a period of six months after issuance of payment to Eligible Class Members. At the expiration of this period, the portion of the Contingency Fund which the Claims Administrator has not paid out to class members shall be deemed a balance, and shall be paid i) to the *Fonds d'aide aux actions collectives*, at the amount provided for by regulation ii) to a charitable or non-profit organization to be selected jointly by the Parties and approved by the Court.

**SIGNED :**

In \_\_\_\_\_, on \_\_\_\_\_, 2019

**MARILENA MASELLA**

In Toronto, on September 23, 2019

  
**THE TORONTO-DOMINION BANK**

Per: David Braumstein, AVP, Canadian Depositor

Duly authorized representative of  
The Toronto-Dominion Bank