

June 13, 2016

Crawford Class Action Services

Direct Dial: 1-866-640-0039

Direct Fax: 1-888-842-1332

BMONBOvertime@crawco.ca

**Re: NOTICE OF SETTLEMENT and FEE APPROVAL HEARING
*Rosen v. BMO Nesbitt Burns Inc. (the "Class Action")***

Re: Overtime Pay

You are receiving this notice because you are a Settlement Class Member in a proposed settlement of the Class Action and may be entitled to receive compensation from the settlement, if the settlement is approved by the Court.

You have been identified as someone who currently or previously worked as an Investment Advisor with BMO Nesbitt Burns Inc. (Nesbitt) at some point since January 1, 2002. This Class Action was certified in 2013, the plaintiff alleged that Nesbitt misclassified Investment Advisors (IAs), Associate Investment Advisors (AIAs) and IA Trainees as ineligible for overtime compensation. The Class Action sought a common determination that all IAs, AIAs and IA Trainees were eligible for overtime. Nesbitt defended the action and denies all liability.

The class of employees originally certified in 2013 excluded any time period for which an Investment Advisor was on a team that had one or more Associate IAs or Sales Assistants assigned to them (the "Team Exclusion"). As part of the settlement approval motion described in this notice, the plaintiff will be asking the court to amend the class definition for settlement purposes to remove the Team Exclusion and also to end the class period at June 1, 2016. That means that if you were an IA, AIA or IA Trainee at any time between January 1, 2002 and June 1, 2016, exclusive for any time period you held the position of Branch Manager, Assistant Branch Manager or Divisional Manager, you will be included in this Class Action as a Settlement Class Member, if the settlement is approved. As a Settlement Class Member you will therefore be able to participate in the settlement and will also be bound by the judgement and release of claims.

The Class Action has now settled, but the settlement must be approved by the court. If you have questions about this notice, you should contact Crawford Class Action Services, at the contact information provided at the end of this notice, or Class Counsel if you still have questions after speaking with Crawford.

You should read this notice carefully as it may affect your legal rights and you may need to take prompt action.

Important Deadlines

The court will hear submissions on whether this settlement and the legal fees and costs of Koskie Minsky LLP and Mr. Eli Karp should be approved on July 21, 2016. You can attend this hearing if you wish, but you do not need to. If the settlement is approved, payments to Settlement Class Members will be made in accordance with the terms of the settlement agreement.

If you wish to object to the settlement, you must notify Crawford Class Action Services in writing by using the enclosed objection form by July 14, 2016. Your objection will be filed with the Court.

Overview of Settlement

Nesbitt has agreed to pay an all-inclusive non-reversionary sum of \$12 million (inclusive of all claims, costs, interest, taxes and honorarium) (the “Settlement Fund”), as well as settlement administration costs of up to \$500,000. Subject to applicable deductions, the Settlement Fund will be distributed as follows:

- (a) by payment to each Settlement Class Member who participated in the IIROC initial close supervision period of the Nesbitt Trainee Program as an IA Trainee and who properly completes and returns a Distribution Confirmation Form or otherwise advises the Administrator of the information set out in the Distribution Confirmation Form; and
- (b) a Finality Contribution for all Settlement Class Members, of CAD 2 million (less deductions), to be divided and paid in equal amounts to each Settlement Class Member, who properly completes and returns a Distribution Confirmation Form or otherwise advise the Administrator of the information set out in the Distribution Confirmation Form, regardless of whether they are an IA Trainee.

BMO Nesbitt Burns Inc. denies the truth of the allegations in the Action and denies any liability whatsoever.

This settlement is the result of 8 years of litigation, production of over 2 million documents, extensive settlement discussions and a 2 day mediation conducted by the former Chief Justice of Ontario acting as mediator. Class Counsel conducted a detailed analysis of the risks of litigation. If this case had proceeded to trial, there was a very significant risk the class as a whole, or very significant portions of the class, would not be successful in a determination for overtime. If Class Counsel was successful at trial, the amount of money owed to each individual Settlement Class Member would require individual determinations and potentially individual proof of hours worked. The earliest date for a trial would be April, 2017, and a final disposition of any appeals would likely not be completed until at least 2019, or later. Even if the plaintiff was entirely successful at trial and on all appeals, individual damage determinations could only start in 2019 or 2020 at the earliest. This settlement is very beneficial as it provides certainty and immediate benefits relative to the alternative of proceeding to trial and lengthy uncertain individual determinations. Class Counsel recommends this settlement.

Class Counsel Fees

Class Counsel will be seeking a fee of 25% on the \$12 million settlement fund, plus HST and repayment of disbursements in accordance with the retainer agreement in this case. The 25% contingency fee in this case must be approved by court. Class Counsel has devoted over 3,000 hours to this case over the 8 years of litigation. The certification motion alone in this case involved 22 cross-examinations, 7 expert witnesses and was held over 3 days, not including a leave to appeal motion heard over 1 day. Over 2 million documents have been produced and an extensive investigation into the merits of the case has been conducted.

Compensation Fund Available to Settlement Class Members

After the deduction of fees for Class Counsel (including taxes on that fee), disbursements and the levy to the Class Proceedings Fund (who provided an indemnity in this case), the net compensation fund remaining for distribution to the class is expected to be approximately \$7.8 million (the “Compensation Fund”).

The amount of the distribution you will receive from the Compensation Fund depends on whether you went through the BMO Nesbitt Burns Trainee program as a new IA, or whether you were already working as an IA when hired and did not have to participate in the Nesbitt IA trainee program. Settlement Class Members who opted out cannot receive any compensation. In order to receive the below distribution, evidence as to hours worked is not required.

Trainee Distribution

A total of \$10 million (less deductions and withholding tax) of the \$12 million Settlement Fund has been allocated to compensate those who participated in the Nesbitt Trainee program. Eligible Settlement Class Members who are currently a Trainee, or who were a Trainee anytime between January 1, 2002 and June 1, 2016, will receive an equal share of the \$10 million, after deductions for legal fees, HST, withholding taxes, disbursements and the Class Proceedings Fund levy described above. In order to receive a distribution, Settlement Class Members will have to respond to a distribution confirmation form if this settlement is approved.

Non-Trainee Distribution

A Finality Contribution totaling \$2 million (less deductions and withholding tax) of the \$12 million Settlement Fund has been allocated to compensate each Settlement Class Member in the action, including those who did not participate in the Nesbitt Trainee program. Each Settlement Class Member will receive an equal share of the \$2 million, after deductions for legal fees, taxes, disbursements and the Class Proceedings Fund levy described above. In order to receive a distribution, Settlement Class Members will have to respond to a distribution confirmation form if this settlement is approved.

A complete copy of the Settlement Agreement and other information about these lawsuits is available at: www.kmlaw.ca/nesbittclassaction.

Contact Information of Crawford Class Action Services

If you would like additional information, please contact Crawford Class Action Services, at the address, phone number or E-mail below.

Crawford Class Action Services

Re: Rosen v. BMO

3-505, 133 Weber Street North

Waterloo, Ontario

N2J 3G9

Tel: 1-866-640-0039

Email: BMONBOvertime@crowco.ca

If you have additional questions and wish to speak with Class Counsel at Koskie Minsky LLP and Mr. Eli Karp, you may contact Class Counsel at nesbittclassaction@kmlaw.ca or at 1-866-777-6308.

Do not direct inquiries about this notice to the Court.

**DISTRIBUTION OF THIS NOTICE HAS BEEN AUTHORIZED
BY THE ONTARIO SUPERIOR COURT OF JUSTICE**

NOTICE OF OBJECTION

ONLY USE THIS FORM IF YOU DO NOT APPROVE OF SETTLEMENT

TO: Crawford Class Action Services
Re: Rosen v. BMO
3-505, 133 Weber Street North
Waterloo, Ontario
N2J 3G9

Email: BMONBOvertime@crowco.ca

RE: Settlement in *Rosen v. BMO*

I _____, object to (please specify the type of objection):

the terms of settlement in *Rosen v. BMO*, for the reasons below.

the proposed fees and or disbursement of Class Counsel, for the reasons below.

I acknowledge that pursuant to the order of Mr. Justice Belobaba dated April 29, 2016, persons wishing to object to the settlement are required to complete and deliver this Notice of Objection by no later than 5:00 p.m. (Eastern Time) on July 14, 2016.

I _____, object for the following reasons (please attach extra pages if you require more space):

- I DO NOT intend to appear at the hearing of the motion to approve the settlement, and I understand that my objection will be filed with the court prior to the hearing of the motion at 10:00 a.m. on July 21, 2016.
- I DO intend to appear, in person or by counsel, and to make submissions at the hearing of the motion to approve the settlement at 10:00 a.m. on July 21, 2016.

MY ADDRESS FOR SERVICE IS:

MY LAWYER'S ADDRESS FOR SERVICE IS (if applicable):

Name:

Name:

Address:

Address:

Tel.:

Tel.:

Fax:

Fax:

Email:

Email:

Date: _____ **Signature:** _____