

# Canadian Foreign Exchange Price-Fixing Class Actions

## Notice of Certification and Settlement

### **Please Read this Notice Carefully. Your rights may be affected.**

#### **What are these class actions about?**

Class actions were commenced in Ontario and Quebec alleging that beginning at least as early as 2003 and continuing through 2013, the Defendant banks conspired with each other to fix prices in the FX market.

#### **What is the status of the contested litigation?**

If the settlements are approved, the Ontario and Quebec actions will be entirely resolved.

On April 14, 2020, the Ontario action was certified on behalf of all persons in Canada who, between January 1, 2003 and December 31, 2013, entered into an FX Instrument transaction with a Named Defendant's salesperson, either directly or indirectly through an intermediary. Excluded from the class are the Defendants, their parent companies, subsidiaries, and affiliates.

In the Ontario certification order, "FX Instruments" is defined as FX spot transactions, outright forwards, FX swaps, FX options, FX futures contracts, options on FX futures contracts, and other instruments traded in the FX Market in Canada, excluding instruments traded on any exchange or on any electronic trading platforms.

For more information about the certified class, including a list of the "Named Defendants" and the common issues, review the long form notice at <https://kmlaw.ca/cases/forex-canadian-class-action/>

#### **What settlements were reached?**

Separate settlements were reached with:

- Toronto Dominion Bank, TD Bank, N.A., TD Group Holdings, LLC, TD Bank USA, N.A., and TD Securities Limited ("TD") for CAD \$4,500,000, less the CAD \$175,000 TD previously contributed to costs of the certification motion;
- Royal Bank of Canada and RBC Capital Markets LLC ("RBC") for CAD \$6,556,000,

less the CAD \$175,000 RBC previously contributed to costs of the certification motion;

- Credit Suisse Group AG, Credit Suisse Securities (USA) LLC, Credit Suisse AG, Credit Suisse Securities (Canada), Inc. ("Credit Suisse") for CAD \$5,560,000; and
- Deutsche Bank AG ("Deutsche Bank") for USD \$7,220,000, less the CAD \$175,000 (converted to USD \$144,000) Deutsche Bank contributed to costs of the certification motion.

The settlement agreements, if approved and conditions fulfilled, will settle, extinguish and bar all claims relating in any way to or arising out of the proceedings against TD, RBC, Credit Suisse, and Deutsche Bank. The settlements are a compromise of disputed claims. TD, RBC, Credit Suisse, and Deutsche Bank do not admit any wrongdoing or liability.

#### **Who is affected by the settlements?**

You are affected by the settlements if you are a member of the Settlement Class. The Settlement Class includes all persons in Canada who, between January 1, 2003 and December 31, 2013, entered into an FX Instrument\* either directly or indirectly through an intermediary, and/or purchased or otherwise participated in an investment or equity fund, mutual fund, hedge fund, pension fund or any other investment vehicle that entered into an FX Instrument. Excluded from the class are the Defendants, their parent companies, subsidiaries, and affiliates; provided, however, that Investment Vehicles shall not be excluded from the Settlement Class.

\*FX Instruments includes FX spot transactions, outright forwards, FX swaps, FX options, FX futures contracts, options on FX futures contracts, and other instruments traded in the FX Market.

The Ontario and Quebec actions have been certified/authorized (for settlement purposes only) on behalf of members of the Settlement Class.

**Who are the lawyers who represent the class and how are they paid?**

Sotos LLP, Koskie Minsky LLP, Siskinds LLP, and Camp Fiorante Matthews Mogergerman represent class members in the Ontario action. Siskinds Desmeules, s.e.n.c.r.l. represents class members in the Quebec action (“Class Counsel”).

You are not required to pay Class Counsel’s fees or expenses. If approved by the Court, Class Counsel’s fees and expenses will be deducted from the settlement amounts.

**How much will Class Counsel be paid?**

The retainer agreements between the plaintiffs and Class Counsel provide for fees of 25% of all settlements reached prior to the certification motion and 30% of all settlements reached after the certification motion, plus applicable taxes and disbursements.

Class Counsel will ask the Court to award fees up to 30% of the TD, RBC, Credit Suisse, and Deutsche Bank settlement amounts (which were reached after the certification motion), plus applicable disbursements and taxes. In other words, Class Counsel will request fees up to CAD \$4,984,800 and USD \$2,166,000, plus disbursements and taxes.

With respect to prior settlements achieved in the litigation, Class Counsel was awarded fees equivalent to 17.64% of the collective settlement amounts. At the approval hearing, Class Counsel will ask the Court to approve additional fees equivalent to 2.36% (CAD \$2,592,031) of the total prior settlement amounts.

**When are the approval hearings?**

Hearings will be held during which Class Counsel will seek the Courts’ approval of the settlement

agreements, the proposed distribution of settlement funds, and Class Counsel fee request plus disbursements and applicable taxes.

The hearing before the Ontario Superior Court of Justice will be held on September 23, 2021 at 10am (ET) by videoconference. The hearing before the Quebec Superior Court will be held on October 19, 2021 at 9am (ET) by videoconference.

**How will the Settlement Funds be Distributed?**

The Ontario and Quebec Courts approved a method for disseminating the settlement funds achieved pursuant to previous settlements. A copy of the approved Distribution Protocol can be viewed at [canadianfxnationalclassaction.ca](http://canadianfxnationalclassaction.ca). Class Counsel propose to distribute the settlement funds pursuant to this Distribution Protocol.

The claims deadline has passed, and no further claims period is contemplated.

**What are your options?**

**Take no Steps:** You do not have to do anything to stay in the class actions.

**Object:** All members of the proposed Settlement Class may attend the approval hearings and ask to make submissions regarding the proposed settlements and distribution. If you want to object to the proposed settlements, distribution or Class Counsel’s fee request, you should do so by setting out your objection in writing addressed to the FX Class Counsel at the address below by September 13, 2021.

**More Information?**

Go to <https://kmlaw.ca/cases/forex-canadian-class-action/> or call toll-free 1-855-595-2624 or write to Class Counsel at [fxclassaction@kmlaw.ca](mailto:fxclassaction@kmlaw.ca).

**Interpretation**

If there is a conflict between the provisions of this notice and the settlement, the terms of the settlement agreement will prevail.

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