

# DISTRIBUTION PROTOCOL

## IN THE MATTER OF THE CANADA TD BANK COIN COUNTING CLASS ACTION SETTLEMENT

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## **PART I - GENERAL PRINCIPLES**

1. The procedures set forth herein are intended to govern the administration of the settlement agreement entered into in the Canadian TD Bank Coin Counting class action (the “**Settlement Agreement**”).<sup>1</sup>
  
2. The administration shall:
  - (a) implement and conform to the Settlement Agreement, orders of the Court and this Distribution Protocol; and
  - (b) employ secure, paperless, web-based systems with electronic registration and record-keeping where possible.
  
3. Settlement Class Members seeking compensation must disclose and give credit for any compensation received through other proceedings or private out-of-class settlements in relation to Coin Counting Machines, unless by such proceedings or private out-of-class settlements the Settlement Class Member’s claim was released in its entirety, in which case the Settlement Class Member shall be deemed ineligible for any further compensation.

## **PART II - DEFINITIONS**

4. The definitions set out in the Settlement Agreement apply to and are incorporated herein. Where a term is defined in both the Settlement Agreement and in this Distribution Protocol, the definition in this Distribution Protocol shall govern.
  
5. For the purposes of this Distribution Protocol, the following definitions apply:

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<sup>1</sup> The Settlement Agreement is available online at [www.TDcoinclassactioncanada.com](http://www.TDcoinclassactioncanada.com).

- (a) ***Claim*** means the electronic form that a Settlement Class Member must complete and submit before the Claims Filing Deadline in order to be considered for settlement benefits under this Distribution Protocol.
- (b) ***Claims Administrator*** means Trilogy Class Action Services.
- (c) ***Claims Filing Deadline*** means the date by which Claims (and any required supporting documentation) must be electronically submitted in order for Settlement Class Members to be considered for settlement benefits under this Distribution Protocol, which date shall be four (4) months after the first publication of the notice advising Settlement Class Members of the claims process.
- (d) ***Class Counsel*** means Sotos LLP.
- (e) ***Class Period*** means between January 1, 2013 and May 25, 2016.
- (f) ***Court*** means the Ontario Superior Court of Justice.
- (g) ***Decision Notice*** shall have the meaning attributed to it in paragraph 25.
- (h) ***Deposited Coins*** means the value of the coins deposited into a TD Bank Coin Counting Machines by a Settlement Class Member during the Class Period as evidenced by supporting documentation, such as receipts or bank statements, as determined by the Claims Administrator and subject to the minimum value described in paragraph 7.
- (i) ***Net Settlement Funds*** means the aggregate of the Settlement Amount recovered pursuant to the Settlement Agreement, plus accrued interest, less:

- (i) Class Counsel Fees as approved by the Court;
  - (ii) taxes accruable with respect to the income earned on the Settlement Amount prior to distribution (including interest and penalties); and
  - (iii) any other deductions approved by the Court.
- (j) ***Settlement Agreement*** has the meaning attributed to it in paragraph 1.
- (k) ***Settlement Class Members*** means all persons who used TD Bank's Coin Counting Machines in Canada during the Class Period. The following persons are excluded:
- (i) The Defendant and its respective parents, subsidiaries, affiliates, officers and directors; and
  - (ii) Persons who validly and timely opted out of the proceeding.
- (l) ***TD Bank*** means the Defendant, The Toronto Dominion Bank.

### **PART III - DISTRIBUTION OF SETTLEMENT FUNDS**

#### **CALCULATION OF PAYMENTS**

6. The Net Settlement Funds will be distributed to Settlement Class Members *pro rata* (or proportionally) based on the value of the Settlement Class Members' Deposited Coins as against the value of all Settlement Class Members' Deposited Coins, as determined by the Claims Administrator.

7. Notwithstanding any other provision in this Distribution Protocol and subject to further order of the Court following the adjudication of all claims, all Claims assessed as valid by the Claims Administrator will be assigned a minimum value of \$25.00. In other words, if a Settlement

Class Member submits receipts showing that they deposited \$10.00 in coins, the claim will be assigned a value of \$25.00, not \$10.00. The \$25.00 valuation target is not an estimate of any damages suffered. It is a minimum administrative threshold designed to maintain a feasible economic and administrative platform for the settlement distribution. The \$25 amount that is assigned does not reflect the amount to be paid to a class member: payment will be calculated in accordance with a Class Member's *pro rata* share, and subject to a 2% cap, as described in this protocol.

8. A Settlement Class Member's total recovery from the Net Settlement Funds will be capped at 2% of the value of their Deposited Coins.

9. Any balance of the Settlement Class Member's *pro rata* share of the Net Settlement Funds that exceeds 2% of the value of their Deposited Coins will be contributed towards a separate fund to be distributed by *cy près* award.

### **SAMPLE CALCULATION**

10. Below is a sample calculation involving a class member whose Deposited Coins totalled \$500, under circumstances where the total value of all Settlement Class Members' Deposited Coins is \$1 million:

- (a) The total Settlement Amount is \$555,000.
- (b) The Net Settlement Funds, once Class Counsel fees and disbursements have been deducted, is \$345,000.
- (c) Having claimed \$500 in Deposited Coins, the Settlement Class Member would be entitled to 0.05% ( $\$500/\$1,000,000$ ) of the Net Settlement Funds, or \$172.50.

- (d) \$172.50 is 34.5% of the \$500 value of the Settlement Class Member's Deposited Coins.
- (e) Since the Settlement Class Member's total recovery from the Net Settlement Fund is capped at 2% of the value of their Deposited Coins pursuant to the Distribution Protocol, the Settlement Class Member would be entitled to recover \$25.

11. In consultation with Class Counsel, the Claims Administrator can seek directions from the Court with respect to the distribution of the Net Settlement Funds to ensure a fair and cost effective distribution of the Net Settlement Funds.

***CY PRÈS PAYMENT***

12. To the extent that the full Net Settlement Funds are not paid out due to uncashed e-transfers or cheques, residual interest, the cap detailed at paragraph 8, or otherwise, such monies shall be distributed by *cy près* payment to The Law Foundation of Ontario.

13. To be eligible to receive the monies under this distribution protocol, The Law Foundation of Ontario must:

- (a) Use the monies for the purposes outlined in its proposal submitted to Class Counsel and approved by the Court; and
- (b) Report to the Claims Administrator on an annual basis until all funds are exhausted on how the monies have been used.

14. Subject to the consent of Class Counsel, all funds distributed to the Law Foundation of Ontario by *cy près* payment shall be used up within two years of receipt.

## **PART IV - THE CLAIMS PROCESS**

### **THE CLAIM**

15. Each Claim shall require the following:
- (a) a declaration specifying the value of Deposited Coins and the approximate date on which the deposit(s) was made;
  - (b) documentary proof that will allow the Claims Administrator to verify the value of Deposited Coins claimed by the Settlement Class Member, which might include receipts or bank statements;
  - (c) disclosure regarding whether the Settlement Class Member has received compensation through other proceedings or private out-of-class settlements in relation to their Deposited Coins, and/or whether the Settlement Class Member's claims in relation to their Deposited Coins have been released, and details of the compensation received and the claims released;
  - (d) authorization to the Claims Administrator to contact the Settlement Class Member or its representative, as the Claims Administrator deems appropriate, for more information and/or to audit the Claim;
  - (e) a declaration that the information submitted in the Claim is true and correct; and
  - (f) if the Claim is submitted by a third-party on behalf of a Settlement Class Member (including a parent company claiming on behalf of a subsidiary or affiliate), the third-party must provide a signed statement from the Settlement Class Member at the time the Claim is filed authorizing the third-party to file the Claim on its behalf.

**THE ONLINE CLAIMS PORTAL**

16. The Claims Administrator shall create an online claims portal that Settlement Class Members can access in order to file a Claim and shall provide the necessary administrative support to enable Settlement Class Members to do so.

17. The online claims portal shall contain fields that require the Settlement Class Member to provide all applicable information required as part of the Claim, in accordance with paragraph 15 above.

**CLAIMS FILING PROCESS**

18. Settlement Class Members will be required to complete and submit a Claim electronically using the online claims portal. Subject to paragraph 23, or further order of the Court, Claims must be submitted to the online claims portal on or before the Claim Filing Deadline.

**ASSISTANCE IN FILING A CLAIM**

19. Settlement Class Members can contact the Claims Administrator or Class Counsel, at no charge, with questions about how to complete a Claim.

20. Settlement Class Members may utilize third-party claims services, a lawyer of their own choosing, or similar services to file Claims. If a Settlement Class Member chooses to use a third-party claims service, a lawyer of their own choosing, or similar services, the Settlement Class Member will be responsible for any and all expenses incurred in doing so.

**AUDITS**

21. At its sole discretion, the Claims Administrator can elect to audit any Claim as it sees fit to maintain the integrity of the claims procedure.

**DEFICIENCIES**

22. If during claims processing, the Claims Administrator finds that deficiencies exist in a Claim or other information is required, the Claims Administrator shall notify the Settlement Class Member of the deficiencies through the online claims portal. The Claims Administrator shall allow the Settlement Class Member thirty (30) days from the date of such notice to correct the deficiencies. If the deficiencies are not corrected within the thirty (30) day period, depending on the nature of the deficiency, the Claims Administrator may reject the Claim.

**ADJUSTMENTS TO CLAIM PROCESS AND EXTENSION OF THE CLAIMS FILING DEADLINE**

23. Class Counsel and the Claims Administrator shall agree to extend the Claims Filing Deadline and/or adjust the Claims process if, in their opinion, doing so will further the fair and efficient administration of the Net Settlement Funds and it is in the best interests of the Settlement Class Members to do so.

**CLAIMS ADMINISTRATOR'S DECISION**

24. In respect of each Settlement Class Member who has filed a Claim in accordance with this Distribution Protocol, the Claims Administrator shall decide whether the Settlement Class Member is eligible to receive settlement benefits payable out of the Net Settlement Funds in accordance with the Settlement Agreement, orders of the Court and this Distribution Protocol.

25. The Claims Administrator shall send to the Settlement Class Member, by email or regular mail, a decision as to the approval or rejection of the Claim (the "Decision Notice"). Where the Claims Administrator has rejected all or part of the Claim, the Claim Administrator shall include in the Decision Notice its grounds for doing so.

26. The Claims Administrator's decision will be final and binding upon the Settlement Class Member.

### **PAYMENT OF CLAIMS**

27. As soon as practicable after the claims evaluations and any appeals are completed, the Claims Administrator shall:

- (a) Report to Class Counsel the particulars of the proposed distribution to each eligible Settlement Class Member; and
- (b) Make arrangements to pay approved Claims.

28. Claimants who are customers of TD Bank and have provided their relevant account details will be paid by the Claims Administrator by direct transfer from the Claims Administrator's trust account, which is held at TD Bank.

29. Claimants who are not customers of TD Bank will be paid by e-transfer through email where an email address has been provided or cheque where no email address has been provided or the Settlement Class Member has made arrangements with the Claims Administrator.

### **PART V - THE CLAIMS ADMINISTRATOR'S DUTIES AND RESPONSIBILITIES**

#### **SUPERVISORY POWERS OF THE COURT**

30. The Claims Administrator shall administer the Settlement Agreement and this Distribution Protocol under the ongoing authority and supervision of the Court.

#### **INVESTMENT OF SETTLEMENT FUNDS**

31. The settlement funds shall be held in a guaranteed investment vehicle, liquid money market account or equivalent security with a rating equivalent to or better than that of a Canadian

Schedule I bank (a bank listed in Schedule I of the *Bank Act*, SC 1991, c 46), held at a Canadian financial institution.

### **COMMUNICATION, LANGUAGES AND TRANSLATION**

32. Where a Claim is filed by a third-party claims agent or lawyer on behalf of a Settlement Class Member, unless the Settlement Class Member requests otherwise, all communications shall be made to the third-party claims agent or lawyer.

33. The Claims Administrator shall establish a toll-free number for calls from Canada.

34. The Claims Administrator shall dedicate sufficient personnel to respond to Settlement Class Members' inquiries in English or French, as the Settlement Class Member elects.

35. All written communications from the Claims Administrator to a Settlement Class Member shall be transmitted via email if an email address has been provided, or if an email address has not been provided, by regular mail.

### **UNDELIVERABLE MAIL**

36. The Claims Administrator shall have no responsibility for locating Settlement Class Members for any mailing returned to the Claims Administrator as undeliverable.

37. The Claims Administrator shall have the discretion, but is not required, to reissue payments to a Settlement Class Member returned as undeliverable under such policies and procedures as the Claims Administrator deems appropriate. Any costs associated with locating current address information for the Settlement Class Member shall be deducted from the Settlement Class Member's settlement benefits.

**REISSUANCE OF PAYMENT**

38. Where a Settlement Class Member who is entitled to payment of greater than \$25 requests that an e-transfer be reissued, \$10 shall be deducted from that Settlement Class Member's settlement benefits representing the costs of reissuing payment. Where a Settlement Class Member who is entitled to payment of greater than \$25 requests that a cheque be reissued, \$15 shall be deducted from that Settlement Class Member's settlement benefits representing the costs of reissuing payment. Subject to the sole discretion of the Claims Administrator, payments for \$25 or less will not be reissued.

**TAXES**

39. The Claims Administrator shall take all reasonable steps to minimize the imposition of taxes upon the Net Settlement Funds and shall pay any taxes imposed on such monies out of the Net Settlement Funds.

**REPORTING**

40. The Claims Administrator shall provide regular reports to Class Counsel regarding the administration.

41. The Claims Administrator shall provide any reports requested by the Court.

**PRESERVATION AND DISPOSITION OF CLAIM SUBMISSIONS**

42. The Claims Administrator shall preserve, in hard copy or electronic form, as the Claims Administrator deems appropriate, the submissions relating to a Claim, until two years after all settlement monies or court awards have been paid out to Settlement Class Members, and at such time shall destroy the submissions by shredding, deleting, or such other means as will render the materials permanently illegible.

**ASSISTANCE TO THE CLAIMS ADMINISTRATOR**

43. The Claims Administrator shall have the discretion to enter into such contracts and obtain financial, accounting, and other expert assistance as are reasonably necessary in the implementation of the Settlement Agreement and this Distribution Protocol.

**CONFIDENTIALITY**

44. All information received from the Defendant or Settlement Class Members, used and retained by the Claims Administrator for the purposes of administering the Settlement Agreement, including evaluating the Settlement Class Member's eligibility status under the Settlement Agreement, is protected under the *Personal Information Protection and Electronic Documents Act*, SC 2000 c 5. The information provided by Settlement Class Members is strictly private and confidential and will not be disclosed without the express written consent of the relevant Settlement Class Member, except in accordance with the Settlement Agreement, orders of the Court and/or this Distribution Protocol. Prior to implementing the Distribution Protocol, the Claims Administrator shall execute an undertaking that confirms its commitment to abide by the obligations set out in this paragraph.