



Ontario
Securities
Commission

Commission des
valeurs mobilières
de l'Ontario

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Citation: The Toronto-Dominion Bank (Re), 2019 ONSEC 29

Date: 2019-08-30

File No. 2019-31

**IN THE MATTER OF
THE TORONTO-DOMINION BANK**

**ORAL REASONS FOR APPROVAL OF SETTLEMENT
(Subsections 127 and 127.1 of the *Securities Act*, RSO 1990, c S.5)**

Hearing: August 30, 2019

Decision: August 30, 2019

Panel: D. Grant Vingoe Vice-Chair and Chair of the Panel
Lawrence Haber Commissioner
Heather Zordel Commissioner

Appearances: Cullen Price For Staff of the Commission
Alexandra Matushenko
Kai Olson
Ryan Lapensee

Paul H. Le Vay For The Toronto-Dominion Bank
Ben Kates

ORAL REASONS FOR APPROVAL OF SETTLEMENT

The following reasons have been prepared for publication in the Ontario Securities Commission Bulletin, based on the reasons delivered orally in the hearing as edited and approved by the panel, to provide a public record of the oral reasons.

[1] This is a hearing to consider a settlement agreement entered into by The Toronto-Dominion Bank (**TD**) with Staff of the Ontario Securities Commission (**Staff**), dated August 23, 2019 (the **Settlement Agreement**) regarding allegations described in the Statement of Allegations, dated August 26, 2019.

[2] Staff alleges that TD, over a period of at least three years, from 2011 to 2013 (the **Material Time**), failed to have sufficient supervision and controls in its FX trading business. In addition, Staff alleges that TD did not promote a culture of compliance in its FX trading business during the Material Time, which allowed FX traders to behave in a manner which put TD's economic interests ahead of the interests of its customers, other market participants and the integrity of the capital markets. I refer to these circumstances as the "Supervisory Inadequacies".

[3] Staff further alleges that the Supervisory Inadequacies allowed TD's FX traders to inappropriately share confidential customer information with its competitors' FX traders through electronic chat rooms on a regular basis during the Material Time.

[4] In the Statement of Allegations, Staff alleges that this conduct was contrary to the public interest.

[5] Staff and TD have entered into a settlement agreement in which the facts underlying these allegations have been acknowledged and agreed to by TD. TD also acknowledges and admits that this conduct was contrary to the public interest. As a result, TD failed to meet the high standards of conduct expected of a market participant, which potentially put its customers at risk.

[6] The Settlement Agreement is the result of extensive negotiations between Staff and TD, and the Commission affords significant deference to negotiated agreements reached by parties. As such, the Panel's consideration of the settlement before us is based only on the facts described by Staff and Staff's conclusions as set out in the Settlement Agreement, as agreed to by TD. However, we must still be satisfied that the measures called for in the Settlement Agreement are within a reasonable range and in the public interest.

[7] This Panel had the opportunity to meet with Staff and counsel for TD in a confidential settlement conference. We reviewed the proposed settlement agreement and heard submissions from Staff and TD. We have also heard submissions from Staff and TD at today's hearing.

[8] The role of the Panel in reviewing a settlement agreement is to determine whether the terms of the settlement as a whole are fair and reasonable in the circumstances and whether the approval of the settlement is in the public interest. In making a determination of what is in the public interest, the Panel must have regard to the purposes of the

*Securities Act*¹, described in section 1.1, namely, to provide protection to investors from unfair, improper or fraudulent practices, to foster fair and efficient capital markets and confidence in capital markets and to contribute to the stability of the financial system and the reduction of systemic risk.

[9] The Panel ultimately finds that it is in the public interest to approve the Settlement Agreement between Staff and TD.

[10] In determining that it is in the public interest to approve the Settlement Agreement, we consider the following factors to be particularly relevant:

- a. TD has, since the Material Time, engaged in significant continuing compliance remediation efforts, including (i) the introduction of new procedures, (ii) adoption of the FX Global Code (the **Code**), (iii) implementation of a training program with respect to the requirements of the Code, (iv) engagement of a third party consultant to review TD's Market Abuse Monitoring Controls, resulting in enhancements to its global surveillance system, and (v) in 2018, its conduct of an assessment of its existing control environments in relation to the Code;
- b. TD's Internal Audit Group will conduct an internal audit of its compliance with the Code and related practices and procedures, including provisions related to the disclosure of confidential customer information in its global FX business, and TD will institute any necessary changes in accordance with a process appended to the Settlement Agreement;
- c. TD has made a voluntary payment of \$9,300,900 to the Commission for the benefit of third parties or for investor education and has paid \$800,000 to reimburse the Commission for costs incurred; and
- d. TD provided exemplary cooperation to Staff in its investigation and with respect to the completion of the settlement agreement, especially in relation to the handling of the very large amounts of data reviewed by Staff. Notably, this level of cooperation resulted in a 30% reduction in the voluntary payment sought by Staff. The calculation itself, appended to the Settlement Agreement, reflects a significant amount of transparency regarding the calculation of the voluntary payment to be made by TD.

[11] For all the reasons stated above, this Panel finds that it is in the public interest to approve the Settlement Agreement. We will issue an order substantially in the form of the order in Schedule "A" to the Settlement Agreement.

Dated at Toronto this 30th day of August, 2019.

"D. Grant Vingoe"

D. Grant Vingoe

"Lawrence P. Haber"

Lawrence P. Haber

"Heather Zordel"

Heather Zordel

¹ RSO 1990, c S.5