Ontario Securities Commission
Commission des valeurs mobilières de l'Ontario
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IN THE MATTER OF THE TORONTO-DOMINION BANK

SETTLEMENT AGREEMENT

PART I – INTRODUCTION

1. The foreign exchange ("FX") markets are among the largest and most liquid markets in the world.[1] Their integrity is of central importance to the broader capital markets, including the Ontario capital markets. Over a period of at least three years, from 2011 to 2013 (the "Material Time"), The Toronto-Dominion Bank ("TD") failed to have sufficient supervision and controls in its FX trading business. Additionally, despite actions taken by TD in November 2013 to impose a ban on multi-dealer chatrooms, as described below certain compliance monitoring issues continued into 2015. TD did not sufficiently promote a culture of compliance in the FX trading business, 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. Failures of this nature put customers at risk of harm and undermine market integrity. TD's failures in this regard were contrary to the public interest.

2. TD's failure to have sufficient supervision and controls in its FX trading business allowed the inappropriate sharing of confidential customer information by TD FX traders with FX traders at other competitor firms on a regular basis. Staff ("Staff") of the Ontario Securities Commission (the "Commission") have identified many hundreds of prohibited disclosures

[1] The daily average volume turnover of the global FX market was over USD 5 trillion in April 2013 according to the Bank for International Settlements (BIS) Triennial Central Bank Survey 2013.

throughout 2011-2013.[2] The disclosures included detailed information about the customer orders such as trade sizes, timing, price, or stop-loss levels. In addition, TD FX traders received confidential customer information of competitor firms on a regular basis which allowed them to gain a potential advantage in the market and over traders at other firms who did not have access to this information.[3]

3. TD appeared to rely primarily on its front office[4] FX trading supervisors and their delegates, who were responsible for the first line of defence, to identify, assess and manage risks concerning the disclosure of confidential customer information. The front office failed to adequately discharge these responsibilities with regard to obvious risks associated with confidentiality and conflicts of interest. These failings occurred in circumstances where some of those responsible for managing front office matters were aware of and/or at times involved in the inappropriate disclosures described herein.

4. Staff expect firms trading in FX to identify, assess and manage appropriately the risks of non-compliance with the *Securities Act*[5] (the "Act") and risks to the integrity of capital markets. Staff also expect firms to promote a culture of compliance where their personnel adhere to high ethical standards and ensure their behaviour does not put customers and the integrity of the

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[2] Staff is not suggesting that in every prohibited disclosure, confidential customer information was disclosed. For example, the prohibited disclosure could have come from other institutions. However, in many other instances confidential customer information was shared with other participants in the chatroom.

[3] Although Staff is not alleging specific violations as described below, or suggesting that there is evidence of such misconduct, it is helpful to describe generally the types of misconduct that gives rise to market integrity issues. For the purpose of providing guidance to market participants, types of misconduct could include:

Front Running – a prohibited practice where a broker enters into an equity trade with foreknowledge of a block transaction which will influence the price of the equity, resulting in an economic gain for the broker.

Trading Ahead – a market maker trading securities from his firm's own account instead of matching available bid and ask orders from market investors.

Proprietary Position – when a firm or bank invests for its own direct gain instead of trading on behalf of its clients.

Triggering Stops – attempts to trigger client stop loss orders involving inappropriate disclosure to traders at other firms concerning details of the size, direction and level of client stop loss orders. Traders would potentially profit from this activity because if successful, they would have sold the particular currency to its client pursuant to the stop loss order at a higher rate than it had bought that currency in the market.

[4] Front Office means TD's FX Trading Desk.

[5] RSO 1990, c S.5, as amended.

capital markets at risk. Firms must be vigilant about detecting, thwarting and addressing potential market abuse activities, including behaviours where market participants use their position to gain an inappropriate advantage over other market participants.

(1) The Scope of FX Markets

5. The FX markets, in which participants can buy, sell, exchange and speculate on currencies, are among the largest financial markets in the world. Participants in the FX markets include banks, commercial companies, central banks, investment management firms and investment funds.

6. The institutional FX markets encompass a wide variety of transactions including transactions involving:

   a) the exchange of currencies between two parties at an agreed rate for settlement within two business days from the trade date;

   b) the exchange of currencies between two parties at an agreed rate for settlement on a future date (usually more than two business days from the trade date); and

   c) the option for one party to exchange currencies with another party at a fixed rate by or on a certain future date.

(2) Commission Jurisdiction in the FX Markets and Importance of Ethical Conduct

7. The Commission has jurisdiction over conduct in the FX markets for the purposes of s.127 of the Act. The markets for these transactions are interconnected as spot transactions are part of the basis upon which the value of FX forwards, swaps and options are determined. Benchmarks set in the spot FX market are used throughout the world to establish the relative values of different currencies and are of crucial importance in worldwide capital markets including over-the-counter derivative and commodity futures markets and establishing benchmarks for valuing assets and liabilities, such as those of investment funds.

8. Given the importance of the FX markets and their impact on the broader capital markets, it is vital to fostering confidence in the capital markets that market participants like TD ensure honest and responsible conduct by its employees in the FX trading business. Implementing

sufficient systems of control and supervision in the FX trading business are critical to monitoring trader conduct.

9. The Commission expects market participants to identify, assess and manage appropriately the risks that their lines of business pose, to ensure investor protection and market integrity. TD understands that it is required to comply with this expectation in relation to the conduct of its employees in its FX trading business.

10. Although cooperation with Commission investigations is expected, Staff would like to recognize the exemplary cooperation it received from TD in this matter.

11. The parties will jointly file a request that the Commission issue a Notice of Hearing (the "Notice of Hearing") to announce that it will hold a hearing (the "Settlement Hearing") to consider whether, pursuant to sections 127 and 127.1 of the Act, it is in the public interest for the Commission to make certain orders against TD (the "Respondent").

PART II - JOINT SETTLEMENT RECOMMENDATION

12. Staff recommend settlement of the proceeding (the "Proceeding") against the Respondent commenced by the Notice of Hearing, in accordance with the terms and conditions set out in Part V of this settlement agreement (the "Settlement Agreement"). The Respondent consents to the making of an order (the "Order") substantially in the form attached as Schedule "A" to the Settlement Agreement based on the facts set out herein.

13. For the purposes of the Proceeding, and any other regulatory proceeding commenced by a Canadian securities regulatory authority, the Respondent agrees with the facts set out in Part III of the Settlement Agreement and the conclusion in paragraphs 72-73 of the Settlement Agreement.

PART III - AGREED FACTS

A. Background

(1) The Respondent

14. TD is a Schedule 1 Bank under the *Bank Act* (Canada).[6] During the Material Time, and at present, TD Securities ("TDS"), an unincorporated division of TD, engaged in the purchase and sale of foreign currencies with customers and for itself ("FX Trading"), as defined below.

15. In the Material Time, TD's foreign exchange business was based primarily in Toronto. For some of the Material Time, TD also had trading or sales desks in London, Singapore and New York. In the Material Time, TD took positions in spot transactions, forwards, swaps and over-the-counter-options.

16. The foreign exchange business at TDS was focused entirely on institutional and corporate customers.

(2) "Market colour" information

17. During the Material Time, TD primarily participated in the above FX transactions with customers and for TD's own account ("proprietary trading"). Making profitable trades could be dependent on correctly assessing the direction of the market for various currency pairs.

18. The FX markets are primarily over-the-counter markets. Accordingly, a bank's profitability and ability to manage business risk in its FX Trading business was dependent on the quality of information its traders possessed. Individual traders sought to understand macroeconomic factors affecting currency rates. There was also an advantage to knowing "market flow" including which institutions were buying or selling which currencies in significant amounts and details of those trades.

19. Exchanging "market colour" including economic analysis relating to the movement of currencies was acceptable. However, during the Material Time, traders inappropriately sought

[6] SC 1991, c. 46.

and disclosed specific transaction details, to gain an advantage in the market, which led to the chatroom misconduct described below.

20. The frequent flow of information between traders of different firms using various communication platforms increases the risk of traders sharing confidential information. It is therefore particularly important that financial institutions exercise sufficient control and monitoring of such communications.

B. Chatroom Misconduct

(1) TD FX traders participated in electronic chatrooms with traders from other firms

21. It was common practice during most of the Material Time for FX traders at firms to use electronic messaging services, such as chatrooms on Bloomberg, to communicate with FX traders at other firms. While the use of such communication tools is not in itself inappropriate, the frequent and significant flow of information between traders at different firms increased the potential risk of traders engaging in improper activity, including, amongst other things, the sharing of confidential customer information.

22. TD FX traders were involved in several large chatrooms involving FX traders from other international banks ("Multi-Dealer Chatrooms") in addition to bi-lateral chats. One of these bi-lateral chats involved a Managing Director in TD's FX Trading business, TD Managing Director A. Staff have identified many hundreds of prohibited disclosures throughout 2011-2013.

23. Participation in chatrooms with traders from other firms had a profit motive. For example, in a Multi-Dealer Chatroom with FX traders from other firms, a TD FX trader based in London, TD Trader A, wrote "*profit is profit*" and "*no-one ever got fired for making cash*". TD Trader A also wrote in a chat to an FX trader at another large Canadian bank: "*u should be over 2 bucks up on my ideas and info this year*".

(2) TD's policies prohibited the disclosure of confidential information

24. The disclosure of confidential customer information to other traders and third parties was contrary to TD's policies and accepted industry standards.

25. TD had a number of policies and procedures in place during the Material Time that applied to FX Trading.

26. First, the Bank's Code of Conduct and Ethics for Employees and Directors outlined the following principles, amongst others:

    a) "As a responsible business enterprise and corporate citizen, [TD] is committed to conducting its affairs to the highest standards of ethics, integrity, honesty, fairness and professionalism – in every respect, without exception, and at all times."

    b) "We must avoid acting in manner that places our personal interests ahead of the best interests of TD, our customers, and/or our shareholders … [and] must also avoid situations that might create the appearance of a conflict of interest, whether or not it actually exists and whether or not we believe we would be improperly influenced."

    c) "Customer information must be kept private and confidential. We must not discuss or disclose any customer information to anyone outside TD unless we are required to disclose by law, are authorized to disclose by the customer or are directed to disclose in circumstances described in policies and procedures applicable to our business segment or region."

27. In addition, TD's 2011 and 2012 Rates & FX Compliance Manual Canada stated the following specifically in the context of FX Trading:

    a) Code of Conduct and Ethics: "While reaching our business goals is critical to our success, equally important is the way we achieve them … The Code establishes the standards that govern the way we deal with each other, our shareholders, customers, suppliers and competitors…"

    b) Confidentiality: "Every TD Securities employee has a duty to preserve and protect the confidential information of TD Securities and [TD Bank Financial Group]. Perhaps even more important, employees must also protect the confidentiality of our customers and suppliers." And, as it pertains specifically to trading activities, the Code of Conduct and Ethics provided, "All transactions, whether they are for TD Securities, a customer or a

competitor and whether concluded or not, must remain confidential. Details of transactions or prospective transactions must not be revealed to third parties under any circumstances and any breaches of confidentiality must be reported to senior management immediately"

(3) Chatroom misconduct in violation of TD's policies

28. During the Material Time, certain TD FX traders regularly provided confidential information to, and received confidential information from, the traders of other financial institutions, including in respect of the existence of customer stop loss orders. This sharing of confidential information occurred in Multi-Dealer Chatrooms and in bi-lateral chats.

29. All TD traders understood that the sharing of specific customer names was unequivocally prohibited. While traders were encouraged to seek and use "market flow" and "market colour" in the course of their trading, there was no clear indication as to what, aside from customer names, was impermissible and what was permitted. Consequently, confidential information including specific transaction details was disclosed by TD traders to individuals at other institutions. The disclosure of such information in some instances was a breach of confidentiality and created the potential risk that this information could be used for the trader's benefit and to the customer's detriment.

30. TD Managing Director A communicated in a chatroom with one individual from another financial institution, who was also a former colleague. These individuals shared information in a manner which was, at times, inconsistent with market integrity. For example, TD Managing Director A disclosed the following information:

> "fyi..we have stop at 97...from a guy that alwyas has stop behind some large offers...we have stops above figure and big one at 35-40 area"

31. Given TD Managing Director A's longstanding personal relationship with the other individual, he believed that the individual would not use the information being provided to the detriment of TD or its customers (and there is no evidence of such conduct). In some instances, TD Managing Director A was sharing confidential information with his former colleague in order to determine whether customer positions could be appropriately filled or netted outside of the market. However, the disclosure of this information by TD Managing Director A was a breach of TD's policies and a breach of confidentiality.

32. The following is a TD trader disclosing information about a customer stop loss order to traders at other firms in a Multi-Dealer Chatroom:

> TD Trader A: I have decent stop below 20 eur fyi
> Bank A Trader: ta
> Bank B Trader: a weak one or one that been there a while
> TD Trader A: very fresh
> Bank B Trader: just sitting there ready to be popped
> …
> Bank B Trader: ill let my 24 bid ride a few pips then[7]

33. The sharing of confidential information was a two-way street. For example, on January 10, 2013, a trader from another firm inappropriately disclosed information about a "huge" option that was expiring the next day to TD Trader A:

> Bank A Trader: between u s
> Bank A Trader: there is huge 13240 tom exp
> TD Salesperson A: ok
> TD Trader A: ta

34. TD Managing Director A confirmed during this investigation that information about specific barriers should not be disclosed and that it was something that he would refer to compliance.[8]

35. Despite confirming that information about specific barriers should not be disclosed, on February 29, 2012, TD Managing Director A disclosed information about a barrier option he had a "piece of" to another FX trader in a bi-lateral chat:

> Bank A Trader: hearing from barx, very large barrier in usdcad at .9850. they dont have it. they are hearing it
> TD Managing Director A: we have a piece of it . . . . 6 days til expiry

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[7] In the chat directly above, TD Trader A has disclosed confidential information about a stop and Bank B Trader appears to be using this information to inform his market strategy to make a profit. This behaviour could undermine market integrity because Bank B Trader appears to be using confidential information to gain an advantage over the rest of the market.

[8] A barrier option is a type of derivative where the payoff depends on whether or not the underlying asset has reached or exceeded a predetermined price. In other words, a barrier option's payoff is based on the underlying asset's price path. The option becomes worthless or may be activated upon crossing of a price point barrier.

TD Managing Director A: on the one we have

36. On April 30, 2012, TD Managing Director A disclosed and received confidential customer information with an FX trader at another firm:

> TD Managing Director A: lot of small but dodgy sellers popping in up here above 60 with tight stops
>
> TD Managing Director A: i.e. wacking 60-64 with stops at 70...
>
> Bank A Trader: thks i have very little here
>
> TD Managing Director A: more of same coming..in..we literally have about 5 diff guys that tend to be well informed with stops above 70 and just got short here...they not generally right in long term...but would guess someone has a lot to go between 65 and 70
>
> Bank A Trader: cool...i have stops 40 dow to 30 program type guys who would be long post number
>
> Bank A Trader: would like to buy it down thee

37. This illustrates that once information is shared, the risk created is impossible to control as it can be further disclosed to a potentially unlimited chain of recipients.

(4) Sharing of information with other banks was permitted by TD FX Supervisors

38. The tone from the top of TD's FX Trading business permitted traders to provide confidential information to traders at other firms and receive confidential information in return.

39. The use of Bloomberg chats was accepted by supervisors. For example, on April 16, 2013, as other banks were banning Multi-Dealer Chatrooms, TD Trader A told others in a chat that TD Managing Director B would never prohibit Bloomberg chats:

> TD Trader A: we will never have to close ours
>
> TD Trader A: tyhe big man here has said he'll never ever stop it
>
> Bank A Trader: I am going down the semantics route for an exception
>
> TD Trader A: thinks its ridiculous

40. TD Trader A and others confirmed that "big man" was a reference to TD Managing Director B.

(5) Disclosures of Confidential Customer Information Posed Risks

41. TD's disclosures of confidential customer information put the customers at risk of economic loss. The behaviour also undermined market integrity.

C. TD did not have a sufficient system of controls and supervision in place in relation to its FX Trading business during the Material Time

42. During the Material Time, TD did not have a sufficient system of controls and supervision over its global FX Trading business concerning the disclosure of confidential customer information.

43. TD operated a "three lines of defence" model to manage risk of FX Trading during the Material Time. TD's front office (the first line of defence) had primary responsibility for identification of conduct risks, which they were expected to report to compliance officers for escalation via relevant business control committees. In addition, the front office and Compliance functions participated in risk assessments, which could also result in escalation of issues for further review by Compliance or Risk (the second line of defence) or Internal Audit (the third line of defence).

44. During the Material Time, there were deficiencies in the first and second lines of defence as outlined below.

(1) TD did not recognize the regulatory risks of its FX Trading business

45. Between 2011 and 2012, TD did not appear to recognize the risk that the manner in which its FX Trading business was conducted might result in TD not complying with securities legislation. For example, certain of its policies and procedures indicated that it was not subject to securities legislation.

(2) TD did not provide sufficient guidance to its FX traders about the prohibition on sharing of confidential information

46. TD's policies and procedures during the Material Time did not provide sufficient guidance to FX traders. While, as noted above, the policies prohibited disclosing confidential customer information, they were high-level in nature and applied to TD or the capital markets business as a whole. The policies did not specifically address the use of chatrooms or the practical issues

FX traders faced daily. For instance, the policies did not provide sufficient guidance on the differences between sharing confidential information, which was prohibited, and sharing acceptable "market colour".

(3) TD's FX front office did not sufficiently identify, assess and manage risks concerning the disclosure of confidential customer information

47. During the Material Time, TD appeared to rely primarily on its front office FX Trading supervisors and their delegates, who were responsible for the first line of defence, to identify, assess and manage risks concerning the disclosure of confidential customer information.

48. The front office did not effectively do so. FX traders were not provided with sufficient guidance on what was or was not acceptable in chatrooms. The front office did not effectively supervise chatroom discussions. In some instances, TD Managing Director A, who was supposed to be supervising conduct, participated in the disclosure of confidential customer information in chatrooms.

(4) TD's Second Line of Defence Failed to Sufficiently Address the Risk posed by the Chatrooms

49. Compliance, the second line of defence, failed to sufficiently address the risk posed by the chatrooms. For much of the Material Time, Compliance's role in monitoring the FX Trading business was primarily focused on developing FX trade surveillance and performing electronic communications surveillance—the limitations of which are discussed below.

(5) TD did not formally prohibit Multi-Dealer Chatrooms until November 2013 although it should have been aware of issues in Chatrooms as early as the middle of 2012

50. In November 2013, TD imposed a ban on Multi-Dealer Chatrooms. The ban was documented in TD's policies and procedures in 2015. From an operational perspective, the ban was insufficient. In chats, various traders discussed alternative means of communication, such as other chatrooms, WhatsApp and the telephone, although Staff have no evidence of traders participating in similar misconduct in a different forum following the chat ban.

51. From the middle of 2012, TD should have been aware of the increased risks associated with information sharing and should have modified its policies and procedures accordingly. It was

at this time that regulatory issues surrounding LIBOR highlighted concerns with the risk of collusive behaviour and misuse of confidential information. Some banks began prohibiting Multi-Dealer Chatrooms around this time and these prohibitions were discussed in a chatroom involving TD FX employees in August 2012. The FX regulatory issues first received media attention in mid-2013, supervisors were aware of this and at least one TD trader discussed potential and actual chatroom shut downs in a chatroom. However, TD did not prohibit its traders from participating in Multi-Dealer Chatrooms until November 2013 at the earliest.

(6) TD Compliance's "electronic communications" review was insufficient to identify disclosure of confidential customer information

52. As a regular monitoring, supervision or control practice, Compliance relied in part on an electronic communications "e-comms" (including email and other messaging platforms) review based on lexicon "hotword" lists and random sampling. Issues with the review included the following:

a) The lexicon terminology was deficient. Certain terms that ought to have been included were not;

b) One of the supervisors charged with conducting the review was himself involved in chats involving the disclosure of confidential information;

c) The scope and structure of the review was insufficient to reveal the disclosure of confidential information; and

d) Compliance's participation was insufficient and did not add value, as all it did was monitor an insufficient review process.

53. A market participant that identifies a problem in respect of its systems of internal control or any other inappropriate activity that has affected (or may affect) investors or compromises the integrity of Ontario's capital markets, should promptly and fully self-report. TD failed to establish a sufficient compliance system to monitor its FX Trading business. As such, the lack of sufficient controls meant that misconduct went undetected, and TD was unable to remediate, self-report and escalate concerns.

(7) TD provided insufficient training and guidance on how TD's general policies on confidentiality should be applied to the FX Trading business

54. There was insufficient training and guidance during the Material Time on how TD's general policies on confidentiality should be applied specifically to the FX Trading business.

55. For example, TD FX employees told Staff that they could not recollect receiving any training on information sharing. Training presentations, even from 2013, did not reference chatrooms. TD FX employees examined by Staff did not have a clear understanding of TD's policies and procedures on information sharing.

56. The insufficient training and guidance about the application of general policies to the FX Trading business increased the risk that confidential customer information could be disclosed.

57. It was only beginning in the fall of 2013, that TD established an FX-specific policy entitled *TD Securities Global Rates FX Sales and Trading Policy – Canada*, which addressed the following matters, among others:

a) Conflicts of Interest: "All Employees are expected to avoid conflicts of interest in their dealings with clients, counterparties and the public. Such conflicts can arise in many different circumstances but one of the underlying principles is that a fair, efficient and liquid debt market relies in part on open and unbiased dealings by the Employees, and fulfillment by their duties to clients before their own interests."

b) Client Confidentiality and Proprietary Information: "Employees should not pass on confidential and non-public information beyond their trade desk. Such information includes discussions with unrelated parties concerning their trades, their trading positions, or the firm's position. It is also inappropriate to disclose, or to request others to disclose information relating to a counterparty's involvement in a transaction except to the extent required by law."

c) Client Priority: "Employees should not enter into any transaction which may conflict with a duty of care owed to a client, unless such conflict is disclosed to the client and the client consents to the transaction. In particular, where Employees are handling client orders, these

orders should be handled appropriately and with due regard to the best interests of the client."

58. TD continued to review and update its compliance program as it pertained to FX Trading as outlined further below.

(8) TD's "FX Dealer Probe" was inadequate

59. Between 2013 and 2014, TD engaged in an internal review known as the "FX dealer probe" or "lookback" (the "FX Dealer Probe"). The FX Dealer Probe involved collecting and reviewing chats. The FX Dealer Probe was undertaken as a result of international media reports beginning in mid-2013 regarding investigations of global misconduct in the FX markets. None of these reported investigations involved TD or a TD FX trader. There were several issues with the review:

a) The FX Dealer Probe was insufficient in scope, focusing only on manipulation of the WM/Reuters rate and improper personal trading. TD focused only on these issues because they were the principal allegations of investigations by other regulators at the time. The FX Remediation Programme later conducted by the FCA (the "FCA's FX Remediation Programme") also included risks that included engaging in coordinated trading to gain an unfair advantage, deliberately triggering customer stop loss orders, and sharing confidential information with customers and traders at other firms. There is no indication that TD looked at any of these types of misconduct.

b) Documentation to support the scope of the FX Dealer Probe was not retained. As a result, it is unclear which chats were reviewed, who reviewed them, when they did so and what issues they considered. The review may not have been appropriately focused to detect chatroom misconduct.

c) The reviewers did not appear to receive specific instructions and at least one had no FX training. TDS' Chief Compliance Officer also advised that they would "have had a dialogue about what to focus on," but that they "wouldn't have written it down as a procedure." TD Managing Director A, who was one of the reviewers, may have conducted his review based

on whether the information was "tradeable", as opposed to whether it was confidential customer information being shared in breach of TD's policies and procedures.

d) The conclusion of the FX Dealer Probe was that it did not reveal any area of "meaningful concern" and that TD's currency trading activities "are still considered to be within standard market practice in Canada and globally". The standard was inappropriate, because it was not based on considerations such as whether TD was in compliance with its own internal policies, whether market integrity was appropriately safeguarded or whether TD was in compliance with securities legislation.

60. Through the course of the OSC investigation, it was revealed that individual traders were sharing confidential information with traders from other financial institutions, as outlined above.

D. OTHER FACTORS

61. Staff have considered the above and certain other factors in arriving at the voluntary payment amount. The methodology is set out in Schedule "C" to the Settlement Agreement entitled Calculation of Voluntary Payment. It includes the nature and seriousness of the conduct.

62. There is no evidence or indication that TD was involved in any plan or collusion to attempt to manipulate the WM/Reuters benchmark or any other benchmark rate.

(1) Continuing Compliance Remediation

63. TD participated in various efforts with other regulators and financial market organizations to improve oversight of the FX market.

64. For example, TD participated in the FCA's FX Remediation Programme with respect to its FX Trading business beginning in late 2014 and concluding in late 2015. Although the focus of the FCA's FX Remediation Programme was on TD's London spot FX Trading business, a number of new procedures were added across its FX Trading business based on this review.

65. In 2014, TD also participated in the process which led to the establishment of the FX Global Code[9] in May 2017 as a global set of best practices for financial institutions. TD took guidance from this process and on November 1, 2017, TD introduced its Global Foreign Exchange Compliance Policy (the "Global FX Policy").

66. In May 2018, TDS signed its FX Global Code Statement of Commitment, in which it confirmed that the Code represents a statement of principles generally recognized as good practice and that TDS had taken appropriate steps to align its activities with the Code. Employees were provided with training with respect to the requirements of the Code and of the Global FX Policy. The training is ongoing and ensures that all in scope front office employees are subject to a periodic refresh on the Code principles and application. New employees are required to complete the training program in order to ensure they are aware of the Code and their accountabilities.

67. This training covers all leading principles of the Code, with specific focus on the principles having the greatest impact on front office, including Governance, Ethics, Execution, and Information Sharing. On Information Sharing, the training defines confidential information, and includes examples of both good practice and prohibited misconduct as it relates to confidential information and market colour.

68. In 2018, TD also engaged a third-party consultant to review TD's Market Abuse Monitoring Controls. The consultant's final report was submitted to the FCA in June 2018. TD then established a project to address the recommendations made by the consultant with a focus on improving governance and upgrading surveillance capabilities globally within TDS, across all business lines, including FX. As a result of this project, TD's global surveillance system (SMARTS together with in house models) captures all asset classes globally, including foreign exchange.

[9] The FX Global Code is a set of global principles of good practice in the FX markets that has been developed to provide a common set of guidelines to promote the integrity and effective functioning of the FX markets.

69. In 2018, TD conducted an assessment of its existing control environment as against the requirements of the FX Global Code. As part of its remediation plan for identified opportunities for improvement, TD committed to continued reassessment and remediation.

(2) Cooperation

70. TD has provided exemplary cooperation to Staff in its investigation and with respect to the completion of the Settlement Agreement.

71. In the course of the investigation, TD worked collaboratively with Staff in a timely manner to address challenges related to production of very large data requests. In addition, TD's responses to Staff's requests for assistance was exemplary, including the production of e-comms and trading records in extremely short periods of time. E-comms were obtained by TD from a third-party service provider at significant expense to TD in order to provide the information in a format that was more easily consumable by Staff. TD also worked with Staff to develop a comprehensive protocol for reviewing material for privilege in an efficient and coordinated manner. Similarly, TD was proactive and collaborative throughout the resolution of this matter.

PART IV - CONDUCT CONTRARY TO THE PUBLIC INTEREST

72. TD acknowledges and admits that, during the Material Time, it engaged in conduct contrary to the public interest by:

(a) sharing confidential customer information with FX traders at other firms in electronic chatrooms; and

(b) failing to establish and maintain an adequate compliance system that addressed inappropriate information sharing and thus provided reasonable assurance that TD:

(i) complied with securities legislation, and in particular the market manipulation and fraud prohibitions in the Act; and

(ii) did not undermine confidence in the integrity of the FX markets.

73. As a result, TD failed to meet the high standards of conduct expected of a market participant, which potentially put its customers at risk.

PART V - TERMS OF SETTLEMENT

74. The Respondent agrees to the terms of settlement set forth below.

75. The Respondent consents to the Order substantially in the form attached as Schedule "A", pursuant to which it is ordered that:

    a) the Settlement Agreement be approved;

    b) TD's Internal Audit Group will conduct an internal audit of its compliance with the FX Global Code, and the practices and procedures relating thereto, including in relation to the disclosure of confidential customer information in its global FX business, and institute any necessary changes in accordance with the process set forth in Schedule "B" to the Order, pursuant to paragraph 4 of subsection 127(1) of the Act;

    c) the voluntary payment of $9,300,900 by the Respondent is designated for allocation or use by the Commission in accordance with paragraph 3.4(2)(b)(i) or (ii) of the Act; and

    d) the Respondent pay costs in the amount of $800,000, by wire transfer to the Commission before the commencement of the Settlement hearing pursuant to section 127.1 of the Act.

76. The Respondent has given an undertaking (the "Undertaking") to the Commission in the form attached as Schedule "A" to this Order to:

    make a voluntary payment to be designated for allocation or use by the Commission in accordance with paragraphs (b)(i) or (ii) of subsection 3.4(2) of the Act, in the amount of $9,300,900, by wire transfer to the Commission before the order approving the Settlement Agreement is made, which payment is conditional upon approval of the Settlement Agreement by the Commission;

77. The Respondent acknowledges that the Settlement Agreement and the Order (except for the payment described in paragraph 75(c)) may form the basis for orders of parallel effect in other jurisdictions in Canada. The securities laws of some other Canadian jurisdictions allow orders

made in this matter to take effect in those other jurisdictions automatically, without further notice to the Respondent.

PART VI - FURTHER PROCEEDINGS

78. If the Commission approves the Settlement Agreement, Staff will not commence or continue any proceeding against the Respondent under Ontario securities law based on the misconduct described in Part III of the Settlement Agreement, unless the Respondent fails to comply with any term in the Settlement Agreement or the Undertaking, in which case Staff may bring proceedings under Ontario securities law against the Respondent that may be based on, among other things, the facts set out in Part III of the Settlement Agreement as well as the breach of the Settlement Agreement or the Undertaking.

79. The Respondent acknowledges that, if the Commission approves the Settlement Agreement and the Respondent fails to comply with any term in it or the Undertaking, Staff or the Commission are entitled to bring any proceedings necessary to, among other things, recover the amounts set out in sub-paragraphs 75.c) and 75(d), above.

80. The Respondent waives any defences to a proceeding referenced in paragraphs 78-79 that are based on the limitation period in the Act, provided that no such proceeding shall be commenced later than six years from the date of the occurrence of the last failure to comply with the Settlement Agreement or the Undertaking.

PART VII - PROCEDURE FOR APPROVAL OF SETTLEMENT

81. The parties will seek approval of the Settlement Agreement at the Settlement Hearing before the Commission, which shall be held on a date determined by the Secretary to the Commission in accordance with the Settlement Agreement and the Commission's *Rules of Procedure*, dated July 23, 2019.

82. The Respondent may have a representative attend the Settlement Hearing in person or have counsel attend the Settlement Hearing on its behalf.

83. The parties confirm that the Settlement Agreement sets forth all of the agreed facts that will be submitted at the Settlement Hearing, unless the parties agree that additional facts should be submitted at the Settlement Hearing.

84. If the Commission approves the Settlement Agreement:

    a) the Respondent irrevocably waives all rights to a full hearing, judicial review or appeal of this matter under the Act; and

    b) neither party will make any public statement that is inconsistent with the Settlement Agreement or with any additional agreed facts submitted at the Settlement Hearing.

85. Whether or not the Commission approves the Settlement Agreement, the Respondent will not use, in any proceeding, the Settlement Agreement or the negotiation or process of approval of the Settlement Agreement as the basis for any attack on the Commission's jurisdiction, alleged bias, alleged unfairness or any other remedies or challenges that may be available.

PART VIII - DISCLOSURE OF SETTLEMENT AGREEMENT

86. If the Commission does not make the Order:

    a) the Settlement Agreement and all discussions and negotiations between Staff and the Respondent before the Settlement Hearing will be without prejudice to Staff and the Respondent; and

    b) Staff and the Respondent will each be entitled to all available proceedings, remedies and challenges, including proceeding to a hearing on the merits of the allegations contained in the Statement of Allegations in respect of the Proceeding. Any such proceedings, remedies and challenges will not be affected by the Settlement Agreement, or by any discussions or negotiations relating to the Settlement Agreement.

87. The parties will keep the terms of the Settlement Agreement confidential until the Settlement Hearing, unless they agree in writing not to do so or unless otherwise required by law.

PART IX - EXECUTION OF SETTLEMENT AGREEMENT

88. The Settlement Agreement may be signed in one or more counterparts which together constitute a binding agreement.

89. A facsimile copy or other electronic copy of any signature will be as effective as an original signature.

DATED at **Toronto**, **Ontario** this **23rd** day of **August, 2019**.

"*C. Daniel Wolski*"

Witness: C. Daniel Wolski

THE TORONTO-DOMINION BANK

By: "*Bob Dorrance*"
Name: Bob Dorrance
Title: Group Head, Wholesale Banking,
TD Bank Group

DATED at Toronto, Ontario, this **23rd** day of **August, 2019**.

ONTARIO SECURITIES COMMISSION

By: "*Jeff Kehoe*"
Name: Jeff Kehoe
Title: Director, Enforcement Branch

SCHEDULE "A"

FORM OF ORDER

Ontario Securities Commission | Commission des valeurs mobilières de l'Ontario | 22nd Floor, 20 Queen Street West, Toronto ON M5H 3S8 | 22e étage, 20, rue queen ouest, Toronto ON M5H 3S8

IN THE MATTER OF
[Company and/or Individual Name(s)]
File No. [#]
(Names of panelists comprising the panel)

(Day and date order made)

ORDER
(Sections 127 and 127.1)

WHEREAS:

1. on **[date]**, the Ontario Securities Commission (the "Commission") issued a Notice of Hearing (the "Notice of Hearing") in relation to the Statement of Allegations filed by Staff of the Commission ("Staff") on **[date]** with respect to The Toronto-Dominion Bank ("TD" or the "Respondent");

2. the Notice of Hearing gave notice that on **[date]**, the Commission would hold a hearing to consider whether it is in the public interest to approve a settlement agreement between the Respondent and Staff dated **[date]** (the "Settlement Agreement");

3. pursuant to the Settlement Agreement, the Respondent has given an undertaking (the "Undertaking") to the Commission, in the form attached as Schedule "A" to this Order, which includes an undertaking to make a voluntary payment to be designated for allocation or use by the Commission in accordance with paragraphs (b)(i) or (ii) of subsection 3.4(2) of the Act, in the amount of $9,300,900, by wire transfer to the Commission before the order approving the Settlement Agreement is made, which payment is conditional upon approval of the Settlement Agreement by the Commission.

4. the Respondent acknowledges that the Settlement Agreement and this Order may form the basis for orders of parallel effect in other jurisdictions in Canada;

5. the Commission has reviewed the Settlement Agreement, the Undertaking**,** the Notice of Hearing and the Statement of Allegations and heard submissions from counsel for the Respondent and Staff; and

6. the Commission is of the opinion that it is in the public interest to make this Order.

ON READING [give particulars of the material filed] and on hearing the submissions of the representative(s) for [name parties], [add as applicable: (name parties) appearing in person; no one appearing for (name parties), although properly served as appears from (indicate proof of service)], [and considering (indicate any consents or undertakings if provided)];

IT IS ORDERED THAT:

(a) the Settlement Agreement be approved;

(b) TD's Internal Audit Group will conduct an internal audit of TDS' compliance with the FX Global Code, and the practices and procedures relating thereto, including in relation to the disclosure of confidential customer information in its global FX business, and institute any necessary changes in accordance with the process set forth in Schedule "B" to the Order, pursuant to paragraph 4 of subsection 127(1) of the Act;

(c) the Respondent pay costs in the amount of $800,000, pursuant to section 127.1 of the Act;

_____

[Commissioner]

_____ _____

[Commissioner] [Commissioner]

SCHEDULE "A" TO THE ORDER

Ontario Securities Commission
Commission des valeurs mobilières de l'Ontario
22nd Floor, 20 Queen Street West, Toronto ON M5H 3S8
22e étage, 20, rue queen ouest, Toronto ON M5H 3S8

IN THE MATTER OF THE *SECURITIES ACT*,
R.S.O. 1990, c. S.5, AS AMENDED

- and -

IN THE MATTER OF THE TORONTO-DOMINION BANK

UNDERTAKING TO THE ONTARIO SECURITIES COMMISSION

1. This Undertaking is given in connection with the settlement agreement dated **[date]** (the "Settlement Agreement") between The Toronto-Dominion Bank (the "Respondent") and Staff ("Staff") of the Commission. All terms shall have the same meanings in this Undertaking as in the Settlement Agreement.

2. The Respondent undertakes to the Commission to:

> make a voluntary payment to be designated for allocation or use by the Commission in accordance with paragraphs (b)(i) or (ii) of subsection 3.4(2) of the Act, in the amount of $9,300,900 by wire transfer to the Commission before the order approving the Settlement Agreement is made, which payment is conditional upon approval of the Settlement Agreement by the Commission.

DATED at **Toronto**, **Ontario** this **23rd** day of **August, 2019**.

"*C. Daniel Wolski*"

Witness: C. Daniel Wolski

THE TORONTO-DOMINION BANK

By: "*Bob Dorrance*"
Name: Bob Dorrance
Title: Group Head, Wholesale Banking,
TD Bank Group

Schedule "B" – REVIEW OF PRACTICES AND PROCEDURES

1. The Toronto-Dominion Bank ("TD") Internal Audit Group will conduct an internal audit of the compliance of TDS with the FX Global Code, and the practices and procedures relating thereto, including in relation to the disclosure of confidential customer information in TDS' global FX business (the "FX Business Compliance System") covering the period from February 1, 2020 to July 31, 2020 to ensure that:

(a) the activities of TDS' FX Business are aligned with the FX Global Code;

(b) in relation to its FX business, TDS' culture, governance arrangements, policies, procedures, systems and controls are of a sufficiently high standard to effectively manage the following risks ('the Specified Risks'):

1. Attempts to manipulate (or control) fixes (including 'building');
2. Application of 'hard mark-ups' to clients;
3. Coordinated trading (e.g. instructions when to/not to trade);
4. Performing 'partial fills' of client orders;
5. Use of layering and/or wash trades;
6. Triggering of client stop loss orders;
7. Inappropriately trading ahead of client orders (e.g. front running);
8. Inappropriately sharing or receiving confidential information with traders at other firms (including (i) the use of codes to identify clients, and (ii) the sharing of spreads);
9. Inappropriately assigning 'transaction window' rates to client orders (e.g. assigning the client the worst rate available);
10. Inappropriate use of personal trading accounts (including spread betting); and

11. Other types of unacceptable behaviour, trader misconduct, breaches of client confidentiality and failure to manage conflicts of interest.

(i) The internal audit will include, but not be limited to:

1. front office culture;

2. the adequacy of the first line of defence (i.e. the risk and control environment relating to day to day operations, including monitoring of traders' activity and conduct);

3. the adequacy of compliance and risk in the first and second lines of defence;

4. the adequacy of the challenge of risk management by the second line of defence;

5. the role and appropriateness of financial incentives and performance management;

6. the adequacy of training for the specific relevant business area;

7. the adequacy of communications monitoring and surveillance;

8. the adequacy of the management of conflicts of interest; and

9. benchmarks, whether trading, judgement or submissions based, which fall within any of these business areas.

(c) the FX Business' Trade Business Management and Compliance Systems are designed to prevent and identify any non-compliance at an early stage, to allow for correction of the conduct in a timely manner, and to escalate breaches for appropriate action; and

(d) all applicable TD staff are trained on TD's policies regarding the disclosure of confidential information including the specifics of permitted and non-permitted communications with third parties.

2. TD shall deliver the internal audit report (the "Report") to a Manager in the Derivatives branch of the Commission (the "OSC Manager") by December 1, 2020;

3. Within 3 months of the delivery of the Report to the OSC Manager, TD shall deliver a plan for implementation of any recommendations in the Report, including timeline for implementation. Once the recommendations have been fully implemented, the Chief Compliance Officer of TD (the "CCO") shall provide written confirmation to the OSC Manager that there has been full implementation of the recommendations in the Report (the "Confirmation Letter");

4. Within 12 months of the provision of the Confirmation Letter to the OSC Manager, the CCO shall provide a letter (the "Attestation Letter") to the OSC Manager, stating that the recommendations of internal audit in the Report are being appropriately followed, administered and enforced by TD.

5. TD shall immediately submit to Staff a direction giving consent for unrestricted access and permission for Staff and the TD internal audit team to communicate with one another regarding the internal audit and TD's progress with respect to the implementation of the recommendations in the Report.

Schedule "C"

CALCULATION OF VOLUNTARY PAYMENT

1. In cases where there is no alleged violation of Ontario securities law but there is still significant conduct contrary to the public interest, Staff and respondents typically agree to a voluntary payment in order to reflect adequate specific and general deterrence.

2. Specific and general deterrence are aimed at promoting high standards of regulatory conduct by deterring participants in the markets from committing further contraventions of securities law or the public interest, helping to deter other participants in the markets from committing such contraventions and demonstrating generally the benefits of compliant behaviour.

3. Such a payment is consistent with the prospective and preventative focus of the Commission's public interest powers.

4. In this case, deterrence means that a significant financial penalty against TD is appropriate.

5. Staff have approached the calculation of the voluntary payment to account for certain principles, which are described below together with Staff's analysis.

Four-Step Methodology

6. Staff have considered a four-step methodology to the calculation, which takes into account relevant principles.

Step 1: Disgorgement

7. Given there is no allegation of a breach of Ontario securities law, Staff have not considered disgorgement. In addition, it is not practicable to quantify any financial benefit that TD may have derived directly from its failings.

Step 2: The seriousness of the conduct

8. TD's conduct was serious. The failings in TD's procedures, systems and controls in its FX Trading business occurred over a period of more than three years prior to October 2013. This gave rise to a risk that TD's traders would engage in the behaviours described in the Settlement Agreement, including inappropriate disclosures of confidential information. TD's conduct undermines confidence in Ontario's capital markets.

9. TD is one of the biggest, most sophisticated and well-resourced financial services institutions in Canada. Serious failings committed by such a firm warrant a significant voluntary payment.

10. At Step 2 Staff have considered a figure that reflects the seriousness of the conduct. Where the amount of revenue generated by a firm from a particular product line or business area is indicative of the harm or potential harm that its conduct may have caused, that figure will be based on a percentage of the firm's revenue from the relevant products or business area. Staff have therefore determined a figure based on a percentage of TD's relevant revenue. Staff consider that the relevant revenue for the period from 2011 to 2013 is $102,870,000.[10]

11. In deciding on the percentage of the relevant revenue that forms the basis of the Step 2 figure, Staff have considered the seriousness of the conduct based on a percentage between 0% and 20%. This range is divided into five fixed levels which represent, on a sliding scale, the seriousness of the breach; the more serious the breach, the higher the percentage. Staff consider 10% to be an appropriate level to reflect the seriousness of TD's conduct based on the following factors:

Impact of the conduct

(1) The conduct potentially had an adverse effect on the confidence in integrity of the FX and broader capital markets due to the importance of the FX markets.

[10] Staff have applied the relevant revenue figure from 2013, which is $34,870,000, to each year from 2011 to 2013.

Nature of the failure

(2) There were serious and systemic weaknesses in TD's procedures, systems and controls in its FX Trading business over a number of years;

(3) TD failed to adequately address obvious risks in that business in relation to conflicts of interest and confidentiality. These risks were clearly identified in industry codes published before and during the Material Time and as internally recognized at TD as early as October 2011.

(4) TD's failings allowed improper trader behaviours to occur in its FX Trading business as described in the Settlement Agreement.

(5) There was a potential detriment to customers and to other market participants arising from misconduct in the FX market;

(6) Certain of those responsible for managing front office matters at TD were aware of and/or at times involved in behaviours described in the Settlement Agreement;

12. Taking all of these factors into account, Staff have calculated Step 2 at $10,287,000.

Step 3: Adjustment for deterrence

13. In Step 3, Staff have considered whether the figure arrived at after Step 2 is insufficient to deter TD or other market participants. Staff consider that adding the amount of $1,000,000 per year of failures ($3,000,000) to be appropriate.

14. The failings described in the Settlement Agreement allow an FX Trading business to act in its own interests without proper regard for the interests of its customers, other market participants or the financial markets as a whole. A failure to control properly the activities of that business in a systemically important market undermines confidence in the Ontario capital markets and puts its integrity at risk. Staff views these as matters of the utmost importance when considering the need for credible deterrence.

15. Step 3 is therefore $13,287,000.

Step 4: Settlement discount

16. Staff consider that the exemplary cooperation during this investigation as well as the early settlement by the Respondent merits a significant discount of 30% to the amount referred to in Step 3.

17. The application of Step 4 results in a voluntary payment amount of $9,300,900.