

PROPOSED DISTRIBUTION PROTOCOL

This Distribution Protocol should be read in conjunction with the Settlement Agreement dated September 11, 2024 (“**Settlement Agreement**”).

DEFINED TERMS

1. The definitions set out in the Settlement Agreement apply to and are incorporated herein. Where a term is defined both in the Settlement Agreement and this Distribution Protocol, the definition in this Distribution Protocol shall govern.
2. The following definitions apply to this Distribution Protocol:
 - (a) **Authorized Claimant** means a Class Member who submits a valid Claim to the Administrator that is accepted as set out in paragraph 26 hereof;
 - (b) **Claim** means an online claim form on the Administrator’s website or a paper claim form that a Class Member must complete and submit before the Claims Filing Deadline in order to be considered to receive settlement benefits under this Distribution Protocol;
 - (c) **Claimant** means a Class Member who submits a properly completed Claim and all required documentation to the Administrator on or before the Claims Filing Deadline;
 - (d) **Claims Filing Deadline** means 11:59pm Toronto (Eastern) time on the date that is one hundred and eighty (180) calendar days after the date on which any part of Second Notice is first disseminated;

- (e) **Client Information** means Class Member information provided in accordance with paragraphs 6 to 7 hereof, which permits the calculation of the Class Member's Trailing Commissions Paid in accordance with this Distribution Protocol; and
- (f) **Trailing Commissions Paid** is the amount of trailing commissions paid by the Defendant to a Discount Broker in respect of the TD Mutual Fund units held by a Claimant, determined pursuant to paragraph 8 of this Distribution Protocol, which forms the basis upon which each Authorized Claimant's *pro rata* share of the Net Settlement Amount is determined.

GENERAL PRINCIPLES

- 3. The objective of this Distribution Protocol is to cost-effectively and efficiently distribute the Net Settlement Amount among Authorized Claimants, while avoiding double compensation.
- 4. The administration shall:
 - (a) implement and conform to the Settlement Agreement, orders of the Court and this Distribution Protocol;
 - (b) employ secure, paperless, web-based systems with electronic registration and record-keeping wherever possible; and
 - (c) rely on Client Information provided by Discount Brokers wherever possible.
- 5. All figures are in Canadian dollars unless otherwise denoted.

CLIENT INFORMATION

- 6. Pursuant to the terms of the Settlement Agreement, the Defendant will provide Client Information to the Administrator in respect of the TD Mutual Fund units held by Class

Members through the Defendant's affiliated Discount Broker, TD Direct Investing (a division of TD Waterhouse Canada Inc.) ("**TD Discount Broker**") and possibly other Discount Brokers.

7. To the extent it is requested from, and provided by, Discount Brokers other than the TD Discount Broker ("**External Discount Brokers**"), similar Client Information may be available to the Administrator.

CALCULATION OF A CLAIMANT'S TRAILING COMMISSIONS PAID

8. A Claimant's Trailing Commissions Paid will be calculated as follows:

- (a) where the Administrator has been provided with Client Information that states the amount of trailing commissions received by the Claimant's Discount Broker from the Defendant in respect of the TD Mutual Fund units held by the Claimant (either in an aggregate amount or at regular intervals such that the aggregate trailing commissions received on behalf of the Class Member can be calculated), that aggregate amount shall be the Trailing Commissions Paid;

- (b) where the Administrator has been provided with the aggregate market value of all TD Mutual Fund units held by the Claimant through the Discount Broker at monthly intervals, the Trailing Commissions Paid will be calculated for each month as follows:

[Aggregate market value of all TD Mutual Fund units held by the Claimant through the Discount Broker in the applicable month up to June 1, 2022] multiplied by [0.75%] multiplied by [1/12]

and the amount determined for each month over the period during which the TD Mutual Fund units were held by the Claimant will be added together;

- (c) where the Administrator has been provided with the aggregate market value of all TD Mutual Fund units held by the Claimant through the Discount Broker at quarterly intervals, the Trailing Commissions Paid will be calculated for each quarter as follows:

[Aggregate market value of all TD Mutual Fund units held by the Claimant through the Discount Broker in the applicable quarter up to June 1, 2022] multiplied by [0.75%] multiplied by [1/4]

and the amount determined for each quarter over the period during which the TD Mutual Fund units were held by the Claimant will be added together;

- (d) where the Administrator has been provided with the aggregate market value of all TD Mutual Fund units held by the Claimant through the Discount Broker at six-month intervals, the Trailing Commissions Paid will be calculated for each six-month period as follows:

[Aggregate market value of all TD Mutual Fund units held by the Claimant through the Discount Broker in the applicable six-month period up to June 1, 2022] multiplied by [0.75%] multiplied by [1/2]

and the amount determined for each six-month period over the period during which the TD Mutual Fund units were held by the Claimant will be added together;

- (e) where the Administrator has been provided with the aggregate market value of all TD Mutual Fund units held by the Claimant through the Discount Broker at twelve-month intervals, the Trailing Commissions Paid will be calculated for each twelve-month period as follows:

[Aggregate market value of all TD Mutual Fund units held by the Claimant through the Discount Broker in the applicable 12-month period up to June 1, 2022] multiplied by [0.75%]

and the amount determined for each 12-month period over the period during which the TD Mutual Fund units were held by the Claimant will be added together.

9. Where the Administrator has been provided with the aggregate market value of all TD Mutual Fund units held by the Claimant through the Discount Broker between monthly and annual intervals on a basis other than monthly, quarterly, six-monthly or annual basis as provided for in paragraphs 8(b) to 8(e), the Administrator shall calculate the Trailing Commissions Paid in a manner analogous with the formulae set out in those paragraphs.
10. Where the Administrator has been provided with a combination of the information described in paragraphs 8 and 9, the Trailing Commissions Paid shall be the sum of:
 - (a) the amount calculated in accordance with paragraph 8(a); and
 - (b) for any period for which the Administrator does not have the information necessary to perform the calculations described in paragraph 8(a), the amount calculated in accordance with paragraphs 8(b) to 8(e) and 9, giving priority to the available data over the shortest interval (using monthly data available under paragraph 8(b), then using quarterly data available under paragraph 8(c), etc.).
11. For TD Mutual Fund units held by a Claimant through a Discount Broker on or after June 1, 2022 (being the implementation date of the regulatory ban on the payment of trailing commissions to Discount Brokers), the Trailing Commissions Paid shall be deemed to be zero for that period on or after June 1, 2022.
12. Any amounts in U.S. dollars or other currency will be converted to Canadian dollars using the Bank of Canada's exchange rate as of September 11, 2024.
13. The Administrator, acting in good faith and in consultation with Class Counsel, shall not be required to undertake the calculations described in paragraphs 8(b) to 8(e) and 9 if the

time and expense of doing so would be disproportionate or unreasonable. The Administrator or Class Counsel may, but are not required to, seek directions from the Court in this regard.

THE CLAIMS PROCESS

14. To be eligible for compensation, a Class Member must submit a completed Claim to the Administrator on or before the Claims Filing Deadline.

Streamlined Claim Process Where Client Information is Provided by Discount Brokers

15. For Class Members for whom Client Information is provided to the Administrator, the following process shall be implemented:
 - (a) where an email address is available for the Class Member, the Administrator shall email the Class Member a username and password for the online claims portal established by the Administrator for the filing of Claims (“**Pre-Populated Claim Notice**”). The Pre-Populated Claim Notice will be sent by regular mail where only a mailing address is available;
 - (b) the Administrator will use the information disclosed in the Client Information to calculate the Class Member’s Trailing Commissions Paid in accordance with paragraphs 8 to 13, and this amount of Trailing Commissions Paid shall be pre-populated in the online Claim for the Class Member; and
 - (c) the Claimant may rely on the amount of the Trailing Commissions Paid that has been pre-populated in the online Claim and submit the Claim relying on that information, without the need to provide any supporting documentation for those Trailing Commissions Paid.

Full Claim Process

16. Sections 16 to 18 hereof apply to:
 - (a) Class Members to whom a Pre-Populated Claim Notice was not sent;
 - (b) Class Members who did not receive a Pre-Populated Claim Notice;
 - (c) Class Members who received a Pre-Populated Claim Notice but who wish to expand their Claim to a period not covered by the Pre-Populated Claim Notice (but only in respect of the additional period); and
 - (d) Class Members who received a Pre-Populated Claim Notice but who object to the amount of the Trailing Commissions Paid that has been pre-populated in the online Claim for the Class Member, but only if the amount of Trailing Commissions Paid would increase by at least \$500 based on the information provided by the Class Member and the calculation of their Trailing Commissions Paid in accordance with paragraphs 8 to 13.
17. Claims must be submitted through the online claims portal created by the Administrator (subject to paragraph 22) on or before the Claims Filing Deadline.
18. Claims must state the aggregate market value of all TD Mutual Fund units held by the Class Member through a Discount Broker at regular intervals ranging between monthly and annually, and must be accompanied by documentary support for the information provided in the Claim that is deemed adequate by the Administrator. The Administrator will calculate the Class Member's Trailing Commissions Paid in accordance with paragraphs 8 to 13.

Requirements for All Claims

19. Each Claim shall require the following:
 - (a) the Claimant's contact information;
 - (b) the Claimant's verification of payment details (address to send a cheque or e-transfer details);
 - (c) the Claimant's authorization to the Administrator to contact the Claimant or its representative for more information and/or to audit the Claim;
 - (d) a declaration by the Claimant that the information submitted in the Claim is true to the best of the Claimant's information and belief; and
 - (e) if the Claim is submitted by a third party on behalf of a Claimant, the third party must provide a signed statement from the Claimant at the time the Claim is filed authorizing the third party to file the Claim on the Claimant's behalf.

Default Rule That Claims Are to be Filed Online

20. The Administrator shall create an online claims portal that Class Members can access to file a Claim. The online claims portal shall contain fields that require Claimants to provide all information required in accordance with this Distribution Protocol.
21. Subject to the discretion of the Administrator, Claims may not be amended after the Claims Filing Deadline. For clarity, "placeholder claims"—meaning incomplete Claims filed solely for the purpose of meeting the Claims Filing Deadline—will not be permitted.
22. If a Class Member does not have internet access or for other good reason is unable to submit an online Claim, the Class Member may obtain a paper Claim from the Administrator and submit it via mail or email to the Administrator no later than the Claims Filing Deadline.

A paper Claim mailed to the Administrator will be considered to have been submitted on the date it is post-marked.

Assistance Filing a Claim

23. Claimants may contact the Administrator or Class Counsel, at no charge, with questions about completing a Claim.
24. Claimants may utilize third party claims services, a lawyer of their own choosing, or similar services to file a Claim. If a Claimant chooses to do so, the Claimant will be responsible for any and all fees and expenses incurred in connection with the third party claims services, lawyer of their own choosing or similar services.

QUESTRADE CLIENTS

25. The Trailing Commissions Paid shall be deemed to be zero for TD Mutual Fund units held through Questrade from 2009 onwards. For clarity, Class Members shall not receive compensation from the Net Settlement Amount for their TD Mutual Fund units held through Questrade during this period but can receive compensation for TD Mutual Fund units held through Questrade prior to 2009.

CALCULATION OF MONETARY COMPENSATION AND DISTRIBUTION

26. The Administrator shall first determine a Claimant's Trailing Commissions Paid in accordance with paragraphs 8 to 13. If the Claimant has Trailing Commissions Paid greater than zero (0), they become an Authorized Claimant. The Administrator will go on to calculate each Authorized Claimant's *pro rata* entitlement to compensation from the Net Settlement Amount. A Claimant for whom the amount of Trailing Commissions Paid is zero (0) is not eligible for payment from the Net Settlement Amount.

27. The Net Settlement Amount will be distributed to Authorized Claimants *pro rata* (proportionally) based on the value of the Authorized Claimant's Trailing Commissions Paid relative to the value of the Trailing Commissions Paid of all Authorized Claimants.
28. Compensation shall be paid to Authorized Claimants in Canadian dollars.
29. The Administrator shall not make payments to Authorized Claimants whose *pro rata* entitlement to payment from the Net Settlement Amount under this Distribution Protocol is \$25 or less. Such amounts shall, instead, be allocated *pro rata* to other Authorized Claimants with entitlements above \$25 in accordance with this Distribution Protocol.
30. The Administrator shall make payment to Authorized Claimants by cheque or e-transfer. If, for any reason, an Authorized Claimant does not accept payment within six (6) months of a cheque being issued or within one (1) month of an e-transfer being sent, the Authorized Claimant shall forfeit the right to compensation and the funds shall be redistributed in accordance with this Distribution Protocol.
31. In consultation with Class Counsel, the Administrator can seek directions from the Court with respect to the distribution of the Net Settlement Amount to ensure a fair and cost-effective distribution of the Net Settlement Amount.

SUPPLEMENTAL DISTRIBUTIONS AND *CY PRES* DISTRIBUTION

32. If, six (6) months from the date on which the Administrator distributes the Net Settlement Amount to Authorized Claimants, the Trust Account remains in a positive balance (whether due to tax refunds, uncashed cheques, or otherwise), the Administrator shall, if economically feasible, reallocate such balance among the Authorized Claimants in an equitable and economic fashion. If, in the opinion of the Administrator and Class Counsel, it is not feasible to reallocate any remaining balance among the Authorized Claimants in

an equitable and economic fashion, such balance shall be distributed *cy pres* to the Osgoode Hall Law School Investor Protection Clinic.

REVIEW OF CLAIMS, IRREGULAR CLAIMS AND APPEALS FROM DECISIONS OF THE ADMINISTRATOR

33. The claims process is intended to be expeditious, cost effective and “user friendly” to minimize the burden on Claimants. The Administrator shall, in the absence of reasonable grounds to the contrary, assume Claimants to be acting honestly and in good faith.
34. The Administrator shall use email for correspondence with Claimants to the maximum extent possible.
35. The Administrator shall review all Claims for (or implement processes to detect) deficiencies including incomplete fields, missing documentation, and duplicative or fraudulent claims.
36. The Administrator shall audit a subset of Claims for accuracy. This audit will determine whether the Claimant provided adequate proof of Trailing Commissions Paid and otherwise met the requirements of this Distribution Protocol.
37. Where a Claim contains minor omissions or errors, the Administrator shall correct such omissions or errors if the information necessary to correct the omissions or errors is readily available to the Administrator.
38. If, during claims processing, the Administrator finds that deficiencies exist in a Claim or other information is required, the Administrator shall notify Claimant by email or regular mail, of the deficiencies. The Administrator shall allow the Claimant 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, the Administrator shall reject the Claim.

39. Where the Administrator disallows a claim in its entirety, they shall send to the Claimant, at the email or postal address provided by the Claimant or the Claimant's last known email or postal address, a notice advising that the claim has been disallowed and that the Claimant may request the Administrator to reconsider its decision. For greater certainty, a Claimant is not entitled to a notice or a review where a claim is allowed but the Claimant disputes the amount of their Trailing Commissions Paid or their individual compensation.
40. Any request for reconsideration must be received by the Administrator within 45 days of the date of the notice advising of the disallowance. If no request is received within this time period, the Claimant shall be deemed to have accepted the Administrator's determination and the determination shall be final and not subject to further review by any court or other tribunal.
41. Where a Claimant files a request for reconsideration with the Administrator, the Administrator shall advise Class Counsel of the request and conduct an administrative review of the Claimant's complaint.
42. Following its determination in an administrative review, the Administrator shall advise the Claimant of its determination ("**Reconsideration Decision Notice**"). If the Administrator reverses a disallowance, the Administrator shall send the Claimant, at the email or postal address provided by the Claimant or the Claimant's last known email or postal address, a notice specifying the revision to the Administrator's disallowance.
43. The Administrator's decision on a request for reconsideration will be binding upon the Claimant, subject to the Claimant's right to appeal, as outlined below.

44. Where, following the determination of a request for reconsideration, the Administrator continues to disallow a Claimant's claim in its entirety, the Claimant may appeal the disallowance.
45. Appeals will be determined by an arbitrator appointed by the Court. The arbitrator shall apply the rules provided herein to any appeals.
46. Appeals shall be based on written submissions of the Claimant and Administrator supported by any documentation provided to the Administrator and any other material provided by the Claimant or Administrator. Notwithstanding the foregoing, the arbitrator, in his or her sole discretion, may request oral submissions to be made via videoconference or establish additional procedures to be followed during the appeal in cases where he or she determines that is warranted.
47. The arbitrator, in his or her sole discretion, may mediate the differences at any stage in the proceedings and, if mediation is unsuccessful, continue to arbitrate the appeal.
48. The costs of the arbitrator and the Administrator for a successful appeal will be paid from the Net Settlement Amount. For greater clarity, the Claimant shall have no entitlement to be repaid their costs (including any legal fees or disbursements) from a successful appeal.
49. The costs of the arbitrator and the Administrator for an unsuccessful appeal will be borne by the Claimant, subject to the discretion of the Administrator.
50. The arbitrator's decision on the appeal is final and binding and shall not be subject to any further appeal or review whatsoever.

51. For greater certainty, there shall be no right of appeal or for reconsideration:
- (a) where a Claim is allowed but the Claimant disputes the amount of his, her or its Trailing Commissions Paid or his, her or its individual compensation;
 - (b) in respect of Claims filed after the Claims Filing Deadline; and
 - (c) in respect of Claims where the appeal or request for reconsideration, if successful, will result in the Claimant's Trailing Commissions Paid being less than \$500..

ADMINISTRATOR'S RESPONSIBILITIES AND OTHER ISSUES

Supervisory Powers of the Court

52. The Administrator shall administer the Settlement Agreement and this Distribution Protocol under the ongoing authority and supervision of the Court.
53. No action shall lie against Class Counsel or the Administrator for any decision made in the administration of the Settlement Agreement and the Distribution Protocol without an order from a Court authorizing such an action.

Investment of Settlement Funds

54. The settlement funds shall be held in a guaranteed investment vehicle, liquid 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

55. Where a claim is filed by a third party claims agent or lawyer on behalf of a Class Member, unless the Class Member requests otherwise, all communications shall be made with the third party claims agent or lawyer.

56. The Administrator shall establish a toll-free number for calls from Canada.
57. The Administrator shall dedicate sufficient personnel to respond to Class Members' inquiries in English or French, as the Class Member elects.
58. All written communications from the Administrator to a Class Member shall be transmitted via email if an email address has been provided, or by regular mail if an email address has not been provided.

Undeliverable Mail

59. The Administrator shall have no responsibility for locating Class Members for any mailing returned to the Administrator as undeliverable.
60. The Administrator shall have the discretion, but is not required, to reissue payments to a Class Member returned as undeliverable under such policies and procedures as the Administrator deems appropriate. Any costs associated with locating current address information for the Class Member shall be deducted from that Class Member's settlement benefits.

Reissuance of Payment

61. Where an Authorized Claimant requests payment be reissued, \$15 shall be deducted from that Authorized Claimant's settlement benefits representing the costs of reissuing payment.

Taxes

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

Reporting

63. The Administrator shall provide regular reports to Class Counsel regarding the administration.
64. The Administrator shall provide any report requested by the Court.

Assistance to the Administrator

65. The Administrator shall have the discretion to enter 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

66. All information received from the Defendant, Discount Brokers or Class Members collected, used, and retained by the Administrator for the purposes of administering the Settlement Agreement, including evaluating the 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 Class Members is strictly private and confidential and will not be disclosed without the express written consent of the relevant Class Member, except in accordance with the Settlement Agreement, orders of the Court and/or this Distribution Protocol.
67. The Administrator shall preserve, in hard copy or electronic form, as the Administrator deems appropriate, the submissions relating to a Claim or Client Information, as applicable, until 90 days after the completion of the administration of the Settlement Agreement, and at such time shall destroy the submissions by shredding, deleting, or such other means as will render the materials permanently illegible.

Extension of Deadlines

68. By agreement between Class Counsel and the Administrator, any deadline contained in this Distribution Protocol may be extended if, in their opinion, acting reasonably, doing so will not adversely impact the efficient administration of the settlement and it is in the interest of one or more Class Members to do so.