

# TD Mutual Fund Trailing Commission Class Action

## *Guide to the Distribution Protocol*

The following is a guide to the Distribution Protocol and a brief summary of some of the factors considered by the Plaintiff and Class Counsel in concluding that the Distribution Protocol is fair and reasonable. A more detailed explanation will be provided in the motion materials to be filed in support of Court approval of the Settlement and the Distribution Protocol, which will be posted at <https://www.siskinds.com/class-action/mutual-fund-trailing-commissions/> in advance of the settlement approval hearing scheduled for December 9, 2024.

A copy of the Distribution Protocol is available at the above website. If anything in this document is inconsistent with the Distribution Protocol, the Distribution Protocol prevails.

### **PART 1 – BACKGROUND**

The Settlement Agreement provides for \$70.25 million to be paid into a fund to be distributed to Class Members, after deductions for certain expenses as described below.

#### **1. Who are Class Members, Claimants and Authorized Claimants?**

Class Members are all persons, wherever they may reside or be domiciled, who held or hold, at any time on or prior to September 11, 2024, units of a TD Mutual Fund<sup>1</sup> through a discount broker<sup>2</sup>, except for the Excluded Persons<sup>3</sup>.

A Claimant is a Class Member who submits a properly completed claim and all required supporting documentation to the Administrator within the specified time for doing so. A Claimant who makes a valid claim for compensation and whose assessed Trailing Commissions Paid are greater than zero is an “Authorized Claimant”.

#### **2. How much money will be distributed?**

Certain expenses will be deducted from the Settlement Amount before the balance can be distributed. Those expenses include counsel fees, counsel disbursements, the commission of the litigation funder, the costs of providing notice to Class Members and

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<sup>1</sup> “TD Mutual Funds” means all mutual fund trusts (including, without limitation, all series of units thereof) of which the Defendant is trustee or was trustee at any time on or prior to September 11, 2024 (but only in respect of the period during which the Defendant is trustee or was trustee, as applicable), including, for greater certainty, (i) those mutual funds that have been terminated, (ii) those mutual funds that have been merged into other mutual funds, and (iii) those mutual funds that have undergone name changes.

<sup>2</sup> Examples of discount brokers are TD Direct Investing, BMO InvestorLine, CIBC Investor’s Edge, National Bank Direct Brokerage, RBC Direct Investing, Scotia iTRADE, CI Direct Trading, Qtrade, Desjardins Online Brokerage, HSBC InvestDirect, Laurentian Bank Discount Brokerage, Wealthsimple, Questrade, and Interactive Brokers. They may have had different names in the past.

<sup>3</sup> “Excluded Persons” means the Defendant; the past and present parents, subsidiaries, affiliates, officers, directors, senior employees, legal representatives, heirs, predecessors, successors and assigns of the Defendant; the past and present members of the independent review committee of each TD Mutual Fund; and any person who validly opted or opts out of the class action.

settlement administration expenses. All expenses must be approved by the Court. The remainder, after the deduction of Court approved expenses, is called the “Net Settlement Amount”. The Net Settlement Amount will be distributed to Authorized Claimants in accordance with the Distribution Protocol.

## **PART 2 – RATIONALE FOR THE DISTRIBUTION PROTOCOL**

The Distribution Protocol distributes the Net Settlement Amount to each Authorized Claimant based on the amount of his, her or its Trailing Commissions Paid as a proportion of the total amount of Trailing Commissions Paid of all Authorized Claimants.

In so doing, the Distribution Protocol will distribute money to Class Members in a manner that tracks the losses alleged in the litigation. The alleged losses are those suffered by Class Members as a result of TDAM paying trailing commissions to discount brokers on their behalf. In Class Counsel’s opinion, dividing compensation amongst Class Members based on their approximate alleged losses is fair and reasonable.

The Distribution Protocol is designed to be efficient and user friendly. As described further below, it allows Class Members to rely on data Class Counsel obtains from the Defendant or discount brokers to make a claim to the extent that data is available. All other Claimants will be able to make claims using their own information and records of their TD Mutual Fund holdings through discount brokers. The use of Defendant or discount broker data should substantially increase the speed and efficiency of the claims process for the benefit of Claimants.

## **PART 3 – DETERMINING ELIGIBILITY AND ENTITLEMENT**

### **1. Trailing Commissions Paid**

A Claimant’s eligibility for compensation and the amount of compensation they receive is based on their **Trailing Commissions Paid**.

Each Claimant who submits a valid claim and has Trailing Commissions Paid greater than zero (0) will be an Authorized Claimant eligible to receive a proportionate share of the Net Settlement Amount (as described in the next section) subject to a minimum entitlement threshold of \$25.

The Administrator’s calculation of Trailing Commissions Paid for a particular Claimant will vary depending on the source and nature of the available information. A Claimant’s Trailing Commissions Paid shall be determined as follows:

**A. Actual trailers paid:** Where the Defendant or a discount broker provides information to the Administrator on the actual amount of trailing commissions paid to a Claimant’s discount broker by the Defendant on the Claimant’s behalf, that amount shall be the Trailing Commissions Paid.

**B. Estimated trailers paid based on asset value:** If the information described in “A” is unavailable, Trailing Commissions Paid will be based on the aggregate market value of a Claimant’s TD Mutual Fund units held through a discount broker

assuming that trailing commissions were charged at a rate of 0.75% annually. For example, if monthly market value information is available, the Trailing Commissions Paid will be calculated as follows:

For each month, Trailing Commissions Paid equals the [Aggregate market value of all TD Mutual Fund units held by the Claimant through the discount broker in the applicable month] multiplied by [0.75%] multiplied by [1/12]. 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.

Where the Administrator has a combination of the information described above, the Administrator will give priority to “A” and then “B”. For “B”, the Administrator will use the information available over the shortest time interval first (e.g. using monthly first, then quarterly, then at six-month intervals, then annually).

For all Claimants, Trailing Commissions Paid on or after June 1, 2022 shall be deemed to be zero.<sup>4</sup>

## **2. Proportionate Allocation of Net Settlement Amount to Authorized Claimants**

After each Authorized Claimant’s Trailing Commissions Paid are determined, the Net Settlement Amount will be allocated to Authorized Claimants proportionately based upon each Authorized Claimant’s Trailing Commissions Paid. What this means is that each Authorized Claimant will be entitled to a share of the Net Settlement Amount equal to their relative share of the total Trailing Commissions Paid of all Authorized Claimants. For example, if an Authorized Claimant has Trailing Commissions Paid of \$10,000 and the total Trailing Commissions Paid was \$100,000,000, she would be entitled to 0.01% of the Net Settlement Amount.

## **PART 4 – THE CLAIMS PROCESS**

There are two ways a claim for compensation can be made. *First*, there is a streamlined process available where the Administrator has been provided with information from TDAM or a discount broker that allows the Administrator to calculate the Class Member’s Trailing Commissions Paid. *Second*, there is a full claims process for Class Members when that information is not available from TDAM or a discount broker.

### **i. The Streamlined Claims Process**

Where TDAM or a discount broker (to the extent the information is reasonably available) provides the Administrator with information to calculate the Trailing Commissions Paid of a particular Class Member and their contact information, that Class Member will be entitled to rely on the information provided when making a claim for compensation.

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<sup>4</sup> June 1, 2022 is the date when TDAM stopped paying trailing commissions to discount brokers because of a regulatory prohibition on the practice.

To facilitate this process, the Administrator will send such Class Members an email or letter with a username and password to log-on to the online claims portal created by the Administrator. The online claims portal will be pre-populated with information on the Trailing Commissions Paid by the Class Member based on the information provided by TDAM or their discount broker. The Class Member will be able to rely on that pre-populated information to submit a claim for compensation without any further supporting documentation. As described in more detail in the Distribution Protocol, the Class Members may provide supplemental information using the full claims process described below if they disagree with the pre-populated Trailing Commissions Paid or wish to expand their claim for a period not covered by their pre-populated information.

It is Class Counsel's view that this should substantially increase the efficiency of the claims process for a significant number of Class Members.

## ii. The Full Claims Process

All other Claimants can make a claim using the online portal created by the Administrator. The portal will be designed by the Administrator to make the claims process as efficient as possible. Claimants using the full claims process must provide documentation supporting their claim. The Administrator will be flexible in their approach to supporting documentation.

## PART 5 – SAMPLE CALCULATIONS FOR ILLUSTRATION PURPOSES

**NOTE: A Claimant's actual entitlement based on their Trailing Commissions Paid can vary significantly from the amounts described below depending on the actual aggregate amount of Trailing Commissions Paid of all Authorized Claimants and the actual Net Settlement Amount available for distribution.**

### Example 1:

#### *Assumed Facts*

- TDAM provides records to the Administrator showing that it paid \$10,000 in trailing commissions to the Claimant's discount broker on the Claimant's behalf with respect to their TD Mutual Fund units held through that discount broker;
- The sum of all Authorized Claimants' Trailing Commissions Paid is \$100,000,000; and
- The Net Settlement Amount available for distribution is \$44,000,000.

#### *Application of Distribution Protocol to the Assumed Facts*

- The Claimant has Trailing Commissions Paid of \$10,000. As a result, they are an Authorized Claimant eligible for compensation under the Distribution Protocol.
- The Authorized Claimant is entitled to \$4,400 in compensation, calculated as:  
[\$10,000 ÷ \$100,000,000] x \$44,000,000

**Example 2:**

*Assumed Facts*

- A Claimant's aggregate annual value of TD Mutual Fund units held through a discount broker are as follows:

2012	\$50,000
2013	\$51,000
2014	\$51,550
2015	\$53,000
2016	\$60,000
2017	\$63,000
2018	\$66,000
2019	\$68,000

- The sum of all Authorized Claimants' Trailing Commissions Paid is \$100,000,000; and
- The Net Settlement Amount available for distribution is \$44,000,000.

*Application of Distribution Protocol to the Assumed Facts*

- The Claimant has Trailing Commissions Paid of \$3,469.13, calculated as the sum of A to G:

A.	\$50,000 multiplied by 0.75% =	\$375.00
B.	\$51,000 multiplied by 0.75% =	\$382.50
C.	\$51,550 multiplied by 0.75% =	\$386.63
D.	\$53,000 multiplied by 0.75% =	\$397.50
E.	\$60,000 multiplied by 0.75% =	\$450.00
F.	\$63,000 multiplied by 0.75% =	\$472.50
G.	\$66,000 multiplied by 0.75% =	\$495.00

H. \$68,000 multiplied by 0.75% = \$510.00

TOTAL: \$3,469.13

- As a result, the Claimant is an Authorized Claimant eligible for compensation under the Distribution Protocol; and
- The Authorized Claimant is entitled to \$1,526.42, calculated as  $[\$3,469.13 \div \$100,000,000] \times \$44,000,000$ .

## **PART 6 – DISPUTE RESOLUTION**

In the event of a denial of a claim by the Administrator and subject to the limitations described in the next paragraph, a Claimant can request reconsideration of their claim by the Administrator within 45 days of receiving a notice from the Administrator that their claim has been denied in its entirety. If the claim continues to be denied in its entirety after a request for reconsideration, Claimants will have a final right of appeal to a Court-appointed arbitrator.

To promote an efficient and expeditious administration process, Claimants will not be able to make a request for reconsideration to the Administrator or have an appeal right: (a) where the claim is allowed but the Claimant disputes the amount of the Trailing Commissions Paid or their individual compensation; (b) for claims filed after the Claims Filing Deadline; and (c) where the appeal or request for reconsideration, if successful, will result in the Claimant's Trailing Commissions Paid being less than \$500.