

AMENDED THIS 4-Nov-2024 PURSUANT TO
MODIFIÉ CE CONFORMÉMENT À

☒ RULE/LA RÈGLE 20.02 (A)

☐ THE ORDER OF _____
L'ORDONNANCE DU _____
DATED / FAIT LE _____

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SUPERIOR COURT OF JUSTICE COUR SUPÉRIEURE DE JUSTICE

Court File No. CV-24-00720906-00CP

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

ANGELA PARKIN, OMER DZEHVEROVIC AND THE TRUSTEES OF THE DRYWALL
ACOUSTIC LATHING AND INSULATION LOCAL 675 PENSION FUND

Plaintiffs

- and -

THE TORONTO-DOMINION BANK, BHARAT B. MASRANI, LEOVIGILDO SALOM,
GREG BRACA, KELVIN VI LUAN TRAN, RIAZ AHMED, ALAN N. MACGIBBON,
MARY A. WINSTON, BRIAN M. LEVITT, MICHAEL BOWMAN, MIA LEVINE, KEVIN
DOHERTY, AND ALLEN LOVE

Defendants

Proceeding under the *Class Proceedings Act, 1992*

FRESH AS AMENDED STATEMENT OF CLAIM

(Notice of Action issued on May 24, 2024)

I. RELIEF SOUGHT

1. The Plaintiffs claim, on their own behalf and on behalf of the Class Members, from the Defendants, jointly and severally:

- (a) An order pursuant to s. 138.8 of the *Securities Act*, R.S.O. 1990, c. S.5 (“*OSA*”), and, if necessary, the analogous provisions of the other Canadian Securities Legislation, as defined below, granting leave to proceed with this action under s. 138.3 of the *OSA*;
- (b) An order certifying this action as a class proceeding and appointing the Plaintiffs as Representative Plaintiffs pursuant to the *Class Proceedings Act*, 1992, S.O. 1992, c. 6 (“*CPA*”);
- (c) An order declaring that the Defendants are liable to Class Members for statutory misrepresentations pursuant to s. 138.3 of the *OSA* and the analogous provisions of the Other Canadian Securities Legislation;
- (d) An order declaring that certain Defendants have liability to the Class Members pursuant to ss. 130 and 130.1 of the *OSA* and the analogous provisions of the Other Canadian Securities Legislation and that the Plaintiffs are entitled to aggregate damages pursuant to ss. 130 and 130.1;
- (e) Aggregate damages pursuant to ss. 138.5 and 138.6 of the *OSA* and s. 24(1) of the *CPA* as a result of statutory misrepresentations in the sum of approximately CAD \$20 billion or in such other amount and as determined by the Court;
- (f) Damages for negligent misrepresentation in the amount of CAD \$20 billion or in such other amount and as determined by the Court;
- (g) Compound pre-judgment and post-judgment interest pursuant to the *Courts of Justice Act*, RSO 1990, c C.43 (“*CJA*”);
- (h) Costs of this action on a substantial indemnity basis and the costs of notice and the costs of administering the plan distribution of the recovery in this action plus applicable taxes; and
- (i) Such further and other relief as this Honourable Court may deem just.

II. DEFINITIONS

2. In this Claim, in addition to the terms that are defined elsewhere below, the following capitalized terms have the following meaning:

- (a) “**AML**” means anti-money laundering;

- (b) **“AML Controls”** means anti-money laundering controls, systems, procedures, practices and policies;
- (c) **“AML Act”** means the Anti-Money Laundering Act of 2020 which amends subchapter II of chapter 53 of Title 31 of the USC – the legislative framework commonly referred to as the Bank Secrecy Act (“BSA”);
- (d) **“Annual Financial Statement”** means the audited annual financial statement filed on SEDAR during the Class Period;
- (e) **“Annual CEO Certification”** means the certification of annual filings by the CEO, made pursuant to NI 52-109 and filed on SEDAR during the Class Period;
- (f) **“Annual CFO Certification”** means the certification of annual filings by the CFO, made pursuant to NI 52-109 and filed on SEDAR during the Class Period;
- (g) **“Annual MD&A”** means the annual Management Discussion and Analysis filed on SEDAR during the Class Period;
- (h) **“Annual Report”** means the annual report filed on SEDAR and EDGAR during the Class Period, which contained the Annual MD&A, Annual Financial Statement, Ten-year Statistical Review and other shareholder and investor information;
- (i) **“Audit Committee”** means Alan N. MacGibbon and Mary A. Winston;
- (j) **“Average Market Price”** means the daily average of weighted average prices for trades of board lots of common shares of TD during each of the five trading before the relevant dividend is payable;
- (k) **“Bank Act”** means the *Bank Act*, SC 1991, c. 46, as amended;
- (l) **“Board”** means the Board of Directors of TD Bank;
- (m) **“BSA”** means the *Currency and Foreign Transactions Reporting Act of 1970*, its amendments and related statutes – commonly referred to as the *Bank Secrecy Act* (Title 12 U.S.C. 1829b, 12 U.S.C. 1951-1960, 31 U.S.C. 5311-5314, 5316-5336) – which establishes program, recordkeeping and reporting requirements for national banks, federal savings associations, federal branches and agencies of federal banks, including AML related requirements and standards;;
- (n) **“CDS”** means credit default swap;
- (o) **“CEO”** means Chief Executive Officer;
- (p) **“CFO”** means Chief Financial Officer;

- (q) **“CFR”** means the US Code of Federal Regulations which codifies the general and permanent rules published in the Federal Register by the departments and agencies of the Federal Government;
- (r) **“CGU”** means Cash Generating Units;
- (s) **“CJA”** means the Ontario *Courts of Justice Act*, RSO 1990, c C-43, as amended;
- (t) **“Class Members”** means all persons or entities, wherever they are resident, who acquired TD Bank securities during the period from May 27, 2021 to October 9, 2024 (“Class Period”) and held some or all of those securities through one or more of the public correction dates: May 8, 2023, August 24, 2023, January 8, 2024, April 30, 2024, May 2, 2024, May 3, 2024, August 22, 2024, or October 9-10, 2024. The Class excludes the Defendants’ subsidiaries, affiliates, officers, directors, senior employees, partners, legal representatives, heirs, predecessors, successors, assignees, and the immediate family members of the Individual Defendants;
- (u) **“Core Documents”** means every prospectus or other offering documents, management’s discussion analysis, annual information form, information circular, Annual Reports, interim financial reports issued by TD Bank during the Class Period;
- (v) **“Corporate Governance Committee”** means Brian M. Levitt, Karen E. Maidment and Alan N. MacGibbon;
- (w) **“CSA”** means Canadian Securities Administrators;
- (x) **“CTF”** means counter-terrorist financing;
- (y) **“DCF”** means discounted cash flow;
- (z) **“DC&P”** means disclosure controls and procedures, as defined in section 1(1) of the National Instrument 52-109;
- (aa) **“DOJ”** means the US Department of Justice;
- (bb) **“DRIP Plan”** means TD Bank’s Dividend Reinvestment Plan whereby holders of TD Bank common shares reinvested cash dividends in additional common shares of TD Bank;
- (cc) **“EDGAR”** mean the Electronic Data Gathering, Analysis, and Retrieval database administered by the SEC;
- (dd) **“FCAC”** means the Financial Consumer Agency of Canada;
- (ee) **“FDIC”** means the Federal Deposit Insurance Corporation;
- (ff) **“FinCEN”** means the US Financial Crimes Enforcement Network;
- (gg) **“FINTRAC”** means the Financial Transactions and Reports Analysis Centre of Canada;

- (hh) **“First Horizon”** means First Horizon Bank, the regional US banking subsidiary of First Horizon Corporation, a US financial services company
- (ii) **“GAAP”** means Generally Accepted Accounting Principles;
- (jj) **“GAML”** means Global Anti-Money Laundering department of TD Bank Group;
- (kk) **“IAS 36”** means the prescribed disclosure requirements for recognizing or reversing an impairment loss during the reporting period and the requirements for disclosing information used in estimating the recoverable amount where goodwill or indefinite life intangible assets have been allocated to a CGU for impairment review purposes.
- (ll) **“ICFR”** means Internal Control over Financial Reporting;
- (mm) **“IFRS”** means International Financial Reporting Standards;
- (nn) **“Individual Defendants”** means Bharat B. Masrani, Leovigildo Salom, Greg Braca, Kelvin Vi Luan Tran, Riaz Ahmed, Brian M. Levitt, Karen E. Maidment, Alan N. MacGibbon, Mary A. Winston, Michael Bowman, Mia Levine, Kevin Doherty, and Allen Love;
- (oo) **“Certification”** means the certification of interim and annual filings pursuant to NI 52-109 and filed on SEDAR during the Class Period;
- (pp) **“Interim Financial Statements”** means the unaudited interim financial statements filed on SEDAR during the Class Period;
- (qq) **“National Bank Act”** means the *National Bank Act* June 20, 1874, ch. 343, § 1, 18 Stat. 123
- (rr) **“NI 52-109”** means CSA National Instrument 52-109 – *Certification of Disclosure in Issuers’ Annual and Interim Filings*;
- (ss) **“Non-Core Documents”** means all press releases, official statements and other representations made by TD Bank and/or its senior employees, officers, directors, executives and Board members during the Class Period;
- (tt) **“NYSE”** means the New York Stock Exchange;
- (uu) **“OCC”** means the Office of the Comptroller of the Currency, an independent bureau of the US Department of the Treasury;
- (vv) **“Offering”** means the primary distribution in Canada of TD Bank’s securities that occurred during the Class Period, namely, the public offering or distribution of TD’s common shares pursuant to the Prospectuses and Circulars;
- (ww) **“Offering Document”** means Prospectus, Offering Memorandum or Offering Circular;

(xx) “OM” means Offering Memoranda;

(yy) “OSFI” means the Office of the Superintendent of Financial Institutions;

(zz) “Other Canadian Securities Legislation” means, collectively, the *Securities Act*, RSA 2000, c S-4, the *Securities Act*, RSBC 1996, c 418, *The Securities Act*, CCSM c S50, the *Securities Act*, SNB 2004, c S-5.5, the *Securities Act*, RSNL 1990, c S-13, the *Securities Act*, SNWT 2008, c 10, the *Securities Act*, RSNS 1989, c 418, the *Securities Act*, S Nu 2008, c 12, the *Securities Act*, RSPEI 1988, c S-3.1, the *Securities Act*, RSQ, c V-1.1, *The Securities Act*, 1988, SS 1988-89, c S-42.2, and the *Securities Act*, SY 2007, c 16, all as amended;

(aaa) “Patriot Act” means the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT) Act of 2001 which, with the purpose of deterring and punishing terrorist acts in the US, enhances legal enforcement investigatory tools and requires, among other things, financial institutions to report potential money laundering;

(bbb) “PCA” means *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* (S.C. 2000, c. 17);

(ccc) “PCR” means *Proceeds of Crime (Money Laundering) and Terrorist Financing Regulations* (SOR/2002-184);

(ddd) “PPP” means Paycheck Protection Program;

(eee) “Proceeds of Crime (Money Laundering) and Terrorist Financing Act” means *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* (S.C. 2000, c. 17);

(fff) “Prospectus” or “Prospectuses” means the Prospectuses for TD Bank filed on SEDAR, EDGAR and posted on the TD Bank website between February 21, 2002 and the date of this action;

(ggg) “SEC” means the US Securities and Exchange Commission;

(hhh) “SEDAR” means the System for Electronic Document Analysis and Retrieval of the Canadian Securities Administrators;

(iii) “TD Bank” or “Bank” means the Defendant Toronto-Dominion Bank;

(jjj) “TD Bank Group” means TD Bank and its subsidiaries;

(kkk) “TD Group Holdings” means TD Group US Holdings LLC, the direct US subsidiary of TD Bank, which wholly owns TD Holdings and is the ultimate parent holding company in the US;

(III) “**TD Holdings**” means TD Bank US Holding Company, the American subsidiary of TD Bank, which is the direct parent of TDNA and TDUSA, and is headquartered in Cherry Hill, New Jersey, US;

(mmm) “**TDNA**” means TD Bank, N.A., an American retail banking subsidiary of TD Bank, which carries on business as “TD Bank America’s Most Convenient Bank” and is headquartered in Cherry Hill, New Jersey, US ;

(nnn) “**TDUS**” means TD Bank USA, N.A., an American retail banking subsidiary of TD Bank, which carries on business as “TD Bank America’s Most Convenient Bank” and is headquartered in Cherry Hill, New Jersey, US;

(ooo) “**TSX**” means the Toronto Stock Exchange;

(ppp) “**US**” means the United States of America;

(qqq) “**USC**” means the United States Code which is a compilation of most public laws currently in force in the US, organized by subject matter, including the AML Act, the BSA and the Patriot Act, among others;

(rrr) “**US DEA**” means the United States Drug Enforcement Administration; and

(sss) “**US DRIP Prospectus**” means the Dividend Reinvestment Plan Prospectus dated February 21, 2002.

III. THE PARTIES

A. The Plaintiffs and The Class Members

3. The Plaintiffs, Angela Parkin and Omer Dzehverovic, are husband and wife and reside in Toronto, Ontario.

4. Angela Parkin purchased 62 TD Bank shares on November 27, 2023 on the TSX at an average price of CAD \$82.83 and continued to hold some of those shares at the end of the Class Period.

5. Omer Dzehverovic purchased a total of 62 TD Bank shares on December 8 and 13, 2023 on the TSX at an average price of CAD \$80.83 per share and continued to hold some of those shares at the end of the Class Period.
6. The Plaintiff, the Trustees of the Drywall Acoustic Lathing and Insulation Local 675 Pension Fund (the “Trustees”), acquired 9,600 TD Bank shares during the Class Period between November 4, 2022 and March 17, 2023 for an average price of CAD \$86.66, holding these shares through two corrective disclosures as described below. The Trustees sold these shares on November 6, 2023.
7. The Drywall Acoustic Lathing and Insulation Local 675 Pension Fund (“DALI”) is a multi-employer pension plan established on November 1, 1977, for the benefit of its current and retired members and beneficiaries.
8. Drywall, Acoustic Lathing & Insulation, Local 675 of the United Brotherhood of Carpenters and Joiners of America (“675”) is a trade union which represents over 6,800 Drywall, Acoustic Lathing and Insulation professionals within the Greater Toronto Area.
9. The Trustees, DALI and 675 share the same business premises in Woodbridge, Ontario.
10. The Plaintiffs bring this action on their own behalf and on behalf of the following class of persons (“Class Members”):

All persons or entities, wherever they are resident, who acquired TD Bank securities during the period from May 27, 2021 to October 9, 2024 (“Class Period”) and held some or all of those securities through one or more of the public correction dates: May 8, 2023, August 24, 2023, January 8, 2024, April 30, 2024, May 2, 2024, May 3, 2024, August 22, 2024, or October 9-10, 2024.

The Class excludes the Defendants' subsidiaries, affiliates, officers, directors, senior employees, partners, legal representatives, heirs, predecessors, successors, assignees, and the immediate family members of the Individual Defendants.

B. The Defendants

(i) TD Bank

11. The Defendant, TD Bank, is a Chartered Bank and financial services and products provider having its head office in Toronto, Ontario, Canada. It is incorporated pursuant to the Bank Act, is a reporting issuer pursuant to the *OSA*, and is a responsible issuer pursuant to *OSA* Part XXIII.1. TD Bank is a Schedule I bank under the Bank Act and is regulated by OSFI, FCAC and FINTRAC, which all monitor compliance with AML and CTF laws.

12. TD Bank and its subsidiaries around the world are collectively known as "TD Bank Group". TD Bank is the global parent company of the TD Bank Group. The Board of Directors of TD Bank are responsible for the supervision of the TD Bank Group overall, including its AML Controls and compliance, enterprise risk, and general oversight of all subsidiaries.

13. TD Bank is the reporting and responsible issuer for all entities in the TD Bank Group. TD Bank issues Core and Non-Core Documents on behalf of, and containing information with respect to, all entities within the TD Bank Group. Material information relating to any of the TD Bank Group entities is material information for shareholders of TD Bank shares. Material information relating to TD Bank Group must be disclosed by TD Bank in a timely and accurate manner. At all material times, TD Bank's common shares traded on the TSX and the NYSE under the ticker symbol TD.

14. TD Group Holdings is a wholly owned subsidiary of TD Bank. It is the intermediate and ultimate parent holding company of TD Bank Group's US entities. TD Group Holdings exercises oversight of the risk management framework of TD Bank Group's US operations.

15. TD Holdings is a wholly owned subsidiary of TD Group Holdings. TD Holdings exercises oversight of the AML Controls for TD Bank Group's US operations to ensure compliance with applicable laws and regulations.

16. TDNA and TDUS are the wholly owned subsidiaries of TD Holdings and the entities through which TD Bank Group carries out and operates its US retail and commercial banking business. TDNA and TDUS are chartered as national banks under the *National Bank Act* and carry on business as "TD Bank, America's Most Convenient Bank." The OCC and FinCEN regulate TDNA's and TDUS's operations to ensure compliance with US federal laws and regulations. As part of the US Federal Reserve System, TDNA and TDUS are also overseen by the Federal Reserve for financial stability. The FDIC, a US government corporation supplying deposit insurance to depositors in US banks, insures deposits in TDNA and TDUS and supervises their risk management practices.

17. On October 10, 2024, in an unprecedented action for a US bank, TDNA and TD Holdings pleaded criminally guilty to criminal felony charges ("DOJ Plea Agreement") charging TDNA and TD Holdings with conspiring to:

- a) fail to maintain an adequate AML program, contrary to Title 31, USC, ss. 5318(h) and 5322 (BSA as amended by the AML Act);
- b) fail to file accurate currency transaction reports, contrary to Title 31, USC, ss. 5313 and 5324 (BSA as amended by the AML Act); and
- c) laundering monetary instruments, contrary to Title 18, USC, s. 1956(a)(2)(B)(i) and in violation of Title 18, USC, s. 371 (Patriot Act).

18. Pursuant to the DOJ Plea Agreement, TDNA agreed to pay a fine of USD \$500,000 and was required to forfeit another USD \$452,432,302. TD Holdings was fined USD \$1,434,013,478.40. Although not a defendant in the DOJ matter, TD Bank, as the ultimate parent bank of all TD Bank Group operations, was also subject to certain terms and obligations of the DOJ Plea Agreement. It also places TDNA and TD Holdings on a term of probation of five years, which requires TD Bank Group's US subsidiaries to retain an independent compliance for three years to oversee its remediation of its AML Controls.

19. On the same day, FinCEN issued a consent order against TDNA and TDUS ("FinCEN Consent Order") imposing an additional USD \$1.3 billion civil penalty. FinCEN found that:

- a) TDNA and TDUS willfully failed to implement an adequate AML program that met BSA requirements, in violation of Title 31 USC s. 5318(h)(1) (BSA as amended by the AML Act) and 31 CFR s. 1020.210(a); and
- b) TDNA and TDUS failed to accurately and timely report suspicious transactions and currency transaction reports to FinCEN, in violation of Title 31 USC ss. 5313, 5318(g) (BSA as amended by the AML Act) and 31 CFR ss. 1010.311 and 1020.320.

20. On the same day, the OCC announced a cease-and-desist order and a USD \$450 million civil monetary penalty against TDNA and TDUS ("OCC Consent Order") for violating:

- a) 12 CFR s. 21.21 (procedures for monitoring BSA compliance);
- b) 12 CFR s. 21.11 (suspicious activity report violations); and
- c) 31 CFR s. 1010.312 (currency transaction report violations).

21. Critically, the OCC Order imposed an asset cap that prevents TD Bank Group from growing its US retail and commercial banking business. The asset cap limits TDNA's and TDUS's total consolidated assets to their reported assets as of September 30, 2024, and authorizes further

reductions to the asset cap if there are prolonged AML non-compliances. If TDNA and TDUS do not achieve compliance with all actionable articles in the OCC Order, the OCC may require TDNA and TDUS to reduce their total consolidated assets by up to 7% for each successive year the bank is non-compliant with the OCC Order. The OCC Order also imposed business restrictions that prohibit TDNA and TDUS from opening a new retail branch or entering a new market.

22. In total, TDNA, TDUS and TD Holdings received USD \$3.09 billion in monetary penalties and sanctions.

23. As is discussed in detail below, the October 10, 2024 announcements were the culmination of a series of eight partial corrective disclosures between May 8, 2023 and October 10, 2024 which publicly disclosed cumulatively the totality of the material misrepresented information relating to TD Bank Group's – particularly, TDNA's, TDUS's and TD Holding's – systemically deficient AML Controls which were non-compliant with AML legislation and regulations.

22. These eight partial corrective disclosures of the misrepresented material facts directly caused a massive adverse effect on TD Bank's share price and market capitalization, resulting in approximately USD \$20 billion of losses to Class Members.

(ii) Individual Defendants

23. The Individual Defendants were directors and/or officers of TD Bank at the time the Core and Non-Core Documents were released, and all authorized, permitted or acquiesced in the release of the Impugned Core and Non-Core Documents and public oral statements.

24. The Defendant, Bharat B. Masrani, was at all material times an Officer, Director, Group President, and CEO of TD Bank.

25. The Defendant, Leovigildo Salom, was an Officer of TD Bank and served as Group Head, US Retail during the Class Period. He was named President and CEO of TDNA and TDUS on January 1, 2022.

26. The Defendant, Greg Braca, was Salom's predecessor and was an Officer of TD Bank during the Class Period. He served as Group Head, US Retail from June 2017 to December 2021 for TD Bank. On January 1, 2022, he was appointed Vice-Chair of TDNA and TDUS. As Vice-Chair, he reported directly to Masrani.

27. The Defendant, Kelvin Vi Luan Tran, was an Officer of TD Bank during the Class Period. He has been the Group Head of TD Bank since March 9, 2023 and has served as the CFO of TD Bank since September 2021.

28. The Defendant, Riaz Ahmed, was Tran's predecessor and was an Officer of TD Bank during the Class Period. He has been the Group Head, Wholesale Banking for TD Bank since September 2021. Prior to that, he served as the Group Head and CFO of TD Bank from January 2015 to September 2021.

29. The Defendant, Brian M. Levitt, was a Director and the Chair of the Corporate Governance Committee of TD Bank during the Class Period. He retired from the Board on April 18, 2024.

30. The Defendant, Alan N. MacGibbon, was a Director and the Chair of TD Bank's Audit Committee during the Class Period until February 1, 2024, when he became the Chair of the Board of Directors of TD Bank. He is a Designated Audit Committee Financial Expert. He was also a member of the Corporate Governance Committee of TD Bank during the Class Period.

31. The Defendant, Michael Bowman, was an Officer of TD Bank during the Class Period. He has served as TD Bank's Chief Global AML Officer since April 2017. Within this role, his responsibilities included ensuring that the TD Bank Group's AML Controls were compliant with all applicable laws, regulations and industry standards. Bowman is referred to as "Individual-1" in the DOJ Plea Agreement. He had knowledge of or ought to have had knowledge of various deficiencies TD Bank Group's AML Controls, of criminal organizations laundering criminal funds through TD Bank Group's banking services, and of TD Bank Group's failure to remediate these issues throughout the Class Period.

32. The Defendant, Mia Levine, was an Officer of TD Bank, serving as TD Bank's US BSA Officer and Head of TD Bank's US AML program during the Class Period. Levine is referred to as "Individual-2" in the DOJ Plea Agreement. She had knowledge of or ought to have had knowledge of various deficiencies in TD Bank Group's AML Controls, of criminal organizations laundering criminal funds through TD Bank Group's banking services, and of TD Bank Group's failure to remediate these issues throughout the Class Period.

33. The Defendant, Kevin Doherty, was an Officer of TD Bank during the Class Period. He was TD Bank's Head of Financial Intelligence Unit and the Associate Vice President, Global AML from March 2019 to January 2024.

34. The Defendant, Allen Love, was an Officer of TD Bank during the Class Period. He was TD Bank's Head of Fraud Risk Management and Global Security & Investigations from October 2019 until his retirement in 2024. Love is referred to as "Individual-3" in the DOJ Plea Agreement. He had knowledge of or ought to have had knowledge of various deficiencies in TD Bank Group's AML Controls, of criminal organizations laundering criminal funds through TD Bank Group's

banking services, and of TD Bank Group's failure to remediate these issues throughout the Class Period.

35. The Defendant, Mary A. Winston, was a Director of TD Bank and a Chair of the Audit Committee during the Class Period.

36. As is discussed in detail below, the Individual Defendants made, authorized, permitted, controlled or acquiesced in the misrepresentations made by TD Bank in its Core and Non-Core Documents and public oral statements released during the Class Period.

IV. NATURE OF THE ACTION

37. This Claim arises from the Defendants' repeated misrepresentations of material facts, expressly through misstatements but primarily by omission in Core and Non-Core Documents and public oral statements during the Class Period. These misrepresentations by commission and omission were essentially repeated in the same or similar language throughout the Class Period. The misrepresentations fell into four categories. Those four categories of misrepresentation all relate to the highly material systemic flaws and deficiencies in the TD Bank Group's AML Controls throughout the Class Period and can be summarized as follow:

- a) First – TD Bank misrepresented **by commission** by repeatedly stating in its public disclosure that its AML Controls were designed and operated to detect and prevent money laundering and to comply with AML legislation and regulatory requirements, and it took a proactive and comprehensive approach to risk management. These statements were false. It also misrepresented **by omission** by repeatedly failing to disclose material facts necessary to be stated that, in fact, throughout the Class Period, TD Bank Group, including TDNA, TDUS, and TD Holdings had
 - i) systemically deficient AML Controls,
 - ii) failed to invest necessary resources to remediate the AML Controls deficiencies identified by the US banking regulators and which it was fully aware of;

- iii) failed to train staff on necessary AML compliance to ensure that its AML Controls were implemented and executed to prevent money laundering, particularly in TDNA and TDUS branches; and
 - iv) permitted massive money laundering of hundreds of millions of dollars in its branches and as a result were in serious violation of the BSA and related US AML legislation and regulations;
- b) Second – TD Bank misrepresented **by omission** by repeatedly failing to disclose the existence and scope of the serious investigations into TD Bank Group's, particularly TDNA's, TDUS's and TD Holdings', deficient AML Controls by US regulators, law enforcement, and the DOJ, which made it highly unlikely that regulators would approve TD Bank Group's acquisition of the US bank First Horizon and made it highly likely that US and Canadian regulators would impose monetary penalties and other sanctions against TD Bank Group;
- c) Third – TD Bank misrepresented **by omission** by repeatedly failing to disclose the criminal charges and or convictions against TDNA employees and TDNA and TDUS customers for facilitating and participating in significant money laundering activities through TDNA and TDUS branches in the US which made it highly likely that US regulators and the DOJ would impose significant monetary sanctions, asset caps and business restrictions on TD Holdings, TDNA and TDUS; and
- d) Fourth – TD Bank misrepresented **by commission** by repeatedly representing that TD Bank's financial statements complied with IFRS, and TD Bank had designed effective ICFR and that its ICFR and DC&P were functioning and made Certifications of such compliance in TD Bank's financial reports of the same. It also misrepresented **by omission** by repeatedly failing to disclose its reported goodwill and provisional contingencies did not account for operational risks posed by TD Bank's Group's AML Controls deficiencies and related regulatory and criminal investigations.

V. OVERVIEW

38. Canadian and US banks are highly regulated by authorities in both jurisdictions. Prior to and during the Class Period, banks have been required, by the relevant legislation and regulatory framework, to have and implement effective and rigorous controls, policies and procedures to detect and prevent money laundering. The existence of such AML Controls, TD Bank Group's compliance with strict AML Controls requirements in both jurisdictions, and most significantly, the effectiveness of TD Bank Group's AML Controls, was extremely important for Canadian and US banks. The existence and effectiveness of these AML Controls for TD Bank Group during the

Class Period and TD Bank Group's AML Controls' compliance with legal and regulatory requirements in both the US and Canada was material to shareholders of TD Bank during the Class Period.

39. Throughout the Class Period, TD Bank operated and had knowledge, or ought to have had knowledge, of the AML Controls that applied across TD Bank Group's global operations, including with respect to compliance with applicable AML legislation and regulations in Canada and the US. At all material times, senior TD Bank Group AML executives in Canada and the US reported directly to TD Bank's Chief AML Officer – Defendant Bowman – who was responsible for TD Bank Group's AML Controls. As TD Bank Group expanded its US branch network prior to and during the Class Period, the revenue from its US subsidiaries became increasingly significant in contributing to TD Bank Group's overall revenue, profitability and future growth. As a result, compliance with US AML legislation and regulations was a material issue for TD Bank Group, and this was understood by TD Bank Group AML officers, senior executives and the Boards of TD Bank and its US subsidiaries.

40. As described below, TD Bank Group had previously experienced challenges with its AML Controls, including failing to prevent, and in fact facilitating, the laundering of billions of dollars in relation to Ponzi schemes. Criminal charges were also brought against TD Bank Group's employees for facilitating money laundering. TD Bank Group's previous AML failings include:

- a) On November 4, 2009, TD Bank was named as defendant in *Rotstain v. Trustmark National Bank, et al.*, a putative class action in the US alleging that TD Bank aided and abetted or conspired with Mr. R. Allen Stanford to commit fraud. Mr. Stanford utilized TD Bank Group's retail banking services to orchestrate a USD \$7.2 billion Ponzi scheme. It was alleged that TD Bank ignored blatant red flags for years and received fraudulent transfers from Mr. Stanford by collecting fees for providing correspondent banking

services. On February 27, 2023, TD Bank announced that it had agreed to USD \$1.205 billion settlement to resolve the class action claims.

- b) In September of 2013, FinCEN, the SEC, and the OCC found that TDNA had willfully violated its suspicious activity reporting requirements. TDNA paid USD \$52.5 million in civil penalties to settle charges brought by FinCEN, OCC, and the SEC for its alleged violations of the BSA and securities law in relation to the USD \$1.1 billion Ponzi scheme orchestrated by Scott W. Rothstein.
- c) On May 15, 2019, the Lieutenant Governor of British Columbia established the Commission of Inquiry into Money Laundering in British Columbia (“Cullen Commission”) to investigate the effectiveness of AML Controls of financial institutions, including TD Bank. On June 3, 2022, the Cullen Commission released its final report which was critical of TD Bank. Among other things, it found that TD Bank was the single largest source of suspicious bank drafts being tendered at BC casinos, representing a sum of \$26 million from March 2018 to January 2019 alone. Despite TD Bank and its executives being aware of this issue, TD Bank did not take any steps to remediate these issues for over a year, and not until it received numerous inquiries from the Cullen Commission.

41. Against this backdrop, the material facts that TD Bank Group’s, particularly TDNA’s, TDUS’s and TD Holdings’, AML Controls remained systemically deficient and non-complaint with US AML legislation and regulations, and the existence and scope of AML related investigations against TDNA, TDUS, and TD Holdings, as well as their employees and customers was material information that was necessary to disclose to shareholders and informed their decisions to buy, sell or hold TD Bank shares.

42. As pleaded below, TD Bank made significant misrepresentations of material fact relating to TD Bank Group’s AML Control deficiencies, and particularly with respect to its US operating subsidiaries, which continued throughout the Class Period. These misrepresentations were made expressly through untrue statements of material fact and by omission, as the Defendants repeatedly failed to state material facts required to be stated or necessary to make their statements not misleading in light of the circumstances in which they were made. Throughout the Class Period, the Defendants were aware that TD Bank Group’s AML Controls, and particularly for its US

operating subsidiaries, were never remediated, grossly deficient and contravened civil, regulatory, and criminal standards. The Defendants were aware of multiple criminal and regulatory AML investigations alleging that various entities within the TD Bank Group, including TD Bank, TDNA, TDUS and TD Holdings, as well as TDNA employees, had knowingly failed to prevent and, in some cases, knowingly facilitated, the laundering of millions of dollars of drug money for criminal organizations.

43. The Defendants were also aware by the commencement of the Class Period, that it was highly likely the AML investigations by the DOJ and US banking regulators would result in significant monetary and non-monetary sanctions that would materially impact TD Bank Group's reputation, business operations and growth strategy in the US, and thus TD Bank's reported goodwill, reported revenue, and balance sheets. The Defendants were or ought to have been aware that this information was material to holders of TD Bank shares.

44. As described below, the importance and materiality of the information about TD Bank Group's AML Control deficiencies, especially as they related to its US operating subsidiaries, is reflected in the immediate and substantial share price drops that followed each of the pleaded partial public corrective disclosures over a 17-month period from May 8, 2023 to October 10, 2024. Each of these partial public corrective disclosures caused a significant drop in TD Bank's share price of either hundreds of millions or billions of dollars. The cumulative negative impact to TD Bank's shareholders was an over CAD \$20 billion drop in TD Bank's market capitalization. TD Bank shareholders who bought TD Bank shares during the Class Period at artificially inflated prices suffered massive losses. These losses were suffered by both Class Members who bought

TD Bank shares on the secondary markets on the TSX or NYSE, and those who bought TD Bank shares pursuant to primary Offerings based on misleading Offering Documents.

45. The Defendants knew or ought to have known that information relating to TD Bank Group's AML Controls was material information that must be disclosed to TD Bank shareholders. Particularly in light of the increasing scrutiny on money laundering activity in the US. On January 1, 2021, the US Congress enacted the AML Act, which was the most important development in AML Controls in the US since the Patriot Act of 2001. The AML Act requires financial institutions to develop "risk-based" AML Controls and prioritize and direct resources to customers and activities that pose higher risks of money laundering. It not only increased penalties and sanctions for banks with inadequate AML Controls that failed to detect and deter money laundering, but it also made it easier for regulatory agencies to penalize banks. The AML Act established key requirements relevant to TD Bank Group's previous AML failings, including enhanced currency transaction reporting and suspicious activity reporting requirements. It also increased the breadth of regulatory oversight and information sharing between law enforcement and FinCEN with respect to AML data.

46. As a result, the Defendants' failure to disclose the above material facts, and TD Bank's representations that TD Bank Group's AML Controls were designed to be effective and comply with AML legislation and regulations and that TD Bank Group took a proactive and comprehensive approach to AML risks, constituted material misrepresentations that were repeated throughout the Class Period and artificially inflated TD Bank's share price. As did the fact that the Individual Defendants authorized, permitted or acquiesced in the misrepresentations by omission and commission. TD Bank Group's inadequate AML Controls and the corresponding criminal and regulatory investigations into these issues inevitably resulted in:

- a) increased operating costs to meet regulatory AML standards – TD Bank has spent over \$500 million since late 2023 remediating TD Bank Group’s AML Controls;
- b) non-monetary sanctions that will restrict TD Bank Group’s ability to expand and grow in the US – TDNA and TD Holdings on a five-year probationary period which requires them, among other things, to retain an independent monitor for three years in relation to the remediation of the deficient AML Controls. There is also an asset cap that prevents TD Bank from growing its US operations for an indeterminate period of time, pursuant to the OCC Consent Order;
- c) monetary penalties in the range of billions of dollars – specifically a total of USD \$3.09 billion in monetary penalties against TDNA, TDUS and TD Holdings pursuant to the DOJ Plea Agreement, OCC Consent Order and FinCEN Consent Order – that could and would be expected to have a significant adverse impact on the TD Bank Group’s future cash flows financial outlook; and
- d) significant reputational damage, particularly in light of disclosures that, from the commencement of the Class Period, the Defendants have been aware of the systemic deficiencies in TD Bank Group’s AML Controls and the related regulatory and criminal investigations, that could and would be expected to significantly impede future business expansion, especially in the very important US banking sector that has rigorous AML standards and strict AML regulations.

47. Throughout the Class Period, the Defendants failed to disclose that they were aware of TD Bank Group’s AML Control failures, had failed to adequately address, let alone correct, these significant deficiencies, and were aware of related regulatory and criminal investigations that would result in material monetary and non-monetary penalties. The Defendants also repeated false statements with respect to this material information to the public and publicly dismissed and rejected the accuracy of reports relating to TD Bank Group’s AML Control deficiencies. The Defendants expressly misstated and failed to disclose AML-related material information to the Class Members and market analysts throughout the Class Period.

48. As stated above, the public disclosure of these previously undisclosed material facts, in a series of eight partial public corrective disclosures, caused immediate and significant drops in the share price of TD which caused substantial damages to shareholders of over CAD \$20 billion.

VI. AML LEGAL AND REGULATORY REGIME

A. US REGIME

49. Throughout the Class Period, the BSA imposed AML requirements on TD Bank Group's US banking operations, which were carried out through TDNA and TDUS. At all material times, the BSA required:

- a) the establishment, implementation and maintenance of risk-based AML Controls that incorporate the "five core pillars":
 - i) internal policies, procedures, and controls designed to guard against money laundering;
 - ii) individuals or individuals responsible for overseeing day-to-day compliance with the BSA;
 - iii) an ongoing employee training program;
 - iv) an independent audit function to test compliance programs; and
 - v) a risk-based approach for conducting ongoing customer due diligence (Title 31, USC, ss. 5311, 5318(h); Title 31 CFR s. 1020.210);
- b) the use of an automated transaction monitoring system to properly identify, mitigate and report suspicious activity and to prevent the institution from being used to facilitate money laundering. Automated transaction monitoring systems screen transactions through various scenarios and generate alerts if transactions meet the parameters of specific scenarios. Internal analysts employed by the bank must then review each alert to determine whether it should be escalated for further investigation or for the filing of a suspicious activity report with FinCEN (Title 31 USC, s. 5318(g); Title 31 CFR s. 1020.320); and
- c) the filing of currency transaction reports to FinCEN for each deposit, withdrawal, exchange of currency or other payment of transfer, by, through, or to the bank, which involves a transaction in currency of more than USD \$10,000. The reports must be filed within 15 days following the day on which the transaction occurred. The bank must verify and record: the name and address of the individual making the transaction and the identity, account number, and the social security or taxpayer identification number of the individual or entity on whose behalf the transaction is to be effected (Title 31 USC s. 5311; Title 31 CFR ss. 1010.306(a)(1),(a)(3), (d)).

50. On January 1, 2021, Congress passed the AML Act which amended the BSA, including by:

- a) promoting coordination, and sharing of information, between law enforcement, FinCEN, OCC, and DOJ, including through voluntary public-private information sharing partnerships;
- b) authorizing additional monetary penalties against repeat violators of AML requirements, including penalties equivalent to three times the profit gained or loss avoided as a result of the violation or two times the maximum penalty for the violation; and
- c) requiring partners, directors, officers, or employees of financial institutions convicted of BSA violations to repay any bonus paid to that individual during the calendar year during which or after the violation occurred.

51. Throughout the Class Period, FinCEN, the OCC and the DOJ exercised authority, oversight and jurisdiction over financial institutions in the US, including TDNA and TDUS, to ensure compliance with the BSA.

52. The Director of FinCEN exercises overall authority for investigating and enforcing compliance with the BSA and may impose civil penalties for violations of the BSA and its implementing regulations. FinCEN has authority to issue directives, guidance and advisories to banks with respect to AML Controls. By the commencement of the Class Period, FinCEN had issued the following advisories relevant to this matter:

- a) FIN-2010-A001: advised banks of red flags that may indicate trade-based money laundering and necessitate suspicious transaction reports, such as funds transferred into US domestic accounts that are subsequently transferred out of the account in the same or nearly the same amounts to high-risk jurisdictions; over-the-counter cash deposits into accounts associated with ATM cards located outside of the US; withdrawals made via foreign ATM transactions; and accounts having multiple cash deposits in a single day that generate currency transaction reports;
- b) FIN-2014-A007: advised banks that AML non-compliance often occurs at bank's lacking a culture of compliance and that a culture of compliance stems from the top-down—executives and leaders should be involved in the bank's AML Controls and remain informed of the bank's AML compliance; adequate human and technological resources should be invested into AML Controls and AML compliance should not be compromised for revenue; information should be shared across the organization, particularly between the AML compliance department, fraud prevention department, and legal department; and

- c) FIN-2014-A005: advised banks that “funnel accounts” – individual or business accounts in one geographic area that receive multiple cash deposits that are withdrawn in a different geographic area with little time elapsing between deposits and withdrawals – are red flags indicative of money laundering.

53. The OCC exercised delegated authority from FinCEN to examine financial institutions to ensure compliance with BSA. The OCC also exercised legislative and regulatory authority for compliance and enforcement, including to conduct regular examinations and issue reports assessing bank compliance with the BSA.

54. The DOJ – specifically its Money Laundering and Asset Recovery Section, Bank Integrity Unit – has statutory and regulatory authority to investigate and prosecute banks, as well as their officers, managers, and employees, for violations of the BSA.

B. CANADIAN REGIME

55. Throughout the Class Period, the PCA and its regulations (PCR) imposed AML requirements on TD Bank’s Canadian banking operations. At all material times, the PCA required:

- a) the establishment and implementation of AML Controls, including
 - i) the development and application of written policies and procedures, approved by a senior officer, to assess the risk of money laundering;
 - ii) appointing a person responsible for implementing the AML Controls;
 - iii) assessing and documenting the risk of money laundering in an account and/or by client, by taking into account the business, geographic location of their activities, and any other relevant factor;
 - iv) developing and maintaining a written, ongoing AML compliance training program and delivering the training; and
 - v) instituting and documenting a plan for review of the bank’s AML compliance and for testing its effectiveness (PCA, s. 9.6(2); PCR, s. 156(1));

- b) the filing of suspicious transaction reports to FinCEN with respect to transactions that occurred in the course of TD Bank's activities and in respect of which there are reasonable grounds to suspect that the transactions are related to commission or attempted commission of money laundering (PCA, s. 7);
- c) the taking of special measures where the bank considers the risk of money laundering with an account or client is high, including taking enhanced measures to verify the identify of the client; ensuring, at a frequency appropriate to the level of risk, that client identification information is up to date; and conducting, at a frequency appropriate to the level of risk, ongoing monitoring (PCA, s. 9.6(2)-(3); PCR, s. 157); and
- d) keeping a record of the measures taken and the information obtained to verify the identify of an individual or entity when conducting ongoing AML monitoring bank's business relationship with that individual or entity (PCA, s. 6; PCR, s. 146).

56. Throughout the Class Period, FINTRAC exercised authority, oversight and jurisdiction over financial institutions in Canada, including TD Bank, to ensure compliance with the PCA and the regulations promulgated thereunder (PCR). FINTRAC collects, analyses, and assess information from banks to detect, prevent and deter money laundering.

VII. TD BANK GROUP'S INADEQUATE AML CONTROLS PRIOR TO THE CLASS PERIOD AND THE DEFENDANTS' KNOWLEDGE OF THESE AML ISSUES

A. TD Bank Group's Prior Involvement In Facilitating Money Laundering

57. Historically, TD Bank Group, and in particular its US subsidiaries, had experienced significant AML Controls deficiencies, including involvement in both the Rothstein and Stanford Ponzi schemes as described below. Given that in the past TD Bank Group's AML Control had failed to detect and deter money laundering, TD Bank's failure to disclose that TD Bank Group's AML Controls remained systemically deficient, were under investigation by US and Canadian regulators, and had been exploited in money laundering conspiracies by TDNA employees and TDNA and TDUS customers was particularly important to investors. Investors relied upon TD Bank's false representations that TD Bank Group's AML Controls were designed to be effective

and comply with AML legislation and regulations, and its lack of disclosures to the contrary, and were misled to believe that TD Bank Group's prior AML Control deficiencies and failures had been remediated. A brief history of TD Bank Group's pre-Class Period AML Control issues is set out below. TD Bank Group's prior and continuing AML failures were relied upon significantly by the DOJ, OCC and FinCEN in their 2022 to 2024 criminal and regulatory investigations of TDNA, TDUS, and TD Holdings and in the resulting felony charges and civil and regulatory penalties.

58. In 2009, Scott Rothstein used TDNA to launder the proceeds of his USD \$1.2 billion Ponzi scheme. Through its investigation into the Rothstein Ponzi scheme, the OCC, FinCEN, and SEC determined that TDNA's had "failed to file suspicious activity reports" due to "significant, long-standing, systemic breakdown in its transaction monitoring program". TDNA processed USD \$900 million over thousands of transactions with "clear indicia of highly suspicious activity" in Mr. Rothstein's accounts. FinCEN Director, Jennifer Shasky Calvery, noted in a press statement, that "in the face of repeated alerts on Rothstein's accounts by the bank's anti-money laundering surveillance software over an 18-month period, *the bank did not do enough to prevent the pain and financial suffering of innocent investors*". Multiple TDNA employees were criminally indicted for their involvement in the Rothstein Ponzi scheme, and TDNA was subject to regulatory actions.

59. On September 22, 2013, FinCEN issued a consent order against TDNA imposing a USD \$37.5 million fine pursuant to Title 31, USC s. 5321 (BSA) and Title 31, CFR s. 1010.80 for TDNA's AML failures with respect to the Rothstein Ponzi Scheme ("2013 FinCEN Consent Order"). The 2013 FinCEN Consent Order stated that TDNA had violated Title 31, USC s. 5318(g) and Title 31, CFR s. 1020.320 by failing to file suspicious activity reports in a timely manner from April 2008 to September 2009. FinCEN also found that the banks' AML training was inadequate.

The FinCEN 2013 Consent Order was made in coordination with the OCC and SEC. FinCEN and OCC together imposed the USD \$37.5 million against TDNA.

60. On September 23, 2013, the OCC issued a consent order against TDNA imposing a USD \$37.5 million fine for TDNA's AML failings with respect to the Rothstein Ponzi Scheme ("2013 OCC Consent Order). The 2013 OCC Consent Order alleged that TDNA violated Title 12 CFR s. 21.11 by failing to file suspicious activity reports in a timely fashion. Notably, the 2013 OCC Order stated that the **alleged AML violations "may be utilized by the [OCC] in future enforcement actions against the Bank (TDNA) or its institution-affiliated parties ... to establish a pattern or practice of violations or the continuation of a pattern of practice of violations."**

61. On September 23, 2013, the SEC charged TDNA and its then-regional Vice President Frank A. Spinosa for violating, among others, ss. 17(2)2 and (3) of the *Securities Act of 1933* with respect to the Rothstein Ponzi Scheme. TDNA agreed to settle the SEC charges in an administrative proceeding and pay USD \$15 million.

62. As a result of the above, the Defendants were aware from that time through the Class Period that the TD Bank Group's US operating subsidiaries and especially TDNA were on the US banking regulators "radar" and under close regulatory scrutiny with respect to the sufficiency of their AML Controls compliance. This scrutiny resulted not only from TD Bank Group's history of past violations and AML Control deficiencies, but also by the fact that TD Bank was Canada's second largest bank, and that TDNA and TDUS comprised, by the Class Period, the tenth largest bank in the US.

63. TD Bank Group was also involved in the second largest Ponzi scheme in history, the multi-billion-dollar Stanford Ponzi Scheme, which occurred between 1989-2009. From 1991 to 2009, TD Bank Group acted as a correspondent bank for Stanford International Bank (“SIB”), an offshore bank in Antigua run by Allen Stanford. Through its TD Bank Group accounts, SIB sold, what it represented as, high yield certificates of deposits in USD to investors. Once the money was received in the TD Bank Group accounts, SIB then transferred investment funds to its accounts in Antigua. It was revealed in 2009 that SIB had misappropriated billions of dollars in investor funds. It was alleged that, in operating the SIB accounts, TD Bank Group’s AML Controls failed:

- a) to meet KYC requirements, including the enhanced KYC requirements under the *Patriot Act*, by failing to collect and verify appropriate documentation and references that would have raised serious red flags relating to the volume of SIB’s transactions.
- b) take into account an April 1999 FinCEN advisory advising banks to give enhanced scrutiny to all financial transactions routed to Antigua due to recent legislative changes that significantly weakened money laundering laws in Antigua;
- c) take into account multiple media reports in 1999 disclosing that Mr. Stanford himself had been a major player behind the weakening of Antigua’s money laundering laws; and
- d) take into account media outlets reports in 2003 disclosing that the April 1999 FinCEN advisory was specifically directed at Mr. Stanford, whom the FinCEN alleged was subverting bank and money laundering laws in Antigua.

64. On February 7, 2023, TD Bank announced that that it had agreed to a USD \$1.2 billion settlement with the court-appointed receiver for the Stanford Financial Group in a class action lawsuit relating to its involvement in that scheme. In announcing the settlement, TD Bank represented that it had “elected to settle that matter to avoid the distraction and uncertainty of” litigation and that it was denying any wrongdoing with respect to the Standford Ponzi Scheme – just as it publicly denied any failings in its AML Controls with respect to the Rothstein Ponzi Scheme.

65. On June 15, 2022, the Cullen Commission, which was established by the BC provincial government to investigate money laundering in the real estate, casinos and luxury goods sectors, released its Final Report which was critical of TD Bank. It stated that it was “surprised” and “troubled” by TD Bank’s delay in “address[ing] money laundering vulnerability flagged by law enforcement”. The report specifically criticized TD Bank for being the only large Canadian bank that failed to implement basic AML Controls to detect and prevent money laundering. It also noted that “senior management in TD Bank’s anti-money laundering unit” were “aware by at least May 2019 [prior to the start of the Class Period] that their bank was the single largest source of bank drafts flagged as suspicious” by Canadian authorities dating back to 2018. The Commission further observed that even though TD Bank executives were “aware that TD risked being out of step with its peers if it did not take action to reduce the anonymity of its drafts” and could become a target for money launders, it delayed implementing changes for two years, and only when prompted to do so.

66. In the context of these two scandals and the Cullen Commission’s findings, TD Bank’s failure to disclose that TD Bank Group’s AML Controls remained systemically deficient and were under serious investigation by federal regulators in the US and its representations and its false statements that its AML Controls were “designed” to meet all legal and regulatory requirements amounted to misrepresentations. Investors were misled to believe that TD Bank Group’s AML Controls were by that time effective at detecting and deterring money laundering at all of its branches and in all of its banking services.

VIII. MATERIAL EVENTS DURING THE CLASS PERIOD RELATING TO TD BANK GROUP'S AML CONTROL DEFICIENCIES AND NON-COMPLIANCE

A. TD Bank Represented That TD Bank Group Had AML Controls That Were Compliant With Legal And Regulatory Requirements

67. TD Bank made repeatedly misrepresented, by omission and commission, during the Class Period that it had adequate and fully compliant AML Controls as particularized below. It also repeatedly failed to disclose the existence of serious DOJ, criminal, and regulatory investigations into these controls and CEO Masrani publicly and falsely denied the existence of such investigations. TD Bank misrepresented by commission that its buyout of First Horizon, a US bank headquartered in Tennessee, for \$13.4 billion, as described further below, was sure to close, despite being aware, by at least October 2022, that the transaction faced significant, ultimately fatal, regulatory hurdles due to significant failures in TD Bank Group's AML Controls. TD Bank also failed to disclose criminal prosecutions of TDNA employees and TDNA and TDUS customers for facilitating money laundering through TD Bank Group branches and services in significant amounts of at least hundreds of millions of dollars.

68. Further, TD Bank made multiple accounting misrepresentations concerning TD Bank's ICFR, DC&P and related Certifications, including failing to account for the significant monetary penalties TD Bank Group would receive for its deficient AML Controls and the material impact the non-monetary sanctions would have on its operations and growth, particularly in the US.

69. These misrepresentations, by omission and commission, were repeated in TD Bank's Core and Non-Core Documents and public oral statements throughout the Class Period. These misrepresentations are further described below.

- (i) **The Defendants were aware by no later than the commencement of the Class Period of serious deficiencies in TD Bank Group's AML Controls and particularly for its US operating subsidiaries**

70. By the commencement of the Class Period, the Defendants were aware that TD Bank Group had failed to remediate its AML Controls which remained grossly inadequate, ineffective and non-compliant with legal and regulatory requirements, and especially US regulatory requirements. At all material times, the OCC, FinCEN, TD Bank Group's internal audit committees, and third-party consultants, repeatedly identified serious deficiencies in its AML Controls. Throughout the Class Period, the Defendants had and obtained knowledge of long-term, pervasive and systemic deficiencies in nearly every layer of TD Bank Group's AML Controls and with respect to various important and high-risk areas of TD Bank Group's US retail operations. Pursuant to the DOJ Plea Agreement, and the FinCEN and OCC Consent Orders, TDNA, TDUS and TD Holdings admitted to the existence, and their knowledge of the existence, of the following AML Controls deficiencies:

- a) TD Bank Group's automated transaction monitoring system was not substantively updated during the Class Period, and omitted numerous transaction types. As a result, TDNA monitored only approximately 8% of the volume of transactions and did not monitor approximately USD \$18.3 trillion in activity between January 1, 2018 and April 12, 2024;
- b) TD Bank Group had not enhanced its transaction monitoring program as required by the OCC and thus its AML Controls failed to discriminate between high-risk customers and other customers. The Defendants were aware that this defect was serious and that TD Bank Group had failed to remediate the issue, including that:
 - i) The OCC instructed TDNA and TDUS in 2015 to remedy its transaction monitoring program to ensure its AML Controls identified high-risk customers and analyzed their transactions with appropriate scenarios and thresholds;
 - ii) TD Bank Group purportedly began to develop remedies to its transaction monitoring program in 2016;

- iii) TD Bank Group put the transaction monitoring remediation efforts on hold in October 2016 despite the AML issues remaining unresolved;
 - iv) TD Bank Group informed the OCC during its examinations in 2017, 2018 and 2019 that the transaction monitoring remediation efforts were still in development;
 - v) TD Bank Group failed to remediate the transaction monitoring system. Throughout the Class Period, the transaction monitoring system failed to distinguish between high-risk customer and the rest of TDNA's and TDUS's customers, and failed to appropriately analyse transactions of high-risk customers;
 - vi) As a result, criminals targeted and exploited TD Bank Group's transaction monitoring system to further criminal money laundering conspiracies involving hundreds of millions of dollars, including the criminal conspiracies discussed below;
- c) TD Bank Group was aware that its AML Controls had not been updated to capture a form of money laundering known as the Colombia ATM Typology – a rudimentary and basic money laundering scheme involving criminal organizations depositing cash into personal and business accounts in the US and withdrawing cash at ATMs in Colombia. Despite TD Bank's AML executives, including the Defendant Levine being aware of this gap in TD Bank Group's AML Controls, TD Bank Group's AML Controls were not adjusted to detect such activity until October 2023 when revisions were finally made following the Oscar Nunez Florez indictment discussed below;
- d) It was known to the Defendants that TD Bank Group's AML Controls failed to identify and capture suspicious activity on TDNA's and TDUS's Zelle Platform, which – similar to the “interac e-transfer” service available to TD Bank's customers in Canada – was a mobile and internet application that allowed users to transfer funds between accounts across various financial institutions. Several TDNA and TDUS employees working in AML related roles raised this issue to TD Bank Group's executives and middle managers on multiple occasions, and to the OCC during its annual examination. This significant gap persisted throughout the Class Period:
- i) TDNA and TDUS did not monitor **any** transactions or activity for money laundering on the Zelle Platform until March 2020 – 35 months after the Zelle Platform launched;
 - ii) TDNA and TDUS did not incorporate the Zelle Platform into its AML monitoring system until August 2020;
 - iii) The AML monitoring system implemented in August 2020 failed to capture **any** transactions on the Zelle Platform because the parameters of the monitoring system were not calibrated to the types of transactions and activity that occurred on the Zelle Platform;

- iv) The AML monitoring issue with the Zelle Platform remained unremedied as of July 2021 when TD Bank Group executives represented to the OCC that TD Bank Group was developing and implementing AML Controls appropriately calibrated for the Zelle Platform;
 - v) TD Bank Group put the Zelle AML Remediation on hold in late 2021 despite knowing its AML Controls were still not appropriately calibrated for the Zelle Platform;
 - vi) Throughout the Class Period, approximately USD \$75 billion was transferred on the Zelle Platform, almost entirely unmonitored; and
 - vii) Throughout the Class Period, criminals used the Zelle Platform to carry out money laundering conspiracies involving hundreds of millions of dollars, including the criminal conspiracies discussed below;
- e) TD Bank Group's AML Controls were ineffective at detecting and flagging large cash activity, and by April 2022 had been exploited by criminal organizations, including those discussed below. This defect was a result of TD Bank Group's decision to decommission various AML Controls targeting large cash activity by businesses and other customers in 2011;
- f) TD Bank Group's list of high-risk countries for enhanced transaction monitoring omitted numerous countries with higher indicia of AML risk until at least late 2023, despite TD Bank Group's AML employees repeatedly raising concerns of suspicious ATM activity involving such countries;
- g) TD Bank Group had substantial backlogs of unreviewed AML alerts across multiple workstreams throughout the Class Period;
- h) TD Bank Group's AML employees repeatedly expressed concerns of systemic deficiencies in TD Bank Group's AML Controls, caused by self-imposed budgetary restrictions on its AML Controls and an organization approach to risk management that prioritized revenue and growth over legal and regulatory compliance; and
- i) TDUS and TDNA employees were inadequately trained, including on the filing and reporting of unusual and suspicious transaction, as well as identifying and reporting the party that was conducting deposits and transactions *vis a vis* the party that was in control of the accounts.

71. Despite being aware by the commencement of the Class Period of the above deficiencies, in TD Bank Group's AML Controls – as TDNA and TD Holdings admitted in the DOJ Plea Agreement, TD Bank repeatedly failed to disclose any of this material information in a timely manner. Its false representations that TD Bank Group had AML Controls designed to comply with

legal and regulatory requirements and took a proactive approach to compliance and risk management, constituted a misrepresentation by omission and commission.

- (ii) The Defendants were aware by the commencement of the Class Period of criminal and regulatory investigations into TD Bank Group's AML Control deficiencies and were aware by no later than the fall of 2022 of the likelihood that the First Horizon deal would not close**

72. Throughout the Class Period, the OCC, FinCEN, FINTRAC and the DOJ have repeatedly identified serious concerns with TD Bank Group's AML Controls. By the commencement of the Class Period, the Defendants were aware or ought to have been aware that TD Bank Group's, particularly TDNA's, TDUS's and TD Holdings', AML Controls were under intense scrutiny by regulators and law enforcement. By October 2022, at the latest, TD Bank was aware that these regulatory and criminal investigations into TD Bank Group's, particularly TDNA's, TDUS' and TD Holdings', AML Controls would prevent the First Horizon transaction from closing.

73. By the commencement of the Class Period, TD Bank Group had failed to remediate the AML Control issues that had led to the 2013 OCC Consent Order and the 2013 FinCEN Consent Order—namely, failures to file suspicious activity reports; failures to properly train its staff on AML Controls and compliance; and failures to detect and prevent employees creating shell companies, opening bank accounts and issuing debit cards that were used to withdraw cash in ATMs in high-risk foreign jurisdiction. Given that it was subject to annual examinations by the OCC which had repeatedly identified and reported that the previously sanctioned AML deficiencies were not remediated, and the 2013 OCC Consent Order specifically stated that continuing non-compliance may be relied upon in future enforcement actions, TD Bank was aware or ought to have been aware, by the commencement of and throughout the Class Period, that it was at jeopardy of facing further regulatory actions in the US.

74. In May 2021, the DOJ indicted Da Ying Sze with money laundering USD \$653 million of proceeds of crime – USD \$474 million was laundered through TDNA branches. The indictment indicated that this money laundering had been facilitate by certain TDNA employees and law enforcement contacted TDNA to collect information with respect to Sze, and cease certain cheques. TDNA and TD Bank Group AML officers, senior management and the Boards of both the US subsidiaries and TD Bank were well aware, or ought to have been aware, of this serious allegation. They were aware, or ought to have been aware, that this criminal indictment would attract intense scrutiny of TDNA by the DOJ, but also the OCC and FinCEN which had repeatedly identified systemic AML deficiencies at TDNA and TDUS.

75. By October 2022, the OCC was investigating and was highly critical of TD Bank Group's AML Controls, particularly TDNA, TDUS and TD Holdings, and had communicated this to TD Bank Group and certain of its executives. By November 2022, there had been at least four highly unusual, private meetings between TD Bank Group executives, TD Bank Group's internal and external counsel, the OCC and the Federal Reserve. During these meetings, TD Bank Group executives were told that multiple federal regulators and law enforcement agencies had identified serious issues with TD Bank Group's AML Controls. TD Bank Group executives were also told that the deficient AML Controls were the focus of an ongoing DOJ investigation, and as a result the First Horizon deal would likely be rejected.

76. TD Bank failed to disclose the existence of the DOJ and regulatory AML investigations, including the OCC's and FinCEN's repeated findings that TD Bank Group's, particularly TDNA's, AML Controls continued to have the same deficiencies that were identified and sanctioned in 2013. TD Bank also failed to disclose that, due to this intense regulatory scrutiny, there was a significant

likelihood that the First Horizon deal would not be completed. Despite TD Bank's knowledge of these serious criminal and regulatory investigations into TDNA and TDUS's AML deficiencies, TD Bank executives, including the Individual Defendants, continued to represent, or authorize, acquiescence and/or permit the release of representations, that TD Bank Group was in compliance with all AML legal and regulatory requirements. They continued to repeatedly express confidence about closing the First Horizon deal, and denied the existence of any US legal and regulatory concerns. On a December 1, 2022, earnings call, TD Bank CEO Masrani extended the closing date for the First Horizon deal to the first half of fiscal 2023. However, when an analyst asked Masrani about whether regulators were "taking a closer look at anything", Masrani misrepresented, and concealed his awareness of these regulatory issues, stating: "I'm not aware of anything of the sort you're mentioning".

77. In February 2023, the closing date for the First Horizon deal was again extended to May 27, 2023, with no disclosure of the significant challenges faced by TD Bank Group as a result of the ongoing, but undisclosed, criminal and regulatory AML investigations. Instead, as discussed below, the press release announcing the extension falsely expressed confidence that the First Horizon transaction would close.

78. On May 3, 2023, TD Bank and First Horizon issued a joint press release, confirming that TD Bank and First Horizon were terminating their merger agreement due to "uncertainty as to when and if [the necessary] regulatory approvals would be obtained". In this press release, however, TD Bank did not disclose the specifics of TD Bank Group's AML criminal and regulatory challenges – namely, the US regulatory concerns about TDNA and TDUS's significant AML Control deficiencies – that blocked the deal from closing.

79. On May 8, 2023, the *Wall Street Journal* reported that “concern over TD anti-money laundering practices helped scuttle First Horizon deal”. Specifically, the *Wall Street Journal* reported that the “biggest obstacle” was TDNA and TDUS’s handling of transactions related to money laundering. In particular, the *Wall Street Journal* article attributed regulators’ refusal to approve the deal to TDNA’s and TDUS’s “handling of suspicious customer transactions” and “the way TD handled unusual transactions in recent years, and the speed at which some of them were brought to the attention of U.S. authorities”. On that same day, *Bloomberg* also reported that US regulators’ scrutiny of TDNA’s and TDUS’s “handling of suspicious transactions” was the reason that the banks “abandoned the deal”. Specifically, *Bloomberg* detailed that the “regulators’ concerns were related to anti-money laundering practices”. The TD Bank share price fell significantly and immediately after the disclosure of this information.

(iii) The Defendants delayed disclosing facts relating to the DOJ and regulatory investigations into their AML Controls deficiencies

80. Although the Defendants were or ought to have been fully aware of the existence of serious investigations by FinCEN, the OCC and the DOJ into TDNA and TDUS’s AML Controls, and of the DOJ’s investigation of money laundering by Da Ying Sze in the TDNA branches by the commencement of the Class Period, they failed to disclose for months that TDNA, TDUS and TD Holdings were being formally investigated by the DOJ and US regulators, and that TD Bank Group’s regulatory challenges were specifically in relation to its AML Controls. Once made, these disclosures caused immediate and material drops in TD Bank’s share price as discussed below.

81. On May 8, 2023, the *Wall Street Journal* and *Bloomberg* published articles, discussed in detail below, disclosing that TD Bank Group’s acquisition of the First Horizon bank was cancelled because regulators had serious concerns with respect to TD Bank Group’s (TDNA’s and TDUS’s)

AML failings in recent years and contraventions of the BSA. The TD Bank share price fell materially and immediately after the disclosure of this information.

82. On August 24, 2023, TD Bank finally disclosed in its 2023 Q3 Results Report to Shareholders that it had received “formal and informal inquiries from regulatory authorities and law enforcement” concerning its AML Controls, including “an investigation by the United States Department of Justice” and that it “expected” monetary and non-monetary penalties to be imposed. The 2023 Q3 Results Report stated:

The Bank has been responding to *formal and informal inquiries from regulatory authorities and law enforcement concerning its Bank Secrecy Act/anti-money laundering compliance program*, both generally and in connection with specific clients, counterparties or incidents in the US, including in connection with an investigation by the United States Department of Justice. The Bank is cooperating with such authorities and is pursuing efforts to enhance its Bank Secrecy Act/anti-money laundering compliance program. While the ultimate outcomes of these inquiries and investigations are unknown at this time, *the Bank anticipates monetary and/or non-monetary penalties to be imposed*. [Emphasis added]. (2023 Q3 Results Report at p. 79).

83. The TD Bank share price fell materially and immediately after the disclosure of this information.

84. However, it was not until January 8, 2024 that an article published by *Capitol Forum* publicly disclosed the facts that, by November 2022, TD Bank’s executives “were aware that multiple federal law enforcement agencies had found such serious lapses in anti-money laundering (AML) controls that U.S. regulators might reject the merger”. According to the January 8, 2024, *Capitol Forum* article, “leading bank regulators were aware of problems at TD Bank and the DOJ probe” and officials from the Federal Reserve and the OCC “discussed the alleged AML failings openly with TD Bank executives” in November 2022. *Capitol Forum* revealed that TD Bank Group

had immediate and ongoing “systemic” problems and that “regulators have determined that the company’s failings go back many years.” This disclosure also caused a further immediate and material drop in the TD share price as discussed below.

85. On August 21, 2024, a press release by TD Bank, discussed in detail below, disclosed for the first time that there was not only regulatory, but *criminal* investigations into TD Bank Group’s AML Controls. This disclosure also caused a further immediate and material drop in the TD share price as discussed below.

86. Finally, it was not until October 10, 2024, that it was disclosed that TDNA and TD Holdings had been subject to not only *criminal investigation but actual prosecution* by the DOJ for criminal felony charges of conspiracy to commit and permit money laundering and related felony charges. Pursuant to the DOJ Plea Agreement, in an unprecedented move, TD Bank Group, specifically TDNA and TD Holdings, became the *first bank to plead criminal guilty to conspiracy to commit money laundering*. The release of the DOJ Plea Agreement, the FinCEN Consent Order, the OCC Consent Order, and TD Bank’s press release, all on October 10, 2024, caused a further immediate and material drop in the TD share price as discussed below.

(iv) The prospect of or actual financial sanctions, non-monetary penalties, and criminal punishment imposed on TD Bank Group by US and Canadian regulators as a result of TD Bank Group’s deficient AML Controls

87. On April 30, 2024, after the close of trading, TD Bank announced that it was taking a USD \$450 million reserve against possible regulatory sanctions for its AML Control deficiencies. This disclosure caused a significant drop in TD Bank’s share price when markets opened on May 1, 2024, a day on which all Canadian bank stocks rose in value.

88. On May 2, 2024, FINTRAC announced that it was imposing its largest-ever monetary penalty on TD Bank, nearly \$9.2 million, for five violations of the PCA and its associated regulations (PCR). FINTRAC's compliance examination revealed that TD Bank had failed to submit suspicious transaction reports, failed to assess and document money laundering/terrorist activity financing risks, and failed to apply "prescribed special measures" for high-risk customers, among other things.

89. On May 3, 2024, it was reported by multiple media outlets that the fine assessed by US regulators could exceed USD \$2 billion. These disclosures caused a further immediate and significant drop in the TD Bank share price.

90. After market close on August 21, 2024, TD Bank announced it was taking an additional \$2.6 billion provision for the ongoing DOJ, OCC and FinCEN investigations into TD Bank Group's AML failures. This disclosure caused a further immediate and significant drop in the TD Bank share price when markets opened for trading on August 22, 2024.

91. On October 10, 2024, the U.S. Attorney General Merrick B. Garland announced that TDNA and TD Holdings had pleaded criminally guilty to multiple felonies for conspiracy to commit and fail to prevent money laundering. Pursuant to the DOJ Plea Agreement, OCC Consent Order, and the FinCEN Consent Order, TDNA, TDUS and TD Holdings agreed to pay USD \$3.09 billion to settle charges with the OCC, DOJ and FinCEN. While TD Bank had previously disclosed on August 21, 2024 the potential size of the monetary fine, the Defendants had not disclosed that the regulatory sanctions would also include an asset cap imposed on its US retail business, and that TDNA and TD Holdings would plead *criminally* guilty.

92. The DOJ Plea Agreement, OCC Consent Order, and FinCEN Consent Order disclosed, and TDNA, TDUS and TD Holdings admitted, that despite their knowledge of their systemic AML deficiencies, they did not remediate the AML issues and did not invest resources into training staff on AML compliance.

(v) Criminal charges involving TDNA employees and TDNA and TDUS customers demonstrated that TD Bank Group's AML Controls were inadequate during the Class Period

93. During the Class Period, several TDNA employees were criminally prosecuted based on allegations that they had facilitated and participated in money laundering activities through certain TDNA bank accounts. There were also criminal prosecutions against TDNA and TDUS customers that related to the use of TDNA and TDUS banks and services to launder hundreds of millions of dollars. These prosecutions made clear, or ought to have made clear, to the Defendants that TD Bank Group's AML Controls were undoubtably lacking even the most basic AML Controls. TD Bank Group failed, time and time again, to respond to numerous, glaringly obvious red flags of fraudulent activity. The prosecution of TDNA employees also made clear that, contrary to its representations during the Class Period, TD Bank Group's AML Controls were not designed to be fully compliant with all AML related legislature and regulations and failed to employ best practices. It made clear that TD Bank Group employees did not comply with TD Bank's Codes of Conducts filed on SEDAR and EDGAR with respect to detecting and deterring money laundering.

94. As discussed above, on May 6, 2021, charges were brought against six individuals – Da Ying Sze, a man from Queens, New York, and his five co-conspirators – for laundering more than USD \$653.3 million of proceeds of illegal drug sales between 2016 and 2021. Specifically, the indictment alleged that Da Ying Sze and his co-conspirators conspired to commit money

laundering, including by bribing TDNA employees. As of May 20, 2021, when law enforcement agencies seized cheques deposited into TDNA accounts by Da Ying Sze's and/or his co-conspirators, TDNA was aware that its AML Controls had failed to detect and deter money laundering, and that its employee(s) had knowingly laundered money through TD accounts and services.

95. In the Da Ying Sze indictment, the financial institution where the money laundering occurred – TDNA – was anonymized. TDNA was simply referred to as a “financial institution”, or “F-1”. It was therefore not publicly known that the money laundering in the indictment was taking place at TD Bank Group retail branch until May 2, 2024, when the *Wall Street Journal* published an article revealing that TD Bank Group was in fact the financial institution referred to in the Da Ying Sze indictment as “F-1”. Further details of TDNA's blatant AML failures with respect to the Sze conspiracy were revealed in the DOJ Plea Agreement. Specifically:

- a) Between January 2018 and February 2021, the Sze Conspiracy laundered approximately USD \$474 million through TDNA retail branches in New Jersey, New York, Pennsylvania, Maine and Florida;
- b) In February 2020, the Sze Conspiracy purchased USD \$8.5 million – \$8.3 million of which was paid in **cash** – in official bank checks at two different TDNA retail branches;
- c) TDNA's AML Controls failed to detect suspicious activity that was obvious even to a casual observer. During surveillance on July 21, 2020, US DEA agents observed members of Sze's organization successfully depositing multiple large bags of cash over the counter at various TDNA branches. He deposited USD \$372,000 into TDNA accounts that were not in his name and then went to a different TDNA retail branch and conducted a USD \$290,000 cash transaction;
- d) Sze allegedly provided over USD \$57,000 in gift cards and other valuable items to TDNA employees to ensure these suspicious transactions were not reported;
- e) By August 2020, TDNA employees were openly discussing that the Sze Conspiracy was laundering money through TDNA's banking services; and

- f) By August 2020, TD Bank Group AML executives were alerted of the Sze Conspiracy and suspicious activity occurring in the Sze accounts but failed to take any action.

96. TD Bank Group's, specifically TDNA's, AML Controls failed to detect these suspicious transactions and its employees failed to deter money laundering. In February 2022, Da Ying Sze pleaded guilty to, among other things, conspiracy to commit money laundering and bribing a bank employee in relation to charges brought against him and five others, including a TDNA employee.

97. From March 2021 to March 2023, a different criminal organization laundered approximately USD \$123 million in criminal funds through TDNA accounts in the name of shell companies. As law enforcement alerted TDNA in April 2022 that this criminal conspiracy was laundering money through its banking services, TDNA was aware by April 2022, at the latest, that its AML Controls failed to detect obvious red flags raised by the transactions and activity in these accounts, including large cash deposits across 161 transactions totalling over USD \$122 million, which were followed by numerous transfers of funds to other accounts. These types of high velocity transactions are a common indicator of money laundering, but TD Bank Group's AML Controls failed to detect it.

98. On December 21, 2022, Daniel Hernandez, a TD Bank Group US Regional Vice President who oversaw 80 bank employees and more than 20 branches throughout South Florida, pleaded guilty to wire conspiracy charges and was sentenced to 120 months in prison. From April 2020 through July 2021, Hernandez had obtained USD \$15 million in fraudulent PPP loans, by directing customers to submit falsified paperwork. Despite the obvious signs of fraud, such as mismatched names and IRS records, TD Bank Group's AML Controls did not flag Hernandez's suspicious transactions and internal concerns raised by TDNA and TDUS employees and managers about these transactions were ignored.

99. On February 24, 2023, Diappe Seck, a TDNA and/or TDUS employee, was convicted of conspiracy to commit bank fraud, among other offences. Between January 2019 and 2020, Diappe Seck and his co-conspirators opened approximately 412 TDNA and/or TDUS chequing accounts, relying on purported Romanian passports and drivers license information. Seck and his associates deposited cheques payable to religious institutions into many of these TDNA and/or TDUS accounts. Ultimately, Diappe Seck obtained or attempted to obtain almost USD \$2 million through fraud. The federal judge in Seck's trial found, on February 24, 2023, that TDNA and/or TDUS had failed to stop the fraud, noting “*the TD Bank people were either asleep at the switch or were happy they were getting these accounts*”. As a result of TDNA’s and/or TDUS’s complicity, Seck received a reduced sentence.

100. On October 27, 2023, TDNA employee Oscar Nunez-Flores was charged by the US DEA with one count of conspiracy to launder money instruments for more than a year and one count of receiving bribes in his capacity as a bank employee. Nunez-Flores allegedly “repeatedly and corruptly accepted bribes” in exchange for laundering millions of dollars related to the manufacture and distribution of illegal narcotics for Colombian drug cartels.

101. Nunez-Flores conspired to commit a form of money laundering known as Colombian ATM Typology – a rudimentary and easily detectable money laundering scheme which involves depositing funds into personal and business accounts in the US and withdrawing cash at ATMs in Colombia. Flores allegedly created accounts under shell companies with owners that he was aware were not controlling the accounts. He also allegedly provided numerous debit cards to access the accounts online. Within two weeks of opening one account, Nunez-Flores allegedly approved 28 debit cards that accomplices in Colombia used to withdraw cash. This activity should have

triggered suspicious activity alerts and been caught immediately by TD Bank Group's AML Controls. The DEA has alleged that between May and August 2022, more than 17,000 international ATM withdrawals were conducted and about USD \$1.9 million was routed from the US to Colombia and other countries from the TD Bank Group debit cards approved by Nunez and through TD Bank Group services. Between November 2019 and November 2022, USD \$39 million was deposited into approximately thirty TDNA chequing accounts in the US and withdrawn through 194,949 cash withdrawal at ATMs in Columbia. In exchange for facilitating the money laundering, Flores received bribes in the form of gift cards, as well as direct cash transfers into his personal account at TDNA via the Zelle Platform.

102. On August 24, 2023, TD Bank disclosed in its Q3 2023 Results Report to Shareholders that there were ongoing investigations by, among others, "law enforcement" in relation to, among other things, "specific clients, counterparties or incidents in the US ...". This was TD Bank's first public disclosure related to the existence of potentially criminal investigations in relation to TD Bank Group employees and customer. This disclosure caused an immediate and significant drop in the TD share price.

103. On January 8, 2024, the *Capitol Forum* published an article entitled "TD Bank/First Horizon: Buyer Knew It Faced a Serious Money-Laundering Probe Months Before Deal Collapsed". This article disclosed the charges against former TDNA employee Nunez-Flores for laundering millions of dollars in illegal drug sales. This disclosure caused an immediate and significant drop in the TD Bank share price.

104. On May 2, 2024, the *Wall Street Journal* published an article entitled "TD Bank Probe tied to Laundering of Illicit Fentanyl Profits: The Canadian bank is contending with three other US

probes into its anti-money laundering controls”. This article disclosed the charges against Da Ying Sze. This disclosure caused an immediate and significant drop in the TD Bank share price.

105. On October 10, 2024, the DOJ Plea Agreement, OCC Consent Orders and the FinCEN Consent Orders disclosed that four other TDNA employees faced criminal prosecution for providing material assistance, in exchange for bribes, to money laundering schemes, involving tens of millions of dollars being transferred from the US to Colombia. These employees opened accounts and provided dozens of ATM cards to the money-laundering networks. Beginning in October 2023, law enforcement began arresting and charging these TDNA employees, including Flores, as is discussed above. This disclosure caused an immediate and significant drop in the TD Bank share price.

IX. THE MISREPRESENTATIONS

106. As summarized above and below, throughout the Class Period, in both its Core and Non-Core Documents and public oral statements, TD Bank made and repeated multiple misrepresentations through both misstatements of material facts and omission. The misstatements repeated in identical or very similar language to the effect that TD Bank Group, including its US subsidiaries had designed and operated fully compliant AML Controls. In light of those repeated and virtually identical misstatements, TD Bank misrepresented by omission in failing to disclose highly material information about the extent of its serious and systemic breakdown in its AML Controls and serious regulatory and criminal violation of US criminal law and regulatory requirements relating to money laundering which it permitted in its branches. The specific and repeated misrepresentations are summarized in four categories:

- a) **First Misrepresentation – Effective and Compliant AML Controls:** misrepresented that it had designed and operated effective and fully compliant AML Controls and took a proactive and comprehensive approach to risk management, including risks arising from money laundering, during the Class Period. These were false statements. It misrepresented by omission in failing to disclose that TD Bank Group, including TDNA, TDUS, and TD Holdings, had systemically deficient AML Controls, failed to invest resources to remediate the AML Controls deficiencies, failed to train staff on AML compliance, permitted massive money laundering in its branches and were in violation of the BSA and related US AML legislation and regulations;
- b) **Second Misrepresentation – Existence and Scope of Regulator and Criminal AML Investigations:** misrepresented by omission in failing to disclose the existence and scope of the serious investigations into TD Bank Group's, particularly TDNA's, TDUS's and TD Holdings', deficient AML Controls by US regulators, law enforcement, and the DOJ, which made it highly unlikely that regulators would approve TD Bank Group's acquisition of the US bank First Horizon and made it highly likely that US and Canadian regulators would impose monetary penalties and other sanctions against TD Bank Group;
- c) **Third Misrepresentation – Criminal Investigations of Employees and Customers:** misrepresented by omission in failing to disclose the criminal charges and convictions against TDNA employees and TDNA and TDUS customers for facilitating and participating in significant money laundering activities through TDNA and TDUS branches in the US which made it highly likely that US regulators and the DOJ would impose significant monetary sanctions, asset caps and business restrictions on TD Holdings, TDNA and TDUS; and
- d) **Fourth Misrepresentation – Accounting:** made false statements of financial results in Core Documents, that it was fully compliant with ICFR, that its ICFR and DC&P were functioning, and made Certifications of such compliance of those financial results in Core Documents. It also misrepresented by omission that its reported goodwill and provisional contingencies did not take into account the operational risks and financial loss arising from TD Bank Group's deficient AML Controls and the related regulatory and criminal investigations.

107. TD Bank's misrepresentations were made in its Core Documents including Offering Documents described herein, which it filed with both SEDAR, EDGAR and disseminated publicly, pursuant to which TD Bank distributed securities to Class Members. The Offering Documents, including documents incorporated by reference in the Offerings Documents, contained misrepresentations by commission and omission as described above.

108. The Individual Defendants who signed these Offering Documents certified that the Offering Documents (together with the documents incorporated by reference, constituted full, true

and plain disclosure of all material facts relating to these securities). However, these certifications were false and as a result those Individual Defendants who signed the Offering Documents together with TD Bank, are liable for misrepresentation pursuant to ss. 130 and 130.1 of the *OSA* and the equivalent Other Canadian Securities Legislation.

A. First Misrepresentation – Effective and Compliant AML Controls

109. **First**, in TD Bank’s Core and Non-Core Documents and public oral statements throughout the Class Period, the Defendants failed to disclose that TD Bank Group’s AML Controls were systemically deficient, that its employees were not adequately trained on AML compliance, and it did not invest resources to remediate its AML deficiencies. Instead, it repeated the misrepresentation that TD Bank Group: oversaw and operated AML Controls “designed” to comply with legal and regulatory requirement and detect and deter money laundering, were committed to meeting regulatory AML expectations, and took a proactive and comprehensive approach to risk management. The Class Members suffered significant damage once the truth about TD’s Bank Group, particularly TDNA’s, TDUS’s and TD Holdings’ ineffective AML Controls emerged in the first (May 8, 2023), second (August 24, 2023), third (January 8, 2024), fourth (April 30, 2024), fifth (May 2, 2024), sixth (May 3, 2024) and eighth (October 9-10, 2024) partial corrective disclosures discussed below.

(i) Core Document misrepresentations

Annual Reports

110. In its Annual Reports for the fiscal years ended October 31, 2021 (released December 1, 2021), October 31, 2022 (released November 30, 2022), and October 31, 2023 (released November 29, 2023), TD Bank by omission misrepresented that TD Bank Group’s GAML department

effectively oversaw operated TD Bank Group's AML Controls "*so that money laundering ... risks are appropriately identified and mitigated*" ("GAML Statement"):

Global Anti-Money Laundering

GAML is responsible for the oversight of TD's regulatory compliance with Anti-Money Laundering (AML), Anti-Terrorist Financing, Economic Sanctions, and Anti-Bribery/Anti-Corruption regulatory compliance and broader prudential risk management across the Bank in alignment with enterprise AML policies *so that the money laundering, terrorist financing, economic sanctions, and bribery and corruption risks are appropriately identified and mitigated.* [Emphasis added]

Annual Report 2021 at p. 87; Annual Report 2022 at p. 84; Annual Report 2023 at p. 85

111. This misstatement constituted a misrepresentation by omission. The statement implies that TD Bank had effective and fully compliant AML Controls when it knew that it did not. TD Bank omitted material facts that were necessary to be stated. TD Bank failed to state that TD Bank Group's GAML department did not, in fact, effectively oversee and operated its AML Controls to comply with AML laws and regulations, there were systemic deficiencies in its AML Controls, and the GAML department's operation and oversight of its AML Controls routinely failed to detect money laundering that occurred across retail branches in Canada and the US. These omitted material facts were required to be stated, as their non-disclosure misled investors to believe that TD Bank Group's GAML department effectively oversaw and operated its AML Controls. It was known or ought to have been known that this information would be highly material information to investors and would have a significant impact on the share price of TD Bank shares.

112. TD Bank also represented that TD Bank Group took "comprehensive and proactive approach to risk management" ("Risk Management Statement"):

APPROACH TO RISK MANAGEMENT PROCESSES

The Bank's *comprehensive and proactive approach to risk management* is comprised of four processes: risk identification and assessment, measurement, control, and monitoring and reporting.

Annual Report 2021 at p. 83; Annual Report 2022 at p. 85; Annual Report 2023 at p. 86.

113. This misstatement constituted a misrepresentation by omission. TD Bank omitted material facts that were necessary to be stated. TD Bank failed to state that TD Bank Group did not take a proactive approach to AML risks and that it did not invest resources to remediate systemic deficiencies in its AML Control, which put it at a high risk of regulatory and criminal prosecution due to non-compliance with AML legislation and regulations. These omitted material facts were required to be stated, as their non-disclosure made the Risk Management Statement misleading and inaccurate. It was known or ought to have been known that this information would be highly material information to investors and would have a significant impact on the share price of TD Bank shares.

Annual Information Forms

114. In its Annual Information Form for the fiscal years ended October 31, 2021 (dated December 1, 2021), October 31, 2022 (dated November 30, 2022), and October 31, 2023 (dated November 29, 2023), TD Bank by commission and omission misrepresented TD Bank Group's AML Controls, were "**designed** so that the Bank is in compliance with the laws and regulations that apply to it as well as its own policies ..." (the "Audit Statement"):

The Committee shall oversee and monitor the establishment, maintenance and *ongoing effectiveness of the Anti-Money Laundering / Anti-Terrorist Financing / Economic Sanctions/ Anti-Bribery and Anti-Corruption Program ("AML Program") that is designed so that the Bank is in compliance with the laws and regulations* that apply to it as well as its own policies, [Emphasis added].

(AIF 2021 at p. 39; AIF 2022 at p. 41; AIF 2023 at p. 41)

115. The Audit Statement constituted a misrepresentation by commission and omission. TD Bank falsely stated that TD Bank Group AML Controls were “designed” to comply with legal and regulatory AML requirements when in fact it was aware that its AML Controls, particularly with respect to TDNA, TDUS and TD Holdings, were non-compliant with AML legislation and regulations. TD Bank also omitted to state material facts that were necessary to be stated. It was necessary to state that the OCC and FinCEN had repeatedly identified that TD Bank Group’s AML Controls did not, in fact, comply with AML laws and regulations. These omitted material facts were required to be stated, as their non-disclosure made the Audit Statement misleading and inaccurate. It was known or ought to have been known that this information would be highly material information to investors and would have a significant impact on the share price of TD Bank shares.

116. These same misrepresentations – that TD Bank Group had, by design, strong AML Controls, that it complied with regulatory requirements and that it took a proactive approach to risk management – were repeated many times throughout the Class Period by TD Bank, using similar language, in both Core and Non-Core Documents. These misrepresentations were repeated in TD Bank’s “AML Statement” posted on its website since the commencement of the Class Period, updated in March 2022, March 2023 and March 2024.

117. The Defendants knew, at the time these documents were released, or public oral statement was made, that the document or public oral statement contained misrepresentations.

(ii) Other Non-Core Document and public oral statement misrepresentations

118. On June 15, 2022, after *Capitol Forum* released a report stating that the DOJ was investigating TD Bank Group’s US retail operations, TD issued a public statement denying the

truth of the information contained in the report. It expressly represented that TD Bank Group “follow[ed] industry best practices that are designed to detect and help prevent fraud” (the “Public Statement”):

“The allegations in the Capitol Forum article are unfounded. Our business is built on a foundation of ethics, integrity and trust. At TD Bank, we put our customers first and are proud of our culture of delivering legendary experiences to customers. As part of routine and ongoing monitoring, TD Bank has not identified systemic sales practice issues at any time,

...

“Our compensation practices — which place a heavy emphasis on customer satisfaction — are carefully and actively managed. We vehemently object to any allegations of systemic sales practice issues, or any other claims alleged in the article.”

...

“Finally, we strongly disagree with the article’s characterization of information presented as facts regarding TD Bank’s fraud procedures. At TD Bank, protecting the security of our customers’ accounts and personal information is a top priority. We follow industry-best practices that are designed to detect and help prevent fraud.” [Emphasis added].

119. The Public Statement was a misrepresentation by commission and omission. TD Bank falsely stated that TD Bank Group followed industry best practice that were designed to detect and prevent suspected fraud, which includes money laundering, when in fact TD Bank Group’s AML Controls were systemically deficient and inconsistent with best practices. TD Bank also omitted to state material facts necessary to be stated. It was necessary to state that TD Bank Group’s AML Controls had failed to detect and deter money laundering conspiracies involving hundreds of millions of dollars of criminal proceeds. It was known or ought to have been known that this information would be highly material information to investors and would have a significant impact on the share price of TD Bank’s shares.

120. The misrepresentation regarding the GAML department's oversight and operation of TD Bank Group's AML Controls, design of TD Bank Group's AML Controls, its commitment to effective and compliant AML Controls, and approach to risk management, as well as the Defendants knowledge of these issues, were incrementally corrected the partial public corrective disclosures referred to below. As each partial corrective disclosure was released, the existence, extent and scope of TD Bank's AML misrepresentations and TD Bank Group's deficient, and lackadaisical approach to, AML Controls were further disclosed exposed to Class Members.

B. Second Misrepresentation – Existence and Scope of Regulatory and Criminal AML Investigations

121. Throughout the Class Period, TD Bank repeatedly failed to disclose the existence and scope of serious regulatory investigations relating to TD Bank Group's AML Controls that would result in material monetary and non-monetary penalties, including the cancellation of the First Horizon transaction. Up until the cancellation of the First Horizon transaction on May 4, 2023, TD Bank and CEO Masrani also made false statements that the First Horizon transaction was likely to close and that there were no regulatory scrutiny or investigations that would prevent it from closing.

122. The failure to disclose First Horizon transaction not being approved as a result of regulatory concerns over TD Bank Group's AML Controls, and the false statements to the contrary, were corrected by the first partial corrective disclosure by the press on May 8, 2023, while the existence and extent of the DOJ and regulatory investigations was incrementally corrected over six of the remaining seven partial public corrective disclosures (August 24, 2023; January 8, 2024; April 30, 2024; May 2, 2024; August 21, 2024; and October 9-10, 2024). Notably, the Defendants were aware of but failed to disclose the existence of a criminal investigation against TDNA and TD Holdings. This information was partially revealed by the seventh partial corrective disclosure on

August 21, 2024, but the full scope and extent of the criminal prosecution was revealed by the eighth partial corrective disclosure, specifically through the release of the DOJ Plea Agreement and related documents on October 10, 2024.

(i) Core Document misrepresentations by omission of these material facts

123. TD Bank was required, but failed, to disclose, in any of its Core Documents that, by the commencement of the Class Period, it was under regulatory scrutiny by the OCC, FinCEN, and the DOJ. TD Bank also failed to disclose that, by at the latest October 2022, the OCC, FinCEN, FINTRAC, and the DOJ were investigating and had identified serious, systemic and pervasive deficiencies in TD Bank Group's AML Controls, and that it was highly unlikely the First Horizon transaction would be approved.

124. Although TD Bank knew by the commencement of the Class Period that TD Bank Group was facing material regulatory and criminal investigations, it omitted to disclose the existence of these regulatory investigations in its Annual Report for the fiscal year ended on October 31, 2022 (released December 1, 2022). At page 81 of its 2021 Annual Report, TD Bank represented that Note 27 of the Consolidated Financial Statements ("Provisions, Contingent Liabilities, Commitments, Guarantees, Pledged Assets and Collateral in the "Legal and Regulatory Matters" which spans from page 212 to 214) disclosed all "material legal proceedings" against it and, at page 212, stated that the Note 27 disclosure includes "regulatory examinations, investigations, audits and requests for information by governmental, regulatory and self-regulatory agencies and law enforcement authorities in various jurisdiction". Note 27 contained no material facts relating to ongoing AML related regulatory and criminal investigations.

125. TD Bank's failure to disclose the ongoing regulatory and criminal investigations into TD Bank Group's ineffective AML Controls and the high risk of regulatory and criminal sanctions was a misrepresentation by omission. It was necessary to state that TD Bank Group was under regulatory scrutiny by the OCC, FinCEN and FINTRAC, and facing certain criminal prosecution by the DOJ and that these regulators and the DOJ had identified deficiencies in TD Bank Group's AML Controls. This was highly material information that was known or should have been known to be highly important to investors and would have a significant impact on the share price of TD Bank shares.

126. Until August 21, 2024, the Defendants failed to disclose that TD Bank Group was subject to an unprecedented criminal investigation for money laundering. It was necessary to state this material information that demonstrated TD Bank Group would face severe fines and non-monetary penalties, significant reputational damage, and had extensive and pervasive AML issues. This information was only fully revealed in the DOJ Plea Agreement, dated October 10, 2024.

(ii) Non-Core Document and public oral statement misrepresentations

127. TD Bank, via Defendant Masrani, made a misrepresentation by commission in public oral statements by denying the existence of the AML related regulatory and legal actions.

128. Two months after officials from the Federal Reserve, FinCEN, DOJ, and the OCC had openly discussed TD's AML failings with TD executives, TD Bank CEO Masrani stated that he was "not aware if regulators were taking a closer look at anything". Specifically, during the Q4 2022 Earnings Conference Call held on December 2, 2022, when Masrani was asked by an analyst if regulators were "taking a closer look at anything" relating to the First Horizon deal, Masrani misled investors by stating, "I'm not aware of anything of the sort you're mentioning":

Gabriel Dechaine – National Bank Financial – Analyst: Okay. We calculate it ourselves, it might be the compare methodology there. My real question is on the First Horizon. A subtle shift in timing expectations, I guess. Last quarter, you were expecting to close in fiscal Q1, now first half. *What's prompting the delayed expectation of closing?*

Bharat Masrani – TD – Group President and CEO: We're already in December. And so we don't control the timing of all the regulatory approvals, but *we are confident that we'll get closing within the time line that we've put out.*

Gabriel Dechaine – National Bank Financial – Analyst: *I mean are they taking a closer look at anything?* Are you anticipating having to make any adjustments to your product lineup or your fee schedule in advance of the close?

Bharat Masrani – TD – Group President and CEO - No, I'm not aware of anything of the sort you're mentioning. [Emphasis added].

129. This was false. Masrani false misrepresented that he was not aware that regulators were “taking a closer look at anything” when, in fact, TD Bank executives had met with officials from the Federal Reserve and the OCC in October 2022 and openly discussed” the failings of TD Bank Group’s AML Controls. Further, the OCC and FinCEN had been monitoring and expressing concerns to the Defendants and TD Bank Group generally since the commencement of and throughout the Class Period. TD Bank was therefore evidently aware that regulators were “taking a closer look” at TD Bank Group’s AML Controls. The Defendants knew, at the time this public oral statement was made, that it contained misrepresentations. The fact that regulators *were* taking a closer look at the First Horizon transaction and that they had already expressed that they had identified failings with TD Bank Group’s AML Controls was highly material information that was known or should have been highly important to investors and would have a significant impact on the share price of TD Bank’s shares.

130. This misrepresentation also benefitted the Individual Defendants. At TD Bank's Annual Meeting held on April 23, 2023, just weeks before it was finally announced the First Horizon deal would not close, TD Bank shareholders approved millions of dollars of additional compensation, exceeding what executives received in prior years, for Defendants Masrani, Salom and Tran, for their role in facilitating the First Horizon merger.

131. TD Bank by omission also made misrepresentations in press releases dated February 9, 2023 and May 4, 2023.

- a) In a joint press release with First Horizon dated February 9, 2023, TD Bank stated that TD Bank and First Horizon had agreed to extend the closing date for the transaction "in accordance with the terms of the merger agreement", and that they were "fully committed to the merger and continue[d] to make significant progress in planning for the closing and integration of the companies."
- b) On May 4, 2023, TD Bank and First Horizon released a joint press release stating that TD Bank had "informed First Horizon that TD Bank does not have a timetable for regulatory approvals to be obtained for reasons unrelated to First Horizon" and that because of the "uncertainty as to when and if these regulatory approvals can be obtained" the merger agreement had been terminated by the parties.

132. These two press releases dated February 9, 2023 and May 4, 2023, contained misrepresentations by omission. It was necessary to, but TD Bank did not, disclose that TD Bank Group was facing, or was highly likely to face, regulatory and criminal investigations and prosecutions regarding its AML Controls and that as a result regulators were unlikely to approve the First Horizon deal, not merely that it was uncertain will regulatory approval would be obtained. This was material information that was known or should have been known to be highly important to investors that would have a significant impact on the share price of TD Bank's shares.

133. The first partial corrective disclosure revealed that the First Horizon transaction would not close because of TD Bank Group's AML Control problems, while six of the remaining seven

corrective disclosures revealed the existence, scope, and severity of numerous regulatory and criminal investigations into its AML issues. As pleaded below, seven of the partial corrective disclosure corresponded to the subject matter of the pleaded misrepresentations and revealed the existence of the previous misrepresentations made by the Defendants.

C. Third Misrepresentation – Criminal Investigations of Employees and Customers

134. In TD's Core and Non-Core Documents throughout the Class Period, the Defendants repeatedly failed to disclose that there were both criminal investigations and proceedings against TD Bank Group employees (specifically TDNA employees) and customers for laundering money through TDNA and TDUS accounts. Given the Defendants' representations in Core and Non-Core Documents that it had AML Controls were designed to detect and deter money laundering and that TD Bank Group and its employees were committed to effective and compliant AML Controls, the existence of criminal proceeding relating to failures in TD Bank Group's AML Controls were material to investors. It was necessary to disclose that TD Bank Group's employees and customers had exploited its AML Controls and were facing serious criminal prosecutions. TD Bank's failure to make such disclosures was a misrepresentation by omission. Class Members suffered significant damage once the truth about the criminal proceedings were revealed in the second (August 8, 2023), third (January 8, 2024), fifth (May 2, 2024), and eighth (October 9-10) partial corrective disclosures discussed below.

D. Fourth Misrepresentation – Accounting

135. In each of its Class Period financial statements, TD Bank repeatedly misrepresented that its financial reporting was IFRS-compliant and that it had effective and functioning ICFR and DC&P. Defendants Masrani, Ahmed and Tran, as CEO and CFO respectively, provided false Certification that TD Bank's financial reporting was fair and reliable. It was only at the time of the

fourth (April 30, 2024), fifth (May 2, 2024), seventh (August 21, 2024) and eighth (October 9-10, 2024) partial corrective disclosures, that the true extent of the monetary and non-monetary regulatory and criminal penalties faced by TD Bank Group, and the effect these issues would have on TD Bank Group's financial state and business operations, were revealed.

136. TD Bank had recorded significant goodwill associated with its US business based on the assumption that its US expansion would generate significant further business growth, revenue and cash flows. However, as a result of the undisclosed US regulatory and DOJ criminal investigations and prosecutions, and the cancellation of the First Horizon acquisition, significant impairment indicators arose during the Class Period that required a write-down on the value of the assets and goodwill related to this business. It had also recorded significant goodwill related to its Canadian business that also needed to be written down during the Class Period. Those write-downs were not taken which resulted, during the Class Period, in an overstatement of the value of TD Bank Group's assets on its Balance Sheets and a corresponding overstatement of income as a result of the failure to take the amount of such write-downs as expenses during the Class Period.

137. Throughout the Class Period, TD Bank failed to comply with applicable accounting standards and requirements, including IFRS and GAAP. TD Bank also misrepresented its financial position in its quarterly and annual financial consolidated statements. TD Bank by commission and omission repeated the following accounting misrepresentations in its Quarterly and Annual Reports throughout the Class Period:

- a) TD Bank failed to take necessary impairment write downs because of the value of its goodwill suffered impairment as a result of the AML Controls deficiencies, and the resulting investigations and sanctions;
- b) TD Bank failed to comply with accounting disclosure requirements of the risks associated with its AML Controls issues described and failed to disclose adequate

contingent liabilities related to its AML Controls deficiencies and the related investigations; and

- c) TD Bank misstated that it had functioning and effective ICFR and DC&P during the class period when it did not and thus the Certifications by the CEO and CFO as such were false.

Goodwill, CGU Values and Operational Risks

138. In its Annual Reports for the fiscal years ended October 31, 2021 (released December 1, 2021), October 31, 2022 (released November 30, 2022), and October 31, 2023 (released November 29, 2023), TD Bank recorded upwards of billions of dollars in aggregated goodwill in relation to CGUs for its Canadian and US business based on the assumption related to “forecasted earnings, growth rates, discount rates, and terminal growth rates”. TD Bank by commission and omission misrepresented that the below reported values of goodwill were “reasonable and supportable” and accounted for “market risk, credit risk, and operational risk”.

- a) **Carrying amount of goodwill as of October 31, 2021** (Annual Report 2021 at Note 14, pp. 189-190):

- i) **Canadian Retail:** CAD \$2,824,000,000;
- ii) **US Retail:** CAD \$13,134,000,000;

- b) **Carrying amount of goodwill as of October 31, 2022** (Annual Report 2022 at Note 14, pp. 193-194):

- i) **Canadian Retail:** CAD \$902,000,000;
- ii) **US Retail:** CAD \$14,463,000,000;

- c) **Carrying amount of goodwill as of October 31, 2023** (Annual Report 2023 at Note 14, pp. 193-194):

- i) **Canadian Retail:** CAD \$902,000,000; and
- ii) **US Retail:** CAD \$14,722,000,000.

139. The recordings of Goodwill in Note 14 of its Annual Reports during the Class Period were a misrepresentation by commission and omission. TD Bank misrepresented by commission that the reported goodwill values were “reasonable and supportable” and accounted for “operational risk”. The reported goodwill values did not account for operational risks posed by TD Bank Group’s AML Controls deficiencies, such as future monetary and non-monetary penalties and sanctions that TD Bank expected to receive, the reputational damages that would result from the regulatory and criminal investigations and penalties, and the cost of improving AML Controls to meet legal and regulatory standards.

140. It was necessary to disclose and account for the ineffectiveness of TD Bank Group’s AML Controls and the DOJ and regulatory investigations into the TD Bank Group’s AML Controls. These facts were significant impairment indicators that arose during the Class Period that required a write-down on the value of the assets and goodwill related to this business. Alternatively, it was necessary to disclose that TD Bank Group’s goodwill value did not account for, or assumed compliance with, legal and regulatory AML requirements despite the fact its AML Controls failed to detect and deter money laundering and TDNA and TD Holdings were subject to a DOJ criminal investigation, and the TD Bank Group was subject to various regulatory investigations. It was known or ought to have been known that this information would be highly material information to investors and would have a significant impact on the share price of TD Bank shares.

Representations and Certifications regarding Functioning ICFR and DC&P

141. In its Annual Reports for the fiscal years ended October 31, 2021 (released December 1, 2021), October 31, 2022 (released November 30, 2022), and October 31, 2023 (released November 29, 2023), TD Bank by commission misrepresented that its annual Consolidated Financial

Statements were “prepared in accordance with International Financial Reporting Standards ...”.
(Annual Report 2021 at p. 14; Annual Report 2022 at p. 18; Annual Report 2023 at p. 18).

142. TD Bank repeated this misrepresentation in the following Quarterly Reports:

- a) 2021 Q2 Results Report to Shareholders at p. 1 (released May 27, 2021);
- b) 2021 Q3 Results Report to Shareholders at p. 1 (released August 26, 2021);
- c) 2021 Q4 Results Report to Shareholders at p. 1 (released December 2, 2021);
- d) 2022 Q1 Results Report to Shareholders at p. 1 (released March 3, 2022);
- e) 2022 Q2 Results Report to Shareholders at p. 1 (released May 26, 2022);
- f) 2022 Q3 Results Report to Shareholders at p.1 (released August 25, 2022);
- g) 2022 Q4 Results Report to Shareholders at p.1 (released December 1, 2022);
- h) 2023 Q1 Results Report to Shareholders at p.1 (released March 2, 2023);
- i) 2023 Q2 Results Report to Shareholders at p.1 (released May 25, 2023);
- j) 2023 Q3 Results Report to Shareholders at p.1 (released August 24, 2023);
- k) 2023 Q4 Results Report to Shareholders at p.1 (released November 30, 2023); and
- l) 2024 Q1 Results Report to Shareholders at p.1 (released February 29, 2024);

143. For all the reasons described above, TD Bank’s representations that its Quarterly Reports and Annual Reports, released during the Class Period, were IFRS-compliant and that its ICFR and DC&P were functioning were misrepresentations by commission. All Quarterly Reports and Annual Reports released during the Class Period failed to comply with applicable accounting standards and failed to properly present the financial statements, financial results, and other financial and regulatory metrics. This was done in violation of IAS 1 and other accounting standards.

144. Further, the Certifications in the Quarterly and Annual Financial Statements by the CEO and CFO that TD's ICFR and DC&P were effective were false and constituted misrepresentations.

X. CORRECTIVE DISCLOSURES OF MISREPRESENTATIONS

145. The misrepresentations as described above were corrected by eight partial public corrective disclosures made on May 8, 2023, August 24, 2023, January 8, 2024, April 30, 2024, May 2, 2024, May 3, 2024, August 21, 2024, and October 9-10, 2024.

A. May 8, 2023- First Partial Public Corrective Disclosure

146. On May 8th, 2023, *Bloomberg* and the *Wall Street Journal* published reports revealing that the reason the Federal Reserve and the OCC had refused to approve the First Horizon deal was specifically due to TD Bank Group's severe AML Control deficiencies. Both reports attributed regulators refusal to approve the deal to TD Bank Group's "handling of suspicious customer transactions" and concerns around its AML Controls. The *Wall Street Journal* article was published at 2:02 pm. TD Bank's stock price dropped from \$84.81 per share at 2:02 pm to \$82.59 per share at 2:12 pm.

147. While TD Bank had admitted, four days earlier on May 4, 2023, via a joint press release with First Horizon, that TD Bank and First Horizon were terminating their merger agreement due to "uncertainty" as to "when and if" the necessary "regulatory approvals could be obtained, it was not until the release of the *Wall Street Journal* and *Bloomberg* articles, described above, that the public became aware that ***regulators' concerns were centered around TD's Bank Group's deficient AML Controls specifically*** and that the regulators' refusal to approve the First Horizon deal related to "the way TD handled unusual transactions in recent years, and the speed at which some of them were brought to the attention of U.S. authorities". This was critical given the

significant penalties, sanctions, reputational damage and business disruptions that violations of AML regulatory and legal requirements posed.

148. Overall, the May 8, 2023 first partial public corrective disclosure of previously undisclosed material facts caused a significant drop in the TD Bank share price in the amount of \$0.95 per share or 1.14%. Price charts reflecting the impact of the first partial public corrective disclosure are below.

Figure 1: Intraday Prices on May 8, 2023 (indexed to TD Bank stock price at 2:02 pm)



Figure 2: Price Charts for May 8 and 9, 2023



B. August 24, 2023 – Second Partial Public Corrective Disclosure

149. Before the stock market opened on August 24, 2023, TD Bank disclosed for the first time that it expected to receive fines and non-monetary sanctions from regulatory and criminal investigations into TD Bank Group’s AML Controls.

150. Specifically, in its 2023 Q3 Results Report to Shareholders (“2023 Q3 Report”) (released August 24, 2023), TD Bank disclosed that there were ongoing regulatory and criminal investigations relating to TD Bank Group’s AML Controls, both generally and in relation to specific clients and events, including an investigation by the DOJ. TD Bank stated that it anticipated monetary and non-monetary penalties as a result of these investigations. Specifically, TD Bank reported that:

The Bank has been responding to *formal and informal inquiries from regulatory authorities and law enforcement concerning its Bank Secrecy Act/anti-money laundering compliance program*, both generally and in connection with specific clients, counterparties or incidents in the US, including in connection with an investigation by the United States Department of Justice. The Bank is cooperating with such authorities and is pursuing efforts to enhance its Bank Secrecy Act/anti-money laundering compliance program. *While the ultimate outcomes of these inquiries and investigations are unknown at this time, the Bank anticipates monetary and/or non-monetary penalties to be imposed.* [Emphasis added].

(2023 Q3 Report at p. 79)

151. This second partial public corrective disclosure of previously undisclosed material facts caused a significant drop in the TD Bank share price in the amount of \$2.61 per share or 3.13%.

152. Notably, while the 2023 Q3 Report outlined above disclosed the existence of regulatory and criminal AML concerns, TD Bank still did *not* disclose the severity and significance of the investigations, nor the deleterious effects the investigations and subsequent sanctions and penalties would have on TD Bank Group's operations in Canada and the US. Further, TD Bank did not disclose that TD Bank Group, specifically TDNA and TD Holdings, were facing AML related criminal investigations and prosecutions.

153. A price chart of the impact of the second partial public corrective disclosure is set out on the following page.

Figure 3: Interday Price Charts for August 23, 24 and 25 2023



C. January 8, 2024 – Third Partial Public Corrective Disclosure

154. Late on January 8, 2024, the *Capitol Forum* published an article entitled “TD Bank/First Horizon: Buyer Knew It Faced a Serious Money-Laundering Probe Months Before Deal Collapsed”. This article corrected various misrepresentations made by TD Bank in relation to TD Bank Group’s AML Controls, the closing of the First Horizon transaction, its knowledge and history of AML issues, and the severity and scope of the criminal and regulatory investigations into, and potential penalties that could be levied against, TD Bank Group.

155. The January 8 *Capitol Forum* article disclosed, among other things, for the first time that:

- a) TD Bank executives knew by November 2022 that “multiple federal law enforcement agencies had found such serious lapses in anti-money laundering (AML) controls that US regulators might reject the [First Horizon] merger ...”;
- b) In October 2022, “a former TD Bank branch employee in New Jersey was charged with helping launder millions of dollars in illegal drug sales since early 2022” and the nature of the former employee’s activities “should have immediately set off alarms at TD ...”; and
- c) TD Bank Group had “systemic problems” and “regulators have determined that the company’s failings go back many years”.

156. This third partial public corrective disclosure of previously undisclosed material facts caused a significant drop in the TD Bank share price in the amount of \$3.82 per share or 3.22%.

A price chart reflecting the impact of the third partial public corrective disclosure is set out below.

Figure 4: Prices for January 8, 9 and 10 2024



D. April 30, 2024 – Fourth Partial Public Corrective Disclosure

157. On April 30, 2024, TD Bank issued a press release after the close of trading, where it disclosed, for the first time, the severity of the potential regulatory penalties and sanctions TD Bank Group faced. TD Bank revealed that it had taken an initial provision of USD \$450 million in “connection with discussions with one of its US regulators, related to previously disclosed regulatory and law enforcement investigations of TD’s US Bank Secrecy Act (BSA)/anti-money laundering (AML) program”.

158. In this press release, TD Bank further clarified that the bank anticipated “additional monetary penalties” and the provision did not reflect the “final aggregate amount of potential monetary penalties or any non-monetary penalties”. TD Bank also admitted that TD Bank Group’s AML Controls were “insufficient to effectively monitor, detect, report and respond to suspicious activity”.

159. This announcement was widely reported after market closing on April 30, 2024 and the next day on May 1, 2024, in publications including but not limited to *The Globe and Mail*, *The Canadian Press*, *The Wall Street Journal Online*, *Reuters News*, and *Dow Jones Institutional News*. For instance, *the Globe and Mail* published an article titled, “TD investors concerned with lack of details about US regulatory probe after bank sets aside USD \$450-million provision for penalties,” and discussed other potential non-monetary fines.

160. This fourth partial public corrective disclosure of previously undisclosed material facts caused a significant drop in the TD Bank share price in the amount of \$0.91 per share or 1.11%. A price chart reflecting the impact of the fourth partial public corrective disclosure is below at paragraph 178 (see Figure 5: Price Charts for April 30, 2024, May 1, 2, 3 and 6, 2024).

E. May 2, 2024 – Fifth Partial Public Corrective Disclosure

161. On May 2, 2024, FINTRAC announced that, on April 9, 2024, it imposed an administrative monetary penalty of \$9,185,000 on TD Bank for non-compliance with Part 1 of the PCA and its associated Regulations (PCR). Specifically, following a 2023 compliance examination, FINTRAC found that TD Bank had:

- a) Failed to submit 20 suspicious transaction reports (of the 178 reviewed) where there were reasonable grounds to suspect that transactions were related to a money laundering or terrorist activity financing offence, including failures to obtain and validate information to inform its understanding of the nature and purpose of the clients' transactions and the source of their funds, and continuing gaps in the processes of TD Bank Group's Financial Intelligence Unit;
- b) Failed to assess and document money laundering/terrorist activity financing risks – due to weaknesses in its oversight of and processes for the assessment of client risk, which led to a failure to identify 96 clients as high-risk clients – and a failure to ensure its procedures and guidance were aligned with standards;
- c) Failed to take the prescribed special measures in relation to 85 clients who were at high risk of engaging in money laundering/terrorist financing;
- d) Failed to periodically conduct ongoing monitoring of business relationships based on prescribed risk assessments, including 116 instances where TD Bank failed to conduct a review of account activity to ensure transactions or activity were consistent with the information obtained about the client; and
- e) Failed to keep record of the measures taken and information obtained when conducting ongoing monitoring of business relationships in relation to 96 clients.

162. The FINTRAC announcement was the first disclosure of TD Bank's significant and gross AML Control deficiencies in its *Canadian* operations.

163. Following the FINTRAC announcement, various media outlets began reporting on the penalty imposed on TD Bank and the associated circumstances. For instance, on the same day, the *Globe and Mail* published an article entitled "TD Bank ordered to pay almost \$9.2 million by

Canada's anti-money laundering regulator over faulty controls". This article stated that the fine levied against TD Bank was the "largest-ever monetary penalty" imposed by FINTRAC.

164. On May 2, 2024, following the announcement of the FINTRAC penalty, *Reuters* published an article entitled "TD Bank probed tied to laundering of illicit fentanyl profits, WSJ Reports" that provided an emailed statement from a TD Bank spokesperson who acknowledged the deficiencies in TD Bank Group's AML processes: "Regrettably, our U.S. AML program did not effectively thwart these [money laundering] activities".

165. On the same day, the *Wall Street Journal* published an article entitled "TD Bank Probe Tied to Laundering of Illicit Fentanyl Profits: The Canadian bank is contending with three other US probes into its anti-money laundering controls". The article highlighted the deficiencies of TD Bank's previous disclosures, including that "[w]hile TD disclosed a Justice Department probe into its anti money-laundering practices last year, the focus on money laundering related to illegal drug sales hasn't been previously reported." It also detailed the extent and severity of the regulatory and criminal investigations into TD Bank Group's AML deficiencies:

TD's anti-money-laundering practices have been under scrutiny for years.

The bank said Tuesday that in addition to the Justice probe, ***it is the subject of three other anti-money-laundering investigations in the U.S.*** TD set aside \$450 million to resolve one of those inquiries and said it expects additional penalties. On Thursday, a Canadian banking regulator fined TD the equivalent of \$6.7 million for failing to file suspicious activity reports and document risks related to money laundering and terrorist activity, among other things. [Emphasis added].

166. The article disclosed that TD Bank Group (later revealed it was specifically TDNA) was in fact the bank identified as "Financial Institution No. 1" in a 2021 complaint charging TDNA customer Da Ying Sze for money-laundering. The article stated that the DOJ's investigation of Da

Ying Sze led to the DOJ's probe of TD Bank Group's US operations as the prosecutors noted that Sze used one financial institution – **TDNA** – to launder money. The article also stated that the US Attorney's Office in New Jersey charged Oscar Marcelo Nunez-Flores, an employee at a TDNA branch, in 2023 “for taking bribes and using his position [at TD] to facilitate the laundering of millions of dollars in drug proceeds.”

167. The *Reuters* article stated that the “issues have already stalled TD's ambitious expansion plans” and led to the termination of the First Horizon transaction. In a bulletin published on May 2, 2024, the National Bank of Canada stated that it was reducing its “estimates to reflect an assumption that TD Bank Group's U.S. asset growth will be restricted next fiscal year” and that it was dropping its target for TD Bank's share price from \$92 to \$84. The National Bank analysis projected a “reduction to TD's future earning potential of over \$1 bln (billion)”. The reason for the downgrading and reductions were:

Market expectations of the regulatory penalties/fines related to its AML issues have undoubtedly increased. ***For starters, the bank's recently disclosed US\$450 mln provision made expectations of a \$500 mln - \$1 bln range of outcomes seem low, considering it was booked for only one regulatory investigation.*** The bank also faces potential penalties from two other regulators, plus the Department of Justice (DoJ), which has a history of imposing much larger fines. ***As such, we believe that a total penalty amount of \$2 bln is realistic.*** However, fines alone aren't the only financial consideration.

What could potentially be more impactful to financial performance of TD's U.S. operations are the consent orders that may be imposed by its regulators. As the name suggests, consent orders dictate what a bank needs to do (and what it can't do) in order to address deficiencies in risk management, engagement in unsafe or unsound business practices or other infractions identified by regulators. Typically a consent order requires a bank to take actions such as:

- 1) Ceasing and desisting unsound/unsafe practices;
- 2) Remedial action aimed at addressing said practices;
- 3) Restitution or reimbursement for the cost of said practices; and
- 4) Restrict asset growth and/or modify the business model. [Emphasis added]

168. This fifth partial public corrective disclosure of previously undisclosed material facts caused a significant drop in the TD Bank share price in the amount of \$1.36 per share or 1.68%. A price chart reflecting the impact of the fifth partial public corrective disclosure is below at paragraph 178 (See Figure 5: Price Charts for April 30, 2024, May 1, 2, 3 and 6, 2024).

F. May 3, 2024- Sixth Partial Public Corrective Disclosure

169. On May 3, 2024, it was reported by multiple media outlets that the fine assessed by US regulators could exceed USD \$2 billion. For instance, *CBC News* published an article on May 3, 2024 that reported, according to National Bank of Canada analyst Gabriel Dechaine, TD Bank Group could “face more severe penalties after drug money laundering allegations” that connected TD Bank Group to “illicit fentanyl profits”. In the *CBC* article, Mr. Dechaine noted that not only could TD Bank Group face fines above \$500 million, but that it could also face “more severe regulator-imposed limitations on its business activities” and that he believed “investors need to put greater weight on worst-case scenarios for the stock.”

170. The *Globe and Mail* also released an article on May 3, 2024, which expressed concern that fines against TD Bank Group could “easily hit” \$2 billion:

Last year TD disclosed that it was the subject of an anti-money-laundering (AML) investigation after U.S. regulators blocked its US\$13.4-billion takeover of Memphis, Tenn.-based First Horizon Corp., *but until Thursday investors and analysts never seemed all that fussed about the outcome. The working theory was that TD would pay a fine, but nothing obscene, and its expansion in the United States, its major growth market, would be limited for the near future.*

That narrative is now changing – fast. “We believe that TD could not only face a larger than expected fine, but also regulator-imposed limitations on its business activities,” Gabriel Dechaine, a banking analyst at National Bank Financial, wrote in a note to clients For months, analysts have predicted a fine in the range of US\$500-million to US\$1-billion, but that’s now jumped. *“We believe cumulative fines could easily hit \$2-billion,”* Mr. Dechaine wrote.[Emphasis added]

171. This sixth partial public corrective disclosure of previously undisclosed material facts caused a significant drop in the TD Bank share price in the amount of \$4.60 per share or 5.79%. A price chart reflecting the impact of the sixth partial public corrective disclosure is set out below.

Figure 5: Price Charts for April 30, 2024, May 1, 2, 3 and 6, 2024



G. August 21, 2024 – Seventh Partial Corrective Disclosure

172. After market closed on August 21, 2024, TD Bank released a press release disclosing for the first time that it had set aside an additional USD \$2.6 billion to cover anticipated regulatory fines related to TD Bank Group's serious and systemic AML deficiencies. This disclosure, also contained within TD Bank's Q3 Report to Shareholders released before market opened on August 22, 2024, was made in the context of ongoing investigations by multiple U.S. regulatory and law enforcement agencies, including the DOJ, the OCC, and FinCEN.

173. The disclosure corrected TD Bank's previous disclosure of a USD \$450 million provision for monetary penalties. The updated estimate of \$3 billion exceeded previous media outlet reports of a fine in the range of USD \$2 billion. The sum reflects the magnitude of the TD Bank Group's failure to remediate and implement effective AML Controls.

174. This disclosure revealed the true scale of TD Bank Group's monetary regulatory liabilities. Furthermore, TD Bank's acknowledgment of potential non-monetary penalties raised substantial concerns that the TD Bank Group's ability to expand its U.S. operations may be severely curtailed until TD Bank Group's AML deficiencies are fully remediated.

175. The disclosure also revealed for the first time that there had been, not only civil, but **criminal investigations** into TD Bank Group's AML Controls and compliance with the BSA.

176. This seventh partial public corrective disclosure of previously undisclosed material facts caused a significant drop in the TD Bank share price in the amount of \$1.70 per share or 2.1%.

H. October 9-10, 2024 – Eighth Partial Corrective Disclosure

177. After market close on October 9, 2024, the *Wall Street Journal* disclosed that the OCC was "expected to impose an asset cap barring the bank from growing above a certain level in the US" and confirmed that TD Bank Group was "expected to pay about [USD] \$3 billion in penalties ... as part of a settlement with regulators and prosecutors over charges it failed to properly monitor money laundering by drug cartels." The article disclosed that the "sweeping rebuke shows regulators and prosecutors found the problems at TD to be severe." This article disclosed for the first time that TD Bank Group's growth strategy in the US would be curtailed, and effectively terminated, which had been rumoured by other media outlets but never confirmed by TD Bank.

178. On October 10, 2024, the US Attorney General and TD Bank disclosed that TDNA, TDUS and TD Holdings had settled the ongoing AML investigations with multiple U.S. regulatory, including the DOJ, the OCC, the Federal Reserve Board, and FinCEN. Along with the USD \$3.09 billion fine (the largest ever penalty imposed on a bank), TDNA and TDUS received significant non-monetary sanctions, including an asset cap imposed on TDNA and TDUS's retail banking operations.

179. It was only at the announcement of the DOJ Plea agreement, that it was disclosed that TD Bank Group, specifically TDNA and TD Holdings, had pleaded *criminally guilty* for conspiracy to commit and fail to prevent money laundering—an unprecedented and novel occurrence for a US bank. Other than the seventh partial corrective disclosure on August 21, 2024 of a criminal investigation against TD Bank Group, there had been no prior disclosure related to potential criminal prosecutions and charges against TDNA and TD Holdings. The OCC Consent Order limits TDNA's and TDUS's total assets to USD \$434 billion, effective as of September 30, 2024. This asset cap will remain in place until TD Bank Group successfully implements a comprehensive overhaul of the “systemic deficiencies” in its AML Controls and satisfies U.S. regulators that it has sufficiently remediated the identified deficiencies.

180. The DOJ Plea Agreement, OCC Consent Order, and the FinCEN Consent Order, all released on October 10, 2024, disclosed for the first time that TD Bank Group had knowingly and deliberately prioritized revenue and growth over effective and compliant AML Controls. The discloses detailed that TD Bank Group, for over a decade, had continued to ignore serious red flags and systemic deficiencies in its AML Controls and had not even remediated the issues identified in the 2013 OCC and FinCEN Consent Orders. It also disclosed that TDNA, TDUS and TD Holdings had failed to adequately train staff on compliance with AML Controls and AML

legislation and regulations, and had repeatedly chosen to not invest resources into its AML Controls.

181. The full impact of the DOJ Plea Agreement and the OCC and FinCEN Consent Orders extends beyond the financial costs. The resolution requires TD Bank Group to take substantial corrective actions, including appointing a compliance monitor to oversee its AML Controls, implementing enhanced transaction monitoring systems, and strengthening its internal oversight. TD Bank also admitted that these systemic failures had allowed large-scale money laundering activities to continue undetected within its US operations for an extended period.

182. This eighth corrective disclosure disclosed the extent of TD Bank Group's regulatory violations, systemic deficiencies, significant reputational damage, and the significant operational restrictions that will now affect, if not eliminate, its US retail growth strategy.

183. This eighth partial public corrective disclosure of previously undisclosed material facts caused a significant drop in the TD Bank share price in the amount of \$8.63 per share or 9% from market close on October 9 to market close on October 11, 2024.

XI. THE PROSPECTUS OFFERINGS

A. Common Shares Distributed Under TD Bank's Dividend Reinvestment Plan

184. Throughout the Class Period, TD Bank distributed common shares from its treasury to Class Members under its DRIP Plan whereby holders of TD Bank common shares reinvested cash dividends in additional common shares of TD Bank.

185. For Canadian residents, common shares were distributed under the DRIP Plan pursuant to short form base shelf prospectuses (described below), and an Offering Circular, dated February 20, 2002, that incorporated documents that contained misrepresentations.

186. For US residents, common shares were distributed under the DRIP Plan pursuant to a February 21, 2002, US Prospectus (described below) that incorporated documents that contained misrepresentations.

187. Based on TD Bank's Annual Reports, the total amount of common shares issued under the DRIP Plan from November 1, 2020, to October 31, 2023, was as follows:

- a) **November 1, 2020, to October 21, 2021:** 5 million shares for an aggregate amount of CAD \$414,000,000;
- b) **November 1, 2021, to October 31, 2022:** 17 million shares for an aggregate amount of CAD \$1,442,000,000; and
- c) **November 1, 2022, to October 31, 2023:** 20.5 million shares for an aggregate amount of CAD \$1,720,000,000.

(i) Short Form Base Shelf Prospectuses filed on SEDAR

188. Throughout the Class Period, TD Bank distributed securities, including common shares under the DRIP Plan, pursuant to Prospectuses filed on SEDAR. The following two Prospectuses are of relevance:

- a) **The January 4, 2021, Short Form Base Shelf Prospectus** (the "January 2021 Prospectus") that was in effect up to and including February 28, 2023; and
- b) **The March 1, 2023, Short Form Base Shelf Prospectus** (the "March 2023 Prospectus") that remains in effect until April 2025.

189. Pursuant to the January 2021 Prospectus, TD Bank was authorized to distribute debt securities, common shares, Class A preferred shares, warrants to purchase preferred shares and subscription receipts for up to an aggregate initial offering price of CAD \$15,000,000,000.

190. The January 2021 Prospectus incorporated by reference, among others, the following documents:

- a) Annual Information Forms for the fiscal year ended October 31, 2021 (dated December 1, 2021), and October 31, 2022 (dated November 30, 2022);
- b) management proxy circulars dated February 7, 2020, February 4, 2021, February 14, 2022, and February 21, 2023;
- c) Annual Reports for the fiscal year ended October 31, 2021 (released December 1, 2021) and October 31, 2022 (released November 30, 2022);
- d) Interim Financial Statements filed after January 4, 2021;
- e) any material change reports filed after January 4, 2021; and
- f) any business acquisition report filed after January 4, 2021.

191. As discussed above and below, these documents incorporated by reference in the January 2021 Prospectus contained misrepresentations.

192. Masrani and Ahmed each signed the January 2021 Prospectus, and certified that the January 2021 Prospectus together with the documents incorporated by reference in that Prospectus, constituted full, true and plain disclosure of all material facts relating to the securities offered thereby. This was a misrepresentation.

193. Pursuant to the March 2023 Prospectus, TD Bank is authorized to distribute debt securities, common shares, Class A preferred shares, warrants to purchase preferred shares and subscription receipts. The March 2023 Prospectus does not provide the aggregate initial offering price of the

securities. The March 2023 Prospectus incorporated by reference, *inter alia*, the following documents:

- a) Annual Information Forms for the fiscal years ended on October 31, 2022 (dated November 30, 2022) and October 31, 2023 (dated November 29, 2023);
- b) management proxy circulars dated February 14, 2022, February 21, 2023, and February 20, 2024;
- c) Annual Reports for the fiscal year ended October 31, 2022 (dated November 30, 2022) and October 31, 2023 (released November 29, 2023);
- d) Interim Financial Statements filed after March 1, 2023;
- e) any material change reports filed after March 1, 2023; and
- f) any business acquisition reports filed after March 1, 2023.

194. As discussed above and below, these documents incorporated by reference in the March 2023 Prospectus contained misrepresentations.

195. Masrani and Tran each signed the March 2023 Prospectus, and certified that the March 2023 Prospectus together with the documents incorporated by reference in that Prospectus, constituted full, true and plain disclosure of all material facts relating to the securities offered thereby. This was a misrepresentation.

(ii) Common shares issued under TD Bank's DRIP Plan to Canadian residents

196. As described in the DRIP Plan Offering Circular, effective February 20, 2002, TD Bank issued common shares from its treasury to Canadian residents on the following dates and at the following prices:

- a) July 31, 2021: shares were purchased at the Average Market Price;
- b) October 31, 2021: shares were purchased at the Average Market Price;

- c) January 31, 2022: shares were purchased at the Average Market Price;
- d) April 30, 2022: shares were purchased at the Average Market Price;
- e) July 31, 2022: shares were purchased at the Average Market Price discounted by 2%;
- f) October 31, 2022: shares were purchased at the Average Market Price discounted by 2%;
- g) January 31, 2023: shares were purchased at the Average Market Price discounted by 2%;
- h) April 30, 2023: shares were purchased at the Average Market Price discounted by 2%;
- i) July 31, 2023: shares were purchased at the Average Market Price;
- j) October 31, 2023: shares were purchased at the Average Market Price;
- k) January 31, 2024: shares were purchased at the Average Market Price;
- l) April 30, 2024: shares were purchased at the Average Market Price; and
- m) July 31, 2024: shares were purchased at the Average Market Price.

197. The shares purchased by Class Members under the DRIP Plan were issued pursuant to either the January 2021 Prospectus or the March 2023 Prospectus (depending on the date the dividend was issued). As discussed above and below, the documents incorporated by reference in the January 2021 Prospectus and the March 2023 Prospectus contained misrepresentations.

(iii) Common shares issued under TD Bank's DRIP Plan to US residents

198. The US DRIP Prospectus applied to common shares distributed to US residents under the DRIP Plan. It incorporated by reference, among other documents, Annual Reports for the fiscal years ended on October 31, 2021 (released December 1, 2021), October 31, 2022 (released November 30, 2022), and October 31, 2023 (released November 29, 2023).

199. As discussed above and below, the documents incorporated by reference in the US DRIP Prospectus contained the misrepresentations described above and below which were contained in the Core Documents which were incorporated by reference.

200. Throughout the Class Period, TD Bank distributed common shares from its treasury to US residents pursuant to supplements to the US DRIP Prospectus as set out below:

- a) **Prospectus Supplement No. 8, dated August 27, 2020:** 1,200,000 TD Bank common shares to be purchased under the DRIP Plan at the Average Market Price for dividends payable on
 - i. July 31, 2021;
 - ii. October 31, 2021;
 - iii. January 31, 2022;
 - iv. April 30, 2022;
- b) **Prospectus Supplement No. 9, dated May 26, 2022:** 1,200,000 TD Bank common shares to be purchased under the DRIP Plan at the Average Market Price, discounted by 2%, for dividends payable on:
 - i. July 31, 2022;
 - ii. October 31, 2022;
 - iii. January 31, 2023;
 - iv. April 30, 2023;
- c) **Prospectus Supplement No. 10, dated May 25, 2023:** 1,200,000 TD Bank common shares to be purchased under the DRIP Plan at the Average Market Price for dividends payable on:
 - v. July 31, 2023;
 - vi. October 31, 2023;
 - vii. January 31, 2024;
 - viii. April 30, 2024; and
 - ix. July 31, 2024.

201. The Prospectus Supplements did not correct, modify, or supersede the misrepresentations in the documents incorporated by reference in the US DRIP Prospectus, pursuant to which the TD

Bank common shares were distributed under the DRIP Plan. The misrepresentations described below were repeated and contained in the Core Documents incorporated by reference.

C. Preferred Shares Issued Pursuant To A Prospectus Supplement To The January 2021 Prospectus

202. Pursuant to a Prospectus Supplement, dated March 9, 2022, to the January 2021 Prospectus, TD Bank issued 850,000 non-cumulative 5-year fixed rate reset preferred shares (“Series 27”) at a price of CAD \$1000 per share for an aggregate amount of CAD \$850,000,000.

203. The Prospectus Supplement incorporated by reference the following documents:

- a) The Annual Report for the fiscal year ended on October 31, 2021 (released December 1, 2021);
- b) The Annual Information Form for the fiscal year ended on October 31, 2021 (dated December 1, 2021);
- c) The management proxy circular dated as of February 7, 2022; and
- d) The First Quarter 2022 Results Report to Shareholders for the three months ended on January 31, 2022 (dated March 2, 2022).

204. As discussed above and below, these incorporated documents, as well as the documents incorporated in the January 2021 Prospectus, contained the misrepresentations described above and below.

D. Senior Medium Term Notes Issued Pursuant To A Preliminary Short Form Base Shelf Prospectus

205. Pursuant to a Preliminary Short Form Base Shelf Prospectus dated July 22, 2022 (the “July 2022 Prospectus”), TD Bank distributed senior medium-term notes of up to an aggregate principal amount of CAD \$5,000,000,000. The July 2022 Prospectus applies to Offerings of new issue

senior medium-term notes issued in the 25 months commencing from July 22, 2022. The July 2022 Prospectus incorporated by reference the following documents:

- a) Management proxy circulars dated as of February 7, 2022, February 21, 2023, and February 20, 2024;
- b) Annual information forms for the fiscal years ended October 31, 2021 (dated December 1, 2021), October 31, 2022 (dated November 30, 2022), and October 31 (dated November 29, 2023);
- c) Annual Reports for the fiscal years ended October 31, 2021 (released December 1, 2021), October 31, 2022 (released November 30, 2022), and October 31 (released November 29, 2023);
- d) Any interim unaudited financial statements filed after July 22, 2022;
- e) Any material change reports filed after July 22, 2022; and
- f) Any business acquisition reports filed after July 22, 2022.

206. As discussed above and below, these incorporated documents contained the misrepresentations described below.

207. Each of Masrani and Tran signed the July 2022 Prospectus, and certified that the July 2022 Prospectus together with the documents incorporated by reference in that Prospectus constituted full, true and plain disclosure of all material facts relating to the securities offered thereby. This was a misrepresentation

XII. CAUSES OF ACTION

A. Secondary Market Liability

208. On behalf of the Class, the Plaintiffs plead, against all Defendants, the cause of action in Part XXIII.1 of the *OSA* and the analogous provisions of the Other Canadian Securities Legislation.

209. TD Bank is a “responsible issuer” pursuant to *OSA* sections 138.1 and 138.3 and the analogous provisions of the Other Canadian Securities Legislation.

210. The Core and Non-Core Documents and public oral statements described below contained one or more misrepresentations with respect TD Bank Group’s AML Controls, which were corrected through a series of eight partial public corrective disclosures, as particularized above.

211. The Individual Defendants, were, at the material time, directors and, or officers of TD Bank. Each of the Individual Defendants authorized, permitted or acquiesced in the release of some or all of the Core and Non-Core Documents and public oral statements described below while knowing that some or all of those documents contained misrepresentations as particularized above.

212. At all material times, the Defendants knew at the time that the Core and Non-Core Documents and public oral statements described below were released that they contained misrepresentations, or in the alternative, deliberately avoided acquiring knowledge that those documents contained misrepresentations, or in the alternative, through act or failure to act, was guilty of gross misconduct in connection with the release of the Core and Non-Core Documents and public oral statements that contained misrepresentations as particularized above. The Individual Defendants also failed to conduct, and did not cause to be conducted, a reasonable investigation and had reasonable grounds to believe that TD Bank had filed documents and had made public oral statements containing the misrepresentations.

213. The Individual Defendants, specifically Masrani, Ahmed and Tran, signed the Certifications which contained misrepresentations. The Individual Defendants permitted, authorized or acquiesced in the release of the Certifications, and knew that the Certifications contained the misrepresentations that are alleged above to have been contained therein or, in the

alternative, deliberately avoided acquiring such knowledge or, in the alternative, were guilty of gross misconduct in connection with the release of the Certifications.

214. Pursuant to section 138.3(1) and the equivalent provisions of the Other Canadian Securities Legislation, the Individual Defendants are liable in respect of the misrepresentations alleged to be contained in the Certifications.

215. On the basis of the foregoing, the Defendants are liable to the Class under Part XXIII.1 of the *OSA* and the equivalent provisions of Other Canadian Securities Legislation.

B. Primary Market Liability

216. The Plaintiffs plead the cause of action in Part XXIII of the *OSA*, Prospectus and Offering Circular, and the analogous provisions of the Other Canadian Securities Legislation as against TD Bank, and on behalf of those Class Members who purchased TD Bank securities pursuant to the Prospectuses during the Class Period.

217. The Prospectuses and Offering Circular were prepared to effect the Offerings and provide all material information necessary for prospective investors, including Class Members, to determine whether they would acquire TD Bank securities offered by the Prospectuses and Offering Circular during the period of distribution or during distribution to the public. The Prospectuses and Offering Circular also form part of TD Bank's continuous disclosure record and were intended to be read and relied upon by investors, including Class Members, subsequent to the period of distribution, in making decisions as to whether to buy, hold, or sell TD Bank securities.

218. TD Bank issued the Prospectuses and Offering Circular, which, along with the TD Bank's Core Documents incorporated by reference, contained the misrepresentations that are alleged above.

219. On the basis of the foregoing, the Defendants are liable to the Class under ss. 130 and 130.1 of Part XXIII of the *OSA* and the equivalent provisions of Other Canadian Securities Legislation.

C. Negligent Misrepresentation

220. Throughout the Class Period, the Defendants by omission and commission repeated the four false and misleading misrepresentations, described above in Section IX and elsewhere, negligently.

221. The Defendants knew and intended that the Plaintiffs and Class Members would and did rely to their detriment on the accuracy, transparency, and completeness of TD Bank's Core and Non-Core Documents to make an informed decision as to whether the common share price of TD Bank was under valued, over valued, or represented fair market value. The misrepresentations described in Section IX above were material in formulating the scope of the duty of care and the reasonable expectations of the shareholders as to TD Bank's disclosure.

222. The Plaintiffs and the Class Members suffered foreseeable damages and losses as a result of the Defendants' negligent misrepresentations. Had the Defendants met the requisite standard of conduct expected of them and not misled the Plaintiffs and Class Members, the Plaintiffs and Class Members would have been alerted to the systemic deficiencies in TD Bank Group's AML Controls and the high likelihood that the related regulatory and criminal investigations would lead to unprecedented monetary and non-monetary penalties against TD Bank Group. If adequately

informed, the Plaintiffs and Class Members would not have purchased TD Bank securities, or alternatively, would not have purchased the shares at artificially inflated prices.

223. The Defendant knowingly and deliberately made the misrepresentations to facilitate the sale of TD Bank shares on the relevant exchanges at artificially inflated prices, and to permit TD Bank to continue to raise funds through primary offerings and the equity market and to pay cash and shares bonuses to the Defendants.

224. By the time TD Bank made its partial corrective disclosures, the Plaintiffs and Class Members had already suffered realized and unrealized losses – as represented by the devaluation of their shares from a previously artificially inflated price to a market price established by an informed efficient market on the TSX and NYSE. The loss in share value was collectively CAD \$20 billion.

D. Vicarious Liability

225. TD Bank is vicariously liable for the acts and omissions of its officers, directors and employees. The acts or omissions particularized in this Claim were authorized, ordered and done by the Individual Defendants, and other agents, employees and representatives of TD Bank, while engaged in the management, direction, control and transaction of the business and affairs of TD Bank Group. Such acts and omissions are, therefore, not only the acts and omissions of its executives, directors, officers and employees but are also the acts and omissions of TD Bank.

XIII. DAMAGES

226. The price of TD Bank's securities was directly affected during the Class Period by the issuance of the Core and Non-Core Documents and public oral statements containing the

misrepresentations as described above. The Defendants were aware at all material times of the effect of TD Bank's disclosure documents upon the price of its securities.

227. The Core Documents containing misrepresentations described above were filed, among other places, with SEDAR, the TSX, EDGAR and the NYSE, and thereby became immediately available to, and were reproduced for inspection by, the Class Members, other members of the investing public, financial analysts, and the financial press.

228. TD Bank regularly communicated with public investors and financial analysts via established market communication mechanisms, including through regular disseminations of their disclosure documents, including press releases on newswire services in Canada, the United States and elsewhere, and public end statements. Each time TD Bank communicated that new material information about TD Bank Group's financial results or transactions entered into by TD Bank Group to the public, the price of TD Bank's common shares was directly affected.

229. TD Bank was the subject of analysts' reports that incorporated certain of the information contained in the disclosure documents and public end statements, with the effect that any recommendations to purchase TD Bank's common shares and price targets in such reports during the Class Period were based, in whole or in part, upon that information.

230. TD Bank's securities were and are traded, among other places, on the TSX and NYSE, which are efficient and automated markets. The price at which TD Bank's securities traded promptly incorporated material information from TD Bank's disclosure documents about TD Bank Group's business and affairs, including the misrepresentations alleged above, which was disseminated to the public through the documents referred to above and distributed by TD Bank, as well as by other means.

231. The price of TD Bank's securities was artificially inflated during the Class Period as a result of the Defendants' false and misleading representations and omissions of material facts relating to its AML Controls and ICFR, DC&P and Certifications. The Defendants knew that the disclosure of these material facts would cause the price of TD Bank's securities to decline.

232. The partial public corrective disclosures of the misrepresentation pleaded caused the price of TD Bank's securities to significantly decline from pre-correction values, which resulted in significant damages to the Plaintiffs and Class Members.

XIV. JURISDICTION

233. The Plaintiffs and the Class Members plead that this action has a real and substantial connection with Ontario because, among other things:

- (a) TD Bank is a reporting issuer in Ontario;
- (b) TD Bank is a Canadian company, which is headquartered in Ontario and which does business in Ontario;
- (c) TD Bank's shares trade on the TSX, which is located in Toronto, Ontario;
- (d) the Core and Non-Core Documents and public oral statements containing misrepresentations as described above were disseminated in and from Ontario;
- (e) a substantial proportion of the Class Members reside in Ontario; and
- (f) a substantial portion of the damages sustained by the Class were sustained by persons and entities domiciled in Ontario.

XV. SERVICE OUTSIDE OF ONTARIO

234. The Plaintiffs may serve the Statement of Claim outside of Ontario without leave in accordance with rule 17.02 of the *Rules of Civil Procedure*, because this Claim is:

- (a) a claim in respect of personal property in Ontario;

- (b) a claim in respect of damage sustained in Ontario;
- (c) a claim against a person outside of Ontario who is a necessary or proper party to a proceeding properly brought against another person served in Ontario; and
- (d) a claim against a person ordinarily resident or carrying on business in Ontario.

XVI. RELEVANT LEGISLATION

235. The Plaintiffs plead and rely on the *CJA*, the *CPA*, the *OSA* and the Other Canadian Securities Legislation.

XVII. PLACE OF TRIAL

236. The Plaintiffs propose that this action be tried in the City of Toronto, in the Province of Ontario, as a proceeding under the *CPA*.

June 24, 2024

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-and-

THE TORONTO-DOMINION BANK, et al.
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Court File No.: CV-24-00720906-00CP

ONTARIO
SUPERIOR COURT OF JUSTICE

PROCEEDING COMMENCED IN
TORONTO

FRESH AS AMENDED STATEMENT OF CLAIM
(Notice of Action issued on May 24, 2024)

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