

CLASS ACTION SETTLEMENT APPROVAL HEARING
MacDonald v. BMO Trust Company

This Notice may affect your rights. Please read carefully.

Why am I getting this notice?

You have been identified as a potential class member in this lawsuit.

What is the lawsuit about?

The lawsuit is against BMO Trust Company, BMO Nesbitt Burns Inc., and BMO InvestorLine Inc. (collectively, the “defendants”). Commenced in 2006, the plaintiffs’ lawsuit claims that the defendants charged an undisclosed fee on foreign exchange conversions in the class members’ registered accounts. The Court appointed James MacDonald together with John Zoppas, Lynn Zoppas, and Michael Halasz to act as representative plaintiffs on behalf of the class members, and the Court appointed Paliare Roland Rosenberg Rothstein LLP to act as lawyers for the class (“class counsel”) to act in the best interests of the class as a whole.

Who are class members?

Class members are

- (i) residents in Canada who:
 - a) held registered accounts (e.g., RRSPs, TFSAs, RRIFs, LIRAs) at BMO InvestorLine Inc. (between June 14, 2001 and September 6, 2011) or BMO Nesbitt Burns Inc. (between October 1, 2002 and September 6, 2011) or
 - b) are the 14 clients of BMO Nesbitt Burns who opted out of the class proceeding entitled *Skopit*, and
- (ii) purchased or sold investments denominated in a foreign currency, or received dividends or interest denominated in a foreign currency in their registered account.

There are approximately 135,000 class members with approximately 160,000 registered accounts.

What is the status of this case?

In February 2020, the Court found the defendants liable to the class for breach of trust, breach of fiduciary duty, and breach of contract (“Breaches”) and required the defendants to return the profits on the amounts charged to the class.

The Court ordered a further court proceeding called a reference to determine the reasonable and necessary expenses to be deducted from the foreign exchange revenue to determine the final profit amount of the final judgment.

Both sides appealed the Court's decision. Before the reference hearing and before the appeals, the parties reached a proposed settlement. The defendants do not admit any Breaches; however, provided the Court approves the settlement, the defendants consent to the dismissal of their appeal.

What are the terms of the proposed settlement?

Under the settlement, the defendants will pay \$100,000,000 into a settlement fund. In exchange, the claims against the defendants will be dismissed, the appeals will be dismissed, and the defendants will receive releases on behalf of all approximately 135,000 class members.

When will the Court decide whether to approve the settlement?

Like all class action settlements in Canada, the Court must approve the settlement for it to become effective. The settlement approval hearing is scheduled for May 12, 2021. If the hearing date changes, notice will be provided on class counsel's website provided below. The Court will also be asked to approve the payment of class counsel's fees out of the settlement fund.

How will the settlement fund be distributed?

Subject to Court approval, the payments out of the settlement fund will be:

- Pro rata payments to those class members whose payment under the settlement calculation is at least \$25 after deduction of the below amounts ("Compensation Fund");
- The contingency fees of class counsel based on their contingency fee agreement at 25% and reimbursement for disbursements plus applicable taxes;
- The statutory levy of 10% to Ontario's Class Proceedings Fund; and
- An honorarium to the representative plaintiffs.

If an amount cannot be paid to a class member, it will be paid to a non-profit recipient approved by the Court.

What happens next, and will I get money from the settlement?

If the settlement and payments from the settlement fund are approved, each class member whose payment under the settlement calculation is at least \$25 will receive a pro

rata payment from the Compensation Fund (subject to any required tax withholding). The final calculations will be done by an accounting firm as part of claims administration, using the class member account information maintained by the defendants.

If the settlement is approved:

- class members who will receive a payment of at least \$25 from the Compensation Fund will be identified and receive a further notification
- the defendants will credit the pro rata amount to the class member's registered account at BMO Nesbitt Burns or InvestorLine, if the account still exists
- those who no longer have their registered account with the defendants will receive a cheque by mail
- the defendants will report to the Court on the settlement distribution

Please note that at this time, class counsel and the defendants cannot confirm who will receive a payment or the amount of the payment.

We estimate that most payments will be made within one year of the settlement being approved.

If any payments to class members are subject to withholding tax, the defendants will withhold and remit the appropriate amount and you will receive a tax slip.

It is class members' responsibility to obtain tax advice about their own circumstances.

I think I am a class member. Do I need to take any steps at this time?

No, unless you wish to object to the settlement or the payment of class counsel's fees and disbursements, in which case you must contact class counsel using the contact information provided below.

What if I have an objection?

If you are a class member and want to raise an objection, you are required to submit it to class counsel at the address below so that it is received by May 3, 2021.

If you submit an objection, class counsel will bring it to the attention of the Court. You may also participate in the hearing either personally or by retaining your own lawyer. However, you will not be reimbursed for any legal fees that you incur.

Where can I find more information about the case or the settlement?

A copy of the settlement agreement and other documents are available on class counsel's website at rrspclassaction.com.

Due to class action procedural rules, at this time, the defendants are not able to respond to your questions about this notice, settlement or what compensation if any you will receive. All such inquiries should be directed to class counsel. If you contact the defendants, you will be directed to contact class counsel.

Class counsel can be reached at:

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