

SETTLEMENT AGREEMENT

Made as of this _____ day of March, 2021

B E T W E E N:

JAMES RICHARD MACDONALD, LYNN D. ZOPPAS, JOHN A. ZOPPAS and MICHAEL HALASZ

(“Plaintiffs”)

- and -

BMO TRUST COMPANY, BMO NESBITT BURNS INC. and
BMO INVESTORLINE INC.

(“Defendants”)

(The Plaintiffs and Defendants are individually a **“Party”** and collectively the **“Parties”**)

WHEREAS the Plaintiffs James MacDonald and Lynn Zoppas held RRSPs with BMO Nesbitt Burns Inc., John Zoppas was responsible for Lynn Zoppas’ RRSP pursuant to a power of attorney, and Michael Halasz held an RRSP with BMO InvestorLine Inc.;

AND WHEREAS the Plaintiffs commenced a class action bearing Court File Number 06-CV-316213 CP in the Ontario Superior Court of Justice at Toronto pursuant to the *Class Proceedings Act, 1992* (Ontario) (**“Action”**) against the Defendants, claiming entitlement to amounts charged on foreign currency conversions in registered accounts (**“FX Revenue”**);

AND WHEREAS by order of the Honourable Justice Horkins, dated January 31, 2012, the Action was certified as a class proceeding;

AND WHEREAS by Judgment of the Honourable Justice Belobaba, dated February 28, 2020, the Plaintiffs’ summary judgment motion was granted, concluding that the Defendants were liable to the Class for breach of trust, breach of fiduciary duty and breach of contract (**“Summary Judgment Decision”**);

AND WHEREAS the Honourable Justice Belobaba concluded that certain claims of Class Members were statute barred;

AND WHEREAS the Honourable Justice Belobaba found that the Plaintiffs were entitled to an accounting of profits;

AND WHEREAS the FX Revenue was fixed at \$102.9 million, subject to deductions for the Statute-Barred Period (defined below);

AND WHEREAS the Honourable Justice Belobaba ordered a reference (“**Reference**”) to determine the reasonable and necessary expenses that were incurred to generate the FX Revenue and the final profit amount to be the subject of the final judgment;

AND WHEREAS the Honourable Justice Belobaba fixed pre-judgement interest at 3.8%;

AND WHEREAS the Defendants have appealed the Summary Judgment Decision, and the Plaintiffs cross-appealed the Summary Judgment Decision, both to the Court of Appeal for Ontario (individually an “**Appeal**” and collectively, the “**Appeals**”);

AND WHEREAS prior to the hearing of the Reference the Parties reached an agreement to resolve the Action, including the Reference and the Appeals, and entered into a Term Sheet dated January 11, 2021, which is attached to this Agreement as **Schedule “A”** (“**Term Sheet**”);

AND WHEREAS the Term Sheet contemplated the Parties executing this Settlement Agreement;

AND WHEREAS the Parties enter into this Settlement Agreement in order to achieve a full and final resolution of the Action (subject to Court approval) and to avoid the further expense, inconvenience, risks, and burdens of litigating the Reference and the Appeals;

NOW THEREFORE in consideration of the mutual agreements set forth below, the Parties agree as follows:

DEFINITIONS

1. In addition to the defined terms in the recitals above, in this Settlement Agreement, and its Schedules:

- (a) “**Allocation Plan**” means the plan of allocation set out in **Schedule “B”**;
- (b) “**Calculation**” has the meaning set out in **Schedule “B”** of this Settlement Agreement;
- (c) “**Class**” means all current and former clients of BMO Nesbitt Burns Inc. (“**BMO Nesbitt Burns**”) and BMO InvestorLine Inc. (“**BMO InvestorLine**”) resident in Canada who held one or more registered accounts administered by BMO Trust Company, BMO Nesbitt Burns and/or BMO InvestorLine and purchased or sold investments denominated in foreign currency in their registered accounts or were paid dividends or interest in a foreign currency in their registered account(s), or

otherwise received foreign currency into their registered account(s) which was then converted to Canadian dollars by the Defendants during the period between:

June 14, 2001 and September 6, 2011 for:

- (i) all clients and former clients of BMO InvestorLine;
- (ii) the 14 clients of BMO Nesbitt Burns who opted out of the class proceeding entitled *Skopit v. BMO Nesbitt Burns* either entirely or with respect to the overlap period with this Action; and

October 1, 2002 and September 6, 2011 for all other clients of BMO Nesbitt Burns.

- (d) **“Class Counsel”** means counsel for the Class in the Action, Paliare Roland Rosenberg Rothstein LLP;
- (e) **“Class Member”** means a member of the Class;
- (f) **“Class Period”** means

June 14, 2001 and September 6, 2011 for:

- (i) all clients and former clients of BMO InvestorLine;
- (ii) the 14 clients of BMO Nesbitt Burns who opted out of the class proceeding entitled *Skopit v. BMO Nesbitt Burns* either entirely or with respect to the overlap period with this Action; and

October 1, 2002 and September 6, 2011 for all other clients of BMO Nesbitt Burns.

- (g) **“Compensation Fund”** has the meaning set out in **Schedule “B”** of this Settlement Agreement;
- (h) **“Completion”** has the meaning set out in paragraph 18 of this Settlement Agreement;
- (i) **“Court”** means the Ontario Superior Court of Justice;

- (j) **“CPA”** has the meaning set out in **Schedule “C”** of this Settlement Agreement;
- (k) **“Cy-près Recipients”** means
 - (i) for the first \$250,000 cy-près dollars to be distributed (**“First CPD”**), the Class Action Clinic at the University of Windsor Faculty of Law (**“Class Action Clinic”**);
 - (ii) after the First CPD, the United Way of Canada (**“United Way”**) for the next \$250,000 in cy-près dollars (**“Second CPD”**);
 - (iii) after the Second CPD, for any cy-près dollars thereafter, the Class Action Clinic and the United Way, as to fifty per cent each.
- (l) **“Excel Spreadsheet”** has the meaning set out in **Schedule “B”** of this Settlement Agreement;
- (m) **“Final Settlement Approval”** means the date of issuance of the Settlement Approval Order together with the expiration of any applicable appeal periods and, if applicable, the dismissal of all appeals taken from such order of the Court;
- (n) **“Notice Program”** is the program for publishing and distributing notices as defined in paragraphs 5 and 7 of this Settlement Agreement;
- (o) **“Notice of Settlement”** has the meaning set out in paragraph 7 of this Settlement Agreement;
- (p) **“PJI”** has the meaning set out in **Appendix “A”** of **Schedule “C”** of this Settlement Agreement;
- (q) **“Released Claims”** means all claims, and the facts and circumstances giving rise to such claims advanced or which could have been advanced in the Action, including, without limitation, relating to or arising, directly or indirectly, from amounts charged to Class Members during the Class Period with respect to undisclosed, inadequately disclosed or unauthorized charges, commissions and fees

incurred as a result of transactions involving a currency conversion in conjunction with securities trades, dividends earned and other amounts relating to registered accounts held by them under agreements with any of the Defendants and in any remediation thereof;

- (r) **“Releasees”** has the meaning set out in paragraph 12(a) of this Settlement Agreement;
- (s) **“Releasers”** has the meaning set out in paragraph 12(a) of this Settlement Agreement;
- (t) **“Returned Mail”** has the meaning set out in **Schedule “B”** of this Settlement Agreement;
- (u) **“Settlement”** means the settlement agreed to in this Settlement Agreement;
- (v) **“Settlement Approval Hearing Notice”** has the meaning set out in paragraph 3 of this Settlement Agreement;
- (w) **“Settlement and Fee Approval Hearing”** means the motion returnable before the Court for approval of the Settlement;
- (x) **“Settlement Approval Order”** means the order obtained approving the Settlement substantially in the form attached hereto as **Schedule “C”** (or in a form as may be amended upon the written consent of the parties prior to the issuance of the order);
- (y) **“Settlement Class Transactions”** means all currency conversions executed in a registered account of a Class Member during the Class Period, except those executed during the Statute-Barred Period, where foreign exchange revenue was earned by BMO Nesbitt Burns or BMO InvestorLine;
- (z) **“Settlement Class Member”** means a member of the Class who had one or more Settlement Class Transactions;

- (aa) **“Settlement Fund”** has the meaning set out in paragraph 2 of this Settlement Agreement;
- (bb) **“Statute-Barred Period”** means between January 1, 2004 and August 1, 2004 for Class Members who held accounts with BMO Nesbitt Burns and January 1, 2004 and March 5, 2005 for Class Members who held accounts with BMO InvestorLine; and
- (cc) **“Threshold”** has the meaning set out in **Schedule “B”** of this Settlement Agreement.

SETTLEMENT FUND

2. The Defendants will pay a non-reversionary lump sum of CAD \$100 million (**“Settlement Fund”**) in accordance with the Allocation Plan in full satisfaction of:

- (a) The Action, including the results of the Summary Judgment Decision, the Reference ordered therein and the Appeals;
- (b) Pre-judgment interest on the amount awarded in the Action;
- (c) Any costs payable by the Defendants including in respect of the Summary Judgment Decision and the Appeals;
- (d) Fees and disbursements of Class Counsel;
- (e) Amounts payable to the Class Proceedings Fund; and
- (f) Plaintiffs’ Honorarium.

NOTICE PROGRAM

3. The Parties have prepared a form of notice to advise Class Members of the Settlement and Fee Approval Hearing (**“Settlement Approval Hearing Notice”**).

4. A draft of the order approving the Settlement Approval Hearing Notice and Notice Program is attached as **Schedule “D”** to this Settlement Agreement.

5. The Parties will publish and distribute the Settlement Approval Hearing Notice as follows:
 - (a) The Defendants will at least thirty days prior to the Settlement and Fee Approval Hearing:
 - (i) Send the Settlement Approval Hearing Notice to the Class Members using regular mail or email (where available); and
 - (ii) Publish the Settlement Approval Hearing Notice in an advertisement in the Business Section of The Globe and Mail and in Le Journal;
 - (b) Class Counsel will, at least thirty days prior to the Settlement and Fee Approval Hearing, publish the Settlement Approval Hearing Notice on Class Counsel's website and send the Settlement Approval Hearing Notice by email to Class Members who have contacted Class Counsel about the Action.
6. If following the publication and distribution of the Settlement Approval Hearing Notice the Defendants receive inquiries from Class Members, the Defendants shall communicate with Class Members in accordance with the Settlement Approval Hearing Notice and shall re-direct inquiries to Class Counsel.
7. If the Court approves the Settlement, the Parties will provide notice of the Settlement to each Settlement Class Member (including their respective entitlement and method of distribution in accordance with **Schedule "B"** to this Settlement Agreement) ("**Notice of Settlement**") as follows:
 - (a) The Defendants will provide the Notice of Settlement to the Settlement Class Members using regular mail, email (where available) or other direct electronic communication (such as BMO InvestorLine MyLink or BMO Nesbitt Burns Gateway);
 - (b) Class Counsel will publish a press release containing content substantially similar to the Notice of Settlement and in accordance with paragraph 18 herein; and
 - (c) Class Counsel will publish the Notice of Settlement on Class Counsel's website.

8. The content of the Notice of Settlement will be agreed by the Parties following Final Settlement Approval.

9. All of the costs of the Notice Program will be paid by the Defendants and will not be paid out of the Settlement Fund, except that the Defendants will not be responsible for paying expenses associated with website maintenance or updates for Class Counsel's website pursuant to paragraphs 5(b) and 7(c), expenses associated with Class Counsel retaining a third party administrator to address inquiries from Class Members arising from this Settlement, nor will the Defendants be responsible for paying Class Counsel to send emails to Class Members pursuant to paragraph 5(b).

DISTRIBUTION OF FUNDS TO THE CLASS

10. The allocation and distribution of the Settlement Fund will be in accordance with **Schedule "B"** to this Settlement Agreement.

11. The Defendants will pay all costs related to the administration and distribution of the Settlement Fund in accordance with **Schedule "B"** to this Settlement Agreement. None of those costs will be paid out of the Settlement Fund.

RELEASE AND BAR ORDER

12. The Parties agree, and will ensure that the Settlement Approval Order submitted to the Court for approval provides, that:

- (a) The Defendants and their subsidiaries, affiliates and related entities and its current and former officers, directors, employees, shareholders, partners, agents, lawyers, insurers, reinsurers, subrogees, successors and assigns ("**Releasees**") are fully, finally and forever released and discharged, without qualification or limitation, by each Class Member and their heirs, executors and assigns ("**Releasers**") from the Released Claims.
- (b) The Releasers are forever barred from advancing the Released Claims directly or indirectly against the Releasees by way of any proceedings or procedure, whether

court-based or administrative, or by way of advancing a claim against any person or entity who might claim in any manner or form contribution or indemnity in common law or in equity, or under the provisions of any statute or regulation, including the *Negligence Act* (Ontario) and the amendments thereto and/or any successor legislation thereto and/or under the *Rules of Civil Procedure* (Ontario), from the Releasees for or in respect of the Released Claims.

13. Without limiting the generality of paragraph 12 above, the Parties acknowledge that the intent of this Settlement Agreement and the release is to finally conclude all issues which arise or could arise from the Released Claims including causes of action, claims and demands for damages, indemnity, costs, interest and loss or injury not now known or anticipated, but which may later be discovered in respect of the Released Claims, including all the effects and consequences thereof.

SUMMARY JUDGMENT, REFERENCE, APPEALS, AND THIS SETTLEMENT

14. In the Summary Judgment Decision, the Court made liability findings against the Defendants leading the Court to direct the Reference. The Defendants have appealed the Summary Judgment Decision to the Court of Appeal for Ontario, as have the Plaintiffs. The Defendants do not admit any breaches of duty or liability, however, the Defendants are prepared as a term of this settlement, provided the Court approves the settlement, to consent to the dismissal of their Appeal.

15. The Plaintiffs, the Defendants, and all Releasees expressly reserve all of their rights if the Settlement Agreement is not approved, is terminated, or otherwise fails to take effect for any reason.

16. Regardless of whether this Settlement Agreement is finally approved, is terminated, or otherwise fails to take effect for any reason, this Settlement Agreement and anything contained herein, and any and all negotiations, documents, discussions and proceedings associated with this Settlement Agreement, and any action taken to carry out this Settlement Agreement, shall not be deemed, construed, or interpreted to be an admission by the Defendants of any violation of any statute or law, or of any wrongdoing or liability by the Releasees, or of the truth of any of the claims or allegations contained in the Action, or of the viability of any defences or arguments on the Reference or Appeal of the Releasees.

17. The Parties agree that, regardless of whether it is finally approved, is terminated, or otherwise fails to take effect for any reason, this Settlement Agreement and anything contained herein, and any and all negotiations, documents, discussions and proceedings associated with this Settlement Agreement, and any action taken to carry out this Settlement Agreement, shall not be referred to, offered as evidence or received in evidence in any pending or future civil, criminal or administrative action or proceeding, except in a proceeding to approve, enforce, or some combination thereof this Settlement Agreement, to defend against the assertion of Released Claims, as necessary in any insurance-related proceeding, in respect of any tax-related matter or as otherwise required by law.

PUBLIC DISCLOSURE WITH RESPECT TO THE SETTLEMENT

18. Class Counsel will provide reasonable advance notice to counsel for the Defendants, including proposed language, for any press release, media release or public Internet posting they intend to publish in respect of this settlement until the completion of the distribution of the Settlement Fund and delivery of the report under paragraph 12 of **Schedule “B”** hereto (“**Completion**”). To the extent that Class Counsel become aware of an intended press release, media release or public Internet posting by the Plaintiffs prior to Completion, they will provide reasonable notice of such to the Defendants. Any such press release, media release or Internet posting by Class Counsel or the Plaintiffs for which Class Counsel has provided reasonable advance notice to the Defendants may address, reasonably and neutrally, the findings that the Court has made in the Summary Judgment Decision, together with the fact that it is under appeal by the Defendants, and such additional factual statements as do not contain language disparaging of the Defendants or their current and former employees, directors and officers.

19. The Defendants shall not communicate with Class Members or issue any press release, media release, or advertisement in respect of the Action or the settlement except in accordance with the Notice Program, or as may be reasonably necessary for the Defendants to respond to a press release, media release or Internet posting or as otherwise contemplated in this Settlement Agreement.

20. The Defendants may communicate with Class Members in the course of settlement administration or in the ordinary course of their business.

SETTLEMENT CONDITIONAL

21. The obligation on the Defendants to complete this Settlement Agreement, including the making of the payment provided for in paragraph 2 hereof, is conditional upon the Final Settlement Approval Order being substantially in the form attached hereto as **Schedule “C”** (or as may be modified upon written consent of the Parties or as modified by the Court). This condition is entirely for the benefit of the Defendants and may only be waived by them in writing.

DISPOSITION OF APPEALS

22. All parties hereby consent to the dismissal of the Appeals without costs and shall deliver on Final Settlement Approval all necessary consents to an order of the Court of Appeal for Ontario dismissing the Appeals without costs.

GENERAL PROVISIONS

23. The Parties agree that:

- (a) they will support the implementation of the terms of this Settlement Agreement in the Action before the Court and when communicating at any time and in any manner with any Class Member;
- (b) the Defendants will consent to the Plaintiffs’ motion for settlement approval, and if the motion is granted, the Parties waive any right to appeal from the Court’s decision approving the Settlement;
- (c) the Defendants will not oppose a motion by the Plaintiffs and Class Counsel to approve fees, disbursements, and taxes of Class Counsel and an honorarium for the Plaintiffs, which the Plaintiffs and Class Counsel will seek to schedule on the same hearing date as the motion for settlement approval, and if the motion is granted, the Parties waive any right to appeal from the Court’s decision approving Class Counsel fees, disbursements, and taxes and an honorarium for the Plaintiffs;
- (d) the Parties will seek to schedule the motion for settlement approval before April 30, 2021, subject to the availability of the Court;

- (e) there are no oral warranties or representations or other agreements between the Parties in connection with the subject matter hereof, except as expressly set forth and referred to herein. No amendment of this Settlement Agreement will be binding unless executed in writing by the Parties to be bound thereby. No waiver of any provision of this Settlement Agreement will be deemed or will constitute a waiver of any other provision nor will any such waiver constitute a continuing waiver unless otherwise expressed to provide a waiver;
- (f) this Settlement Agreement will be binding upon and enure to the benefit of the Parties hereto and their respective successors, assigns, heirs, administrators and/or legal representatives;
- (g) this Settlement Agreement will be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein. The Plaintiffs, on their own behalf and on behalf of all Class Members and the Defendants hereby attorn to the jurisdiction of the Ontario Superior Court of Justice, which Court will have the exclusive power and jurisdiction to adjudicate upon and provide a binding decision on any dispute concerning the construction, effect or enforcement of this Settlement Agreement; and
- (h) this Settlement Agreement may be executed in counterparts, each of which will be deemed to be an original and all of which taken together will be deemed to constitute one and the same instrument. The Parties acknowledge and agree that this Settlement Agreement may be executed by electronic signature, which shall be considered as an original signature and shall have the same force and effect as an original signature.

Date: _____

Witness

JAMES RICHARD MACDONALD

Date: _____

Witness

LYNN D. ZOPPAS

Date: _____

Witness

JOHN A. ZOPPAS

Date: _____

Witness

MICHAEL HALASZ

Date: _____

BMO TRUST COMPANY

Per:

Name: Andrew Auerbach
Position: Chair

Date: _____

BMO TRUST COMPANY

Per:

Name: Bruce Ferman
Position: Director

Date: _____

BMO NESBITT BURNS INC.

Per:

Name: Andrew Auerbach
Position: Head, Private Client Division

Date: _____

BMO NESBITT BURNS INC.

Per:

Name: Bruce Ferman
Position: Chief Operations Officer, Private
Client Division

Date: _____

BMO INVESTORLINE INC.

Per:

Name: Silvio Stroescu
Position: President

Date: _____

BMO INVESTORLINE INC.

Per:

Name: Andrew Auerbach
Position: Director

SCHEDULE "A"

[TERM SHEET, DATED JANUARY 11, 2021]

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

JAMES RICHARD MACDONALD,
LYNN D. ZOPPAS, JOHN A. ZOPPAS and MICHAEL HALASZ

Plaintiffs

- and -

BMO TRUST COMPANY, BMO NESBITT BURNS INC. and
BMO INVESTORLINE INC.

Defendants

PROCEEDING UNDER THE *CLASS PROCEEDINGS ACT, 1992*

Settlement Term Sheet

1. In consideration of the full and final settlement of the action and the appeals, the Defendants shall pay a non-reversionary settlement amount of \$100 million (“Settlement Fund”) inclusive of:
 - (a) Claim, including the results of the Summary Judgment Decision and the Reference ordered therein;
 - (b) Pre-judgment interest on the Claim;
 - (c) Any costs payable by the Defendants including in respect of the Summary Judgment Decision and the pending appeals; and
 - (d) Any amount payable to the Class Proceedings Fund.

2. Within 90 days of settlement approval, the Defendants shall pay all amounts to be paid in accordance with the method of allocation of the Settlement Fund to active accountholders.
3. The administration of the settlement will be particularized in the settlement agreement (“Settlement Agreement”) reflecting the following:
 - (a) The Defendants shall administer the Settlement Agreement internally. The Defendants shall administer the settlement in accordance with the method of allocation and method of distribution of the Settlement Fund;
 - (b) The costs of administration shall be borne by the Defendants and shall not be paid out of the Settlement Fund;
 - (c) The method of allocation of the Settlement Fund, and any *de minimis* threshold, shall be agreed between counsel for the Class and counsel for the Defendants, both acting reasonably;
 - (d) The method of distribution of the Settlement Fund shall be agreed between counsel for the Class and counsel for the Defendants, both acting reasonably, having regard to the fact that any source of existing account and client information will be the Defendants;
 - (e) In respect of the matters in (c) and (d), the Defendants shall provide counsel for the Class with reasonable information about the size of Class Members’ individual claims, including the average claim size and number of Class Members who would fall below any proposed *de minimis* threshold;

- (f) In the event that there are amounts which cannot be distributed, or below the minimums, counsel for the Class and counsel for the Defendants will agree on a reasonable alternative, including one or more charities or other *cy-pres* recipients acceptable to the parties, for any such remaining funds;
 - (g) Following completion of the administration process, the Defendants shall at their expense prepare a report setting out information about the distribution of the Settlement Fund.
- 4. Counsel for the Defendants will advise as to whether the Defendants anticipate any material tax issues of general application which would materially affect the settlement administration (“Tax Issues”). Costs in respect of any tax advice the Defendants require regarding Tax Issues shall be borne by the Defendants and shall not be paid out of the Settlement Fund. The parties will work cooperatively to address Tax Issues, acting reasonably.
- 5. Upon final approval of the Settlement Agreement, the Class will deliver, and the Court will order, a full, unconditional and binding release of the Defendants, and the Defendants’ past and present affiliates, officers, directors, employees, agents and their respective successors, assigns, heirs, executors and administrators and a corresponding bar order, with respect to the claims advanced or which could have been advanced and the facts and circumstances giving rise to the claims and any remediation thereof, all in a form satisfactory to counsel for the parties.

6. The notice program shall be proposed by counsel for the Class at first instance. The notice program will be particularized in the Settlement Agreement. Costs of notice shall be borne by the Defendants and shall not be paid out of the Settlement Fund.
7. The settlement approval motion shall be brought forward by counsel for the Class. The Defendants shall be at liberty to adduce supportive evidence if they so choose. The Defendants shall consent to a settlement approval order in form satisfactory to counsel for both parties.
8. Together with the settlement approval motion, counsel for the Class shall bring a motion to approve counsel fees and disbursements. The Defendants will not oppose the motion by counsel for the Class for approval of counsel fees and disbursements.
9. The final settlement approval is to be heard and achieved by April 15, 2021, subject to the availability of the Court to hear the motion by that date. In the event that the settlement is not approved, the Settlement Agreement shall provide that the outstanding Reference will proceed.
10. Class counsel will provide reasonable advance notice, including proposed language, for any press release, media release or public Internet posting they issue or post in respect of this settlement. No press release, media release or Internet posting by counsel for the Class or by the representative plaintiffs will contain language disparaging of the Defendants. Assuming timely notice of the settlement approval hearing, counsel for the Class does not expect that they or the representative plaintiffs will issue any press release, media release or Internet posting before notice of the settlement hearing is circulated.


11. The Defendants shall not communicate with Class Members or issue any press release or media release in respect of the action or the settlement except in accordance with the notice plan provided in the Settlement Agreement, except as may be reasonably necessary to respond to a press release, media release or Internet posting. The Defendants may communicate with Class Members in the course of settlement administration or in the ordinary course of their business.
12. The parties shall advise the Court of Appeal of the pending settlement, in order to obtain the necessary deferral of perfection of the appeal and cross-appeal until such time as the settlement is approved or rejected.
13. The parties shall negotiate a formal Settlement Agreement including these terms and such other terms as are reasonably agreeable to them and consistent with this Settlement Term Sheet.

14. The parties intend that this Settlement Term Sheet is a binding settlement of this action, subject to Court approval. If any disputes arise in preparing the Settlement Agreement, such disputes will be mediated and arbitrated by the Hon. Warren K. Winkler with the costs of such mediation-arbitration to be divided equally between the parties.

Dated at Toronto this 11th day of January, 2021.

**PALIARE ROLAND ROSENBERG
ROTHSTEIN LLP**


Per:



Kenneth Rosenberg
Lawyers for the Class

**LENCZNER SLAGHT ROYCE
SMITH GRIFFIN LLP**

Per:



Peter H. Griffin
Lawyers for the Defendants

SCHEDULE "B"

SETTLEMENT FUND ALLOCATION PLAN AND DISTRIBUTION

1. The Defendants shall allocate and pay the Settlement Fund as follows:
 - (a) The Settlement Fund will be subject to deductions in respect of legal fees (inclusive of taxes), disbursements (inclusive of applicable taxes), the Plaintiffs' honorarium, and the statutory levy of the Class Proceedings Fund.
 - (b) The Defendants will pay the following amounts in the following order to administer the Settlement Fund:
 - (i) to Class Counsel, such amount as is approved by the Court in respect of legal fees and disbursements (including applicable taxes) within 30 days of Final Settlement Approval;
 - (ii) to the Class Proceedings Fund, such amount as is approved by the Court as the amount it is entitled to receive pursuant to the *Law Society Act* (Ontario) and the regulations passed thereto and in respect of disbursements (including applicable taxes), within 30 days of Final Settlement Approval;
 - (iii) to Class Counsel in trust for the Plaintiffs, such amount as is approved by the Court as a Plaintiffs' honorarium; and
 - (iv) to the Settlement Class Members, in accordance with the allocation described below, the amount remaining after payment of the amounts set out in paragraphs 1(b)(i)-(iii) above ("**Compensation Fund**"), less any required federal or provincial tax withholdings.
2. The Defendants will prepare a spreadsheet ("**Excel Spreadsheet**") containing the following information with respect to the Class Members, where available, and provide same to Class Counsel:
 - (a) Account numbers;

- (b) Account holder names;
- (c) Last known contact information in the Defendants' possession current to February 1, 2021;
- (d) Legal entity in which the registered account is held (BMO Nesbitt Burns or BMO InvestorLine);
- (e) Foreign exchange revenue earned from currency conversions during the Class Period plus prejudgment interest by registered account;
- (f) Whether the Class Member is above the Threshold (defined below);
- (g) Adjusted total by registered account once the Calculation (defined below) is applied; and
- (h) Information as to whether the registered account is open or closed as of February 1, 2021.

3. The Defendants will provide the Excel Spreadsheet to Class Counsel 15 days before the distribution of the Compensation Fund to the Settlement Class Members begins pursuant to paragraph 6(a) herein.

4. Each Settlement Class Member's share of the Compensation Fund will be based on the following calculation (which will be performed by an independent accounting firm and will be reported to Class Counsel and counsel for the Defendants):

- (a) Identify the foreign exchange revenue generated from the Settlement Class Transactions;
- (b) Calculate pre-judgment interest on the foreign exchange revenue generated from the Settlement Class Transactions, at the rate of 3.8% simple interest, as per the Summary Judgment Decision;

- (c) Allocate pro-rata the Compensation Fund to each registered account in which Settlement Class Transactions were made based on the amounts in paragraphs 4(a)-(b) above; and
 - (d) Where the amounts described in paragraphs 4(a)-(b) above cannot be traced to a registered account in which Settlement Class Transactions were made, the untraceable amounts will be allocated pro-rata to the known registered accounts in which Settlement Class Transactions were made (“**Calculation**”).
5. A sample calculation to illustrate the application of the Calculation set out in paragraph 4 herein is attached as **Appendix “A”**.
6. The Defendants will distribute the Settlement Fund as follows:
- (a) Within 90 days of the Settlement Approval Order, to those Settlement Class Members who have an open registered account with either BMO InvestorLine or BMO Nesbitt Burns, whose recovery for that registered account is \$25.00 or more (“**Threshold**”), by depositing their recovery for that registered account into that account or a successor account maintained at BMO InvestorLine or BMO Nesbitt Burns where practicable to do so;
 - (b) to those Settlement Class Members who do not have open registered accounts as of February 1, 2021 with either BMO InvestorLine or BMO Nesbitt Burns, whose recovery is in excess of the Threshold, by cheque delivered by mail to the last known address/address on the Excel Spreadsheet or updated address information if obtained following paragraph 8 below; and
 - (c) Within 120 days of the Settlement Approval Order, on behalf of those Settlement Class Members whose recovery is less than the Threshold, the sum of their recoveries cy-près to the Cy-près Recipients.
7. The Defendants will make reasonable efforts to initiate the distribution to those Settlement Class Members who do not have open registered accounts within 150 days of the Settlement

Approval Order. The Defendants will make reasonable efforts to complete the distribution within one year following the Settlement Approval Order.

8. To those Settlement Class Members for whom a return to sender notice was received (“**Returned Mail**”) following delivery of the Settlement Approval Hearing Notice as set out in paragraph 5(a)(i) of the Settlement Agreement or, if no such delivery occurred pursuant to paragraph 5(a)(i) of the Settlement Agreement, delivery of the cheque as set out in paragraph 6(b) herein, the Defendants will engage Transunion, Equifax or another equivalent service to attempt to locate recent contact information for all Returned Mail. Should the Defendants receive an address from Transunion, Equifax or other service provider for the Settlement Class Member, the Defendants will mail the distribution cheque as outlined above in paragraph 6(b) to that address.

9. The Parties acknowledge that for those Settlement Class Members for whom Returned Mail was received or who raise issues, the completion of the distribution of their entitlement may exceed 180 days from the Settlement Approval Order.

10. In addition to the payments pursuant to paragraph 6(c) herein, the Defendants will pay the following amounts cy-près to the Cy-près Recipients:

- (a) The recovery for those Settlement Class Members for whom a return to sender notice is received following delivery of the cheque to the most recent address from Transunion or Equifax, as contemplated in paragraph 8 above;
- (b) The recovery for those Settlement Class Members who do not negotiate their cheque within 180 days of the date it was issued;
- (c) The recovery for those Settlement Class Members who choose to direct any entitlement to the Cy-près Recipients; and
- (d) Any amounts from the Compensation Fund which cannot be delivered.

11. The Defendants will report to Class Counsel on the status of distribution of the Settlement Fund to Settlement Class Members and amounts paid to and/or accruing to the Cy-pres Recipients and any material objections to the distribution process at the end of the 90 days following the Settlement Approval Order and each 30 days thereafter.

12. After the entirety of the Settlement Fund has been distributed, the Defendants will prepare a report for the Court regarding the distribution process setting out the total payments provided to Settlement Class Members, the number of Settlement Class Members who received monies from the Settlement, and the total amounts paid to the Cy-près Recipients.

APPENDIX “A”

SAMPLE DISTRIBUTION CALCULATION

STEP 1: Identify the foreign exchange revenue generated from the Settlement Class Transactions. Note that for simplicity it is assumed that only one currency conversion transaction was executed in each of the below accounts.

#	Account Number	Line of Business	Transaction Date	Foreign Exchange Revenue
1	612-0****_.*	BMO NB	2011-07-25	\$86.95
2	331-0****_.*	BMO NB	2005-02-23	\$107.37
3	706-0****_.*	BMO NB	2003-08-07	\$37.15

STEP 2: Calculate pre-judgment interest (“PJI”) on the foreign exchange revenue generated from the Settlement Class Transactions at the PJI rate of 3.8% simple interest as per the Summary Judgment Decision.

#	Account Number	Foreign Exchange Revenue	PJI (on Foreign Exchange Revenue)	Total Foreign Exchange Revenue (Foreign Exchange Revenue + PJI)
1	612-0****_.*	\$86.95	\$32.13	\$119.09
2	331-0****_.*	\$107.37	\$65.85	\$173.22
3	706-0****_.*	\$37.15	\$24.97	\$62.11

STEP 3: Allocate pro-rata the Compensation Fund to each registered account in which Settlement Class Transactions were made based on the total amount identified in Step 2.

#	Account Number	Total Foreign Exchange Revenue (Foreign Exchange Revenue + PJI)	Allocated Amount (before, if necessary, any applicable tax deductions)
1	612-0****_.*	\$119.09	\$51.63
2	331-0****_.*	\$173.22	\$75.10
3	706-0****_.*	\$62.11	\$26.93

STEP 4: Where the total amount described in Step 2 cannot be traced to a registered account in which Settlement Class Transactions were made, the untraceable amounts are to be allocated pro-rata to the known registered accounts in which Settlement Class Transactions were made.

SCHEDULE “C”

Court File No. 06-CV-316213-CP

**ONTARIO
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE) THE _____ DAY OF
JUSTICE)
)
) _____, 2021

B E T W E E N:

JAMES RICHARD MACDONALD,
LYNN D. ZOPPAS, JOHN A. ZOPPAS and MICHAEL HALASZ

Plaintiffs

- and -

BMO TRUST COMPANY, BMO NESBITT BURNS INC. and
BMO INVESTORLINE INC.

Defendants

PROCEEDING UNDER THE *CLASS PROCEEDINGS ACT, 1992*

SETTLEMENT APPROVAL ORDER

THIS MOTION, made by the Plaintiffs, on consent of the Defendants, for an order approving the settlement of this action pursuant to subsection 29(2) of the *Class Proceedings Act, 1992* (Ontario) (“**CPA**”), was heard on _____, 2021 at Osgoode Hall, 130 Queen Street West, Toronto, Ontario.

WHEREAS this action was certified as a class proceeding pursuant to the order of the Honourable Justice Horkins, dated January 31, 2012,

AND WHEREAS by order of the Honourable Justice Belobaba, dated February 28, 2020, the Plaintiffs' summary judgment motion was granted ("**Summary Judgment Decision**"), concluding that the Defendants were liable to the Class for breach of trust, breach of fiduciary duty, and breach of contract (collectively, the "**Breaches**");

AND WHEREAS findings have been made against the Defendants in the Summary Judgment Decision. The Defendants have appealed the Summary Judgment Decision to the Court of Appeal for Ontario, and do not admit the Breaches;

AND UPON HAVING REGARD for the steps required to oversee the implementation of the Settlement Agreement pursuant to this court's supervisory jurisdiction pursuant to the CPA, and its inherent jurisdiction to control its own process, in order to ensure the Settlement Agreement is administered in a fair and impartial manner,

AND UPON HEARING the submissions of counsel for the Plaintiffs and Defendants and upon reading the materials filed, including the motion record of the Plaintiffs and the factum of the Plaintiffs, and the hearing of objections, if any,

1. **THIS COURT ORDERS AND DECLARES** that for the purposes of this order, and subsequent orders in this action, the definitions set out in the Settlement Agreement attached as Schedule A to this order apply to the capitalized terms.
2. **THIS COURT ORDERS AND DECLARES** that the Settlement Agreement is fair, reasonable and in the best interests of the Class Members.
3. **THIS COURT ORDERS** that the Settlement Agreement, which is expressly incorporated by reference into this order, be and hereby is approved and will be implemented in accordance with its terms and this order and any further orders of this Court.
4. **THIS COURT ORDERS, ADJUDGES AND DECLARES** that this order and the Settlement Agreement are binding upon all Class Members including those persons who are under a disability.
5. **THIS COURT ORDERS AND DECLARES** that the requirements of Rules 7.04(1) and 7.08(4) of the *Rules of Civil Procedure* (Ontario) are dispensed with in respect of this action.

6. **THIS COURT ORDERS AND DECLARES** that without in any way affecting the finality of this order, this Court reserves exclusive and continuing jurisdiction over this action, the Class Members and the Defendants for the limited purposes of implementing the Settlement Agreement and enforcing and administering the Settlement Agreement and this order.

7. **THIS COURT ORDERS AND ADJUDGES** that this action is dismissed without costs and with prejudice, and that such dismissal will be a defence to any subsequent action in respect of the subject matter hereof.

8. **THIS COURT ORDERS** that, upon Final Settlement Approval, each Class Member shall be deemed to have consented to the dismissal as against the Releasees of any other actions he, she or it has commenced in respect of the Released Claims, without costs and with prejudice.

9. **THIS COURT ORDERS** that, upon Final Settlement Approval, each Releasor has released and shall be conclusively deemed to have fully, finally and forever released and discharged, without qualification or limitation, the Releasees from the Released Claims.

10. **THIS COURT ORDERS** that, upon Final Settlement Approval, the Releasors are forever barred from advancing the Released Claims directly or indirectly against the Releasees by way of any proceedings or procedure, whether court-based or administrative, or by way of advancing a claim against any person or entity who might claim in any manner or form contribution or indemnity in common law or in equity, or under the provisions of any statute or regulation, including the *Negligence Act* (Ontario) and the amendments thereto and/or any successor legislation thereto and/or under the *Rules of Civil Procedure* (Ontario), from the Releasees for or in respect of the Released Claims.

11. **THIS COURT ORDERS** that the Notice Program and the distribution process will proceed as set out in the Settlement Agreement.

12. **THIS COURT ORDERS** that the Defendants shall pay the following amounts from the Settlement Fund within 30 days of Final Settlement Approval:

- (a) To Class Counsel, the legal fees and disbursements (inclusive of taxes) fixed in the amount of _____.

(b) To the Class Proceedings Fund, the amount of _____.

(c) To Class Counsel, in trust of for the Plaintiffs, an honorarium in the amount of _____.

13. **THIS COURT ORDERS** that it may issue such further and ancillary orders, from time to time, as are necessary to implement and enforce the provisions of the Settlement Agreement and this order.

Belobaba J.

**SCHEDULE "A" TO SETTLEMENT APPROVAL ORDER
[SETTLEMENT AGREEMENT]**

SCHEDULE “D”

Court File No. 06-CV-316213-CP

**ONTARIO
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE) THE _____ DAY OF
)
JUSTICE BELOBABA) _____, 2021

B E T W E E N:

JAMES RICHARD MACDONALD,
LYNN D. ZOPPAS, JOHN A. ZOPPAS and MICHAEL HALASZ

Plaintiffs

- and -

BMO TRUST COMPANY, BMO NESBITT BURNS INC. and
BMO INVESTORLINE INC.

Defendants

PROCEEDING UNDER THE *CLASS PROCEEDINGS ACT, 1992*

NOTICE APPROVAL ORDER

THIS MOTION made by the Plaintiffs for an order approving the notice of settlement approval hearing and the method of dissemination of said notice for settlement approval was heard this day at Osgoode Hall, 130 Queen Street West, Toronto, Ontario.

ON READING the materials filed, including the settlement agreement with the Defendants dated as of ●, 2021 attached to this order as **Schedule “A” (“Settlement Agreement”)**, and on reading the submissions of counsel for the Plaintiffs;

AND WHEREAS this Court certified this proceeding as a class proceeding on January 31, 2012 on behalf of the following Class:

all current and former clients of BMO Nesbitt Burns Inc. (“**BMO Nesbitt Burns**”) and BMO InvestorLine Inc. (“**BMO InvestorLine**”) resident in Canada who held one or more registered accounts administered by BMO Trust Company, BMO Nesbitt Burns and/or BMO InvestorLine and purchased or sold investments denominated in foreign currency in their registered accounts or were paid dividends or interest in a foreign currency in their registered account(s), or otherwise received foreign currency into their registered account(s) which was then converted to Canadian dollars by the defendants during the period between:

June 14, 2001 and September 6, 2011 for:

- (i) all clients and former clients of BMO InvestorLine;
- (ii) the 14 clients of BMO Nesbitt Burns who opted out of the class proceeding entitled *Skopit v. BMO Nesbitt Burns* either entirely or with respect to the overlap period with this action; and

October 1, 2002 and September 6, 2011 for all other clients of BMO Nesbitt Burns.

AND ON BEING ADVISED that the deadline for opting out of this proceeding has passed, and no persons validly exercised the right to opt out;

AND ON BEING ADVISED that the Plaintiffs and the Defendants consent to this order;

1. **THIS COURT ORDERS** that, for the purposes of this order, except to the extent that they are modified in this order, the definitions set out in the Settlement Agreement apply to and are incorporated into this order.

2. **THIS COURT ORDERS** that the Settlement Approval Hearing Notice is hereby approved substantially in the form attached hereto as **Schedule “B”**.

3. **THIS COURT ORDERS** that the Notice Program described in the Settlement Agreement for the dissemination of the Settlement Approval Hearing Notice is hereby approved.

Belobaba J.

SCHEDULE "A"
[SETTLEMENT AGREEMENT]

SCHEDULE "B"

[SETTLEMENT APPROVAL HEARING NOTICE]

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.

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 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 ●. 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 class members whose payment under the settlement calculation exceed \$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 exceeds \$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 ●.

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 ●.

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:

PALIARE ROLAND ROSENBERG ROTHSTEIN LLP

Telephone (toll free): ●

Email: ●

Mail: ●

Website: ●