

## NOTICE OF THE FAIRNESS HEARING ON FRIDAY, APRIL 24, 2009 TO CONSIDER THE PROPOSED SETTLEMENT OF THE TD VISA CARD FOREIGN EXCHANGE CLASS ACTION

### **This notice is to inform Class Members of their rights under the proposed settlement.**

This class action was commenced in Ontario against The Toronto-Dominion Bank ("TD") alleging that TD charged its TD VISA Cardholders undisclosed, inadequately disclosed or unauthorized fees or charges in respect of debits and credits incurred on their TD VISA accounts in a foreign currency during the "Class Periods" which are before September 1, 2001 for consumer TD VISA Cards and before June 1, 2003 for commercial TD VISA Cards.

On November 14, 2007, the court certified this action as a class action and directed that any person who did not wish to participate was to opt out on or before August 28, 2008.

The "Class Members" are all persons who held a consumer TD VISA (or Chargex) Card prior to September 1, 2001 or a commercial TD VISA (or Chargex) Card prior to June 1, 2003 and incurred debits and credits in a foreign currency during the Class Periods and who did not opt out of the action on or before August 28, 2008.

A settlement has been reached in this class action, subject to court approval. The settlement is a compromise of disputed claims. TD does not admit any wrongdoing or liability.

### **TERMS OF THE PROPOSED SETTLEMENT**

The court will be asked to approve settlement of this class action on the following terms:

TD will pay the sum of \$55 million in full and final settlement of all claims of the Class Members against it.

Under the supervision of the court, the settlement amount of \$55 million will be allocated and paid as follows:

- (a) up to \$11 million directly to the Class Members comprising the Distribution Group;
- (b) approximately \$14 million to charitable organization(s) to promote financial literacy among youth, disadvantaged and minority groups in Canada, on terms and in a manner to be approved by the court by further order;
- (c) approximately \$14 million to common law law schools in Canada to promote professionalism and ethical behaviour by practicing lawyers so as to benefit the general public, on terms and in a manner to be approved by the court by further order;
- (d) up to \$11 million, plus GST, plus disbursements, to the lawyers for their services to the Class Members;
- (e) approximately \$60,000 for administration costs; and
- (f) approximately \$4.3 million to the Class Proceedings Fund of the Law Foundation of Ontario on behalf of the Class Members; or in such other allocation and/or for such other purposes as the court directs.

### **THE DISTRIBUTION GROUP**

The representative plaintiffs propose that the "Distribution Group" consist of the approximate 1,122,000 TD VISA Cardholders whose Cards were issued during the Class Periods and are in good standing as of June 1, 2009, and who have conducted a transaction within the three months prior to June 1, 2009.

The representative plaintiffs also propose that on the distribution date, TD credit the TD VISA accounts of:

- (a) the approximate 403,000 TD VISA Cardholders in the Distribution Group, who engaged in at least one foreign currency transaction in the period January 1, 1998 to the end of the Class Periods, as shown in TD's existing electronic records, with \$11.23; and
- (b) the remaining approximate 719,000 TD VISA Cardholders in the Distribution Group with \$8.66.

### **THE APRIL 24, 2009 FAIRNESS HEARING TO CONSIDER APPROVING THE PROPOSED SETTLEMENT**

The court will decide whether to approve the proposed settlement of \$55 million, the composition of the Distribution Group and the amount or amounts that will be paid and to whom, and will fix the fees, disbursements and taxes to be paid to the plaintiffs' lawyers, at a Fairness Hearing to be held **on Friday, April 24, 2009 at 10:00 a.m.** at the court house at 361 University Avenue, Toronto, Ontario.

Any Class Member who objects to the proposed settlement may attend the Fairness Hearing in person or send a representative. **Class Members who do not oppose the proposed settlement need not appear at the Fairness Hearing or take any other action at this time to indicate their desire to participate in the proposed settlement.**

The court will consider all objections to the proposed settlement by Class Members, and requests that these objections be sent in writing, by prepaid mail, courier, email or fax on or before April 20, 2009 to:

Sarkis Isaac  
Howie & Partners  
3063 Walker Road  
Windsor ON N8W 3R4  
tel: 519.250.8663  
fax: 519.250.1929  
email: [sisaac@howieandpartners.com](mailto:sisaac@howieandpartners.com)

It would be preferable if the written objections included the following information:

- (a) the person's or corporation's name as it appears on his, her or its TD VISA account statement, address, telephone number and the last four digits of each TD VISA Card held by the person;
- (b) a brief statement of the nature of and the reasons for the objection; and
- (c) whether the person or a representative intends to appear at the court hearing in person or by counsel, and if by counsel, the name, address, telephone number, fax number and e-mail address of counsel.

#### **ADDITIONAL INFORMATION**

This settlement will not release TD from any claim which has been asserted against it in an action commenced at Montreal in the Superior Court of Quebec with court file no. 500-06-000197-034 and styled *Marcotte v. Bank of Montreal et al.*

Information about the settlement is available in English or French by telephone toll free in Canada and the U.S. at 1-800-9TD-VISA (1-800-983-8472) or, for the hearing impaired, toll free at 1-866-704-3194 (TTY), Monday – Sunday from 7 a.m. – 12 a.m. EDT.

**OR**

At the website [www.tdvisaaction.com](http://www.tdvisaaction.com)

**OR**

By communicating with one of the law firms acting for the Class Members:

Sutts, Strosberg LLP  
Lawyers  
251 Goyeau Street, Suite 600  
Windsor, ON N9A 6V4  
tel. 866.374.7644  
fax: 866.316.5308  
e-mail: [tdvisaaction@strosbergco.com](mailto:tdvisaaction@strosbergco.com)

Class Members who consider it desirable or necessary to seek the advice and guidance of their own lawyers, do so at their own expense.

#### **INTERPRETATION**

This notice is a summary of some of the terms of the proposed settlement. If there is a conflict between the provisions of this notice and the terms of the settlement, the terms of the settlement prevail. You may review the terms of settlement at [www.tdvisaaction.com](http://www.tdvisaaction.com).

This notice is approved by the Ontario Superior Court of Justice.

Any questions about the matters in this notice should not be directed to the court as its administrative structure is not designed to address this type of inquiry.