

CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTREAL
No.: 500-06-000914-180

SUPERIOR COURT
(Class Action)

**MAJESTIC ASSET MANAGEMENT LLC, es
qualité as manager, vested with the full
administration powers over the **TURN8
TACTICAL EQUITY FUND****

-AND-

**TURN8 PARTNERS INC., a legal person having
a primary place of business at 8011 Holiday
Avenue, Pointe-Claire, Province of Quebec, H9R
5N3**

Representative Plaintiff

-vs-

THE TORONTO-DOMINION BANK

-AND-

BHARAT B. MASRANI

-AND-

RIAZ E. AHMED

-AND-

COLLEEN M. JOHNSTON

Defendants

**AMENDED MOTION FOR AUTHORIZATION TO BRING AN ACTION
PURSUANT TO SECTION 225.4 OF THE *QUEBEC SECURITIES ACT* AND
APPLICATION FOR AUTHORIZATION TO INSTITUTE A CLASS ACTION**

IN SUPPORT OF ITS MOTION FOR AUTHORIZATION PURSUANT TO THE *QUEBEC SECURITIES ACT* AND ITS APPLICATION FOR AUTHORIZATION TO INSTITUTE A CLASS ACTION, THE PLAINTIFF RESPECTFULLY SUBMITS AS FOLLOWS:

A. DEFINITIONS

1. In addition to the terms that are defined elsewhere herein, the terms hereinbelow have the following meanings:
 - a. **“Annual Report”** refers to the Toronto-Dominion Bank’s yearly report to shareholders documenting its activities and finances in the previous financial year (same being communicated herewith for the year 2015 as **Exhibit P-6**, and for the year 2016 as **Exhibit P-8**);
 - b. **“Canadian Retail Business Segment”**: the Toronto-Dominion Bank’s operations and activities are organized around three key business segments: Canadian Retail, U.S. Retail, and Wholesale Banking. The Canadian Retail business segment provides a full range of financial products and services in personal and commercial banking to nearly 13 million customers through the Toronto-Dominion Bank’s network of 1,156 branches. This includes personal deposits, consumer lending, credit cards and merchant solutions, auto finance, direct investing, advice-based wealth business, asset management, and insurance;
 - c. **“Canadian Retail Section”** refers to the section of the Toronto-Dominion Bank’s Management Discussion and Analysis which discusses the Canadian Retail Business Segment;
 - d. **“CBC”** means the Canadian Broadcasting Corporation, a Canadian Federal Crown corporation that serves as the national public radio and television broadcaster;
 - e. **“CCQ”** means the Civil Code of Québec, CQLR c CCQ-1991;
 - f. **“CCP”** means the Code of Civil Procedure, CQLR c C-25.01;
 - g. **“Class”** and **“Class Members”** are comprised of the following, other than the **“Excluded Persons”**:
 - I. **Primary Market Sub-Class**: All persons and entities, wherever they may reside or may be domiciled, who, from December 3, 2015 to March 9, 2017 (inclusively), acquired the Toronto-Dominion Bank’s securities in an **Offering** and held some, or all of those securities until the end of the **Class Period**; and
 - II. **Secondary Market Sub-Class**: All persons and entities, wherever they may reside or may be domiciled, who, from December 3, 2015 to March 9, 2017 (inclusively), acquired the Toronto-Dominion Bank’s securities in the

secondary market and held some, or all of those securities until the end of the **Class Period**; and

1. are resident in Canada or were resident in Canada at the time of such acquisition, regardless of the location of the exchange on which they acquired the Toronto-Dominion Bank's securities; or
 2. acquired the Toronto-Dominion Bank's securities in the secondary market in Canada or elsewhere other than in the United States;
- h. "**Class Period**" means the period from December 3, 2015 to March 9, 2017 (inclusively);
- i. "**Core Documents**" (each being a "**Core Document**") refers to:
- I. the Toronto-Dominion Bank's Management Discussion and Analysis for the year 2015, **Exhibit P-5**;
 - II. the Toronto-Dominion Bank's Management Discussion and Analysis for the year 2016, **Exhibit P-7**;
 - III. the Toronto-Dominion Bank's interim quarterly Management Discussion and Analyses released during the Class Period, more specifically:
 - a) the Toronto-Dominion Bank's Management Discussion and Analysis for the quarter spanning from November 2015 to January 2016;
 - b) the Toronto-Dominion Bank's Management Discussion and Analysis for the quarter spanning from February 2016 to April 2016; and
 - c) the Toronto-Dominion Bank's Management Discussion and Analysis for the quarter spanning from May 2016 to July 2016;
- Collectively communicated herewith as **Exhibit P-19 en liasse**;
- j. "**Corrective Disclosures**" refers to the CBC's March 6, 2017 and March 10, 2017 Reports, collectively, as further particularized herein;
- k. "**Defendants**" means the Toronto-Dominion Bank, Bharat B. Masrani, Riaz E. Ahmed, and Colleen M. Johnston, collectively;
- l. "**Excluded Persons**" refers to the Defendants herein, at all material times, members of their immediate families and their legal representatives, heirs, successors or assigns and the directors, officers, subsidiaries, and affiliates of the Toronto-Dominion Bank and its subsidiaries as well as any entity in which the Toronto-Dominion Bank has or had a controlling interest;
- m. "**Impugned Documents**" (each being an "**Impugned Document**") refers to:
- I. the Core Documents (MD&As Exhibits P-5, P-7 and P-19);
 - II. the Toronto-Dominion Bank's 2015 Annual Report, Exhibit P-6; and

- III. the Toronto-Dominion Bank's 2016 Annual Report, Exhibit P-8;
- IV. the Toronto-Dominion Bank's March 16, 2016, "Code of Conduct and Ethics for Employees and Directors" **Exhibit P-23**;
- n. "**Individual Defendants**" (each being an "**Individual Defendant**") refers to Bharat B. Masrani ("**Masrani**"), Riaz E. Ahmed ("**Ahmed**"), and Colleen M. Johnston ("**Johnston**"), collectively;
- o. "**MD&A**" means the Toronto-Dominion Bank's Management Discussion and Analyses. Management Discussion and Analyses are a narrative explanation of how a company performed during the period covered by the financial statements, and of a company's financial condition and future prospects. The MD&A enables readers to assess material changes in the financial condition and operating results of a company and must discuss important trends and risks that have affected the financial statements, and trends and risks that are reasonably likely to affect them in future;
- p. "**Non-interest income**" refers to, *inter-alia*, income derived primarily from fees including, but not limited to, deposit and transaction fees, insufficient funds fees (NSF), annual fees, monthly account service charges, inactivity fees, and check and deposit slip fees;
- q. "**NYSE**" means the New York Stock Exchange;
- r. "**Offering**" (each being an "Offering") means the offerings of the Toronto-Dominion Bank's securities during the Class Period including, but not limited to, an offering by way of a Prospectus, Short Form Base Shelf Prospectus, Pricing Supplement to a Short Form Base Shelf Prospectus or any document issued by the Toronto-Dominion Bank through which it effects a distribution of its securities as defined in the Quebec Securities Act (*CQLR c V-1.1*) or other **Securities Legislation**;
- s. "**Plaintiff**" and "**Representative Plaintiff**" refers to Majestic Asset Management LLC ("**Majestic**") in its capacity as manager, vested with the full administration powers over the Turn8 Tactical Equity Fund, pursuant to the Trust Agreement, as defined herein. "**Plaintiff**" and "**Representative Plaintiff**" also refers to Turn8 Partners Inc. ("**Turn8**"), the investment advisor of The Fund;
- t. "**Pressure Selling Program**" refers to the Toronto-Dominion Bank's employee sales target, monitoring and retribution system, as further particularized herein;
- u. "**QER**" means the Quebec Enterprise Register;
- v. "**QSA**" means the Quebec Securities Act, *CQLR c V-1.1*;
- w. "**Securities Legislation**" means, collectively, the QSA; the Securities Act, RSO 1990, c S.5, as amended; the Securities Act, RSA 2000, c S-4, as amended; the Securities Act, RSBC 1996, c 418, as amended; the Securities Act, CCSM c S50, as amended; the Securities Act, SNB 2004, c S-5.5, as amended; the Securities Act, RSNL 1990, c S-13, as amended; the Securities Act, SNWT 2008, c 10, as amended; the Securities Act, RSNS 1989, c 418, as amended; the Securities Act, S

Nu 2008, c 12, as amended; the Securities Act, RSPEI 1988, c S-3.1, as amended; the Securities Act, 1988, SS 1988-89, c S-42.2, as amended; and the Securities Act, SY 2007, c 16, as amended;

- x. “**TD**” means the Toronto-Dominion Bank;
- y. “**The Fund**” refers to the Turn8 Tactical Equity Fund, an open-ended trust established on January 22, 2016 pursuant to the Trust Agreement and in which securities of the Toronto-Dominion Bank are held. The Fund is managed and fully administered by Majestic pursuant to the Trust Agreement, as defined herein;
- z. “**Trust Agreement**” refers to an agreement between Majestic and TSX Trust Company (formerly Equity Financial Trust Company) (“**TTC**”), wherein TTC, as trustee, delegates to Majestic the full administration powers over The Fund (said Trust Agreement being communicated herewith as **Exhibit P-2**);
- aa. “**TSX**” means the Toronto Stock Exchange;
- bb. “**Turn8 Partners Inc.**” (“**Turn8**”) is the investment advisor of The Fund. Turn8 made the investment decisions for The Fund, which included purchasing securities of the Toronto-Dominion Bank;
- cc. “**Turn8’s Portfolio Statement**” refers to the portfolio statement issued by the National Bank Correspondent Network in respect of the investment activities carried out in The Fund for the period spanning from March 1, 2016 to March 31, 2016, communicated herewith as **Exhibit P-9**;

B. INTRODUCTION

1. Overview of Proposed Action

- 2. On December 3, 2015, the Defendants released Impugned Documents which failed to disclose material facts relating to TD’s Canadian Retail Business Segment and which contained materially false and misleading statements with regard to TD’s business practices, risks management and ethics policies;
- 3. The Impugned Documents stated that TD’s Canadian Retail Business Segment experienced significant revenue increase in Non-Interest Income due to, *inter alia*, wealth asset growth and higher personal and business banking fee-based revenue, as further particularized hereinbelow;
- 4. However, the Defendants failed and omitted to disclose that the increase in income in TD’s Canadian retail revenue was driven by an unethical, illegal and predatory employee sales target, monitoring and retribution system: the “**Pressure Selling Program**”. Through this system, TD imposed continuously increasing and unrealistic sales targets on employees and monitored whether its employees attained them. TD subjected employees who failed to reach their targets to sanctions which included reprimands, imposed trainings and termination;
- 5. TD’s unethical, illegal and predatory Pressure Selling Program placed extreme pressure on, and induced employees to (i) sell clients products and services that were unnecessary,

inappropriate and/or unsolicited, (ii) upsell clients more expensive products and services although these were unnecessary, inappropriate and/or unsolicited, (iii) omit to disclose to clients the true costs or risks involved in products, services or programs offered, (iv) illegally subscribe, enroll or upgrade clients into programs or services without their knowledge or consent (such as overdraft protection), and (v) illegally increase clients' credit lines without their knowledge or consent;

6. TD's management used the Pressure Selling Program as a tool to subject TD's employees to intense pressure to continuously increase their sales revenue under the threat of being fired. Specific examples of the tactics and practices put in place by TD are evidenced from:

a. A Confidential Affidavit ("CA-1") communicated herewith as **Exhibit P-17**:

I. TD awarded employees sales revenue points ("**SRs**") for each product or service that an employee sold to a given customer. Each product or service would generate a fixed number of SRs. For example:

Product/Service	SRs Generated
Overdraft protection @\$4.00/month	250 SR
Overdraft protection - pay as you go	50 SR
Selling a credit card or upselling to a better credit card	600 SR
Increasing a credit card limit, for every \$1000	10 SR
Upselling to an all-inclusive account	750 SR

II. TD employees were expected to generate somewhere between 200 and 300 SR every day of work;

III. The pressure to sell and upsell TD's products and services was particularly strong on "blitz days", days on which TD put pressure on employees to sell one particular product or service;

IV. As a result of the pressure on employees to sell and upsell, on numerous occasions, clients were not provided with the required explanations, forms containing details, or costs concerning the products and services being sold to them; and

V. Products and services were being sold to customers even though these products and services were unnecessary and not in the clients' best interests;

b. A Confidential Affidavit ("CA-2") communicated herewith as **Exhibit P-18**:

I. When a TD customer consulted with a teller, that customer's profile would appear on the teller's computer along with a list of TD banking products and services for which that customer qualified and TD required the teller to offer and sell these listed products or services to that customer regardless of whether said products and services were or were not appropriate for the customer;

- II. There was a general practice to target senior citizens and students with the Pressure Selling Program;
 - III. At times, the sale of products and services was done without providing the customers with sufficient and proper information;
 - IV. To avoid reprimands, employees had to earn a predetermined amount of SRs (“**SR Quotas**”) within a given period; and
 - V. At times, SR Quotas were subject to increases which added pressure on the employees;
7. The Pressure Selling Program was pervasive throughout TD’s ranks and was applied to TD’s retail employees, financial advisors and managers;
 8. The statements made by the Defendants in the Impugned Documents concerning (i) customer service experience, (ii) the providing of the right products, services, tools, and solutions to clients, (iii) the optimizing of shareholder value through disciplined risk management practices, (iv) reputational risk monitoring and oversight, (v) ethical behaviour, and (vi) responsible banking, were materially false and misleading;
 9. TD knew or should have known that the Pressure Selling Program would have caused, and did in fact cause, its employees to carry out the actions, *inter alia*, stated in paragraph 5 hereinabove as well as the Confidential Affidavits CA-1 and CA-2;
 10. Following the release of the Impugned Documents, unaware of TD’s Pressure Selling Program, The Fund and Class Members acquired TD’s securities at artificially inflated prices;
 11. The Corrective Disclosures by the CBC publicly revealed TD’s Pressure Selling Program and prompted the market price of TD’s securities to suffer their largest drop since 2009;
 12. In respect of the Impugned Documents, all Defendants knew, or should have known that the documents contained misrepresentations at the time each document was released or, the Defendants deliberately avoided acquiring such knowledge at or before that time;
 13. The Representative Plaintiff, on behalf of The Fund, asserts and pleads, as against all Defendants, the commission of a fault in violation of the general private law duty of diligence pursuant to the CCQ, and breaches of Title VIII, Chapter II, Divisions I and II of the QSA, as further particularized hereinbelow;
 14. The Representative Plaintiff, on behalf of The Fund, seeks the authorization of this Honorable Court to institute a class action on behalf of all Class Members who purchased or otherwise acquired TD securities during the Class Period and held some, or all of those securities until the end of the Class Period;

2. The parties

15. Majestic is a legal person having its elected domicile and its principal place of business in Quebec. Majestic is an investment fund manager duly registered with the QER, as more fully appears from Majestic’s QER registration, communicated herewith as **Exhibit P-1**.

Majestic is The Fund's manager, vested with the full administration powers over The Fund pursuant to the Trust Agreement, as more fully appears from the Trust Agreement, communicated herewith as Exhibit P-2;

16. Turn8 is a legal person which carries out its principal business activities in Quebec as a portfolio manager and is duly registered with the QER, as more fully appears from Turn8's QER registration, communicated herewith as **Exhibit P-3**. Turn8 acts as the investment advisor to The Fund. As it appears from the Affidavit communicated herewith as **Exhibit P-20**, at all material times, Turn8 made the investment decisions for The Fund, which included purchasing the TD securities in issue;
17. The Defendant TD is a legal person incorporated pursuant to the *Bank Act, S.C. 1991, c. 46*, as more fully appears from TD's QER registration, communicated herewith as **Exhibit P-4**;
18. TD provides, *inter alia*, retail banking services at branches and online, across Canada and throughout the world. TD offers a broad range of banking services to individuals, businesses, financial institutions, governments, and multinational corporations;
19. TD is a reporting issuer in Quebec and its shares are publicly traded and listed on the TSX under the ticker symbol "TD", as well as the NYSE under the ticker symbol "TD:US";
20. The Defendant Masrani has served as TD's Chief Executive Officer and President since November 1, 2014;
21. The Defendant Johnston has served as TD's Chief Financial Officer from November 1, 2005 until January 2, 2016;
22. The Defendant Ahmed has served as TD's Chief Financial Officer since January 2, 2016;

C. FACTS

1. The release of the Impugned Documents

23. On December 3, 2015, TD filed a Core Document, namely, its MD&A for the financial period beginning on November 1, 2014 and ending on October 31, 2015 ("**2015 MD&A**"), as more fully appears from TD's 2015 MD&A, communicated herewith as Exhibit P-5;
24. In the Canadian Retail Section of the 2015 MD&A, TD boasts of its recognitions and distinctions as an industry leader in customer service excellence;
25. Under the *Business Highlights* heading of the Canadian Retail Section of the 2015 MD&A, TD lists, as highlights:

"Recorded strong chequing and savings deposit volume growth due to a focus on acquiring and retaining core customer accounts."
26. Under the *Industry Profile* heading of the Canadian Retail Section of the 2015 MD&A, TD states:

“The personal and business banking environment in Canada is very competitive among the major banks as well as some strong regional players and non-bank competitors. The strong competition makes it difficult to sustain market share gains and distinctive competitive advantage over the long term. Continued success depends upon delivering **outstanding customer service and convenience, disciplined risk management practices**, and prudent expense management. Business growth in the fiercely competitive wealth management industry lies in the ability to differentiate on client experience **by providing the right products, services, tools, and solutions to serve our clients’ needs.**”

[our emphasis]

27. Under the *Overall Business Strategy* heading of the Canadian Retail Section of the 2015 MD&A, TD states, *inter alia*:

“The strategy for Canadian Retail is to:

- Consistently deliver **a legendary customer experience in everything we do.**
- Be recognized as **an extraordinary place to work.**
- Make the **customer and employee experience simple, fast, and easy in order to drive efficiency.**

[our emphasis]

28. Under the *Review of Financial Performance* heading of the Canadian Retail Section of the 2015 MD&A, TD states:

“Canadian Retail revenue is derived from the Canadian personal and commercial banking businesses, including credit cards, auto finance, wealth and insurance businesses. Revenue for the year was \$19,685 million, an increase of \$524 million, or 3%, compared with last year. Net interest income increased \$243 million, or 3%, driven primarily by good loan and deposit volume growth and the full year impact of Aeroplan, partially offset by lower margins. **Non-interest income increased \$281 million, or 3%, largely driven by wealth asset growth, higher personal and business banking fee-based revenue**, and insurance premium growth, partially offset by a change in mix of reinsurance contracts. Margin on average earning assets was 2.87%, a decrease of 8 bps, primarily due to the low rate environment and competitive pricing.”

[our emphasis]

29. Under the *Business Outlook and Focus for 2016* heading of the Canadian Retail Section of the 2015 MD&A, TD states:

“We will continue to focus on our **legendary customer service and convenience** across all channels. (...)”

[our emphasis]

30. Under the *Key Priorities for 2016* heading of the Canadian Retail Section of the 2015 MD&A, TD states, *inter alia*:

“Our key priorities for 2016 are as follows:

- **Continue to deliver a legendary customer experience** across all businesses and distribution channels.
- Keep our focus on productivity to **enhance the customer experience, employee satisfaction, and shareholder value.**
- Continue to be an **extraordinary place to work.**”

[our emphasis]

31. Under the *Regulatory Oversight and Compliance Risk* heading of the Risk Factors and Management Section of the 2015 MD&A, TD states:

“(…) TD has a Fair & Responsible Banking Compliance group which **provides oversight, monitoring and analysis** of fair lending and **unfair, deceptive or abusive acts or practices risks.** (…)”

[our emphasis]

32. Under the *Managing Risk* heading of the Risk Factors and Management Section of the 2015 MD&A, TD states:

“Risk Culture

The Bank’s risk culture embodies the “tone at the top” set by the Board, Chief Executive Officer (CEO), and Senior Executive Team (SET), which informs TD’s vision, mission, guiding principles, and leadership profile. These governing objectives describe **the attitudes and behaviours that the Bank seeks to foster, among its employees**, in building a culture where **the only risks taken are those that can be understood and managed.** TD’s risk culture promotes accountability, learning from past experiences, and encourages open communication and transparency on all aspects of risk taking. **TD employees are encouraged to challenge and escalate when they believe the Bank is operating outside of its risk appetite.**

Ethical behaviour is a key component of TD’s risk culture. TD’s Code of Conduct and Ethics guides employees and Directors to make decisions **that meet the highest standards of integrity, professionalism, and ethical behaviour.** Every TD employee and Director is expected and required to assess business decisions and actions on behalf of the organization in light of whether it is right, legal, and fair. (…)”

[our emphasis]

33. Under the *Reputational Risk* heading of the Risk Factors and Management Section of the 2015 MD&A, TD states:

“Reputational risk is the potential that **stakeholder impressions, whether true or not, regarding the Bank’s business practices, actions or inactions, will or may cause a decline in TD’s value**, brand, liquidity or customer base, or require costly measures to address. A company’s reputation is a valuable business asset that is essential to optimizing shareholder value and therefore, is constantly at risk. **Reputational risk can arise as a consequence of negative impressions about TD’s business practices and may involve any aspect of the Bank’s operations, but usually involves concerns about business ethics and integrity, competence, or the quality or suitability of products and services.** As such, reputational risk is not managed in isolation from TD’s other major risk categories, as all risk categories can have an impact on reputation, which in turn can impact TD’s brand, earnings, and capital.

(...)

Responsibility for managing risks to the Bank’s reputation ultimately lies with the SET [senior executive team] and the executive committees that examine reputational risk as part of their regular mandate. The RRC [reputational risk committee] is the most senior executive committee for the review of reputational risk matters at TD. The mandate of the RRC is to oversee the management of reputational risk within the Bank’s risk appetite. **Its main accountability is to review and assess business and corporate initiatives and activities across TD where significant reputational risk profiles have been identified and escalated.** The RRC ensures that escalated initiatives and activities have received adequate senior management and subject matter expert review for reputational risk implications prior to implementation. **At the same time, every employee and representative of the Bank has a responsibility to contribute in a positive way to the Bank’s reputation. This means following ethical practices at all times**, complying with applicable policies, legislation, and regulations and supporting positive interactions with the Bank’s stakeholders. Reputational risk is most effectively managed when everyone at the Bank works continuously to protect and enhance TD’s reputation.

[our emphasis]

34. On February 23, 2016, TD released its Annual Report for the financial exercise beginning on November 1, 2014 and ending on October 31, 2015, as more fully appears from TD’s 2015 Annual Report, communicated herewith as Exhibit P-6 (“**2015 Annual Report**”). In its 2015 Annual Report, TD incorporates and repeats the entirety of the 2015 MD&A including the sections referred to at paragraphs 24 to 33 hereinabove;
35. On December 1, 2016, TD filed another core document, namely, its MD&A for the financial exercise beginning on November 1, 2015 and ending on October 31, 2016 (“**2016 MD&A**”), as more fully appears from TD’s 2016 MD&A, communicated herewith as Exhibit P-7;
36. As TD did in the 2015 MD&A, in the Canadian Retail Section of its 2016 MD&A, TD boasts of its recognitions and distinctions as an industry leader in customer service excellence;
37. Under the *Industry Profile* heading of the Canadian Retail Section of the 2016 MD&A, TD repeats the contents it had previously mentioned under the *Industry Profile* heading in its 2015 MD&A, and already stated at paragraph 26 hereinabove;

38. Under the *Overall Business Strategy* heading of the Canadian Retail Section of the 2016 MD&A, TD states, *inter alia*:

“The strategy for Canadian Retail is to:

- Consistently deliver **legendary customer experiences and provide trusted advice to help our customers achieve their goals and aspirations.**
- Be recognized as an **extraordinary place to work** by embracing diversity and inclusion and **helping all our colleagues achieve their full potential.**
- Deliver organic growth by deepening relationships and focusing on underrepresented products and markets.
- Execute with speed and impact, **taking only those risks we can understand and manage.**

[our emphasis]

39. Under the *Review of Financial Performance* heading of the Canadian Retail Section of the 2016 MD&A, TD states:

“Canadian Retail revenue is derived from the Canadian personal and commercial banking, wealth and insurance businesses. Revenue for the year was \$20,209 million, an increase of \$524 million, or 3%, compared with last year. Net interest income increased \$198 million, or 2%, reflecting loan and deposit volume growth, partially offset by lower margins. **Non-interest income increased \$326 million, or 3%, reflecting wealth asset growth and higher personal and business banking fee-based revenue.** Margin on average earning assets was 2.78%, a 9 bps decrease, reflecting the low rate environment and competitive pricing.”

[our emphasis]

40. Under the *Business Outlook and Focus for 2017* heading of the Canadian Retail Section of the 2016 MD&A, TD states:

“The Canadian Retail business will remain focused on **delivering legendary customer service** and convenience across all channels **and deepening client relationships.** (...)”

[our emphasis]

41. Under the *Key Priorities for 2017* heading of the Canadian Retail Section of the 2016 MD&A, TD states, *inter alia*:

“Our key priorities for 2017 are as follows:

- Continue to **deliver legendary customer experiences** while building on our lead in digital engagement to enable omni-channel experiences.

- Deliver organic growth by deepening relationships and focusing on underrepresented products and markets.
- Keep our focus on productivity and simplify key processes to **enhance customer experience, employee satisfaction, and shareholder value.**
- Continue to be **an extraordinary place to work.**

[our emphasis]

42. Under the *Managing Risk* and *Reputational Risk* headings of the Risk Factors and Management Section of the 2016 MD&A, TD repeats what it had previously mentioned, under these respective headings, in its 2015 MD&A as stated in paragraphs 32 and 33 hereinabove;
43. On February 23, 2017, TD released its Annual Report for the financial exercise beginning on November 1, 2015 and ending on October 31, 2016, as more fully appears from TD's 2016 Annual Report, communicated herewith as Exhibit P-8 ("**2016 Annual Report**"). In its 2016 Annual Report, TD incorporates and repeats the entirety of the 2016 MD&A including the sections referred to at paragraphs 37 to 42 hereinabove;
44. During the Class Period, TD released quarterly MD&As collectively communicated herewith as Exhibit P-19 *en liasse*. In these MD&As, TD states:
 - a. In relation to the increase in revenue in the Canadian Retail Business Segment: that Non-interest income increased due to higher fee-based revenue in personal and commercial banking, wealth asset growth and wealth asset-based fee growth; and
 - b. In relation to risk management:

"The Bank's risk appetite states that it takes risks required to build its business, but only if those risks: (1) fit the business strategy, and can be understood and managed; (2) do not expose the enterprise to any significant single loss events; TD does not 'bet the bank' on any single acquisition, business, or product; and (3) do not risk harming the TD brand.(...)

TD considers it critical to assess regularly the operating environment and highlight top and emerging risks within the individual business and enterprise that could have a significant impact on the Bank. These risks can be internal or external, impacting the financial results, reputation, or sustainability of the business. They may also represent exposures or potential events which may or may not materialize. These risks are identified, discussed, and actioned by senior risk leaders and reported quarterly to the Risk Committee of the Board. Specific plans to mitigate top and emerging risks are prepared, monitored, and adjusted as required."
45. On March 16, 2016, TD filed a document entitled "Code of Conduct and Ethics for Employees and Directors" ("Code of Conduct"), a copy of which is communicated herewith as Exhibit P-23. In the Code of Conduct, TD makes the following statements:

a) In the Preface:

A Message from Bharat Masrani and Brian Levitt Our Group President and CEO and our Chairman of the Board

The TD shield is synonymous with trust – a reputation built up over decades and one we can all point to with pride.

Safeguarding this reputation is the responsibility of every TD employee and is key to our continued growth as an organization. By acting ethically and with integrity, we will ensure that our stakeholders' confidence in TD is stronger than ever. Protecting our customers is at the heart of the successful relationships that set TD apart.

The Code of Conduct and Ethics is our roadmap to maintaining our reputation. It supports the TD Framework, which encompasses the elements that will help us achieve our vision to be The Better Bank.

(...)

b) In the “Introduction and Summary”

The Code of Conduct and Ethics (Code) establishes the standards that govern the way we deal with each other, our customers, shareholders, governments, regulators, suppliers, competitors, the media and the public at large. Complying with the Code is part of the terms and conditions of our employment with The Toronto-Dominion Bank (TD Bank) together with its wholly-owned subsidiaries (collectively, TD).

As a responsible business enterprise and corporate citizen, TD is committed to conducting its affairs to the highest standards of ethics, integrity, honesty, fairness and professionalism – in every respect, without exception, and at all times. While reaching our business goals is critical to our success, equally important is the way we achieve them. Every employee and director of TD is expected and required to assess every business decision and every action on behalf of the organization in light of whether it is right, legal and fair and within our risk appetite. This applies at all levels of the organization, from major decisions made by the Board of Directors to day-to-day business transactions. The Code is intended to help employees and directors meet these expectations and make such assessments.

In recent years, the number of news stories regarding ethical lapses at many leading organizations reminds us of the critical importance of a strong ethical culture. By following the ethical practices outlined in the Code and incorporating elements of the TD Framework in our day-to-day activities, we will continue to promote a culture of high integrity at TD and reduce the risk that our actions will cause harm to TD. (...) Employees often take their cues from their managers. In addition, since employees most frequently report misconduct that they observe to their managers and Human Resources, it is critical for those who receive such information to address it promptly and with the seriousness it deserves.

(...)

Furthermore, all employees and directors are obliged to report, in a timely fashion, any violations of the Code we may witness or reasonably suspect, ask questions about our culture of integrity and raise good faith concerns about compliance with the Code.

c) In a Section entitled “Respecting the Law”

Making the Right Decision

Concern for what is right should be our first consideration in all business decisions and actions, and that includes compliance with the law. Financial services are heavily regulated in all jurisdictions in which we operate. We need to be familiar with and observe all laws and regulations relating to TD in the jurisdiction(s) in or for which we work or that is/are impacted by the decisions that we make. We must avoid performing any task that could reasonably be considered legally suspect, even if it might be common practice in the country or region.

(...)

d) In a Section entitled “Irregular Business Conduct”

Irregular business conduct (which includes any criminal, fraudulent or illegal conduct, any impropriety, lack of professional responsibility or dishonesty) will not be tolerated under any circumstances. Such conduct may not only be subject to internal disciplinary action, but may also lead to criminal prosecution, regulatory action or civil suit. (...)

e) In a Section entitled “Sales Misconduct”

A central component of TD’s mission is to be customer focused. Accordingly, whenever employees are servicing customers or providing advice or recommendations, we must deal fairly with our customers. As such, we must not allow our desire to increase our performance results to come before our focus on our customers. Employees must not wilfully spread rumours or disseminate false or misleading information. (...)

f) In a Section entitled “Introduction to Conflicts of Interest”

In keeping with expectations regarding ethical corporate conduct, customers and the public have a right to openness and honesty in all their dealings with TD. As representatives of TD, we must avoid activities or circumstances that create conflicts between our personal interests and our responsibilities as employees or directors, as well as complying with policies and procedures that manage potential conflicts between TD’s interests and those of other stakeholders, such as customers and counterparties.

Conflicts of interest arise when individuals or organizations have personal interests that may interfere with, or appear to interfere with, the independent exercise of judgment in business dealings. We must avoid having our decisions on behalf of TD influenced (or to even be seen to be influenced by) conflicting interests. (...)

A Conflict may arise where we may be motivated to act in a manner that is not in the best interests of TD, our customers and/or our shareholders. Often this is because we, or our relatives or people with whom we share a financial or close personal relationship, stand to benefit from the action in some way.

We must avoid acting in a manner that places our personal interests ahead of the best interests of TD, our customers and/or our shareholders.

(...)

g) In a Section entitled “Conflicting TD Interests”

TD is committed to avoiding material Conflicts between its interests and those of its customers and counterparties. A material Conflict would exist if TD were to engage in any transaction or activity that could involve or result in TD’s interests being materially adverse to the interests of a customer or counterparty.

(...)

46. All of the foregoing statements were materially false and misleading as TD failed to disclose its unethical, illegal and predatory practices;

2. The Fund’s purchase of TD’s securities

47. On March 10, 2016, The Fund acquired 12,157 shares of TD on the TSX at the price of \$54.20/share for a total purchase price of \$659,084.46 as more fully appears from Turn8’s Portfolio Statement for the period spanning from March 1, 2016 to March 31, 2016, communicated herewith as Exhibit P-9;
48. Further, on March 16, 2016, The Fund acquired a further 1,354 shares of TD on the TSX at the price of \$54.99/share for a total purchase price of \$74,469.05, as more fully appears from Turn8’s Portfolio Statement Exhibit P-9;
49. As at March 31, 2016, The Fund acquired 13,511 shares of TD on the TSX having a book value of \$733,553.51 and a market value of \$757,426.66, as more fully appears from Turn8’s Portfolio Statement Exhibit P-9;
50. The Fund held all of those shares until the end of the Class Period;

3. The March 6, 2017 CBC Report

51. On Monday, March 6, 2017, Erica Johnson, investigative reporter for the CBC, posted a report on the news section of CBC’s website. The report was entitled: “***I will do anything I can to make my goal: TD teller says customers pay price for 'unrealistic' sales targets | Bank employees say their jobs depend on upselling customers for products that can put them into debt***” (the “**March 6, 2017 Report**”), as more fully appears from the CBC news report, communicated herewith as **Exhibit P-10**;

[our emphasis]

52. The March 6, 2017 Report stated: “Three TD Bank Group employees are speaking out about what they say is "incredible pressure" to squeeze profits from customers by signing them up for products and services they don't need.”;

53. The March 6, 2017 Report describes an environment at TD's branches whereby TD imposed extreme pressure on its employees and lower level management to sign customers up for various unnecessary and/or unsolicited services and products in order for these employees to meet continuously increasing and unrealistic sales targets, failing which, these employees risk losing their jobs;
54. The March 6, 2017 Report conveys some of the employees' experiences:

*The long-time employees say their jobs have become similar to that of the stereotypical used car salesman, **as they're pushed to upsell customers to reach rising sales revenue targets.***

*They say there has always been a sales component to the job, but **the demand to meet "unrealistic" quarterly goals has intensified in recent years** as profits from low interest rates have dropped and banks became required — after the financial meltdown of 2008 — to keep more capital on hand to protect against a downturn in the market.*

*"I'm in survival mode now," says a teller who has worked at TD for more than 15 years, "because **it's a choice between keeping my job and feeding my family ... or doing what's right for the customer.**"*

(...)

*"When I come into work, **I have to put my ethics aside** and not do what's right for the customer," says the teller.*

Documents provided to Go Public show the teller's sales revenue goals have more than tripled in the past three years.

*"You don't know what it's like to go to bed at night, knowing your job is now to **set people up for financial failure,**" says the teller, her voice cracking.*

*Go Public has heard from TD tellers in several Canadian cities who say they quit their jobs because **the pressure to push products was so extreme.***

"I was made to feel as if I was committing a huge wrong for looking out for the best interests of my customer over the interests of the bank," says Dalisha Dyal, who worked as a TD teller in Vancouver for four years.

Another TD teller says the relentless pressure to meet sales numbers is so severe, the teller is currently on a medical leave.

[our emphasis]

55. The March 6, 2017 Report also describes part of the Pressure Selling Program:

The three bank employees who initially contacted Go Public explained how tellers upsell customers: when a customer keys in a PIN at the teller counter, a gold star lights up on the teller's computer screen, indicating that "Advice Opportunities Exist."

When a teller clicks on the star, products and services the customer hasn't purchased pop up, such as overdraft protection, credit card or line of credit.

Each time a teller gets a customer to sign up for one of those options, it counts towards meeting their sales targets.

"Customers are prey to me," says the teller. "I will do anything I can to make my [sales] goal."

(...)

*Documents obtained by Go Public show tellers who fail to reach their sales goals are called "underperformers" and placed on a "Performance Improvement Plan," which involves daily coaching and monitoring by managers. **If sales performance doesn't improve, employees are warned "employment could be terminated."***

(...)

The TD employees say elderly customers are a common target because they've grown to trust their tellers over the years.

"There are elderly customers who have fought for us — they have an army pension," says the teller.

"And here I am, setting them up with all these service fees and they don't have a clue what's going on."

*Both the managers sometimes work the front counter and **say there's a big push by their branch manager to sign up people for overdraft protection**, so sometimes clients with large balances get it, too.*

"Customers pay enough in service charges," says one manager. "They shouldn't have to worry ... ' What has my teller added to my profile today?"

[our emphasis]

56. The March 6, 2017 Report quotes a TD Branch manager as follows:

***"The higher-ups are also putting more pressure** on us to get tellers to achieve these goals," says the other manager.*

*"And if they don't ... our job is to make sure that they understand **that they're no longer right for this job.**"*

"I feel bad for what they're making me do," she says.

*When the managers expressed concerns to their branch manager and district vice president, they say **they were asked to consider whether they were still "a good fit" for the job.***

[our emphasis]

4. The March 10, 2017 CBC Report

57. On Friday, March 10, 2017, Erica Johnson, posted a follow-up report to the March 6, 2017 Report. The report was entitled: "***We do it because our jobs are at stake: TD bank employees admit to breaking the law for fear of being fired | Hundreds of current and former employees respond to CBC report with stories of pressure to upsell customers***" (the "**March 10, 2017 Report**"), as more fully appears from the CBC news report, communicated herewith as **Exhibit P-11**;

[our emphasis]

58. The March 10, 2017 Report revealed a nationwide systemic practice whereby TD applied extreme pressure on its employees to upsell unnecessary and/or unsolicited services and products to clients in order for these employees to meet their increasingly demanding and unrealistic sales quotas at the risk of losing their jobs;
59. The March 10, 2017 Report states:

*"A CBC report earlier this week about TD employees pressured to meet high sales revenue goals has touched off a firestorm of reaction from TD employees across the country — **some of whom admit they have broken the law at their customers' expense in a desperate bid to meet sales targets and keep their jobs.***

*Hundreds of current and former TD Bank Group employees wrote to Go Public describing a **pressure cooker environment they say is "poisoned," "stress inducing," "insane" and has "zero focus on ethics."***

Some employees admitted they broke the law, claiming they were desperate to earn points towards sales goals they have to reach every three months or risk being fired. CBC has agreed to conceal their identities because their confessions could have legal ramifications."

[our emphasis]

60. As an example of the type of unethical, illegal and predatory practices TD employees resorted to under TD's extreme Pressure Selling Program, the March 10, 2017 Report quotes an employee as follows:

*"**I've increased people's lines of credit by a couple thousand dollars, just to get SR [sales revenue] points,**" said a teller who worked for several years at a TD branch in Windsor, Ont.*

He admits he didn't tell the customers, which is a violation of the federal Bank Act."

*Another teller with over 20 years' experience at an Ontario TD branch said **she has increased customers' overdraft protection amounts without their knowledge, and increased their TD Visa card limits on the sly — all to earn units towards her sales revenue target.***

(...)

*One teller on sick leave described how a manager stood behind her three times a day, **pushing her to sell more.***

(...)

"They just really stress you out and say, 'You're not doing good. I need you to do double the amount you've been doing.' I couldn't sleep. I'd be thinking ... 'What can I do tomorrow to try and get sales?'"

She admits to upgrading customers to a higher fee account without telling them.

[our emphasis]

61. The March 10, 2017 Report also related a TD customer's experience under TD's Pressure Selling Program:

Bev Beaton believes she's been a victim of a TD teller desperate to generate sales revenue.

In January, she noticed a service charge on her account for \$29.95. When she called TD to ask about it, she was told it was because she was in an account that required her to keep a minimum monthly balance of \$5,000 or she would be charged that monthly fee.

"I said, 'I did not ask for this account. There's no way I would have asked for this account.' And [the bank employee] said, 'You must have.'"

When Beaton checked her statements, she saw that she'd been moved to the higher fee account last May, but only noticed when her balance dropped below \$5,000 for the first time in December and she was hit with the service charge.

*"I was very annoyed," Beaton said. **"And I think it's dishonest.** Because if I wasn't looking at my statement closely, I wouldn't have noticed the \$29.95."*

[our emphasis]

62. According to the March 10, 2017 Report, TD also imposed extreme pressure on its wealth management employees to upsell customers:

"Financial advisers also admit deceit

TD employees tell Go Public the pressure to deceive customers extends beyond front-line staff to workers handling wealth management.

'I have invested clients' savings into funds which were not suitable, because of the ... pressure.' – TD financial adviser

"We do it because our jobs are at stake," said one financial adviser in Ontario.

She admits she acted in her own interest rather than that of her clients after being put on a Performance Improvement Plan — a program that involves coaching and could result in termination of employment — because she wasn't meeting her sales targets.

"I have invested clients' savings into funds which were not suitable, because of the SR [sales revenue] pressure," she said. "That's very difficult to admit. I didn't do this lightly."

(...)

*A former TD financial adviser in Calgary says **he would downplay the risk of products that gave him a big boost towards his quarterly goal.***

"I was forced to lie to customers, just to meet the sales revenue targets," he said.

"I was always asked by my managers to attach unnecessary products or services to the original sale just to increase the sales points — and not care if the customer can afford it or not."

A financial adviser who worked for six years in Nanaimo, B.C., before quitting says "people eventually snap, or lose all sense of themselves and do anything to close sales."

"I have had multiple conversations with branch and district managers. These conversations led to my being asked if I was still the right fit for the job."

[our emphasis]

5. The Aftermath of the Corrective Disclosures

63. On Friday March, 10, 2017, following the posting of the March 6, 2017 Report which revealed the existence of the Pressure Selling Program and the March 10, 2017 Report which revealed the extent to which the Pressure Selling Program was pervasive within TD's ranks and throughout TD's branches across the country, TD's shares listed on the TSX fell 5.55% losing \$3.88 to close at \$66.00, down from the previous day's close at \$69.88, as more fully appears from TD's TSX share price history for the month of March 2017, communicated herewith as **Exhibit P-12**;
64. On that same day, TD's shares listed on the NYSE fell 5.31% losing \$2.67 to close at \$49.02, down from the previous day's close at \$51.77, as more fully appears from TD's NYSE share price history for the month of March 2017, communicated herewith as **Exhibit P-13**;
65. As well, following the Corrective Disclosures, CBC posted an online article entitled: "**TD Bank shares post worst day since 2009 after CBC story | Bank analyst notes TD's 'Wells Fargo moment' as reaction to CBC story reverberates**", (the "**March 10th News Article**") as more fully appears from the March 10th News Article, communicated herewith as **Exhibit P-14**;

[our emphasis]

66. The March 10th News Article states:

*“Shares in Toronto-Dominion Bank posted **their biggest loss since 2009** on Friday after the publication of a second CBC News story uncovering how employees admit they have broken the law at their customers' expense in a desperate bid to meet sales targets and keep their jobs.*

*TD stock closed at \$66, falling \$3.88 a share — more than 5.5 per cent — **its worst day since the end of the financial crisis, and enough to wipe out all of its gains for 2017.***

In two stories on Monday and Friday, CBC's Go Public team outlined how TD employees have come under pressure to sell products that may not be appropriate for customers, and in at least one case increased a customer's overdraft and credit limits without their knowledge.”

[our emphasis]

67. On the tenth day following the Corrective Disclosures, TD's shares, listed on the TSX, closed at \$65.60, as more fully appears from TD's TSX share price history for the month of March 2017, communicated herewith as Exhibit P-12;

6. The response by TD's CEO, Defendant Masrani

68. On March 30, 2017, TD held its Annual Meeting of Common Shareholders. As it appears from the transcript of this meeting, communicated herewith as **Exhibit P-21**, in response to the March 6 and March 10, 2017 Reports, Defendant Masrani stated the following:

“Since the stories first appeared, I have joined my leadership team in listening to our colleagues from across the country on this issue. So many of them have told us that these reports are not their experience, not their TD, and I agree. (...) Still, the experiences expressed by some of our colleagues concern me. They go against the very fiber of our culture. (...) With regards to our sales practices, we know that out of approximately 13 million Canadian personal banking customers and more than 100 million interactions, through tens of thousands of TD Bankers last year, we received a few hundred complaints related to our sales practices that were escalated beyond the initial channel. Of those that impacted our customers, less than 100 had compliance concerns, and these were investigated and addressed.

[our emphasis]

69. At an event named the *TD Bank Group Scotiabank Financials Summit* held on September 6, 2017, as it appears from the transcript of this event communicated herewith as **Exhibit P-22**, Defendant Masrani stated the following:

“There were alleged complaints against the Bank. And my view was that one issue, one complaint, in this regard is one too many, and we're going to take this very seriously. I did publicly say that I don't believe that this is a widespread problem of unethical behavior or misselling at TD.”

70. As it appears from Exhibits P-21 and P-22, Defendant Masrani never categorically denied the allegations concerning TD's sales practices as disclosed in the March 6 and March 10, 2017 Reports. Rather, Defendant Masrani stated that he did not believe that the problem was widespread;

D. THE MISREPRESENTATIONS

1. The Increased Revenue

71. The statements made by the Defendants in TD's Impugned Documents pertaining to increased earnings in TD's Canadian Retail Business Segment consistently failed and omitted to disclose that this increase was driven by an unethical, illegal and predatory Pressure Selling Program which generated extreme pressure on, and induced its employees to (i) sell clients products and services that were unnecessary, inappropriate and/or unsolicited, (ii) upsell clients more expensive products and services although these were unnecessary, inappropriate and/or unsolicited, (iii) omit to disclose to clients the true costs or risks involved in products, services or programs offered, (iv) illegally subscribe, enroll or upgrade clients into programs or services without their knowledge or consent (such as overdraft protection), and (v) illegally increase clients' credit lines without their knowledge or consent;
72. The Pressure Selling Program and its effects are material facts which the Defendants omitted to disclose in the Impugned Documents and constitute misrepresentations;
73. As well, as further particularized below, the Defendants made materially false and misleading statements in the Impugned Documents, which constituted further misrepresentations;

2. TD's business practices, risks management and ethics policies

74. Throughout the Impugned Documents released by the Defendants during the Class Period, the Defendants repeatedly allege that TD provides outstanding and consistent legendary customer service experience, disciplined risk management practices and the providing of the right products, services, tools, and solutions to serve clients' needs, the whole, as particularized hereinabove at paragraphs 24, 26, 27, 29, 30, 34, 36, 37, 38, 40, 41 and 43;
75. The Impugned Documents state that TD is an extraordinary place to work and that its priorities are to keep its focus on productivity to enhance the customer experience, employee satisfaction, and shareholder value, as particularized hereinabove at paragraphs 27, 30, 34, 38, 41 and 43;
76. The foregoing statements are materially false and misleading;
77. With its unethical, illegal and predatory Pressure Selling Program, TD caused its employees to violate TD's own Code of Conduct at the expense of TD's customers;
78. As particularized in paragraphs 26, 31, 32, 33, 34, 37, 42, 43 and 44 hereinabove, TD undertook to (i) deliver disciplined risk management practices, (ii) provide oversight monitoring and analysis of unfair, deceptive or abusive acts or practices, (iii) encourage employees to challenge and escalate issues to management when they believed TD was

operating outside of its risk parameters, (iv) task the senior executive team and the reputational risk committee to review and assess business and corporate initiatives and activities across TD where significant reputational risk profiles have been identified and escalated, (v) ensure that escalated initiatives and activities have received adequate senior management and subject matter expert review for reputational risk implications, and (vi) only take risks if they can be understood and managed, do not expose the enterprise to any significant single loss events, and do not risk harming the TD brand;

79. As it appears from the Corrective Disclosures and the Confidential Affidavits CA-1 and CA-2 (Exhibits P-17 and P-18), TD consistently failed to provide adequate monitoring and oversight of identified and escalated reputational risk matters or unfair, deceptive and abusive acts or practices. In fact, as it appears from paragraphs 56 and 62 hereinabove, employees or managers who attempted to escalate such matters were threatened and asked if they were “still a right fit for the job”;
80. Furthermore, as particularized in paragraphs 32, 42, 43 and 45, hereinabove, TD states that ethical behaviour is a key component of TD's risk culture. TD's Code of Conduct guides employees and directors to make decisions that meet the highest standards of integrity, professionalism, and ethical behaviour;
81. Despite TD's foregoing statements, the Pressure Selling Program established and put into effect by TD rendered its own Code of Conduct and ethics policies impracticable and/or obsolete;
82. In light of the foregoing, the statements made by the Defendants in the Impugned Documents concerning customer service experience, its ability to provide adequate products, services, tools, and solutions to clients, the optimizing of shareholder value through disciplined risk management practices, reputational risk monitoring and oversight, ethical behaviour and responsible banking, are materially false and misleading;

3. The Individual Defendants

83. At all material times during the Class Period, the Individual Defendants signed Certificates of Annual Filings attesting to the accuracy of the 2015 and 2016 MD&As, as more fully appears from the Certifications of Annual Filings for 2015 and 2016, communicated herewith as **Exhibits P-15 en liasse**. As well, the Individual Defendants signed Certificates of Interim Filings attesting to the accuracy of the interim quarterly MD&As, as more fully appears from the Certifications of Interim Filings for the interim quarterly MD&As communicated herewith as **Exhibits P-16 en liasse**;
84. *Inter alia*, the Individual Defendants certified that:
 - a. they had reviewed the annual and interim filings of TD, which include the MD&As;
 - b. based on their knowledge, having exercised reasonable diligence, the MD&As did not contain any untrue statement of a material fact or omit to state a material fact required to be stated or that was necessary to make a statement not misleading in light of the circumstances under which it was made;
 - c. based on their knowledge, having exercised reasonable diligence, the financial information included in the annual and interim filings fairly presented in all material

respects the financial condition, financial performance and cash flows of TD, as of the date of and for the periods presented in the annual filings;

- d. they were responsible for establishing and maintaining TD's disclosure controls and procedures as well as TD's internal controls over financial reporting;
 - e. they had designed the disclosure controls and procedures, or caused them to be designed under their supervision, to provide reasonable assurance that material information relating to TD was made known to them by others, particularly during the period in which the documents were being prepared and information required to be disclosed by TD in its annual filings, interim filings or other reports filed or submitted under securities legislation was recorded, processed, summarized and reported within the time periods specified by Securities Legislation;
 - f. they had designed the internal controls over financial reporting, or caused it to be designed under their supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with GAAP or the international financial reporting standards ("IFRS"), as applicable; and
 - g. in respect of TD's annual filings, the Individual Defendants had evaluated, or caused to be evaluated under their supervision, the effectiveness of TD's internal controls over financial reporting and TD's disclosure controls and procedures, at the financial year end and TD had disclosed in its annual filings their conclusions about the effectiveness of TD's controls;
85. The Individual Defendants oversaw the preparation and reporting of TD's Impugned Documents and knew or should have known of the misrepresentations particularized at paragraphs 71 to 82 hereinabove;
86. The Individual Defendants authorized, permitted or acquiesced to the release of the Impugned Documents, which contained the misrepresentations particularized at paragraphs 71 to 82 hereinabove;

4. TD's internal controls

87. During the Class Period, in TD's 2015 and 2016 MD&As, the Defendants represented that TD's internal controls, including disclosure controls and procedures, were effective;
88. Such statements were false and/or misleading;
89. At all material times, TD's internal controls and disclosure controls and procedures were ineffective or defective as, despite the Defendants' representations in that regard, the Impugned Documents failed or omitted to reveal material facts concerning TD's Canadian Retail revenue and contained materially false and misleading information regarding TD's business practices, risks management and ethics policies;

E. The Rights of Actions

1. **Statutory right of action for misrepresentation in secondary market disclosures under the QSA**

90. On behalf of The Fund and all members of the Secondary Market Sub-Class, the Representative Plaintiff asserts, as against all Defendants, the right of action found in section 225.8 of the QSA and, if necessary, as applicable, the concordant provisions of the Securities Legislation;
91. As alleged herein and as it appears from Exhibit P-9, The Fund acquired TD's securities during the Class Period and held those securities until the end of the Class Period;
92. As against the Defendants, this claim is being asserted in respect of all Impugned Documents which contained misrepresentations, as particularized at paragraphs 71 to 82 hereinabove, within the meaning of the QSA and the concordant provisions of the Securities Legislation;
93. TD is a reporting issuer in Quebec and is closely and significantly connected to Quebec for the purposes of Title VIII, Chapter II, Divisions I and II of the QSA;
94. TD has been in operation in Canada since 1855. It is the second largest Canadian bank in terms of market capitalization and it offers its financial products and services to nearly 13 million customers through over 1,100 branches located throughout Canada;
95. TD has been in operation in the Province of Quebec since 1860, has approximately 5000 employees in over 130 branches, has more than 780,000 personal, small business and commercial banking customers in the province and, through its Canadian Retail Business Segment, provides personal and commercial banking products and services in Quebec to Quebec residents;
96. TD's Pressure Selling Program was put into effect in Quebec and throughout Canada, TD's Quebec and Canadian employees carried out the actions stated at paragraphs 5 and 51-62 hereinabove, as well as the actions stated in the Confidential Affidavits CA-1 and CA-2 (Exhibits P-17 and P-18) in Quebec and throughout Canada and revenue generated through the Pressure Selling Program was realized in Quebec and throughout Canada;
97. The Impugned Documents were made available in, and consulted by investors from Quebec and throughout Canada;
98. Relying on the Impugned Documents made available in Quebec and throughout Canada, The Fund and the Class Members acquired TD's securities in Quebec;
99. The omissions, materially false and misleading statements and misrepresentations in the Impugned Documents were made available in Quebec and throughout Canada, were consulted in Quebec and throughout Canada and TD caused damages to The Fund and the Class Members, in Quebec and throughout Canada;
100. The Individual Defendants were directors of TD at the time of the release of the Impugned Documents and/or were officers of TD at those times and they authorized, permitted or acquiesced in the release of the Impugned Documents;
101. All Defendants knew, or should have known that the Impugned Documents contained misrepresentations at the time that each was released or, the Defendants deliberately avoided acquiring such knowledge at or before that time;

2. Statutory right of action for misrepresentation in primary market disclosures under the QSA

102. On behalf of all members of the Primary Market Sub-Class, the Representative Plaintiff asserts, as against all Defendants, the right of action found in sections 217 *et seq* of the QSA and, if necessary, the concordant provisions of the other Securities Legislation;
103. This claim is being asserted in respect of all Offerings made during the Class Period which contained misrepresentations including misrepresentations incorporated into such Offerings by way of reference;

3. Article 1457 of the CCQ

104. On behalf of The Fund and all other Class Members, the Representative Plaintiff asserts and pleads, as against all Defendants, the commission of a fault in violation of the general private law duty of diligence they owed the Class Members pursuant to Article 1457 of the CCQ, as particularized herein;
105. The Defendants failed to abide by the rules of conduct incumbent upon them in the circumstances, at law and as reasonably required from them;
106. The Defendants' duties, which they breached, are particularized hereinabove;
107. As against all of the Defendants, on behalf of The Fund, the Representative Plaintiff alleges the commission of the following faults:

The Defendants:

- a. created and put into effect an unethical, illegal and predatory Pressure Selling Program which generated extreme pressure on, and induced TD's employees to violate its Code of Conduct and, at times, the law, the whole, at the expense of TD's customers;
- b. failed to provide adequate response, or any response at all to the escalation, by employees, of matters related to the acts stated in paragraph 5 and 51-62 hereinabove, as well as the actions stated in the Confidential Affidavits CA-1 and CA-2 (Exhibits P-17 and P-18);
- c. knew or should have known that the Pressure Selling Program would have caused, and did in fact cause its employees to carry out the actions stated in paragraph 5 and 51-62 hereinabove, as well as the actions stated in the Confidential Affidavits CA-1 and CA-2 (Exhibits P-17 and P-18);
- d. omitted to state material facts concerning TD's Canadian Retail revenues in the Impugned Documents;
- e. made materially false and misleading statements about TD's business practices, risks management, ethics policies and internal control measures for risk managing;
- f. authorized, permitted or acquiesced in the release of documents which contained the misrepresentations particularized hereinabove; and
- g. released the Impugned Documents while they knew, or should have known that the documents contained misrepresentations at the time each document was released or, deliberately avoided acquiring such knowledge at or before that time;

108. The Defendants committed the foregoing faults and caused the Class Members to suffer significant monetary damages. The Defendants are bound to compensate the Class Members for those losses;

4. The Class Action and the criteria of Article 575 CCP

i. The claims of the Class Members raise identical, similar or related questions of law or fact

109. The present claim raises the following issues of law or fact, common to all Class Members:

- a. Did the Defendants set up and put into effect the Pressure Selling Program?
- b. Did the Pressure Selling Program cause or induce employees to sell and/or upsell clients, or subscribe or enroll clients to TD banking products and services that were unnecessary, inappropriate and/or unsolicited and did the Pressure Selling Program cause or induce employees to misinform, or fail to inform clients as to the risks and appropriateness of these products and services?
- c. During the Class Period, did the Defendants release, or caused to be released, Impugned Documents containing omissions of material fact, materially false and misleading information and/or misrepresentations within the meaning of the QSA and/or, as applicable, the Securities Legislation? If so, what documents contained what misrepresentations?
- d. Did the Representative Plaintiff and the Class Members suffer damages as a result of the Defendants' faults, practices and/or breaches of applicable laws and/or regulations?
- e. Are the Defendants liable for damages suffered by the Class Members and if so, what damages have the Class Members suffered?

ii. The facts alleged appear to justify the conclusions sought

110. As particularized herein, the Defendants violated their legal obligations and their duties and responsibilities to the Class Members and released the Impugned Documents containing misrepresentations;

111. As it appears from the facts alleged herein, The Fund acquired the securities of the Defendant TD during the Class Period and held those securities until the end of the Class Period;

112. The Fund and the Class Members acquired TD's securities at artificially inflated prices;

113. The subsequent public revelation and Corrective Disclosures of the Defendants' misrepresentations caused a significant decline to TD's securities thereby causing damages to The Fund and the Class Members;

114. Accordingly, the facts alleged by the Representative Plaintiff justify the conclusions it seeks in regard to a relief for damages against the Defendants for misrepresentation within the

meaning of the QSA and the Securities Legislation and for the violation of their general private law duties and obligations owed to the Class Members;

iii. The composition of the group makes it difficult or impracticable to apply the rules for mandates to take part in judicial proceedings on behalf of others or for consolidation of proceedings

115. TD is a multinational company having, at all material times to the present action, issued approximately 1,857 million common shares which are publicly traded on the TSX and NYSE stock exchanges;

116. There are thousands of members of the putative Class located throughout Quebec, Canada and the world;

117. In this context, it would be impracticable for each Class Member to bring a separate action;

iv. The Class Member appointed as representative plaintiff is in a position to properly represent the Class Members

118. Majestic is the manager of The Fund and is vested with the full administration powers over The Fund. The Fund purchased and held TD's securities until the end of the Class Period;

118.1. Turn8 acts as the investment advisor to The Fund. At all material times, Turn8 made the investment decisions for The Fund, which included purchasing the TD securities in issue;

119. The Representative Plaintiff understands the requirements of time and dedication required of its role, has sufficient knowledge and understanding of the allegations of the present proposed class action, and is prepared to actively represent the interests of the Class Members and to devote the required resources to carry forward this proposed class action on behalf of the Class;

120. The Representative Plaintiff has no conflict of interest with other Class Members, identifies with the common investor having sufficient knowledge in investing himself or herself on the stock market and is represented by counsel that are experienced at litigating shareholders' claims in class actions against multinational corporations;

FOR THESE REASONS, MAY IT PLEASE THE COURT TO:

AUTHORIZE these proceedings under section 225.4 of the *Quebec Securities Act*,

AUTHORIZE the Class as:

Class and the Class Members are comprised of, other than the Excluded Persons:

- I. **Primary Market Sub-Class:** All persons and entities, wherever they may reside or may be domiciled, who, from December 3, 2015 to March 9, 2017 (inclusively), acquired the Toronto-Dominion Bank's securities in an **Offering** and held some, or all of those securities until the end of the **Class Period**; and

- II. **Secondary Market Sub-Class:** All persons and entities, wherever they may reside or may be domiciled, who, from December 3, 2015 to March 9, 2017 (inclusively), acquired the Toronto-Dominion Bank's securities in the secondary market and held some, or all of those securities until the end of the **Class Period**; and
1. are resident in Canada or were resident in Canada at the time of such acquisition, regardless of the location of the exchange on which they acquired the Toronto-Dominion Bank's securities; or
 2. acquired the Toronto-Dominion Bank's securities in the secondary market in Canada or elsewhere other than in the United States;

NAME Majestic and Turn8 as the Representative Plaintiff;

DECLARE that the following questions of fact and law to be dealt with collectively are:

- a. Did the Defendants set up and put into effect the Pressure Selling Program?
- b. Did the Pressure Selling Program cause or induce employees to sell and/or upsell clients, or subscribe or enroll clients to TD banking products and services that were unnecessary, inappropriate and/or unsolicited and did the Pressure Selling Program cause or induce employees to misinform, or fail to inform clients as to the risks and appropriateness of these products and services?
- c. During the Class Period, did the Defendants release, or caused to be released, Impugned Documents containing omissions of material fact, materially false and misleading information and/or misrepresentations within the meaning of the QSA and/or, as applicable, the Securities Legislation? If so, what documents contained what misrepresentations?
- d. Did the Representative Plaintiff and the Class Members suffer damages as a result of the Defendants' faults, practices and/or breaches of applicable laws and/or regulations?
- e. Are the Defendants liable for damages suffered by the Class Members and if so, what damages have the Class Members suffered?

AUTHORIZE the class action proceedings to seek the following conclusions:

GRANT this class action on behalf of the Class;

GRANT the Plaintiff's action against the Defendants in respect of the rights of action asserted against the Defendants under Title VIII, Chapter II, Divisions I and II of the QSA and, if necessary, the concordant provisions of the Securities Legislation, and article 1457 of the CCQ;

CONDEMN the Defendants to pay to the Plaintiff and the Class compensatory damages for all monetary losses;

ORDER collective recovery in accordance with articles 595 to 598 of the *Code of Civil Procedure*;

THE WHOLE with interest and additional indemnity provided for in the *Civil Code of Quebec* and with full costs and expenses, including expert fees, notice fees and fees relating to administering the plan of distribution of the recovery in this action;

APPROVE the notice to the Class Members in the form to be submitted to the Court;

ORDER the publication of the notice to the Class Members no later than forty-five (45) days after the date of the judgment authorizing the class proceedings;

ORDER that the deadline for a Class Member to exclude themselves from the class action proceedings shall be sixty (60) days from the publication of the notice to the Class Members;

THE WHOLE WITH COSTS including experts' fees.

MONTREAL, this 15th day of October, 2018

(S) Faguy & Co.

FAGUY & CO. BARRISTERS & SOLICITORS INC.

Attorneys ad litem for the Representative Plaintiff