



Ontario
Securities
Commission

Commission des
valeurs mobilières
de l'Ontario

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**IN THE MATTER OF THE SECURITIES ACT
R.S.O. 1990, c. S.5, AS AMENDED**

- and -

**TD WATERHOUSE PRIVATE INVESTMENT COUNSEL INC., TD WATERHOUSE CANADA
INC. and TD INVESTMENT SERVICES INC.**

**SETTLEMENT AGREEMENT BETWEEN STAFF OF THE COMMISSION and TD
WATERHOUSE PRIVATE INVESTMENT COUNSEL INC., TD WATERHOUSE CANADA
INC. and TD INVESTMENT SERVICES INC.**

PART I – INTRODUCTION

1. The Ontario Securities Commission (the “Commission”) will issue a Notice of Hearing to announce that it will hold a hearing to consider whether, pursuant to sections 127 and 127.1 of the *Securities Act*, R.S.O. 1990, c. S-5, as amended (the “Act”), it is in the public interest for the Commission to make certain orders in respect of TD Waterhouse Private Investment Counsel Inc. (“TDWPIC”), TD Waterhouse Canada Inc. (“TD Waterhouse”) and TD Investment Services Inc. (“TDIS”).
2. TDWPIC is a corporation incorporated pursuant to the laws of Canada and is registered with the Commission as an Exempt Market Dealer and Portfolio Manager.
3. TD Waterhouse is a corporation incorporated pursuant to the laws of Ontario. TD Waterhouse is a member of the Investment Industry Regulatory Organization of Canada (“IIROC”) and is registered with the Commission as an Investment Dealer. The matters described below with regard to TD

Waterhouse pertain only to the business units within TD Waterhouse that provide advice, namely Financial Planning and Private Investment Advice.

4. TDIS is a corporation incorporated pursuant to the laws of Ontario. TDIS is a member of the Mutual Fund Dealers Association of Canada (“MFDA”) and is registered with the Commission as a Mutual Fund Dealer.
5. TDWPIC, TD Waterhouse and TDIS (the “TD Entities”) are subsidiaries of The Toronto-Dominion Bank.
6. During the period May to September 2014, the TD Entities self-reported to Staff of the Commission (“Commission Staff”) four separate matters. During Commission Staff’s investigation of these four matters, the TD Entities provided prompt, detailed and candid co-operation to Commission Staff, Staff of the IROC (“IROC Staff”) and Staff of the MFDA (“MFDA Staff”).
7. As summarized at paragraph 13 below and more fully described in Part III below, it is Commission Staff’s position that in relation to each of the four matters, there were inadequacies in the TD Entities’ systems of controls and supervision which formed part of their compliance systems (the “Control and Supervision Inadequacies”) which resulted in clients paying, directly or indirectly, excess fees that were not detected or corrected by the TD Entities in a timely manner.

PART II - JOINT SETTLEMENT RECOMMENDATION

8. Commission Staff and the TD Entities have agreed to a settlement of the proceeding initiated in respect of the TD Entities by Notice of Hearing dated November 7, 2014 (the “Proceeding”) on the basis of the terms and conditions set out in this settlement agreement (“Settlement Agreement”). Commission Staff have consulted with IROC Staff and MFDA Staff in relation to the underlying facts which are the subject matter of this Settlement Agreement.

9. Pursuant to this Settlement Agreement, Commission Staff agree to recommend to the Commission that the Proceeding be resolved and disposed of in accordance with the terms and conditions contained herein.
10. It is Commission Staff's position that:
 - a. the statement of facts set out by Commission Staff in Part III below, which is based on an investigation carried out by Commission Staff following the self-reporting by the TD Entities, is supported by the evidence reviewed by Commission Staff and the conclusions contained in Part III are reasonable; and
 - b. it is in the public interest for the Commission to approve this Settlement Agreement, having regard to the following considerations:
 - (i) Commission Staff's allegations are that each of the TD Entities failed to establish, maintain and apply procedures to establish controls and supervision:
 - A. sufficient to provide reasonable assurance that the TD Entities, and each individual acting on behalf of the TD Entities, complied with securities legislation, including the requirement to deal fairly with clients with regard to fees; and
 - B. that were reasonably likely to identify the non-compliance described in A. above at an early stage and that would have allowed the TD Entities to correct the non-compliant conduct in a timely manner;
 - (ii) Commission Staff do not allege, and have found no evidence of dishonest conduct by the TD Entities;
 - (iii) the TD Entities discovered and self-reported the Control and Supervision Inadequacies to Commission Staff;

- (iv) during the investigation of the Control and Supervision Inadequacies following the self-reporting by the TD Entities, the TD Entities provided prompt, detailed and candid cooperation to Commission Staff, IIROC Staff and MFDA Staff;
- (v) the TD Entities had formulated an intention to pay appropriate compensation to clients and former clients in connection with their report of the first three Control and Supervision Inadequacies to Commission Staff and, thereafter, the TD Entities co-operated with Commission Staff with a view to providing appropriate compensation to clients and former clients that were harmed by any of the four Control and Supervision Inadequacies (the “Affected Clients”);
- (vi) as part of this Settlement Agreement, the TD Entities have agreed to pay appropriate compensation to the Affected Clients, in accordance with a plan submitted by the TD Entities to Commission Staff and presented to the Commission (the “Compensation Plan”). As at the date of this Settlement Agreement, the TD Entities anticipate paying compensation to Affected Clients of over \$13,500,000 in the aggregate in respect of the first three Control and Supervision Inadequacies and additional compensation in respect of the fourth Control and Supervision Inadequacy which has not yet been quantified;
- (vii) the Compensation Plan prescribes, among other things:
 - A. the detailed methodology to be used for determining the compensation to be paid to the Affected Clients;
 - B. the detailed methodology to be used for determining the compensation to be paid to the Affected Clients representing the time value of money in respect of any monies owed by the TD Entities to the Affected Clients;

- C. the approach to be taken with regard to contacting and making payments to the Affected Clients;
- D. the timing to complete the various steps included in the Compensation Plan;
- E. a \$25 *de minimis* exception (the aggregate of such *de minimis* amounts as at the date of this Settlement Agreement is approximately \$17,400 for the first three Control and Supervision Inadequacies as compared to \$13,500,000 in compensation to be paid for the first three Control and Supervision Inadequacies, which amount will be donated to the Prosper Canada Centre for Financial Literacy);
- F. the approach to be taken to any remaining funds that are not paid out to Affected Clients after the steps included in the Compensation Plan have been fully implemented. In that regard, the Compensation Plan provides that if the TD Entities are not able to contact any former Affected Clients, notwithstanding the steps described in the Compensation Plan, each TD Entity will use reasonable efforts to locate any Affected Clients who are entitled to payment of \$200 or more including directory searches, internet searches, and the employment of third parties to assist in the search. If the TD Entity determines that a client is deceased but does not know the identity of the personal representative of the client's estate, and the estate is entitled to more than \$400, the TD Entity shall make reasonable efforts to identify the personal representative of the deceased client. Subject to any applicable unclaimed property legislation, any amounts remaining undistributed to non-located clients by December 31, 2016 will be donated to the Prosper Canada Centre for Financial Literacy;

- G. the resolution of client inquiries through an escalation process; and
 - H. regular reporting to a manager or deputy director in the Compliance and Registrant Regulation Branch of the Commission (“OSC Manager”) detailing the TD Entities’ progress with respect to the implementation of the Compensation Plan, including with regard to the resolution of client inquiries;
- (viii) at the request of Commission Staff, the TD Entities conducted an extensive review of their other Canadian business lines to identify whether there were any other instances of inadequacies in their systems of controls and supervision leading to clients directly paying excess fees or indirectly paying excess fees on mutual funds managed by TD Asset Management Inc. (“TDAM”), a subsidiary of The Toronto-Dominion Bank; based on this review, the TD Entities have advised Commission Staff that there are no other instances other than the four instances of Control and Supervision Inadequacies described herein;
- (ix) the TD Entities are taking corrective action including implementing additional controls and supervision to address the Control and Supervision Inadequacies including establishing procedures and implementing controls, supervisory and monitoring systems designed to prevent the re-occurrence of the Control and Supervision Inadequacies in the future (the “Enhanced Control and Supervision Procedures”) and, as part of this Settlement Agreement, the TD Entities are required to report to the OSC Manager on the development and implementation of the Enhanced Control and Supervision Procedures;

- (x) the TD Entities have agreed to make a voluntary payment of \$600,000 to the Commission to advance the Commission's mandate of protecting investors and fostering fair and efficient capital markets and to make a further voluntary payment of \$50,000 to be allocated to costs;
- (xi) the total agreed settlement amount of \$650,000 will be paid by wire transfer before the commencement of the hearing before the Commission to approve this Settlement Agreement, which payment is conditional upon approval of this Settlement Agreement by the Commission; and
- (xii) the terms of this Settlement Agreement are appropriate in all the circumstances, including mitigating factors and the principles of general and specific deterrence. Commission Staff are of the view that the voluntary payments referred to above in addition to the amounts to be paid as compensation to Affected Clients by the TD Entities will emphasize to the marketplace that Commission Staff expect registrants to have compliance systems with appropriate controls and supervision in place which:
 - A. provide reasonable assurance that registrants, and each individual acting on behalf of registrants, are complying with securities legislation, including the requirement to deal fairly with clients including, without limitation, with regard to fees; and
 - B. are reasonably likely to allow registrants to identify and correct non-compliance with securities legislation in a timely manner.

11. The TD Entities neither admit nor deny the accuracy of the facts or the conclusions of Commission Staff as set out in Part III of this Settlement Agreement.

12. The TD Entities agree to this Settlement Agreement and to the making of an order in the form attached as Schedule “A”.

PART III – COMMISSION STAFF’S STATEMENT OF FACTS AND CONCLUSIONS

A. Overview

13. During the period May to September 2014, the TD Entities self-reported the Control and Supervision Inadequacies to Commission Staff, IROC Staff and MFDA Staff. The Control and Supervision Inadequacies are summarized as follows:
 - a. Certain TDAM managed mutual funds with embedded advisor fees held in fee-based accounts with TDWPIC were incorrectly included in account fee calculations, thereby resulting in some clients paying excess fees during the period November 2000 to February 2014;
 - b. Certain investment products with embedded advisor fees held in fee-based accounts with TD Waterhouse were incorrectly included in account fee calculations, thereby resulting in some clients paying excess fees during the period December 2007 to September 2014;
 - c. Beginning in 2005, some clients of TD Waterhouse and TDIS were not advised that they qualified for a lower Management Expense Ratio (“MER”) series of a TDAM managed mutual fund within the TD Managed Assets Program and indirectly paid excess fees when they invested in the higher MER series of the same mutual fund; and
 - d. Beginning in 2010, some clients of TD Waterhouse were not advised that they qualified for a lower MER series of TDAM managed mutual funds (other than those within the TD Managed Assets Program) and indirectly paid excess fees when they invested in the higher MER series of the same mutual fund.

14. In each instance, the Control and Supervision Inadequacies continued undetected for an extended period of time. The TD Entities discovered the Control and Supervision Inadequacies following inquiries made and/or reviews conducted by the relevant TD Entities.
15. As set out in greater detail below in the section entitled Mitigating Factors, the TD Entities have taken several remedial steps in order to correct the Control and Supervision Inadequacies.

B. The Control and Supervision Inadequacies

16. Each of the four instances of Control and Supervision Inadequacies is described below.

(a) Excess asset management fees paid by some TDWPIC clients

17. TDWPIC is a discretionary asset manager. TDWPIC charges clients a direct fee based on the client's assets under management (the "PIC Fee").
18. For some TDWPIC clients, assets under management historically included Investor series units in certain TDAM managed mutual funds (the "I Series Funds"). The I Series Funds have higher MERs than other series of the same fund because they include, as part of their MERs, embedded advisor fees that are payable to advisors.
19. I Series Funds were available for purchase by TDWPIC's clients from the inception of TDWPIC in November 2000 until May 2011. TDWPIC's account and service agreements and related disclosure documents provided to clients up to May 2011 specified that certain TD mutual funds would be excluded from the calculation of the PIC Fee. TDWPIC's intention had always been to exclude the I Series Funds from the calculation of the PIC Fee. As a result, TDWPIC applied an operational procedure to exclude these assets from the calculation of the PIC Fee.
20. In July 2012, during a review requested by TDWPIC's internal compliance department, TDWPIC identified that its operational procedure to exclude the I Series Funds from the calculation of the PIC

Fee was not consistently applied and, as a result, some TDWPIC clients were charged excess PIC Fees. Specifically:

- a. TDWPIC determined that it did not have adequate systems of internal controls and supervision in place to ensure that the I Series Funds were consistently excluded from the calculation of the PIC Fee;
- b. TDWPIC determined that its internal controls failed to detect this Control and Supervision Inadequacy in a timely manner; and
- c. TDWPIC took immediate steps to ensure that I Series Funds were consistently excluded from the calculation of the PIC Fee on a going forward basis.

21. An internal investigation was commenced by TDWPIC in July 2012 to determine the extent of the problem and how to compensate clients who paid excess PIC Fees. TDWPIC engaged independent third parties to identify, calculate and validate the amounts to be paid to clients as compensation for the excess PIC Fees paid by the clients. Having taken the steps described above, TDWPIC self-reported this Control and Supervision Inadequacy to Commission Staff in May 2014.
22. TDWPIC has determined that, as a result of this Control and Supervision Inadequacy, approximately 4,680 client accounts were charged excess PIC Fees during the period November 2000 to February 2014.
23. TDWPIC has agreed to compensate the Affected Clients of these client accounts in accordance with the Compensation Plan, which requires that TDWPIC pay to the Affected Client:
 - a. the excess PIC Fees;
 - b. an amount representing the applicable sales taxes charged on the excess PIC Fees; and

- c. an amount representing the time value of money in respect of the excess PIC Fees from the time the excess PIC Fees were charged to November 30, 2014, based on composite index returns on a balanced portfolio (the “PIC Fees Foregone Investment Opportunity Cost”).

24. As at the date of this Settlement Agreement, TDWPIC has determined that the total amount to be paid as compensation to these Affected Clients pursuant to the Compensation Plan, inclusive of the PIC Fees Foregone Investment Opportunity Cost, is approximately \$1,700,000.

(b) Excess asset management fees paid by some TD Waterhouse clients

25. TD Waterhouse is an investment dealer that provides investment and wealth management services. In some cases, clients of TD Waterhouse Private Investment Advice have fee-based accounts and TD Waterhouse charges these clients a direct fee based on the client’s assets under management (the “Asset Management Fee”).
26. For some TD Waterhouse fee-based clients, assets under management included investment products that had embedded advisor fees included in the product’s MER. Similar to TDWPIC and consistent with representations made to TD Waterhouse clients, TD Waterhouse’s intention had been to exclude from the calculation of the Asset Management Fee, any series of any security that included an embedded advisor fee.
27. In or about November 2013, as a result of inquiries made by its investment advisers, TD Waterhouse discovered that a number of investment products had been incorrectly excluded from the calculation of the Asset Management Fee in some fee-based accounts, such that clients were undercharged. At that time, TD Waterhouse also discovered, in other cases, that certain investment products with embedded advisor fees had been incorrectly included in the calculation of the Asset Management Fee in some fee-based accounts, such that clients were overcharged. As a result, starting in December 2007, some TD Waterhouse clients were charged excess Asset Management Fees. At that time,

- a. TD Waterhouse determined that it did not have adequate systems of internal controls in place to ensure that investment products with embedded advisor fees were appropriately classified in the TD Waterhouse billing system to ensure their consistent exclusion from the calculation of the Asset Management Fee;
 - b. TD Waterhouse determined that its internal controls failed to identify this Control and Supervision Inadequacy in a timely manner; and
 - c. Commencing in November 2013, TD Waterhouse took steps to ensure that investment products with embedded advisor fees were excluded from the calculation of the Asset Management Fee on a going forward basis.
28. Thereafter, TD Waterhouse took steps to determine the extent of the problem and how to compensate Affected Clients. TD Waterhouse self-reported this Control and Supervision Inadequacy to IROC Staff in June 2014 and to Commission Staff in July 2014.
29. TD Waterhouse has determined that, as a result of this Control and Supervision Inadequacy, approximately 1,840 client accounts were charged excess Asset Management Fees during the period December 2007 to September 2014.
30. TD Waterhouse has agreed to compensate the Affected Clients of these client accounts in accordance with the Compensation Plan, which requires that TD Waterhouse pay to the Affected Clients:
 - a. the excess Asset Management Fees;
 - b. an amount representing the applicable sales taxes charged on the excess Asset Management Fees; and
 - c. an amount representing the time value of money in respect of the excess Asset Management Fees from the time the excess Asset Management Fees were charged to November 30, 2014,

based on a simple interest rate of 5% per annum calculated monthly (the “Asset Management Fees Foregone Investment Opportunity Cost”).

31. Where Asset Management Fees were undercharged to the client, the benefit of those undercharges will not be set off against any compensation amounts paid to the client. The undercharges will also not otherwise be charged to Affected Clients or any other clients.
32. As at the date of this Settlement Agreement, TD Waterhouse has determined that the total amount to be paid as compensation to these Affected Clients pursuant to the Compensation Plan is approximately \$780,000, inclusive of the Asset Management Fee Foregone Investment Opportunity Cost.

(c) Excess management fees paid by some clients of TD Waterhouse and TDIS who invested in the TD Managed Assets Program

33. The TD Managed Assets Program consists of sixteen mutual funds managed by TDAM.
34. The TD Managed Assets Program mutual funds are available in different series. The MER differs for each series of the same mutual fund with the MER being lower for series with higher minimum investment thresholds (the “Premium Series”).
35. Beginning in November 2005 and up to June 30, 2014, the majority of the TD Managed Assets Program mutual funds offered Premium series that were generally available to TD Waterhouse and TDIS clients where the amount invested was \$250,000 or greater. The MERs for the Premium Series were generally 50 basis points lower than the other series available for the same mutual fund.
36. In September 2013, TD Waterhouse conducted a review of the minimum investment thresholds (the “Threshold Review”) with respect to the TD Managed Assets Program which resulted in a lowering of the minimum investment thresholds for the Premium Series to \$150,000 beginning in July, 2014.

In July, 2014, the Premium Series of the TD Managed Assets Program were no longer offered by TDIS.

37. In the context of the Threshold Review, TD Waterhouse discovered, in September 2013, that certain client accounts invested in a TD Managed Assets Program mutual fund that appeared to qualify for a Premium Series of the mutual fund were not invested in that series and therefore the holders of those client accounts did not benefit from the Premium Series' lower MER with regard to their investment in the mutual fund. TDIS became aware of the issue in or around April 2014. Specifically,
 - a. TD Waterhouse and TDIS determined that they did not have adequate systems of internal controls and supervision in place to ensure that when a purchase or transfer of investments in a TD Managed Assets Program mutual fund exceeded the minimum investment thresholds, the client was consistently advised that a lower MER Premium Series of the same mutual fund was available to the client;
 - b. TD Waterhouse and TDIS determined that their internal controls failed to identify this Control and Supervision Inadequacy in a timely manner; and
 - c. TD Waterhouse and TDIS began to implement enhancements to their processes to help identify clients that meet the minimum investments thresholds required to qualify for the Premium Series.
38. TD Waterhouse and TDIS engaged independent third parties to identify, calculate and validate the amounts to be paid to clients as appropriate compensation.
39. TD Waterhouse and TDIS self-reported this Control and Supervision Inadequacy to Commission Staff, IIROC Staff and MFDA Staff in July 2014.

40. TD Waterhouse has determined that there are approximately 3,960 client accounts that ought to have been invested in the Premium series of the same mutual fund but were not from November 2005 to the date of this Settlement Agreement.
41. In accordance with the Compensation Plan, in respect of those client accounts, TD Waterhouse has agreed to pay:
 - a. an amount representing the return that the Affected Client would have received on any units held by the client of a TD Managed Asset Program mutual fund had the client been invested in the Premium Series units of that mutual fund in a timely manner upon becoming eligible to invest in the Premium Series, less the return actually received by the Affected Client on any Non-Premium Series units held in that mutual fund for the entire period in which the Affected Client qualified for the Premium Series units of that mutual fund (the “Difference in Return”); and
 - b. an amount representing the time value of money in respect of the Difference in Return in respect of any Non-Premium Series units from the date of sale, conversion, transfer or disposition of such units for any periods up to November 30, 2014, based on a simple interest rate of 5% per annum calculated monthly (the “TD MAP Foregone Investment Opportunity Cost”).
42. On this basis, TD Waterhouse has determined that the total compensation to be paid to Affected Clients as a result of this Control and Supervision Inadequacy is approximately \$11,080,000, inclusive of the TD MAP Foregone Investment Opportunity Cost, where applicable.
43. TDIS has determined that there were approximately 40 current client accounts that held TD Managed Assets Program mutual funds as at April 30, 2014 that ought to have been invested in the Premium Series of the mutual fund but were not. TDIS has agreed to compensate these current clients on the

same basis as set out above in relation to TD Waterhouse clients. TDIS has determined that the total compensation to be paid to these current clients pursuant to the Compensation Plan is approximately \$291,000.00 inclusive of Foregone Investment Opportunity Cost, based on a simple interest rate of 5% per annum calculated monthly, where applicable.

44. In addition, TDIS has also agreed to compensate current TDIS clients and former TDIS clients (where the former client's account data is available on the electronic database currently used by TDIS) that formerly held a TD Managed Assets Program mutual fund with TDIS and ought to have been invested in the Premium Series of the mutual fund but were not. TDIS has agreed to quantify compensation and compensate these Affected Clients on the same basis as set out above. In addition, as part of the Compensation Plan, TDIS will provide regular reporting to the OSC Manager regarding the compensation of these Affected Clients in accordance with the Compensation Plan.
45. In the event that any former TDIS client, whose account data is unavailable on the TDIS electronic database, contacts TDIS and provides information in support of a claim that the client would have been entitled to compensation sufficient to allow TDIS, acting reasonably, to verify such claim, TDIS will make reasonable efforts to verify such claim and compensate the client in the same manner as an Affected Client.

(d) Excess management fees paid by some TD Waterhouse clients who invested in other TDAM managed mutual funds where Premium Series were available

46. In addition to the TD Managed Assets Program mutual funds, TD Waterhouse offers other mutual funds managed by TDAM to their clients which are available in a Premium Series with a lower MER to investors that meet certain minimum investment thresholds. TDIS offers one such fund, however no MER differential currently exists. TD Waterhouse offers five mutual funds managed by TDAM for which a Premium Series became available in September 2010 and two additional mutual funds managed by TDAM for which a Premium Series became available in May 2013 (collectively the

“Other TDAM Managed Mutual Funds”). In each case, the minimum investment thresholds for the Premium Series of the Other TDAM Managed Mutual Funds are generally \$100,000 and the MER is 0 to 52 basis points lower than the MER for the equivalent non-premium series for the same mutual fund.

47. In June 2014, following the Threshold Review for the TD Managed Assets Program, TD Waterhouse conducted a review of the Other TDAM Managed Mutual Funds and identified that a Control and Supervision Inadequacy similar to the one described above for the TD Managed Assets Program existed for these Other TDAM Managed Mutual Funds. In particular, TD Waterhouse determined that certain client accounts that appeared to qualify for the Premium Series of the same mutual fund were not invested in that series and therefore the holders of those client accounts did not benefit from the Premium Series’ lower MER with regard to their investments in the Other TDAM Managed Mutual Funds. Specifically,
 - a. TD Waterhouse determined that it did not have adequate systems of internal controls and supervision in place to ensure that clients were consistently advised that the lower MER Premium Series of the same mutual fund was available to them when their purchase or transfer of investments in one of these Other TDAM Managed Mutual Funds brought them over the minimum investment thresholds;
 - b. TD Waterhouse determined that its internal controls failed to identify this Control and Supervision Inadequacy in a timely manner; and
 - c. TD Waterhouse began to implement enhancements to its processes to help identify clients that meet the minimum investments thresholds required to qualify for the Premium Series.
48. TD Waterhouse self-reported this Control and Supervision Inadequacy to Commission Staff and IROC Staff in September 2014.

49. As part of the Compensation Plan, TD Waterhouse has agreed to pay compensation to Affected Clients as a result of this Control and Supervision Inadequacy following a calculation methodology that is the same as the methodology employed to calculate compensation for Affected Clients of the TD Managed Assets Program described in paragraph 41 above. The calculation and validation of compensation payments to clients will be performed by an independent third party. Any differences in the method of payment will be subject to approval by the OSC Manager. In addition, as part of the Compensation Plan, TD Waterhouse is required to provide regular reporting to the OSC Manager regarding the compensation of these Affected Clients in accordance with the Compensation Plan.

C. Breaches of Ontario Securities Law

50. In each of the four instances of Control and Supervision Inadequacies, the relevant TD Entities failed to establish, maintain and apply procedures to establish controls and supervision:
- a. sufficient to provide reasonable assurance that the TD Entities, and each individual acting on behalf of the TD Entities, complied with securities legislation, including the requirement to deal fairly with clients with regard to fees; and
 - b. that were reasonably likely to identify the non-compliance described in a. above at an early stage and that would have allowed the TD Entities to correct the non-compliant conduct in a timely manner.
51. As a result, each of the four instances of Control and Supervision Inadequacies constituted a breach of section 11.1 of National Instrument 31-103 – *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (“NI 31-103”). In addition, the failures in the TD Entities’ systems of controls and supervision associated with the Control and Supervision Inadequacies were contrary to the public interest.

D. Mitigating Factors

52. Commission Staff's allegations are that each of the TD Entities failed to establish, maintain and apply procedures to establish controls and supervision:

- a. sufficient to provide reasonable assurance that the TD Entities, and each individual acting on behalf of the TD Entities, complied with securities legislation, including the requirement to deal fairly with clients with regard to fees; and
- b. that were reasonably likely to identify the non-compliance described in a. above at an early stage and that would have allowed the TD Entities to correct the non-compliant conduct in a timely manner

and that these failures resulted in breaches of Ontario securities law.

53. Commission Staff do not allege, and have found no evidence of dishonest conduct by the TD Entities.

54. The TD Entities discovered and self-reported the Control and Supervision Inadequacies to Commission Staff.

55. During the investigation of the Control and Supervision Inadequacies following the self-reporting by the TD Entities, the TD Entities provided prompt, detailed and candid cooperation to Commission Staff, IIROC Staff and MFDA Staff.

56. The TD Entities had formulated an intention to pay appropriate compensation to clients and former clients in connection with their report of the first three Control and Supervision Inadequacies to Commission Staff and, thereafter, the TD Entities co-operated with Commission Staff with a view to providing appropriate compensation to the Affected Clients that were harmed by any of the four Control and Supervision Inadequacies.

57. As part of this Settlement Agreement, the TD Entities have agreed to pay appropriate compensation to the Affected Clients, in accordance with the Compensation Plan. As at the date of this Settlement Agreement, the TD Entities anticipate paying compensation to Affected Clients of over \$13,500,000 in the aggregate in respect of the first three Control and Supervision Inadequacies and additional compensation in respect of the fourth Control and Supervision Inadequacy which has not yet been quantified.
58. The Compensation Plan prescribes, among other things:
- a. the detailed methodology to be used for determining the compensation to be paid to the Affected Clients;
 - b. the detailed methodology to be used for determining the compensation to be paid to the Affected Clients representing the time value of money in respect of any monies owed by the TD Entities to the Affected Clients;
 - c. the approach to be taken with regard to contacting and making payments to the Affected Clients;
 - d. the timing to complete the various steps included in the Compensation Plan and the person(s) responsible for implementation of these steps;
 - e. a \$25 *de minimis* exception (the aggregate of such *de minimis* amounts as at the date of this Settlement Agreement is approximately \$17,400 for the first three Control and Supervision Inadequacies as compared to \$13,500,000 in compensation to be paid for the first three Control and Supervision Inadequacies, which amount will be donated to the Prosper Canada Centre for Financial Literacy);
 - f. the approach to be taken to any remaining funds that are not paid out to Affected Clients after the steps included in the Compensation Plan have been fully implemented. In that regard, the

Compensation Plan provides that if the TD Entities are not able to contact any former Affected Clients, notwithstanding the steps described in the Compensation Plan, each TD Entity will use reasonable efforts to locate any Affected Clients who are entitled to payment of \$200 or more including directory searches, internet searches, and the employment of third parties to assist in the search. If the TD Entity determines that a client is deceased but does not know the identity of the personal representative of the client's estate, and the estate is entitled to more than \$400, the TD Entity shall make reasonable efforts to identify the personal representative of the deceased client. Subject to any applicable unclaimed property legislation, any amounts remaining undistributed to non-located clients on December 31, 2017 will be donated to the Prosper Canada Centre for Financial Literacy;

- g. the resolution of client complaints through an escalation process; and
- h. regular reporting to the OSC Manager detailing the TD Entities' progress with respect to the implementation of the Compensation Plan, including with regard to the resolution of client inquiries.

59. At the request of Commission Staff, the TD Entities conducted an extensive review of their other Canadian business lines to identify whether there were any other instances of inadequacies in their systems of controls and supervision leading to clients directly paying excess fees or indirectly paying excess fees on TDAM managed mutual funds; based on this review, the TD Entities have advised Commission Staff that there are no other instances other than the four instances of Control and Supervision Inadequacies described herein.
60. The TD Entities are taking corrective action including implementing the Enhanced Control and Supervision Procedures and, as part of this Settlement Agreement, the TD Entities are required to

report to the OSC Manager on the development and implementation of the Enhanced Control and Supervision Procedures.

61. The TD Entities have agreed to make a voluntary payment of \$600,000 to the Commission to advance the Commission's mandate of protecting investors and fostering fair and efficient capital markets and to make a further voluntary payment of \$50,000 to be allocated to costs.
62. The TD Entities will pay the total agreed settlement amount of \$650,000 by wire transfer before the commencement of the hearing before the Commission to approve this Settlement Agreement, which payment is conditional upon approval of this Settlement Agreement by the Commission.
63. The terms of settlement are appropriate in all the circumstances, including mitigating factors and the principles of general and specific deterrence. Commission Staff are of the view that the voluntary payments referred to above in addition to the amounts to be paid as compensation to Affected Clients by the TD Entities will emphasize to the marketplace that Commission Staff expect registrants to have compliance systems with appropriate controls and supervision in place which:
 - a. provide reasonable assurance that registrants, and each individual acting on behalf of registrants, are complying with securities legislation, including the requirement to deal fairly with clients, including, without limitation, with regard to fees; and
 - b. are reasonably likely to allow registrants to identify and correct non-compliance with securities legislation in a timely manner.

E. The TD Entities' Undertaking

64. By signing this Settlement Agreement, the TD Entities undertake to:
 - a. pay compensation to the Affected Clients in accordance with the Compensation Plan and to report to the OSC Manager in accordance with the Compensation Plan;

- b. make a voluntary payment of \$50,000 to be allocated to the costs of the investigation in accordance with subsection 3.4(2)(a) of the Act; and
 - c. make a further voluntary payment of \$600,000 to be designated for allocation to or for the benefit of third parties, or for use by the Commission for the purpose of educating investors or promoting or otherwise enhancing knowledge and information of persons regarding the operation of the securities and financial markets in accordance with subsections 3.4(2)(b)(i) or (ii) of the Act.
- (the “Undertaking”)

PART IV – TERMS OF SETTLEMENT

65. The TD Entities agree to the terms of settlement listed below and consent to the Order attached hereto, pursuant to subsection 127(1) and section 127.1 of the Act, that:
- a. the Settlement Agreement is approved;
 - b. within 90 days of the Order approving this Settlement Agreement, the TD Entities shall provide to the OSC Manager, revised written policies and procedures for each of the TD Entities (the “Revised Policies and Procedures”) that, to the satisfaction of the OSC Manager, are responsive to any remaining issues raised by Staff as at the date of the Order approving this Settlement Agreement with regard to the TD Entities’ policies and procedures to establish the Enhanced Control and Supervision Procedures;
 - c. within 8 months of receiving confirmation from the OSC Manager that the Revised Policies and Procedures satisfy the remaining issues raised by Staff (the “Confirmation Date”), the TD Entities shall submit a letter (the "Attestation Letter"), signed by the Ultimate Designated Person (“UDP”) and the Chief Compliance Officer (“CCO”) for each of the TD Entities, to the OSC Manager, on whether the Enhanced Control and Supervision Procedures are (i) being

followed by the TD Entities; (ii) working appropriately; and (iii) being adequately administered and enforced by the TD Entities for the six month period commencing from the Confirmation Date;

- d. the Attestation Letter shall be accompanied by a report which provides a description of the testing performed to support the conclusions contained in the Attestation Letter;
- e. the TD Entities shall submit such additional reports as may be requested by the OSC Manager for the purpose of satisfying the OSC Manager that the TD Entities have complied with subparagraphs (c)(i), (ii) and (iii) above;
- f. any of the TD Entities or Commission Staff may apply to the Commission for directions in respect of any issues that may arise with regard to the implementation of subparagraphs (b) to (e) above; and
- g. the TD Entities shall comply with the Undertaking to:
 - i. pay compensation to the Affected Clients in accordance with the Compensation Plan and to report to the OSC Manager in accordance with the Compensation Plan;
 - ii. make a voluntary payment of \$50,000 to be allocated to the costs of the investigation in accordance with subsection 3.4(2)(a) of the Act; and
 - iii. make a further voluntary payment of \$600,000 to be designated for allocation to or for the benefit of third parties, or for use by the Commission for the purpose of educating investors or promoting or otherwise enhancing knowledge and information of persons regarding the operation of the securities and financial markets in accordance with subsections 3.4(2)(b)(i) or (ii) of the Act.

66. The TD Entities agree to make the payments described above by wire transfer before the commencement of the hearing before the Commission to approve this Settlement Agreement.

PART V - COMMISSION STAFF COMMITMENT

67. If the Commission approves this Settlement Agreement, Commission Staff will not commence any proceeding under Ontario securities law in relation to the Commission Staff's Statement of Facts and Conclusions set out in Part III of this Settlement Agreement, subject to the provisions of paragraph 68 below and except that with respect to paragraph 59 above, nothing in this Settlement Agreement shall be interpreted as limiting Commission Staff's ability to commence proceedings against the TD Entities in relation to any control and supervision inadequacies leading to clients paying excess fees other than the four Control and Supervision Inadequacies described herein.
68. If the Commission approves this Settlement Agreement and any of the TD Entities fails to comply with any of the terms of this Settlement Agreement, Commission Staff may bring proceedings under Ontario securities law against the TD Entities. These proceedings may be based on, but are not limited to, the Commission Staff's Statement of Facts and Conclusions set out in Part III of this Settlement Agreement as well as the breach of this Settlement Agreement.

PART VI - PROCEDURE FOR APPROVAL OF SETTLEMENT

69. The parties will seek approval of this Settlement Agreement at a public hearing before the Commission scheduled for November 13, 2014, or on another date agreed to by Commission Staff and the TD Entities, according to the procedures set out in this Settlement Agreement and the Commission's Rules of Procedure.
70. Commission Staff and the TD Entities agree that this Settlement Agreement will form all of the evidence that will be submitted at the settlement hearing on the TD Entities' conduct, unless the parties agree that additional evidence should be submitted at the settlement hearing.
71. If the Commission approves this Settlement Agreement, the TD Entities agree to waive all rights to a full hearing, judicial review or appeal of this matter under the Act.

72. If the Commission approves this Settlement Agreement, the TD Entities will not make any public statement that is inconsistent with this Settlement Agreement or with any additional evidence submitted at the settlement hearing. In addition, the TD Entities agree that they will not make any public statement that there is no factual basis for this Settlement Agreement. Nothing in this paragraph affects the TD Entities' testimonial obligations or the right to take legal or factual positions in other investigations or legal proceedings in which the Commission and/or Commission Staff is not a party or in which any provincial or territorial securities regulatory authority in Canada and/or its Commission Staff is not a party ("Other Proceedings") or to make public statements in connection with Other Proceedings.
73. Whether or not the Commission approves this Settlement Agreement, the TD Entities will not use, in any proceeding, this Settlement Agreement or the negotiation or process of approval of this Settlement Agreement as the basis for any attack on the Commission's jurisdiction, alleged bias, alleged unfairness, or any other remedies or challenges that may otherwise be available.

PART VII - DISCLOSURE OF SETTLEMENT AGREEMENT

74. If the Commission does not approve this Settlement Agreement or does not make the order attached as Schedule "A" to this Settlement Agreement:
- a. this Settlement Agreement and all discussions and negotiations between Commission Staff and the TD Entities before the settlement hearing takes place will be without prejudice to Commission Staff and the TD Entities; and
 - b. Commission Staff and the TD Entities will each be entitled to all available proceedings, remedies and challenges, including proceeding to a hearing of the allegations contained in the Statement of Allegations. Any proceedings, remedies and challenges will not be affected by this Settlement Agreement, or by any discussions or negotiations relating to this Settlement Agreement.

75. All of the parties will keep the terms of this Settlement Agreement confidential until the commencement of the public hearing to obtain approval of this Settlement Agreement by the Commission. Any obligations of confidentiality shall terminate upon the commencement of the public settlement hearing. If, for whatever reason, the Commission does not approve this Settlement Agreement, the terms of this Settlement Agreement remain confidential indefinitely, unless Commission Staff and the TD Entities otherwise agree or if required by law.

PART VIII - EXECUTION OF SETTLEMENT AGREEMENT

76. This agreement may be signed in one or more counterparts which, together, constitute a binding agreement.

77. A facsimile copy or other electronic copy of any signature will be as effective as an original signature.

Dated this 7th day of November, 2014

Witness "David A. Hausman" TD Waterhouse Private Investment Counsel Inc.

"Paul Whitehead Jr."

Per: _____
Paul Whitehead, Jr.

Witness "David A. Hausman" TD Waterhouse Canada Inc.

"Leovigildo Salom Jr."

Per: _____
Leovigildo Salom, Jr.

“David A. Hausman” TD Investment Services Inc.
Witness

“Thomas Dyck”

Per: Thomas Dyck

“Kelly Gorman”

For Tom Atkinson
Director, Enforcement Branch



Ontario
Securities
Commission

Commission des
valeurs mobilières
de l'Ontario

22nd Floor
20 Queen Street West
Toronto ON M5H 3S8

22e étage
20, rue queen ouest
Toronto ON M5H 3S8

SCHEDULE "A"

**IN THE MATTER OF THE *SECURITIES ACT*,
R.S.O. 1990, c. S.5, AS AMENDED**

- AND -

**TD WATERHOUSE PRIVATE INVESTMENT COUNSEL INC.,
TD WATERHOUSE CANADA INC. and TD INVESTMENT SERVICES INC.**

**ORDER
(Subsections 127(1) and 127(2) and section 127.1)**

WHEREAS on November 7, 2014, the Ontario Securities Commission (the "Commission") issued a Notice of Hearing pursuant to subsections 127(1) and 127(2) and section 127.1 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act") in relation to the Statement of Allegations filed by Staff of the Commission ("Commission Staff") on November 7, 2014 with respect to TD Waterhouse Private Investment Counsel Inc. ("TDWPIC"), TD Waterhouse Canada Inc. ("TD Waterhouse") and TD Investment Services Inc. ("TDIS") (collectively, the "TD Entities") relating to four allegations of control and supervision inadequacies which resulted in clients of the TD Entities paying excess fees (the "Control and Supervision Inadequacies");

AND WHEREAS Commission Staff are satisfied that the TD Entities discovered and self-reported the Control and Supervision Inadequacies to Commission Staff;

AND WHEREAS Commission Staff are satisfied that during the investigation of the Control and Supervision Inadequacies by Commission Staff, the TD Entities provided prompt, detailed and candid cooperation to Commission Staff, IROC Staff and MFDA Staff;

AND WHEREAS Commission Staff are satisfied that the TD Entities had formulated an intention to pay appropriate compensation to clients and former clients in connection with their report of the first three Control and Supervision Inadequacies to Commission Staff;

AND WHEREAS Commission Staff are satisfied that thereafter, the TD Entities co-operated with Commission Staff and agreed to pay appropriate compensation to clients and former clients that were harmed by any of the four Control and Supervision Inadequacies (the “Affected Clients”), in accordance with a plan submitted by the TD Entities to Commission Staff (the “Compensation Plan”);

AND WHEREAS the TD Entities entered into a Settlement Agreement with Commission Staff dated November 7, 2014 (the “Settlement Agreement”) in which the TD Entities and Commission Staff agreed to a proposed settlement of the proceeding commenced by the Notice of Hearing dated November 7, 2014, subject to approval by the Commission;

AND WHEREAS as part of the Settlement Agreement, the TD Entities undertake to:

- a. pay compensation to the Affected Clients in accordance with the Compensation Plan and to report to the OSC Manager in accordance with the Compensation Plan;
- b. make a voluntary payment of \$50,000 to be allocated to the costs of the investigation in accordance with subsection 3.4(2)(a) of the Act; and
- c. make a further voluntary payment of \$600,000 to be designated for allocation to or for the benefit of third parties, or for use by the Commission for the purpose of educating investors or promoting or otherwise enhancing knowledge and information of persons regarding the operation of the securities and financial markets in accordance with subsections 3.4(2)(b)(i) or (ii) of the Act.

(the “Undertaking”)

AND WHEREAS the Notice of Hearing issued on November 7, 2014 also announced that the Commission proposed to hold a hearing to consider whether it is in the public interest to approve the Settlement Agreement;

AND UPON reviewing the Settlement Agreement, the Notices of Hearing and the Statement of Allegations of Commission Staff and upon hearing submissions of counsel for the TD Entities and from Commission Staff;

AND WHEREAS the Commission is of the opinion that it is in the public interest to make this order;

IT IS HEREBY ORDERED THAT:

- a) the Settlement Agreement is approved;
- b) within 90 days of the Order approving the Settlement Agreement, the TD Entities shall provide to the OSC Manager, revised written policies and procedures for each of the TD Entities (the “Revised Policies and Procedures”) that, to the satisfaction of the OSC Manager, are responsive to any remaining issues raised by Staff as at the date of the Order approving this Settlement Agreement with regard to the TD Entities’ policies and procedures to establish the Enhanced Control and Supervision Procedures;
- c) within 8 months of receiving confirmation from the OSC Manager that the Revised Policies and Procedures satisfy the remaining issues raised by Staff (the “Confirmation Date”), the TD Entities shall submit a letter (the "Attestation Letter"), signed by the Ultimate Designated Person (“UDP”) and the Chief Compliance Officer (“CCO”) for each of the TD Entities, to the OSC Manager, on whether the Enhanced Control and Supervision Procedures are (i) being followed by the TD Entities; (ii) working appropriately; and (iii) being adequately administered and enforced by the TD Entities for the six month period commencing from the Confirmation Date;

- d) the Attestation Letter shall be accompanied by a report which provides a description of the testing performed to support the conclusions contained in the Attestation Letter;
- e) the TD Entities shall submit such additional reports as may be requested by the OSC Manager for the purpose of satisfying the OSC Manager that the TD Entities have complied with subparagraphs (c)(i), (ii) and (iii) above;
- f) any of the TD Entities or Commission Staff may apply to the Commission for directions in respect of any issues that may arise with regard to the implementation of subparagraphs (b) to (e) above; and
- g) the TD Entities shall comply with the Undertaking to:
 - i. pay compensation to the Affected Clients in accordance with the Compensation Plan and to report to the OSC Manager in accordance with the Compensation Plan;
 - ii. make a voluntary payment of \$50,000 to be allocated to the costs of the investigation in accordance with subsection 3.4(2)(a) of the Act; and
 - iii. make a further voluntary payment of \$600,000 to be designated for allocation to or for the benefit of third parties, or for use by the Commission for the purpose of educating investors or promoting or otherwise enhancing knowledge and information of persons regarding the operation of the securities and financial markets in accordance with subsections 3.4(2)(b)(i) or (ii) of the Act.

DATED at Toronto, Ontario this day of November, 2014
