



Ontario
Securities
Commission

Commission des
valeurs mobilières
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**IN THE MATTER OF
THE TORONTO-DOMINION BANK**

STATEMENT OF ALLEGATIONS

(Subsection 127(1) and Section 127.1
of the *Securities Act*, RSO 1990, c. S.5)

A. OVERVIEW

1. The foreign exchange (“FX”) markets are among the largest and most liquid markets in the world.¹ Their integrity is of central importance to the broader capital markets, including the Ontario capital markets. Over a period of at least three years, from 2011 to 2013 (the “Material Time”), The Toronto-Dominion Bank (“TD”) failed to have sufficient supervision and controls in its FX trading business. Additionally, despite actions taken by TD in November 2013 to impose a ban on multi-dealer chatrooms, as described below certain compliance monitoring issues continued into 2015. TD did not sufficiently promote a culture of compliance in the FX trading business, which allowed FX traders to behave in a manner which put TD’s economic interests ahead of the interests of its customers, other market participants and the integrity of the capital markets. Failures of this nature put customers at risk of harm and undermine market integrity. TD’s failures in this regard were contrary to the public interest.

2. TD’s failure to have sufficient supervision and controls in its FX trading business allowed the inappropriate sharing of confidential customer information by TD FX traders with FX traders at other competitor firms on a regular basis. Staff (“Staff”) of the Ontario Securities Commission (the “Commission”) have identified many hundreds of prohibited disclosures throughout 2011-

¹ The daily average volume turnover of the global FX market was over USD 5 trillion in April 2013 according to the Bank for International Settlements (BIS) Triennial Central Bank Survey 2013.

2013. In many of the prohibited disclosures, confidential customer information was shared by TD FX traders with other participants in the chatroom. In other instances, the prohibited disclosures came from a chatroom participant from another institution which allowed the TD FX traders to gain a potential advantage in the market and over traders at other firms who did not have access to this information.² The disclosures included detailed information about the customer orders such as trade sizes, timing, price, or stop-loss levels.

3. TD appeared to rely primarily on its front office³ FX trading supervisors and their delegates, who were responsible for the first line of defence, to identify, assess and manage risks concerning the disclosure of confidential customer information. The front office failed to adequately discharge these responsibilities with regard to obvious risks associated with confidentiality and conflicts of interest. These failings occurred in circumstances where some of those responsible for managing front office matters were aware of and/or at times involved in the inappropriate disclosures described herein.

4. Staff expect firms trading in FX to identify, assess and manage appropriately the risks of non-compliance with the *Securities Act*⁴ (the “Act”) and risks to the integrity of the capital markets. Staff also expect firms to promote a culture of compliance where their personnel adhere to high ethical standards and ensure their behaviour does not put customers and the integrity of the capital markets at risk. Firms must be vigilant about detecting, thwarting and addressing potential market abuse activities, including behaviours where market participants use their position to gain an inappropriate advantage over other market participants.

5. Given that the markets for FX transactions are interconnected as spot transactions are part of the basis upon which the value of FX forwards, swaps and options are determined, and given the importance of the FX markets and their impact on the broader capital markets, it is vital to

² Although Staff is not alleging specific violations as described below, or suggesting that there is evidence of such misconduct, it is helpful to describe generally the types of misconduct that gives rise to market integrity issues. For the purpose of providing guidance to market participants, types of misconduct could include front running, trading ahead, proprietary position, or triggering stops.

³ Front Office means TD’s FX Trading Desk.

⁴ RSO 1990, c S.5.

fostering confidence in the capital markets that market participants like TD ensure honest and responsible conduct by its employees in the FX trading business.

B. FACTS

Staff of the Enforcement Branch of the Commission (“**Enforcement Staff**”) make the following allegations of fact:

(1) Background

6. TD is a Schedule 1 Bank under the *Bank Act* (Canada).⁵ During the Material Time, and at present, TD Securities (“TDS”), an unincorporated division of TD, engaged in the purchase and sale of foreign currencies with customers and for itself (“FX Trading”), as defined below.

7. In the Material Time, TD's FX business was based primarily in Toronto. For some of the Material Time, TD also had trading or sales desks in London, Singapore and New York. In the Material Time, TD took positions in spot transactions, forwards, swaps and over-the-counter options.

8. The foreign exchange business at TDS was focused entirely on institutional and corporate customers.

9. During the Material Time, TD primarily participated in the above FX transactions with customers and for TD's own account (“proprietary trading”). Making profitable trades could be dependent on correctly assessing the direction of the market for various currency pairs.

10. The FX markets are primarily over-the-counter markets. Accordingly, a bank's profitability and ability to manage business risk in its FX Trading business was dependent on the quality of information its traders possessed. Individual traders sought to understand macroeconomic factors affecting currency rates. There was also an advantage to knowing “market flow” including which institutions were buying or selling which currencies in significant amounts and details of those trades.

⁵ SC 1991, c. 46.

11. Exchanging “market colour” including economic analysis relating to the movement of currencies was acceptable. However, during the Material Time, traders inappropriately sought and disclosed specific transaction details, to gain an advantage in the market, which led to the chatroom misconduct described below.

12. The frequent flow of information between traders of different firms using various communication platforms increases the risk of traders sharing confidential information. It is therefore particularly important that financial institutions exercise sufficient control and monitoring of such communications.

(2) Chatroom Misconduct

13. It was common practice during most of the Material Time for FX traders at firms to use electronic messaging services, such as chatrooms on Bloomberg, to communicate with FX traders at other firms. While the use of such communication tools is not in itself inappropriate, the frequent and significant flow of information between traders at different firms increased the potential risk of traders engaging in improper activity, including, amongst other things, the sharing of confidential customer information.

14. TD FX traders were involved in several large chatrooms involving FX traders from other international banks (“Multi-Dealer Chatrooms”) in addition to bi-lateral chats. One of these bi-lateral chats involved a Managing Director in TD’s FX Trading business, TD Managing Director A. Staff have identified many hundreds of prohibited disclosures throughout 2011-2013.

15. Participation in chatrooms with traders from other firms had a profit motive. For example, in a Multi-Dealer Chatroom with FX traders from other firms, a TD FX trader based in London, TD Trader A, wrote “*profit is profit*” and “*no-one ever got fired for making cash*”. TD Trader A also wrote in a chat to an FX trader at another large Canadian bank: “*u should be over 2 bucks up on my ideas and info this year*”.

16. TD had a number of policies and procedures in place during the Material Time that applied to FX Trading. The disclosure of confidential customer information to other traders and third parties was contrary to TD’s policies and accepted industry standards.

17. During the Material Time, certain TD FX traders regularly provided confidential information to, and received confidential information from, the traders of other financial institutions, including in respect of the existence of customer stop loss orders. This sharing of confidential information occurred in Multi-Dealer Chatrooms and in bi-lateral chats.

18. All TD traders understood that the sharing of specific customer names was unequivocally prohibited. While traders were encouraged to seek and use “market flow” and “market colour” in the course of their trading, there was no clear indication as to what, aside from customer names, was impermissible and what was permitted. Consequently, confidential information including specific transaction details was disclosed by TD traders to individuals at other institutions. The disclosure of such information in some instances was a breach of confidentiality and created the potential risk that this information could be used for the trader’s benefit and to the customer’s detriment.

19. TD Managing Director A communicated in a chatroom with one individual from another financial institution, who was also a former colleague. These individuals shared information in a manner which was, at times, inconsistent with market integrity. For example, TD Managing Director A disclosed the following information:

“fyi..we have stop at 97...from a guy that alwyas [sic] has stop behind some large offers...we have stops above figure and big one at 35-40 area”

20. Given TD Managing Director A's longstanding personal relationship with the other individual, he believed that the individual would not use the information being provided to the detriment of TD or its customers (and there is no evidence of such conduct). In some instances, TD Managing Director A was sharing confidential information with his former colleague in order to determine whether customer positions could be appropriately filled or netted outside of the market. However, the disclosure of this information by TD Managing Director A was a breach of TD's policies and a breach of confidentiality.

21. The following is a TD trader disclosing information about a customer stop loss order to traders at other firms in a Multi-Dealer Chatroom:

TD Trader A: I have decent stop below 20 eur fyi

Bank A Trader: ta

Bank B Trader: a weak one or one that been there a while

TD Trader A: very fresh

Bank B Trader: just sitting there ready to be popped

...

Bank B Trader: ill let my 24 bid ride a few pips then⁶

22. The sharing of confidential information was a two-way street. For example, on January 10, 2013, a trader from another firm inappropriately disclosed information about a “huge” option that was expiring the next day to TD Trader A:

Bank A Trader: between u s

Bank A Trader: there is huge 13240 tom exp

TD Salesperson A: ok

TD Trader A: ta

23. TD Managing Director A confirmed during this investigation that information about specific barriers should not be disclosed and that it was something that he would refer to compliance.

24. Despite confirming that information about specific barriers should not be disclosed, on February 29, 2012, TD Managing Director A disclosed information about a barrier option he had a “piece of” to another FX trader in a bi-lateral chat:

Bank A Trader: hearing from barx, very large barrier in usdcad at .9850. they dont have it. they are hearing it

TD Managing Director A: we have a piece of it 6 days til expiry

TD Managing Director A: on the one we have

25. On April 30, 2012, TD Managing Director A disclosed and received confidential customer information with an FX trader at another firm:

⁶ In this chat, TD Trader A has disclosed confidential information about a stop and Bank B Trader appears to be using this information to inform his market strategy to make a profit. This behaviour could undermine market integrity because Bank B Trader appears to be using confidential information to gain an advantage over the rest of the market.

TD Managing Director A: lot of small but dodgy sellers popping in up here above 60 with tight stops

TD Managing Director A: i.e. wacking 60-64 with stops at 70...

Bank A Trader: thks i have very little here

TD Managing Director A: more of same coming..in..we literally have about 5 diff guys that tend to be well informed with stops above 70 and just got short here...they not generally right in long term...but would guess someone has a lot to go between 65 and 70

Bank A Trader: cool...i have stops 40 dow to 30 program type guys who would be long post number

Bank A Trader: would like to buy it down thee

26. This illustrates that once information is shared, the risk created is impossible to control as it can be further disclosed to a potentially unlimited chain of recipients.

27. The tone from the top of TD's FX Trading business permitted traders to provide confidential information to traders at other firms and receive confidential information in return.

28. TD's disclosures of confidential customer information put the customers at risk of economic loss. The behaviour also undermined market integrity.

29. There is no evidence or indication that TD was involved in any plan or collusion to attempt to manipulate the WM/Reuters benchmark or any other benchmark rate.

(3) TD did not have a sufficient system of controls and supervision in place in relation to its FX Trading business during the Material Time

30. During the Material Time, TD did not have a sufficient system of controls and supervision over its global FX Trading business concerning the disclosure of confidential customer information.

31. TD operated a "three lines of defence" model to manage risk of FX Trading during the Material Time. TD's front office (the first line of defence) had primary responsibility for identification of conduct risks, which they were expected to report to compliance officers for escalation via relevant business control committees. In addition, the front office and Compliance functions participated in risk assessments, which could also result in escalation of issues for

further review by Compliance or Risk (the second line of defence) or Internal Audit (the third line of defence).

32. During the Material Time, there were deficiencies in the first and second lines of defence as outlined below:

- a) Between 2011 and 2012, TD did not appear to recognize the risk that the manner in which its FX Trading business was conducted might result in TD not complying with securities legislation. For example, certain of its policies and procedures indicated that it was not subject to securities legislation.
- b) TD's policies and procedures during the Material Time did not provide sufficient guidance to FX traders. While, as noted above, the policies prohibited disclosing confidential customer information, they were high-level in nature and applied to TD or the capital markets business as a whole. The policies did not specifically address the use of chatrooms or the practical issues FX traders faced daily. For instance, the policies did not provide sufficient guidance on the differences between sharing confidential information, which was prohibited, and sharing acceptable "market colour".
- c) During the Material Time, TD appeared to rely primarily on its front office FX Trading supervisors and their delegates, who were responsible for the first line of defence, to identify, assess and manage risks concerning the disclosure of confidential customer information. The front office did not effectively do so. FX traders were not provided with sufficient guidance on what was or was not acceptable in chatrooms. The front office did not effectively supervise chatroom discussions. In some instances, TD Managing Director A, who was supposed to be supervising conduct, participated in the disclosure of confidential customer information in chatrooms.
- d) Compliance, the second line of defence, failed to sufficiently address the risk posed by the chatrooms. For much of the Material Time, Compliance's role in monitoring the FX Trading business was primarily focused on developing FX trade surveillance and

performing electronic communications surveillance—the limitations of which are noted below.

- e) In November 2013, TD imposed a ban on Multi-Dealer Chatrooms. The ban was documented in TD’s policies and procedures in 2015. From an operational perspective, the ban was insufficient. In chats, various traders discussed alternative means of communication, such as other chatrooms, WhatsApp and the telephone, although Staff have no evidence of traders participating in similar misconduct in a different forum following the chat ban. From the middle of 2012, TD should have been aware of the increased risks associated with information sharing and should have modified its policies and procedures accordingly. It was at this time that regulatory issues surrounding LIBOR highlighted concerns with the risk of collusive behaviour and misuse of confidential information. Some banks began prohibiting Multi-Dealer Chatrooms around this time and these prohibitions were discussed in a chatroom involving TD FX employees in August 2012. The FX regulatory issues first received media attention in mid-2013, supervisors were aware of this and at least one TD trader discussed potential and actual chatroom shut downs in a chatroom. However, TD did not prohibit its traders from participating in Multi-Dealer Chatrooms until November 2013 at the earliest.
- f) As a regular monitoring, supervision or control practice, Compliance relied in part on an inadequate electronic-communications “e-comms” (including email and other messaging platforms) review based on lexicon “hotword” lists and random sampling.

33. A market participant that identifies a problem in respect of its systems of internal control or any other inappropriate activity that has affected (or may affect) investors or compromises the integrity of Ontario’s capital markets, should promptly and fully self-report. TD failed to establish a sufficient compliance system to monitor its FX Trading business. As such, the lack of sufficient controls meant that misconduct went undetected, and TD was unable to remediate, self-report and escalate concerns.

34. There was insufficient training and guidance during the Material Time on how TD’s general policies on confidentiality should be applied specifically to the FX Trading business. TD

FX employees examined by Staff did not have a clear understanding of TD's policies and procedures on information sharing.

35. The insufficient training and guidance about the application of general policies to the FX Trading business increased the risk that confidential customer information could be disclosed.

36. Between 2013 and 2014, TD engaged in an internal review known as the "FX dealer probe" or "lookback" (the "FX Dealer Probe"). The FX Dealer Probe involved collecting and reviewing chats. The FX Dealer Probe was undertaken as a result of international media reports beginning in mid-2013 regarding investigations of global misconduct in the FX markets. None of these reported investigations involved TD or a TD FX trader. There were several issues with the review, including that

- a) it was insufficient in scope,
- b) documentation to support the scope was not retained,
- c) reviewers did not appear to receive specific instructions, and
- d) it applied an inappropriate standard of review that did not consider compliance with TD's own internal policies, whether market integrity was sufficiently safeguarded or whether TD was in compliance with securities legislation.

C. CONDUCT CONTRARY TO THE PUBLIC INTEREST

Enforcement Staff alleges that the following conduct was contrary to the public interest:

37. During the Material Time, TD:

- a) Shared confidential customer information with FX traders at other firms in electronic chatrooms; and
- b) Failed to establish and maintain an adequate compliance system that addressed inappropriate information sharing and thus provided reasonable assurance that TD:
 - (i) complied with securities legislation, and in particular the market manipulation and fraud prohibitions in the Act; and

(ii) did not undermine confidence in the integrity of the FX markets.

38. As a result, TD failed to meet the high standards of conduct expected of a market participant, which potentially put its customers at risk.

D. ORDER SOUGHT

39. Enforcement Staff request that the Commission make an order pursuant to subsection 127(1) and section 127.1 of the Act to approve the settlement agreement dated August 23, 2019 between TD and Enforcement Staff.

40. Staff reserve the right to amend these allegations and to make such further and other allegations as Staff deems fit and the Commission may permit.

DATED this 26th day of August 2019.

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