



Court File No. CV-15-536174CP

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**

THE HONOURABLE  
JUSTICE P. PERELL

)  
)

THURSDAY THE 26<sup>TH</sup> DAY OF  
NOVEMBER, 2020

B E T W E E N:

JOSEPH S. MANCINELLI, CARMEN PRINCIPATO, DOUGLAS SERROUL, LUIGI CARROZZI, MANUEL BASTOS and JACK OLIVEIRA in their capacity as THE TRUSTEES OF THE LABOURERS' PENSION FUND OF CENTRAL AND EASTERN CANADA, and CHRISTOPHER STAINES

Plaintiffs

- and -

ROYAL BANK OF CANADA, RBC CAPITAL MARKETS LLC, BANK OF AMERICA CORPORATION, BANK OF AMERICA, N.A., BANK OF AMERICA CANADA, BANK OF AMERICA NATIONAL ASSOCIATION, BANK OF MONTREAL, BMO FINANCIAL CORP., BMO HARRIS BANK N.A., BMO CAPITAL MARKETS LIMITED, THE BANK OF TOKYO MITSUBISHI UFJ LTD., BANK OF TOKYO-MITSUBISHI UFJ (CANADA), BARCLAYS BANK PLC, BARCLAYS CAPITAL INC., BARCLAYS CAPITAL CANADA INC., BNP PARIBAS GROUP, BNP PARIBAS NORTH AMERICA INC., BNP PARIBAS (CANADA), BNP PARIBAS, CITIGROUP, INC., CITIBANK, N.A., CITIBANK CANADA, CITIGROUP GLOBAL MARKETS CANADA INC., CREDIT SUISSE GROUP AG, CREDIT SUISSE SECURITIES (USA) LLC, CREDIT SUISSE AG, CREDIT SUISSE SECURITIES (CANADA), INC., DEUTSCHE BANK AG, THE GOLDMAN SACHS GROUP, INC., GOLDMAN, SACHS & CO., GOLDMAN SACHS CANADA INC., HSBC HOLDINGS PLC, HSBC BANK PLC, HSBC NORTH AMERICA HOLDINGS INC., HSBC BANK USA, N.A., HSBC BANK CANADA, JPMORGAN CHASE & CO., J.P. MORGAN BANK CANADA, J.P. MORGAN CANADA, JPMORGAN CHASE BANK NATIONAL ASSOCIATION, MORGAN STANLEY, MORGAN STANLEY CANADA LIMITED, ROYAL BANK OF SCOTLAND GROUP PLC, RBS SECURITIES, INC., ROYAL BANK OF SCOTLAND N.V., ROYAL BANK OF SCOTLAND PLC, SOCIÉTÉ GÉNÉRALE S.A., SOCIÉTÉ GÉNÉRALE (CANADA), SOCIÉTÉ GÉNÉRALE, STANDARD CHARTERED PLC, TORONTO DOMINION BANK, TD BANK, N.A., TD GROUP HOLDINGS, LLC, TD BANK USA, N.A., TD SECURITIES LIMITED, UBS AG, UBS SECURITIES LLC, AND UBS BANK (CANADA)

Defendants

Proceeding under the *Class Proceedings Act, 1992*, SO 1992, c 6

**ORDER**  
**(Amendments to Distribution Protocol)**

**THIS MOTION**, made by the Plaintiff for an Order approving the amended Distribution Protocol was heard today via judicial video conference.

**ON READING** the materials filed and on hearing the submissions of Class Counsel, no Defendant having opposed this Order.

**ON BEING ADVISED** that the Defendants do not oppose this Order;

1. **THIS COURT ORDERS** that the Amended Distribution Protocol, attached as Schedule "A", is approved.

ENTERED AT / INSCRIT A TORONTO  
ON / BOOK NO:  
LE / DANS LE REGISTRE NO:

DEC 01 2020

PER / PAR:



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THE HONOURABLE JUSTICE P. PERELL

# SCHEDULE "A"

## CANADIAN FX NATIONAL CLASS ACTION

### AMENDED DISTRIBUTION PROTOCOL

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## DEFINITIONS

1. The following definitions apply for the purposes of this protocol (the “**Distribution Protocol**”):
  - (a) “**Canadian FX National Class Action**” means the actions commenced in the Ontario Superior Court of Justice bearing Court File No. CV-15-536174 and the Superior Court of Quebec bearing Court File No. 200-06-000189-152.
  - (b) “**Claim**” means the claim forms developed for the claims process that a Class Member must complete and submit by the Claims Filing Deadline.
  - (c) “**Claims Administrator**” means the Garden City Group, LLC and any employees of Garden City Group, LLC.
  - (d) “**Claims Filing Deadline**” means the date by which Claims must be submitted in order for Class Members to make a timely Claim.
  - (e) “**Class Counsel**” means Sotos LLP, Koskie Minsky LLP, Siskinds LLP, and Camp Fiorante Matthews Mogerman.
  - (f) “**Class Members**” means all Persons, except Excluded Persons, in Canada who, between January 1, 2003 and December 31, 2013, entered into an FX Instrument either directly or indirectly through an intermediary, and/or purchased or otherwise participated in an investment or equity fund, mutual fund, hedge fund, pension fund or any other investment vehicle that entered into an FX Instrument.
  - (g) “**Class Period**” means January 1, 2003 and December 31, 2013.
  - (h) “**Consulting Expert**” means the expert retained by Class Counsel to assist the Claims Administrator in the review and valuation of claim submissions.
  - (i) “**Courts**” means the Ontario Superior Court of Justice and the Superior Court of Quebec.

- (j) **“Direct Claimant”** means a Person in Canada who between January 1, 2003 and December 31, 2013, entered into an FX Instrument directly with a financial institution, including but not limited to the Defendants. Direct Claimants include all Financial Customers and Non-Financial Customers that entered into an FX Trade with an FX Dealer. Investment Vehicles are excluded from the pool of Direct Claimants.
- (k) **“Direct Claims Fund”** means the fund containing that portion of the Net Proceeds allocated to Direct Claimants.
- (l) **“Eligible Participation Amount”** means the Settlement Transaction Volume adjusted by Relative Damage Factors that account for two transaction characteristics that affect damages: currency pair traded and trade size.
- (m) **“Excluded Persons”** means each defendant in the Canadian FX National Class Action, their parent companies, subsidiaries, and affiliates; provided, however, that Investment Vehicles shall not be considered Excluded Persons.
- (n) **“Financial Customer”** means financial institutions such as mutual funds, pension funds, hedge funds, currency funds, money market funds, leasing companies, insurance companies, financial subsidiaries of corporate firms, and central banks. Financial Customers also include smaller commercial and investment banks that do not participate as reporting dealers in the triennial survey of the Bank of Canada.
- (o) **“Funds”** means the Direct Claims Fund and the Indirect Claims Fund.
- (p) **“FX”** means foreign exchange.
- (q) **“FX Dealer”** means a financial institution that has received authorization from a relevant regulatory body to act as a dealer involved in FX Trading.
- (r) **“FX Exchange-Traded Instruments”** means any and all FX Instruments that were listed for trading through an exchange, including, but not limited to, FX futures contracts and options on FX futures contracts.

- (s) ***“FX Instruments”*** means all instruments traded in the FX Market, including FX spot transactions, outright forwards, FX swaps, FX options, FX futures contracts and options on FX futures contracts.
- (t) ***“FX Market”*** means the market for the exchange of currencies, FX Trading, transactions in FX Instruments and/or FX Exchange-Traded Instruments.
- (u) ***“FX Trading”*** and ***“FX Trades”*** means the trading or exchange of currencies or FX Instruments, regardless of the manner in which such trading occurs or is undertaken, or a decision to withhold bids and offers with respect to FX Instruments.
- (v) ***“Indirect Claimant”*** means a Person in Canada who between January 1, 2003 and December 31, 2013, entered into an FX Instrument indirectly through an intermediary and/or purchased or otherwise participated in an investment or equity fund, mutual fund, hedge fund, or any other investment vehicle that entered into an FX Instrument. Included as Indirect Claimants are Investment Vehicles.
- (w) ***“Indirect Claims Fund”*** means the fund containing that portion of the Net Proceeds allocated to Indirect Claimants.
- (x) ***“Investment Vehicles”*** means any investment entity or pooled investment fund, including, but not limited to, mutual fund families, exchange-traded funds, and fund of funds, in which a Defendant has or may have a direct or indirect interest, or as to which its affiliates may act as an investment advisor, but of which a Defendant or its respective affiliates is not a majority owner or does not hold a majority beneficial interest. For the purposes of Indirect Claims, the definition of “Investment Vehicles” is not limited to those in which a Defendant has or may have a direct or indirect interest.
- (y) ***“Net Proceeds”*** means the portion of the Proceeds remaining after the payments contemplated by the Settlement Agreements and Orders of the Courts.

- (z) ***“Non-Financial Customer”*** means non-financial end-users such as corporations and non-financial government entities.
- (aa) ***“Persons”*** means an individual, corporation, partnership, limited partnership, limited liability company, association, joint stock company, estate, legal representative, trust, trustee, executor, beneficiary, unincorporated association, government or any political subdivision or agency thereof, and any other business or legal entity and their heirs, predecessors, successors, representatives, or assignees.
- (bb) ***“Proceeds”*** means the proceeds of all approved settlements in the Canadian FX National Class Action.
- (cc) ***“Settlement Agreements”*** means the settlement agreements as approved by the Courts in the Canadian FX National Class Action.
- (dd) ***“Settlement Transaction Volume”*** means the gross transaction volume in eligible instruments adjusted by Conversion Ratios that account for an instrument’s sensitivity to the spot rate.
- (ee) ***“U.S. Proceeding”*** means the class action proceeding, in which certain Settling Defendants are named as parties, currently pending in the United States District Court for the Southern District of New York known as *In Re: Foreign Exchange Benchmark Rate Antitrust Litigation*, ECF Case No. 1:13-cv-07789-LGS.

## **GENERAL PROVISIONS**

2. The Net Proceeds shall be distributed in accordance with the rules established by this Distribution Protocol according to a claims-made process to compensate Class Members in the Canadian FX National Class Action.

3. The Claims Administrator will consider any compensation received by Class Members in other private settlements in respect of FX Trades, but shall not consider any compensation received pursuant to class action settlements other jurisdictions, including the U.S. Proceeding.

#### **ALLOCATION OF NET PROCEEDS**

4. The Net Proceeds shall be allocated to the following Funds:

Direct Claims Fund	80%
Indirect Claims Fund	20%

5. Class Members will be entitled to advance claims in the following claims categories:

- (a) Direct Claims; and
- (b) Indirect Claims.

6. Class Members may advance separate claims in respect of more than one claims category, provided those claims are in compliance with the rules applicable to each claims category. Class Members cannot advance a claim for the same FX Trades in different Funds. The claims process will be designed to assist Class Members to easily and efficiently advance their claims in all applicable claims categories.

7. Compensation payable for all valid claims received will be calculated by the Claims Administrator based on the rules for the applicable claims category and the Net Proceeds available in the applicable Fund.

8. The distribution in Quebec will be subject to the application of the *Regulation respecting the percentage withheld by the Fonds d'aide aux actions collectives*, C.Q.L.R. c. R-2.1, r. 2.

9. If there are more monies allocated to any Fund than is required to pay the maximum compensation to Class Members for all valid claims made against that Fund on the terms set out below, Class Counsel may apply such excess to proportionately increase the other Funds. Any excess in the Indirect Claims Fund will be applied to the Direct Claims Fund.

#### **DIRECT CLAIMS FUND AND DIRECT CLAIMANTS**

10. Direct Claims will be advanced by Class Members against the Direct Claims Fund.



11. A Direct Claimant is not required to document their eligible transaction volume unless and until the Claims Administrator chooses to audit said claim.

12. The Claims Administration will undertake the following steps to value a claim, with assistance from the Consulting Expert as necessary:

- (a) **Step #1:** Analyze transaction volume based on the information submitted by the Claimant;
- (b) **Step #2:** If any volumes submitted are rejected, send a deficiency notice and provide an opportunity to cure;
- (c) **Step #3:** Adjust the transaction volume to yield the Claimant's Settlement Transaction Volume;
- (d) **Step #4:** Adjust the Settlement Transaction Volume to yield the Eligible Participation Amount; and,
- (e) **Step #5:** Determine the damages calculation and the payment to the Claimant, having regard to any compensation received in private settlements, but not any regard to any compensation received pursuant to class action settlements other jurisdictions, including the U.S. Proceeding.

***Conversion Ratios***

13. The conduct of the defendants at issue in the class action was aimed at affecting the FX spot price. Therefore, the impact on the various FX Instruments will be adjusted based on the exposure to spot prices.

14. The following Conversion Ratios will be will be applied to FX Instruments:

<b>Instrument</b>	<b>Conversion Ratio</b>
FX Spot Transactions	1.0

<b>Instrument</b>	<b>Conversion Ratio</b>
FX Forwards	1.0
FX Swaps	1.0 for FX forward risk component
OTC FX Options	0.2
FX Futures	1.0
Options on FX Futures	0.2

***Relative Damage Factors: Liquidity and Trade Size***

15. Adjustments for transaction characteristics are called “**Relative Damage Factors**” and include currency pair traded and trade size. The Claimant’s Settlement Transaction Volume, as adjusted by the Relative Damage Factors, results in the Claimant’s Eligible Participation Amount.

*Liquidity: Currency Pair Traded*

16. This Relative Damage Factor recognizes the effect of the liquidity of a currency pair on damage. All else being equal, trades in currency pairs with higher liquidity are likely damaged less per unit of Settlement Transaction Volume than trades in currency pairs with lower liquidity.

17. The following table of currency pairs were measured and grouped based on similar liquidity profiles:

<b>Most Liquid</b>	USDCAD, USDEUR, USDGBP, USDJPY, USDMXN, USDAUD, CADEUR, CADGBP, USDCHF, USDBRL
<b>Liquid</b>	CADJPY, USDSEK, CADSEK, CADAUD, EURGBP, USDNZD, USDNOK, EURJPY, EURAUD, CADCHF, EURSEK, USDZAR, EURNOK, USDKRW, EURCHF, USDTRY, JPYAUD, USDTWD, USDINR, USDRUB, USDPLN, EURPLN, EURDKK, EURHUF, EURTRY
<b>Illiquid</b>	All other currency pairs, except for Pegged.

<b>Pegged</b>	<p><b>No Separate Legal Tender (Hard Peg):</b> Ecuador, El Salvador, Marshall Islands, Micronesia, Palau, Panama, Timor-Leste, Zimbabwe, Kosovo, Montenegro, San Marino, Kiribati, Tuvalu</p> <p><b>Currency Board (Hard Peg):</b> Antigua &amp; Barbuda, Dominica, Grenada, St. Kitts and Nevis, St. Lucia, St. Vincent &amp; Grenadines, Djibouti, Hong Kong, Bosnia Herzegovina, Bulgaria, Brunei Darussalam</p> <p><b>Conventional Peg (Soft Peg):</b> Aruba, Bahamas, Bahrain, Barbados, Belize, Curacao &amp; Sint Maarten, Eritrea, Jordan, Oman, Qatar, Saudi Arabia, South Sudan, Turkmenistan, United Arab Emirates, Venezuela, Benin, Burkina Faso, Cameroon, Cape Verde, Central African Rep., Chad, Congo, Comoros, Cote d'Ivoire, Equatorial Guinea, Gabon, Guinea-Bissau, Mali, Niger, Senegal, Sao Tome &amp; Principe, Togo, Butan, Fiji, Kuwait, Lesotho, Libya, Morocco, Namibia, Nepal, Samoa, Solomon Islands, Swaziland, Tonga</p> <p><b>Stabilized Agreement (Soft Peg):</b> Cambodia, Gyuana, Honduras, Iraq, Lebanon, Maldives, Suriname, Macedonia, Angola, Azerbaijan, Bolivia, Costa Rica, Georgia, Laos, Tajikistan, Trinidad &amp; Tobago, Ukraine, Vietnam, Yemen</p> <p><b>Crawling Peg (Soft Peg):</b> Ethiopia, Honduras, Jamaica, Kazakhstan, Nicaragua, Croatia, Argentina, Botswana, China, Dominican Rep., Egypt, Haiti, Indonesia, Rwanda, Singapore, Tunisia, Uzbekistan</p>
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Trade Size

18. This Relative Damage Factor recognizes the effect of trade size on damage.

Relative Damage Factor Table

19. Claimant's Settlement Transaction Volume will be adjusted to account for the Relative Damage Factors as follows:

Settlement Transaction Volume	Most Liquid	Liquid	Illiquid	Pegged
Less than and not including \$1,000,000	0.53	1.47	3.13	0.09
\$1,000,000-\$19,999,999	1.00	2.91	6.24	0.31
\$20,000,000-\$99,999,999	3.51	7.87	13.5	0.74

<b>Settlement Transaction Volume</b>	<b>Most Liquid</b>	<b>Liquid</b>	<b>Illiquid</b>	<b>Pegged</b>
\$100,000,000 and above	4.82	13.2	22.7	1.52

**Discounts**

20. Trades between January 1, 2003 and November 30, 2007 will be discounted by 40% (“**Time Period Discount**”).

**Formulas**

21. Eligible Participation Amounts will be calculated on a trade-by-trade basis using the following formulas by instrument. In the formulas below, “**EPA**” means Eligible Participation Amount and “**STV**” means Settlement Transaction Volume. The formulas are as follows:

**Spot and Forward EPA** = STV x Relative Damage Factor x Time Period Discount (if applicable)

Where STV = notional x 1.0 Conversion Ratio

**Futures EPA** = STV x Relative Damage Factor x Time Period Discount (if applicable)

Where STV = notional x 1.0 Conversion Ratio

**Swap EPA** = STV x Relative Damage Factor x Time Period Discount (if applicable)

Where STV = **EITHER** mismatch swap proportion x 1.0 Conversion Ratio **OR** notional x 0.001 Conversion Ratio

**OTC Option EPA** = STV x Relative Damage Factor x Time Period Discount (if applicable)

Where STV = notional x 0.2 Conversion Ratio

**Option on Futures EPA** = STV x Relative Damage Factor x Time Period Discount (if applicable)

Where  $STV = \text{notional} \times 0.2 \text{ Conversion Ratio}$

***Payments***

22. Subject to paragraph 23, the Direct Claimants will share the Direct Claimants Fund *pro rata*.
23. Any valid Direct Claim that is less than \$1,000 shall receive a minimum payment of \$1,000. All amounts remaining in the Direct Claims Fund as a result of this provision will be reallocated *pro rata* across the other valid Direct Claims.
24. In the event there are multiple rounds of distribution, the *pro rata* share payments will be reduced by the hold back amount.
25. If there are more monies allocated to the Direct Claimants Fund than are required to make payment of compensation to all valid Direct Claims made against it, Class Counsel may implement a *pro rata* increase in the compensation payment to Direct Claimants. If a *pro rata* increase is determined to be inappropriate, Class Counsel will prepare a proposal in respect of any excess money and will move to the Courts for approval of it prior to the distribution of the Direct Claimant Fund. In preparing a proposal in respect of how to distribute any excess monies, Class Counsel will consider all relevant factors, including the utility and efficacy of a *cy près* distribution, if appropriate.

**INDIRECT CLAIMS FUND AND INDIRECT CLAIMS**

26. Indirect Claims will be advanced by Class Members against the Indirect Claims Fund.
27. An Indirect Claimant is not required to document their holdings of Investment Vehicles available in Canada that entered into FX Instruments unless and until the Claims Administrator chooses to audit said claim. Upon auditing of any claim, the Claims Administrator has discretion to determine what documentation is sufficient for the purposes of establishing an Indirect Claimant's holdings of Investment Vehicles. Such acceptable supporting documents may include, but are not limited to, the following: account statements, print outs of online account balances, trade confirmation reports, and any other document that shows the value of an Investment Vehicle.

28. The Claims Administrator will determine if the Indirect Claimant's holdings are included on a list of Investment Vehicles available in Canada that entered into FX Instruments. Such list of Investment Vehicles will be posted online by the Claims Administrator. If the investment is not on the list, then the Claims Administrator will notify Class Counsel who will confirm the claims should be denied for that reason, or whether the investment should be added to the list.

***Payments***

29. The Indirect Claimants will receive a payment based on the peak value of their investments over the class period as provided in the chart below:

<b>Peak Investment</b>	<b>Payment</b>
Less than \$100,000	\$20
Over \$100,000 but less than \$1,000,000	\$50
Over \$1,000,000	\$50 plus \$1 per \$10,000 in excess of the first \$1,000,000

30. If there are more funds allocated to the Indirect Claim Fund than are required to make payment of compensation for all valid Indirect Claims made against it, any excess money will move to the Direct Claim Fund.

**RESIDUAL DISCRETION FOR THE MANAGEMENT OF THE DISTRIBUTION PROTOCOL**

31. Notwithstanding the foregoing, if, during the claims process or following the claims process and the calculation of compensation in accordance with this Distribution Protocol, Class Counsel have concerns that the claims process and/or Distribution Protocol is producing an unjust result on the whole or to any segment of the Class Members or that a modification is required or recommended, they shall move to the Courts for approval of a reasonable modification to this Distribution Protocol or for further directions with respect to the distribution of the Net Proceeds.

32. In arriving at a determination that an unjust result is occurring or that a modification is required or recommended, Class Counsel shall seek a consensus among themselves, failing which they may move to the Courts for a determination of any such issue.

#### **RESIDUAL DISTRIBUTION**

33. If there remains any amounts in any of the Funds after the distribution has been made to all valid claims in accordance with the provisions of this Distribution Protocol (as modified, if applicable), Class Counsel will make an application to the Courts to determine how such funds shall be distributed. In preparing a proposal in respect of how to distribute any excess monies, Class Counsel will consider all relevant factors, including the utility and efficacy of a *cy près* distribution, if appropriate.

#### **ADMINISTRATION**

34. The administration of this Distribution Protocol and the claims process will be governed by the Administration Protocol.

JOSEPH S. MANCINELLI, et al  
Plaintiffs and  
ROYAL BANK OF CANADA, et al  
Defendants

Court File No.: CV-15-536174CP

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Toronto

**ORDER  
(Amendments to Distribution Protocol)**

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