RBC and PH&N Mutual Fund Trailing Commission Class Action

Summary rationale for settlement reached on behalf of investors who held RBC and/or PH&N Mutual Fund units through discount brokers

This class action (the "***Ross* Action**") is on behalf of all investors who held RBC and/or PH&N Mutual Fund units through a discount broker ("**Class Members**").[1] The Plaintiff in the *Ross* Action alleges that trailing commissions were improperly paid to discount brokers on behalf of Class Members by the Defendants resulting in Class Members suffering a loss. The Plaintiff asserts, among other things, that the payment of those trailing commissions was a breach of trust and fiduciary duty, and that the fact and purpose of those payments was not adequately disclosed to Class Members.

The Settlement Agreement, if approved by the Court, provides that the Defendants[2] will pay $45 million for the benefit of Class Members in exchange for the full and final release of the claims that were, or could have been, asserted by Class Members in the *Ross* Action. The Defendants denied and continue to deny the allegations made in the *Ross* Action.

The following is a brief summary of some of the important risk factors considered by the Plaintiff and the lawyers for the Class in concluding that the Settlement is fair, reasonable and in the best interests of Class Members. These factors, and others, will be explained in greater detail in motion materials to be filed in support of Court approval of the Settlement, which will be posted at https://www.siskinds.com/class-action/mutual-fund-trailing-commissions/ before the settlement approval hearing scheduled for September 8, 2026.

The factors discussed below are case-specific risks that arose on the particular facts of the *Ross* Action. In addition to these case-specific risks, there are also generic risks that are inherent in all litigation that influence the range of outcomes. Such generic risks include the risks arising from the passage of time, and the procedural risks that exist in litigation of this complexity, such as the risk that witnesses will not appear or will not give the evidence expected of them, and the risk of adverse procedural or evidentiary rulings. With the passage of time, documentary evidence may no longer be available, and witnesses may no longer be available, or their memories of the material events may fade, all of which would impact the ability to win the case.

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[1] The Class is formally defined as: All persons, wherever they may reside or be domiciled, who held, from December 28, 2003 to July 25, 2024, units of an RBC Mutual Fund or a PH&N Mutual Fund through a Discount Broker, except for the Excluded Persons. For more information on the class definition see the long form notice, which is available here: https://www.siskinds.com/class-action/mutual-fund-trailing-commissions/.

[2] The Defendants are RBC Global Asset Management Inc. and RBC Investor Services Trust.

The risk that the Court would find that there was no misconduct

The Defendants may argue at trial that their conduct was not illegal or otherwise in breach of their obligations. They may argue that regulators permitted the payment of trailing commissions to discount brokers until June 2022, when such payments were prohibited. The Defendants complied with the ban and stopped paying trailers at that time. The Defendants may argue that it would be inappropriate to find that they breached their obligations during a period when regulators allowed the practice.

In a class action brought against discount brokers arguing that they should not have received trailing commissions, the Court accepted similar arguments in denying class certification of the action.[3] If the Court accepted those arguments in the *Ross* Action, there would be no recovery for Class Members.

The risk of no recovery where lower-cost Series D units were available

The Defendants may argue at trial that discount brokers were entitled to compensation for the purported services they provided, including infrastructure, trading platforms and informational tools that enabled Class Members to make investment decisions and execute trades. They may be able to establish that regulators recognized that paying some compensation to discount brokers for these services is appropriate. The Defendants may argue that the 0.25% trailing commission paid on many Series D units of RBC and PH&N mutual fund units fairly compensated discount brokers for their services (note – the advisor or full-service trailing commission typically ranges from 0.50% to 1.00%).

The Defendants may argue that they were the pioneer and industry leader in providing Series D mutual fund units. They may be able to demonstrate at trial that Series D units were far more widely available and adopted for RBC and PH&N mutual funds than for other mutual fund families because of the steps they took, including: (a) being the first to introduce Series D mutual fund units in 2007; (b) making Series D units widely available at an early point in time; (c) converting investors from non-Series D units to Series D; and (d) taking significant steps to block the purchase of non-Series D units in the discount broker channel.

If the Court accepted these arguments, Class Members would not recover any damages for trailing commissions paid on Series D mutual fund units.

The Defendants may also assert at trial that Class Members suffered no damages when Series D units of the RBC and PH&N mutual fund units were available. They may contend that Class Members should have switched their non-Series D mutual fund holdings to the lower-cost Series D and that this option was clearly disclosed. Relatedly,the Defendants may argue that Class Members who remained in non-Series D units failed to mitigate their damages and, therefore, should not be entitled to recover the trailing commissions they paid.

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[3] *Frayce v. BMO Investor Line Inc. et al*, 2023 ONSC 16.

If the Court accepted the Series D arguments set out above, recoverable damages in the *Ross* Action would be reduced by approximately 82%.

The risk that the Court would conclude that Class Members, acting reasonably, ought to have been aware of the alleged misconduct

The Defendants may argue that the trailing commission payments to discount brokers were fully disclosed to Class Members. They may also contend that Class Members ought to have known about those payments and that the payments were causing a loss. If accepted, this argument could lead a Court to find that certain defences (discussed below) are available to the Defendants, thereby reducing or eliminating recovery for some or all Class Members.

Limitation period risk

The Defendants may raise a limitation period defence at trial. A limitation period is the legal term for a time limit to start a lawsuit. Losses from wrongful conduct generally cannot be recovered through litigation unless it is started within 2 years of the date a person would have discovered their claim if they had been reasonably diligent – *i.e.* when the person ought reasonably to have known that they suffered a loss because of the defendant's misconduct.

The Defendants may argue that a reasonable person would have discovered their claim because trailing commission payments were disclosed in the documents that were sent to, or made available to, Class Members. If accepted, this argument would prevent recovery of any losses relating to trailing commissions paid more than 2 years prior to the *Ross* Action being commenced in December 2018. Alternatively, a more extreme version of this argument is that any losses in relation to trailing commissions paid on mutual fund units purchased more than 2 years prior to the *Ross* Action being commenced would not be recoverable, even if some of the trailing commissions were paid less than 2 years prior to the action being started.

Approval of trailing commissions paid

The Defendants may assert that, because Class Members ought to have been aware of the payment of trailing commissions to discount brokers, they consented to the payments. As a result, the Defendants may contend that Class Members could not later challenge the payments. If accepted, this would be a full defence to the claims.

The risk that a significant number of Class Member claims were released

The Defendants may argue that, under terms of the governing trust instruments, Class Members who redeemed (*i.e.* sold) their mutual fund units released any claims with respect to those units. If the Court accepted this argument, those Class Members would be unable to recover any losses for trailing commissions paid on redeemed units.