

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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GARY CRUZ, : Case No.: 10-CV-8026 (PKC)  
 :  
 Plaintiff, :  
 :  
 - against - :  
 :  
 TD BANK, N.A., :  
 :  
 Defendant. :

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ARTHEMIO PEREZ and WILFRED :  
BUCKNOR, : Case No.: 16-cv-05375 (PKC)  
 :  
 Plaintiffs, :  
 :  
 - against - :  
 :  
 TD BANK, N.A., :  
 :  
 Defendant. :

-----X  
**NOTICE OF PENDENCY OF CLASS ACTIONS AND PROPOSED SETTLEMENT,  
SETTLEMENT HEARING, AND MOTIONS BY CLASS COUNSEL FOR AWARD OF  
CLASS COUNSEL FEES AND BY CLASS REPRESENTATIVES FOR AWARD OF  
SERVICE AWARDS**

**TO: The proposed class (“Class”) consisting of:**

from EIPA’s effective date to the date of the Preliminary Approval Order, all TD Bank Account Holders who are or were judgment debtors under New York law and whose accounts containing EIPA Exempt Funds were restrained, including those asserting claims that were or could have been asserted in the Actions for violations of EIPA, for example but unexclusively for: failure to receive, maintain or mail timely EIPA notices and forms, or improper charges or fees, or improper aggregation of account balances to determine the amount of EIPA Exempt Funds, or providing improper, incomplete, inadequate types or methods of less than completely unfettered access to EIPA Exempt Funds, or improper internal controls, policies or procedure for EIPA compliance.

**Please visit [www.bankfeessettlement.com](http://www.bankfeessettlement.com) (“Settlement Website”) for further important information concerning these matters.**

**The proposed settlement may affect your legal rights.**

This Notice of Pendency of Class Actions and Proposed Settlement, Settlement Hearing, and Motions by Class Counsel for Award of Class Counsel Fees and by Class Representatives for award of Service Awards (“*Class Notice*”) was approved by the United States District Court for the Southern District of New York (“*Court*”). It is not a lawyer’s solicitation.

**Class Actions and Settlement:** This Class Notice advises you of the pendency and proposed settlement of the above captioned actions (“*Actions*”) brought by plaintiffs Gary Cruz, Artemio Perez and Wilfred Bucknor (collectively, “*Plaintiffs*”), on behalf of themselves and the proposed Class, against TD Bank, N.A. (“*TD Bank*” or “*Defendant*”).

**Claims:** Plaintiffs in the Cruz Action and Perez Action (“*Actions*”) claim that TD Bank violated the New York State Exempt Income Protection Act (“*EIPA*”) and each seek to represent a class of similarly situated persons – TD Bank customers in New York whose bank accounts were restrained (“*New York Customers*”). Cruz claims that TD Bank improperly denied Plaintiffs and the Class the ability to obtain funds in their accounts, released Plaintiffs’ personal funds to third parties, failed to provide mandatory disclosures, and charged unlawful fees. Perez and Bucknor claim that TD Bank prevented Plaintiffs and the Class from withdrawing EIPA Exempt Funds from their accounts in the ordinary method for withdrawals, improperly aggregated account balances to determine the amount of EIPA Exempt Funds and unlawfully imposed fees and penalties.

**Settlement Agreement:** Plaintiffs, on behalf of themselves and the proposed Class, negotiated with TD Bank a proposed settlement of the Actions (“*Settlement*”) on the terms stated in the Stipulation and Agreement of Settlement dated December 23, 2016 (“*Settlement Agreement*”).

**Preliminary Class Certification:** The Court, for settlement purposes only, preliminarily certified the Class and appointed Plaintiffs as Class Representatives and Plaintiffs’ counsel as Class Counsel. The Court also approved the appointment of RG/2 Claims Administration LLC to serve as the settlement administrator (“*Settlement Administrator*”).

**Settlement Hearing Date:** The Court scheduled a hearing (“*Settlement Hearing*”) for June 15, 2017 to determine, among other things, whether to approve the Settlement and to grant Class Counsel’s request for Class Counsel Fees and the Class Representatives’ request for a Service Award.

**Terminology:** All capitalized terms used, but not defined, have the same meaning as the terms defined in the Settlement Agreement, which is posted on the Settlement Website at the section entitled “Settlement Filings” and available from the Settlement Administrator (see Question 3).

**A Summary of Your Rights and Options:**

*If you are a Class Member, then your legal rights are affected whether or not you act. Please read this Class Notice carefully. It explains your rights and options – and the deadlines to exercise them.*

| You May:  | Brief Explanation:  | Due Date:   |
|---|---|---|
| <b>1. File a Proof of Claim to Obtain Compensation</b>                  | This is the only way to receive any payment from the Settlement, if it is approved by the Court. If you file a Proof of Claim, then <b><i>you will be bound</i></b> by the Settlement Agreement (including the release of TD Bank), if the Settlement is approved.<br><br><b>See Question 8</b>   | You must submit the Proof of Claim by mail or email to the Settlement Administrator postmarked/transmitted no later than <b>May 12, 2017.</b>   |
| <b>2. Request to be Excluded from the Class</b>                         | You may exclude yourself from the Class and keep your right, if any, to sue TD Bank for the claims asserted in the Actions at your own expense. If you exclude yourself, then you <b><i>will not receive</i></b> any settlement payment and you <b><i>will not be bound</i></b> by the terms of the Settlement Agreement, if approved by the Court.<br><br><b>See Question 17</b> | You must submit a written request for exclusion by mail to the Settlement Administrator postmarked no later than <b>May 12, 2017.</b>   |
| <b>3. Object to the Settlement, Class Counsel Fees or Service Award</b> | If you do not exclude yourself from the Class, then you may object to the Settlement or to Class Counsel's or the Class Representatives' requests for Class Counsel Fees or a Service Award, respectively. You also may appear at the Settlement Hearing to present your objections.<br><br><b>See Question 19</b>  | Objections and requests to present arguments at the Settlement Hearing must be made in writing and filed with the Court and a copy must be served on Class Counsel and TD Bank's Counsel no later than <b>April 28, 2017.</b> |
| <b>4. Do Nothing</b>  | If you are a Class Member but you neither submit a Proof of Claim nor exclude yourself from the Class, then you <b><i>will not receive</i></b> any settlement payment and <b><i>you will be bound</i></b> by the Settlement Agreement (including the release of TD Bank), if the Settlement is approved.<br><br><b>See Question 24</b>  | <b>Not applicable</b>   |

The Court has not yet decided whether to approve the Settlement or to grant Class Counsel's request for Class Counsel Fees or the Class Representatives' request for a Service Award. These issues, among others, will be addressed at the Settlement Hearing.

If the Court does not approve the Settlement, then the Actions will proceed as if the Settlement had never been proposed and Plaintiffs will, among other things, have to obtain certification of the proposed Class and prove their claims against TD Bank at trial.

## 1. WHY SHOULD I READ THIS CLASS NOTICE?

**Your Legal Rights May Be Affected:** This Class Notice explains the Actions, the proposed Settlement, the requests by Class Counsel and the Class Representatives, your legal rights, what benefits are available, who is eligible for them, and how to get them.

This Class Notice is being sent to you by a Court Order requiring that you be informed of the proposed Settlement and the Settlement Hearing to be held by the Court to consider, among other things, whether:

- (a) the Settlement is fair, reasonable and adequate and should be approved; and
- (b) to grant Class Counsel's request for Class Counsel Fees and the Class Representatives' request for a Service Award.

This Class Notice is not an expression of any opinion by the Court as to the merits of the claims or defenses asserted in the Actions.

## 2. WHAT ARE THE ACTIONS ABOUT?

### A. The Allegations

**EIPA Violations:** Plaintiffs in the Actions claim that TD Bank violated EIPA by improperly denying Plaintiffs and the Class the ability to obtain funds in their accounts, releasing Plaintiffs' personal funds to third parties, failing to provide mandatory disclosures, preventing Plaintiffs and the Class from withdrawing EIPA Exempt Funds from their accounts in the ordinary method for withdrawals, improperly aggregating account balances to determine the amount of EIPA Exempt Funds and unlawfully imposed fees and penalties.

**Express Denial:** TD Bank expressly denies all the claims in the Actions and denies that it has done anything wrong.

### B. Status of the Actions

**Complaints:** Plaintiff Cruz filed a putative class action complaint on October 21, 2010. Plaintiffs Perez and Bucknor filed a putative class action complaint on July 6, 2016.

**Formal and Informal Discovery:** The Plaintiffs and TD Bank (collectively, "*Settling Parties*") engaged in substantial discovery, including the production of documents, the taking of depositions and the exchange of other written information requests, as described in more detail in Section 1.11 of the Settlement Agreement.

**Settlement:** Following extensive negotiations, the Settling Parties agreed to settle the Actions on the terms stated in the Settlement Agreement, subject to approval by the Court.

**Preliminary Approval:** On January 26, 2017, the Court entered an Order ("*Preliminary Approval Order*") which, among other things,

- (a) preliminarily approved the Settlement Agreement subject to further consideration of the Settlement, and any objections, at the Settlement Hearing;

(b) preliminarily certified, for settlement purposes only, the Class as defined above;

(c) preliminarily appointed Plaintiffs as Class Representatives and Plaintiffs' counsel as Class Counsel;

(d) authorized this Class Notice to be posted to the Settlement Website and for notices to be sent directly to Class Members; and

(e) scheduled a Settlement Hearing to consider, among other things, whether the Settlement is fair, reasonable and adequate and should be approved.

**More Information Online:** Copies of the Preliminary Approval Order and its exhibits can be obtained by visiting the Settlement Website at the section entitled "Settlement Filings" or by requesting a copy from the Settlement Administrator in the manner and method stated below (see Question 3).

### **3. WHAT IS A CLASS ACTION AND WHO IS INVOLVED HERE?**

**Class Actions and Class Representatives:** A class action is similar to any lawsuit, except that it is prosecuted by the plaintiff, referred to as the "class representative," on an individual basis and on behalf of a class of similarly situated persons – which might include you.

**Class Counsel:** Counsel for the plaintiff typically serves as counsel for the class and is referred to as "class counsel." Class counsel owes a fiduciary duty to the class and acts as your lawyer if you are determined to be a class member.

**Court Supervision:** The Court in a class action actively supervises the conduct of the proceedings to ensure that the interests of the class are fairly represented. Among other things, the Court must approve the appointment of plaintiff as the class representative and plaintiff's counsel as class counsel and the class action may not be settled unless the Court determines that the settlement is fair, reasonable and adequate and should be approved. Moreover, in a class action, determinations by the Court, whether or not favorable to the plaintiff, will also bind the members of the class that the plaintiff represents, unless a class member has requested to be excluded from the class.

In these Actions, pending in the United States District Court for the Southern District of New York the Honorable P. Kevin Castel is the assigned Judge. He will preside over the hearing and determine the Plaintiffs' motions for preliminary and final approval of the Settlement Agreement and the Settlement. If the Settlement is approved, then he will preside over all proceedings related to the implementation, enforcement and administration of the Settlement Agreement and the Settlement.

**Appointment of Class Representatives and Class Counsel:** The Court, in the Preliminary Approval Order, preliminarily appointed the Plaintiffs to be the Class Representatives and Plaintiffs' counsel, the law firm of Law Offices of G. Oliver Koppell & Associates by G. Oliver Koppell and Daniel F. Schreck and Charles Juntikka & Associates, LLP by Charles Juntikka, to be Class Counsel.

**Contact Class Counsel:** Class Counsel can be contacted, if necessary, as follows:

**Law Offices of G. Oliver Koppell & Associates**  
99 Park Ave., Suite 1100  
New York, New York 10016  
(212) 867-3838

**Appointment of Settlement Administrator:** Also, in its Preliminary Approval Order, the Court appointed RG/2 Claims Administration LLC to act as the Settlement Administrator. Its responsibilities include, among other things, creating and maintaining the Settlement Website, responding to inquiries from, and communicating with, Class Members and reviewing submitted Proof of Claims and Revised Proof of Claims, as applicable, to determine if they were timely submitted, complete and valid and should be approved for issuance of a Distribution Check in the amount of a Claim Payment.

**Contact Settlement Administrator:** The Settlement Administrator can be contacted by mail, email and phone as follows:

TD EIPA Claims Release  
c/o RG/2 Claims Administration LLC  
P.O. Box 59479  
Philadelphia, PA 19102-9479  
Email: bankfeessettlement@rg2claims.com  
Toll Free Phone: (866) 742-4955

If you choose to contact the Settlement Administrator for any purpose other than to submit a Proof of Claim or to request to be excluded from the Class, then please refer to either one or both Actions and provide your full name and email or mailing address. **Submissions to the Settlement Administrator of Proof of Claims and requests to be excluded from the Class must be done in the manner and method described below (see Questions 8 & 17).**

#### **4. HOW DO I DETERMINE IF I AM A CLASS MEMBER?**

You are a Class Member if you meet the definition of the Class stated at the beginning of this Class Notice.

If you received this Class Notice sent directly to you concerning the proposed Settlement, then you are likely a member of the Class, unless the Notice was sent in error. Alternatively, you may have learned about the proposed Settlement in some other manner.

In any of these events, you can determine if you are a member of the Class by calling Class Counsel at the number listed above (see Question 3) and ask whether you are a Class Member. Class Counsel can compare your name against a list of Class Members.

**Please do not contact the Settlement Administrator to determine whether you are Class Member.**

#### **5. WHAT ARE THE REASONS FOR THE PROPOSED SETTLEMENT?**

The Court has not reached any final decisions concerning the Class Representatives' claims against TD Bank.

**Avoiding Further Litigation Uncertainty and Costs:** The Class Representatives and TD Bank have agreed to the proposed Settlement. In reaching the Settlement, they have avoided the cost, delay and uncertainty of further litigation.

As in any lawsuit, the Class Representatives and the proposed Class would face an uncertain outcome if they did not agree to the proposed Settlement. The Settling Parties expected that the

Actions could continue for a long time and that, if the Class Representatives succeeded, then TD Bank would file appeals that would substantially postpone final resolution of the Actions. Continuation of the Actions against TD Bank could result in a judgment greater than the proposed Settlement. Conversely, continuing the Actions could result in no recovery at all or a recovery that is less than the amount of the proposed Settlement.

**Fairness Reasonableness and Adequacy:** The Class Representatives and Class Counsel believe that the proposed Settlement is fair, reasonable and adequate and should be approved by the Court. They have reached this conclusion for several reasons. If the Settlement is approved, then the Class Members who timely submit complete and valid Proof of Claims will receive a monetary recovery.

Also, Class Counsel believes that the significant and immediate benefits of the proposed Settlement are an excellent result for the Class – especially given the risks and uncertainties of continued litigation.

**Express Denial:** TD Bank expressly denies any wrongdoing whatsoever, and is making this Agreement solely to avoid the continuing costs, distractions from daily business operations and risks concerning the Actions, and to accommodate customers who are Class Members.

**No Admission:** This Agreement is not, and shall not be construed or deemed to be, evidence of an admission or concession by TD Bank concerning any claim, liability or damage.

## 6. HOW MUCH MONEY WILL MEMBERS OF THE CLASS RECEIVE?

**Payment:** A Class Member who timely submits a complete and valid Proof of Claim (“*Authorized Claimant*”) shall receive a Claim Payment as follows:

- (a) \$125 for any Uncredited Restraint Fee; and
- (b) (i) the actual amount of any Uncredited Overdraft Fees if you submit with the Proof of Claim, account statements establishing the amount of Uncredited Overdraft Fees or (ii) \$20 for an Uncredited Overdraft Fee if you submit no account statements with the Proof of Claim.

**Potential for *Pro Rata* Payments:** If the amount in the Settlement Fund, after payment of the Settlement Administration Costs, is insufficient to pay all of the Authorized Claimants, then the Authorized Claimants shall be paid *pro rata*. That means each Authorized Claimant will receive a payment equal to an Authorized Claimant’s proportion of the available funds.

**“Distribution Checks”:** Checks issued to Authorized Claimants (referred to as “*Distribution Checks*” in the Settlement Agreement) will remain valid for a period of 180 calendar days after issuance but, if not cashed or otherwise negotiated by the end of such period, will be cancelled as stale and will not be reissued.

**More than one Authorized Claimant:** If more than one Authorized Claimant was an Account Holder for one account, for example, if the account was held in the name of the husband and wife, then all such Authorized Claimants shall be:

(a) entitled to only one Claim Payment, the amount of which shall be determined based on the above criteria and which amount shall be embodied in one Distribution Check made payable to all such Authorized Claimants;

(b) solely responsible for the allocation, if any, of the Claim Payment between and among all such Authorized Claimants; and

(c) solely responsible for taking all steps necessary to negotiate any Distribution Check made payable to all such Authorized Claimants, including but not limited to all costs associated with taking such steps.

**File on Time or Receive No Payment and Be Bound:** Class Members who fail to timely submit a complete and valid Proof of Claim will not be entitled to receive any Claim Payment but will be bound by any judgment entered in the Actions and by terms of the Settlement Agreement if approved by the Court, unless the Class Member has timely and properly requested to be excluded from the Class.

**7. DOES THE CLASS SETTLEMENT AGREEMENT INCLUDE OTHER BENEFITS TO CLASS MEMBERS?**

Yes.

**Enhanced Account Access to EIPA Exempt Funds:** Consistent with TD Bank's interest in providing benefits to current and former customers constituting the Class, TD Bank will provide four types of enhanced access to EIPA Exempt Funds.

(a) **Store Access:** Customers may withdraw Available EIPA Exempt Funds during normal business hours.

(b) **Limited "Debit Card" Access at ATMs:** Within 90 days of entry of Judgment, customers may withdraw Available EIPA Exempt Funds from ATMs by calling a toll free number connected to a TD Bank call center or levy department. This access service:

(i) will be available six days a week, Monday to Friday, 8:00 AM to 6:00 PM Eastern, and Saturday, 8:30 AM to 3:00 PM Eastern;

(ii) is limited to withdrawals from ATMs; and

(iii) expressly does not include any type of point of sale transactions for which debit cards are accepted, such as, by example but not as an exclusive listing, grocery or department or convenience stores, restaurants, gas stations, internet sites, or for any kind of foods, beverages, goods, products or services.

(c) **Check Access:** Within six months of entry of Judgment, TD Bank will initiate a process to review checks issued against a restrained account and clear such checks with any Available EIPA Exempt Funds if the amount drawn on the restrained account is less than or equal to the available EIPA Exempt Funds.

(d) **ACH Payments Access:** Within six months of entry of Judgment, TD Bank will initiate a process to review ACH payments that are presented against restrained accounts and pay any

that are covered by Available EIPA Exempt Funds if the amount drawn on the restrained account is less than or equal to the available the available EIPA Exempt Funds.

**Revised Enhanced Account Access to EIPA Exempt Funds:** TD Bank may replace or supplement the above processes at any time if TD Bank develops and implements an automatic method to provide equivalent account access to EIPA Exempt Funds, but TD Bank is under no obligation to develop or provide any revised method of accessing EIPA Exempt Funds.

## **8. HOW CAN I GET A CLAIM PAYMENT?**

**Complete and Sign Forms and Submit on Time:** To qualify for a Claim Payment, you must timely submit a complete and valid Proof of Claim.

If you are receiving this Class Notice directly by mail, then the Proof of Claim is enclosed. Otherwise, you may obtain a paper copy of the Proof of Claim by printing them from the Settlement Website (available at the section entitled “Submit a Proof of Claim”) or by requesting them from the Settlement Administrator by mail, email or phone at the contact information for the Settlement Administrator stated above (see Question 3).

Read the instructions on the Proof of Claim carefully, fill out the form, and submit it by **mail**, first class postage pre-paid, **or by email** to the Settlement Administrator at the Settlement Administrator’s **mailing address or email address** stated above (see Question 3) and repeated immediately below:

TD EIPA Claims Release  
c/o RG/2 Claims Administration LLC  
P.O. Box 59479  
Philadelphia, PA 19102-9479  
Email: bankfeessettlement@rg2claims.com

**Required Mailing Date:** To be considered timely, Proof of Claims **must be postmarked** or transmitted no later than **May 12, 2017**.

**No Payment for Invalid or Untimely Forms or Exclusions:** If you do not timely submit a completed and valid Proof of Claim, then you will not receive a Claim Payment; however, unless you timely and properly exclude yourself from the Class as described below (see Question 17), you will still be bound in all other respects by any judgment entered in the Actions and by the terms of the Settlement Agreement (including the release of TD Bank) if approved by the Court.

## **9. WHAT IS THE PROCESS FOR DETERMINING WHETHER A PROOF OF CLAIM WILL BE APPROVED OR REJECTED?**

**Claim Review Process:** The Settlement Administrator, under the supervision of Class Counsel, will review each Proof of Claim to determine if it was timely submitted, complete and valid and should be approved. For example,

1. Proofs of Claims that are not timely submitted will be rejected.
2. Proofs of Claims will be deemed incomplete if all required information, as stated in the instructions on the Proof of Claim, is not provided.

3. Proofs of Claims will be deemed invalid if certain required information on the Proof of Claim does not substantially match the data concerning the Account Holder contained in TD Bank's records.

4. A claim for an Uncredited Restraint Fee in a Proof of Claim will be deemed invalid if the Claimant has no Uncredited Restraint Fee.

5. A claim for an Uncredited Overdraft Fee in a Proof of Claim will be deemed invalid if the Claimant seeks an Uncredited Overdraft Fee for a EIPA restraint applied after September 29, 2009.

**Efforts to Cure Defective Proofs of Claims:** If the Settlement Administrator determines that a Proof of Claim is not complete or valid, then the Settlement Administrator will, if possible, contact the Claimant, describe the identified defect in the Proof of Claim, and request that a Revised Proof of Claim be submitted.

**Time for Cure:** The Claimant will have fifteen (15) calendar days following receipt of such notice to mail or email to the Settlement Administrator a Revised Proof of Claim and any information the Claimant believes is relevant and supports approval of the Claimant's Revised Proof of Claim.

**Revised Proof of Claim Review:** The Settlement Administrator will, under the supervision of Class Counsel, review any Revised Proof of Claim to determine if it is timely submitted, complete and valid.

**Decisions are Final:** The Settlement Administrator's determination to reject a Proof of Claim or Revised Proof of Claim on the grounds that it was not timely submitted, complete or valid shall be binding on the Claimant and not subject to further review or appeal.

**Bar from Payment and Binding Judgment:** Any Claimant whose Proof of Claim or Revised Proof of Claim has been rejected by the Settlement Administrator shall be barred from receiving any Claim Payment but otherwise shall be bound by any judgment that may be entered in the Actions and the terms of the Settlement Agreement (including the release of TD Bank), if approved by the Court.

**TD Bank's Right to Challenge Claims:** All Proof of Claims or Revised Proof of Claims that the Settlement Administrator, under the supervision of Class Counsel, has determined to approve as timely submitted, complete and valid will be subject to review and challenge by TD Bank. If the Settlement Administrator, Class Counsel and TD Bank's Counsel are unable to resolve TD Bank's objections, if any, then TD Bank may apply to the Court, on notice to Class Counsel and to the Claimants whose Proof of Claims or Revised Proof of Claims are subject to TD Bank's objections, for an Order determining that the Claimant's Proof of Claim or Revised Proof of Claim should be rejected.

TD Bank will bear the burden of persuasion and proof in connection with any objections it makes.

Resolution of TD Bank's objections will proceed according to the schedule to be set by the Court and Claimants whose Proof of Claims or Revised Proof of Claims are challenged by TD Bank will be subject to discovery, limited to the Claimant's status as a Settlement Class Member and the Claimant's entitlement to a Claim Payment under the terms of the Settlement Agreement.

**More Information Online:** The above description of the review process for approving or rejecting Proof of Claims or Revised Proof of Claims is only a summary. The complete terms of the review process, including the definition of capitalized terms not defined in this Class Notice, are stated in the Settlement Agreement, which you may obtain from the Settlement Website by visiting the section entitled “Settlement Filings” or by contacting the Settlement Administrator at the contact information listed above (see Question 3).

#### **10. WHEN WOULD I GET MY DISTRIBUTION CHECK?**

**Settlement Hearing and Appeals:** The Court will hold a Settlement Hearing on **June 15, 2017, at 2:00 p.m.**, to decide whether to approve the proposed Settlement. If the Court approves the Settlement, then there may be appeals.

It is always uncertain whether these appeals can be resolved favorably, and resolving them can take time, perhaps more than a year. It also takes time for all the Proof of Claims and/or Revised Proof of Claims to be evaluated to determine if they were timely submitted, complete and valid.

**Mailing Distribution Checks:** If there are no appeals and depending on the number of Proof of Claims and/or Revised Proof of Claims submitted, then the Settlement Administrator could issue Distribution Checks as early as forty-five days after the Court’s approval of the Settlement becomes Final.

Please be patient.

#### **11. WHAT AM I GIVING UP TO GET A PAYMENT?**

**Judgment and Release:** If the Court approves the proposed Settlement, then it will enter a Judgment containing, among other things, a release which provides that, on the Effective Date, each of the Class Representatives and each Settlement Class Member, on behalf of themselves, and each of their heirs, executors, trustees, administrators, beneficiaries, predecessors, successors and assigns, and any other person claiming by, through or on behalf of them, shall be deemed by operation of law:

(a) to have released, waived, discharged and dismissed each and every of the Settled Claims against the Released Parties;

(b) shall forever be enjoined from commencing, instituting or prosecuting any or all of the Settled Claims against any of the Released Parties; and

(c) shall not institute, continue, maintain or assert, either directly or indirectly, whether in the United States or elsewhere, on their own behalf or on behalf of any class or any other person, any action, suit, cause of action, claim or demand against any person or entity who may claim any form of contribution or indemnity from any of the Released Parties concerning any Settled Claim.

**More Information Online:** The above description of the release applicable to the Class Representatives and Settlement Class Members is only a summary. The complete terms, including the definitions of capitalized terms not defined in this Class Notice, are stated in the Settlement Agreement, which you may obtain from the Settlement Website by visiting the section entitled “Settlement Filings” or by contacting the Settlement Administrator at the contact information listed above (see Question 3).

**12. DO I NEED TO CONTACT CLASS COUNSEL TO RECEIVE A DISTRIBUTION CHECK?**

No.

If you timely submit a completed and valid Proof of Claim or Revised Proof of Claim, as applicable, then you do not need to contact Class Counsel.

If, however, you require any information about the proposed Settlement that is not otherwise available on the Settlement Website or you prefer not to review the Settlement Website to obtain information about the proposed Settlement, then you may contact, as appropriate, either the Settlement Administrator or Class Counsel at the contact information listed above (see Question 3).

**13. WILL THERE BE ANY PAYMENTS IF THE SETTLEMENT AGREEMENT IS TERMINATED?**

No.

The Settlement Agreement may be terminated under several circumstances outlined in it.

If the Settlement Agreement is terminated, then the Actions will proceed as if the Settlement Agreement had not been entered.

**14. MAY I CONTACT CLASS COUNSEL?**

Yes.

Class Counsel has been preliminarily appointed by the Court to represent the Class Representatives and Class Members.

You will not be charged any fees nor incur any costs by contacting Class Counsel concerning any questions you may have regarding the Actions or the proposed Settlement.

Class Counsel may be contacted at the contact information listed above (see Question 3).

**15. HOW WILL CLASS COUNSEL BE PAID?**

**Motion for Class Counsel Fees:** Class Counsel will file a motion for an award of Class Counsel Fees, consisting of their attorneys' fees and the reimbursement of their costs and expenses incurred in the Actions. TD Bank reserves the right to object to the motion for Class Counsel Fees. That motion and any objections will be considered by the Court at the Settlement Hearing.

**Amount of Fees Sought For Class Counsel:** In recognition of the success achieved in obtaining both reimbursement of fees for class members and better access to exempt funds by restrained depositors, Class Counsel will seek to obtain attorneys' fees from TD Bank. Attorneys' fees will be calculated by multiplying the number of hours worked on the case by each attorney assigned by that attorney's normal hourly billing rate. Billing rates are set based on an attorney's seniority and experience. This calculation is also known as determining attorneys' "lodestar." Class Counsel will also seek reimbursement for the expenses they have incurred in bringing this action. In their motion for attorney's fees to the Court, Class Counsel will not seek from TD Bank an amount greater than Class Counsel's total attorneys' fees and expenses incurred in this case.

From the beginning of this action through January 31, 2017, Class Counsel has incurred attorneys' fees (or lodestar) of approximately \$455,000, and expenses of approximately \$25,000.00. Class Counsel anticipates incurring additional attorneys' fees of no more than \$40,000 through the final approval of this action, and less than \$2,000 in additional expenses (barring any subsequent appeals).

**Payment:** Any Class Counsel Fees approved by the Court will be paid by TD Bank.

**Class Members Not Responsible:** Class Members are not personally liable for any Class Counsel Fees that may be awarded by the Court nor for any attorneys' fees, costs or expenses incurred by Class Counsel in prosecuting the Actions.

**Purpose of Class Counsel Fees:** The Class Counsel Fees requested will be the only payment to Class Counsel for their efforts in achieving the proposed Settlement and for their risk in undertaking this representation on a wholly contingent basis. Class Counsel has committed significant time and expense in litigating the Actions for the benefit of the Class. To date, Class Counsel has not been paid for their services in prosecuting the Actions on behalf of the Class Representatives and the Class or reimbursed for their costs and expenses.

The Class Counsel Fees requested will compensate Class Counsel for their work in achieving the proposed Settlement.

**Court's Review:** The Court will decide what a reasonable Class Counsel Fee award is and may award less than the amount requested by Class Counsel.

**16. WILL THE CLASS REPRESENTATIVES SEEK AN AWARD IN ADDITION TO THE CLAIM PAYMENTS THAT OTHER CLASS MEMBERS MAY RECEIVE?**

Yes.

**Motion for Service Award:** The Class Representatives will request that the Court award each Class Representative a Service Award of no more than \$20,000 (\$10,000 for Cruz and \$5,000 each for Perez and Bucknor) for the time and effort expended in representing the Class in the Actions.

**Court's Review and Payment:** The Court will consider the Class Representatives' request at the Settlement Hearing. Any Service Awards approved by the Court will be paid by TD Bank.

**Class Members Not Responsible:** Class Members are not personally liable for any Service Award that the Court may award.

**17. CAN I EXCLUDE MYSELF FROM THE CLASS?**

Yes.

**Exclusion Right:** If you do not want to receive a Claim Payment from the proposed Settlement and you want to keep your right, if any, to sue TD Bank, at your own expense, concerning the claims raised in the Actions, then you must take steps to exclude yourself from the Class.

**How to Exclude:** To exclude yourself from the Class, you must submit a written request, by first class mail, postage pre-paid, to the Settlement Administration at the **mailing address** listed above (see Question 3).

**Mailing Date Required:** To be effective, your written request for exclusion **must be postmarked** no later than **May 12, 2017**.

**Exclusion Request Content:** In addition, your written request for exclusion must clearly provide all of the following information:

(a) the name and current mailing address of the person seeking exclusion; and

(b) a signed statement that you wish to be excluded from the Class and the Settlement in *Cruz v. TD Bank, N.A., Case 1:10-cv-08026-PKC (S.D.N.Y.)* and *Perez et al. v. TD Bank, N.A., Case 7:16-cv-0537-KMK (S.D.N.Y.)*.

**Request By Representative:** If the exclusion request is made by someone other than you on your behalf, then the person or entity submitting the exclusion request must provide documentation evidencing authority to submit the exclusion request on your behalf. The request for exclusion shall not be effective unless it provides the required information and is made within the time stated above, or the exclusion is otherwise accepted by the Court.

**Written Exclusions Only:** You **cannot** make a proper request to exclude yourself from the Class by phone, by email, or by contacting anyone but the Settlement Administrator in the manner and by the deadline stated immediately above.

**Bar from Payment and Binding Judgment:** If you make a proper request for exclusion, then you will not receive a Claim Payment from the Settlement; you cannot object to the proposed Settlement; and you will not be legally bound by any judgments that may be entered in the Actions or by the terms of the proposed Settlement, if approved by the Court.

**18. IF I EXCLUDE MYSELF FROM THE CLASS, THEN CAN I STILL GET MONEY FROM THE SETTLEMENT?**

No.

If you exclude yourself from the Class, then do not submit a Proof of Claim to ask for any recovery from the Settlement because you will no longer be a member of the Class and, as such, will not be eligible for any recovery from the proposed Settlement, if approved.

**19. CAN I OBJECT TO THE PROPOSED SETTLEMENT, CLASS COUNSEL'S REQUEST FOR CLASS COUNSEL FEES OR THE CLASS REPRESENTATIVES' REQUEST FOR A SERVICE AWARD?**

Yes.

**Objection Right:** If you are a Class Member and have not requested to exclude yourself from the Class, then you can object to the Settlement, or any part of it, as well as to Class Counsel's request for Class Counsel Fees and the Class Representatives' request for a Service Award.

**Filing Dated Required:** To object, you **must**, by no later than **April 28, 2017**, have filed in writing your objection and any supporting papers with the Court (accompanied by due proof of service upon counsel for the Settling Parties) and have served, by hand, mail or overnight delivery, copies of all such written filings on counsel for the Settling Parties at the following addresses:

**To the Court:**

Clerk of Court  
United States District Court for the Southern District of New York  
500 Pearl Street  
New York, New York 10007

**To Class Counsel:**

G. Oliver Koppell, Esquire  
Daniel F. Schreck, Esquire  
**Law Offices of G. Oliver Koppell & Associates**  
99 Park Ave., Suite 1100  
New York, New York 10016

**To TD Bank's Counsel:**

Alexander D. Bono, Esquire  
Ryan E. Borneman, Esquire  
**DUANE MORRIS LLP**  
30 South 17<sup>th</sup> Street  
Philadelphia, PA 19103-4196

**Objection Content:** In addition, your written objection **must** include all of the following information:

- (a) your name and current mailing address; and
- (b) a signed statement that you object to the Settlement in *Cruz v. TD Bank, N.A., Case 1:10-cv-08026-PKC (S.D.N.Y.)* and *Perez et al. v. TD Bank, N.A., Case 7:16-cv-05375-KMK (S.D.N.Y.)* and that states the reasons for such objection.

**Attendance Not Required:** Attendance at the Settlement Hearing is not necessary for you to object to any matters to be presented at the Settlement Hearing. But if you or your representative wish to appear, then to be heard orally to oppose any matters to be presented at the Settlement Hearing (including the approval of the Settlement) and/or present evidence at the Settlement Hearing, you must include with the filing and service of your written objection a notice of your intent to appear at the Settlement Hearing and the identity of any witnesses you may seek to call to testify and exhibits you may seek to introduce into evidence at the Settlement Hearing.

**Written Objections Only:** Unless the Court orders otherwise, no Class Member or other person shall be entitled to object to any matters to be presented at the Settlement Hearing, or otherwise be heard at the Settlement Hearing, except by serving and filing written objections as described above.

**Binding Judgment:** Any Class Member who does not object in the manner prescribed above shall be deemed to have waived such objection and shall be bound by any judgments entered in the Actions and all the terms of the Settlement Agreement, if approved by the Court, unless the Class Member has properly requested to be excluded from the Class.

**20. WHAT IS THE DIFFERENCE BETWEEN OBJECTING TO THE PROPOSED SETTLEMENT AND EXCLUDING YOURSELF FROM THE CLASS?**

**Objection:** Objecting is simply telling the Court that you do not like the Settlement or some part of it. You can only object if you remain a Class Member. If you timely submit a valid Proof of Claim, then you may still receive a Claim Payment.

**Exclusion:** Excluding yourself is telling the Court that you don't want to be part of the Class. If you exclude yourself, then you have no basis to object because the Actions and the proposed Settlement no longer affect you.

**21. WHEN WILL THE SETTLEMENT HEARING TAKE PLACE AND WHAT WILL BE ADDRESSED?**

**Hearing Date:** The Settlement Hearing will be held on **June 15, 2017, at 2:00 p.m.**, before the Honorable P. Kevin Castel, at the United States District Court for the Southern District of New York, 500 Pearl Street, New York, New York 10007.

**Purpose:** The Hearing's purpose will be to determine whether:

(a) the proposed Settlement, as embodied in the Settlement Agreement, is fair, reasonable, and adequate, and should be approved;

(b) to enter the Judgment, substantially in the form attached as Exhibit B to the Settlement Agreement, which, among other things, provides for the dismissal of the Actions with prejudice and the release by the Class Representatives and Settlement Class Members of the Settled Claims as against the Released Parties;

(c) the Actions should be finally certified, for settlement purposes, as a class action under Rules 23(a) and (b)(3) of the Federal Rules of Civil Procedure;

(d) to grant Class Counsel's application for an award of Class Counsel Fees;

(e) to grant the Class Representatives' request for a Service Award; and

(f) to rule upon such other matters as the Court may deem appropriate.

**22. MAY I SPEAK AT THE SETTLEMENT HEARING?**

Yes.

If you or your representative wish to raise an objection at the Settlement Hearing to any matter to be addressed at the Settlement Hearing, then you must first inform the Court and counsel for the Settling Parties of your intention to speak according to the instructions stated in Question 19.

You cannot speak at the Settlement Hearing if you properly requested to exclude yourself from the Class.

**23. DO I HAVE TO COME TO THE SETTLEMENT HEARING?**

No.

Class Counsel will answer any questions the Court may have, but you are welcome to come at your own expense.

If you file and serve an objection to the proposed Settlement (or any part of it) according to the instructions stated in Question 19, then you need not appear at the Settlement Hearing to talk about it. So long as you complied with the requirements for filing and serving an objection as stated in Question 19, the Court will consider it.

You may also pay your own lawyer to attend the Settlement Hearing, but it is not necessary.

#### **24. WHAT HAPPENS IF I DO NOTHING?**

If you do nothing, then you will not receive any money from the Settlement.

But, unless you properly request to exclude yourself from the Class, you will be bound by any judgment, whether or not favorable to you, that the Court may enter in the Actions and by all the terms of the Settlement Agreement (including the release of TD Bank), if approved by the Court.

#### **25. WILL I HAVE TO PAY TAX ON A CLAIM PAYMENT I AM ELIGIBLE TO RECEIVE FROM THE SETTLEMENT?**

**No Tax Withholdings:** The Settlement Administrator will not withhold any taxes from Claim Payment.

**No Tax Advice:** The tax treatment of any Claim Payment you may be eligible to receive is your responsibility, including whether you are subject to tax withholding and, if so, what steps, if any, you may or must take to accept a distribution that does not withhold any funds for tax purposes. Neither the Settlement Administrator nor the Settling Parties and their counsel (including Class Counsel and TD Bank's counsel) can provide you with individual tax advice.

Accordingly, you should consult your tax advisor if you are not certain about the tax treatment of a Claim Payment you may be eligible to receive from the Settlement.

#### **26. HOW DO I OBTAIN ADDITIONAL INFORMATION?**

This Class Notice contains only a summary of the terms of the proposed Settlement.

The records in the Actions may be examined and copied at any time during regular office hours, and subject to customary copying fees, at the office of the Clerk of Court, United States District Court for the Southern District of New York, 500 Pearl Street, New York, New York 10007.

In addition, settlement related documents, including the Proof of Claim, Settlement Agreement and Preliminary Approval Order, may be obtained by visiting the Settlement Website or by contacting the Settlement Administrator in the manner and at the contact details stated above (see Question 3).

You may also contact class counsel, the Law Offices of G. Oliver Koppell & Associates at 99 Park Ave., Suite 1100, New York, New York 10016, (212) 867-3838

**PLEASE DO NOT WRITE TO OR TELEPHONE THE COURT FOR INFORMATION.**

Dated: March 15, 2017

By Order of the United States  
District Court of the Southern District  
of New York