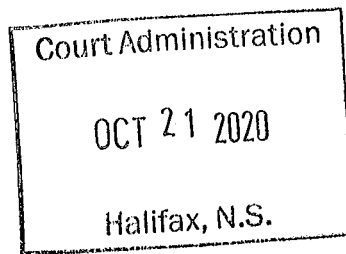


2017



Hfx. No. 461070

**SUPREME COURT OF NOVA SCOTIA**

B E T W E N:

~~DAVID MACGILLIVRAY~~ DENISE WADE

PLAINTIFF

and

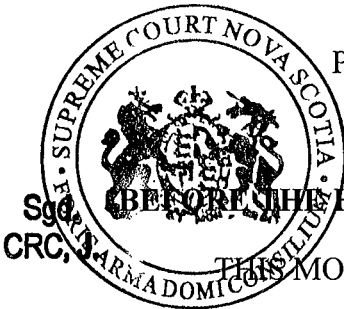
BMO NESBITT BURNS INC.

DEFENDANT

Proceeding under the *Class Proceedings Act*, S.N.S. 2007, c. 28

**CONDITIONAL CERTIFICATION ORDER**

**BEFORE THE HONOURABLE JUSTICE C. RICHARD COUGHLAN**



THIS MOTION made by the Plaintiff, Denise Wade, for an order certifying the Action as a class proceeding for settlement purposes only and for an order approving the form of Notice of Certification and Settlement Approval Hearings (the "Pre-Approval Notice") and the means by which the Pre-Approval Notice will be disseminated (the "Plan of Dissemination"), was heard on October 9, 2010 at 1815 Upper Water Street, Halifax, NS B3J 1S7

ON READING the pleadings and materials filed and on hearing the submissions of counsel for the Plaintiff and for the Defendant;

AND ON BEING ADVISED THAT the Plaintiff has entered into an Agreement with the Defendant dated June 10, 2020 (the "Agreement");

AND ON BEING ADVISED that the Parties consent to this Order;

1. **THIS COURT ORDERS AND DECLARES** that, except to the extent they are modified by this Order, the definitions set out in the Settlement Agreement which is attached as Schedule "A" to this Order, apply to and are incorporated into this Order.

2. THIS COURT ORDERS that the Action is conditionally certified as a class proceeding for settlement purposes only, conditional upon the Settlement Agreement being approved by this Court.

3. THIS COURT ORDERS that the Class is defined as:

All current and former Nesbitt employees who at any time between January 1, 2009 to January 31, 2020 both:

(i) held the position of Investment Advisor, Associate Investment Advisor, or Investment Advisor Trainee, or who performed the same or similar job functions under a different or previous Nesbitt job title; and

(ii) carried out the roles and responsibilities of such position while working in and reporting to a Nesbitt branch in Nova Scotia.

4. THIS COURT ORDERS that Denise Wade is appointed as the representative plaintiff for the Class.

5. THIS COURT ORDERS that the following issue is common to the Class:

Are Class Members entitled to overtime pay pursuant to the *Labour Standards Code*, RS, c 247, s 1, and the regulations thereto?

6. THIS COURT ORDERS that Ricepoint Administration Inc is appointed as the Claims Administrator.

7. THIS COURT ORDERS that the Claims Administrator shall carry out the responsibilities assigned to it under the Agreement.

8. THIS COURT ORDERS that any member of the Class who wishes to opt-out of the Action must do so by sending a signed written election to opt-out, together with the information required in the Agreement, to the Claims Administrator, postmarked, couriered, faxed or emailed on or before the end of the Opt-Out Period.

9. THIS COURT ORDERS that any member of the Class who validly opts out of the Action is not bound by the Agreement and will not be entitled to receive any share of benefits payable in connection with same, and will cease to be a putative class member in the Action.

10. THIS COURT ORDERS that any member of the Class who has not validly opted-out of the Action is bound by the Agreement if it is approved by the Court and becomes effective in accordance with its terms.

11. THIS COURT ORDERS that the hearing to approve the Agreement shall take place on March 18, 2021.

12. THIS COURT ORDERS that the Ombudsman of BMO Nesbitt Burns Inc. may respond to communications from individuals identified as potential class members by the Defendant regarding this proceeding, on the following terms:

(a) The information regarding this proceeding conveyed by the Ombudsman of BMO Nesbitt Burns Inc. to individuals identified as potential class members by the Defendant shall be substantially that information contained in the document attached at Schedule "C"; and

(b) The Ombudsman is also authorized to provide to any individuals identified as potential class members by the defendant a copy of Notice attached at Schedule "B" and/or a copy of the Opt-Out Form attached at Schedule "D", which forms may be provided by the Ombudsman to such individuals whether or not those forms are specifically requested by those individuals.

13. THIS COURT ORDERS that the Notice of Certification and Settlement Approval Hearing is hereby approved substantially in the form attached hereto as Schedule "B".

14. THIS COURT ORDERS that the Notice of Certification and Settlement Approval Hearing shall be determined in accordance with the Agreement.

IN THE SUPREME COURT  
COUNTY OF HALIFAX, N.S.  
I hereby certify that the foregoing document,  
identified by the registration court as a true  
copy of the original document on the file herein,  
dated at Halifax, Nova Scotia, this 21 day of October, 2020

OCT 21 2020

*Y. Dooks*  
Deputy Prothonotary

**YVONNE DOOKS**  
Deputy Prothonotary

*Yvonne Dooks*

**YVONNE DOOKS**  
Deputy Prothonotary

# Schedule 'A'

## SETTLEMENT AGREEMENT

Made as of this 10<sup>th</sup> day of June, 2020

**B E T W E E N:**

DENISE WADE

- and -

BMO NESBITT BURNS INC.

**WHEREAS** Wade was employee of Nesbitt from approximately 2009 until 2013 and worked as an Investment Advisor at a Nesbitt branch in Nova Scotia;

**AND WHEREAS** Wade is the proposed representative plaintiff in the Action, claiming entitlement to overtime compensation pursuant to the Nova Scotia *Labour Standards Code*, RS, c 247, s 1, and the regulations thereto and related claims;

**AND WHEREAS** Wade has advised her intention to bring a motion for certification, but that motion has not yet been brought;

**AND WHEREAS** Nesbitt has brought a summary judgment to dismiss Wade's claim and the Action, with such motion having been adjourned *sine die* to allow settlement discussions to proceed;

**AND WHEREAS** Nesbitt has previously resolved a class action styled *Rosen v BMO Nesbitt Burns Inc* bearing court file number CV-10-39668500CP in the Ontario Superior Court of Justice at Toronto pursuant to the *Class Proceedings Act, 1992* (Ontario) against Nesbitt, claiming entitlement to overtime compensation pursuant to the *Employment Standards Act, 2000*, S.O. 2000, c. 41, and the regulations thereto and related claims;

**AND WHEREAS** the Ontario Superior Court of Justice previously approved the settlement reached in *Rosen v BMO Nesbitt Burns Inc*;

**NOW THEREFORE** in consideration of the mutual agreements set forth below, the Parties agree as follows:

### DEFINITIONS

1. In this Agreement:

- (a) **Action** means the proposed class action bearing Court file number Hfx No. 461070 commenced in the Supreme Court of Nova Scotia at Halifax;
- (b) **Agreement** means this settlement agreement, including the recitals and schedules;
- (c) **Approval Order** mean an order of the Court substantially in the form attached as Schedule D approving this Agreement, declaring this Agreement to be binding upon all Settlement Class Members, and dismissing the Action with prejudice and without costs;
- (d) **Certification Order** means an order of the Court substantially in the form attached as Schedule A certifying the Action as a class proceeding for the purpose of giving effect to and implementing this Agreement, approving the Notice of Certification and Settlement Approval Hearing, and providing a process for Class Members to opt-out of the Action;
- (e) **Claims Administrator** means a third-party claims administrator agreed upon by the Plaintiff and Nesbitt and appointed by the Court to carry out the functions assigned to the Claims Administrator under this Agreement;
- (f) **Class** mean all current and former Nesbitt employees who at any time between January 1, 2009 to January 31, 2020 both:
  - (i) held the position of Investment Advisor, Associate Investment Advisor, or Investment Advisor Trainee, or who performed the same or similar job functions under a different or previous Nesbitt job title; and
  - (ii) carried out the roles and responsibilities of such position while working in and reporting to a Nesbitt branch in Nova Scotia;
- (g) **Class Counsel** means Valent Legal;
- (h) **Class Counsel Fees** mean the fees, disbursements, costs, and all other applicable taxes or charges of Class Counsel, including without limitation any applicable GST, PST, HST, or QST;

- (i) **Class Member(s)** means, individually or collectively, any member or members of the Class;
- (j) **Common Issue** means: Are Class Members entitled to overtime pay pursuant to the *Labour Standards Code*, RS, c 247, s 1, and the regulations thereto?
- (k) **Court** mean the Nova Scotia Supreme Court;
- (l) **Distribution Confirmation Form** means the Class Member claim form attached hereto as Schedule F;
- (m) **Effective Date** means the next calendar day after the day on which all appellate rights with respect to the Approval Order have expired or the Approval Order is affirmed upon a final disposition of all appeals;
- (n) **Finality Contribution** means 40% of the Net Settlement Amount;
- (o) **Former Employee** means a Class Member who, as of the date on which Nesbitt provides information to the Claims Administrator pursuant to paragraph 9 of this Agreement, is not employed by Nesbitt;
- (p) **IA Trainee Class Member** means a Class Member who held the position of Investment Advisor Trainee, or who otherwise was in the Nesbitt Trainee Program, for any period of time during the period from January 1, 2009 through June 1, 2016. For greater certainty, an individual need not have completed the entirety of the Nesbitt Training Program during the period from January 1, 2009 through June 1, 2016 in order to be included in the IA Trainee Class Member, provided that the individual held the position of Investment Advisor Trainee, or who otherwise was in the Nesbitt Trainee Program, for any period of time during the period from January 1, 2009 through June 1, 2016.
- (q) **IIROC** means the Investment Industry Regulatory Organization of Canada;
- (r) **Nesbitt** means BMO Nesbitt Burns Inc.;

- (s) **Nesbitt Trainee Program** means the full Nesbitt training program, typically lasting approximately eighteen months to two years, for the training of IA Trainees, which includes but is not limited to the initial close supervision period of six months mandated by IIROC and/or its predecessors;
- (t) **Net Settlement Amount** means the amount remaining from the Settlement Amount after deduction of Class Counsel Fees;
- (u) **Non-IA Trainee Class Member** means a Class Member other than an IA Trainee Class Member;
- (v) **Notice of Certification and Settlement Approval Hearing** means the form of notice attached hereto as Schedule B, or such other form as may be agreed to by Wade and Nesbitt and approved by the Court, which informs the Class of: (i) the principal elements of this Agreement, (ii) the certification of the Action as a class proceeding, (iii) the right to opt-out of the Action, (iv) the date and location of the Settlement Approval Hearing, and (v) the right to present arguments to the Court;
- (w) **Notice of Settlement Approval** means the form of notice attached hereto as Schedule E, or such other form as may be agreed to by Wade and Nesbitt and approved by the Court, which informs the Class that this Agreement has been approved and the means by which Settlement Class Members can obtain compensation pursuant to this Agreement;
- (x) **Opt-Out Period** means the period of time commencing on the date on which the Notice of Certification and Settlement Approval Hearing is first sent to any Class Member and ending forty-five (45) days thereafter, or such other period as agreed upon by Wade and Nesbitt and approved by the Court;
- (y) **Parties** mean the Plaintiff, the Settlement Class Members, and Nesbitt;
- (z) **Payment Class** mean all Settlement Class Members who complete a Distribution Confirmation Form, or otherwise advise the Claims Administrator of the

information set out in the Distribution Confirmation Form, within the Response Deadline;

- (aa) **Payment Class Member(s)** means, individually or collectively, any member or members of the Payment Class;
- (bb) **Plaintiff** means Denise Wade;
- (cc) **Released Claims** mean any and all manner of claims, demands, actions, suits, causes of action, whether class, individual or otherwise in nature, whether personal or subrogated, for damages of any kind, including without limitation compensatory, punitive or other damages, liabilities of any nature whatsoever, including interest, costs, expenses, class administration penalties, and lawyers' fees (including Class Counsel Fees), known or unknown, suspected or unsuspected, foreseen or unforeseen, actual or contingent, and liquidated or unliquidated, in law, under statute or in equity, that the Releasors, or any of them, whether directly, indirectly, derivatively, or in any other capacity, ever had, now have, or hereafter can, shall, or may have, relating in any way to any conduct occurring anywhere, from the beginning of time to January 31, 2020 relating to allegations that the Releasors were entitled to overtime pay by Nesbitt pursuant to the Nova Scotia *Labour Standards Code*, RS, c 247, s 1, and the regulations thereto, including, without limitation, all claims that were raised or which could have been raised in the Action, as well as any claims for pension and benefit entitlements attributable to payments under this Agreement;
- (dd) **Releasees** mean jointly and severally, individually and collectively, Nesbitt and its subsidiaries, affiliates and related entities and its current and former officers, directors, employees, shareholders, partners, agents, lawyers, insurers, reinsurers, subrogees, successors, and assigns;
- (ee) **Releasors** mean individually and collectively, the Plaintiff and each of the Settlement Class Members and their respective heirs, executors, administrators, and



assigns, whether or not such Settlement Class Members deliver a Distribution Confirmation Form or otherwise receive any portion of the Net Settlement Amount;

- (ff) **Response Deadline** means 60 days from the date that the Distribution Confirmation Form is sent to any Settlement Class Member;
- (gg) **Settlement Amount** means the sum of CDN \$375,000;
- (hh) **Settlement Approval Hearing** means the hearing of the motion to be brought by the Plaintiff in Court for the Approval Order;
- (ii) **Settlement Class** mean all Class Members, except Persons who validly opt-out of the Settlement Class in accordance with the Certification Order;
- (jj) **Settlement Class Member(s)** means, individually or collectively, any member or members of the Settlement Class;
- (kk) **Trainee Compensation Fund** means 60% of the Net Settlement Amount;
- (ll) **Withholdings** means any applicable withholdings applied to amounts paid out of the Finality Contribution and the Trainee Compensation Fund that are or are intended to be deducted and remitted to the Canada Revenue Agency.

#### **PAYMENT OF SETTLEMENT FUND**

2. Nesbitt will pay the Settlement Amount as a non-reversionary lump sum to the Claims Administrator within 15 days of the Effective Date.

#### **BEST EFFORTS TO EFFECT SETTLEMENT**

3. The Parties shall use their best efforts to effect the terms of this Agreement and the settlement described herein, including securing the Certification Order and the Approval Order in accordance with this Agreement.

**THE CERTIFICATION ORDER**

4. At a time mutually agreed to by the Plaintiff and Nesbitt after this Agreement is executed, and which is as soon as practicable, the Plaintiff shall bring a motion before the Court for the Certification Order. The Certification Order shall be substantially in the form set out in Schedule A to this Agreement.

5. The Parties agree that Action shall be certified solely for purposes of settlement of the Action against Nesbitt and the approval of this Agreement by the Court.

6. Wade agrees that, for settlement purposes, the only common issue that she will seek to define is the Common Issue and the only class that she will assert is the Class. Wade acknowledges that Nesbitt agrees to the definition of the Common Issue for purposes of settlement only.

**NOTICE OF CERTIFICATION AND SETTLEMENT APPROVAL HEARING**

7. Subject to the approval of the Court, the Notice of Certification and Settlement Approval Hearing shall be substantially in the form set out in Schedule B to this Agreement.

8. Subject to the approval of the Court, the Notice of Certification and Settlement Approval Hearing will be distributed as follows:

(a) The Claims Administrator shall send direct mailings of the Notice of Certification and Settlement Approval Hearing to the Class Members using both regular mail and e-mail (where available) in the manner described hereinafter in this Agreement; and

(b) Class Counsel shall post the Notice of Certification and Settlement Approval Hearing on Class Counsel's website.

9. In order to facilitate the dissemination of the Notice of Certification and Settlement Approval Hearing by the Claims Administrator as described above, within seven (7) days following receipt of the Certification Order:

- (a) Nesbitt will provide to Class Counsel and the Claims Administrator a list of Class Members in Excel format that includes, insofar as such information is in Nesbitt's knowledge, each Class Member's, first name, middle name, last name, mailing address, phone number, e-mail, whether they are a former or current employee of Nesbitt, the job titles they held at Nesbitt between January 1, 2009 and January 31, 2020, and Nesbitt's views as to whether the Class Member is an IA Trainee Class Member or a Non-IA Trainee Class Member; and
- (b) Class Counsel will provide to the Claims Administrator each Class Member's, first name, middle name, last name, mailing address, phone number, and e-mail, if any, in Class Counsel's possession.

10. Within thirty (30) days following receipt of the Certification Order, the Claims Administrator will take the following steps to locate Class Members for the purposes of delivery of the Notice of Certification and Settlement Approval Hearing:

- (a) The Claims Administrator will cross-reference the addresses of all Former Employees against the National Change of Address Database produced by Canada Post to determine if the Former Employees have changed addresses;
- (b) The Claims Administrator will search the names of all Former Employees with the IIROC Advisor Report database to locate Former Employees' active and currently registered business addresses. The Claims Administrator will further search for Former Employees' current business E-mail addresses, if this is made available on the webpage of the Former Employee's currently registered employer;
- (c) If the Claims Administrator does not locate an active registration for a Former Employee through the search in (b) above, the Claims Administrator will search the name of the Former Employee with the Canadian Securities Administrators National Registration Search (CSANR) database to locate Former Employees' currently registered addresses. The Claims Administrator will further search for Former Employees' current business E-mail addresses if they are made available on the webpage of the Former Employee's current employer;

- (d) If the Claims Administrator does not have information that it reasonably believes may result in the Notice of Certification and Settlement Approval Hearing reaching a Settlement Class Member, the Claims Administrator will employ the services of a skip tracer to attempt to locate recent contact information for each such Settlement Class Member.

11. The Claims Administrator will send the Notice of Certification and Settlement Approval Hearing to all addresses and email addresses obtained as a result of the steps described in paragraphs 9 and 10 that the Claims Administrator reasonably believes may result in the Notice of Certification and Settlement Approval Hearing reaching a Class Member. Notice of Certification and Settlement Approval Hearing shall be sent in this manner as soon as reasonably possible, and in any event no later than forty-five (45) days following receipt of the Certification Order.

12. The Claims Administrator will report to Class Counsel and Nesbitt at least seven (7) days before the Settlement Approval Hearing the number of Class Members for whom returned mail or e-mail was received in respect of the Notice of Certification and Settlement Approval Hearing.

### **OPTING OUT**

13. A Class Member may opt-out of the Action by sending a signed opt-out request form by pre-paid mail, courier, fax, or email to the Claims Administrator at an address and coordinates to be identified in the Notice of Certification and Settlement Approval Hearing.

14. Opt-out requests must contain:

- (a) A statement requesting that the person opting out be excluded from the Settlement Class; and
- (b) The full name, current address, telephone number, and e-mail address of the person who is opting out, as well as any former names which are relevant to the allegations in the Action, including any former names used by such persons when they were employed by Nesbitt.

15. An opt-out request may be, but is not required to be, in substantially the form attached as Schedule C to this Agreement, provided the opt-out request contains all or substantially all of the information listed in paragraph 14 of this Agreement.

16. An opt-out request will only be effective if the executed opt-out request is postmarked or emailed to the Claims Administrator on or before the end of the Opt-Out Period.

17. Opt-out request forms, in substantially the form attached as Schedule C to this Agreement, will be available on the website of Class Counsel, and can also be obtained by mail or email by contacting Class Counsel, or as otherwise ordered by the Court.

18. Within twenty-one (21) days of the end of the Opt-Out Period, the Claims Administrator shall notify Class Counsel and Nesbitt of each person, if any, who has opted out of the Action.

#### **THE APPROVAL ORDER**

19. Following receipt of the Certification Order, and at a time mutually agreed to by the Plaintiff and Nesbitt which is as soon as practicable following the Opt-Out Period, the Plaintiff shall bring a motion before the Court for the Approval Order. The Approval Order shall be substantially in the form set out in Schedule D to this Agreement.

#### **NOTICE OF SETTLEMENT APPROVAL AND THE DISTRIBUTION CONFIRMATION FORMS**

20. Subject to the approval of the Court, the Notice of Settlement Approval shall be substantially in the form set out in Schedule E to this Agreement.

21. Within five (5) days following the Effective Date, both Class Counsel and Nesbitt will provide any updated addresses and/or email addresses they may have for the Settlement Class Members to the Claims Administrator.

22. Within thirty (30) days following the Effective Date, the Claims Administrator will employ the services of a skip tracer to attempt to locate recent contact information for all Settlement Class Members for whom returned mail or e-mail was received in respect of the Notice of Certification and Settlement Approval Hearing. In order to assist the Claims Administrator in that regard,

Nesbitt will provide to the Claims Administrator the following information within five (5) days of such information being requested by the Claims Administrator, in respect of each Settlement Class Member for whom returned mail or e-mail was received in respect of the Notice of Certification and Settlement Approval Hearing:

- (a) The Settlement Class Member's date of birth;
- (b) The Settlement Class Member's sex; and
- (c) The Settlement Class Member's Social Insurance Number.

23. Nesbitt will seek, and the Plaintiff will consent to, a court order at the Settlement Approval Hearing to permit the information at paragraph 22 to be provided to the Claims Administrator if requested by the Claims Administrator.

24. The Claims Administrator will have the discretion to conduct further reasonable searches to locate recent contact information for Settlement Class Members.

25. The Claims Administrator shall send the Notice of Settlement Approval and the Distribution Confirmation Form to the Settlement Class Members in the manner described below as soon as possible after the steps described at paragraphs 21-24 are completed, and in any event within 60 days of the Effective Date.

26. The Claims Administrator shall send the Notice of Settlement Approval in the manner described below to all Class Members, other than Settlement Class Members, within 60 days of the Effective Date.

27. The Claims Administrator will send the Notice of Settlement Approval and, where applicable, the Distribution Confirmation Form by regular mail and e-mail (as available) to the addresses used for the distribution of the Notice of Certification and Settlement Approval Hearing, as well any other addresses or email addresses that the Claims Administrator reasonably believes may result in the Notice of Settlement Approval and the Distribution Confirmation Form reaching a Class Member.

**THE SETTLEMENT PAYMENT**

28. The Net Settlement Amount shall be distributed in accordance with paragraphs 29-36 of this Agreement.

29. Within five (5) days of the Response Deadline, the Claims Administrator will inform Class Counsel and Nesbitt of the number of responses to Distribution Confirmation Forms, how many responses are from Settlement Class Members who are IA Trainee Class Members, how many responses are from Settlement Class Members who are Non-IA Trainee Class Members, and the amounts to be paid to each IA Trainee Class Member and each Non-IA Trainee Class Member.

30. The Net Settlement Amount will be allocated amongst the Payment Class as follows:

- (a) The Trainee Compensation Fund will be divided among and paid in equal amounts to all Payment Class Members who are IA Trainee Class Members; and
- (b) The Finality Contribution will be divided among and paid in equal amounts to all Payment Class Members.

31. For greater certainty, Settlement Class Members will be required to properly complete and return a Distribution Confirmation Form or otherwise advise the Administrator of the information set out in the Distribution Confirmation Form, in order to receive any payment of either the Trainee Compensation Fund or the Finality Contribution.

32. The Claims Administrator shall pay the Trainee Compensation Fund and the Finality Contribution, less Withholdings, to those members of the Payment Class who are entitled to each, as described above in paragraph 30, within 15 days of the Response Deadline. Such amounts shall be paid by mailing each Payment Class Member a cheque.

33. The Claims Administrator shall hold the Withholdings and remit them to the Canada Revenue Agency.

34. If, for any reason, a Payment Class Member does not cash a cheque within three (3) months after the date the compensate cheque is sent to them, the Claims Administrator will make reasonable efforts to locate and follow up with the Payment Class Member to ensure the cheque is

cash. If by six (6) months after the date compensation cheque is sent to the Payment Class Member, the Payment Class Member has still not cashed the cheque, the Payment Class Member will be deemed to forfeit the right to receive the funds, and such funds will be distributed by the Claims Administrator to the United Way Halifax.

35. Thirty (30) days prior to the expiry of the six (6) month period described above, the Claim Administrator will:

- (a) Provide Class Counsel with a list of Payment Class Members who have not cashed their compensation cheque; and
- (b) Send the Payment Class Members a further letter (copied to Class Counsel) advising that they have thirty (30) days to cash the compensation cheque.

36. The Claims Administrator will have the discretion to make determinations in respect of the eligibility of Settlement Class Members and determine the categorization of Settlement Class Members in respect of whether they are an IA Trainee Class Member or a non-IA Trainee Class Members. Such determinations will be made based solely on written information provided by Nesbitt and, if they choose to provide such information, the Settlement Class Members. For greater certainty, there is no right to an oral hearing in respect of such determinations, and the Claims Administrator is not required to and shall not seek to obtain any information other than from Nesbitt or the Settlement Class Member at issue to make such determination. The Claim Administrator's decision in this respect will be final and binding and not subject to appeal.

#### **THE CLAIMS ADMINISTRATOR**

37. The Plaintiff and Nesbitt will jointly propose to the Court a Claims Administrator proposed by Nesbitt and agreed to by the Plaintiff, which agreement shall not be unreasonably withheld.

38. In addition to its other obligations set out herein, the Claims Administrator will:

- (a) Make reasonable requests of Nesbitt for assistance in clarifying information concerning Settlement Class Members and reaching them where Nesbitt can reasonably assist;



- (b) Consult with Nesbitt with respect to any issues that may affect human resources or tax reporting interests or obligations of Nesbitt; and
- (c) Provide necessary information to permit Nesbitt to comply with its human resource and tax reporting requirements.

### **RELEASE AND BAR ORDER**

39. Upon the Effective Date, and in consideration of payment of the Settlement Amount and for other valuable consideration set forth in this Agreement, the Releasers forever and absolutely release and forever discharge the Releasees from the Released Claims.

40. The Releasers shall not now or hereafter institute, continue, maintain, assert, participate in or be involved with, either directly or indirectly, whether in Canada 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 Releasee or against any other person who may claim contribution or indemnity, or other claims over for relief, from any Releasee in respect of any Released Claims.

41. Upon the Effective Date, the Action shall be dismissed with prejudice and without costs.

### **EFFECT OF SETTLEMENT**

42. The Parties acknowledge that Nesbitt denies the truth of the allegations in the Action and denies any liability whatsoever.

43. Wade and Nesbitt expressly reserve all of their rights if this Agreement is not approved, is terminated, or otherwise fails to take effect for any reason. Further, whether or not this Agreement is finally approved, is terminated, or otherwise fails to take effect for any reason, this Agreement and anything contained herein, and any and all negotiations, documents, discussions and proceedings associated with this Agreement, and any action taken to carry out this Agreement, shall not be deemed, construed or interpreted to be an admission of any violation of any statute or law, or of any wrongdoing or liability by Nesbitt or by any Releasee, or of the truth of any of the claims or allegations contained in the Action or any other pleading filed by the Plaintiff or any other person.

44. Whether or not it is terminated, this Agreement and anything contained herein, and any and all negotiations, documents, discussions and proceedings associated with this Agreement, and any action taken to carry out this Agreement, shall not be referred to, offered as evidence or received in evidence in any present, pending or future civil, criminal or administrative action or proceeding, except: (i) by the Parties in a proceeding to approve or enforce this Agreement; (ii) by a Releasee to defend against the assertion of any Released Claims; (iii) by a Releasee in any insurance-related proceeding; or (iv) as otherwise required by law or as provided in this Agreement.

45. Except insofar as such a term is prohibited by law, Class Counsel will hereafter not institute, continue, maintain, assert, participate in or be involved with, either directly or indirectly, whether in Canada 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 Releasee or against any other person who may claim contribution or indemnity, or other claims over for relief, from any Releasee which relates to or arises from the Released Claims.

46. In the event that this Agreement is not finally approved, is terminated in accordance with its terms, or otherwise fails to take effect, this Agreement shall, subject to an agreement by Wade and Nesbitt to the contrary, be null and void and of no force and effect and any order certifying or authorizing a class proceeding shall be set aside and the Parties agree that all Parties shall be put in the position they were in before this Agreement was executed and nothing in this Agreement shall prejudice any position that any of the Parties or any Releasee may take on any issue in the Action or any other litigation.

#### **CLASS COUNSEL FEES AND ADMINISTRATION EXPENSES**

47. All fees and costs of the Claims Administrator in connection with the implementation of this Agreement will be paid by Nesbitt, up to a maximum of CAD \$100,000.

48. Except as provided in paragraphs 2 and 47, the Releasees shall not be liable for or required to pay any damages, costs, fees, disbursements, or taxes arising in any way under this Agreement or the Action, including but not limited to Class Counsel Fees and other any costs, fees, disbursements, or taxes of the Plaintiff or any Settlement Class Members, including any expenses

or costs incurred by any lawyers, experts, advisors, agents, or representatives of the Settlement Class Members.

49. Class Counsel may on notice to Nesbitt seek the Court's approval of Class Counsel Fees contemporaneous with seeking the Approval Order, or at such other time as they shall determine in their sole discretion. Class Counsel shall seek Class Counsel Fees in accordance with their retainer agreement in the amount of twenty-five percent of the Settlement Amount after all reasonable and proper disbursements have been deducted. Class Counsel Fees shall be paid by the Claims Administrator from the Settlement Amount. Nesbitt shall take no position on such a motion.

50. The failure of the Court to approve a request for Class Counsel Fees has no impact or effect on the rights and obligations of the Parties to this Agreement and shall not be grounds for termination of the Agreement.

#### **TERMINATION OF AGREEMENT**

51. Wade or Nesbitt may terminate this Agreement only in the event that:

- (a) The Court declines to grant a Certification Order substantially in the form attached as Schedule A, or if any such Certification Order is overturned or reversed in whole or in part on appeal;
- (b) The Court declines to grant the Approval Order substantially in the form attached as Schedule D or if such Approval Order is overturned or reversed in whole or in part on appeal; or
- (c) The total number of Class Members who opt-out of the Action exceeds 25% of the total number of Class Members.

52. To exercise a right of termination under paragraph 51, a terminating party shall deliver a written notice of termination pursuant to paragraph 51 of this Agreement within thirty (30) days of the ground for termination becoming known to the terminating party. Upon delivery of such a written notice, this Agreement shall be terminated, shall be null and void and have no further force or effect, and shall not be binding on the Parties.

53. If this Agreement is not approved, is terminated by Wade or Nesbitt in accordance with its terms, or otherwise fails to take effect for any reason, all orders made in respect of this Agreement shall be set aside and shall be deemed as having no force and effect and shall be without prejudice to any position the Parties may assert in the future.

54. If this Agreement is terminated or otherwise fails to take effect for any reason, the provisions of sections 42-44 and 46 and the definitions applicable thereto shall survive the termination and continue in full force and effect. The definitions shall survive only for the limited purpose of the interpretation of these surviving sections within the meaning of this Agreement. All other provisions of this Agreement and all other obligations pursuant to this Agreement shall cease immediately.

#### MISCELLANEOUS

55. Wade or Nesbitt may apply to the Court for directions in respect of the interpretation, implementation, and administration of this Agreement.

56. All motions contemplated by this Agreement shall be on notice to both Wade and Nesbitt.

57. In this Agreement:

- (a) The division of the Agreement into paragraphs and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Agreement; and
- (b) The terms "this Agreement", "hereof", "hereunder", "herein" and similar expressions refer to this Agreement and not to any particular section or other portion of this Agreement.

58. In the computation of time in this Agreement, except where a contrary intention appears:

- (a) Where there is a reference to a number of days between two events, the number of days shall be counted by excluding the day on which the first event happens and including the day on which the second event happens, including all calendar days; and

- (b) Only in the case where the time for doing an act expires on a statutory holiday, the act may be done on the next day that is not a holiday.

59. The Court shall retain exclusive jurisdiction over this Agreement and the Parties hereto (including the Class Members).

60. This Agreement shall be governed by and construed and interpreted in accordance with the laws of the Province of Nova Scotia.

61. This Agreement constitutes the entire agreement among the Parties, and supersedes all prior and contemporaneous understandings, undertakings, negotiations, representations, promises, agreements, agreements in principle and memoranda of understanding in connection herewith. None of the Parties will be bound by any prior obligations, conditions, or representations with respect to the subject matter of this Agreement, unless expressly incorporated herein.

62. This Agreement may not be modified or amended except in writing and on consent of Wade and Nesbitt, and the modifications or amendments shall only be effective if the Court approves any such material modification or amendment made after the Approval Orders have been granted.

63. This Agreement shall be binding upon, and enure to the benefit of Wade, Nesbitt, the Settlement Class Members, the Releasors, the Releasees, and all of their successors and assigns. Without limiting the generality of the foregoing, each and every covenant and agreement made herein by the Plaintiffs shall be binding upon all Releasors and each and every covenant and agreement made herein by Nesbitt shall be binding upon all of the Releasees.

64. This Agreement may be executed in counterparts, all of which taken together will be deemed to constitute one and the same agreement, and a facsimile or PDF signature shall be deemed an original signature for purposes of executing this Agreement.

65. This Agreement has been the subject of negotiations and discussions among the Parties, each of which has been represented and advised by competent counsel, so that any statute, case law, or rule of interpretation or construction that would or might cause any provision to be construed against the drafter of this Agreement shall have no force and effect. The Parties further

agree that the language contained in or not contained in previous drafts of this Agreement, or any agreement in principle, all have no bearing upon the proper interpretation of this Agreement.

66. The recitals to this Agreement are true and form part of the Agreement.

67. The Schedules annexed hereto form part of this Agreement.

68. Any and all notices, requests, directives, or communications required by this Agreement shall be in writing and shall, unless otherwise expressly provided herein, be given personally, by express courier, by postage prepaid mail, by facsimile transmission, or by email PDF files, and shall be addressed as follows:

**FOR THE PLAINTIFFS AND FOR CLASS COUNSEL:**

Michael Dull  
Valent Legal  
401-1741 Brunswick Street  
Halifax, NS B3J 3X8  
Tel: 902-443-4488  
Fax: 902-443-6593  
Email: [mike@valentlegal.ca](mailto:mike@valentlegal.ca)

**FOR NESBITT:**

Monique Jilesen  
Paul-Erik Veel  
Lenczner Slaght  
130 Adelaide Street W.  
Suite 2600  
Toronto, Ontario M5H 3P5  
Tel: (416) 865-3096  
Fax: (416) 865-9010  
Email: [mjilesen@litigate.com](mailto:mjilesen@litigate.com)  
[pveel@litigate.com](mailto:pveel@litigate.com)

69. Each of the Parties hereby affirms and acknowledges that:

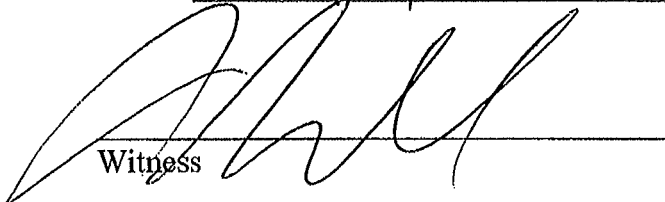
- (a) He, she, or a representative of the Party with the authority to bind the Party with respect to the matters set forth herein has read and understood this Agreement;

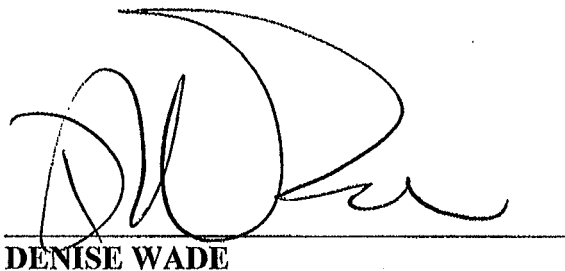
- (b) The terms of this Agreement and the effects thereof have been fully explained to him, her, or the Party's representative by his, her or its counsel;
- (c) He, she, or the Party's representative fully understands each term of this Agreement and its effect; and
- (d) No Party has relied upon any statement, representation or inducement (whether material, false, negligently made or otherwise) of any other Party, beyond the terms of this Agreement, with respect to the first Party's decision to execute this Agreement.

70. Each of the undersigned represents that he or she is fully authorized to enter into the terms and conditions of, and to execute, this Agreement on behalf of the Parties identified above their respective signatures below.

71. The Parties have executed this Agreement as of the date on the cover page.

Date: July 1, 2020

  
Witness

  
DENISE WADE

Date: \_\_\_\_\_

**BMO NESBITT BURNS INC.**


Per: **Bruce Ferman** Digitally signed by  
Bruce Ferman  
Date: 2020.06.17  
11:42:44 -04'00'

Name: Bruce Ferman

Position: COO

Date: June 17/20

**BMO NESBITT BURNS INC.**

Per:   
\_\_\_\_\_

Name: Jamie Loughery

Position: Regional President



**SCHEDULE "A" TO AGREEMENT – CERTIFICATION ORDER**

Hfx. No. 461070

**SUPREME COURT OF NOVA SCOTIA**

THE HONOURABLE ) THE \_\_\_\_\_ DAY OF  
JUSTICE ) \_\_\_\_\_, 20\_\_

B E T W E N:

DAVID MACGILLIVRAY DENISE WADE

PLAINTIFF

and

BMO NESBITT BURNS INC.

DEFENDANT

Proceeding under the *Class Proceedings Act*, S.N.S. 2007, c. 28

**ORDER**

THIS MOTION made by the Plaintiff, Denise Wade, for an order certifying the Action as a class proceeding for settlement purposes only and for an order approving the form of Notice of Certification and Settlement Approval Hearings (the "Pre-Approval Notice") and the means by which the Pre-Approval Notice will be disseminated (the "Plan of Dissemination"), was heard on ●, 20\_\_ at 1815 Upper Water Street, Halifax, NS B3J 1S7

ON READING the pleadings and materials filed and on hearing the submissions of counsel for the Plaintiff and for the Defendant;

AND ON BEING ADVISED THAT the Plaintiff has entered into an Agreement with the Defendant dated ● (the "Agreement");

AND ON BEING ADVISED that the Parties consent to this Order;

1. **THIS COURT ORDERS AND DECLARES** that, except to the extent they are modified by this Order, the definitions set out in the Settlement Agreement which is attached as Schedule "A" to this Order, apply to and are incorporated into this Order.

2. **THIS COURT ORDERS** that the Action is certified as a class proceeding for settlement purposes only.

3. **THIS COURT ORDERS** that the Class is defined as:

All current and former Nesbitt employees who at any time between January 1, 2009 to January 31, 2020 both:

(i) held the position of Investment Advisor, Associate Investment Advisor, or Investment Advisor Trainee, or who performed the same or similar job functions under a different or previous Nesbitt job title; and

(ii) carried out the roles and responsibilities of such position while working in and reporting to a Nesbitt branch in Nova Scotia.

4. **THIS COURT ORDERS** that Denise Wade is appointed as the representative plaintiff for the Class.

5. **THIS COURT ORDERS** that the following issue is common to the Class:

Are Class Members entitled to overtime pay pursuant to the *Labour Standards Code*, RS, c 247, s 1, and the regulations thereto?

6. **THIS COURT ORDERS** that ● is appointed as the Claims Administrator.

7. **THIS COURT ORDERS** that the Claims Administrator shall carry out the responsibilities assigned to it under the Agreement.

8. **THIS COURT ORDERS** that any member of the Class who wishes to opt-out of the Action must do so by sending a signed written election to opt-out, together with the information required

in the Agreement, to the Claims Administrator, postmarked, couriered, faxed or emailed on or before the end of the Opt-Out Period.

9. THIS COURT ORDERS that any member of the Class who validly opts out of the Action is not bound by the Agreement and will not be entitled to receive any share of benefits payable in connection with same, and will cease to be a putative class member in the Action.

10. THIS COURT ORDERS that any member of the Class who has not validly opted-out of the Action is bound by the Agreement if it is approved by the Court and becomes effective in accordance with its terms.

11. THIS COURT ORDERS that the hearing to approve the Agreement shall take place on ●.

12. THIS COURT ORDERS that the Ombudsman of BMO Nesbitt Burns Inc. may respond to communications from individuals identified as potential class members by the Defendant regarding this proceeding, on the following terms:

(a) The information regarding this proceeding conveyed by the Ombudsman of BMO Nesbitt Burns Inc. to individuals identified as potential class members by the Defendant shall be substantially that information contained in the document attached at Schedule "C"; and

(b) The Ombudsman is also authorized to provide to any individuals identified as potential class members by the defendant a copy of Notice attached at Schedule "B" and/or a copy of the Opt-Out Form attached at Schedule "D", which forms may be provided by the Ombudsman to such individuals whether or not those forms are specifically requested by those individuals.

13. THIS COURT ORDERS that the Notice of Certification and Settlement Approval Hearing is hereby approved substantially in the form attached hereto as Schedule "B".

14. THIS COURT ORDERS that the Notice of Certification and Settlement Approval Hearing shall be disseminated in accordance with the Agreement.

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Justice

**SCHEDULE "B" TO AGREEMENT – NOTICE**

**SCHEDULE "B" TO CERTIFICATION ORDER – NOTICE**

**If You Worked as an Investment Advisor for BMO  
Nesbitt Burns in Nova Scotia**

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**This Class Action Lawsuit May Affect Your Rights.**

*A court authorized this notice. You are not being sued.*

You are receiving this notice as you have been identified by BMO Nesbitt Burns as having held the position in Nova Scotia of Investment Advisor, Associate Investment Advisor, or Investment Advisor Trainee at some point after January 1, 2009. You may be a class member in this class action (see further information below). If you qualify as a class member, you are automatically included and you do not have to do anything to participate in this class action.

A settlement has been reached with BMO Nesbitt Burns. You may be entitled to compensation as a result of this settlement, if the settlement is approved by the Court.

If you do not take the steps described below to opt out of the settlement, you will be bound by the settlement, if it is approved by the Court.

**BASIC INFORMATION**

**1. Why was this notice issued?**

This lawsuit has been "certified" as a Class Action because the Plaintiff and BMO Nesbitt Burns have reached a settlement of the lawsuit.

The case is known as *Wade v. BMO Nesbitt Burns Inc.*, Hfx. No. 461070. The person who sued (Ms. Wade) is the Plaintiff, who is pursuing the action for the benefit of the entire class. BMO Nesbitt Burns Inc. is the Defendant.

This notice has been issued to advise about the certification of this action, to provide general information about the action, to provide information about the proposed settlement, and to provide information about how class members may opt out if they do not wish to participate in the action. Class members who opt out will not be entitled to share in any settlement.

You may visit this website to obtain further information: [www.valentlegal.ca/class-action/bmo-nesbitt-burns-overtime-class-action](http://www.valentlegal.ca/class-action/bmo-nesbitt-burns-overtime-class-action).

**You should read this notice carefully as it may affect your legal rights and you may need to take prompt action.**

## **2. What is this lawsuit about?**

The lawsuit alleges that BMO Nesbitt Burns Inc. improperly failed to pay overtime compensation to certain Investment Advisors, Associate Investment Advisors, and Investment Advisor Trainees working in Nova Scotia.

The class action alleges that the Defendant, BMO Nesbitt Burns Inc. breached its duties to the class by requiring them to work overtime but failing to appropriately compensate them for those overtime hours in accordance with the *Labour Standards Code*. It is alleged that class members were routinely required to work overtime, but that BMO Nesbitt Burns misclassified the class members as being ineligible for overtime pay to which they were entitled.

BMO Nesbitt Burns Inc. has defended this action on the basis that it alleges that Investment Advisors, Associate Investment Advisors, and Investment Advisor Trainees are exempt from the payment of overtime compensation.

The claims have not been proven, and the Court has not yet decided whether the plaintiff or the defendant is correct. BMO Nesbitt Burns Inc. denies the truth of the allegations in the Action and denies any liability whatsoever.

A copy of the Statement of Claim (which describes the claims against BMO Nesbitt Burns), a copy of the Statement of Defence (which describes BMO Nesbitt Burns' position), and other legal documents associated with this case, can be viewed at [www.valentlegal.ca/class-action/bmo-nesbitt-burns-overtime-class-action](http://www.valentlegal.ca/class-action/bmo-nesbitt-burns-overtime-class-action).

## **3. Why is this a class action?**

In a class action one or more people called "representative plaintiffs" (in this case Denise Wade) sue on behalf of people who have similar claims. All of these people are a "class" or "class members." The court resolves the common issues for all class members, except for those who remove themselves from the class by opting-out.

## **4. Who is a member of the Class?**

The Class includes all current and former Nesbitt employees who at any time between January 1, 2009 to January 31, 2020 both: (i) held the position of Investment Advisor, Associate Investment Advisor, or Investment Advisor Trainee, or who performed the same or similar job functions under a different or previous Nesbitt job title; and (ii) carried out the roles and responsibilities of such position while working in and reporting to a Nesbitt branch in Nova Scotia.

Class members are automatically included in the class action now that it has been certified, unless they choose to opt out of the proceeding, as described below. If a class member opts out, they will not be entitled to the settlement of this action.

Class members who opt out of the proceeding can choose to proceed individually against BMO NBI, outside of this class action. However, class members who do not opt out of the proceeding cannot advance any claims individually against BMO NBI in respect of the allegations advanced in this class proceeding.

Class members who do not opt out will be bound by the settlement reached, provided it is approved by the Court.

If you have any questions about whether you are a member of the Class, please contact Class Counsel at the contact information provided below.

#### **5. Will there be a settlement?**

Yes, subject to Court approval.

Nesbitt has agreed to pay an all-inclusive sum of CDN \$375,000 (inclusive of all claims, costs, interest, and taxes), as well as paying for certain settlement administration costs. After deducting Class Counsel's fees, and subject to applicable deductions, the balance of settlement fund (the "Net Settlement Amount") will be distributed as follows:

- (a) 60% of the Net Settlement Amount will be divided equally among and paid, less applicable withholdings, to current and former Nesbitt employees who held the position of Investment Advisor Trainee, or who performed the same or similar job functions under a different or previous Nesbitt job title, at any time during the period between January 1, 2009 through June 1, 2016 and carried out the roles and responsibilities of such position while working in and reporting to a Nesbitt branch in Nova Scotia ("IA Trainee Class Members");
- (b) 40% of the Net Settlement Amount will be divided equally among and paid, less applicable withholdings, to current and former Nova Scotia current and former Nesbitt employees who, at any time between January 1, 2009 to January 31, 2020, held the position of Investment Advisor, Associate Investment Advisor, or Investment Advisor Trainee, or who performed the same or similar job functions under a different or previous Nesbitt job title, and carried out the roles and responsibilities of such position while working in and reporting to a Nesbitt branch in Nova Scotia.

Class members will have to complete a Distribution Confirmation Form at a later point in time in order to receive payment. These will be sent to an independent third party who is not permitted to disclose your participation in the settlement to Nesbitt.

Class members will not have to prove that they worked any overtime hours in order to receive payment.

Class Counsel will be seeking a fee of 25% on the CDN \$375,000 settlement fund, plus HST and repayment of disbursements in accordance with the retainer agreement in this case. The 25% contingency fee in this case must be approved by court.

The amount of the distribution you will receive as part of the settlement depends on whether you went through the BMO Nesbitt Burns Trainee program as a new IA, or whether you were already working as an IA when hired and did not have to participate in the Nesbitt IA Trainee program.

Settlement Class Members who opted out cannot receive any compensation.

A complete copy of the Settlement Agreement and other information about this lawsuit is available at: [www.valentlegal.ca/class-action/bmo-nesbitt-burns-overtime-class-action](http://www.valentlegal.ca/class-action/bmo-nesbitt-burns-overtime-class-action).

## YOUR RIGHTS AND OPTIONS

### **6. How do I participate in the Class Action?**

If you meet the class definition, you are automatically included in the class action as a class member. You do not need to take any action.

### **7. What if I don't want to be in the Class and wish to "Opt Out"?**

If you decide you do not wish to be included as a class member in the lawsuit, you must remove yourself—in other words, "opt out." If you opt out, you will not be permitted to share in the settlement of the lawsuit.

If you wish to opt out and if you wish to make any claim against BMO Nesbitt Burns yourself, you may need to retain your own lawyer, at your own expense, and proceed with your individual claim on your own. Class members who do not opt out of the proceeding cannot advance any claims individually against BMO NBI in respect of the allegations advanced in this class proceeding.

To opt out of the action, you need to fill out the attached Opt-Out Form (which can also be obtained at ●) and you must mail your Opt-Out Form by no later than [insert date] to: ●

You should contact Class Counsel or your own lawyer to discuss whether it is advisable for you to opt out under the circumstances. You may reach Class Counsel as follows:

**telephone:** 902-443-4488  
**email:** [info@valentlegal.ca](mailto:info@valentlegal.ca)

### **8. What if I disagree with the settlement?**

The court will hear submissions on whether this settlement and the legal fees and costs of Valent Legal should be approved on ●. You can attend this hearing if you wish, but you do not need to. If the settlement is approved, payments to Settlement Class Members will be made in accordance with the terms of the settlement agreement.

If you wish to object to the settlement, you must notify [claims administrator] in writing by using the enclosed objection form by ●. Your objection will be filed with the Court.

### **9. What if I still work at BMO Nesbitt Burns?**

If you still work at BMO Nesbitt Burns, you can still participate in this case. In Nova Scotia, an employer is not allowed to take action against a current employee for legal actions related to their potential employment rights. Your participation in this settlement will be kept confidential from BMO Nesbitt Burns.

If you have any questions about how this class action might affect your employment, you can contact BMO Nesbitt Burns Ombudsman's office at ●.



## THE LAWYERS REPRESENTING YOU

### **10. Do I have a lawyer in the case?**

Yes. The Court has appointed Valent Legal to represent you and other Class Members as "Class Counsel." You will not be charged for these lawyers at this time. Class Counsel will only receive compensation if they are successful in this case for the Class Members. The court must approve all fees paid to Class Counsel.

## GETTING MORE INFORMATION

### **10. How do I get more information?**

You can get more information at [website], by calling ●, or writing to: ● or by email at ●.

You can also contact BMO Nesbitt Burns Ombudsman's office at ●.



---

I DO NOT intend to appear at the hearing of the motion to approve the settlement, and I understand that my objection will be filed with the court prior to the hearing of the motion on ●

I DO intend to appear, in person or by counsel, and to make submissions at the hearing of the motion to approve the settlement on ●.

**MY ADDRESS FOR SERVICE IS:**

**MY LAWYER'S ADDRESS FOR SERVICE IS  
(if applicable):**

Name:

Name:

Address:

Address:

Tel.:

Tel.:

Fax:

Fax:

Email:

Email:

**Date:** \_\_\_\_\_

**Signature:** \_\_\_\_\_

## SCHEDULE "C" TO CERTIFICATION ORDER – OMBUDSMAN'S SCRIPT

### Ombudsman's Script

The following information may be conveyed by the Ombudsman to individuals identified as potential class members by BMO Nesbitt Burns Inc.

#### The Class Proceeding Generally

**Question:** What is this class proceeding about?

**Answer:** The class action alleges that the Defendant, BMO Nesbitt Burns Inc. breached its duties to Nova Scotia Investment Advisors, Associate Investment Advisors and Investment Advisor Trainees by requiring them to work overtime but failing to appropriately compensate them for those overtime hours in accordance with the *Labour Standards Code*. It is alleged that class members were routinely required to work overtime, but that BMO Nesbitt Burns misclassified the class members as being ineligible for overtime pay to which they were entitled.

**Question:** What is BMO Nesbitt Burns Inc.'s position on the class action?

**Answer:** BMO Nesbitt Burns Inc. has defended this action on the basis that it alleges that: 1) Investment Advisors, Associate Investment Advisors and Investment Advisor Trainees were never required by BMO NBI to work hours in excess of 48 hours per week to perform their job responsibilities; and 2) Investment Advisors, Associate Investment Advisors, and Investment Advisor Trainees are exempt from the requirement under the *Labour Standards Code* and the associated regulations to be paid overtime pay.

#### The Class Members

**Question:** Who are the members of the class?

**Answer:** Pursuant to an Order of the Nova Scotia Supreme Court, the Class Members have been defined as follows:

All current and former Nesbitt employees who at any time between January 1, 2009 to January 31, 2020 both:

(i) held the position of Investment Advisor, Associate Investment Advisor, or Investment Advisor Trainee, or who performed the same or similar job functions under a different or previous Nesbitt job title; and

(ii) carried out the roles and responsibilities of such position while working in and reporting to a Nesbitt branch in Nova Scotia.

**Question:** Am I a member of the class?

**Answer:** If you fall within the above definition, you will be a member of the class. If you have any questions as to whether you are a member of the class, you can contact Class Counsel.

**Question:** If I am included in the above definition, do I have to do anything in order to participate in the lawsuit?

**Answer:** No. If you fall within the above definition, you will automatically be included as a member of the class. If you fall within the above definition but do not wish to participate in the class action, you must opt out, as described below.

### **Opting-Out of the Class Action**

**Question: Do I have to participate in the class action?**

**Answer:** No. If you wish to opt out of the class action, you may do so, if you do so in advance of the opt-out deadline.

**Question: How do I opt out of the class action?**

**Answer:** In order to opt out of the class action, you must complete and sign an opt-out form and mail it to the following address.

[claims administrator]  
Attention: Wade v BMO Nesbitt Burns Inc

Your opt-out form must be postmarked by ● in order for you to be able to opt out of the class action.

After ●, you will not be permitted to opt out of the class action, unless a judge of the Nova Scotia Supreme Court gives you leave to do so.

### **Impact on Employment**

**Question: If I participate in the class action, will it negatively impact my employment?**

**Answer:** No. Your participation in this class action will not affect your employment with BMO Nesbitt Burns Inc.

**Question: Do I have to disclose to anyone at BMO Nesbitt Burns Inc. whether or not I am participating in the class action?**

**Answer:** No. You do not need to advise anyone at BMO Nesbitt Burns Inc. whether or not you are participating in the class action.

**Question: Is BMO Nesbitt Burns Inc. going to start paying overtime to class members as a result of this class proceeding?**

**Answer:** Since June 1, 2016, BMO Nesbitt Burns Inc has allowed Nova Scotia Trainee Investment Advisors who work in excess of 48 hours per week to claim overtime pay.

If you are not currently being paid for overtime but believe you are entitled to overtime pay, you may also challenge this using BMO Nesbitt Burns Inc.'s alternative dispute resolution procedure. A copy of that policy is contained on BMO Nesbitt Burns Inc.'s intranet.

### **For More Information**

**Question: Who do I contact for further information?**

**Answer:** You can contact class counsel, Valent Legal, for further information.

**Question: How do I contact class counsel?**

**Answer:** You can contact class counsel by telephone at ● or by email at ●.

**Question: Is there anyone at BMO Nesbitt Burns Inc. that I can contact for further information?**

**Answer:** You can contact BMO Nesbitt Burns Inc.'s Employee Relations department at ● for further information.

**SCHEDULE "C" TO AGREEMENT – OPT OUT FORM**

**SCHEDULE "D" TO CERTIFICATION ORDER – OPT OUT FORM**

**OPT OUT FORM**

**TO:** [claims administrator]  
[claims administrator address]  
**Attention: Wade v BMO Nesbitt Burns Inc**

**This is NOT a claim form.**

Completing this OPT OUT COUPON will EXCLUDE you from receiving any compensation arising out of any settlement or judgment in the class proceeding named below:

Hfx. No. 461070

**SUPREME COURT OF NOVA SCOTIA**

**B E T W E E N:**

**DENISE WADE**

**PLAINTIFF**

**and**

**BMO NESBITT BURNS INC.**

**DEFENDANT**

I do not want to participate in the class action styled as **Denise Wade v. BMO Nesbitt Burns Inc**, alleging a wrongful denial of overtime compensation to eligible Nova Scotia employees by the Defendant.

**I understand that by opting out of this class proceeding, I am confirming that I do not wish to participate in this class proceeding and will not be entitled to share in any money recovered in the action. I confirm that if I opt out, and if I wish to make a claim against the defendant, I will be responsible to hire my own counsel, at my own expense, and pursue the claim on my own.**

I understand that any individual claim I may have against the Defendant must be commenced within a specified limitation period or it will be legally barred. I understand that the certification of this class proceeding suspended the running of the limitation period from the time the class proceeding was filed. The limitation period will resume running against me if I opt out of this class proceeding. I understand that by opting out, I take full responsibility for the resumption of the running of any relevant limitation period and for taking all necessary legal steps to protect any claim I may have.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Address

\_\_\_\_\_  
City, Province, Postal Code

\_\_\_\_\_  
Telephone

\_\_\_\_\_  
Email

This Notice must be delivered on or before \_\_\_\_\_, 2020 to be effective.



**SCHEDULE "D" TO AGREEMENT – SETTLEMENT APPROVAL ORDER**

Hfx. No. 461070

**SUPREME COURT OF NOVA SCOTIA**

THE HONOURABLE ) THE \_\_\_\_\_ DAY OF  
JUSTICE ) \_\_\_\_\_, 20\_\_

**B E T W E E N:**

**DAVID-MACGILLIVRAY DENISE WADE**

**PLAINTIFF**

and

**BMO NESBITT BURNS INC.**

**DEFENDANT**

Proceeding under the *Class Proceedings Act*, S.N.S. 2007, c. 28

**ORDER**

**THIS MOTION**, made by the Plaintiff, on consent of the Defendant, for an order approving the settlement of this action pursuant to section 39 of the *Class Proceedings Act*, was heard on \_\_\_\_\_, 20\_\_ at 1815 Upper Water Street, Halifax, NS B3J 1S7

**WHEREAS** this action was certified as a class proceeding pursuant to the order of Justice \_\_\_\_\_ dated \_\_\_\_\_, (the "Certification Order"),

**AND WITHOUT ADMISSION OF LIABILITY** on the part of the Defendant,

**AND UPON HAVING REGARD** for the steps required to oversee the implementation of the Settlement Agreement pursuant to this court's supervisory jurisdiction pursuant to the *Class Proceedings Act*, and its inherent jurisdiction to control its own process, in order to ensure the Settlement Agreement is administered in a fair and impartial manner,

**AND UPON HEARING** the submissions of counsel for the Plaintiff and Defendant and upon reading the materials filed, including the motion record of the Plaintiff and the factum of the Plaintiff, and the hearing of objections, if any,

1. **THIS COURT ORDERS AND DECLARES** that, except to the extent they are modified by this Order, the definitions set out in the Settlement Agreement which is attached as Schedule "A" to this Order, apply to and are incorporated into this Order.
2. **THIS COURT ORDERS AND DECLARES** that the Settlement Agreement is fair, reasonable, and in the best interests of the Class Members and Settlement Class Members.
3. **THIS COURT ORDERS** that the Settlement Agreement is hereby approved pursuant to section 38 of the *Class Proceedings Act* and will be implemented in accordance with its terms and this order and any further orders of this Court.
4. **THIS COURT ORDERS AND DECLARES** that the Agreement is incorporated by reference into and forms part of this Order.
5. **THIS COURT ORDERS** that in the event of a conflict between this Order and the Agreement, this Order shall prevail.
6. **THIS COURT ORDERS, ADJUDGES, AND DECLARES** that this order and the Settlement Agreement are binding upon all Settlement Class Members, including those persons who are under a disability or who otherwise lack capacity.
7. **THIS COURT ORDERS AND DECLARES** that, upon the Effective Date, each Releasor has released and shall be conclusively deemed to have forever, finally, and absolutely released the Releasees from the Released Claims.
8. **THIS COURT ORDERS** that, each Releasor shall not now or hereafter institute, continue, maintain, assert, participate in or be involved with either directly or indirectly, whether in Canada 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 Releasee or against any other Person who may claim contribution or indemnity, or other claims over for relief, from any Releasee in respect of the Released Claims.

9. **THIS COURT ORDERS AND DECLARES** that without in any way affecting the finality of this order, this Court reserves exclusive and continuing jurisdiction over the Action, the Plaintiff, all of the Class Members, Settlement Class Members, and the Defendant for the limited purposes of implementing the Settlement Agreement and enforcing and administering the Settlement Agreement and this order.

10. **THIS COURT ORDERS AND ADJUDGES** that, save as set out above, this Action is dismissed without costs and with prejudice, and that such dismissal will be a defence to any subsequent action in respect of the subject matter hereof.

11. **THIS COURT ORDERS** that the Notice of Approval of Settlement will be provided to Class Members and the Distribution Confirmation Form will be provided to Settlement Class Members, as described in the Settlement Agreement.

12. **THIS COURT ORDERS** that the Claims Administrator shall pay the Net Settlement Amount to the Payment Class Members, in the manner described in the Settlement Agreement.

13. **THIS COURT ORDERS** that the legal fees and disbursements (inclusive of taxes) of Class Counsel will be determined by further order of this Court.

14. **THIS COURT ORDERS** that in order to assist the Claims Administrator in locating a settlement class member for whom returned mail or e-mail was received in respect of the Notice of Certification and Settlement Approval Hearing, Nesbitt is permitted to and shall provide to the Claims Administrator the following information regarding any Settlement Class Members in respect of whom the Claims Administrator may request such information:

- (a) The Settlement Class Member's date of birth;
- (b) The Settlement Class Member's sex; and
- (c) The Settlement Class Member's Social Insurance Number.

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Justice ●

**SCHEDULE "E" TO AGREEMENT – NOTICE OF SETTLEMENT APPROVAL**

**SCHEDULE "B" TO APPROVAL ORDER – NOTICE OF SETTLEMENT APPROVAL**

[MONTH], [YEAR]

[claims administrator]  
Direct Dial: 1-800- 000-000  
Direct Fax: 416-000-000  
[email]

**Re: NOTICE OF SETTLEMENT APPROVAL and DISTRIBUTION  
*Wade v. BMO Nesbitt Burns Inc. (the "Class Action")*  
Re: Overtime Pay**

You are receiving this notice and distribution confirmation form because you are eligible to receive funds from a class action settlement that has been approved by the Nova Scotia Supreme Court. If you have questions about this notice or how to receive funds, you should contact the Claims Administrator, ●, at the contact information provided at the end of this notice.

**Distribution Response Deadline**

In order receive funds from the Settlement, you must confirm your address with the Administrator. The address you confirm will be used to communicate with you regarding the Settlement and for mailing of the settlement funds. You must respond to this letter by no later than **[60 days after Final Approval]**, confirming your address and that you wish to receive payment. If you do not respond by the deadline, you will forfeit your entitlement to any funds.

**Responses to the Administrator will be kept confidential. BMO Nesbitt Burns will not be advised of your participation in this settlement.**

You must respond to the Administrator in one of the following ways:

1. **returning a copy of the attached Distribution Confirmation Form;**
2. **send an email to [email] confirming your mailing address;**
3. **Call [phone number] and confirm your address; or**
4. **send a letter confirming your mailing address to:**

[claims administrator]  
Re: Wade v. BMO  
[claims administrator]

## **Overview of the Class Action**

This Settlement concerns the allegation that BMO Nesbitt Burns Inc. failed to pay certain Investment Advisors in respect of overtime compensation. BMO Nesbitt Burns Inc. defended this class action and denies this allegation. It has not been proven in court.

## **Overview of Settlement**

The Plaintiff has entered into a settlement with BMO Nesbitt Burns Inc. (the "Settlement Agreement"). The Settlement provides for payment of CDN \$375,000 all inclusive, including a streamlined distribution which does not require class members to prove their hours worked. The Settlement Agreement has now been approved by the Court and Settlement Class Members who are eligible can now receive the approved distribution.

Nesbitt has agreed to pay an all-inclusive sum of CDN \$375,000 (inclusive of all claims, costs, interest, and taxes), as well as paying for certain settlement administration costs. After deducting Class Counsel's fees, and subject to applicable deductions, the balance of settlement fund (the "Net Settlement Amount") will be distributed as follows:

- (a) 60% of the Net Settlement Amount will be divided equally among and paid, less applicable withholdings, to current and former Nesbitt employees who held the position of Investment Advisor Trainee, or who performed the same or similar job functions under a different or previous Nesbitt job title, at any time during the period between January 1, 2009 through June 1, 2016 and carried out the roles and responsibilities of such position while working in and reporting to a Nesbitt branch in Nova Scotia ("IA Trainee Class Members");
- (b) 40% of the Net Settlement Amount will be divided equally among and paid, less applicable withholdings, to current and former Nova Scotia current and former Nesbitt employees who, at any time between January 1, 2009 to January 31, 2020, held the position of Investment Advisor, Associate Investment Advisor, or Investment Advisor Trainee, or who performed the same or similar job functions under a different or previous Nesbitt job title, and carried out the roles and responsibilities of such position while working in and reporting to a Nesbitt branch in Nova Scotia.

You will receive a single cheque for your entitlement, mailed to your confirmed address.

The amount of settlement distribution you receive depends on whether you participated in the Nesbitt Trainee program.

A full copy of the Settlement Agreement can be found on the webpage [insert website], or you can request a copy by emailing [mike@valentlegal.ca](mailto:mike@valentlegal.ca).

**BMO Nesbitt Burns Inc. denies the truth of the allegations in the Action and denies any liability whatsoever.**

**You have been identified as someone who [was a Trainee][was not a Trainee].**

If you have a question or concern about your category, or whether you are eligible, you should contact [claims administrator].

A complete copy of the Settlement Agreement and other information about this lawsuit is available at: ●

**Contact Information**

If you would like additional information, please contact [claims administrator], at the address, phone number or E-mail below.

**[claims administrator]**

**Re: Wade v. BMO Nesbitt Burns Inc**

**[claims administrator address]**

**Tel: ●**

**Email: ●**

**Fax: ●**

Yours truly,

**[claims administrator]**

Do not direct inquiries about this notice to the Court. Inquiries should first be directed to [claims administrator].

If you still have questions after speaking with [claims administrator], you may contact Class Counsel, Valent Legal and Mr. Michael Dull, at [mike@valentlegal.ca](mailto:mike@valentlegal.ca) or 1-902-443-4488.

**DISTRIBUTION OF THIS NOTICE HAS BEEN AUTHORIZED  
BY THE NOVA SCOTIA SUPREME COURT**

**SCHEDULE "F" TO AGREEMENT – DISTRIBUTION CONFIRMATION FORM**

**SCHEDULE "C" TO APPROVAL ORDER – DISTRIBUTION CONFIRMATION FORM**

**DISTRIBUTION CONFIRMATION FORM**

*Wade v. BMO Nesbitt Burns Inc.*

***MUST BE RETURNED BY*** \_\_\_\_\_

I confirm I wish to receive the settlement distribution in *Wade v. BMO Nesbitt Burns Inc.*

I confirm that my current address and contact information for administration of the distribution and receipt of all compensation is as follows:

**Name:** \_\_\_\_\_

**Street Address:** \_\_\_\_\_

**City or Town:** \_\_\_\_\_

**Province:** \_\_\_\_\_

**Country:** \_\_\_\_\_

**Phone Number:** \_\_\_\_\_

**E-Mail:** \_\_\_\_\_

**Sign and date this form below and return by mail, fax or E-mail to**

[claims administrator contact information]

**SIGNATURE:** \_\_\_\_\_ **DATE:** \_\_\_\_\_



**SCHEDULE "B" TO CONDITIONAL CERTIFICATION ORDER – NOTICE**

**If You Worked as an Investment Advisor for BMO  
Nesbitt Burns in Nova Scotia**

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**This Class Action Lawsuit May Affect Your Rights.**

*A court authorized this notice. You are not being sued.*

You are receiving this notice as you have been identified by BMO Nesbitt Burns as having held the position in Nova Scotia of Investment Advisor, Associate Investment Advisor, or Investment Advisor Trainee at some point after January 1, 2009. You may be a class member in this class action (see further information below). If you qualify as a class member, you are automatically included and you do not have to do anything to participate in this class action.

A settlement has been reached with BMO Nesbitt Burns. You may be entitled to compensation as a result of this settlement, if the settlement is approved by the Court.

If you do not take the steps described below to opt out of the settlement, you will be bound by the settlement, if it is approved by the Court.

**BASIC INFORMATION**

**1. Why was this notice issued?**

This lawsuit has been conditionally "certified" as a Class Action because the Plaintiff and BMO Nesbitt Burns have reached a settlement of the lawsuit. This certification is conditional upon the Settlement Agreement being approved by this Court.

The case is known as *Wade v. BMO Nesbitt Burns Inc.*, Hfx. No. 461070. The person who sued (Ms. Wade) is the Plaintiff, who is pursuing the action for the benefit of the entire class. BMO Nesbitt Burns Inc. is the Defendant.

This notice has been issued to advise about the conditional certification of this action, to provide general information about the action, to provide information about the proposed settlement, and to provide information about how class members may opt out if they do not wish to participate in the action. Class members who opt out will not be entitled to share in any settlement.

You may visit this website to obtain further information: [www.valentlegal.ca/class-action/bmo-nesbitt-burns-overtime-class-action](http://www.valentlegal.ca/class-action/bmo-nesbitt-burns-overtime-class-action).

**You should read this notice carefully as it may affect your legal rights and you may need to take prompt action.**

## **2. What is this lawsuit about?**

The lawsuit alleges that BMO Nesbitt Burns Inc. improperly failed to pay overtime compensation to certain Investment Advisors, Associate Investment Advisors, and Investment Advisor Trainees working in Nova Scotia.

The class action alleges that the Defendant, BMO Nesbitt Burns Inc. breached its duties to the class by requiring them to work overtime but failing to appropriately compensate them for those overtime hours in accordance with the *Labour Standards Code*. It is alleged that class members were routinely required to work overtime, but that BMO Nesbitt Burns misclassified the class members as being ineligible for overtime pay to which they were entitled.

BMO Nesbitt Burns Inc. has defended this action on the basis that it alleges that Investment Advisors, Associate Investment Advisors, and Investment Advisor Trainees are exempt from the payment of overtime compensation.

The claims have not been proven, and the Court has not yet decided whether the plaintiff or the defendant is correct. BMO Nesbitt Burns Inc. denies the truth of the allegations in the Action and denies any liability whatsoever.

A copy of the Statement of Claim (which describes the claims against BMO Nesbitt Burns), a copy of the Statement of Defence (which describes BMO Nesbitt Burns' position), and other legal documents associated with this case, can be viewed at [www.valentlegal.ca/class-action/bmo-nesbitt-burns-overtime-class-action](http://www.valentlegal.ca/class-action/bmo-nesbitt-burns-overtime-class-action).

## **3. Why is this a class action?**

In a class action one or more people called "representative plaintiffs" (in this case Denise Wade) sue on behalf of people who have similar claims. All of these people are a "class" or "class members." The court resolves the common issues for all class members, except for those who remove themselves from the class by opting-out.

## **4. Who is a member of the Class?**

The Class includes all current and former Nesbitt employees who at any time between January 1, 2009 to January 31, 2020 both: (i) held the position of Investment Advisor, Associate Investment Advisor, or Investment Advisor Trainee, or who performed the same or similar job functions under a different or previous Nesbitt job title; and (ii) carried out the roles and responsibilities of such position while working in and reporting to a Nesbitt branch in Nova Scotia.

Class members are automatically included in the class action now that it has been conditionally certified, unless they choose to opt out of the proceeding, as described below. If a class member opts out, they will not be entitled to the settlement of this action.

Class members who opt out of the proceeding can choose to proceed individually against BMO NBI, outside of this class action. However, class members who do not opt out of the proceeding cannot advance any claims individually against BMO NBI in respect of the allegations advanced in this class proceeding.

Class members who do not opt out will be bound by the settlement reached, provided it is approved by the Court.

If you have any questions about whether you are a member of the Class, please contact Class Counsel at the contact information provided below.

#### **5. Will there be a settlement?**

Yes, subject to Court approval.

Nesbitt has agreed to pay an all-inclusive sum of CDN \$375,000 (inclusive of all claims, costs, interest, and taxes), as well as paying for certain settlement administration costs. After deducting Class Counsel's fees, and subject to applicable deductions, the balance of settlement fund (the "Net Settlement Amount") will be distributed as follows:

- (a) 60% of the Net Settlement Amount will be divided equally among and paid, less applicable withholdings, to current and former Nesbitt employees who held the position of Investment Advisor Trainee, or who performed the same or similar job functions under a different or previous Nesbitt job title, at any time during the period between January 1, 2009 through June 1, 2016 and carried out the roles and responsibilities of such position while working in and reporting to a Nesbitt branch in Nova Scotia ("IA Trainee Class Members");
- (b) 40% of the Net Settlement Amount will be divided equally among and paid, less applicable withholdings, to current and former Nova Scotia current and former Nesbitt employees who, at any time between January 1, 2009 to January 31, 2020, held the position of Investment Advisor, Associate Investment Advisor, or Investment Advisor Trainee, or who performed the same or similar job functions under a different or previous Nesbitt job title, and carried out the roles and responsibilities of such position while working in and reporting to a Nesbitt branch in Nova Scotia.

Class members will have to complete a Distribution Confirmation Form at a later point in time in order to receive payment. These will be sent to an independent third party who is not permitted to disclose your participation in the settlement to Nesbitt.

Class members will not have to prove that they worked any overtime hours in order to receive payment.

Class Counsel will be seeking a fee of 25% on the CDN \$375,000 settlement fund, plus HST and repayment of disbursements in accordance with the retainer agreement in this case. The 25% contingency fee in this case must be approved by court.

The amount of the distribution you will receive as part of the settlement depends on whether you went through the BMO Nesbitt Burns Trainee program as a new IA, or whether you were already working as an IA when hired and did not have to participate in the Nesbitt IA Trainee program.

Settlement Class Members who opted out cannot receive any compensation.

A complete copy of the Settlement Agreement and other information about this lawsuit is available at: [www.valentlegal.ca/class-action/bmo-nesbitt-burns-overtime-class-action](http://www.valentlegal.ca/class-action/bmo-nesbitt-burns-overtime-class-action).

## **YOUR RIGHTS AND OPTIONS**

### **6. How do I participate in the Class Action?**

If you meet the class definition, you are automatically included in the class action as a class member. You do not need to take any action.

### **7. What if I don't want to be in the Class and wish to "Opt Out"?**

If you decide you do not wish to be included as a class member in the lawsuit, you must remove yourself – in other words, "opt out." If you opt out, you will not be permitted to share in the settlement of the lawsuit.

If you wish to opt out and if you wish to make any claim against BMO Nesbitt Burns yourself, you may need to retain your own lawyer, at your own expense, and proceed with your individual claim on your own. Class members who do not opt out of the proceeding cannot advance any claims individually against BMO NBI in respect of the allegations advanced in this class proceeding.

To opt out of the action, you need to fill out the attached Opt-Out Form (which can also be obtained at ●) and you must mail your Opt-Out Form by no later than [insert date] to: ●

You should contact Class Counsel or your own lawyer to discuss whether it is advisable for you to opt out under the circumstances. You may reach Class Counsel as follows:

**telephone:** 902-443-4488  
**email:** [info@valentlegal.ca](mailto:info@valentlegal.ca)

### **8. What if I disagree with the settlement?**

The court will hear submissions on whether this settlement and the legal fees and costs of Valent Legal should be approved on March 18, 2021. You can attend this hearing if you wish, but you do not need to. If the settlement is approved, payments to Settlement Class Members will be made in accordance with the terms of the settlement agreement.

If you wish to object to the settlement, you must notify Ricepoint in writing by using the enclosed objection form by ●. Your objection will be filed with the Court.

### **9. What if I still work at BMO Nesbitt Burns?**

If you still work at BMO Nesbitt Burns, you can still participate in this case. In Nova Scotia, an employer is not allowed to take action against a current employee for legal actions related to their potential employment rights. Your participation in this settlement will be kept confidential from BMO Nesbitt Burns.

If you have any questions about how this class action might affect your employment, you can contact BMO Nesbitt Burns Ombudsman's office at ●.

## THE LAWYERS REPRESENTING YOU

### **10. Do I have a lawyer in the case?**

Yes. The Court has appointed Valent Legal to represent you and other Class Members as "Class Counsel." You will not be charged for these lawyers at this time. Class Counsel will only receive compensation if they are successful in this case for the Class Members. The court must approve all fees paid to Class Counsel.

## GETTING MORE INFORMATION

### **10. How do I get more information?**

You can get more information at [website], by calling ●, or writing to: ● or by email at ●.

You can also contact BMO Nesbitt Burns Ombudsman's office at ●.



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I DO NOT intend to appear at the hearing of the motion to approve the settlement, and I understand that my objection will be filed with the court prior to the hearing of the motion on March 18, 2021

I DO intend to appear, in person or by counsel, and to make submissions at the hearing of the motion to approve the settlement on March 18, 2021.

**MY ADDRESS FOR SERVICE IS:**

**MY LAWYER'S ADDRESS FOR SERVICE IS  
(if applicable):**

Name:

Name:

Address:

Address:

Tel.:

Tel.:

Fax:

Fax:

Email:

Email:

**Date:** \_\_\_\_\_

**Signature:** \_\_\_\_\_

## SCHEDULE "C" TO CONDITIONAL CERTIFICATION ORDER – OMBUDSMAN'S SCRIPT

### Ombudsman's Script

The following information may be conveyed by the Ombudsman to individuals identified as potential class members by BMO Nesbitt Burns Inc.

#### The Class Proceeding Generally

**Question:** What is this class proceeding about?

**Answer:** The class action alleges that the Defendant, BMO Nesbitt Burns Inc. breached its duties to Nova Scotia Investment Advisors, Associate Investment Advisors and Investment Advisor Trainees by requiring them to work overtime but failing to appropriately compensate them for those overtime hours in accordance with the *Labour Standards Code*. It is alleged that class members were routinely required to work overtime, but that BMO Nesbitt Burns misclassified the class members as being ineligible for overtime pay to which they were entitled.

**Question:** What is BMO Nesbitt Burns Inc.'s position on the class action?

**Answer:** BMO Nesbitt Burns Inc. has defended this action on the basis that it alleges that: 1) Investment Advisors, Associate Investment Advisors and Investment Advisor Trainees were never required by BMO NBI to work hours in excess of 48 hours per week to perform their job responsibilities; and 2) Investment Advisors, Associate Investment Advisors, and Investment Advisor Trainees are exempt from the requirement under the *Labour Standards Code* and the associated regulations to be paid overtime pay.

#### The Class Members

**Question:** Who are the members of the class?

**Answer:** Pursuant to an Order of the Nova Scotia Supreme Court, the Class Members have been defined as follows:

All current and former Nesbitt employees who at any time between January 1, 2009 to January 31, 2020 both:

(i) held the position of Investment Advisor, Associate Investment Advisor, or Investment Advisor Trainee, or who performed the same or similar job functions under a different or previous Nesbitt job title; and

(ii) carried out the roles and responsibilities of such position while working in and reporting to a Nesbitt branch in Nova Scotia.

**Question:** Am I a member of the class?



**Answer:** If you fall within the above definition, you will be a member of the class. If you have any questions as to whether you are a member of the class, you can contact Class Counsel.

**Question:** If I am included in the above definition, do I have to do anything in order to participate in the lawsuit?

**Answer:** No. If you fall within the above definition, you will automatically be included as a member of the class. If you fall within the above definition but do not wish to participate in the class action, you must opt out, as described below.

### **Opting-Out of the Class Action**

**Question: Do I have to participate in the class action?**

**Answer:** No. If you wish to opt out of the class action, you may do so, if you do so in advance of the opt-out deadline.

**Question: How do I opt out of the class action?**

**Answer:** In order to opt out of the class action, you must complete and sign an opt-out form and mail it to the following address.

[claims administrator]  
Attention: Wade v BMO Nesbitt Burns Inc

Your opt-out form must be postmarked by ● in order for you to be able to opt out of the class action.

After ●, you will not be permitted to opt out of the class action, unless a judge of the Nova Scotia Supreme Court gives you leave to do so.

### **Impact on Employment**

**Question: If I participate in the class action, will it negatively impact my employment?**

**Answer:** No. Your participation in this class action will not affect your employment with BMO Nesbitt Burns Inc.

**Question: Do I have to disclose to anyone at BMO Nesbitt Burns Inc. whether or not I am participating in the class action?**

**Answer:** No. You do not need to advise anyone at BMO Nesbitt Burns Inc. whether or not you are participating in the class action.

**Question: Is BMO Nesbitt Burns Inc. going to start paying overtime to class members as a result of this class proceeding?**

**Answer:** Since June 1, 2016, BMO Nesbitt Burns Inc has allowed Nova Scotia Trainee Investment Advisors who work in excess of 48 hours per week to claim overtime pay.

If you are not currently being paid for overtime but believe you are entitled to overtime pay, you may also challenge this using BMO Nesbitt Burns Inc.'s alternative dispute resolution procedure. A copy of that policy is contained on BMO Nesbitt Burns Inc.'s intranet.

**For More Information**

**Question: Who do I contact for further information?**

**Answer:** You can contact class counsel, Valent Legal, for further information.

**Question: How do I contact class counsel?**

**Answer:** You can contact class counsel by telephone at 902-443-4488 or by email at [info@valentlegal.ca](mailto:info@valentlegal.ca).

**Question: Is there anyone at BMO Nesbitt Burns Inc. that I can contact for further information?**

**Answer:** You can contact BMO Nesbitt Burns Inc.'s Employee Relations department at ● for further information.

**SCHEDULE "D" TO CONDITIONAL CERTIFICATION ORDER – OPT OUT FORM**

**OPT OUT FORM**

**TO:** [claims administrator]  
[claims administrator address]  
**Attention: Wade v BMO Nesbitt Burns Inc**

**This is NOT a claim form.**

Completing this OPT OUT COUPON will EXCLUDE you from receiving any compensation arising out of any settlement or judgment in the class proceeding named below:

Hfx. No. 461070

**SUPREME COURT OF NOVA SCOTIA**

**B E T W E E N:**

DENISE WADE

PLAINTIFF

and

BMO NESBITT BURNS INC.

DEFENDANT

I do not want to participate in the class action styled as **Denise Wade v. BMO Nesbitt Burns Inc**, alleging a wrongful denial of overtime compensation to eligible Nova Scotia employees by the Defendant.

**I understand that by opting out of this class proceeding, I am confirming that I do not wish to participate in this class proceeding and will not be entitled to share in any money recovered in the action. I confirm that if I opt out, and if I wish to make a claim against the defendant, I will be responsible to hire my own counsel, at my own expense, and pursue the claim on my own.**

I understand that any individual claim I may have against the Defendant must be commenced within a specified limitation period or it will be legally barred. I understand that the running of the limitation period has been suspended from the time the class proceeding was filed. The limitation period will resume running against me if I opt out of this class proceeding. I understand that by opting out, I take full responsibility for the resumption of the running of any relevant limitation period and for taking all necessary legal steps to protect any claim I may have.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Signature  
\_\_\_\_\_

Print Name

\_\_\_\_\_  
Address

\_\_\_\_\_  
City, Province, Postal Code

\_\_\_\_\_  
Telephone

\_\_\_\_\_  
Email

This Notice must be delivered on or before \_\_\_\_\_, 2020 to be effective.