



IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

IN RE TD BANKNORTH  
SHAREHOLDERS LITIGATION

Consolidated C.A. No. 2557-VCL

**ORDER AND FINAL JUDGMENT**

A hearing having been held before this Court (the "Court") on June 25, 2009, pursuant to the Court's Scheduling Order, dated April 23, 2009, (the "Scheduling Order"), upon the Stipulation and Agreement of Compromise, Settlement and Release (the "Stipulation"), dated April 10, 2009, that was entered into to reflect and embody the settlement (the "Settlement") of the above-captioned case (the "Action"), which Scheduling Order and Stipulation are incorporated herein by reference; it appearing that due notice of said hearing has been given in accordance with the aforementioned Scheduling Order and that said notice was adequate and sufficient; Plaintiffs and Defendants having appeared by their attorneys of record; the Court having received evidence in support of the proposed Settlement; the attorneys for these respective parties having been heard in support of the Settlement of the Action; an opportunity to be heard having been given to all other persons desiring to be heard as provided in the notice to the Class; and the entire matter of the Settlement having been considered by the Court;

**IT IS HEREBY ORDERED, ADJUDGED AND DECREED**, this 24<sup>TH</sup> day of

June, 2009, as follows:

1. Unless otherwise defined herein, all defined terms shall have the meanings as set forth in the Stipulation and the Scheduling Order.
2. The Notice, website postings and press release have been provided to the Class pursuant to and in the manner directed by the Scheduling Order; proof of the mailing of the

Notice, website postings and press release have been filed with the Court; and full opportunity to be heard has been offered to all parties, the Class and persons in interest. The form and manner of the notice are hereby determined to have been the best notice practicable under the circumstances and to have been given in full compliance with the requirements of Court of Chancery Rule 23 and due process, and it is further determined that all members of the Class are bound by this Order and Final Judgment.

3. The Action is properly maintained as a non-opt-out class action pursuant to Court of Chancery Rules 23(a), 23(b)(1) and 23(b)(2), and the Court's prior certification of the Class consisting of all holders of common stock of TD Banknorth at any time from November 19, 2006 through and including April 20, 2007, whether beneficial or of record, including their legal representatives, heirs, successors in interest, transferees and assignees of all such foregoing holders, excluding Defendants, Private Capital Management, L.P., and Ariel Capital Management LLC and their associates, affiliates, legal representatives, heirs, successors in interest, transferees and assignees, is hereby made final.

4. The Settlement and the terms and conditions thereof are found to be fair, reasonable and adequate and in the best interests of the Class, including Plaintiffs. The Court further finds that the Settlement set forth in the Stipulation is the result of arm's-length negotiations between experienced counsel representing the interests of the Parties. Accordingly, the Settlement embodied in the Stipulation is hereby approved in all respects pursuant to Court of Chancery Rule 23(e).

5. The parties to the Stipulation are hereby authorized and directed to comply with and to consummate the Settlement in accordance with the terms and provisions of the Stipulation, and the Register in Chancery is directed to enter and docket this Order and Final

Judgment.

6. This Order and Final Judgment shall not constitute any evidence or admission by any party herein that any acts of wrongdoing have been committed by any of the parties to the Action and shall not be deemed to create any inference that there is any liability therefor.

7. The Action is hereby dismissed with prejudice as to all Defendants in the Action, and against Plaintiffs and all other members of the Class on the merits, with each party to bear its own costs except as provided in paragraph 12 herein and in the Stipulation.

8. Any and all claims, demands, losses, rights, causes of action, liabilities, obligations, judgments, suits, matters and issues of any kind or nature whatsoever, whether known or unknown, including the Unknown Claims (as defined in the Stipulation), contingent or absolute, suspected or unsuspected, disclosed or undisclosed, that have been or could have been asserted in the Action or in any court, tribunal, forum or proceeding (including, but not limited to, any claims arising under federal, state or foreign law, common law, statute, rule, or regulation relating to alleged fraud, breach of any duty, negligence, violations of the federal securities laws, or otherwise, and including all claims within the exclusive jurisdiction of the federal courts), whether individual, class, direct, derivative, representative, legal, equitable or any other type or in any other capacity, against all Defendants, and/or any of their families, parent entities, associates, affiliates or subsidiaries and each and all of their past, present, or future officers, directors, stockholders, employees, attorneys, financial or investment advisors, consultants, accountants, investment bankers, commercial bankers, insurers, engineers, advisors or agents, heirs, executors, trustees, general or limited partners or partnerships, personal representatives, estates, administrators, and each of their respective predecessors, successors, and assigns (collectively, the "Released Persons"), which Plaintiffs or any member of the Class ever had,

now has, or hereafter can, shall, or may have by reason of, arising out of, relating to or in connection with the allegations, conduct, facts, events, transactions, acts, occurrences, statements, representations, alleged misrepresentations, omissions, or any other matter, thing or cause whatsoever, or any series thereof, embraced, involved, or set forth or otherwise related, directly or indirectly, to the Action, the Stockholders Agreement (as defined in the Stipulation), or the Going-Private Transaction (as defined in the Stipulation), including without limitation, any disclosures made or not made in connection with any of the foregoing, except claims to enforce the Settlement (collectively, the “Settled Claims”) are hereby completely discharged as to the Released Persons; dismissed with prejudice against the Released Persons; and settled, enjoined and released as to the Released Persons.

9. The releases of the Settled Claims shall extend to any claims relating to the subject matter of the Action that the releasing parties do not know or suspect to exist through and including the effective date of the execution of this Stipulation, which, if known, might have affected their decision to enter into that release with respect to the Released Persons. Plaintiffs, for themselves and on behalf of the Class, shall be deemed to relinquish, to the full extent permitted by law, the provisions of and the rights and benefits conferred by Section 1542 of the California Civil Code (“Section 1542”), which provides:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

In addition, Plaintiffs, for themselves and on behalf of the Class, also shall be deemed to waive any and all provisions of and rights and benefits conferred by any law of the United States, any law of any state or territory of the United States, or any principle of common law that is similar,

comparable or equivalent to Section 1542 that exist through and including the effective date of the execution of this Stipulation. Plaintiffs, for themselves and on behalf of the Class, acknowledge that members of the Class may discover facts in addition to or different from those that they now know or believe to be true with respect to the subject matter of this release, but that it is their intention, as Plaintiffs and on behalf of the Class, to fully, finally and forever settle and release any and all claims released hereby, known or unknown, suspected or unsuspected, which now exist, or heretofore existed, through and including the effective date of the execution of the Stipulation, and without regard to the subsequent discovery or existence of such additional or different facts.

10. Any and all claims that any of Defendants or the Released Persons may have or could have asserted against Plaintiffs, Current Counsel, and/or the Class arising out of or related to the initiation, litigation, and resolution of the Action, except any claims to enforce the Settlement, are hereby completely released and enjoined as to Plaintiffs, Current Counsel, and the Class.

11. Plaintiffs and the Class are hereby permanently enjoined from asserting, commencing, prosecuting, assisting, instigating or in any way participating in the commencement or prosecution of any action or other proceeding, in any forum, asserting any Settled Claims, either directly, representatively, derivatively, or in any other capacity, against any Released Person.

12. Current Counsel are hereby awarded attorneys' fees of 275% of the Settlement Fund plus expenses of \$ 964,086.61, which sums the Court finds to be fair and reasonable and which shall be paid to Current Counsel in accordance with paragraph 20 of the Stipulation, the terms and conditions of which are incorporated herein. The remainder of the Net

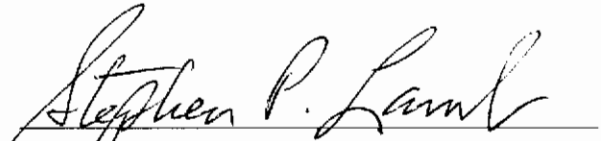
Settlement Fund (as defined in the Stipulation) shall be distributed in accordance with paragraph 6 of the Stipulation.

13. The passage of title and ownership of the Settlement Fund to the Escrow Agent in accordance with the terms and obligations of the Stipulation is approved. No person that is not a member of the Class or Current Counsel shall have any right to any portion of, or any rights in the distribution of, the Settlement Fund, unless otherwise ordered by the Court or otherwise provided in the Stipulation.

14. If there is any balance remaining in the Net Settlement Fund after six months from the date of its distribution, the administrator of the Settlement Fund shall, after full payment of Taxes and Notice and Administration Costs, reallocate, if feasible, such balance among members of the Class who were stockholders of record of TD Banknorth on April 20, 2007 and who have been identified and located. If such reallocation is not feasible, any remainder in the Net Settlement Fund shall, after full payment of Taxes and Notice and Administration Costs, be contributed to the Combined Campaign for Justice, a partnership between and among the Delaware State Bar Association, the Community Legal Aid Society, Inc., Delaware Volunteer Legal Services and the Legal Services Corporation of Delaware.

15. Without further order of the Court, the parties may agree to reasonable extensions of time to carry out any of the provisions of the Stipulation.

16. Without affecting the finality of this Order and Final Judgment in any way, this Court reserves jurisdiction over any matters relating to the implementation and enforcement of the Settlement, as well as any disputes concerning the Stipulation and any issues regarding distribution and administration of the Settlement Fund. Notwithstanding the foregoing, this Order shall constitute a final judgment under and pursuant to Court of Chancery Rule 54(b).

  
Vice Chancellor