

## SIMPLII FINANCIAL CLASS ACTION

### NOTICE OF SETTLEMENT APPROVAL HEARING AND OPT-OUT

**This notice is to any person who is a current or former client of Simplii Financial and who received notice from Simplii Financial that their personal information was accessed or accessible as a result of a data breach affecting Simplii Financial on or about May 27, 2018.**

READ THIS NOTICE CAREFULLY AS IT MAY AFFECT YOUR LEGAL RIGHTS

### CLASS ACTION HAS BEEN SETTLED

In 2018, a class action was commenced against Canadian Imperial Bank of Commerce in respect of a data breach occurring on May 27, 2018 that affected certain clients of Simplii Financial, a division of CIBC.

This notice applies to all clients of Simplii Financial as at May 27, 2018 who were notified by Simplii Financial that their personal information was accessed or accessible as a result of the May 27, 2018 data breach.

The parties to the Class Action have reached a proposed settlement subject to obtaining the approval of the Superior Court of Ontario (the “**Court**”) (the “**Settlement Agreement**”). The Settlement Agreement provides that the Defendant will pay \$1,769,425.00, in full and final settlement of all claims of the Class Members (the “**Settlement Amount**”). The Defendant has also agreed to maintain its existing commitments to compensate all Class Members for any money fraudulently withdrawn from their Simplii banking accounts as a direct result of the data breach. The Settlement Amount includes all legal fees, disbursements, taxes and administration expenses, but excludes non-refundable administration expenses. The Defendant will pay an additional CAD\$100,000.00 to fund non-refundable administration expenses (the “**Non-Refundable Administration Expenses Fund**”), which include the fees, expenses and costs relating to the approval and implementation of the settlement and notice program, and do not include Class Counsel fees and disbursements. In return for the Settlement Amount, the Defendant will receive a release and a dismissal of the Class Action.

The settlement is a compromise of disputed claims and is not an admission of liability, wrongdoing or fault on the part of the Defendant, which has disputed, and continues to dispute, the allegations advanced in the Class Action.

### CERTIFICATION OF THE CLASS ACTION

As part of the terms of the Settlement Agreement, the Action has been certified by the Court as a Class Action.

The definition for Class Members is as follows:

Any person who is a current or former client of Simplii Financial who was notified by Simplii Financial that their Personal Information was accessed or accessible as part of the Data Breach (“**Class**” or “**Class Members**”).

If you received a notice from Simplii Financial, you are a member of the class. If you are not sure whether or not you are a member of the Class, you should speak to Class Counsel whose addresses are provided below.

### **CLASS MEMBERS’ ENTITLEMENTS**

The Defendant has identified 10,101 of its clients whose personal information was affected by the data breach.

The \$1,769,425.00 to be paid by the Defendant will, net of legal fees, be distributed to the Class Members.

The Defendant has identified two groups of clients. One group had social insurance number information accessed or accessible (3,027 affected persons, known as “Group 1”), while the other did not (7,074 affected persons, known as “Group 2”). If the settlement is approved, Class Members will be paid the following approximate amounts on a proportionate share basis from which Class Counsel fees, disbursements and administration expenses will be deducted, calculated in accordance with the Distribution Plan:

Group 1: \$192.80

Group 2: \$120.50

In addition, there are 1,797 Class Members in Group 1 and Group 2 who had an unauthorized transaction in their Simplii Financial account. These Class Members will be paid an additional approximate amount of \$185.50 on a proportionate share basis from which Class Counsel fees, disbursements and administration expenses will be deducted, calculated in accordance with the Distribution Plan.

If the settlement is approved, Class Members who are existing clients of Simplii Financial will have the amounts deposited directly to their Simplii Financial accounts. Class members who are former clients will be required to confirm their contact information and will be paid by cheque. Unclaimed amounts will be donated to the Samuelson-Glushko Canadian Internet Policy and Public Interest Clinic at the University of Ottawa.

### **IF YOU DO NOT WISH TO PARTICIPATE IN THIS CLASS ACTION**

Class Members who wish to participate in the Class Action do not need to do anything at this time. They are automatically included in the Class Action.

Any Class Member who does not wish to participate in the Class Action can choose to opt out and will not be entitled to participate further in the Action, or to share in the distribution of funds

received as a result of the Settlement. Those who opt out will not be bound by the releases exchanged by the Parties.

Any Class Member who wishes to opt out of the Class Action must do so by sending a written opt out form, signed by the Class Member, stating that he/she opts out of the Class Action. The written opt out form appears as Appendix 'A' to this Notice. It can also be obtained from Class Counsel.

A completed opt out form must be sent by pre-paid mail, courier, or email to Class Counsel, and must be received by no later than **February 15, 2021**. Where a postmark is not visible or legible, the request to opt out will be deemed to have been postmarked four (4) business days prior to the date on which it is received by Class Counsel.

No Class Member will be permitted to opt out of the Class Action after **February 15, 2021**. If you opt out of the Class Action, you will take full responsibility for initiating your own lawsuit against the Defendant and for taking all legal steps necessary to protect your claim, if you wish to proceed with a claim.

#### **A SETTLEMENT APPROVAL MOTION WILL BE HELD IN OTTAWA, ONTARIO**

Before the Settlement Agreement can be implemented, the Settlement Agreement must be approved by the Court.

Class Members who do not opt out may choose (but are not required) to attend the Settlement Approval Motion, which will be held on **February 19, 2021 at 10:00 AM** at the court house at 161 Elgin Street, Ottawa, Ontario. In the event that the current COVID-19 pandemic necessitates the Motion be heard remotely, the means by which Class Members may attend at the Settlement Approval Motion will be posted on the web sites of Class Counsel.

Class Members who do not oppose the proposed Settlement do not need to appear at any hearing or take any other action at this time to indicate their desire to support the proposed Settlement.

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

In addition to seeking the Court's approval of the Settlement Agreement, Class Counsel (as identified below) will seek the approval of their legal fees, in an amount equal to 25% of the Settlement Amount, plus disbursements and applicable taxes ("**Class Counsel Fees**"). Class Counsel will also seek approval of a plan for distributing the Settlement Amounts to Class Members (the "**Distribution Plan**"). Class Counsel will not seek legal fees or disbursements from the Non-Refundable Administration Expenses Fund.

#### **PROPOSED DISTRIBUTION OF THE NET SETTLEMENT AMOUNT**

Class Members who have not opted out of the Class Action will be compensated as described above, as further detailed in the Distribution Plan.

If the Settlement is approved, all Class Members except those who have formally opted out of the Action will be bound by the terms of the Settlement Agreement. This means that they will not be able to bring or maintain any other claim or legal proceeding against Canadian Imperial Bank of Commerce in relation to the claims advanced in the Class Action.

**If the settlement is approved, Class Members will:**

- (a) If they remain a client of Simplii Financial, receive compensation by direct deposit into their account by Simplii Financial; or**
- (b) If they are no longer a client of Simplii Financial, receive an email from Simplii Financial asking them to confirm their mailing address, following which they will receive a cheque from Simplii Financial via mail.**

A copy of the Settlement Agreement may be found at:

[www.siskinds.com](http://www.siskinds.com)

[www.sotosllp.com](http://www.sotosllp.com)

[www.jssbarristers.ca](http://www.jssbarristers.ca)

**CLASS MEMBERS MAY OBJECT TO THE SETTLEMENT**

***As a Class Member, if you are unhappy with the terms of the Settlement Agreement, you have a right to object if you decide to not opt out.***

If you wish to comment on, or make objection to, the approval of the Settlement Agreement or Class Counsel Fees, you must provide notice in writing of your intention to do so. All such notice must be submitted to Class Counsel (at the addresses listed below) no later than **February 15, 2021**. Class Counsel will forward all such submissions to the Court and to Counsel for the Defendant. You may attend at the Settlement Approval Hearing whether or not you deliver an objection. In the event that the current COVID-19 pandemic necessitates that the Motion be heard remotely, the means by which Class Members may attend at the Settlement Approval Motion will be posted on the web sites of Class Counsel.

A written objection should include the following information:

- (a) The objector's name, address, telephone number, fax number (where applicable) and email address;
- (b) A brief statement outlining the nature of, and reason for, the objection; and
- (c) A statement as to whether the objector intends to appear at the settlement approval hearing in person or by legal counsel and, if by legal counsel, the name, address, telephone number, fax number and email address of such legal counsel.

**INTERPRETATION**

If there is a conflict between the provisions of this Notice and the Settlement Agreement, the terms of the Settlement Agreement will prevail.

**QUESTIONS ABOUT THE PROPOSED SETTLEMENT SHOULD BE DIRECTED TO CLASS COUNSEL**

**SOTOS LLP**

180 DUNDAS STREET WEST  
SUITE 1200  
TORONTO, ON M5G 1Z8

**SISKINDS LLP**

100 LOMBARD STREET  
SUITE 302  
TORONTO, ON M5C 1M3

**JONATHAN SCHACHTER**

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**JSS BARRISTERS**

800, 304 8 AVENUE SW  
CALGARY, AB T2P 1C2

**CARSTEN JENSEN, QC, FCIARB**

**SEAN CARRIE**

TEL: 403-571-1520  
FAX: 403-571-1528

**Appendix 'A'**

**OPT OUT FORM**

**TO: Class Counsel**

I, \_\_\_\_\_ (insert full name), have received notice of the Simplii Financial Class Action.

I believe that I am a Class Member.

I was a client of Simplii Financial on May 27, 2018, and I was notified by Simplii Financial that my Personal Information was accessed or accessible as a result of the Data Breach that occurred on or around that date.

I do NOT wish to participate in the Simplii Financial Class Action.

I understand that by opting out of this Class Action, I will not be eligible for any benefit that may be available to the Class upon resolution of this matter.

I understand that, if I wish to pursue any remedy with respect to Canadian Imperial Bank of Commerce, I must do so on my own.

Dated the \_\_\_\_ day of \_\_\_\_\_, 2020

\_\_\_\_\_  
(signature)

Insert Mailing Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Telephone Number: \_\_\_\_\_

Email Address: \_\_\_\_\_