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July 27, 2006

Headnote

Mutual Reliance Review System for Exemptive Relief Application – Securities Act s. 48,76 Other - Exemption from s. 34(1)(a) requirement to be registered as a dealer for a trade and s. 61 requirement to file a prospectus for a distribution other than in connection with a corporate acquisition or reorganization; business associates; debt settlements; or employee investment plans and consultants - Foreign bank wants to offer certificates of deposit to BC residents - The applicant is subject to a comprehensive scheme of regulation and supervision in its home jurisdiction comparable to Canadian regulatory requirements governing Schedule I and II banks, including its proposed deposit taking activities with Canadian residents. The applicant's Canadian deposit holders will be covered by the deposit insurance scheme in its home jurisdiction.

Applicable British Columbia Provisions

Securities Act, R.S.B.C.1996, c. 418, ss. 34(1)(a), 48, 61 and 76

**In the Matter of
the Securities Legislation
of British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Québec,
New Brunswick, Prince Edward Island, Nova Scotia, Newfoundland and
Labrador, Yukon Territory, Northwest Territories and Nunavut
(the Jurisdictions)**

and

**In the Matter of the Mutual Reliance Review System
for Exemptive Relief Applications**

and

**In the Matter of TD Banknorth, N.A.
(the Filer)**

MRRS Decision Document

Background

The local securities regulatory authority or regulator (the Decision Maker) in each of the Jurisdictions has received an application from the Filer for a decision under the securities legislation of the Jurisdictions (the Legislation) exempting the Filer and its authorized agents from the dealer, adviser and underwriter registration requirements contained in the Legislation (the Registration Requirements) and the

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prospectus requirement contained in the Legislation (the Prospectus Requirement) to permit the Filer and its authorized agents to distribute U.S. dollar denominated personal chequing accounts, negotiable order withdrawal accounts, savings accounts and certificates of deposit offered by the Filer (collectively, the Deposits) to residents of the Jurisdictions without having to comply with the Registration Requirements or the Prospectus Requirements (the Requested Relief).

Under the Mutual Reliance Review System for Exemptive Relief Applications

- (a) the Ontario Securities Commission is the principal regulator for this application, and
- (b) this MRRS decision document evidences the decision of each Decision Maker.

Interpretation

Defined terms contained in National Instrument 14-101 Definitions have the same meaning in this decision unless they are defined in this decision.

Representations

This decision is based on the following facts represented by the Filer:

1. The Filer is chartered as a national bank under the United States *National Bank Act*.
2. The Filer is an indirect subsidiary of The Toronto-Dominion Bank (TD Bank).
3. TD Bank is a Canadian chartered bank that is listed in Schedule 1 to the *Bank Act* (Canada) (the Bank Act).
4. The Filer carries on the business of banking in the United States.
5. The head office of the Filer is located in Portland, Maine, U.S.A.
6. The Filer is not a bank for purposes of the Bank Act and the Deposits are therefore securities for purposes of the Legislation.
7. The Filer wishes to solicit Deposits from residents of the Jurisdictions, which would constitute a distribution of securities, making the Filer subject to the Registration Requirements and Prospectus Requirements.
8. Although the Filer is not a bank for purposes of the Bank Act, it is chartered as a national bank under the United States *National Bank Act* and it is therefore

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subject to regulation, examination and supervision by the Filer's chartering agency, the Office of the Comptroller of the Currency (OCC), and the Federal Reserve Board (FRB).

9. Each of the OCC and the FRB (collectively, the U.S. Regulatory Authorities) is a regulatory authority created under the federal laws of the United States. Each of the U.S. Regulatory Authorities has been granted extensive discretionary authority to assist it with the fulfillment of its supervisory and enforcement obligations and it exercises such authority for the purpose of conducting periodic examinations of the Filer's compliance with various regulatory requirements, including minimum capital requirements, and to establish policies respecting the classification of assets and the establishment of loan loss reserves for regulatory purposes.
10. The Filer is required to file reports with the U.S. Regulatory Authorities concerning its activities and financial condition and it must obtain the approval of the U.S. Regulatory Authorities before entering into certain transactions, such as mergers with, or acquisitions of, other financial institutions.
11. The Deposits are insured by the Federal Deposit Insurance Corporation (FDIC) under the United States *Federal Deposit Insurance Act*, as amended, and the regulations promulgated thereunder, for up to U.S. \$100,000 for each insured account holder, the maximum currently permitted by law. The Filer and other United States federally insured depository institutions are required to pay premiums for this deposit insurance. The deposit insurance provided by the FDIC is backed by the full faith and credit of the United States government.
12. The Filer is therefore subject to a comprehensive scheme of regulation and supervision that is comparable to regulatory requirements governing Schedule I and Schedule II banks pursuant to the Bank Act and the supervisory responsibilities of the Office of the Superintendent of Financial Institutions.
13. The issuance of Deposits by the Filer to Canadian residents will not contravene any federal or provincial deposit-taking legislation or any provisions of the Bank Act.
14. Deposits of the Filer that are purchased by residents of Canada will be subject to the same regulation and oversight by the U.S. Regulatory Authorities as Deposits of the Filer that are purchased by residents of the United States.

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15. Deposits purchased by residents of Canada will remain throughout the term of such Deposits fully entitled to the benefits of FDIC insurance coverage as if such Deposits had been made by residents of the United States.
16. The Filer will not trade in any securities other than Deposits with or on behalf of persons or companies who are resident in Canada.
17. The Filer will comply with the requirements of applicable U.S. banking legislation when offering and selling Deposits to residents of Canada.

Decision

Each of the Decision Makers is satisfied that the test contained in the Legislation that provides the Decision Maker with the jurisdiction to make the decision has been met.

The decision of the Decision Makers under the Legislation is that the Requested Relief is granted provided that:

- (a) the Filer continues to be subject to regulation, examination and supervision by the U.S. Regulatory Authorities;
- (b) the Deposits are insured by the FDIC up to a maximum of at least U.S. \$100,000 regardless of the residence or citizenship of the holder of a Deposit; and
- (c) details of the FDIC insurance coverage in respect of the Deposits are disclosed to each prospective holder of a Deposit prior to trading any Deposit with the prospective holder.

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