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Headnote

Mutual Reliance Review System for Exemptive Relief Applications – relief from insider reporting requirements for certain vice presidents of a reporting issuer, subject to certain conditions

Applicable British Columbia Provisions

Securities Act, R.S.B.C. 1996, c. 418, ss. 87, 91

National Instrument 55-101 – *Exemption from Certain Insider Reporting Requirements*

IN THE MATTER OF THE SECURITIES LEGISLATION OF BRITISH COLUMBIA, ALBERTA, SASKATCHEWAN, MANITOBA, ONTARIO, QUEBEC, NEWFOUNDLAND AND LABRADOR, AND NOVA SCOTIA

AND

IN THE MATTER OF THE MUTUAL RELIANCE REVIEW SYSTEM FOR EXEMPTIVE RELIEF APPLICATIONS

AND

IN THE MATTER OF THE TORONTO-DOMINION BANK

MRRS DECISION DOCUMENT

WHEREAS the local securities regulatory authority or regulator (the "Decision Maker") in each of British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Québec, Newfoundland and Labrador and Nova Scotia (collectively, the "Jurisdictions") has received an application from The Toronto-Dominion Bank ("TD") for a decision under the securities legislation of the Jurisdictions (the "Legislation") that the requirement contained in the Legislation to file insider reports shall not apply to certain individuals who are insiders of TD by reason of having the title of Vice President;

AND WHEREAS under the Mutual Reliance Review System for Exemptive Relief Applications (the "System"), the Ontario Securities Commission is the principal regulator for this application;

AND WHEREAS, unless otherwise defined, the terms herein have the meaning set out in National Instrument 14-101 Definitions or in Québec Commission Notice 14-101;

AND WHEREAS TD has represented to the Decision Makers that:

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1. TD is a Canadian chartered bank governed by the *Bank Act* (Canada).
2. TD is a reporting issuer (or equivalent) in each of the provinces and territories of Canada that provides for a reporting issuer regime. To the best of its knowledge, TD is not in default of any requirements under the Legislation.
3. Currently it is estimated that approximately 753 individuals are insiders of TD by reason of being a senior officer or director of TD or a subsidiary of TD. In TD's current organizational structure approximately 94 officers hold the office of Senior Vice President and above ("TD Senior Management").
4. As of May 6, 2003 approximately 659 TD employees held the title of "Vice President" or its equivalent (hereinafter referred to as "Vice President"). Of TD's 659 Vice Presidents, approximately 573 satisfy the Exempt VP Criteria (as defined below). The approximately 86 TD employees holding the title of Vice President who do not satisfy the Exempt VP Criteria are referred to herein as the "Insider VPs".
5. TD has made this application to seek the requested relief in respect of approximately 573 Vice Presidents who, in the opinion of TD's Compliance Department, satisfy the Exempt VP Criteria (as defined below) hereinafter referred to as "Exempt VPs".
6. TD Senior Management, Insider VPs and all Exempt VPs are reminded regularly of the prohibition on insider trading applies whenever anyone has information regarding a "material fact" or "material change" (as defined in the Legislation).
7. Notwithstanding the relief requested hereby, all officers of the Bank who hold the rank of Vice President and above will continue to be bound by TD's internal compliance policy (the "Windows Policy") which restricts employee trading in TD securities during "blackout periods" preceding the release of TD's quarterly financial results.
8. The Windows Policy permits trading in TD securities by affected employees only during a period commencing a short time after the public release of TD's financial results and ending six weeks thereafter provided affected employees are not otherwise restricted such as by being in possession of material non-public information concerning TD. TD's Compliance Department advises on an annual basis of the forthcoming year's "window dates" and periodic reminders are given to each such person shortly before a window opens or closes.

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9. In addition to the Windows Policy, the Firewalls Policy establishes processes to protect and manage material non-public information concerning TD, its customers and suppliers. The Firewalls Policy addresses three areas: 1. Restrictions on the control and use of material non-public information by TD employees; 2. The "Watch List", which is maintained by designated persons in the Compliance Department and tracks securities issuers and related material non-public information (in addition to the restrictions in the Windows Policy, TD would be periodically placed on the Watch List for those officers with knowledge of material non-public information, in periods leading up to other major announcements.); and 3. The granting of prior trading approvals for certain TD officers and other designated employees for trades in any security including TD issued securities. In addition to obtaining trading approvals, these officers and designated employees must maintain their trading accounts at TD Waterhouse. Exceptions may be granted in limited circumstances but only with approval from designated persons in the Compliance Department. Trading accounts for those officers and employees covered by the Firewalls policy are monitored by designated staff in the Compliance Department.

10. Designated staff in TD's Compliance Department reviewed 1) the organizational structure of TD; 2) the function of each Vice President; and 3) the distribution of material non-public information about TD through each of its business lines and functional groups and assessed whether material non-public information about TD was provided to a particular Vice President function in the ordinary course based on criteria contained in Canadian Securities Administrators Staff Notice 55-306 Applications for Relief from the Insider Reporting Requirements by Certain Vice-Presidents (the "Staff Notice").

11. TD has made this application to seek relief from the insider reporting requirement for individuals employed by TD who meet the following criteria set out in the Staff Notice (the "Exempt VP Criteria"):

- (a) the individual is a vice-president;
- (b) the individual is not in charge of a principal business unit, division or function of TD or a "major subsidiary" of TD (as that term is defined in NI 55-101);
- (c) the individual does not in the ordinary course receive or have access to information regarding material facts or material changes concerning TD or any Related Issuer (as defined below) before the material facts or material changes are generally disclosed; and

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- (d) the individual is not an insider of TD in any capacity other than as a vice president;

12. TD's Compliance Department will apply the same analysis each time a Vice President is appointed or an existing Vice President makes a lateral change. TD's Compliance Department will review and update TD's Exempt VP analysis annually.

13. If an individual who is designated as an Exempt VP no longer satisfies the Exempt VP Criteria, designated staff of TD's Compliance Department under the supervision of the General Counsel will ensure that the individual is informed about his or her renewed obligation to file an insider report on trades in securities of TD.

14. TD is an insider of each of TD Mortgage Investment Corporation, TD Capital Trust and TD Capital Trust II (the three entities being referred to herein as the "Related Issuers") by virtue of owning more than 10% of the voting securities of each entity. Therefore, the Exempt VPs are also insiders of each of the Related Issuers by virtue of being senior officers of TD.

15. Each of the Related Issuers has received relief pursuant to MRRS Decision Documents from filing and distributing continuous disclosure documents related to such entities so long as TD provides its continuous disclosure documents to holders of securities of such entities in accordance with the terms of the decisions. This relief is premised on the view that information about the affairs and financial performance of TD, as opposed to that of the entity, is meaningful to the holder of securities of the entity given the structure of these securities. For the purpose of insider trading reporting, the securities of these entities should also be treated like securities of TD.

16. TD is seeking a decision that TD's Exempt VPs also be exempted from filing requirements related to securities of the Related Issuers. Individuals who hold the office of Vice President or higher in the Related Issuers would continue to file insider trading reports in respect of those issuers.

17. In connection with this application, TD has filed with the Decision Makers a summary of its internal policies and procedures relating to monitoring and restricting the trading activities of its insiders and other persons whose trading activities are restricted by TD.

AND WHEREAS under the System, this MRRS Decision Document evidences the decision of each Decision Maker (collectively, the "Decision");

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AND WHEREAS 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 requirement contained in the Legislation to file insider reports with respect to trades in securities of TD or securities of the Related Issuers shall not apply to insiders of TD who satisfy the Exempt VP Criteria for so long as such insiders satisfy the Exempt VP Criteria provided that:

- (a) TD agrees to make available to the Decision Makers, upon request, to the extent permitted by law, a list of all individuals who are relying on the exemption granted by this Decision as at the time of the request; and
- (b) the relief granted will cease to be effective on the date when NI 55-101 is amended.

Dated May 30, 2003

H. Lorne Morphy

Robert W. Korthals