

# 2006 BCSECCOM 747

December 13, 2006

## Headnote

Mutual Reliance Review System for Exemptive Relief Applications - Securities Act s. 130 - Relief from certain self-dealing restrictions in Part 15 of the Act - *Conflict of interest relief* - A mutual fund and its registered portfolio manager want relief from sections 121(2)(b) and (c) of the Act so that the fund can invest in and hold securities of related mutual funds and of an issuer in which a substantial security holder of the mutual fund or its manager has a significant interest - *Reporting relief* - A registered mutual fund manager wants relief from the reporting requirements contained in sections 126(a) and (d) of the Act - *Conflict of interest and reporting relief* - The top fund invests in a mutual fund that has exposure to foreign securities; the underlying fund may invest in securities of other funds; the top fund's investment objective includes seeking to eliminate its foreign currency exposure but otherwise its investment objectives are substantially the same as the underlying fund; the top fund's investment in the underlying funds will comply with all the conditions of section 2.5 of NI 81-102 except paragraph 2.5(2)(b)

## Applicable British Columbia Provisions

*Securities Act*, R.S.B.C. 1996, c. 418, s. 121(2)(b) and (c), 126(a) and (d), 130

In the Matter of  
the Securities Legislation of  
British Columbia, Alberta, Saskatchewan, Ontario, New Brunswick, Nova Scotia  
and Newfoundland and Labrador  
(the Jurisdictions)

and

In the Matter of  
the Mutual Reliance Review System for exemptive Relief Applications

and

In the Matter of  
TD Asset Management Inc.  
(the Filer)

MRRS Decision Document

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### **Background**

The local securities regulatory authority or regulator (the Decision Maker) in each of the Jurisdictions has received an application from the Filer, on its behalf and on behalf of the mutual funds listed in Schedule A and other mutual funds that are or will be managed by the Filer (collectively, the Portfolios), for a decision under the securities legislation of the Jurisdictions (the Legislation) granting the following relief (the Requested Relief) in respect of investments by the Portfolios in the TD Currency Neutral Funds (defined herein):

- (a) an exemption from the restriction prohibiting a mutual fund from knowingly making or holding an investment:
  - (i) in a person or company in which the mutual fund, alone or together with one or more related mutual funds, is a substantial security holder; or
  - (ii) in an issuer in which any person or company who is a substantial security holder of the mutual fund, its management company or its distribution company has a significant interest (together with paragraph (i) above, the Mutual Fund Conflict of Interest Investment Restrictions); and
- (b) an exemption from the requirement that a management company file a report relating to a purchase or sale of securities between the mutual fund and any related person or company or any transaction in which, by arrangement other than an arrangement relating to insider trading in portfolio securities, the mutual fund is a joint participant with one or more of its related persons or companies (the Mutual Fund Conflict of Interest Reporting Requirements).

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.

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### **Representations**

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

1. The Filer is a corporation incorporated under the laws of Ontario and has its head office in Toronto, Ontario. The Filer is or will be the trustee and manager of the Portfolios.
2. The Portfolios are or will be open-end mutual funds established under the laws of Ontario.
3. The Portfolios are or will be reporting issuers under the securities laws of each of the Jurisdictions. None of the currently existing Portfolios is in default of any requirements of applicable securities legislation.
4. To achieve their respective investment objectives, the Portfolios invest primarily in securities of other mutual funds, which may include mutual funds managed by the Filer. The Portfolios may have exposure to foreign securities to an extent that will vary from time to time and may be up to 100% of the net assets of a Portfolio at the time that such exposure to foreign securities is obtained.
5. The Filer would like the flexibility to hedge away some or all of the foreign currency exposure in the Portfolios, particularly where those Portfolios increase their foreign property exposure. The Filer proposes that an efficient and cost effective way to accomplish this would be to have the Portfolios invest in units of one or more of the TD Currency Neutral Funds.
6. A TD Currency Neutral Fund, as referenced in this decision, is or will be a TD mutual fund whose:
  - (a) investment objective includes seeking to eliminate substantially its foreign currency exposure; and
  - (b) investment strategy is to seek to achieve its investment objective primarily through investing in units of a specified underlying fund (the Underlying Fund) managed by the Filer and using derivative contracts, on an ongoing basis, to hedge substantially its foreign currency exposure.
7. The investment objectives of a TD Currency Neutral Fund and the applicable Underlying Fund are substantially the same, except that the objective of the TD Currency Neutral Fund includes the objective of seeking to eliminate substantially the fund's foreign currency exposure.

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8. Each TD Currency Neutral Fund is or, in the case of such funds created or reorganized after the date hereof, will be, an open-end mutual fund established under the laws of Ontario and a reporting issuer under the securities laws of each of the Jurisdictions. None of the currently existing TD Currency Neutral Funds is in default of any requirements of applicable securities legislation.
9. An investment by the Portfolios in units of the TD Currency Neutral Funds will in each case be made in accordance with the provisions of section 2.5 of National Instrument 81-102 Mutual Funds (NI 81-102), except for the requirement in paragraph 2.5(2)(b) that a fund not invest in another fund if the other fund holds more than 10% of the market value of its net assets in securities of other mutual funds.
10. If the proposed investment by the Portfolios were made in accordance with each of the provisions of section 2.5 of NI 81-102, the Requested Relief would not be required as subsection 2.5(7) of NI 81-102 provides relief from the Mutual Fund Conflict of Interest Investment Restrictions and the Mutual Fund Conflict of Interest Reporting Requirements to a mutual fund which purchases or holds securities of another mutual fund if the purchase or holding is made in accordance with section 2.5 of NI 81-102.
11. In the absence of an exemption from the Mutual Fund Conflict of Interest Investment Restrictions, a Portfolio would be prohibited from knowingly making or holding an investment in a TD Currency Neutral Fund if the Portfolio, alone or together with one or more related mutual funds, is a substantial security holder of the TD Currency Neutral Fund.
12. The Toronto-Dominion Bank (TD Bank) may at times have a seed capital investment in a TD Currency Neutral Fund which would represent a significant interest in that fund. As TD Bank is a substantial securityholder of the Filer which is the manager of the Portfolios, the Mutual Fund Conflict of Interest Investment Restrictions would further prohibit a Portfolio from investing in a TD Currency Neutral Fund at a time where the TD Bank would hold a significant interest in that fund.
13. In the absence of an exemption from the Mutual Fund Conflict of Interest Reporting Requirements, the Filer would be required to file a report for every transaction by a Portfolio involving units of a TD Currency Neutral Fund and every transaction in which, by arrangement, any of the Portfolios or the TD Currency Neutral Funds are acting as joint participants.

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14. A Portfolio's investment in units of the TD Currency Neutral Funds will represent the business judgment of responsible persons uninfluenced by considerations other than the best interests of the Portfolio.

### **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 Portfolio's investment in units of the TD Currency Neutral Funds be made in compliance with each provision of section 2.5 of NI 81-102, except for paragraph 2.5(2)(b).

Wendell S. Wigle  
Commissioner  
Ontario Securities Commission

David L. Knight  
Commissioner  
Ontario Securities Commission

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### Schedule A

TD Managed Income Portfolio  
TD Managed Income & Moderate Growth Portfolio  
TD Managed Balanced Growth Portfolio  
TD Managed Aggressive Growth Portfolio  
TD Managed Maximum Equity Growth Portfolio  
TD Fundsmart Managed Income Portfolio  
TD Fundsmart Managed Income & Moderate Growth Portfolio  
TD Fundsmart Managed Balanced Growth Portfolio  
TD Fundsmart Managed Aggressive Growth Portfolio  
TD Fundsmart Managed Maximum Equity Growth Portfolio  
TD Managed Index Income Portfolio  
TD Managed Index Income & Moderate Growth Portfolio  
TD Managed Index Balanced Growth Portfolio  
TD Managed Index Aggressive Growth Portfolio  
TD Managed Index Maximum Equity Growth Portfolio