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August 5, 2005

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 - U.S. Bank requires the exemption to distribute U.S. dollar denominated certificates of deposit and U.S. interest bearing chequing accounts offered to Canadian residents - The applicant is subject to a comprehensive scheme of regulation and supervision in the U.S. comparable to Canadian regulatory requirements governing Schedule I and II banks. The applicant is also subject to the indirect oversight by Office of the Superintendent of Financial Institutions because it is a subsidiary of a Canadian bank.

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 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 Waterhouse Bank, N.A.
TD Waterhouse Canadian Call Centre Inc.
TD Waterhouse Investor Services Inc.
(the Filers)**

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 Filers for a decision (the

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Requested Relief) under the securities legislation (the Legislation) of the Jurisdictions that exempts:

- (a) TDWBank and its authorized agents from the dealer, adviser and underwriter registration requirements contained in the Legislation (the Registration Requirements) and the prospectus requirement contained in the Legislation (the Prospectus Requirement) to permit TDWBank and its authorized agents to distribute U.S. dollar denominated certificates of deposit and U.S. interest bearing chequing accounts offered by TD Waterhouse Bank, N.A. (TDWBank) (collectively, the Deposits) to residents of the Jurisdictions; and
- (b) TD Waterhouse Canadian Call Centre Inc. (TDWCCC), TD Waterhouse Investor Services Inc. (TDW) and their authorized agents from the Registration Requirements that would otherwise be applicable to them when TDWBank offers and sells Deposits to residents of the Jurisdictions through a call centre that is located in London, Ontario (the London Call Centre) in the manner described below.

Under the Mutual Reliance Review System for Exemptive Relief Applications

- (i) the Ontario Securities Commission is the principal regulator for this application, and
- (ii) 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 of TDWBank

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

1. TDWBank is an indirect wholly-owned subsidiary of The Toronto-Dominion Bank (TD Bank).
2. TD Bank is a Canadian chartered bank that is listed in Schedule I to the Bank Act (Canada) (the Bank Act).
3. TDWBank is a virtual bank which carries on the business of banking in the United States.

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4. The head office of TDWBank is located in Jersey City, New Jersey, U.S.A.
5. TDWBank is not a bank for purposes of the Bank Act and the Deposits are therefore securities for purposes of the Legislation.
6. Although TDWBank 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 subject to regulation, examination and supervision by the Office of the Comptroller of the Currency (OCC), TDWBank's chartering agency, and the Federal Deposit Insurance Corporation (FDIC), TDWBank's deposit insurer.
7. Each of the OCC and the FDIC (collectively, the U.S. Regulatory Authorities) is a regulatory authority created under the federal laws of the United States. It 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 TDWBank'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.
8. TDWBank 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.
9. The Deposits are insured by the 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. TDWBank 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.
10. TDWBank 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.

Representations of the Filers

This decision is based upon the following facts represented by the Filers:

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1. TDWBank proposes to offer and sell Deposits to residents of the Jurisdictions through, among other things, the London Call Centre.
2. TD Waterhouse Investor Services Inc. (TDW) operates the London Call Centre through TD Waterhouse Canadian Call Centre Inc. (TDWCCC), an affiliate of TDW that is incorporated under the laws of Ontario.
3. TDW is a corporation incorporated under the laws of the State of New York, U.S.A. and is an indirect wholly-owned subsidiary of the Toronto-Dominion Bank, a bank listed on Schedule I of the Bank Act (Canada) (the Bank Act). TDW is registered as a broker-dealer with the United States Securities and Exchange Commission (SEC) pursuant to Section 15(b) of the Securities Exchange Act of 1934, as amended, to carry on business as a broker-dealer in the U.S.A. Its head office is located in New York, New York, U.S.A.
4. Within the London Call Centre, individuals who will represent both TDW and TDWBank (the TDW Representatives) will offer a limited range of financial products and services to the customers of each Filer.
5. When acting as a representative of TDW, a TDW Representative will respond to market and account activity inquiries received from clients of TDW who are not residents of Canada (Non-Canadian Clients) and individuals (NI-35-101 Clients) that are referred to in Section 2.1 of National Instrument 35-101 Conditional Exemption from Registration for United States Broker-Dealers and Agents (NI 35-101). A TDW Representative will also review for approval all Non-Canadian and NI 35-101 Client Orders that are placed via the internet or a touch-tone telephone system; receive and respond to all email inquiries received by TDW; address technical problems encountered by Non-Canadian and NI 35-101 Clients when using electronic services that are available through TDW; and monitor and supervise Non-Canadian and NI 35-101 Client accounts. A TDW Representative that is registered under U.S. securities laws will also accept and route, but not execute, trading orders on behalf of Non-Canadian Clients and NI 35-101 Clients.
6. When acting as a representative of TDWBank, a TDW Representative will respond to account inquiries from, execute account transactions for, and offer a limited range of TDWBank financial products and services to holders of TDWBank accounts who are resident in both the United States (U.S. Customers) and Canada (Canadian Customers) and who access the London Call through the use of a toll-free line. Financial products and services that will be available to U.S. Customers through the London Call Centre comprise Deposits, overdraft protection, mortgages, a home equity line of credit, an

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unsecured line of credit and VISA credit cards. Financial products and services that will be available to Canadian Customers through the London Call Centre Comprise Deposits, overdraft protection, an unsecured line of credit and VISA credit cards.

7. TDW will not establish accounts for, or trade securities with, or on behalf of, persons or companies who are resident in Canada except to the extent that it establishes accounts and conducts trading in Canada in accordance with the dealer registration and prospectus exemptions that are available pursuant to NI 35-101.
8. TDWBank will not trade in any securities other than Deposits with or on behalf of persons or companies who are resident in Canada.
9. TDW, TDWBank, TDWCCC and TDW Representatives will comply with all registration and other requirements of applicable U.S. securities legislation in respect of trades conducted with, or on behalf of, Non-Canadian Clients and U.S. Customers.
10. TDW, TDWBank, TDWCCC and TDW Representatives will comply with the requirements of applicable U.S. banking legislation when offering and selling Deposits to Canadian Customers and U.S. Customers.
11. Without this MRRS Decision Document, TDWBank would be unable to satisfy the Registration Requirements and the Prospectus Requirements that would otherwise be applicable to its offering and sale of Deposits to residents of the Jurisdictions and TDW, TDWBank, TDWCCC and TDW Representatives would be unable to satisfy the Registration Requirements that would otherwise be applicable to them when TDWBank offers and sells Deposits to residents of the Jurisdictions through the London Call Centre.

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) TDWBank continues to be subject to regulation, examination and supervision by the U.S. Regulatory Authorities;

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- (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.

Paul M. Moore
Commissioner
Ontario Securities Commission

Harold P. Hands
Commissioner
Ontario Securities Commission