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November 1, 2007

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 and s. 48 – Limitation on the exercise of discretion in section 82(1)(b) of the *Securities Rules* - A mutual fund manager wants relief from section 127(1)(b) of the Act so that it can sell the securities of an issuer to the account of responsible person - The purchase or sale is consistent with, or is necessary to meet, the investment objectives of the fund; the IRC of the fund has approved the transaction which involves a perceived or actual conflict of interest for the fund manager; the fund manager and the IRC follow any standing instructions that the IRC provides in connection with the transactions; the fund's continuous disclosure materials provide disclosure to fund investors about the transactions with related parties; and the fund keeps the written records required by NI 81-107

Securities Act s. 130 – Relief from certain self-dealing restrictions in Part 15 - A registered mutual fund manager wants relief from the reporting requirements contained in sections 126(a) and (c) of the Act - The fund is a reporting issuer and operates as a conventional mutual fund; the portfolio advisers of the mutual funds have discretion to allocate brokerage business in any manner consistent with the fund's best interests; the allocation of brokerage business represents the business judgement of responsible persons uninfluenced by considerations other than the best interests of the mutual funds; the management report of fund performance for the funds will disclose the names of and fees paid to related persons; the fund's records of portfolio transactions will include information about purchases or sales effected through a related person on a per transaction basis

Applicable British Columbia Provisions

Securities Act, R.S.B.C. 1996, c. 418, ss. 126(a) and (c), 127(1)(b), and 130
Securities Rules, B.C. Reg. 194/97, s. 82(1)(b)

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

and

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

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and

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

and

TD Mortgage Fund, TD Short Term Bond Fund, TD Monthly Income Fund,
TD Private Canadian Bond Income Fund, TD Private Canadian Corporate Bond
Fund and TD Private Canadian Bond Return Fund

MRRS Decision Document

Background

The local securities regulatory authority or regulator (the Decision Maker) in each of the provinces of British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Quebec, New Brunswick, Nova Scotia, and Newfoundland & Labrador (the Jurisdictions) has received an application from the Filer, in its own capacity and on behalf of TD Mortgage Fund, (the Mortgage Fund), TD Short Term Bond Fund and TD Monthly Income Fund (collectively, the Income Funds), TD Private Canadian Bond Income Fund, TD Private Canadian Corporate Bond Fund and TD Private Canadian Bond Return Fund (collectively, the Private Funds and together with the Mortgage Fund and Income Funds, the Funds, and individually, the Fund) for a decision (the Decision) under the securities legislation of the Jurisdictions (the Legislation) that the following provisions of the Legislation do not apply to the Filer, in respect of the purchase or sale of mortgages that the Filer may cause a Fund to enter into with affiliates of the Filer:

- (a) the provision requiring the management company of a mutual fund or, in British Columbia, a mutual fund manager, to file a report relating to
 - (i) every purchase or sale of securities between the mutual fund and any related person or company, and
 - (ii) every purchase or sale effected by the mutual fund through any related person or company with respect to which the related person or company received a fee either from the mutual fund or from the other party to the transaction or both,

within thirty days after the end of the month in which the purchase or sale occurs (the Reporting Requirements); and

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- (b) the provision prohibiting a portfolio manager from knowingly causing any investment portfolio managed by it to purchase or sell the securities of any issuer from or to the account of a "responsible person" as defined in the Legislation and, in British Columbia, from or sold to an associated party of a registrant (the Investment Prohibition)

(the Reporting Requirements and the Investment Prohibition are collectively, the Requested Relief).

Under the Mutual Reliance Review System for Exemptive Relief Applications

- (a) the Ontario Securities Commission (the OSC) is the principal regulator for this application;
- (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 a corporation established under and governed by the laws of Ontario and is the manager and trustee of each of the Funds. It is registered with all the provincial and territorial securities regulators as an investment counselor and portfolio manager or their equivalents, registered as a limited market dealer with the OSC and the Securities Commission of Newfoundland and Labrador, and registered as a commodity trading manager with the OSC. The Filer is a wholly-owned subsidiary of The Toronto-Dominion Bank (the Bank). The head office of the Filer is located in Toronto, Ontario.
2. Each of the Funds is an open-ended mutual fund trust established under the laws of Ontario. Units of the Funds are qualified for sale in each of the provinces and territories of Canada (the Prospectus Jurisdictions) under a number of simplified prospectuses and annual information forms filed in and accepted by each of the Prospectus Jurisdictions (collectively, such prospectuses and annual information forms are referred to herein as the Prospectus).

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3. The investment objective of the Mortgage Fund, as disclosed in its current Prospectus, is to provide a steady stream of interest income by investing in a diversified portfolio consisting primarily of high-quality Canadian residential mortgages bought from and administered by the TD Bank Financial Group. It may invest in uninsured conventional mortgages, mortgages insured under the National Housing Act or by an insurance company and Canadian mortgage-backed securities.
4. The Income Funds and the Private Funds are not precluded from investing in "guaranteed mortgages" as defined in National Instrument 81-102 - Mutual Funds.
5. Purchases and sales of mortgages may occur in all Jurisdictions.
6. The Funds were granted the requested relief in connection with the purchase and sale of mortgages between the Funds and the Bank and The Canada Trust Company (collectively, the TDAM Affiliates or a TDAM Affiliate) pursuant to an MRRS Decision Document dated October 19, 2001 (the Prior MRRS Decision) and a letter dated October 19, 2001, (the Prior 81-102 Relief) (the Prior MRRS Decision and Prior 81-102 Relief are collectively, the Prior Relief).
7. Section 7.2 of National Instrument 81-107 *Independent Review Committee for Investment Funds* (NI 81-107) will cause the Prior Relief to expire on November 1, 2007. Section 7.2 of NI 81-107 provides that any exemption under a provision of securities legislation that was effective before NI 81-107 came into force and that deals with the matters that NI 81-107 regulates will expire on November 1, 2007. Accordingly, the Prior Relief will expire on November 1, 2007.
8. NI 81-107 does not provide an exemption for principal trading of securities of the type contemplated by the Requested Relief.
9. In order for the Funds to continue to have the ability to purchase/sell mortgages from/to the TDAM Affiliates, the Filer needs discretionary relief from the Investment Prohibition and the Reporting Requirements.
10. The Filer will not cause any Income Fund or Private Fund to purchase guaranteed mortgages, whether or not from the TDAM Affiliates if, immediately after the purchase, more than 10 percent of the net assets of the Income Fund or Private Fund, taken at market value at the time of the purchase, would consist of guaranteed mortgages.

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11. National Policy Statement No. 29 (NP 29) permits a mutual fund to acquire mortgages from a lending institution on a non-arm's length basis, subject to compliance with specified pricing or valuation and disclosure conditions.
12. The Filer will cause a Fund to purchase/sell a mortgage (in the case of the Mortgage Fund) or a guaranteed mortgage (in the case of the Income Funds and the Private Funds) from/to a TDAM Affiliate only if
 - (a) the transaction is made in accordance with clause 2.4(c) of Section III of NP 29 such that:
 - (i) the purchase or sale is made at the principal amount which will produce a yield to the Fund of not more than a quarter of one percent less than the interest rate at which the TDAM Affiliate is making commitments, at the time of purchase, to loan on the security of comparable mortgages or guaranteed mortgages; and
 - (ii) in the case of a purchase of a mortgage or guaranteed mortgage, as the case may be,
 - (A) the TDAM Affiliate that sells it to the Fund enters into an agreement (the Repurchase Agreement) with the Fund whereby the TDAM Affiliate that sells the mortgage or guaranteed mortgage is obligated to repurchase it if the mortgage or guaranteed mortgage goes into default for more than 90 days and in circumstances benefiting the Fund,
 - (B) the Filer considers that the Repurchase Agreement is sufficient to justify the difference in yield referred to in subparagraph (a) above;
 - (b) the Bank guarantees the performance of the other TDAM Affiliate under the Repurchase Agreement referred to in paragraph (a)(ii)(A) above;
 - (c) the Filer causes the Funds to comply with the disclosure provisions of Section IV of NP 29; and
 - (d) the Filer causes each Fund to include disclosure in its Prospectus that the Fund will engage in principal transactions in mortgages or guaranteed mortgages, as the case may be, with the TDAM Affiliates.

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13. An independent review committee (IRC) has been constituted for each of the Funds, and other mutual funds managed by the Filer in accordance with the requirements of NI 81-107.
14. The IRC has, or prior to November 1, 2007 will have, reviewed and assessed the adequacy and effectiveness of the Filer's Mortgage Fund Policies and Procedures regarding the purchase and sale of mortgages (Mortgage Transactions) between the Funds and the TDAM Affiliates and issued standing instructions to the Filer approving Mortgage Transactions carried out in accordance with the Filer's Mortgage Fund Policies and Procedures.
15. In the absence of this Decision, the Filer
 - (a) is prohibited by the Investment Prohibition from causing the Funds to engage in Mortgage Transactions with TDAM Affiliates which are responsible persons under the Legislation or an associated party in British Columbia; and
 - (b) is obligated to comply with the monthly Reporting Requirements in respect of Mortgage Transactions with TDAM Affiliates.

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, pursuant to the Legislation, is that

1. the Investment Prohibition does not apply so as to prevent the Filer from causing the Funds to engage in Mortgage Transactions with TDAM Affiliates provided that:
 - (a) the purchase or sale is consistent with, or is necessary to meet, the investment objective of the Fund;
 - (b) the IRC of the Fund has approved the transaction in accordance with section 5.2(2) of NI 81-107;
 - (c) the manager of the Fund complies with section 5.1 of NI 81-107 and the manager and the IRC of the Fund comply with section 5.4 of NI 81-107 for any standing instructions the IRC provides in connection with the transactions; and

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- (d) the Fund keeps the written records required by section 6.1(2)(g) of NI 81-107.
- 2. the Reporting Requirements do not apply to the Filer in respect of the Mortgage Transactions with TDAM Affiliates provided that
 - (a) the annual and interim management reports of fund performance for the Fund disclose
 - (i) the name of the TDAM Affiliate ,
 - (ii) the amount of fees paid to each TDAM Affiliate, and
 - (iii) the person or company who paid the fees if they were not paid by the Fund; and
 - (b) the records of portfolio transactions maintained by each Fund include, separately for every Mortgage Transaction effected by the Fund through a TDAM Affiliate,
 - (i) the name of the TDAM Affiliate,
 - (ii) the amount of fees paid to the TDAM Affiliate, and
 - (iii) the person or company who paid the fees.

Robert L. Shirriff
Commissioner
Ontario Securities Commission

Lawrence E. Ritchie
Vice-Chair/Commissioner
Ontario Securities Commission