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Headnote

Mutual Reliance Review System for Exemptive Relief Applications – Relief from registration and prospectus requirements for securities underlying trust units being qualified by prospectus – underlying securities to be issued by other issuers – relief granted for first trades of underlying securities provided prospectus qualifying trust units is receipted

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 NOVA
SCOTIA, BRITISH COLUMBIA, MANITOBA, NEWFOUNDLAND AND
LABRADOR, PRINCE EDWARD ISLAND, NEW BRUNSWICK, YUKON,
NORTHWEST TERRITORIES AND NUNAVUT**

AND

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

AND

**IN THE MATTER OF THE TORONTO-DOMINION BANK AND TD
CAPITAL TRUST II**

MRRS DECISION DOCUMENT

WHEREAS the local securities regulatory authority or regulator (the “Decision Maker”) in each of Nova Scotia, British Columbia, Manitoba, Newfoundland and Labrador, Prince Edward Island, New Brunswick, Yukon, Northwest Territories and Nunavut (collectively, the “Jurisdictions”) has received an application (the “Application”) on behalf of The Toronto-Dominion Bank (the “Bank”) and TD Capital Trust II (the “Trust”) for a decision, pursuant to the securities legislation of the Jurisdictions (the “Legislation”), that certain trades in securities of the Bank are exempt from the requirements under the Legislation to be registered to trade in a security (the “Registration Requirement”) and to file and obtain a receipt for a preliminary prospectus and a prospectus (the “Prospectus Requirement”), subject to certain conditions;

AND WHEREAS pursuant to the Mutual Reliance Review System for Exemptive Relief Applications (the “System”), the Nova Scotia Securities Commission is the principal regulator for this application;

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AND WHEREAS the Bank and the Trust have represented to the Decision Makers that:

1. The Trust is an open-end trust established under the laws of the Province of Ontario by The Canada Trust Company (“Trustee”), as trustee, pursuant to a declaration of trust dated September 10, 2002 (the “Declaration of Trust”).
2. Following completion of the Offering described below, the authorized capital of the Trust will consist of an unlimited number of: (i) Special Trust Securities – Series 2002-1 (the “Special Trust Securities”); and (ii) TD Capital Trust II Securities – Series 2012-1 (the “TD CaTS II”). The Special Trust Securities and the TD CaTS II are collectively referred to herein as the “Trust Securities”.
3. The Trust was established solely for the purpose of effecting a public offering of TD CaTS II (the “Offering”) and possible future offerings of securities in order to provide the Bank with a cost effective means of raising capital for Canadian financial institution regulatory purposes by means of: (i) creating and selling the Trust Securities; and (ii) acquiring and holding assets, which, on completion of the Offering, will consist primarily of a senior deposit note issued by the Bank (the “Bank Deposit Note”). The Bank Deposit Note will generate income for distribution to holders of the Trust Securities. The Trust does not and will not carry on any operating activity other than in connection with the Offering and any future offerings.
4. Subject to regulatory approval, the TD CaTS II will qualify as Tier 1 Capital of the Bank for the purposes of the capital guidelines issued by the Superintendent of Financial Institutions (the “Superintendent”). The Trust will also issue and sell Special Trust Securities, which are voting securities of the Trust, to the Bank in connection with the Offering.
5. The Bank is a bank under the *Bank Act* (Canada) and such act is its charter.
6. The Bank is a reporting issuer or the equivalent in each of the provinces and territories of Canada that provides for a reporting issuer regime (or its equivalent) and is not, to its knowledge, in default of any reporting requirement under the Legislation.
7. The authorized share capital of the Bank consists of an unlimited number of (i) common shares (the “Bank Common Shares”); and (ii) non-cumulative Class A First Preferred Shares (the “Bank Preferred Shares”), issuable in series.

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8. Pursuant to the terms of the TD CaTS II and a Share Exchange Agreement (the “Share Exchange Agreement”) to be entered into among the Bank, the Trust and a party acting as exchange trustee, the TD CaTS II may be exchanged (the “Holder Exchange Right”), at the option of the holder of TD CaTS II, for Preferred Shares Series A2 of the Bank (“Bank Preferred Shares Series A2”). The TD CaTS II will be automatically exchanged, without the consent of the holder, for Preferred Shares Series A3 of the Bank (“Bank Preferred Shares Series A3”) upon the occurrence of certain stated events relating to the solvency of the Bank or actions taken by the Superintendent in respect of the Bank (the “Automatic Exchange”). The Bank Preferred Shares Series A2 and Bank Preferred Shares Series A3 are collectively referred to herein as the “Bank Exchange Preferred Shares”.
9. The Bank Deposit Note will be convertible at any time at the option of the holder into Bank Preferred Shares Series A2 (such right of conversion being referred to herein as the “Conversion Right”), exercisable by the Trust in circumstances in which holders of TD CaTS II exercise the Holder Exchange Right, to enable the Trust to satisfy its obligation to deliver Bank Preferred Shares Series A2 to holders of TD CaTS II in connection with the Holder Exchange Right.
10. Pursuant to the Share Exchange Agreement, the Bank will grant to the Trust the right to subscribe (the “Subscription Right”) for Bank Exchange Preferred Shares of the appropriate series in order to enable the Trust to redeem the TD CaTS II (if any remain outstanding) in circumstances where: (i) the Automatic Exchange is triggered and, for any reason, the Automatic Exchange does not result in the exchange of all outstanding TD CaTS II for Bank Preferred Shares Series A3 or (ii) the Holder Exchange Right is exercised following maturity of the Bank Deposit Note (in which case, the Trust would not have the benefit of the Conversion Right).
11. The Holder Exchange Right will be effected through the conversion by the Trust of the corresponding principal amount of the Bank Deposit Note into Bank Preferred Shares Series A2, or the acquisition by the Trust of such shares through the exercise of the Subscription Right. Holders of TD CaTS II exercising the Holder Exchange Right, upon surrendering the TD CaTS II to be exchanged, will receive from the Trust 40 Bank Preferred Shares Series A2 in respect of each TD CaTS II so exchanged and the TD CaTS II surrendered for exchange will be cancelled.
12. The Automatic Exchange will be effected through the terms of the Share Exchange Agreement. As of the time of the exchange, each holder of TD CaTS II shall be deemed to have exchanged and transferred to the Bank of all

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such holder's right, title and interest in and to its TD CaTS II in exchange for 40 Bank Preferred Shares Series A3 and: (i) such holder shall cease to be a holder of any TD CaTS II; (ii) all rights of such holder as a securityholder of the Trust will cease; and (iii) such person shall therefrom be deemed to be and shall be for all purposes a holder of Bank Preferred Shares Series A3. If, for any reason, the Automatic Exchange does not result in the exchange of all outstanding TD CaTS II for Bank Preferred Shares Series A3, the Automatic Exchange will be effected through the exercise by the Trust of the Subscription Right pursuant to which the Trust will acquire Bank Preferred Shares Series A3 and the Trust will subsequently redeem each TD CaTS II not so exchanged for 40 Bank Preferred Shares Series A2 and the TD CaTS II so redeemed will be cancelled.

13. The terms of the Bank Exchange Preferred Shares provide that the Bank Exchange Preferred Shares are convertible at the option of the holder into Bank Common Shares at certain times and in certain circumstances, except where an event giving rise to the Automatic Exchange in respect of the TD CaTS II has occurred and is continuing (the "Bank Common Share Conversion Right").
14. The Bank Exchange Preferred Shares are not convertible into Bank Common Shares until June 13, 2013. In addition, the Bank may redeem the Bank Exchange Preferred Shares and pay the redemption price thereof by delivering cash or Bank Common Shares to holders of redeemed Bank Exchange Preferred Shares (the entitlement of the Bank to issue Bank Common Shares for such purpose being the "Bank Preferred Share Redemption Right"). The Bank Exchange Preferred Shares are not redeemable into Bank Common Shares until December 31, 2007, subject to Superintendent approval and certain other terms and conditions.
15. In addition to qualifying the TD CaTS II for distribution, the (final) prospectus in respect of the Offering (the "Prospectus") will also qualify the Holder Exchange Right, the Automatic Exchange, the Conversion Right, the Subscription Right, the Bank Preferred Share Redemption Right and the Bank Common Share Conversion Right (collectively, the "Conversion and Exchange Rights"). Information concerning the Trust and the Bank will be included, or incorporated by reference, in the Prospectus.
16. There may be no registration or prospectus exemptions available under the Legislation for certain of the trades contemplated by the Conversion and Exchange Rights (the "Trades").

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AND WHEREAS pursuant to the System, this MRRS Decision Document evidences the decision of each of the Decision Makers (collectively, the “Decision”);

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 Registration Requirement and the Prospectus Requirement shall not apply to the Trades provided that the first trade in Bank Exchange Preferred Shares and Bank Common Shares acquired pursuant to the Decision, other than a trade by the Trust or the Bank pursuant to the Conversion and Exchange Rights, shall be deemed to be a distribution or a primary distribution to the public under the Legislation of the Jurisdiction in which the trade takes place (the “Applicable Legislation”) unless:

- (a) the Bank has filed and obtained a receipt for the Prospectus under the Applicable Legislation;
- (b) the Bank is a reporting issuer or the equivalent under the Applicable Legislation at the time of the trade, to the extent that the Applicable Legislation provides a reporting issuer regime; and
- (c) the trade is not a control distribution as defined in Multilateral Instrument 45-102 Resale of Securities.

DATED this 10th day of October, 2002.

H. Leslie O’Brien