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Headnote

Mutual Reliance Review System for Exemptive Relief Applications – relief granted from certain of the mutual fund self-dealing prohibitions to permit certain mutual funds to make purchases and sales of shares of The Toronto-Dominion Bank, parent company of the manager of the mutual funds, provided that a fund governance mechanism is used

Applicable British Columbia Provisions

Securities Act, R.S.B.C. 1996, c. 418, ss. 121(2)(a) and (c), 123, 127(1)(a) and 130

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

AND

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

AND

IN THE MATTER OF TD ASSET MANAGEMENT INC. (“TDAM”)

**TD CANADIAN T-BILL FUND
TD CANADIAN MONEY MARKET FUND
TD PREMIUM MONEY MARKET FUND
TD US MONEY MARKET FUND
TD HIGH YIELD INCOME FUND
TD CANADIAN BOND FUND
TD SHORT TERM BOND FUND
TD MORTGAGE FUND
TD GLOBAL RSP FUND
TD REAL RETURN BOND FUND
TD MONTHLY INCOME FUND
TD BALANCED FUND
TD BALANCED GROWTH FUND
TD BALANCED INCOME FUND
TD GLOBAL ASSET ALLOCATION FUND
TD DIVIDEND GROWTH FUND
TD DIVIDEND INCOME FUND
TD CANADIAN VALUE FUND
TD CANADIAN EQUITY FUND
TD CANADIAN BLUE CHIP EQUITY FUND
TD CANADIAN SMALL CAP EQUITY FUND**

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**TD US EQUITY FUND
TD US MID CAP GROWTH FUND
TD US SMALL CAP EQUITY FUND
TD US LARGE CAP VALUE FUND
TD US BLUE CHIP EQUITY FUND
TD US BLUE CHIP EQUITY RSP FUND
TD AMERIGROWTH RSP FUND
TD INTERNATIONAL EQUITY FUND
TD EUROPEAN GROWTH FUND
TD EUROPEAN GROWTH RSP FUND
TD JAPANESE GROWTH FUND
TD ASIAN GROWTH FUND
TD ASIAGROWTH RSP FUND
TD GLOBAL SELECT FUND
TD GLOBAL SELECT RSP FUND
TD INTERNATIONAL GROWTH FUND
TD EMERGING MARKETS FUND
TD EMERGING MARKETS RSP FUND
TD LATIN AMERICAN GROWTH FUND
TD HEALTH SCIENCES FUND
TD HEALTH SCIENCES RSP FUND
TD ENERGY FUND
TD PRECIOUS METALS FUND
TD SCIENCE AND TECHNOLOGY FUND
TD SCIENCE AND TECHNOLOGY RSP FUND
TD ENTERTAINMENT & COMMUNICATIONS FUND
TD ENTERTAINMENT & COMMUNICATIONS RSP FUND
TD RESOURCE FUND
(collectively, “TD MUTUAL FUNDS”)**

**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 MANAGED INCOME RSP PORTFOLIO
TD MANAGED INCOME & MODERATE GROWTH RSP PORTFOLIO
TD MANAGED BALANCED GROWTH RSP PORTFOLIO
TD MANAGED AGGRESSIVE GROWTH RSP PORTFOLIO
TD MANAGED MAXIMUM EQUITY GROWTH RSP PORTFOLIO
TD FUNDSMART MANAGED INCOME PORTFOLIO
TD FUNDSMART MANAGED INCOME & MODERATE GROWTH
PORTFOLIO**

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**TD FUNDSMART MANAGED BALANCED GROWTH PORTFOLIO
TD FUNDSMART MANAGED AGGRESSIVE GROWTH PORTFOLIO
TD FUNDSMART MANAGED MAXIMUM EQUITY GROWTH
PORTFOLIO**

**TD FUNDSMART MANAGED INCOME RSP PORTFOLIO
TD FUNDSMART MANAGED INCOME & MODERATE GROWTH RSP
PORTFOLIO**

**TD FUNDSMART MANAGED BALANCED GROWTH RSP PORTFOLIO
TD FUNDSMART MANAGED AGGRESSIVE GROWTH RSP
PORTFOLIO**

**TD FUNDSMART MANAGED MAXIMUM EQUITY GROWTH RSP
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**

**TD MANAGED INDEX INCOME RSP PORTFOLIO
TD MANAGED INDEX INCOME & MODERATE GROWTH RSP
PORTFOLIO**

**TD MANAGED INDEX BALANCED GROWTH RSP PORTFOLIO
TD MANAGED INDEX AGGRESSIVE GROWTH RSP PORTFOLIO
TD MANAGED INDEX MAXIMUM EQUITY GROWTH RSP
PORTFOLIO**

(collectively, “TD MAP Portfolios”)

TD PRIVATE CANADIAN BOND INCOME FUND

TD PRIVATE U.S. EQUITY GROWTH FUND

TD PRIVATE CANADIAN BOND RETURN FUND

TD PRIVATE U.S. EQUITY INCOME FUND

TD PRIVATE CANADIAN CORPORATE BOND FUND

TD PRIVATE RSP U.S. EQUITY FUND

TD PRIVATE NORTH AMERICAN EQUITY GROWTH FUND

TD PRIVATE SMALL/MID-CAP EQUITY FUND

TD PRIVATE NORTH AMERICAN EQUITY INCOME FUND

TD PRIVATE INTERNATIONAL EQUITY FUND

TD PRIVATE CANADIAN EQUITY GROWTH FUND

TD PRIVATE RSP INTERNATIONAL EQUITY FUND

TD PRIVATE CANADIAN STRATEGIC OPPORTUNITIES FUND

TD PRIVATE CANADIAN DIVIDEND FUND

TD PRIVATE GLOBAL STRATEGIC OPPORTUNITIES FUND

(collectively, “TD PRIVATE FUNDS”)

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EMERALD CANADIAN SHORT TERM INVESTMENT FUND EMERALD CANADIAN BALANCED FUND (collectively, “EMERALD POOLED FUNDS”)

MRRS DECISION DOCUMENT

WHEREAS TDAM has made an application to the local securities regulatory authority or regulator (the “Decision Maker”) in each of the provinces of British Columbia, Alberta, Saskatchewan, Ontario, Québec, Nova Scotia and Newfoundland and Labrador (the “Jurisdictions”) for a decision pursuant to the securities legislation of the Jurisdictions (the “Legislation”) that the following provisions do not apply so as to prevent the TD Mutual Funds, the TD MAP Portfolios, the TD Private Funds and the Emerald Pooled Funds (collectively, the “Current Funds”) as well as such other funds within the three groups of Current Funds as TDAM may establish and advise from time to time (the “Future Funds”) (the Current Funds and Future Funds being hereinafter referred to individually as a “Fund” and collectively as the “Funds”) from investing in, or continuing to hold an investment in, securities of The Toronto-Dominion Bank (“TD Bank”):

- (a) the provision prohibiting a mutual fund from knowingly making or holding an investment in any person or company who is a substantial security holder of the mutual fund, its management company or distribution company;
- (b) the provision prohibiting a mutual fund from knowingly making or holding an investment in an issuer in which a substantial security holder of the mutual fund, its management company or its distribution company has a significant interest; and
- (c) the provision prohibiting a portfolio manager from knowingly causing an investment portfolio managed by it to invest in any issuer in which a responsible person or an associate of a responsible person is an officer or director unless the specific fact is disclosed to the client and the written consent of the client to the investment is obtained before the purchase.

(the provisions of (a), (b) and (c) being collectively, the “Investment Restrictions”)

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;

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AND WHEREAS the Canadian securities administrators (“CSA”) recently released for comment its concept proposal 81-402 titled “*Striking a New Balance: A Framework for Regulating Mutual Funds and their Managers*” which contains, among other things, alternatives for mutual fund governance. The comment period ended June 7, 2002. The CSA has not yet developed a definitive model for mutual fund governance.

AND WHEREAS the CSA has a strategy for dealing with important matters on a timely basis even though they may be part of a larger comprehensive policy study by the CSA.

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

AND WHEREAS it has been represented by TDAM to the Decision Makers that:

1. The Funds are, or will be, open-ended mutual fund trusts established, or mutual fund corporations incorporated, under the laws of the Province of Ontario.
2. TDAM is, or will be, the trustee and manager of, and the portfolio adviser to, each of the Funds.
3. The securities of the Funds are, or will be, offered for sale in all of the provinces and territories of Canada and each of the Funds is, or will be, either (i) a reporting issuer under the Legislation that is not on a list of defaulting issuers maintained under the Legislation; or (ii) a mutual fund in Ontario.
4. TD Bank owns 100% of the outstanding common shares of TDAM.
5. The Current Funds have not yet made any investment in securities of TD Bank.
6. TDAM believes that it would be in the best interests of investors in the Funds to be permitted to invest in securities of TD Bank, in keeping with the investment objectives of the Funds, though only up to the limit allowed by applicable Legislation.
7. Although each of the directors, officers and employees of TDAM (the “TDAM Employees”), including those who participate in the formulation of, or have access prior to implementation to, investment decisions made by

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TDAM on behalf of the Funds, is also a director, officer and/or employee of TD Bank,

- (a) each TDAM Employee works full time for TDAM;
 - (b) each TDAM Employee is dually employed by both TDAM and TD Bank for the sole purpose of subjecting employment and pension benefit arrangements for the TDAM Employees to a single federal regulatory scheme rather than a multiplicity of provincial and territorial regulatory schemes; and
 - (c) each TDAM Employee who has access to material information in relation to TD Bank that has not been generally disclosed (an “Access Person”) is subject to TD Bank’s “Trading Windows Policy” which prohibits Access Persons from engaging in any trading in securities of TD Bank while the trading window is closed and while the Access Person is in possession of undisclosed material information in relation to TD Bank.
- 8. TDAM will create an Independent Review Committee (the “Independent Committee”), comprised entirely of individuals who are wholly independent of TDAM, to oversee the holdings, purchases and sales of securities of TD Bank by the Funds.
 - 9. The Independent Committee shall review the holdings, purchases and sales of securities of TD Bank to ensure that they have been made free from any influence by TD Bank and without taking into account any consideration relevant to TD Bank.
 - 10. The Independent Committee will take into consideration the best interests of unitholders of the Funds and no other factors.
 - 11. The compensation that is payable to members of the Independent Committee will be allocated among the Funds in a manner that is considered by the Independent Committee to be fair and reasonable.
 - 12. Within thirty days of the end of each month in which TDAM purchases or sells securities of TD Bank on behalf of one or more Funds, TDAM shall file the report on SEDAR contemplated by paragraph (n) below disclosing the name of each Fund that purchased or sold securities of TD Bank during the month, the number or amount of TD Bank securities purchased or sold by each Fund and the volume weighted average price paid or received for the TD Bank securities by each Fund.

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AND WHEREAS pursuant to the System this MRRS Decision Document evidences the decision of each Decision Maker (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 pursuant to the Legislation is that:

1. the Funds are exempt from the Investment Restrictions so as to enable the Funds to invest in securities of TD Bank; and
2. this Decision, as it relates to the jurisdiction of a Decision Maker, will terminate one year after the publication in final form of any legislation or rule of that Decision Maker dealing with mutual fund governance in a manner that conflicts with or makes inapplicable any provision of this Decision;

provided that:

- (a) TDAM has appointed the Independent Committee to review the Funds’ purchases, sales and continued holdings of securities of TD Bank;
- (b) the Independent Committee has at least three members, none of whom is an associate or employee of (i) TDAM, (ii) TD Bank, (iii) any portfolio adviser to the Funds; or (iv) any associate or affiliate of TDAM or a portfolio adviser to the Funds (other than a director of any Fund that is a mutual fund corporation);
- (c) the Independent Committee has a written mandate describing its duties and standard of care which, as a minimum, sets out the conditions of this Decision;
- (d) the members of the Independent Committee exercise their powers and discharge their duties honestly, in good faith and in the best interests of investors in the Funds and, in doing so, exercise the degree of care, diligence and skill that a reasonably prudent person would exercise in the circumstances;
- (e) none of the Funds relieves the members of the Independent Committee from liability for loss that arises out of a failure to satisfy the standard of care set out in paragraph (d);

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- (f) none of the Funds indemnifies the members of the Independent Committee against legal fees, judgments and amounts paid in settlement as a result of a breach of the standard of care set out in paragraph (d);
- (g) none of the Funds incurs the cost of any portion of liability insurance that insures a member of the Independent Committee for a liability for loss that arises out of a failure to satisfy the standard of care set out in paragraph (d);
- (h) the cost of any indemnification or insurance coverage paid for by TDAM, any portfolio adviser to the Funds, or any associate or affiliate of TDAM or a portfolio adviser to the Funds to indemnify or insure the members of the Independent Committee in respect of a loss that arises out of a failure to satisfy the standard of care set out in paragraph (d) is not paid either directly or indirectly by the Funds;
- (i) the Independent Committee reviews the Funds' purchases, sales and continued holdings of securities of TD Bank on a regular basis, but not less frequently than every three months;
- (j) the Independent Committee forms the opinion at any time, after reasonable inquiry, that the decisions made on behalf of each Fund by TDAM or the Fund's portfolio adviser to purchase, sell or continue to hold securities of TD Bank were and continue to be in the best interests of the Fund, and to:
 - (i) represent the business judgement of TDAM or the Fund's portfolio adviser, uninfluenced by considerations other than the best interests of the Fund;
 - (ii) have been made free from any influence by TD Bank and without taking into account any consideration relevant to TD Bank; and
 - (iii) not exceed the limitations of the applicable legislation.
- (k) the determination made by the Independent Committee pursuant to paragraph (j) is included in detailed written minutes provided to TDAM not less frequently than every three months;
- (l) the Independent Committee advises the Decision Makers in writing of:

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- (i) any determination by it that the condition set out in paragraph (j) has not been satisfied with respect to any purchase, sale or holding of securities of TD Bank;
- (ii) any determination by it that any other condition of this Decision has not been satisfied;
- (iii) any action it has taken or proposes to take following the determinations referred to above; and
- (iv) any action taken, or proposed to be taken, by TDAM or a portfolio adviser to the Funds in response to the determinations referred to above;
- (m) the existence, purpose, duties and obligations of the Independent Committee, the names of its members, whether and how they are compensated by the Funds, and the fact that they meet the requirements of the condition set out in paragraph (b) are disclosed:
 - (i) in a press release issued, and a material change report filed, prior to reliance on the Decision;
 - (ii) in item 12 of Part A of the simplified prospectus of the Funds; and
 - (iii) on TDAM's internet website; and
- (n) the reports required to be filed pursuant to the Legislation with respect to every purchase and sale of securities of TD Bank are filed on SEDAR in respect of the relevant Fund.

DATED January 10, 2003.

Howard I. Wetston

Theresa McLeod