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Headnote

Mutual Reliance Review System for Exemptive Relief Applications – relief granted from certain mutual fund self-dealing restrictions and reporting requirements and in respect of entering into forward contracts with a related counterparty in connection with an RSP fund in securities of other mutual funds that are under common management, subject to certain conditions- previous decision document revoked

Applicable British Columbia Provisions

Securities Act, R.S.B.C. 1996, c. 418, ss. 121(2)(a) and (b), 123, 126(a), 127(1)(a), 130 and 171

IN THE MATTER OF THE SECURITIES LEGISLATION OF BRITISH COLUMBIA, ALBERTA, SASKATCHEWAN, ONTARIO, QUEBEC, 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. TD EMERGING MARKETS RSP FUND TD ENTERTAINMENT & COMMUNICATIONS RSP FUND TD EUROPEAN GROWTH RSP FUND TD GLOBAL SELECT RSP FUND TD HEALTH SCIENCES RSP FUND TD SCIENCE & TECHNOLOGY RSP FUND TD U.S. BLUE CHIP EQUITY RSP FUND

MRRS DECISION DOCUMENT

WHEREAS the Canadian securities regulatory authority or regulator (the “Decision Maker”) in each of British Columbia, Alberta, Saskatchewan, Ontario, Quebec, Nova Scotia and Newfoundland and Labrador (the “Jurisdictions”) has received an application (the “Application”) from TD Asset Management Inc. (“TDAM”) in its own capacity and on behalf of TD Emerging Markets RSP Fund, TD Entertainment & Communications RSP Fund, TD European Growth RSP Fund, TD Global Select RSP Fund, TD Health Sciences RSP Fund, TD Science & Technology RSP Fund and TD U.S. Blue Chip Equity RSP Fund (individually, a “TD RSP Fund” and collectively, the “TD RSP Funds”) and other mutual funds

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managed by TDAM after the date of this decision having an investment objective or strategy that links its return to the returns of another specified mutual fund while remaining 100% eligible for registered plans under the *Income Tax Act* (Canada) (individually, a “Future RSP Fund” and collectively, the “Future RSP Funds”, and together with the TD RSP Funds, individually, an “RSP Fund” and collectively, the “RSP Funds”) for a decision (the “Decision”) pursuant to the securities legislation of the Jurisdictions (the “Legislation”) that the following requirements and restrictions contained in the Legislation (the “Requirements”) shall not apply in respect of certain investments to be made by the RSP Funds in forward contracts and other specified derivatives (“Derivative Contracts”) with The Toronto-Dominion Bank (“TD Bank”) or any of its affiliates or associates (with TD Bank, each a “Related Counterparty”) (such Derivatives Contracts, “TD Contracts”) as counterparty:

- (A) the Requirements prohibiting each RSP Fund from knowingly making or holding an investment in any person or company who is a substantial securityholder of the mutual fund, its management company or distribution company;
- (B) the Requirements prohibiting a mutual fund from knowingly making and holding an investment in an issuer in which any person or company who is a substantial security holder of the mutual fund, its management company or distribution company has a significant interest;
- (C) the Requirements requiring TDAM to file a report relating to a purchase or sale of securities between an RSP Fund and any related person or company; and
- (D) the Requirements prohibiting TDAM from knowingly causing an RSP Fund to invest in any person or company in which a director, officer or employee of TDAM is a director or officer;

AND WHEREAS TDAM has previously received relief for the RSP Funds to enter into forward contracts and other specified derivatives with TD Bank in the MRRS Decision Document dated September 15, 2000 (the “Existing Decision Document”) which relief will be revoked and replaced with this Decision;

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 TDAM has represented to the Decision Makers as follows:

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1. TDAM is a corporation incorporated under the laws of Ontario. TDAM is a wholly-owned subsidiary of TD Bank. The registered and head office of TDAM is located in Ontario.
2. TDAM is, or will be, the manager and trustee of the RSP Funds and it is, or will be, the manager and trustee of the corresponding mutual fund (the “Underlying Fund”) in which each RSP Fund invests its assets both directly and indirectly.
3. Each of the RSP Funds is, or will be, an open-ended mutual fund trust established under the laws of Ontario which is, or will be, qualified for distribution in all Jurisdictions by means of simplified prospectuses and annual information forms (collectively, the “Prospectus”). Each RSP Fund is, or will be, a reporting issuer under the securities laws of each of the provinces and territories of Canada and none of the TD RSP Funds is currently in default of any requirements of the Legislation. The Prospectus discloses, or will disclose the relationship that exists between TDAM, the Related Counterparty (as applicable) and each RSP Fund.
4. Each Underlying Fund is, or will be an open-ended mutual fund trust established under the laws of Ontario which is, or will be qualified for distribution in all Jurisdictions by means of simplified prospectuses and annual information forms. Each Underlying Fund is, or will be, a reporting issuer under the securities laws of each of the provinces and territories of Canada and none of the Underlying Funds is currently in default of any requirements of the Legislation.
5. Each RSP Fund seeks, or will seek to achieve its investment objective while ensuring that securities of the Fund do not, or will not, constitute “foreign property” for tax-deferred retirement savings plans (“Registered Plans”).
6. The Prospectus contains, or will contain disclosure with respect to the investment objective and investment policies of each RSP Fund. The investment objective of each RSP Fund is, or will be, to achieve long-term capital appreciation primarily by investing in derivative instruments that permit, or will permit, the RSP Fund to link its returns to the returns of its corresponding Underlying Fund, while ensuring that securities of the RSP Fund do not constitute “foreign property” for Registered Plans. In order to achieve its investment objective, each RSP Fund uses, or will use, Derivative Contracts to obtain exposure to its corresponding Underlying Fund and it also invests, or will invest directly in its corresponding Underlying Fund as described in paragraph 8 herein.

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7. The investment objective of each Underlying Fund is, or will be, achieved through investment primarily in foreign securities.
8. As each RSP Fund invests, or will invest, its assets in securities such that its securities will be “qualified investments” for Registered Plans and will not constitute foreign property in a Registered Plan, the direct investment by an RSP Fund in its corresponding Underlying Fund is, or will be, made in an amount which does not exceed the maximum percentage under the foreign property limits under the Tax Act (the “Foreign Property Maximum”). The amount of direct investment by each RSP Fund will be adjusted from time to time so that, except for transitional cash, the aggregate of Derivative Contract exposure to, and direct investment in, its Underlying Fund will equal 100% of the assets of the RSP Fund.
9. A Related Counterparty may, from time to time, invest directly in securities of an Underlying Fund as a hedge against its obligations under its TD Contracts with an RSP Fund.
10. TDAM will engage an independent internationally recognized accounting firm (the “Contract Auditor”) or request an independent committee (comprised of individuals, none of whom are directors, officers or employees of TD Bank or its affiliates or associates) (the “Independent Committee”) to review and assess the then current pricing and terms of Derivative Contracts between the Related Counterparties and other third party mutual fund groups (“Arm’s Length Contracts”) which offer mutual funds which have investment objectives which are similar to the investment objectives of the RSP Funds (“Third Party RSP Funds”). The Contract Auditor or Independent Committee, as applicable, will compare the pricing and terms of Arm’s Length Contracts respecting Third Party RSP Funds with the proposed pricing and terms of each TD Contract. The Contract Auditor will provide TDAM with an opinion (the “Contract Auditor’s Opinion”) or the Independent Committee will provide its confirmation respecting the relative competitiveness of the pricing and terms of the TD Contract.
11. TDAM will not cause an RSP Fund to enter into a TD Contract unless the Contract Auditor’s Opinion or Independent Committee’s confirmation concludes that the proposed pricing and terms of the TD Contract are at least as favourable as the pricing and terms of Arm’s Length Contracts respecting Third Party RSP Funds that are similar in size to the RSP Funds and the Contract Auditor’s Opinion or Independent Committee’s confirmation is received and accepted by TDAM’s board of directors.

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12. Except to the extent evidenced by this Decision and specific approvals granted by the Canadian securities administrators (“CSA”) pursuant to National Instrument 81-102, the investment by each RSP Fund in its corresponding Underlying Fund or Derivative Contracts have been, or will be, structured to comply with the investment restrictions of the Legislation and National Instrument 81-102.
13. In the absence of this Decision, pursuant to the Legislation, each RSP Fund is prohibited from (a) knowingly making an investment in a person or company who is a substantial securityholder of TDAM; (b) knowingly making and holding an investment in an issuer in which any person or company who is a substantial security holder of the mutual fund, its management company or distribution company has a significant interest; and (c) knowingly holding an investment referred to in subsection (a) or (b) hereof. As a result, in the absence of this Decision, an RSP Fund would be required to divest itself of any investments referred to in subsection (a) or (b) herein.
14. In the absence of this Decision, the Legislation requires TDAM to file a report in respect of each TD Contract.
15. In the absence of this Decision, pursuant to the Legislation, TDAM is prohibited from knowingly causing an RSP Fund to invest in any person or company in which a director, officer or employee of TDAM is a director or officer.
16. The investment in TD Contracts by each RSP Fund represents, or will represent, the business judgement of responsible persons uninfluenced by considerations other than the best interests of the RSP Fund.

AND WHEREAS pursuant to the System this Decision evidences the decision of each Decision Maker;

AND WHEREAS each Decision Maker 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 Existing Decision Document is hereby revoked; and

THE DECISION of the Decision Makers pursuant to the Legislation is that the Requirements shall not apply in respect of TD Contracts entered into by an RSP Fund, provided the RSP Fund’s investments in TD Contracts are made in accordance with the following conditions:

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1. the Contract Auditor or the Independent Committee reviews and assesses the pricing and terms of Arm's Length Contracts in respect of Third Party RSP Funds that are similar in size to the RSP Fund and compares such pricing and terms to the proposed pricing and terms of the TD Contract;
2. the Contract Auditor provides TDAM with a Contract Auditors Opinion or the Independent Committee provides its confirmation which concludes that the proposed pricing and terms of the TD Contract are at least as favourable as the pricing and terms of such Arm's Length Contracts;
3. the Contract Auditor or the Independent Committee reconsiders and reassesses the TD Contract whenever the Prospectus is renewed and whenever it is proposed to amend the pricing and terms of the TD Contract;
4. the Prospectus identifies the applicable Related Counterparty as the counterparty to the TD Contract and discloses the relationship that exists between TDAM, the applicable Related Counterparty and the RSP Fund;
5. the Prospectus describes the Contract Auditor's or the Independent Committee's role of assessing and reassessing the TD Contract for the purpose of ensuring that the pricing and terms of the TD Contract are at least as favourable as then current Arm's Length Contracts respecting Third Party RSP Funds that are similar in size to the RSP Fund; and
6. in Quebec, any Future RSP Fund will first seek the consent of the Commission des Valeurs in Quebec prior to relying on this Decision Document.

DATED October 2, 2003.

Robert L. Shirriff

Paul M. Moore