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## Headnote

Mutual Reliance Review System for Exemption Relief Application – 1996 Securities Act s. 48 Adviser Obligations - Exemption from obligations in Part 5 of the Act and Rules for registered Advisers - A BC registered adviser wants an exemption from the suitability requirements. - The clients are using an execution only service; clients acknowledge that they are responsible for their own investment decisions; policies and procedures exist so that advisers will not provide advice or recommendations; the clients are accredited investors.

## Applicable British Columbia Provision:

*Securities Rules* s. 48(1) Exemption from suitability requirements

*Securities Act* s. 48

April 23, 2008

**In the Matter of  
The Securities Legislation of  
British Columbia, Alberta, Saskatchewan, Ontario, Québec, New Brunswick,  
Nova Scotia, Newfoundland and Labrador and Prince Edward Island  
(The Jurisdictions)**

**and**

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

**and**

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

## **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 Filer for a decision under the securities legislation of the Jurisdictions (the **Legislation**) that the requirements of the Legislation requiring the Filer and its registered representatives, salespersons, officers and directors (**Registered Representatives**) to make inquiries of each client of the Filer as are appropriate, in view of the

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nature of the client's investments and of the type of transaction being effected for the client's account, to determine (a) the general investment needs and objectives of the client, and (b) the suitability of a proposed purchase or sale of a security for the client (such requirements, the **Suitability Requirement**) shall not apply to the Filer and its Registered Representatives when purchasing units of a Treasury Management Fund (as defined below) for, and on behalf of, a Self Directed Client (as defined below) (the **Requested Relief**).

Under the Mutual Reliance Review System for Exemptive Relief Applications:

- (a) the Ontario Securities Commission is the principal regulator for this application; and
- (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. The term “accredited investor” has the meaning that has been given to it in section 1.1 of National Instrument 45-106 – *Prospectus and Registration Exemptions*.

### **Representations**

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

1. The Filer is a corporation amalgamated under the *Business Corporations Act* (Ontario). It is a wholly-owned subsidiary of The Toronto-Dominion Bank and its head office is located in Toronto, Ontario.
2. The Filer is registered as an investment counsel and portfolio manager or their equivalent under the securities legislation of all provinces and territories of Canada, as a limited market dealer under the *Securities Act* (Ontario) and the *Securities Act* (Newfoundland and Labrador), and as a commodity trading manager under the *Commodity Futures Act* (Ontario).
3. The Filer conducts an investment management business that offers passive, quantitative, enhanced and active portfolio management services to a large and diversified client base. Its institutional client base is made up largely of pension funds, corporations, foundations, endowments and high net worth individuals. As at December 31, 2007, the Filer had assets under management in excess of \$170 billion of which more than \$73 billion is managed on behalf of its institutional clients.

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4. As part of the Filer's institutional client business, it acts as trustee, manager and portfolio adviser to the TD Emerald Treasury Management Pooled Funds (the **Treasury Management Funds**).
5. The Treasury Management Funds comprise the TD Emerald Canadian Treasury Management Fund; the TD Emerald Canadian Treasury Management – Financial Institutional Fund; the TD Emerald Canadian Treasury Management – Government of Canada Fund; and the TD Emerald U.S. Dollar Treasury Management Fund.
6. Although each of the Treasury Management Funds share the common investment objective of earning a high rate of interest income while also preserving capital and maintaining liquidity, they each seek to achieve their investment objective by investing in different types of high-quality investment grade securities that have a term to maturity of not more than one year and floating rate evidences of indebtedness that may have a term to maturity of more than one year.
7. Each of the Treasury Management Funds has two classes of units. Holders of Investor Class Units are subject to a management fee of 0.30% per annum that is payable by each Treasury Management Fund in respect of its outstanding Investor Class Units. Holders of Institutional Class Units negotiate the amount of their management fee with the Filer and are required to pay the amount so negotiated directly to the Filer. There is no management fee payable by a Treasury Management Fund in respect of its outstanding Institutional Class Units.
8. Both the Investor Class Units and the Institutional Class Units (in either case, a **Unit**) are qualified for distribution in all provinces and territories of Canada pursuant to a simplified prospectus and annual information form dated April 28, 2007 that have been prepared and filed in accordance with applicable Canadian securities regulatory requirements. At the present time, Units of a Treasury Management Fund are available for purchase by persons or companies who may be characterized as either Investment Management Participants or Employer Sponsored Participants (in either case, a **Participant**).
9. Investment Management Participants comprise the following:
  - (a) investors with whom the Filer has an investment management agreement;

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- (b) affiliates of the Filer, with whom the Filer has an agreement, on behalf of investors who have an investment management agreement with such affiliates; and
- (c) qualified investment managers, with whom the Filer has an agreement, on behalf of investors who have an investment management agreement with such managers.

10. Employer Sponsored Participants comprise the following:

- (a) employees who participate through capital accumulation plans (**Employee Plans**) established by employers with whom the Filer has an agreement;
- (b) affiliates of the Filer, on behalf of employees who participate through Employee Plans established by employers with whom such affiliates have an agreement; and
- (c) qualified investment managers on behalf of employees who participate through Employee Plans established by employers with whom such investment managers have an agreement.

11. The Filer proposes to establish a new distribution channel for the Treasury Management Funds (the **Self Directed Channel**) by providing its accredited investor clients with the opportunity to acquire Units directly from the Filer without the benefit of any related recommendations or advice from the Filer. The Self Directed Channel is intended to provide accredited investor clients with an alternative way in which to manage their cash inventories utilizing a Filer account that is comparable to a discount brokerage account.

12. Each prospective client of the Self Directed Channel (a **Self Directed Client**) will be required to complete a Client Directed Account Application (the **Account Application**) and to enter into a Client Directed Service Agreement with the Filer (the **Service Agreement**).

13. The Account Application will require a prospective Self Directed Client to provide the Filer with the information that it requires to identify the Self Directed Client; verify the Self Directed Client's status as an accredited investor; comply with applicable anti-money laundering requirements; and generally facilitate administration of the Filer's electronic access account (the **Self Directed Account**) that is the subject of the Service Agreement. The Account Application will not require a prospective Self Directed Client to provide the Filer with a description of its investment objectives, its risk tolerance or any investment restrictions to which it is subject.

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14. The Service Agreement will establish the Self Directed Account, govern access to the Self Directed Account by the Self Directed Client and set out the management fee payable to the Filer for its services as the manager and portfolio adviser to the Treasury Management Funds in which the Self Directed Client intends to invest. In the case of Institutional Class Units, the management fee will be negotiated by the Filer and the Self Directed Client and will be payable by the Self Directed Client directly to the Filer. In the case of Investor Class Units, the fee will be 0.30% per annum and will be payable by the Treasury Management Fund based on the daily net asset value of the Investor Class Units thereof.
15. The Service Agreement will also require both the Filer and the Self Directed Client to provide each other with certain representations and warranties which will include a representation and warranty of the Self Directed Client as to its status as an accredited investor. The Self Directed Client will also be required to acknowledge that it will neither seek nor obtain any advice or recommendations from the Filer in respect of any Treasury Management Fund transactions that it conducts through its Self Directed Account, that such transactions will not be subject to any suitability review by the Filer and that the Self Directed Client will therefore be responsible for the consequences of all related investment decisions.
16. Orders for the purchase or redemption of Units may be placed either by facsimile transmission or electronically utilizing the Filer's *Info* Transactions Internet Service and a password or security code assigned to the Self Directed Client by the Filer. The minimum initial subscription amount for the Units of any Treasury Management Fund will be Cdn. \$1 million or, in the case of TD Emerald U.S. Dollar Treasury Management Fund, U.S. \$ 1 million.
17. In the absence of this Decision, the Filer would be required to comply with the Suitability Requirement when purchasing Units of a Treasury Management Fund for, and on behalf of, a Self Directed Client.

### **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:

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- (a) the Filer and its Registered Representatives do not provide any advice or recommendations in respect of any Treasury Management Fund transactions;
- (b) the Filer has written policies and procedures in place to ensure that the Filer and its Registered Representatives do not provide advice or recommendations in respect of any Treasury Management Fund transactions and a program is in place for communicating those policies and procedures to all of the Filer's Registered Representatives and ensuring that the policies and procedures are understood and implemented;
- (c) in the case of each Self Directed Client, the Filer has obtained an acknowledgement in the Service Agreement, or otherwise, from the Self Directed Client that such client will neither seek nor obtain any advice or recommendations from the Filer in respect of any Treasury Management Fund transactions that it conducts through its Self Directed Account, that such transactions will not be subject to any suitability review by the Filer and that the Self Directed Client will therefore be responsible for the consequences of all related investment decisions;
- (d) the Filer does not compensate its Registered Representatives on the basis of transactional values; and
- (e) the order-entry systems and records of the Filer are capable of labelling all account documentation relating to Self-Directed Accounts, including monthly statements and confirmations, as "Self-Directed Accounts" or some variant thereof.

"Lawrence Ritchie"  
Commissioner  
Ontario Securities Commission

"Margot C. Howard"  
Commissioner  
Ontario Securities Commission