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May 9, 2005

Headnote

Mutual Reliance Review System for Exemptive Relief Applications - National Instrument 51-102, s. 13.1 *Continuous Disclosure Obligations* - an issuer wants relief from the requirement to file an annual information form - the issuer is a subsidiary of a bank, trust company or insurance company; the issuer's security holders receive fixed distributions; if those distributions are not paid, the securities are automatically converted to preferred shares of the bank, trust company or insurance company; the continuous disclosure materials of the parent will be filed and provided to security holders of the issuer

Applicable British Columbia Provisions

National Instrument 51-102, s. 13.1 *Continuous Disclosure Obligations*

In the Matter of
the Securities Legislation
of British Columbia, Alberta, Manitoba, Nova Scotia, Newfoundland and
Labrador, Yukon and Nunavut (the Jurisdictions)

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 Mortgage Investment
Corporation (TDMIC, and collectively with the Bank, 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) for an exemption from the requirement for TDMIC to prepare and file an annual information form (an AIF) for financial years ending on or after October 31, 2005 (the Requested Relief), subject to certain terms and conditions.

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Under the Mutual Reliance Review System (MRRS) for Exemptive Relief Applications:

- (a) the British Columbia 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.

Representations

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

The Toronto-Dominion Bank

- 1. the Bank is a Canadian chartered bank governed by the *Bank Act* (Canada) (the Bank Act); the Bank is a reporting issuer in each of the Jurisdictions and is not, to its knowledge, in default of any requirement of the Legislation;
- 2. the authorized share capital of the Bank consists of an unlimited number of common shares (Bank Common Shares), of which 660,059,993 common shares were outstanding as at February 28, 2005, and an unlimited number of Non-cumulative Class A Preferred Shares, issuable in series (Bank Preferred Shares), of which the following series were outstanding as at February 28, 2005: 16,065 Series I; 16,383,935 Series J; 14,000,000 Series M and 8,000,000 Series N;
- 3. the Bank Common Shares are listed and posted for trading on the Toronto Stock Exchange (the TSX) and the New York and Tokyo stock exchanges;

TD Mortgage Investment Corporation

- 4. TDMIC is a corporation governed by the *Trust and Loan Companies Act* (Canada) (the Act); TDMIC is a reporting issuer or its equivalent in the Jurisdictions and is not, to its knowledge, in default of any requirement of the Legislation;
- 5. the outstanding securities of TDMIC consist of: (i) 87,600 common shares, all of which are held by the Bank; and (ii) 350,000 Higher Yielding Bank Related Income Derivative Securities, each consisting of one non-cumulative Preferred Share Series A of TDMIC (the HYBRIDS) that were distributed in a public offering under a prospectus dated November 27, 1997;
- 6. the HYBRIDS are listed and posted for trading on the TSX;

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7. the business objective of TDMIC is to acquire and hold Canada Mortgage and Housing insured residential first mortgages acquired primarily from the Bank and/or its affiliates (the Mortgage Assets); the HYBRIDS provide the Bank with a cost-effective means of raising capital for Canadian bank regulatory purposes;

HYBRIDS

8. each HYBRIDS entitles the holder (a HYBRIDS Holder) to receive a fixed cash distribution (the Indicated Yield) of \$32.30 per HYBRIDS payable by TDMIC on the last day of April and October of each year (an Indicated Yield Payment Date);
9. on the occurrence of certain adverse tax events (a Tax Event) before October 31, 2007, the HYBRIDS will be exchangeable, at the option of the Bank without the consent of the holders (the Bank Tax Event Exchange Right), for a formula determined number of Bank Common Shares;
10. on and after October 31, 2007, each HYBRIDS will be exchangeable, at the option of the HYBRIDS Holder, for a formula determined number of Bank Common Shares in accordance with the terms of a Bank Share Exchange Agreement, (the Bank Share Exchange Agreement) made between the Bank, TDMIC and CIBC Mellon Trust Company as trustee for the HYBRIDS Holders;
11. on and after October 31, 2007, each HYBRIDS will be exchangeable, at the option of the Bank, for a formula determined number of Bank Common Shares in accordance with the Bank Share Exchange Agreement;
12. each HYBRIDS will be automatically exchanged without the consent of the holder, for Non-cumulative Class A Preferred Shares, Series X of the Bank (Series X Shares) if: (i) TDMIC fails to declare or pay or set aside for payment when due the Indicated Yield on any Indicated Yield Payment Date; (ii) the Bank fails to declare and pay or set aside for payment when due any dividend on any issue of its Non-cumulative Preferred Shares; (iii) the Superintendent of Financial Institutions (Canada) (the Superintendent) takes control of the Bank under the Bank Act or of TDMIC under the Act or proceedings are commenced for the winding-up of the Bank or TDMIC under the *Winding-Up and Restructuring Act* (Canada); (iv) the Superintendent has determined that the Bank has a Tier 1 risk-based capital ratio of less than 5.0% or a total risk-based capital ratio of less than 8.0%; or (v) the Superintendent, by order, directs the Bank to act under subsection 485(3) of the Bank Act, or directs TDMIC to act under subsection 473(3) of the Act, to increase its capital or to

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provide additional liquidity and either the Bank or TDMIC, as the case may be, elects to cause the exchange as a consequence of the issuance of such order or either the Bank or TDMIC, as the case may be, does not comply with such order to the satisfaction of the Superintendent within the time specified therein;

13. the Series X Shares will be convertible on and after October 31, 2007, at the option of the holder, into Bank Common Shares;
14. the HYBRIDS may be redeemed by TDMIC for cash on and after October 31, 2007, subject to the approval of the Superintendent;
15. the HYBRIDS are non-voting except as required by applicable law;
16. in certain circumstances (as described in paragraph 12 above), including at a time when the Bank's financial condition is deteriorating or proceedings for the winding-up of the Bank have been commenced, the HYBRIDS will be automatically exchanged for preferred shares of the Bank without the consent of HYBRIDS Holders and, as a result, HYBRIDS Holders will have no claim or entitlement to the assets of TDMIC, other than indirectly in their capacity as preferred shareholders of the Bank;
17. in the event that the HYBRIDS are automatically exchanged for Series X Shares (as described in paragraph 12 above), the cost-effective manner by which the Bank was able to raise capital for Canadian bank regulatory purposes through the issuance of the HYBRIDS would be lost;
18. the Bank and TDMIC have entered into an Advisory Agreement under which the Bank provides advice and counsel with respect with certain matters to TDMIC and provides certain employees to serve as officers of TDMIC to administer the day-to-day operations of TDMIC;
19. the Mortgage assets of TDMIC are serviced by the Bank, TD Mortgage Corporation (TDMC) and TD Pacific Mortgage Corporation (TDPMC) under a Mortgage Sales and Servicing Agreement entered into among TDMIC, the Bank, and TDMC and TDPMC;
20. disclosure with respect to TDMIC is provided in a note to the Bank's audited annual financial statements and the Bank's Financial Statements are currently sent to holders of HYBRIDS at the same time and in the same manner as if the holders of HYBRIDS were holders of Bank Common Shares;

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21. because of the terms of the HYBRIDS, the Bank Share Exchange Agreement and the various covenants of the Bank, information about the affairs and financial performance of the Bank, as opposed to that of TDMIC, is meaningful to holders of HYBRIDS; the Bank's filings and the delivery of the same material delivered to shareholders of the Bank will provide HYBRIDS Holders and the general investing public with all information required in order to make an informed decision relating to an investment in HYBRIDS; information regarding the Bank is relevant both to an investor's expectation of being paid the Indicated Yield on the HYBRIDS as well as the return of the investor's principal;
22. under the MRRS Decision Documents dated March 11, 2002 and March 19, 2002, (the Previous Decisions), TDMIC is exempt from certain continuous disclosure requirements of the Legislation;
23. since the date of the Previous Decisions, TDMIC has become subject to the requirement contained in National Instrument 51-102 *Continuous Disclosure Obligations* to prepare and file an AIF, which requirement did not exist in the Jurisdictions at the time the Previous Decisions were issued.

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, for so long as:

- (a) the Bank remains a reporting issuer under the Legislation;
- (b) the Bank prepares and files an AIF with each of the Decision Makers under the Legislation on an annual basis;
- (c) all outstanding securities of TDMIC are either HYBRIDS or common shares;
- (d) the rights and obligations of holders of additional preferred shares in the capital of TDMIC are the same in all material respects as the rights and obligations of the holders of HYBRIDS at the date hereof;
- (e) the Bank or its affiliates are the beneficial owners of all outstanding common shares of TDMIC;

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and provided that if a material change occurs in the affairs of TDMIC, this decision will expire 30 days after the date of that change.

Martin Eady, CA
Director, Corporate Finance
British Columbia Securities Commission