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Headnote

Mutual Reliance Review System for Exemptive Relief Applications – relief from requirement to send trade confirmations to clients, where the clients have given an adviser full discretionary authority – the relief is subject to the client’s consent in writing to waiver of the trade confirmation requirement, and all trade confirmations must be delivered to the client’s adviser

Applicable British Columbia Provisions

Securities Act, R.S.B.C. 1996, c. 418, s. 48

IN THE MATTER OF THE CANADIAN SECURITIES LEGISLATION OF BRITISH COLUMBIA, ALBERTA, SASKATCHEWAN, MANITOBA, ONTARIO, QUEBEC, NEW BRUNSWICK, NOVA SCOTIA, AND NEWFOUNDLAND

AND

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

AND

IN THE MATTER OF E*TRADE CANADA SECURITIES CORPORATION

MRRS DECISION DOCUMENT

WHEREAS the Canadian securities regulatory authority or regulator (the Decision Maker) in each of British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Québec, New Brunswick, Nova Scotia, and Newfoundland (collectively, the Jurisdictions) has received an application (the Application) from E*TRADE Canada Securities Corporation (ETrade) for a decision (the Decision), pursuant to the securities legislation (the Legislation) of the Jurisdictions, that the requirement (the Trade Confirmation Requirement) in the Legislation that registered dealers, who have acted as principal or agent in connection with any trade in a security, promptly send by prepaid mail or deliver to the customer a written confirmation of the trade, setting forth certain information specified in the Legislation, shall not apply to trades ETrade as dealer executes for accounts of its customers (the Clients) that are managed by a portfolio manager and investment counsel or other category of Adviser registered in the province in which the Client resides (the Adviser), on instructions of the Adviser;

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

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;

AND WHEREAS ETrade has represented to the Decision Makers that:

1. ETrade, a corporation amalgamated under the laws of Nova Scotia, is registered under the Legislation of each Jurisdiction as a dealer, in the categories of broker/investment dealer, or an equivalent category, and is a member of the Investment Dealers Association of Canada (the IDA).
2. The head office of ETrade is located in Toronto, Ontario.
3. ETrade is not registered under the Legislation of any Jurisdiction as an Adviser, and does not provide investment advice of any kind to its Clients.
4. Advisers are registered under some or all of the Legislation of the Jurisdictions in which ETrade is registered and in which the Clients reside.
5. Advisers are not registered under the Legislation of any Jurisdiction as a broker or dealer.
6. Certain Advisers utilize the services of ETrade to execute trades for the benefit of Clients whose assets they manage. These Advisers act as agents for the Clients and not as agents for ETrade.
7. ETrade has entered and may continue to enter arrangements with certain Advisers pursuant to which clients of the Advisers may open accounts at ETrade that are managed by the Advisers to obtain trade execution and custody services from ETrade in respect of trades executed on their behalf by the Advisers.
8. Advisers have trading authorization over their clients' accounts at ETrade pursuant to the terms and conditions of a limited power of attorney granted by their client in favor of the Adviser. ETrade executes trades in respect of these clients' accounts only as directed by the Adviser.
9. ETrade provides written trade confirmations in respect of each of its Clients' trades to the Clients. In addition, ETrade delivers monthly and quarterly

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account statements (the Statements) to the Clients in accordance with the Legislation and the By-laws, Regulations, Policies and Forms of the IDA (the IDA Rules), each of which sets out, among other things, all transactions which have been effected in the account during the period covered by the Statement.

10. Each Client has the right and opportunity at any time to view the Client's account transaction history and account balance at ETrade on a real time basis through the ETrade website, which disclosure includes the transactions executed on the Client's behalf by ETrade on the directions of the Adviser.
11. Accounts may be opened in each Client's name, and not in the name of the Client's Adviser, in order that the Adviser may manage both registered and non-registered accounts at ETrade for the Client. (Under applicable tax laws, registered accounts must be opened in the name of the individual who benefits from the tax-advantaged account.) Opening accounts in the Client's name also permits certain account administration and tax reporting on an individual basis to be conducted at ETrade, creating additional efficiencies for the Adviser and Client.
12. Where ETrade opens a brokerage account for an Adviser that is not related to ETrade in the Adviser's name, and the Adviser trades on behalf of its portfolio management clients solely in the name of the Adviser, ETrade will regard the Adviser as the party to whom trade confirmations should be sent in satisfaction of the Trade Confirmation Requirement.
13. Clients who receive trading and account information from both the Adviser and ETrade may receive information which is duplicative and, as a result, confusing and contrary to the expectations of certain Clients who engage Advisers in order to minimize the inconvenience and time commitment that may be associated with managing their portfolios.
14. Each Client will have the option of choosing whether or not to receive trade confirmations directly from ETrade. In the event a Client does not wish to receive trade confirmations directly from ETrade, it will be required to provide its consent in writing, which consent can be revoked at any time, to the waiver of the Trade Confirmation Requirement and the delivery by ETrade of all trade confirmations in respect of such Client's account directly to the Client's Adviser.
15. ETrade will continue to provide Statements to the Clients in accordance with the Legislation and IDA Rules, which Statements currently report, among other things, the following information: (i) the number and description of the securities traded, (ii) the unit price paid or received for the securities traded,

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- (iii) the amount debited or credited to the account for the securities traded, and
- (iv) the settlement date of the trade.

16. Through arrangements between ETrade and the Advisers, the Advisers will deliver to each Client who consents to the waiver of the Trade Confirmation Requirement, at the same time as the delivery of the portfolio statement it is required to send to the Client under the Legislation, and not less than quarterly, a statement that contains, among other things, disclosure of the transactions that have been effected within the Client's account at ETrade during the period covered by the statement and that were reported on the trade confirmations delivered by ETrade to the Adviser on the trade confirmations.
17. Each Client shall have access, upon request, to information regarding the Client's current account transactions and current account balance, which information shall include the transactions executed on the Client's behalf by the Adviser during the period covered by the requested disclosure.

AND WHEREAS, pursuant to the System, this MRRS Decision Document evidences the Decision of each Decision Maker;

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 Trade Confirmation Requirement contained in the Legislation shall not apply to ETrade in respect of any trades ETrade, as dealer, executes in respect of an account of a Client that is managed by an Adviser, on instructions of the Adviser, provided:

- (a) the Client consents in writing to the waiver of the Trade Confirmation Requirement;
- (b) all trade confirmations for the account of the Client are delivered by ETrade to the Client's Adviser;
- (c) the Adviser agrees with ETrade to deliver to the Client at the same time as the delivery of the portfolio statement it is required to send to the Client under the Legislation, and not less than quarterly, a statement that contains, inter alia, disclosure of the transactions that have been effected within the Client's account at ETrade during the period covered by the statement and that were reported on the trade confirmations delivered by ETrade to the Adviser on the trade confirmations; and

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- (d) ETrade continues to deliver Statements to the Client in accordance with the Legislation and IDA Rules.

November 14, 2003

Robert W. Davis

Wendell S. Wigle