

2006 BCSECCOM 310

April 26, 2006

Headnote

Mutual Reliance Review System for Exemptive Relief Applications - Securities Act s. 48,76 Other - Exemption from registration and prospectus requirements for situations other than a corporate acquisition or reorganization; trades to business associates; debt settlements; or trades involving employee investment plans and consultants. - Trades in short-term debt securities that have more than one rating with only one rating being an approved rating - The applicant trades short-term debt that has at least one rating at an approved rating, as defined in NI 81-102; the short-term debt has another rating below an approved rating; the applicant will only trade short-term debt that is not convertible or exchangeable other than into short-term debt; the short-term debt will have at least one approved rating; the decision will terminate on the earlier of three years after the date of the decision or 90 days after NI 45-106 is amended

Applicable British Columbia Provisions

Securities Act, R.S.B.C. 1996, c. 418, ss. 34, 48, 61, and 76

In the Matter of
the Securities Legislation of
British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Quebec, New
Brunswick, Prince Edward Island, Nova Scotia, Newfoundland and Labrador,
Yukon, Northwest Territories 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
(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 trades in negotiable promissory notes and commercial paper (Short-term Debt Instruments)

2006 BCSECCOM 310

by the Filer be exempt from the dealer registration requirement and prospectus requirement (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.

Representations

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

1. The Filer is a bank listed on Schedule I of the *Bank Act* (Canada). The head office of the Filer is located in Toronto, Ontario.
2. The Filer is a reporting issuer in all Jurisdictions and is not in default of its obligations under the Legislation in any Jurisdiction.
3. The Filer is not registered as a dealer or adviser under the Legislation in any Jurisdiction.
4. The Filer both trades and engages in distributions of Short-Term Debt Instruments in the Jurisdictions as part of its activities as a principal and as an agent for issuers.
5. Subsection 2.35(1)(b) of National Instrument 45-106 *Prospectus and Registration Exemptions* (NI 45-106) provides an exemption from the dealer registration requirement and prospectus requirement for a trade in a Short-term Debt Instrument (the Short-term Debt Exemption) where, among other things, the Short-term Debt Instrument “has an approved credit rating from an approved credit rating organization”.
6. NI 45-106 incorporates by reference the definitions for “approved credit rating” and “approved credit rating organization” that are used in National Instrument 81-102 *Mutual Funds* (NI 81-102). The definition of an “approved credit rating” in NI 81-102, requires, among other things, that (a) the rating assigned to such debt must be “at or above” certain prescribed short-term

2006 BCSECCOM 310

ratings, and (b) such debt must not have been assigned a rating by any “approved credit rating organization” that is not an “approved credit rating”.

7. The Filer has in the past traded and proposes in the future to trade Short-term Debt Instruments with the following general characteristics:

- (a) they mature not more than one year from the date of issue;
- (b) they are not convertible or exchangeable into or accompanied by a right to purchase another security other than another Short-term Debt Instrument; and
- (c) they have a credit rating from at least one of the following credit rating organizations not less than the rating indicated:

Rating Organization	Rating
Dominion Bond Rating Service Limited	R-1 (low)
Fitch Ratings Ltd.	F2
Moody's Investors Service	P-2
Standard & Poor's	A-2

8. The Short-term Debt Instruments may have a lower rating than required by the Short-term Debt Exemption and accordingly, the Short-term Debt Exemption may not be available.

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 each Short-term Debt Instrument:

- (a) matures not more than one year from the date of issue;
- (b) is not convertible or exchangeable into or accompanied by a right to purchase another security other than a Short-term Debt Instrument; and
- (c) has a rating issued by one of the following rating organizations, or any of their successors, at or above one of the following rating categories or a rating category that replaces a category listed below:

2006 BCSECCOM 310

Rating Organization	Rating
Dominion Bond Rating Service Limited	R-1 (low)
Fitch Ratings Ltd.	F2
Moody's Investors Service	P-2
Standard & Poor's	A-2

For each Jurisdiction, this decision will terminate on the earlier of:

- (a) 90 days after the coming into force of any rule, other regulation or blanket order or ruling under the Legislation of the Jurisdiction that amends section 2.35 of NI 45-106 or provides an alternate exemption; and
- (b) three years from the date of this decision.

Susan Wolburgh Jenah
Vice-Chair
Ontario Securities Commission

Wendell S. Wigle
Commissioner
Ontario Securities Commission