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Headnote

Mutual Reliance Review System for Exemptive Relief Application – Securities Act s. 171 - Registered advisers who are part of the same organization want to vary a previous decision to reflect a reorganization within the organization - The applicants previously obtained relief from the dealer and adviser registration requirements. The policy reasons for granting that relief have not changed, but the applicants' business structure has been reorganized as part of a larger organizational restructuring. The previous relief will no longer cover the applicants' business activities due to the restructuring. The current decision replaces the previous relief.

Applicable British Columbia Provisions

Securities Act, R.S.B.C.1996, c. 418, ss. 34(1)(a), 48 and 171

**IN THE MATTER OF
THE CANADIAN SECURITIES LEGISLATION OF
BRITISH COLUMBIA, ALBERTA, SASKATCHEWAN, ONTARIO,
NOVA SCOTIA, NEW BRUNSWICK, PRINCE EDWARD ISLAND,
NEWFOUNDLAND AND LABRADOR, YUKON,
NORTHWEST TERRITORIES AND NUNAVUT**

AND

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

AND

IN THE MATTER OF TD ASSET MANAGEMENT INC.

MRRS DECISION DOCUMENT

Background

On June 12, 2002 the local securities regulatory authority or regulator (individually, a "Decision Maker", and, collectively, the "Decision Makers") in each of the provinces and territories of British Columbia, Alberta, Saskatchewan, Ontario, Nova Scotia, New Brunswick, Prince Edward Island, Newfoundland and Labrador, Yukon, Northwest Territories and Nunavut (the "Jurisdictions") made a decision (the "Original Decision") on an application by TD Asset Management Inc. ("TDAM" or the "Filer") that the requirement (the "Dealer Registration Requirement") in the legislation (the "Legislation") that prohibits a person or company from trading in a security unless the person or company is registered in the appropriate category of registration under the Legislation should not apply in

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respect of any trades, in shares or units of a mutual fund (a “TDAM Fund”) that is managed by TDAM, made by TDAM to a client account of TDAM that is a Managed Account (as defined below).

TDAM wishes to vary the Original Decision to permit affiliates of TDAM (a “TDAM Affiliate”) to distribute securities of TDAM Funds to a client account of the TDAM Affiliate that is a Managed Account exempt from the Dealer Registration Requirement.

In order to vary the Original Decision, TDAM, on its behalf and on behalf of TDAM Affiliates, has made an application (the “Application”) for an order revoking the Original Decision and restating it to provide that the Dealer Registration Requirement in the Legislation shall not apply to trades in shares or units of TDAM Funds made by TDAM or TDAM Affiliates, through their respective officers and employees acting on their behalf (each, a “Representative”) to Managed Accounts of TDAM or TDAM Affiliates, subject to the conditions set forth below (the “Requested Relief”).

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

- (a) the Ontario Securities Commission is the principal regulator for this Application;
- (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. TDAM is a corporation incorporated under the Business Corporations Act (Ontario) (the “OBCA”) and is a wholly owned subsidiary of The Toronto-Dominion Bank (“TD Bank”), a bank listed in Schedule I to the *Bank Act* (Canada).
2. TDAM conducts an investment management business offering passive, quantitative, enhanced and active portfolio management services to a large and diversified client base. TDAM currently has assets under management of approximately \$100 billion. TDAM is registered as an investment counsel and

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portfolio manager or their equivalent in all provinces and territories in Canada, as a limited market dealer under the *Securities Act* (Ontario) and the *Securities Act* (Newfoundland and Labrador), as a mutual fund dealer under the *Securities Act* (Québec), and as a commodity trading manager under the *Commodity Futures Act* (Ontario).

3. The Original Decision was originally sought as a result of new rules applicable to mutual fund dealers that were introduced in conjunction with the establishment of the Mutual Fund Dealers Association of Canada (“MFDA”). Prior to the establishment of the MFDA, TDAM had, in addition to its registration as portfolio manager, been also registered as a mutual fund dealer or its equivalent in each Jurisdiction. In this capacity, TDAM acted as principal distributor for the securities of the TDAM Funds. Upon the promulgation of OSC Rule 31-506 *Mutual Fund Dealers* and the equivalent rule in other Jurisdictions, TDAM would have been required to become a member of the MFDA but MFDA membership would have been problematic for TDAM because MFDA members are precluded by Sections 2.3.1 and 2.3.4 of the MFDA Rules from exercising discretion over client accounts (“Managed Accounts”). As a portfolio manager, TDAM regularly exercises discretion over Managed Accounts. Accordingly, in 2002 TDAM decided, like many industry participants, to separate its portfolio management business from its mutual fund distribution business and transferred its mutual fund distribution business to a new affiliate, TD Investment Services Inc. (“TDIS”), which became a mutual fund dealer and joined the MFDA.
4. As part of its portfolio management business, TDAM operates a division known as Private Investment Counsel (“PIC”). PIC utilizes TDAM Funds to provide customized investment management strategies to clients having \$300,000 or more of investible assets who grant PIC the authority to manage their assets on a discretionary basis. The Managed Accounts are charged an annual fee based on a percentage of assets under management.
5. Once TDAM transferred its mutual fund distribution business to TDIS, TDAM surrendered its mutual fund dealer license in each of the Jurisdictions. Upon surrender, TDAM was, in the absence of the Original Decision, precluded from distributing securities of the TDAM Funds to its Managed Accounts. Accordingly, TDAM sought relief from the dealer registration requirement to permit the distribution of securities of TDAM Funds to its Managed Accounts. The applicable Canadian securities administrators granted such relief in the form of the TDAM Decision.
6. As part of the overall re-branding strategy for TD Bank’s wealth management businesses, TDAM proposes to transfer (the “TDAM Restructuring”) its PIC

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division to TD Waterhouse Private Investment Counsel Inc. (“TDWPIC”). The TDAM Restructuring is the first step of a re-branding strategy that is intended to bring all of the wealth management businesses of TD Bank under the TD Waterhouse banner. The assets to be transferred will consist primarily of employee accounts and Managed Accounts. The TDAM Funds in which the transferred Managed Accounts are invested will continue to be managed by TDAM.

7. TDWPIC is a corporation incorporated under the *Canada Business Corporations Act* on August 13, 2004 and is a wholly-owned subsidiary of TDAM. TDWPIC is in the process of applying to the Canadian securities regulatory authorities to become registered as an investment counsel and portfolio manager or their equivalent in all provinces and territories of Canada and as a limited market dealer in Ontario and Newfoundland and Labrador.
8. Upon completion of the TDAM Restructuring, PIC will become a division of TDWPIC. As a result of this restructuring, the Original Decision will no longer accommodate the distribution of securities of the TDAM Funds to clients of PIC exempt from the dealer registration requirements because PIC will be part of TDWPIC. For this reason, TDAM would like to vary the TDAM Decision to permit the distribution of securities of the TDAM Funds exempt from the dealer registration requirement to accounts fully managed by any affiliate of TDAM, including TDWPIC, provided such affiliate is registered in the applicable Jurisdiction as a portfolio manager and registered in Ontario and Newfoundland as a limited market dealer.

Decision

Each of the Decision Makers is satisfied that the tests 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:

1. the Original Decision is revoked; and
2. the Requested Relief is granted provided that:
 - (A) TDAM or the TDAM Affiliate, as applicable, is at the time of the trade, registered under the Legislation as an adviser in the category of “portfolio manager” (or the equivalent);
 - (B) if the trade is made in a Jurisdiction other than Ontario or Newfoundland, it is made by or at the direction of a Representative who is, at the time of

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the trade, registered under the Legislation to act on behalf of TDAM or the TDAM Affiliate, as applicable, as an adviser in the category of “portfolio manager” (or the equivalent);

- (C) if the trade is made in the Jurisdiction of Ontario or Newfoundland, TDAM or the TDAM Affiliate is, at the time of the trade, registered under the Legislation of the Jurisdiction as a dealer in such Jurisdictions in the category of “limited market dealer”, and the trade is made on behalf of TDAM or the TDAM Affiliates, as applicable, by a Representative who is, at the time of the trade, either (i) registered under the Legislation to act on behalf of TDAM or the TDAM Affiliate, as applicable, as an adviser in the category of “portfolio manager” (or the equivalent), or (ii) acting under the direction of such a person and is himself or herself registered under the Legislation to trade on behalf of TDAM or the TDAM Affiliate, as applicable, pursuant to its limited market dealer registration; and
- (D) for each Jurisdiction, this Decision shall terminate one year after the coming into force, subsequent to the date of this Decision, of a rule or other regulation under the Legislation of the Jurisdiction that relates, in whole or part, to any trading by persons or companies that are registered under the Legislation as portfolio managers (or the equivalent), in securities of a mutual fund, to an account of a client, in respect of which the person or company has full discretionary authority to trade in securities for the account, without obtaining the specific consent of the client to the trade, but does not include any rule or regulation that is specifically identified by the Decision Maker for the Jurisdiction as not applicable for these purposes.

October 28, 2004.

Robert L. Shirriff

Paul M. Moore