

2005 BCSECCOM 618

September 15, 2005

Headnote

Mutual Reliance Review System for Exemptive Relief Application – Securities Act s. 48 Dealer - Exemption from s.34(1)(a) requirement to be registered as a dealer to trade securities and the obligations of dealers in Part 5 of the Act and rules - A BC registered dealer wants an exemption from delivering quarterly account statements to clients holding inactive accounts - Dealer will send clients of inactive accounts at least four account statements per year with no time period between account statements exceeding four months

Applicable British Columbia Provisions

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

Securities Rules, s. 38(3) and (4)

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

and

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

and

In the Matter of TD Waterhouse Canada 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**) for variation of the Legislation which requires dealers to send to clients who have not effected an account transaction, but who hold funds or securities in an account with the dealer on a continuing basis (**Inactive Account Clients**) an account statement not less than once every three months, provided that the Filer sends the account statements to the Inactive Account Clients a minimum of four times per year with no time period between account statements exceeding four months (the **Requested Relief**).

Under the Mutual Reliance Review System for Exemptive Relief Applications

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- (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 corporation incorporated under the laws of the Province of Ontario and is a wholly-owned subsidiary of The Toronto-Dominion Bank (**TD Bank**), a bank listed on Schedule I of the *Bank Act* (Canada).
2. The Filer is registered as an investment dealer or its equivalent in all provinces and territories of Canada. It is a member of the Investment Dealers Association of Canada (**IDA**), the Montreal Exchange and the TSX Venture Exchange, and it is a participatory organization of the Toronto Stock Exchange.
3. The fiscal year-end of TD Bank is October 31 in accordance with section 307 of the *Bank Act* (Canada). As a subsidiary of TD Bank, the Filer has the same fiscal year-end as TD Bank to facilitate the preparation and audit of annual consolidated financial statements for TD Bank.
4. As a member of the IDA, the Filer is required to send a statement of account to Inactive Account Clients at the end of each quarter in accordance with IDA Regulation 200.1c. The Filer has made an application to the IDA for exemptive relief from this requirement, similar to the Requested Relief.
5. In order to comply with the Legislation, the IDA rules and external audit requirements, the Filer now sends account statements to Inactive Account Clients five times per year for the periods ending March 31, June 30, September 30, October 31 and December 31 of each year. The extra statement for the period ending October 31 is due to the requirement that the Filer send out fiscal year-end account statements for external audit purposes in order to comply with IDA Regulation 300.2(vii)(6).

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6. Subject to obtaining the requested Relief, the Filer intends to send account statements to Inactive Account Clients for the periods ending March 31, June 30, October 31 and December 31.
7. The Requested Relief will not change the Filer's current requirement to send to a client an account statement at the end of each month in which the client has effected a transaction where there is a debit or credit of securities held.

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.

Donna Leitch
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Ontario Securities Commission