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Headnote

Mutual Reliance Review System for Exemptive Relief Applications – Relief from the substantial securityholder prohibition to permit certain mutual funds to invest in securities of exchange traded funds at any time that the dealer owns more than 10% of the securities of the exchange traded funds, subject to certain specified conditions – relief also granted from certain registrant prohibitions and reporting requirements, subject to conditions

Applicable British Columbia Provisions

Securities Act, R.S.B.C. 1996, c. 418, ss. 123 and 130

**IN THE MATTER OF THE SECURITIES LEGISLATION OF BRITISH
COLUMBIA, ALBERTA, SASKATCHEWAN, ONTARIO, QUEBEC,
NOVA SCOTIA AND NEWFOUNDLAND & LABRADOR**

AND

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

AND

IN THE MATTER OF TD ASSET MANAGEMENT INC.

AND

IN THE MATTER OF

**EMERALD CANADIAN EQUITY INDEX FUND
TD CANADIAN INDEX FUND
TD BALANCED FUND
TD BALANCED GROWTH FUND
TD DIVIDEND INCOME FUND
TD DIVIDEND GROWTH FUND
TD CANADIAN EQUITY FUND
TD CANADIAN BLUE CHIP EQUITY FUND
TD CANADIAN VALUE FUND
TD CANADIAN STOCK FUND
(collectively, the “TD Funds”)**

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**TD PRIVATE CANADIAN DIVIDEND FUND
TD PRIVATE CANADIAN EQUITY/GROWTH FUND
TD PRIVATE EQUITY/INCOME FUND
TD PRIVATE NORTH AMERICAN EQUITY/GROWTH FUND
TD PRIVATE NORTH AMERICAN EQUITY/INCOME FUND
(collectively the “TD Private Funds”)**

**EMERALD CANADIAN LARGE CAP POOLED FUND TRUST
EMERALD CANADIAN SMALL CAP POOLED FUND TRUST
EMERALD CANADIAN MID CAP POOLED FUND TRUST
EMERALD CANADIAN 300 POOLED FUND TRUST
EMERALD ENHANCED CANADIAN EQUITY POOLED FUND TRUST
EMERALD CANADIAN EQUITY 300 POOLED FUND TRUST II
EMERALD CANADIAN 300 CAPPED POOLED FUND TRUST
EMERALD CANADIAN EQUITY 299 POOLED FUND TRUST,
EMERALD ENHANCED CANADIAN 300 POOLED FUND TRUST
(collectively, the “Emerald Pooled Funds”)**

MRRS DECISION DOCUMENT

WHEREAS the local securities regulatory authority or regulator (the “Decision Maker”) in each of British Columbia, Alberta, Saskatchewan, Ontario, Quebec, Nova Scotia and Newfoundland (the “Jurisdictions”) has received an application (the “Application”) from TD Asset Management Inc. (“TDAM”), on its own behalf and on behalf of the TD Funds, TD Private Funds and Emerald Pooled Funds (collectively, the “Funds”) for a decision under the securities legislation of the Jurisdictions (the “Legislation”) that, in connection with proposed investments by the Funds in units (the “Units”) of the TD S&P/TSX Composite Index Fund (the “TSX Fund”) and TD S&P/TSX Capped Composite Index Funds (the “TSX Capped Fund”) (each a “TD ETF”),

- (a) the Funds are exempt from the provisions in the Legislation of the Jurisdictions, other than Quebec, that
 - (i) prohibit a mutual from making or holding an investment in any person or company in which the mutual fund, alone or together with one or more related mutual funds, is a substantial security holder, and
 - (ii) prohibit a mutual fund from making or holding an investment in an issuer in which any person or company who is a substantial

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securityholder of the mutual fund, its management company, or its distribution company has a significant interest,

(together, the “Investment Prohibitions”);

(b) TDAM is exempt from

- (i) the provision in the Legislation of the Jurisdictions, other than Quebec, that prohibits a portfolio manager from causing an investment portfolio managed by it to purchase or sell the securities of any issuer from or to the account of a responsible person, or
- (ii) the provision of the Quebec Legislation that prohibits a registered person from subscribing or buying, on behalf of a portfolio managed by the registered person, securities that the registered person or an affiliate of the registered person owns or is underwriting,

(together, the “Registrant Prohibitions”); and

- (c) TDAM is exempt from the provision in the Legislation of the Jurisdictions, other than Quebec, that requires the management company of a mutual fund to file a report of every transaction of purchase or sale of securities between the mutual fund and any related person or company (the “Reporting Requirement”);

AND WHEREAS under the Mutual Reliance Review System for Exemptive Relief Applications (the “System”), the Ontario Securities Commission 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 Quebec Commission Notice 14-101;

AND WHEREAS TDAM has represented to the Decision Makers as follows:

1. TDAM is the trustee, manager and portfolio manager of the Funds. It is registered under the Legislation of each Jurisdiction as an adviser in the categories of investment counsel and portfolio manager. TDAM is responsible for the day-to-day administration, and for managing the investment portfolios, of the Funds.

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2. The Funds, other than the Emerald Pooled Funds, are reporting issuers under each Jurisdiction's Legislation and are subject to National Instrument 81-102 – Mutual Funds (“NI 81-102”). Each Emerald Pooled Fund is a “mutual fund in Ontario” as defined in the Legislation of Ontario.
3. The TD ETFs are mutual funds whose Units are listed and posted for trading on the Toronto Stock Exchange (the “Exchange”). The TD ETFs are reporting issuers under each Jurisdiction's Legislation and are subject to the applicable requirements of NI 81-102. The Units of the TD ETFs are in continuous distribution.
4. TD Securities Inc. (“TDSI”) is one of the underwriters in the continuous distribution of Units of the TD ETFs. TDSI is also a “responsible person” as such term is defined in the Legislation of the Jurisdictions, other than Quebec.
5. TDAM and TDSI are affiliates because both are wholly-owned subsidiaries of the Toronto-Dominion Bank.
6. TDAM is the trustee and portfolio manager of the TD ETFs and, as such, is responsible for the day-to-day administration, and for managing the investment portfolios, of the TD ETFs.
7. The fundamental investment objective of each TD ETF is to provide long-term growth of capital by replicating, to the extent possible, the performance of the S&P/TSX Composite Index and the S&P/TSX Capped Composite Index (each, a “Target Index”), respectively. To achieve its investment objective, each TD ETF acquires and holds a portfolio of shares (the “Index Shares”) of companies (each a “Constituent Company”) that comprise the relevant Target Index.
8. As one of the underwriters in the continuous distribution of Units of the TD ETFs, TDSI may subscribe for Units of the TD ETFs at any time. As payment therefor, TDSI is required to deliver Index Shares and cash in an amount sufficient so that the aggregate value of the Index Shares and cash is equal to the net asset value, next determined following receipt of the subscription order, of the Units subscribed for.
9. TDSI also acts as a designated broker of the TD ETFs. As such, TDSI may be required to purchase Index Shares from, or sell certain securities to, the TD ETFs as a result of
 - (a) an adjustment to the relevant Target Index,

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- (b) a take-over bid for a Constituent Company of the relevant Target Index, or
- (c) the receipt by the TD ETFs of dividends or other distributions from a Constituent Company that results in an adjustment to the relevant Target Index.

10. In acting as an underwriter and designated broker of the TD ETFs, TDSI receives no compensation from the TD ETFs or TDAM. However, as a dealer, TDSI may engage in secondary market trading activity in Units of the TD ETFs

- (a) on an agency basis, and receive compensation for its services as agent, or
- (b) on a principal basis, and benefit from the spread between the price at which it purchases Units and the price at which it sells them.

11. The TD ETFs have not issued any Units to the underwriters, acting as such, since the original closing of their initial distribution of Units on February 22, 2002. At that time, TDSI subscribed for 3,600,000 Units of the TSX Fund and 1,050,000 Units of the TSX Capped Fund as an underwriter. Additional units were subsequently issued to TDSI as designated broker when the Target Indices were adjusted.

12. As at August 28, 2002, TDSI continued to hold 44.1% and 48.5%, respectively, of the outstanding Units of the TSX Fund and TSX Capped Fund.

13. The net asset value ("NAV") per Unit of the TD ETFs is published daily on TDAM's website. The closing price of the TD ETFs on the Exchange is published daily in newspapers of general circulation in Canada.

14. As at October 29, 2002, the aggregate NAV of the Funds was approximately \$12.7 billion. The aggregate NAV of the TD ETFs as at the same date was approximately \$191.1 million.

15. The proposed investment in Units of the TD ETFs would be consistent with the investment objective of the Funds. For this purpose, each Fund proposes to invest only the cash balances that it holds either to fund redemptions or pending direct investment in securities other than Units of the TD ETFs.

16. It is anticipated that each Fund will invest between 0.50% and 3.00% of its NAV in a TD ETF. However, the aggregate investment of each Fund in the TD ETFs and in any other mutual fund similar to the TD ETFs that are managed by TDAM will not exceed 5% of its NAV.

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17. If each Fund were to invest .05% of its NAV in Units of each TD ETF, the aggregate investment of the Funds in Units of the TD ETFs could result in the Funds acquiring and holding, collectively, an aggregate of 20% or more of the outstanding Units of each TD ETF (the “20% Threshold”) from time to time. TDAM will ensure that the Funds’ collective and aggregate holding in each TD ETF does not at any time exceed 40% of the outstanding Units of each ETF.

18. It is contemplated that, from time to time, TDAM may cause the Funds to purchase Units of the TD ETFs from the account of TDSI .

19. Pursuant to a prior MRRS decision Document dated April 24, 2001 (the “Previous Exemption”), each Fund was permitted to invest in Units of TD ETFs, subject to certain conditions including the condition that the aggregate investment would not exceed 5% of its NAV. In obtaining the Previous Exemption, it was represented to the Decision Makers that a Fund will not knowingly make or hold an investment in a TD ETF if, at the time of such investment, the Fund, either alone or together with other funds, is a substantial security holder of the TD ETF. The Previous Exemption expired on April 24, 2002.

AND WHEREAS under the System this MRRS Decision Document evidences the decision of each Decision Maker (collectively, the “Decision”);

AND WHEREAS each of the Decision Makers is satisfied that the test contained in the Legislation that provides the Decision Makers with the Jurisdiction to make the Decision has been met;

THE DECISION of the Decision Makers under the Legislation is that

- I. the Investment Prohibitions do not apply so as to enable each Fund to make or hold an investment in Units of the TD ETFs;
- II. the Registrant Prohibitions do not apply so as to enable TDAM to cause each Fund to
 - (A) purchase Units of the TD ETFs notwithstanding that TDSI is one of the underwriters in the continuous distribution of Units of the TD ETFs,
 - (B) purchase Units of each TD ETF from the account of TDSI or its affiliates or associates following the 60-day period after
 - (i) any subscription by TDSI as an underwriter for Units of the TD ETFs, or

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(ii) any issuance of Units of the TD ETFs to TDSI as a designated broker, or

(C) sell Units of each TD ETF to the account of TDSI or its affiliates or associates at any time; and

III. the Reporting Requirement does not apply to TDAM in connection with the purchase or sale of Units of the TD ETFs between the Funds and any related person or company (the “Related Person”),

PROVIDED THAT

1. at the time of each investment in or purchase of Units of the TD ETFs by a Fund pursuant to paragraph I and subparagraph II(A) of this Decision, the following conditions are satisfied:

(a) the investment

(i) represents the business judgment of TDAM uninfluenced by considerations other than the best interests of the Fund, or

(ii) is, in fact, in the best interests of the Fund;

(b) the investment is consistent with, or is necessary to meet, the investment objective of the Fund that (in the case of the TD Funds and TD Private Funds) is disclosed in the Fund’s simplified prospectus;

(c) if the investment is made during the 60-day period after

(i) any subscription by TDSI as an underwriter for Units of the TD ETFs, or

(ii) any issuance of Units of the TD ETFs to TDSI as a designated broker,

the purchase order is not placed, on an agency or principal basis, with TDSI or its affiliates or associates;

(d) each purchase is made on the Exchange or any other exchange on which the Units of the TD ETFs are listed and traded;

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- (e) TDSI does not receive, directly or indirectly, any form of compensation in acting as an underwriter or designated broker in connection with the distribution of Units of the TD ETFs;
- 2. in the case of an investment in or purchase of Units of the TD ETFs by a Fund pursuant to paragraph I and subparagraph II(A) of this Decision,
 - (a) the aggregate investment of each Fund in Units of the TD ETFs, and in securities of any other mutual fund similar to the TD ETFs that are managed by TDAM or its affiliates or associates, does not exceed 5% of its NAV;
 - (b) the Funds' aggregate holding in each TD ETF does not exceed 40% of the outstanding Units of each TD ETF;
 - (c) whenever the aggregate holding of Units of each TD ETF by one or more of the Funds trips the 20% Threshold, TDAM files on SEDAR under the continuous disclosure category of filing, and within 10 days following the end of each month in which the aggregate holding tripped the 20% Threshold, a report certified by TDAM and stating the percentage of the outstanding Units of each TD ETF collectively held by the Funds;
- 3. in the case of the purchase or sale of Units of the TD ETFs by each Fund pursuant to subparagraphs II(B) and (C) of this Decision, the purchase or sale is made in compliance with the requirements of section 4.3 of NI 81-102;
- 4. in the case of the exemption from the Reporting Requirement pursuant to paragraph III of this Decision, the statement of portfolio transactions prepared and filed for each Fund in accordance with the Legislation discloses, in respect of Units of each TD ETF bought or sold during the period covered by the statement of portfolio transactions,
 - (a) the name of each Related Person,
 - (b) the amount of fees paid to each Related Person, and
 - (c) the person or company that paid the fees;
- 5. paragraphs I and III of this Decision, as they relate to the jurisdiction of a Decision Maker, will terminate in respect of the TD Funds and TD Private Funds after the coming into force of any legislation or rule of that Decision Maker dealing with the matters regulated by section 2.5 of NI 81-102; and

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6. subparagraph II(A) of this Decision, as it relates to the jurisdiction of a Decision Maker, will terminate in respect of the TD Funds and TD Private Funds after the coming into force of any legislation or rule of that Decision Maker dealing with the matters regulated by section 4.1 of NI 81-102.

Dated this 26th day of November, 2002.

H. Lorne Morphy

Robert W. Korthals