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January 27, 2006

Headnote

Mutual Reliance Review System for Exemptive Relief Application – Securities Act s. 48,76 Other - Exemption from s. 34(1)(a) requirement to be registered as a dealer for a trade and s. 61 requirement to file a prospectus for a distribution other than in connection with a corporate acquisition or reorganization; business associates; debt settlements; or employee investment plans and consultants - Trades to US persons in BC by a US registered dealer that has a physical presence in Canada - The US persons are either temporarily resident in BC and want to continue to trade with their US dealer, or are full-time BC residents that want to continue trading in their US tax advantaged retirement savings plan with their US dealer.

Applicable British Columbia Provisions

Securities Act, R.S.B.C.1996, c. 418, ss. 34(1), 48, 61, and 76

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

and

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

and

**In the Matter of Ameritrade Holding Corporation (AHC) and
Ameritrade Services Company, Inc. (ASCI),
(collectively Ameritrade Group or the Filers)**

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 Filers for a decision under the securities legislation of the Jurisdictions (the **Legislation**) for an exemption from the dealer registration requirement and the prospectus requirements of the Legislation so as to permit the Filers and their agents to deal with the individuals (**NI 35-101 Clients**) referred to in section 2.1 of National Instrument 35-101 -- *Conditional Exemption from Registration for United States*

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Broker-Dealers and Agents (NI 35-101) provided that such dealings are conducted in accordance with all terms and conditions of NI 35-101 save and except for the requirement the Filers have no office or physical presence in any jurisdiction of Canada (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 (the **Principal Regulator**), and
- (b) this MRRS Decision Document evidences the decision of each Decision Maker.

Interpretation

Defined terms contained in National Instrument 14-101 *Definition* 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 Filers:

1. On July 26, 2002 the Decision Maker in each of the Jurisdictions granted a decision under the Legislation which exempted TD Waterhouse Investor Services, Inc. (**TDW**) and its agents from the registration requirement and the prospectus requirements contained in the Legislation so as to permit TDW and its agents to deal with NI 35-101 Clients provided that such dealings are conducted in accordance with all terms and conditions of NI 35-101 save and except for the requirement that TDW has no office or physical presence in any jurisdiction of Canada (as amended on August 5, 2005, the **Decision**).
2. TDW obtained the Decision so that it would be permitted to deal with NI 35-101 Clients using call centre operations it has located in London, Ontario.
3. Pursuant to a definitive agreement between AHC and The Toronto-Dominion Bank (**TD Bank**) among others, (the **Acquisition Agreement**), AHC will acquire only the U.S. retail brokerage business of TD Bank by acquiring all of the outstanding shares of TD Waterhouse Group, Inc. (**TDWG**) including its subsidiaries, TDW and TD Waterhouse Canadian Call Center Inc. (**TDWCCC**), (the **Acquisition**).
4. AHC is a corporation formed under the laws of the State of Delaware. ASCI is a Corporation formed under the laws of the State of Delaware and is a wholly owned subsidiary of AHC. Their head offices are located at 4211 South 102nd Street, Omaha, Nebraska.

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5. TDW is a corporation incorporated under the laws of the State of New York, and is registered as a broker-dealer with the U.S. *Securities and Exchange Commission* (the **SEC**). TDWCCC is a corporation incorporated under the federal laws of Canada.
6. After the Acquisition, AHC will be the indirect owner of TDW and TDWCCC.
7. The Acquisition is expected to close on or about January 24, 2006.
8. On the date of closing of the Acquisition, TD Bank will enter into a Call Centre Services Agreement with the Ameritrade Group (**Call Centre Agreement**) whereby TD Bank will agree to provide certain call centre services as described therein (**Call Centre Services**) to the Ameritrade Group from a call centre located in London, Ontario.
9. Such Call Centre Services will be provided to the Ameritrade Group until September 30, 2006, or upon the termination of the Call Centre Agreement (the **Termination Date**). If the parties to the Call Centre Agreement agree to terminate the Call Centre Agreement at a date later than September 30, 2006, Ameritrade Group shall notify the Principal Regulator, otherwise the Termination Date for the purposes of this decision shall be September 30, 2006.
10. Pursuant to the Call Centre Agreement, representatives of Ameritrade Group will consist of employees, subcontractors, agents and other third parties of, or appointed by, TD Bank who will provide the Call Centre Services in Ontario and who are either in direct communication with the customers of Ameritrade Group, or are line supervisors (the **Ameritrade Representatives**). Also pursuant to the Call Centre Agreement, the Ameritrade Representatives will be dedicated solely to providing Call Centre Services to Ameritrade Group only and will not be utilized to provide services to any other entity or business.
11. The Ameritrade Representatives will be dedicated to answering phone calls from clients who are not resident in Canada (**Non-Canadian Clients**) and NI 35-101 Clients.
12. Within the call centre located in London, Ontario, the Ameritrade Group's call centre operations will be operated in accordance with all applicable rules established by various U.S. regulatory authorities including all applicable rules established by the SEC and the New York Stock Exchange (**NYSE**), and will continue to be subject to the same procedures that apply to TDW's existing

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U.S. business. The Ameritrade Group's call centre operations will be examined at least annually by representatives from Ameritrade Group's compliance staff, and will be supervised by one or more properly qualified individuals acceptable to the NYSE.

13. Ameritrade Representatives will continue to comply with all registration and other requirements of applicable U.S. securities legislation in respect of trades conducted with, or on behalf of, Non-Canadian Clients.
14. Ameritrade Group will not establish accounts for, or trade securities with, or on behalf of, persons or companies who are resident in Canada except to the extent that TDW and its agents now conduct trading in Canada in accordance with dealer registration and prospectus exemptions that are available pursuant to NI 35-101.
15. Within the call centre located in London, Ontario, the Ameritrade Group's call centre operations will be an opaque presence, inaccessible to any person or company other than Non-Canadian Clients and NI 35-101 Clients who direct inquiries to Ameritrade Group.
16. The OSC has issued a ruling and order pursuant to subsections 74(1) of the *Securities Act* (Ontario) (the **Act**) providing that:
 - (a) the Ameritrade Representatives working in the London Call Centre shall not be subject to the requirements of paragraph 25(1)(a) of the Act where the Ameritrade Representatives act on behalf of Ameritrade Group in respect of trades in securities with or on behalf of Non-Canadian Clients provided that the Ameritrade Representatives Comply with all registration and other requirements of applicable securities legislation in the U.S.; and
 - (b) Ameritrade Group shall not be subject to the requirements of paragraph 25(1)(a) of the Act with respect to trading conducted by it in securities with or on behalf of Non-Canadian Clients conducted through the call centre located in London, Ontario, subsequent to the Acquisition, provided that:
 - (i) an Ameritrade Representative acts on behalf of Ameritrade Group in respect of such trading;
 - (ii) Ameritrade Group complies with all registration and other requirements of applicable securities legislation in the U.S.; and

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- (c) this ruling shall be in effect until the Termination Date.

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:

- (a) such dealings are conducted in accordance with all terms and conditions of NI 35-101 save and except for the requirement that the Filers have no office or physical presence in any jurisdiction of Canada;
- (b) the only office or physical presence that the Filers have in Canada is their operations within the call centre located in London, Ontario; and
- (c) this Decision shall be in effect until the Termination Date.

Paul M. Moore

Suresh Thakrar