

October 27, 2006

Headnote

1996 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 Legislative Provisions

Securities Act, ss. 34(1), 48, 61, 76 and 171

National Instrument 35-101 *Conditional Exemption from Registration for United States Broker-Dealers and Agents*

In the Matter of
the Securities Legislation
of British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Quebec, 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 TD Ameritrade Holding Corporation (TD AHC),
TD Ameritrade Services Company, Inc. (TD ASCI), and
TD Ameritrade, Inc. (TDA) collectively, TD Ameritrade Group or the Filers

Amended and Restated MRRS Decision Document

Background

The local securities regulatory authority or regulator (the **Decision Maker**) in each of the Jurisdictions received an application from the Filers for a decision under the securities legislation of the Jurisdictions (the **Legislation**) to revoke a decision granted to the Filers dated January 27, 2006 (the **Original Decision**) and to amend and restate that decision as set out below.

The Original Decision exempted TD AHC and TD ASCI from the dealer registration requirement and the prospectus requirements of the Legislation so as to permit TD Ameritrade

Group 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 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 that the TD Ameritrade Group have no office or physical presence in any jurisdiction of Canada.

The Filers wish to vary the Original Decision to reflect the extension of the Call Centre Agreement.

The Filers also wish to vary the Original Decision to include TD Ameritrade, Inc. (TDA, formerly known as TD Waterhouse Investor Services, Inc., and together with TD AHC and TD ASCI, the TD Ameritrade Group).

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. TD Ameritrade Group obtained the Original Decision so that it would be permitted to deal with NI 35-101 Clients using call centre operations it has located in London, Ontario that they acquired pursuant to the Acquisition (as defined below).
2. TD AHC (formerly known as Ameritrade Holding Corporation) is a corporation formed under the laws of the State of Delaware. TD ASCI (formerly known as Ameritrade Services Company, Inc.) is a Corporation formed under the laws of the State of Delaware and is an indirect subsidiary of AHC. Their head offices are located at 4211 South 102nd Street, Omaha, Nebraska.
3. TDA (formerly TD Waterhouse Investor Services, Inc.) 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).
4. TD Waterhouse Canadian Call Centre Inc. (TDWCCC) is a corporation incorporated under the federal laws of Canada.
5. As part of an acquisition transaction which closed on January 24, 2006 (the Acquisition), TDA and TDWCCC became indirect subsidiaries of TD AHC.

6. On January 24, 2006, the Toronto Dominion Bank (TD Bank) entered into a Call Centre Services Agreement with the TDA and TD ASCI (Call Centre Agreement) whereby TD Bank agreed to provide certain call centre services as described therein (Call Centre Services) to the TD Ameritrade Group from a call centre located in London, Ontario until September 30, 2006.

7. On July 5, 2006 the Call Centre Agreement was amended and restated (the Amended and Restated Call Centre Agreement) to provide for the continued provision of Call Centre Services until November 30, 2008, unless otherwise terminated or further extended.

8. As required pursuant to the Original Decision, the TD Ameritrade Group notified the Principal Regulator that the term of the Call Centre Agreement has been extended from September 30, 2006 to November 30, 2008 pursuant to the Amended and Restated Call Centre Agreement.

9. Pursuant to the Amended and Restated Call Centre Agreement, representatives of TD 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 TD Ameritrade Group, or are line supervisors (the TD Ameritrade Representatives). Also pursuant to the Call Centre Agreement, the TD Ameritrade Representatives will be dedicated solely to providing Call Centre Services to TD Ameritrade Group only and will not be utilized to provide services to any other entity or business.

10. The TD 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.

11. Within the call centre located in London, Ontario, the TD Ameritrade Group's call centre operations are currently 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 TDA's existing U.S. business. TD Ameritrade Group's call centre operations will be examined at least annually by representatives from TD Ameritrade Group's compliance staff, and will be supervised by one or more properly qualified individuals acceptable to the NYSE.

12. TD 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.

13. TD 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 TDA and its agents now conduct trading in Canada in accordance with dealer registration and prospectus exemptions that are available pursuant to NI 35-101.

14. Within the call centre located in London, Ontario, TD 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 the TD Ameritrade Group.

15. The OSC has issued a ruling and order pursuant to subsections 74(1) of the Securities Act (Ontario) (the Act) providing that:

(a) the TD 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 TD Ameritrade Representatives act on behalf of TD Ameritrade Group in respect of trades in securities with or on behalf of Non-Canadian Clients provided that the TD Ameritrade Representatives comply with all registration and other requirements of applicable securities legislation in the U.S.; and

(b) TD 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) a TD Ameritrade Representative acts on behalf of TD Ameritrade Group in respect of such trading; and

(ii) TD Ameritrade Group complies with all registration and other requirements of applicable securities legislation in the U.S.

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:

1. The Original Decision is revoked;

2. The dealer registration requirement and the prospectus requirements of the Legislation shall not apply to the TD Ameritrade Group so as to permit TD Ameritrade Group and their agents to deal with NI 35-101 Clients provided:

(a) such dealings are conducted in accordance with all terms and conditions of NI 35-101 save and except for the requirement that the TD Ameritrade Group have no office or physical presence in any jurisdiction of Canada; and

(b) the only office or physical presence that the TD Ameritrade Group has in Canada is their operations within the call centre located in London, Ontario.

Wendell S. Wigle David L. Knight
Commissioner Commissioner
Ontario Securities Commission Ontario Securities Commission