

Headnote

Mutual Reliance Review System for Exemptive Relief Applications - U.S. licensed adviser, and individuals who act on behalf of U.S. licensed advisers who are employed by affiliates and registered under the Act to act as an adviser on behalf of the affiliate that employs them, exempted from the adviser registration requirement in respect of their acting as an adviser to U.S. residents, subject to terms and conditions.

Exemption decision revokes and restates, to reflect a corporate restructuring relating to the U.S. licensed adviser, a previous MRRS Decision dated October 28, 2004, In the Matter of TD Investment Management Inc. and TD Asset Management Inc.

Applicable Ontario Statutory Provision

Securities Act, R.S.O. 1990, c. S.5., as am., ss. 25(1)(c), 74(1), 144.

Decisions Cited

MRRS Decision dated October 28, 2004, In the Matter of TD Investment Management Inc. and TD Asset Management Inc. (2005), 28 OSCB 863.

April 29, 2005

**IN THE MATTER OF
THE SECURITIES LEGISLATION OF
BRITISH COLUMBIA, ALBERTA, SASKATCHEWAN, MANITOBA, ONTARIO,
NOVA SCOTIA, NEWFOUNDLAND AND LABRADOR, NEW BRUNSWICK, PRINCE
EDWARD ISLAND, NORTHWEST TERRITORIES, YUKON TERRITORY AND
NUNAVUT (the Jurisdictions)**

AND

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

AND

**IN THE MATTER OF
TD INVESTMENT MANAGEMENT INC.,
TD ASSET MANAGEMENT INC. AND
TD WATERHOUSE ASSET MANAGEMENT, INC.**

MRRS DECISION DOCUMENT

Background

On October 27, 2000, the local securities regulatory authority or regulator (the **Original Decision Makers**) in each of the Jurisdictions (the **Original Jurisdictions**) other than Nunavut made a decision (the **Original Decision**), under the securities legislation (the **Legislation**) of the Original Jurisdictions, that TD Investment Management Inc. (then named "CT Investment Counsel (U.S.) Inc." and herein referred to as **TDIM**), and individuals acting on behalf of TDIM, who are also employed by TD Asset Management Inc. (**TDAM**), and appropriately registered to act as adviser on behalf of TDAM in the relevant Jurisdiction, are not subject to the following requirement (the **Applicable Requirement**) contained in the Legislation, in respect of their acting as an adviser in the Jurisdiction to persons or companies (**U.S. Residents**) that are resident in the United States of America (the **U.S.A.**):

no person or company shall act as an adviser unless the person or company is registered as an adviser, or is registered as a partner or officer of a registered adviser and is acting on behalf of the adviser, and the registration has been made in accordance with the Legislation and the person or company has received written notice of such registration and, where the registration is subject to terms and conditions, the person or company complies with such terms and conditions.

On October 28, 2004, the Decision Makers in each of the Jurisdictions (including Nunavut) made a decision (the **Previous Variation Decision**), pursuant to the Legislation of each of the Jurisdictions, that revoked the Original Decision and restated the Original Decision so, that, in all of the Jurisdictions, TDIM, and individuals acting as advisers on behalf of TDIM who are employed by an affiliate of TDIM, including TDAM and TD Waterhouse Private Investment Counsel Inc. (**TDWPIC**), and are registered under the Legislation of the Jurisdiction to act as advisers on behalf of the affiliate of TDIM that employs them, are not subject to the Applicable Requirement in respect of their acting as an adviser in the Jurisdiction to U.S. Residents.

TDIM, TDAM and TDWAM (collectively, the **Filers**) have now made an application (the Present Variation Application) to the Decision Makers for a decision that revokes the Previous Variation Decision and restates, for all of the Jurisdictions, the Previous Variation Decision so that, following the TDIM Restructuring (as defined below), TD Waterhouse Asset Management, Inc. (**TDWAM**), and individuals that act as an adviser on behalf of TDWAM, who are employed by affiliates of TDWAM and registered under the Legislation of the Jurisdiction to act as an adviser on behalf of the affiliate that employs them, shall not be subject to the adviser registration requirement in respect of their acting as an adviser in the Jurisdiction to U.S. Residents.

Under the Mutual Reliance Review System for Exemptive Relief Applications:

- (a) the Ontario Securities Commission is the principal regulator for the Present Variation Application; and
- (b) this MRRS decision document evidences the decision of each Decision Maker in respect of the Present Variation Application.

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

The decision is based on the following facts represented by the Filers:

1. TDIM is a corporation incorporated under the laws of Canada. TDIM is a wholly-owned subsidiary of The Toronto-Dominion Bank (**TD Bank**), a bank named in Schedule I to the *Bank Act* (Canada).
2. TDIM conducts an investment-management business offering its services to U.S. Residents. TDIM is registered as an investment adviser under the *United States Investment Advisers Act* of 1940, as amended (the **U.S. adviser legislation**).
3. TDIM currently has assets under management of approximately U.S. \$300 million.
4. TDIM is not registered under the Legislation of any Jurisdiction.
5. TDAM is a corporation continued under the laws of Ontario. TDAM is a wholly-owned subsidiary of TD Bank.
6. TDAM conducts an investment-management business offering passive, quantitative, enhanced and active portfolio management services to a large and diversified client base.
7. TDAM currently has assets under management of approximately \$100 billion.
8. TDAM is registered under the Legislation of each Jurisdiction as an investment counsel and portfolio manager (or the equivalent). TDAM is also registered under the Legislation of Ontario and Newfoundland and Labrador as a limited market dealer.
9. TDWAM is a corporation incorporated under the Delaware General Corporate Law and is an indirect wholly-owned subsidiary of TD Bank. TDWAM will become a direct wholly-owned subsidiary of TD Bank prior to completion of the TDIM Restructuring (as defined below) and will be a subsidiary of TD Bank following the completion of the TDIM Restructuring.
10. TDWAM conducts an investment-management business offering its services to U.S. Residents.
11. TDWAM currently has assets under management of approximately U.S. \$8.5 billion.

12. TDWAM is registered as an investment advisor under the U.S. adviser legislation.

13. TDWAM is not registered under the Legislation of any Jurisdiction.

14. As a registered investment advisor under the U.S. adviser legislation, TDIM regularly acts as an adviser in respect of securities to U.S. Residents with the subject advice provided by individuals in offices located in one or more Jurisdictions, and, as such, is also subject to the adviser registration requirement in the Legislation of the Jurisdiction. Because TDIM does not act as adviser to any persons or companies (Canadian Residents) who are resident in any of the Jurisdiction, it has not sought to become registered as an adviser in any of the Jurisdictions.

15. Under the Previous Variation Decision, TDIM obtained exemptions from the adviser registration requirement in the Legislation of each of the Jurisdiction on the basis that:

(a) Investment counsellors (Registered Counsellors) in a Jurisdiction, registered in the appropriate adviser category under the Legislation of the Jurisdiction to act as an adviser on behalf of affiliates of TDIM (including TDAM and TDWPIC), would act as adviser on behalf of TDIM to clients (U.S. Clients) of TDIM that were U.S. Residents, from offices of the affiliate that employs the Registered Counsellor located in the Jurisdiction.

(b) The U.S. Clients of TDIM would include clients of TDAM and its affiliates who had left Canada and become U.S. Residents; and would also include U.S. Residents who were neither former Canadian Residents nor former clients of TDAM or any of its affiliates.

(c) Potential U.S. Clients of TDIM would be identified from a review of the TDAM records and asked to enter into a new advisory agreement with TDIM. Written disclosure would be provided to the U.S. Client indicating that the U.S. Client was no longer under the responsibility of TDAM. The U.S. Client would also receive the Form ADV, being a form mandated under applicable U.S. securities legislation, which explained the relationship between TDIM and TDAM. Registered Counsellors who act as advisers on behalf of TDIM would have business cards and letterhead that would identify them to the U.S. Clients as working on behalf of TDIM.

(d) U.S. Clients would be advised at the time they entered into an advisory agreement with TDIM (and periodically thereafter) that,

if they returned to Canada, their accounts would have to be transferred to TDAM or any other adviser registered under the Legislation of the relevant Jurisdiction.

(e) All TDAM Registrants acting on behalf of TDIM would comply with the applicable registration and other requirements of applicable U.S. securities laws when acting as an adviser to U.S. Clients.

(f) Neither TDIM, nor any individual acting on its behalf, would act as an adviser to persons or companies resident in a Jurisdiction unless they were appropriately registered under the Legislation of the Jurisdiction.

16. The Original Decision exempted TDIM, and individuals employed by TDAM and registered in the appropriate advisor category to act as adviser on behalf of TDAM in the relevant Jurisdictions, from the adviser registration requirement in the Legislation of each of the Original Jurisdictions, subject to certain conditions.

17. As part of the overall re-branding strategy for TD Bank's wealth management businesses, TDAM transferred its Private Investment Counsel division to TDWPIC (the **TDAM Restructuring**). The TDAM Restructuring was the first step of a re-branding strategy intended to bring all of the wealth-management businesses of TD Bank under the TD Waterhouse banner.

18. Upon completion of the TDAM Restructuring, some of the TDAM Registrants who acted as advisers to U.S. Clients on behalf of TDIM became registered to act as advisers on behalf of TDWPIC. For this reason, TDIM and TDAM obtained the Previous Variation Decision.

19. It is now proposed that TDIM will be continued out of Canada and into Delaware as a Delaware corporation under the Delaware General Corporate Law. Following the continuance of TDIM under Delaware law, it is proposed that TDIM and TDWAM will merge, as a result of which TDIM will cease to exist as a separate corporate entity and TDWAM will be the surviving merged entity (the **TDIM Restructuring**). It is also proposed that TDWAM will, as part of the TDIM Restructuring, change its name to "TD Asset Management USA Inc."

20. It is proposed that the U.S. Clients of TDIM will become clients of TDWAM and, effective the date (the **Transfer Date**) upon which TDWAM becomes the surviving merged entity under the TDIM Restructuring, Registered Counsellors located in the Jurisdictions may act as advisers to the U.S. Clients on behalf of TDIM, on the same basis as described in paragraph 15, but with the references to TDIM changed to TDWAM.

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.

It is the decision of the Decision Makers pursuant to the Legislation of each Jurisdiction that, effective the Transfer Date:

1. The Previous Variation Decision is revoked; and
2. The adviser registration requirement in the Legislation does not apply to TDWAM or to the individuals acting on its behalf, where they act as adviser in the Jurisdiction to U.S. Residents, provided that:
 - (A) TDWAM is appropriately licensed or otherwise permitted under applicable legislation in the U.S.A. to act as an adviser to the U.S. Residents; and
 - (B) the individual is appropriately licensed or otherwise permitted under applicable legislation in the U.S.A. to act as adviser on behalf of TDWAM to the U.S. Residents.
 - (C) each of the individuals that acts as adviser on behalf of TDWAM in the Jurisdiction is also:
 - (i) employed by an affiliate of TDWAM that is registered under the Legislation of the Jurisdiction, and
 - (ii) registered under the Legislation to act as adviser on behalf of the affiliate of TDWAM, in a category, and on terms, that would permit the affiliate, and the individual, to act as an adviser to the U.S. Client, in compliance with the adviser registration requirement, if the U.S. Resident were instead a resident in the Jurisdiction and a client of the affiliate.

"Robert L. Shirriff" "Robert W. Davis"