

December 31, 2008

**In the Matter of
The Securities Legislation of
British Columbia, Alberta, Saskatchewan, Manitoba,
Ontario, Quebec, New Brunswick, Nova Scotia,
Newfoundland And Labrador, Northwest Territories,
Nunavut and the Yukon Territory
(the Jurisdictions)**

And

**In The Matter Of
The Process for Exemptive Relief Applications In Multiple Jurisdictions**

And

**In The Matter Of TD Waterhouse Canada Inc.
TD Asset Management Inc.
and
TD Waterhouse Private Investment Counsel Inc.
(the Filers, or individually the Filer)**

Decision

Background

The securities regulatory authority or regulator in each of the Jurisdictions (the Decision Maker) has received an application from the Filers for a decision exempting each of them from the requirement (the Trade Confirmation Requirement) contained in the securities legislation of the Jurisdictions (the Legislation) that would otherwise require the Filer, in its capacity as a dealer, to send to its clients a written confirmation of any trade in securities that the Filer conducts:

- (a) pursuant to discretionary investment authority that has been granted to the Filer by the client; or
- (b) based on trading instructions that have been provided to the Filer by another Filer or any other affiliate of The Toronto-Dominion Bank (TD Bank) pursuant to the exercise of discretionary investment authority that has been granted to the other Filer or another affiliate of TD Bank (a TD Bank Affiliate), as the case may be, by the client.

Under the Process for Exemptive Relief Applications in Multiple Jurisdictions (for a coordinated review application):

- (a) Ontario is the principal regulator for this application; and

(b) the decision is the decision of the principal regulator and evidences the decision of each other Decision Maker as regards TD Waterhouse Canada Inc. (TDWCI), each of the Decision Makers in Nova Scotia and Newfoundland and Labrador as regards TD Asset Management Inc. (TDAM), and the Decision Maker in Newfoundland and Labrador as regards TD Waterhouse Private Investment Counsel Inc. (TDW PIC).

Interpretation

Terms defined in National Instrument 14-101 *Definitions* have the same meaning if used in this decision unless otherwise defined.

Representations

This decision is based upon the following facts represented by the Filers:

1. TDWCI is a corporation incorporated under the *Business Corporations Act* (Ontario). It is a wholly-owned subsidiary of TD Bank and its head office is located in Toronto, Ontario.
2. TDWCI is registered as an investment dealer or its equivalent in all provinces and territories of Canada, it is a dealer member of the Investment Industry Regulatory Organization of Canada (IIROC) and it is an approved participant of the Montreal Exchange.
3. TDWCI is authorized to act as an adviser pursuant to an exemption from the adviser registration requirement that is available under the Legislation to dealers who are members of IIROC.
4. TDAM is a corporation amalgamated under the *Business Corporations Act* (Ontario). It is a wholly-owned subsidiary of TD Bank that has its head office located in Toronto, Ontario.
5. TDAM is registered as an investment counsel and portfolio manager or their equivalent under the securities legislation of all provinces and territories of Canada, as a mutual fund dealer under the *Securities Act* (Nova Scotia), as a limited market dealer under the *Securities Act* (Ontario) and the *Securities Act* (Newfoundland and Labrador) and as a commodity trading manager under the *Commodity Futures Act* (Ontario).
6. TDW PIC is a corporation incorporated under the *Canada Business Corporations Act*. It is a wholly-owned subsidiary of TDAM that has its head office located in Toronto, Ontario.
7. TDW PIC is registered as an investment counsel and portfolio manager or their equivalent under the securities legislation of all provinces and territories of Canada and as a limited market dealer under the *Securities Act* (Ontario) and the *Securities Act* (Newfoundland and Labrador).
8. Each of the Filers is not in default of securities legislation in any Jurisdiction.

9. TDWCI currently offers its clients two managed account options and may, in the future, offer other discretionary investment management services. The first option is the Premier Managed Portfolio Program (the Premier Program) and the second option is the Managed Account Program.

10. The Premier Program is a “wrap” account program that provides TDWCI’s clients participating in the Premier Program (Premier Clients) with access to investment advice from a number of different portfolio management firms that are located in a variety of different jurisdictions throughout the world. The Decision Makers have previously granted TDWCI an exemption from the Trade Confirmation Requirement in respect of Premier Clients.

11. The Managed Account Program is a more traditional asset management service that provides TDWCI’s clients with access to the discretionary investment management services that are available from TDWCI’s investment advisers.

12. TDWCI clients that participate in the Managed Account Program (MA Clients) enter into a managed account client agreement with TDWCI (Managed Account Agreement) pursuant to which TDWCI is granted discretionary investment authority over an MA Client’s account.

13. TDAM conducts an investment management business offering passive, quantitative, enhanced and active portfolio management services to a large and diversified client base.

14. As part of its operations, TDAM provides discretionary portfolio management services to separately managed accounts (SMAs) pursuant to a written agreement (a SMA Agreement) between TDAM and its client (a SMA Client). The SMA Agreement grants TDAM discretionary investment authority to purchase or sell securities for an SMA.

15. TDAM is also the manager and promoter of various investment funds (the TDAM Funds) that are offered for sale by means of confidential offering memoranda to institutional investors, members of corporate sponsored group plans and SMAs pursuant to exemptions from prospectus and registration requirements of applicable securities legislation.

16. TDAM also acts as the trustee, manager and promoter of the TD Mutual Funds, the TD MAP Portfolios, the TD Private Funds and the TD Pools (collectively, the TD Funds), and as the manager and promoter of the TD Emerald Pooled Funds and the TD Emerald Treasury Management Pooled Funds (collectively, the TD Emerald Funds). The TD Funds and the TD Emerald Funds are offered for sale by means of simplified prospectuses and annual information forms that have been prepared and filed in accordance with applicable Canadian securities regulatory requirements.

17. TDW PIC utilizes the TD Private Funds to provide customized investment strategies to clients (PIC Clients) who have \$500,000 or more of investable assets. PIC Clients must enter into an investment management agreement (the PIC Agreement) with TDW PIC. The PIC Agreement grants TDW PIC discretionary investment authority over a PIC Client’s account and it authorizes TDW PIC to exercise such discretion to purchase and redeem units of the TD Private Funds on behalf of the PIC Client.

18. The TD Private Funds currently consist of 12 different mutual funds that are used for servicing accounts that are fully managed by TDW PIC. TDAM is the trustee, manager and promoter of the TD Private Funds.

19. In addition to the Premier Program and the Managed Account Program offered by TDWCI, the SMAs offered by TDAM and the customized investment strategies that are provided to PIC Clients by TDW PIC, TDWCI, TDAM, TDW PIC and other TD Bank Affiliates (collectively, the TD Portfolio Managers) may offer other discretionary investment management services (Other Discretionary Investment Services) to their clients from time to time.

20. Before offering any Other Discretionary Investment Services to a client, a TD Portfolio Manager will enter into a written agreement (a Discretionary Investment Agreement) with the client (a Discretionary Investment Client) pursuant to which the Discretionary Investment Client will grant the TD Portfolio Manager discretionary authority to make investment decisions and trade securities on behalf of the Discretionary Investment Client without obtaining the specific consent of the Discretionary Investment Client to specific trades subject to, and in accordance with, the terms and conditions of the Discretionary Investment Agreement including, without limitation, the investment objective, and any investment restrictions and policies, of the Discretionary Investment Client set out in the Discretionary Investment Agreement.

21. Each TD Portfolio Manager is, or will be, registered, or exempt from registration, as an investment counsel and portfolio manager or their equivalent under the securities Legislation of each Jurisdiction in which its MA Clients, SMA Clients, PIC Clients and/or Discretionary Investment Clients who are also customers of a Filer (collectively, TD Clients), as the case may be, are located.

22. Each TD Client agrees, or will agree, to pay a fee calculated on the basis of the TD Client's assets under management by a TD Portfolio Manager which will be payable monthly or quarterly in arrears and will not be based on transactions effected on behalf of the TD Client.

23. Each TD Client that does not wish to receive trade confirmations from a Filer for trades that are executed by the Filer either in its capacity as the TD Client's TD Portfolio Manager or based upon trading instructions received from the TD Client's TD Portfolio Manager must provide a written waiver of the Trade Confirmation Requirement in respect of all such trades (the Trade Confirmation Waiver) to the TD Client's TD Portfolio Manager.

24. Each TD Client that provides a Trade Confirmation Waiver will be entitled to terminate the Trade Confirmation Waiver by providing its TD Portfolio Manager with a written notice of termination of the Trade Confirmation Waiver which shall be effective upon receipt of the written notice by its TD Portfolio Manager as regards all trades conducted following the date of receipt thereof.

25. Trade confirmations for trades that are the subject of a Trade Confirmation Waiver received from a TD Client will be delivered to the TD Client's TD Portfolio Manager.

26. Each TD Client who provides a TD Portfolio Manager with a Trade Confirmation Waiver will receive a statement of account from the TD Portfolio Manager that is prepared and delivered to the TD Client no less frequently than quarterly, and on a monthly basis for each month during which there has been activity in the TD Client's account, in accordance with applicable securities regulatory requirements and each such statement of account shall identify the assets that are being managed by the TD Portfolio Manager on behalf of the TD Client, and shall include a list of all transactions during the relevant period, a statement of portfolio at the end of the relevant period, and for each trade conducted on behalf of the TD Client during the relevant period, the information that would otherwise have been provided to the TD Client in accordance with the Trade Confirmation Requirement save and except for the following (the Omitted Information):

(a) the day and stock exchange upon which the trade took place;

(b) the name of the salesperson, if any, in the transaction; and

(c) if acting as agent in a trade, the name of the person or company from or to or through whom the security was bought or sold.

27. Each TD Portfolio Manager will maintain Omitted Information in respect of each of its TD Clients in its books and records and will make the Omitted Information available to the TD Client immediately following its receipt of a request for the Omitted Information from the TD Client.

28. TDWCI and any other TD Portfolio Manager that becomes a dealer member of IIROC will otherwise comply with all applicable IIROC Rules including, without limitation, client account statement, trade confirmation and managed account requirements found in IIROC Rules 200 and 1300.

Decision

Each of the Decision Makers is satisfied that the decision meets the test set out in the Legislation for the Decision Makers to make the decision.

The decision of the Decision Makers is that TDWCI is exempt from the Trade Confirmation Requirement in the Legislation of all Jurisdictions, that TDAM is exempt from the Trade Confirmation Requirement in the Legislation of Ontario, Nova Scotia and Newfoundland and Labrador, and that TDW PIC is exempt from the Trade Confirmation Requirement in the Legislation of Ontario and Newfoundland and Labrador provided that:

(a) each TD Portfolio Manager is, or will be, registered, or exempt from registration, as an investment counsel and portfolio manager or their equivalent under the Legislation of each Jurisdiction in which its TD Clients are located;

(b) each TD Client pays a fee that is calculated on the basis of the TD Client's assets under management by a TD Portfolio Manager which will be payable

monthly or quarterly in arrears and will not be based on transactions effected on behalf of the TD Client;

(c) each TD Client that does not wish to receive trade confirmations from a Filer for trades that are executed by the Filer either in its capacity as the TD Client's TD Portfolio Manager or based upon trading instructions received from the TD Client's TD Portfolio Manager must provide a Trade Confirmation Waiver to its TD Portfolio Manager;

(d) each TD Client that provides a Trade Confirmation Waiver will be entitled to terminate the Trade Confirmation Waiver by providing its TD Portfolio Manager with a written notice of termination of the Trade Confirmation Waiver which shall be effective upon receipt of the written notice by its TD Portfolio Manager as regards all trades conducted following the date of receipt thereof;

(e) trade confirmations for trades that are the subject of a Trade Confirmation Waiver received from a TD Client will be delivered to the TD Client's TD Portfolio Manager; and

(f) each TD Client who provides a TD Portfolio Manager with a Trade Confirmation Waiver will receive a statement of account from the TD Portfolio Manager that is prepared and delivered to the Client no less frequently than quarterly, and on a monthly basis for each month during which there has been activity in the TD Client's account, in accordance with applicable securities regulatory requirements and each such statement of account shall identify the assets that are being managed by the TD Portfolio Manager on behalf of the TD Client, and shall include a list of all transactions during the relevant period, a statement of portfolio at the end of the relevant period, and for each trade conducted on behalf of the TD Client during the relevant period, the information that would otherwise have been provided to the TD Client in accordance with the Trade Confirmation Requirement save and except for the Omitted Information.

"Lawrence Ritchie"
Commissioner
Ontario Securities Commission

"Wendell S. Wigle"
Commissioner
Ontario Securities Commission