

**IN THE MATTER OF
THE CANADIAN SECURITIES LEGISLATION**

OF

**BRITISH COLUMBIA, ALBERTA, SASKATCHEWAN, ONTARIO,
NOVA SCOTIA, NEW BRUNSWICK, PRINCE EDWARD ISLAND,
NEWFOUNDLAND AND LABRADOR, YUKON, NORTHWEST TERRITORIES
AND NUNAVUT**

AND

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

AND

**IN THE MATTER OF
TD ASSET MANAGEMENT INC.**

MRRS DECISION DOCUMENT

WHEREAS the local securities regulatory authority or regulator (individually, a “Decision Maker”, and, collectively, the “Decision Makers”) in each of the provinces and territories of British Columbia, Alberta, Saskatchewan, Ontario, Nova Scotia, New Brunswick, Prince Edward Island, Newfoundland and Labrador, Yukon, Northwest Territories and Nunavut (the “Jurisdictions”) has received an application (the “Application”) from TD Asset Management Inc. (“TDAM”), for a decision that the requirement (the “Dealer Registration Requirement”) in the Legislation that prohibits a person or company from trading in a security unless the person or company is registered in the appropriate category of registration under the Legislation should not apply in respect of any trades, in shares or units of a mutual fund (a “TDAM Fund”) that is managed by TDAM, made by TDAM to a client account of TDAM that is a Managed Account (as defined below):

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 TDAM has represented to the Decision Makers that:

1. TDAM is a corporation incorporated under the *Business Corporations Act* (Ontario) and conducts an investment management business offering passive, quantitative, enhanced and active portfolio management services

to a large and diversified client base. TDAM currently has assets under management of approximately \$116 billion.

2. TDAM is a wholly-owned subsidiary of The Toronto-Dominion (the “TD Bank”), a bank listed in Schedule I to the Bank Act (Canada).
3. TDAM conducts its portfolio management operations (the “Portfolio Management Operations”) in accordance with adviser registrations under the Legislation of each Jurisdiction, except Prince Edward Island. TDAM is also currently registered as a mutual fund dealer under the Legislation of each Jurisdiction.
4. TDAM is also registered as a limited market dealer under the Legislation of each of Ontario and Newfoundland and Labrador, and as a commodity trading manager under the Legislation of Ontario.
5. TDAM is the trustee, manager, and promoter of the “TD Mutual Funds” and “TD Private Funds”, all of which are offered for sale by means of simplified prospectuses and annual information forms that have been prepared and filed in accordance with the Legislation of each Jurisdiction. The TD Mutual Funds currently consist of 97 different mutual funds which are offered for sale to retail investors by TD Investment Services Inc. (as a result of the restructuring described in paragraph 11) directly, through TD Canada Trust branches and via the Internet. The TD Private Funds currently consist of 17 different mutual funds which are used for servicing accounts which are fully managed by TDAM. The TD Private Funds allow TDAM to pool the assets of fully managed accounts in order to reduce the cost of administering such accounts so that TDAM’s individually managed account services can be offered to individuals who could not otherwise gain access to such services.
6. TDAM is also the manager, principal distributor and promoter of the “Emerald Pooled Funds”, some of which are offered for sale by means of simplified prospectuses and annual information forms that have been prepared and filed in accordance with the Legislation of all Jurisdictions. The Emerald Pooled Funds currently consist of 27 different mutual funds which are only offered for sale to institutional investors, members of corporate sponsored group plans and accounts that are fully managed by TDAM.
7. As a mutual fund dealer, TDAM is subject to the requirements under the Legislation of British Columbia, Alberta, Saskatchewan, Ontario and Nova Scotia (each, an “MFDA Jurisdiction”) that would require TDAM, in order to maintain its registration as a mutual fund dealer under the Legislation of each MFDA Jurisdiction, to apply for, and ultimately obtain, membership in either the Investment Dealers Association or the Mutual Fund Dealers’ Association of Canada (the “MFDA”).

8. Upon becoming a member of the MFDA, TDAM would be required to comply with the Rules (the “MFDA Rules”) and by-laws of the MFDA.
9. Section 2.3.1 of the MFDA Rules provides that no member shall accept or act upon a general power of attorney or other similar authorization from a client in favour of the member. Section 2.3.1 is complemented by section 2.3.4 of the MFDA Rules which provides that the form of limited trading authorization contemplated by section 2.3.2 of the MFDA Rules may not in any way confer general discretionary trading authority upon a member.
10. The effect of the MFDA Rules is to preclude mutual fund dealers such as TDAM from trading in securities of mutual funds in an MFDA Jurisdiction and at the same time acting as advisers and accepting discretionary portfolio management mandates.
11. TD Investment Services Inc. (“TDIS”), a corporation incorporated under the laws of Ontario, was incorporated by The Toronto-Dominion Bank as its subsidiary for the purpose of acquiring, and continuing to conduct TDAM’s mutual fund distribution operations (the “Distribution Operations”) in each of the Jurisdictions.
12. TDIS is a member of the MFDA and is registered as a mutual fund dealer (or the equivalent) under the Legislation of each Jurisdiction.
13. With the transfer of its Distribution Operations to TDIS, TDAM intends to continue to conduct Portfolio Management Operations under its adviser and commodity trading manager registrations. TDAM also expects to retain its registrations as a limited market dealer under the Legislation of each of Ontario and Newfoundland.
14. As part of its Portfolio Management Operations, TDAM provides discretionary portfolio management services to investment portfolio accounts (a “Managed Account”) of clients, under which TDAM, pursuant to a written agreement made between TDAM and each client, makes investment decisions for the account and has full discretionary authority to trade in securities for the account without obtaining the specific consent of the client to the trade.
15. TDAM endeavours to make its portfolio management services available to a broad range of potential customers, including persons who would not generally be considered to have sufficient assets to warrant the establishment of a managed account due to related cost and asset diversification considerations. In order to accommodate the widest possible range of clients in its private client business, TDAM has filed and obtained receipts for prospectuses offering some of the mutual funds comprising the TD Private Funds and Emerald Pooled Funds.

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

AND WHEREAS each of the Decision Makers is satisfied that the tests 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 under the Legislation of each Jurisdiction that the Dealer Registration Requirement in the Legislation shall not apply to trades in shares or units of TDAM Funds made by TDAM, through its officers and employees acting on its behalf (each, a “TDAM Representative”), to Managed Accounts,

PROVIDED THAT:

- (A) TDAM is at the time of the trade, registered under the Legislation as an adviser in the category of “portfolio manager” (or the equivalent);
- (B) if the trade is made in a Jurisdiction other than Ontario or Newfoundland, it is made by or at the direction of a TDAM Representative who is, at the time of the trade, registered under the Legislation to act on behalf of TDAM as an adviser in the category of “portfolio manager” (or the equivalent);
- (C) if the trade is made in the Jurisdiction of Ontario or Newfoundland, TDAM is, at the time of the trade, registered under the Legislation of the Jurisdiction as a dealer in the category of “limited market dealer”, and the trade is made on behalf of TDAM by a TDAM Representative who is, at the time of the trade, either (i) registered under the Legislation to act on behalf of TDAM as an adviser in the category of “portfolio manager” (or the equivalent), or (ii) acting under the direction of such a person and is himself or herself registered under the Legislation to trade on behalf of TDAM pursuant to its limited market dealer registration; and
- (D) for each Jurisdiction, this Decision shall terminate one year after the coming into force, subsequent to the date of this Decision, of a rule or other regulation under the Legislation of the Jurisdiction that relates, in whole or part, to any trading by persons or companies that are registered under the Legislation as portfolio managers (or the equivalent), in securities of a mutual fund, to an account of a client, in respect of which the person or company has full discretionary authority to trade in securities for the account, without obtaining the specific consent of the client to the trade, but does not include any rule or regulation that is specifically identified by the Decision Maker for the Jurisdiction as not applicable for these purposes.

June 12, 2002

“Paul M. Moore”

“Harold P. Hands”
