

Headnote:

Investment by TD managed mutual funds in securities of exchange-traded funds in which TD Bank has a significant interest exempted from the self-dealing prohibitions of clauses 111(2)(c)(ii) and 111(3).

Statutes Cited:

Securities Act (Ontario), R.S.O. 1990 c.S.5, as am., 111(2)(c) and 111(3).

IN THE MATTER OF
THE SECURITIES LEGISLATION OF
BRITISH COLUMBIA, ALBERTA, SASKATCHEWAN, ONTARIO,
QUEBEC, NOVA SCOTIA AND NEWFOUNDLAND AND LABRADOR

AND

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

AND

IN THE MATTER OF

TD BALANCED GROWTH FUND, TD DIVIDEND INCOME FUND, TD DIVIDEND
GROWTH FUND, TD CANADIAN EQUITY FUND, TD CANADIAN BLUE CHIP EQUITY
FUND, TD CANADIAN VALUE FUND, TD CANADIAN STOCK FUND, TD NORTH
AMERICAN EQUITY FUND, TD PRIVATE CANADIAN DIVIDEND FUND, TD PRIVATE
CANADIAN EQUITY GROWTH FUND, TD PRIVATE CANADIAN EQUITY INCOME
FUND, TD PRIVATE NORTH AMERICAN EQUITY GROWTH FUND AND TD PRIVATE
NORTH AMERICAN EQUITY INCOME FUND
(COLLECTIVELY, THE **MFUNDS**)

MRRS DECISION DOCUMENT

WHEREAS the local securities regulatory authority or regulator (the **ADecision Maker**) in each of the provinces of British Columbia, Alberta, Saskatchewan, Ontario, Quebec, Nova Scotia and Newfoundland and Labrador, (the **AJurisdictions**) has received an application (the **AApplication**) from TD Asset Management Inc. (**ATDAM**), on behalf of the Funds, for a decision pursuant to the securities legislation of the Jurisdictions (the **ALegislation**) that the provisions in the Legislation that prohibit a mutual fund from investing in or holding an investment in an issuer in which any person or company who is a substantial security holder of the management company or the distribution company of the mutual fund has a significant interest or, in Quebec, in securities a registered person or an affiliate of a registered person owns or is underwriting (the **AApplicable Requirements**) shall not apply in respect of an investment by the Funds in securities issued by TD Select Canadian Growth Index Fund and TD Select Canadian Value Index Fund (the **AETFs**);

AND WHEREAS pursuant to the Mutual Reliance Review System for Exemptive Relief Applications (the **ASystem**), the Ontario Securities Commission is the principal regulator for the Application;

AND WHEREAS it has been represented to the Decision Maker that:

1. Each of the Funds is a mutual fund which is a reporting issuer in each of the Jurisdictions and which is subject to National Instrument 81-102 (NI 81-102).
2. TDAM is the trustee of the Funds and as such is responsible for the day-to-day administration of each Fund. TDAM is also responsible for the management of the Funds' investment portfolios.
3. TD Securities Inc. (the Dealer), an affiliate of TDAM, acts as an underwriter and designated broker of the ETFs in respect of the distributions (the Offerings) of securities of the ETFs.
4. The ETFs are mutual funds that are listed and posted for trading on the Toronto Stock Exchange and the Offerings by ETFs will be a continuous distribution of securities of the ETFs in the Jurisdictions.
5. Each of the ETFs is a mutual fund which is a reporting issuer in each of the Jurisdictions and which is subject to NI 81-102.
6. The Dealer, in acting as an underwriter and designated broker, will receive no compensation from the Funds, the ETFs or TDAM.
7. The investment by a Fund in an ETF will only be made if it is consistent with the investment objectives of the Fund and, in the view of TDAM, is in the best interests of the Fund.
8. It is anticipated by TDAM that an investment by a Fund in an ETF will be made with cash balances which the Fund holds either to fund redemptions or pending direct investment in other securities.
9. Pursuant to a prior MRRS decision document dated April 24, 2001, the Funds, other than the TD North American Equity Fund, are permitted to invest up to 5% of their net asset value in securities of the TD TSE 300 Index Fund and the TD TSE 300 Capped Index Fund (the TSE ETFs).
10. It is anticipated by TDAM that a Fund will generally invest between 0.50% and 3.00% of its net asset value in an ETF, but in no event will a Fund invest a total greater than 5.00% of its net asset value at the time of the investment in securities of the ETFs and the TSE ETFs.
11. A Fund will not knowingly make or hold an investment in an ETF if, at the time of such investment the Fund, alone or together with other Funds, is a substantial security holder of the ETF.
12. The investment by a Fund in an ETF will be made in compliance with all of the requirements of NI 81-102 other than section 4.1(1) of NI 81-102, in respect of which

relief has been received, and in compliance with all the requirements of the Legislation other than the Applicable Requirements.

13. The Dealer, in its capacity as underwriter and designated broker of an ETF may own, from time to time, more than 10% of the outstanding units of the ETF.
14. The Toronto-Dominion Bank is a substantial securityholder of both the Dealer and TDAM and would be deemed to have a significant interest in an ETF at any time when the Dealer is holding more than 10% of the outstanding units of the ETF.
15. In the absence of this decision, pursuant to the Legislation the Funds are prohibited from investing in or holding the securities of an ETF at any time when the Dealer holds more than 10% or, in Quebec, any of the outstanding units of the ETF.
16. The investment by a Fund in securities of an ETF represents the business judgment of responsible persons uninfluenced by considerations other than the best interests of the Fund.

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

AND WHEREAS 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 pursuant to the Legislation is that the Applicable Requirements shall not apply so as to prevent a Fund from investing in securities issued by an ETF in respect of which the Dealer has a significant interest or, in Quebec, is an owner or an underwriter;

PROVIDED IN EACH CASE THAT:

1. the Decision will terminate one year after the date hereof; and
2. the Decision shall only apply if at the time a Fund makes an investment in an ETF:
 - (a) the investment in the ETF is consistent with the investment objective of the Fund;
 - (b) the Dealer, in acting as underwriter and designated broker of the securities of the ETF, receives no compensation from the Fund, the ETF or TDAM; and
 - (c) the investment by a Fund in the ETFs and TSE ETFs does not exceed 5.00% of the net asset value of the Fund.

DATED January 8, 2002

APaul Moore@

ARobert Korthals@
