

Headnote

Mutual Reliance Review System for Exemptive Relief Applications - relief granted to an issuer from the requirement to file an annual information form and file and deliver annual and interim management discussion and analysis, subject to certain conditions.

Rules Cited

OSC Rule 51-501- AIF and MD&A - ss. 2.1, 3.1, 4.1 and 4.3, s. 5.1

IN THE MATTER OF THE SECURITIES LEGISLATION OF SASKATCHEWAN, ONTARIO
AND QUEBEC

AND

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

IN THE MATTER OF THE TORONTO-DOMINION BANK

AND

IN THE MATTER OF TD MORTGAGE INVESTMENT CORPORATION

MRRS DECISION DOCUMENT

WHEREAS the local securities regulatory authority or regulator (the ADecision Maker@, and, collectively, the ADecision Makers@) in each of the Provinces of Saskatchewan, Ontario and Quebec (collectively, the AJurisdictions@) has received an application (the AApplication@) from TD Mortgage Investment Corporation (ATDMIC@) and The Toronto-Dominion Bank (the ABank@) for a decision, pursuant to the securities legislation of the Jurisdictions (collectively, the ALegislation@), that the requirements contained in the Legislation to prepare and file an annual information form (an AAIF@), and where applicable, annual and interim management's discussion and analysis of the financial condition and results of operation (AMD&A@) and send such MD&A to security holders of TDMIC, as applicable, shall not apply to TDMIC, subject to certain terms and conditions;

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

AND WHEREAS pursuant to the System, relief has been provided by a decision of the Alberta Securities Commission (as principal regulator) that the requirements contained in the Legislation to prepare, file and deliver, as applicable, interim and audited annual financial statements (AFinancial Statements@), an annual filing in lieu of filing an information circular (AAnnual Filing@), an annual report (AAnnual Report@) and information circular shall not apply to TDMIC, subject to certain terms and conditions;

AND WHEREAS TDMIC and the Bank have represented to the Decision Makers that:

The Toronto-Dominion Bank

1. The Bank is a Canadian chartered bank governed by the *Bank Act (Canada)* (the *ABank Act*[®]). The Bank is a reporting issuer or equivalent in the Jurisdictions and is not, to its knowledge, in default of any requirement of the Legislation.
2. The authorized share capital of the Bank consists of an unlimited number of common shares (*ABank Common Shares*[®]), of which 628,317,509 common shares were outstanding as at July 31, 2001, and an unlimited number of Non-cumulative Class A Preferred Shares, issuable in series, of which the following series were outstanding as at July 31, 2001: 7,000,000 Series G; 9,000,000 Series H; 16,065 Series I; 6,000,000 Series K; and 2,000,000 Series L.
3. The Bank Common Shares are listed and posted for trading on The Toronto Stock Exchange (the *ATSE*[®]), the New York, Tokyo and London stock exchanges.

TD Mortgage Investment Corporation

4. TDMIC is a corporation governed by the *Trust and Loan Companies Act (Canada)* (the *AAct*[®]). TDMIC is a reporting issuer or its equivalent in the Jurisdictions and is not, to its knowledge, in default of any requirement of the Legislation.
5. The outstanding securities of TDMIC consist of: (i) 87,600 common shares, all of which are held by the Bank; and (ii) 350,000 Higher Yielding Bank Related Income Derivative Securities, each consisting of one non-cumulative Preferred Share Series A of TDMIC (the *AHYBRIDS*[®]) that were distributed in a public offering pursuant to a prospectus dated November 27, 1997.
6. The HYBRIDS are listed and posted for trading on the TSE.
7. The business objective of TDMIC is to acquire and hold Canada Mortgage and Housing insured residential first mortgages acquired primarily from the Bank and/or its affiliates (the *AMortgage Assets*[®]). The HYBRIDS provide the Bank with a cost-effective means of raising capital for Canadian bank regulatory purposes.

HYBRIDS

8. Each HYBRIDS entitles the holder (a *AHYBRIDS Holder*[®]) to receive a fixed cash distribution (the *AIndicated Yield*[®]) of \$32.30 per HYBRIDS payable by TDMIC on the last day of April and October of each year (an *AIndicated Yield Payment Date*[®]).

9. Upon the occurrence of certain adverse tax events (a **ATax Event**) prior to October 31, 2007, the HYBRIDS will be exchangeable, at the option of the Bank without the consent of the holders thereof (the **ABank Tax Event Exchange Right**), for a formula determined number of Bank Common Shares.
10. On and after October 31, 2007, each HYBRIDS will be exchangeable, at the option of the HYBRIDS Holder, for a formula determined number of Bank Common Shares in accordance with the terms of a Bank Share Exchange Agreement, (the **ABank Share Exchange Agreement**) made between the Bank, TDMIC and CIBC Mellon Trust Company as trustee for the HYBRIDS Holders.
11. On and after October 31, 2007, each HYBRIDS will be exchangeable, at the option of the Bank, for a formula determined number of Bank Common Shares in accordance with the Bank Share Exchange Agreement.
12. Each HYBRIDS will be automatically exchanged without the consent of the holder, for Non-cumulative Class A Preferred Shares, Series X of the Bank (**ASeries X Shares**) if: (i) TDMIC fails to declare or pay or set aside for payment when due the Indicated Yield on any Indicated Yield Payment Date; (ii) the Bank fails to declare and pay or set aside for payment when due any dividend on any issue of its Non-cumulative Preferred Shares; (iii) the Superintendent of Financial Institutions (Canada) (the **ASuperintendent**) takes control of the Bank pursuant to the Bank Act or of TDMIC pursuant to the Act or proceedings are commenced for the winding-up of the Bank or TDMIC pursuant to the *Winding-Up and Restructuring Act (Canada)*; (iv) the Superintendent has determined that the Bank has a Tier 1 risk-based capital ratio of less than 5.0% or a total risk-based capital ratio of less than 8.0%; or (v) the Superintendent, by order, directs the Bank to act pursuant to subsection 485(3) of the Bank Act, or directs TDMIC to act pursuant to subsection 473(3) of the Act, to increase its capital or to provide additional liquidity and either the Bank or TDMIC, as the case may be, elects to cause the exchange as a consequence of the issuance of such order or either the Bank or TDMIC, as the case may be, does not comply with such order to the satisfaction of the Superintendent within the time specified therein.
13. The Series X Shares will be convertible on and after October 31, 2007, at the option of the holder, into Bank Common Shares.
14. The HYBRIDS may be redeemed by TDMIC for cash on and after October 31, 2007, subject to the approval of the Superintendent.
15. The HYBRIDS are non-voting except as required by applicable law.
16. In certain circumstances (as described in paragraph 12 above), including at a time when the Bank's financial condition is deteriorating or proceedings for the winding-up of the Bank have been commenced, the HYBRIDS will be automatically

exchanged for preferred shares of the Bank without the consent of HYBRIDS Holders and, as a result, HYBRIDS Holders will have no claim or entitlement to the assets of TDMIC, other than indirectly in their capacity as preferred shareholders of the Bank.

17. In the event that the HYBRIDS are automatically exchanged for Series X Share (as described in paragraph 12 above), the cost-effective manner by which the Bank was able to raise capital for Canadian bank regulatory purposes through the issuance of the HYBRIDS would be lost.
18. The Bank and TDMIC have entered into an Advisory Agreement pursuant to which the Bank provides advice and counsel with respect with certain matters to TDMIC and provides certain employees to serve as officers of TDMIC to administer the day-to-day operations of TDMIC.
19. The Mortgage assets of TDMIC are serviced by the Bank, TD Mortgage Corporation (ATDMC@) and TD Pacific Mortgage Corporation (ATDPMC@) pursuant to a Mortgage Sales and Servicing Agreement entered into among TDMIC, the Bank, and TDMC and TDCPMC.
20. The Bank intends that disclosure with respect to TDMIC will be provided in a note to the Bank's audited annual financial statements and that the Bank's Financial Statements (and the Bank's Annual Report, in the case of holders of HYBRIDS resident in the Province of Quebec) will be sent to holders of HYBRIDS at the same time and in the same manner as if the holders of HYBRIDS were holders of Bank Common Shares.
21. Notice will be provided to holders of HYBRIDS that as a result of the relief granted herein to TDMIC, such holders will receive the continuous disclosure filings of the Bank described in paragraph 20 above.

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 under the Legislation is that the requirement contained in the Legislation to prepare and file an AIF, and where applicable, MD&A and send such MD&A to security holders of TDMIC, as applicable, shall not apply to TDMIC for so long as:

- (i) the Bank remains a reporting issuer under the Legislation;

- (ii) the Bank sends Financial Statements, and MD&A to holders of HYBRIDS and its Annual Report to holders of HYBRIDS resident in the Province of Quebec at the same time and in the same manner as if the holders of HYBRIDS were holders of Bank Common Shares;
- (iii) all outstanding securities of TDMIC are either preferred shares or common shares;
- (iv) the rights and obligations of holders of additional preferred shares in the capital of TDMIC are the same in all material respects as the rights and obligations of the holders of HYBRIDS at the date hereof;
- (v) the Bank or its affiliates are the beneficial owners of all outstanding common shares of TDMIC;

and provided that if a material change occurs in the affairs of TDMIC, this Decision shall expire 30 days after the date of such change.

DATED this 19th day of March, 2002

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John Hughes
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