

**IN THE MATTER OF
THE SECURITIES LEGISLATION OF
BRITISH COLUMBIA, ALBERTA,
SASKATCHEWAN, MANITOBA, 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
THE TORONTO-DOMINION BANK AND
TD CAPITAL TRUST II**

MRRS DECISION DOCUMENT

WHEREAS the local securities regulatory authority or regulator (the Decision Maker, and collectively the Decision Makers) in each of the Provinces of Ontario, British Columbia, Alberta, Saskatchewan, Manitoba, Quebec, Nova Scotia and Newfoundland and Labrador (the Jurisdictions) has received an application (the Application) from The Toronto-Dominion Bank (the Bank) and TD Capital Trust II (the Trust) for a decision, pursuant to the securities legislation of the Jurisdictions (the Legislation), that the requirements contained in the Legislation to:

- (a) file interim financial statements and audited annual financial statements (collectively, Financial Statements) with the Decision Makers and deliver such statements to the security holders of the Trust;
- (b) make an annual filing (an Annual Filing) with the Decision Makers in lieu of filing an information circular, where applicable;
- (c) file an annual report (an Annual Report) and an information circular with the Decision Maker in Quebec and deliver such report or information circular to the security holders of the Trust resident in Quebec; and
- (d) file an annual information form (an AIF) and management's discussion and analysis (MD&A) of the financial condition and results of operation of the Trust with the Decision Makers in Ontario, Saskatchewan and Quebec and send such MD&A to security holders of the Trust, where applicable (collectively, the AIF and MD&A Requirements);

shall not apply to the Trust, subject to certain terms and conditions;

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, unless otherwise defined the terms herein have the meaning set out in National Instrument 14-101 Definitions or in Québec Commission Notice 14-101;

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

The Bank

1. The Bank is a bank under the *Bank Act* (Canada) and such act is its charter.
2. The authorized share capital of the Bank consists of an unlimited number of (i) common shares (Bank Common Shares); and (ii) non-cumulative Class A First Preferred Shares (Bank Preferred Shares), issuable in series.
3. The Bank is a reporting issuer or the equivalent in each of the provinces and territories of Canada providing for such a regime and is not, to its knowledge, in default of any requirement under the Legislation.
4. The Bank Common Shares are listed and posted for trading on the Toronto Stock Exchange, the New York Stock Exchange, the Tokyo Stock Exchange and the London Stock Exchange.

The Trust

5. The Trust is an open-end trust established under the laws of the Province of Ontario by The Canada Trust Company (the Trustee), as trustee, pursuant to a declaration of trust dated September 10, 2002 (as amended and restated as of October 22, 2002, the Declaration of Trust).
6. The outstanding securities of the Trust consist of: (i) Special Trust Securities – Series 2002-1 (Special Trust Securities); and (ii) TD Capital Trust II Securities - Series 2012-1 (TD CaTS II). The Special Trust Securities and the TD CaTS II are collectively referred to herein as the Trust Securities. The TD CaTS II and the Special Trust Securities are not quoted or listed on any exchange or organized market.
7. The Trust is a reporting issuer or the equivalent in each of the Jurisdictions providing for such a regime as a result of having filed a (final) prospectus dated October 15, 2002 (the Prospectus) and the issuance of a final MRRS Decision Document in relation to the Prospectus and is not, to its knowledge, in default of any requirement of the Legislation.
8. The Trust was established solely for the purpose of effecting a public offering of TD CaTS II (the Offering) and possible future offerings of TD Capital Trust II Securities in order to provide the Bank with a cost effective means of raising capital for Canadian financial institution regulatory purposes by means of: (i) creating and selling the Trust Securities; and (ii) acquiring and holding assets, which consist primarily of a senior deposit note issued by the Bank (the Bank Deposit Note). The Bank Deposit Note will

generate income for distribution to holders of the Trust Securities. The Trust does not and will not carry on any operating activity other than in connection with the Offering and any future offerings.

TD CaTS II

9. The Trust distributed 350,000 TD CaTS II in the Jurisdictions under the Prospectus. The Trust also issued and sold 2,000 Special Trust Securities, which are voting securities of the Trust, to the Bank in connection with the Offering.
10. Holders of TD CaTS II are entitled to receive fixed, semi-annual non-cumulative distributions (each, an Indicated Yield) on the basis described below (the Distributions). Each semi-annual payment date for the Indicated Yield in respect of the TD CaTS II (a Distribution Date) will be either a Regular Distribution Date or a Distribution Diversion Date. A Distribution Date will be a “Distribution Diversion Date”, with the result that the Indicated Yield will not be paid in respect of the TD CaTS II but, instead, the Trust will pay the net distributable funds of the Trust to the Bank as holder of the Special Trust Securities, if: (i) the Bank has failed in the period described in the Prospectus to declare regular dividends on its Bank Class A Preferred Shares (as hereinafter defined) of any series or on its Bank Parity Preferred Shares (as hereinafter defined) (if any); or (ii) if no Bank Class A Preferred Shares or Bank Parity Preferred Shares are then outstanding and the Bank has failed in the period described in the Prospectus to declare regular dividends on its Bank Junior Preferred Shares (as hereinafter defined); or (iii) if no Bank Junior Preferred Shares are then outstanding and the Bank has failed in the period described in the Prospectus to declare regular dividends on its Bank Common Shares. In all other cases, a Distribution Date will be a Regular Distribution Date, in which case holders of TD CaTS II will be entitled to receive the Indicated Yield and the Bank as holder of the Special Trust Securities will be entitled to receive the net distributable income, if any, of the Trust remaining after payment of the Indicated Yield. “Bank Class A Preferred Shares” means the Bank Preferred Shares (including the Class A First Preferred Shares, Series A2 (the Bank Preferred Shares Series A2) and the Class A First Preferred Shares, Series A3 (the Bank Preferred Shares Series A3)). “Bank Parity Preferred Shares” means preferred or preference shares issued by the Bank ranking *pari passu* with the Bank Class A Preferred Shares. “Bank Junior Preferred Shares” means preferred or preference shares issued by the Bank ranking junior to the Bank Class A Preferred Shares. The Bank Class A Preferred Shares, Bank Common Shares, Bank Parity Preferred Shares and Bank Junior Preferred Shares are hereinafter referred to as the “Bank Dividend Restricted Shares”.
11. Under a Share Exchange Agreement entered into among the Bank, the Trust and a party acting as Exchange Trustee (the Share Exchange Agreement), the Bank has agreed, for the benefit of the holders of TD CaTS II, that in the event that the Trust fails on any Regular Distribution Date to pay the Indicated Yield on the TD CaTS II in full, the Bank will not pay dividends on the Bank Dividend Restricted Shares until a specified period of time has elapsed, unless the Trust first pays such Indicated Yield (or the unpaid portion thereof) to holders of TD CaTS II. Accordingly, it is in the interest of the Bank to ensure, to the extent within its control, that the Trust complies with its obligation to pay the Indicated Yield on each Regular Distribution Date.

12. Under the terms of the TD CaTS II and the Share Exchange Agreement, the TD CaTS II may be exchanged, at the option of the holders of TD CaTS II, for newly issued Bank Preferred Shares Series A2. The TD CaTS II will be automatically exchanged, without the consent of the holder, for Bank Preferred Shares Series A3 upon the occurrence of certain stated events relating to the solvency of the Bank or actions taken by the Superintendent of Financial Institutions (the Superintendent and regulatory approval means the approval of the Superintendent) in respect of the Bank (the Automatic Exchange).
13. The terms of the Bank Preferred Shares Series A2 provide, among other things, that such shares are exchangeable at the option of the holder for Bank Common Shares at certain times and in certain circumstances, but in any event the Bank Preferred Shares Series A2 are not exchangeable into Bank Common Shares until June 30, 2013. This exchange right is not operative at any time that an event giving rise to the Automatic Exchange in respect of the TD CaTS II has occurred and is continuing.
14. The Trust may, subject to regulatory approval, on December 31, 2007 and on any Distribution Date thereafter, redeem the TD CaTS II. The price payable in respect of any such redemption will include an early redemption compensation component (such price being the Early Redemption Price) in the event of a redemption of TD CaTS II prior to December 31, 2012 (the Early Redemption Date). The price payable in all other cases will be \$1,000 per TD CaTS II together with any unpaid Indicated Yield thereon (the Redemption Price).
15. Upon the occurrence of certain regulatory or tax events affecting the Bank or the Trust, the Trust may, subject to regulatory approval, redeem at any time all but not less than all of the TD CaTS II at the Early Redemption Price (if the TD CaTS II are redeemed prior to the Early Redemption Date) and at the Redemption Price (if the TD CaTS II are redeemed on or after the Early Redemption Date).
16. The Bank has covenanted, under the Share Exchange Agreement, that the Bank will maintain direct ownership of 100% of the outstanding Special Trust Securities. As a result, the financial results of the Trust will be consolidated with those of the Bank. Subject to regulatory approval, the TD CaTS II constitute Tier 1 Capital of the Bank.
17. As long as any TD CaTS II are outstanding and are held by any person other than the Bank, the Trust may only be terminated with the approval of the Bank as holder of the Special Trust Securities and with the approval of the Superintendent: (i) upon the occurrence of a Special Event prior to December 31, 2007; or (ii) for any reason on December 31, 2007 or any Distribution Date thereafter. Holders of each series of outstanding Trust Securities will rank *pari passu* in the distribution of the property of the Trust in the event of a termination of the Trust, after the discharge of any creditor claims. As long as any TD CaTS II are outstanding, the Bank will not approve the termination of the Trust unless the Trust has sufficient funds to pay the Early Redemption Price in the case of a termination prior to the Early Redemption Date, or the Redemption Price in the case of a termination at any other time.

18. As set forth in the Declaration of Trust, the TD CaTS II are non-voting except in limited circumstances and Special Trust Securities entitle the holders to vote.
19. Except to the extent that the Distributions are payable to TD CaTS II holders, and other than in the event of termination of the Trust (as set forth in the Declaration of Trust), TD CaTS II holders have no claim or entitlement to the income of the Trust or the assets held by the Trust.
20. Under an Administration Agreement entered into between the Trustee and the Bank, the Trustee has delegated to the Bank certain of its obligations in relation to the administration of the Trust. The Bank, as administrative agent, will provide advice and counsel with respect to the administration of the day-to-day operations of the Trust and other matters as may be requested by the Trustee from time to time.
21. The Trust has not requested relief for the purposes of filing a short form prospectus pursuant to National Instrument 44-101 *Short Form Prospectus Distributions* (NI 44-101) (including, without limitation, any relief that would allow the Trust to use the Bank's AIF as a current AIF of the Trust) and no such relief is provided by this Decision Document from any of the requirements of NI 44-101.
22. The Trust may, from time to time, issue further series of TD Capital Trust II Securities, the proceeds of which would be used to acquire additional deposit notes from the Bank.
23. Because of the terms of the TD CaTS II, the Share Exchange Agreement and the various covenants of the Bank, information about the affairs and financial performance of the Bank, as opposed to that of the Trust, is meaningful to holders of TD CaTS II. The Bank's filings and the delivery of the same material delivered to shareholders of the Bank will provide holders of TD CaTS II and the general investing public with all information required in order to make an informed decision relating to an investment in TD CaTS II. Information regarding the Bank is relevant both to an investor's expectation of being paid the Indicated Yield on the TD CaTS II as well as the return of the investor's principal.

AND WHEREAS under the System this MRRS Decision Document evidences the decision of the Decision Makers (collectively, the Decision);

AND WHEREAS the Decision Makers are satisfied that the tests contained in the Legislation that provides the Decision Maker with the jurisdiction to make the Decision have been met;

THE DECISION of the Decision Makers under the Legislation is that the requirement contained in the Legislation:

- (a) to file Financial Statements with the Decision Makers and deliver such statements to holders of Trust Securities;
- (b) to make an Annual Filing, where applicable, with the Decision Makers in lieu of filing an information circular; and

- (c) to file an Annual Report and an information circular with the Decision Maker in Quebec and deliver such report or information circular to holders of Trust Securities resident in Quebec;

shall not apply to the Trust for so long as:

- (i) the Bank remains a reporting issuer under the Legislation;
- (ii) the Bank files with the Decision Makers, in electronic format under the Trust's SEDAR profile, the documents listed in clauses (a) to (c) above of this Decision, at the same time as they are required under the Legislation to be filed by the Bank;
- (iii) the Trust pays all filing fees that would otherwise be payable by the Trust in connection with the filing of the documents referred to in clauses (a) to (c) above of this Decision;
- (iv) the Bank sends its Financial Statements and Annual Filing, where applicable, to holders of Trust Securities and its Annual Report to holders of Trust Securities resident in the Province of Quebec at the same time and in the same manner as if the holders of Trust Securities were holders of the Bank Common Shares;
- (v) all outstanding securities of the Trust are either TD Capital Trust II Securities or Special Trust Securities; and
- (vi) the rights and obligations (other than the economic terms thereof) of holders of additional series of TD Capital Trust II Securities are the same in all material respects as the rights and obligations of the holders of TD CaTs II - Series 2012-1 at the date hereof; and
- (vii) the Bank is the beneficial owner of all Special Trust Securities.

and provided that this Decision shall expire 30 days after the date a material adverse change occurs in the affairs of the Trust.

DATED this 19th day of December, 2002.

“Mary Theresa McLeod”

“Robert L. Shirriff”

AND THE FURTHER DECISION of the Decision Makers in Ontario, Saskatchewan and Quebec is that the AIF and MD&A Requirements shall not apply to the Trust for so long as:

- (i) the conditions set out in clauses (i), (v), (vi) and (vii) of the Decision above are complied with;

- (ii) the Bank files its AIF and its annual and interim MD&A with the Decision Makers, as applicable, in electronic format under the Trust's SEDAR profile at the same time as they are required under the Legislation to be filed by the Bank;
- (iii) the Trust pays all filing fees that would otherwise be payable by the Trust in connection with the filing of the documents referred to in clauses (a) to (c) above of this Decision;
- (iv) the Bank sends its annual and interim MD&A and its AIF, as applicable, to holders of Trust Securities at the same time and in the same manner as if the holders of Trust Securities were holders of Bank Common Shares;

and provided that this Decision shall expire 30 days after the date a material adverse change occurs in the affairs of the Trust.

DATED this 19th day of December, 2002.

“John Hughes”

Manager
Continuous Disclosure, Corporate Finance