

IN THE MATTER OF THE SECURITIES LEGISLATION OF BRITISH COLUMBIA,  
ALBERTA, SASKATCHEWAN, MANITOBA, ONTARIO, QUÉBEC, NOVA SCOTIA,  
NEWFOUNDLAND AND LABRADOR, PRINCE EDWARD ISLAND, YUKON  
TERRITORY, NORTHWEST TERRITORIES AND NUNAVUT

AND

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

AND

IN THE MATTER OF TD WATERHOUSE CANADA INC.

MRRS DECISION DOCUMENT

1 WHEREAS the local securities regulatory authority or regulator (the "Decision Maker") in British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Québec, Nova Scotia, Newfoundland and Labrador, Prince Edward Island, Yukon Territory, Northwest Territories and Nunavut (the "Jurisdictions") has received an application from TD Waterhouse Canada Inc. ("TDW") for a decision under the securities legislation of the Jurisdictions (the "Legislation"), that:

(a) except in Prince Edward Island, the requirement contained in the Legislation that a registered dealer send to clients a written confirmation of the trade setting out certain information specified in the Legislation (the "Confirmation Requirement"), does not apply to TDW for transactions conducted under current and future wrap account programs created by TDW, including the TD Advantage Third Party Managers Program (collectively, the "Programs"); and

(b) except in Ontario, the requirement contained in the Legislation to be registered as an adviser (the "Registration Requirement") does not apply to certain portfolio managers (the "Advisers") who provide portfolio management services for the benefit of TDW's clients (the "clients") participating in the Program.

2 AND WHEREAS under the Mutual Reliance Review System for Exemptive Relief Applications (the "System"), the British Columbia Securities Commission is the principal regulator for this application;

3 AND WHEREAS, unless otherwise defined, the terms herein have the meaning set out in National Instrument 14-101;

4 AND WHEREAS TDW has represented to the Decision Makers that:

1. it is an investment dealer registered under the Legislation, and is a member of the Investment Dealers Association of Canada;

2. it offers its clients a discretionary asset management service through which clients may invest in a portfolio of securities based on the investment advice of and management by Advisers through arrangements its affiliate, TD Asset Management Inc. ("TDAM") has made with those Advisers;

3. a client must:

(a) open an account (an "Account");

(b) enter into a written client agreement with TDW (a "Client Agreement"); and

(c) provide TDW with information regarding the client's investment objective and other information necessary to enable TDW to prepare, along with the client, a written investment policy statement;

4. it will assist the client in selecting one or more Advisers to manage or provide advice with respect to all or a portion of the assets in the Account according to:

(a) the client's investment policy statement; and

(b) the expertise and investment style of the Adviser;

5. under the Client Agreement:

(a) TDAM is appointed by each client to act as portfolio manager with discretionary authority for the Account, including the right to delegate to an Adviser management and/or the power to provide investment advice over all or a portion of the assets in the Account;

(b) unless otherwise requested by the client, the client will waive receipt of trade confirmations as required under applicable Legislation; and

(c) the client will agree to pay a fee to TDW based on the market value of the Account at the end of each applicable period, which fees will include all custodial, transaction and brokerage fees and commissions and professional or other fees of the Advisers; and

6. it will provide the client with a statement of account with information required under the applicable Legislation including a list of all transactions during the period and a statement of portfolio at the end of such period;

7. it will provide trade confirmations as required under the applicable Legislation to the Adviser;

8. with respect to any Adviser which is not appropriately registered as a portfolio manager in the Applicable Jurisdiction to provide the services contemplated under the Programs to a client,

TDW and TDAM will agree to be responsible for any loss that arises out of the failure of an Adviser:

(a) to exercise the powers and discharge the duties of its office honestly, in good faith and in the best interests of TDW, TDAM and the client for whose benefit the investment advice or portfolio management services are to be provided, or

(b) to exercise the degree of care, diligence and skill that a reasonably prudent person would exercise in the circumstances,

(c) and acknowledges that it cannot be relieved by its clients from this responsibility (collectively, the "Assumed Obligations");

9. TDAM will enter into a written portfolio advisory agreement or similar agreement (the "Advisory Agreement") with each Adviser, setting out the terms and conditions governing the relationship between TDAM, the Adviser and the clients and the rights, obligations and duties of the parties;

10. under the Advisory Agreement:

(a) the Adviser will assist TDAM by providing advice or managing the client's assets that are designated to that Adviser, based on the client's investor profile and investment policy statement;

(b) the Adviser will communicate appropriate trading instructions to TDAM or to another party with the consent of TDAM and otherwise participate or assist TDW in providing periodic performance reports or other related information to the clients;

11. a client must obtain all advice and information and give all instructions and directions through TDW;

12. if there is any direct contact between the client and the Adviser, a registered representative of TDW will at all times be present, either in person or by telephone;

13. each Adviser will be licensed, qualified or registered as a portfolio manager or investment counsel in either the United States, the United Kingdom, one of the Jurisdictions or elsewhere to provide discretionary investment counselling and portfolio management services; and

14. Advisers who are not otherwise registered in Ontario will not be required to register as advisers under the *Securities Act* (Ontario) as they can rely on exemptions from registration in Ontario Rule 35-502 *Non-Resident Advisers*.

5 AND WHEREAS under the System, this MRRS Decision Document evidences the decision of each Decision Maker (collectively, the "Decision");

6 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;

7 THE DECISION of the Decision Makers under the Legislation is that:

(a) the Confirmation Requirement shall not apply to TDW in respect of a client's Account in which TDW acts as principal or agent in connection with the associated trade.

(b) except in Ontario, the Registration Requirement does not apply to the Advisers who provide investment counseling and portfolio management services for the benefit of clients in connection with the Programs, provided that:

(i) the obligations and duties of each of the Advisers is set out in an Advisory Agreement;

(ii) each of TDW and TDAM contractually agrees with each client that it will be responsible for the Assumed Obligations;

(iii) TDW and TDAM are not relieved of the Assumed Obligations by clients;

(iv) TDW is registered under the Legislation as an investment dealer in the Jurisdictions in which clients are resident and TDAM is registered under the Legislation as a portfolio manager in the jurisdictions in which clients are residents; and

(v) in Manitoba, the relief is available only to Advisers who are not registered in any Canadian jurisdiction.

8 May 21, 2004

Brenda Leong  
Director  
Headnote

Mutual Reliance Review System for Exemptive Relief Applications - Securities Act s. 48  
Adviser - Exemption from s. 34(1)(c) requirement to be registered as an adviser and the obligations of advisers in Part 5 of the Act and Rules - A person who resides outside BC wants to advise BC residents - The person is hired under a written agreement with a BC registered dealer or adviser to provide advice to the BC registrant and its BC clients; the person is registered or qualified to provide the advice in the jurisdiction in which they reside; under a written agreement with its BC clients or the person, the BC registrant accepts responsibility for all losses resulting from inappropriate advice provided by the person.

Relief also granted from the trade confirmation requirement - the client's account is fully managed by the dealer - the account fees paid by the client are based on the amount of assets, and not on the trading activity in the account - trades in the account are only made on the client's adviser's instructions - the client has agreed in writing that confirmation statements would not be

delivered to them - confirmations are provided to the client's adviser - the client will be provided with statements that include the confirmation information as required under the legislation.

**Applicable British Columbia Provisions**

*Securities Act*, R.S.B.C. 196, c. 418, s. 48