

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

AND

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

AND

IN THE MATTER OF
THE TORONTO-DOMINION BANK

AND

IN THE MATTER OF
TD CAPITAL TRUST

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 British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Quebec, Nova Scotia and Newfoundland (the "Jurisdictions") has received an application (the "Application") from The Toronto-Dominion Bank (the "Bank") and TD Capital Trust (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 ("Annual Filing") with the Decision Makers in lieu of filing an information circular, where applicable;
- (c) file an annual report ("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) prepare and file an annual information form ("AIF"), including management's discussion and analysis ("MD&A") of the financial condition and results of operation of the Trust and send such MD&A to security holders of the Trust;

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

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

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

The Toronto-Dominion Bank

1. The Bank is a Schedule 1 Canadian chartered bank incorporated under the *Bank Act* (Canada) (the "Bank Act"), is a reporting issuer or equivalent under the Legislation and is not in default of any requirement of the Legislation.
2. The authorized capital of the Bank consists of an unlimited number of common shares ("Bank Common Shares") and an unlimited number of Non-cumulative Class A First Preferred Shares, issuable in series (the "Bank Preferred Shares"). As at January 31, 2001, 627,693,764 Bank Common Shares were outstanding, and the following series of Bank Preferred Shares were outstanding: 7,000,000 Series G; 9,000,000 Series H; 16,065 Series I; 16,383,935 Series J; 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 "TSE"), and the New York, London and Tokyo Stock Exchanges and on the Canadian Venture Exchange. The Bank Preferred Shares are listed and posted for trading on the TSE.

TD Capital Trust

4. The Trust is a closed-ended trust established under the laws of the Province of Ontario by TD Trust Company (now The Canada Trust Company) ("Trustee"), as trustee, pursuant to a declaration of trust made as of February 14, 2000, as amended and restated (the "Declaration of Trust"). The Trustee is an indirect, wholly-owned subsidiary of the Bank.
5. The beneficial interests of the Trust are divided into two classes of units, issuable in series, designated as Capital Trust Securities ("TD CaTS") and Special Trust Securities ("Special Trust Securities" and, collectively with TD CaTS, "Trust Securities").
6. The Trust was established solely for the purpose of effecting the Offering (as defined below) and possible future offerings of securities in order to provide the Bank with a cost effective means of raising capital for Canadian bank regulatory purposes. The Trust does not and will not carry on any operating activity other than in connection with the Offering and any future offerings.
7. The Trust is a reporting issuer, or the equivalent, in each of the Jurisdictions and is not in default of any requirement of the Legislation;

TD CaTS

8. The Trust distributed 900,000 Capital Trust Securities - Series 2009 ("TD CaTS - Series 2009") in the Jurisdictions under a long form prospectus (the "Prospectus") dated March 14, 2000 (the "Offering"). The Prospectus also qualified certain other related securities for distribution in the Jurisdictions, including the Holder Exchange Right and the Automatic Exchange Right (both as defined below).

9. The TD CaTS - Series 2009 are listed and posted for trading on the TSE.

10. The Trust also issued and sold an aggregate of 900,000 Special Trust Securities to the Bank in connection with the Offering.

11. The business objective of the Trust is to acquire and hold assets ("Trust Assets") primarily from the Bank or its affiliates which may consist of: (a) undivided co-ownership interests in one or more pools of Canada Mortgage and Housing Corporation ("CMHC") insured first mortgages on residential property situated in Canada; (b) certain mortgage-backed securities; (c) CMHC - insured first mortgages on residential property; and (d) to the extent that the proceeds of the assets of the Trust are not invested in the assets referred to above in (a), (b) or (c), money and certain debt obligations that are qualified investments under the *Income Tax Act* (Canada) for trusts governed by certain deferred income plans.

12. Subject to paragraph 13, each TD CaTS - Series 2009 entitles the holder ("TD CaTS Holders") to receive a fixed cash distribution (a "Distribution") payable by the Trust on the last day of June and December of each year (each such day, a "Distribution Date" and each period from the Distribution Date to and including the next Distribution Date (a "Distribution Period").

13. TD CaTS Holders are not entitled to receive Distributions in respect of a particular Distribution Date if the Bank has not declared regular cash dividends on its preferred shares or, if no such shares are then outstanding, on the Bank Common Shares (in accordance with the Bank's ordinary dividend practice in effect from time to time) in the most recent month in which the Bank ordinarily declares dividends from time to time in respect of such shares occurring prior to the commencement of the Distribution Period ending on such Distribution Date.

14. The Bank has covenanted, pursuant to the Bank Share Exchange Agreement (as defined below) that, if on the Distribution Date the Trust fails to pay in full Distributions on the TD CaTS to which the TD CaTS Holders are entitled, the Bank will not declare dividends of any kind on its preferred shares and the Bank Common Shares until a specific period of time has elapsed from the Distribution Date.

15. Upon the occurrence of certain adverse tax events or events relating to the treatment of TD CaTS for capital purposes prior to June 30, 2005, TD CaTS Series - 2009 will be redeemable, at the option of the Trust and with the approval of the Superintendent of Financial Institutions (Canada) (the "Superintendent"), in whole (but not in part) for a cash amount.

16. On June 30, 2005 and on any subsequent Distribution Date, the TD CaTS - Series 2009 will be redeemable in whole (but not in part) for a cash amount, at the option of the Trust and subject to the approval of the Superintendent.

17. On June 30, 2010, and on any subsequent Distribution Date, each TD CaTS - Series 2009 will be exchangeable (the "Holder Exchange Right"), at the option of the holder ("TD CaTS - Series 2009 Holders"), for one non-cumulative redeemable Class A First Preferred Share, Series A1 of the Bank (a "Bank Preferred Share Series A1"), in accordance with the terms set forth in a Bank Share Exchange Trust Agreement made as of March 21, 2000, (the "Bank Share Exchange Agreement") between the Bank, the Trust and CIBC Mellon Trust Company, as trustee for the TD CaTS - Series 2009 Holders.

18. Each TD CaTS will be automatically exchanged (the "Automatic Exchange Right") without the consent of the holder, for one Bank Preferred Share Series A1 if: (i) an application for a winding-up order in respect of the Bank pursuant to the *Winding-up and Restructuring Act* (Canada) is filed by the Attorney General of Canada or a winding-up order in respect of the Bank pursuant to that Act is granted by a court; (ii) the Superintendent has taken control of the Bank or its assets pursuant to the Bank Act; (iii) the Superintendent advises the Bank in writing that the Superintendent is of the opinion that the Bank has a risk-based Tier 1 Capital ratio of less than 5.0% or a risk-based Total Capital ratio of less than 8.0%; or (iv) the Superintendent directs the Bank pursuant to the Bank Act to increase its capital or to provide additional liquidity and the Bank elects to cause the exchange as a consequence of the issuance of such direction or the Bank does not comply with such direction to the satisfaction of the Superintendent within the time specified in such direction.

19. The Bank Preferred Shares Series A1 will be convertible after specified dates, at the option of the Bank and subject to regulatory approvals, into Bank Common Shares.

20. Beginning on June 30, 2010, and on each subsequent Distribution Date, the Bank Preferred Shares Series A1 will be convertible, at the option of the holder, into Bank Common Shares, except under certain circumstances.

21. As set forth in the Declaration of Trust, TD CaTS are non-voting except in certain limited circumstances and Special Trust Securities entitle the holders to vote.

22. Except to the extent that Distributions are payable to TD CaTS Holders and, other than in the event of termination of the Trust (as set forth in the Declaration of Trust), TD CaTS Holders have no claim or entitlement to the income of the Trust or the Trust Assets.

23. In certain circumstances (as described in paragraph 18 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 TD CaTS Series 2009 will be automatically exchanged for Bank Preferred Shares Series A1 without the consent of TD CaTS Holders. As a result, TD CaTS Holders will have no claim or entitlement to the Trust Assets, other than indirectly in their capacity as preferred shareholders of the Bank.

24. TD CaTS Holders may not take any action to terminate the Trust.

25. 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 which 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.

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

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:

- (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;
- (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;
- (d) to prepare and file an AIF, including MD&A, with the Decision Makers and send such MD&A to holders of Trust Securities;

shall not apply to the Trust for so long as:

- (i) the Bank remains a reporting issuer under the Legislation;
- (ii) the Bank sends its annual financial statements, interim financial statements, annual management discussion and analysis and interim management discussion and analysis 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 Bank Common Shares;
- (iii) all outstanding securities of the Trust are either TD CaTS or Special Trust Securities;
- (iv) the rights and obligations of holders of additional series of TD CaTS are the same in all material respects as the rights and obligations of the holders of TD CaTS - Series 2009 at the date hereof; and

(v) the Bank is the beneficial owner of all Special Trust Securities;

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

DATED this 16th day of May, 2001.

"John Hughes"
John Hughes - Manager

Headnote

Exemptions from certain continuous disclosure requirements granted to a trust on specified conditions where because of the terms of the trust a security holder's return depends upon the financial condition of the sponsoring bank and not that of the trust. Trust offered trust units to the public in order to provide the bank with a cost effective means of raising capital for Canadian bank regulatory purposes; trust holds a portfolio of assets consisting primarily of mortgages and interests in mortgages; unitholders are entitled to fixed semi-annual non-cumulative distributions but no distributions are payable if the bank fails to pay dividends on its preferred shares and if distributions are not paid the bank is prevented from paying dividends on its preferred shares; trust units are not redeemable but are exchangeable at the option of the holder after a fixed term for a series of preferred shares of the bank and trust units are non-voting;

Specifically, exemptions granted from the requirements to:

- (a) file interim financial statements and audited annual financial statements and send such statements to unitholders;
- (b) make an annual filing in lieu of filing an information circular;
- (c) file an annual report and an information circular with the Decision Maker in Quebec and deliver such report or information circular to unitholders; and
- (d) prepare and file an annual information form ("AIF"), including management's discussion and analysis ("MD&A") of the financial condition and results of operation of the trust and send such MD&A to unitholders for so long as
 - (i) the bank remains a reporting issuer;
 - (ii) the bank sends its annual financial statements, interim financial statements, annual management discussion and analysis and interim management discussion and analysis to unitholders and its annual report to unitholders resident in the Province of Quebec at the same time and in the same manner as if the unitholders were holders of common shares of the bank;

(iii) all outstanding securities of the trust are of the type presently issued;

(iv) the rights and obligations of holders of additional securities are the same in all material respects as the rights and obligations of the holders of securities outstanding at the date of the relief is granted; and

(v) the bank and its affiliates are the beneficial owner of all voting securities of the trust provided that the relief expires 30 days after the occurrence of a material change in the affairs of the trust.

Applicable Ontario Statutory Provisions

Securities Act, R.S.O. 1990, c.S.5, as am., ss 77, 78,79, 80(b)(iii),81,

Applicable Ontario Rules Cited

OSC Rule 51-501- *AIF and MD&A*

OSC Rule 52-501- *Financial Statements*