

IN THE MATTER OF
THE SECURITIES LEGISLATION OF
ONTARIO, ALBERTA, BRITISH COLUMBIA, MANITOBA,
NEW BRUNSWICK, NEWFOUNDLAND, NOVA SCOTIA,
PRINCE EDWARD ISLAND, QUEBEC AND
SASKATCHEWAN

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 SECURITIES FUNDS CO-INVESTMENT (CANADA) L.P.
AND TD SECURITIES CO-INVESTMENT (CANADA) L.P.

MRRS DECISION DOCUMENT

WHEREAS the local securities regulatory authority or regulator (the "Decision Maker") in each of Ontario, Alberta, British Columbia, Manitoba, New Brunswick, Newfoundland, Nova Scotia, Prince Edward Island, Quebec and Saskatchewan (the "Jurisdictions") has received an application from The Toronto-Dominion Bank ("TD Bank") for a decision under the securities legislation of the Jurisdictions (the "Legislation") that the requirements contained in the Legislation to be registered to trade in a security (the "Registration Requirement") and to file a preliminary prospectus and a prospectus (the "Prospectus Requirement") shall not apply to the proposed offerings (the "Offerings") of limited partnership interests (the "Interests") by TD Securities Funds Co-Investment (Canada) L.P. ("Fund A") and TD Securities Co-Investment (Canada) L.P. ("Fund B", and together with Fund A, the "Funds") to eligible employees of TD Bank and its affiliates;

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 TD Bank has represented to the Decision Makers that:

1. TD Bank is a Canadian chartered bank under Schedule I of the *Bank Act* (Canada).
2. TD Securities Co-Investment Management (Canada) Ltd., the general partner of the Funds (the "General Partner"), is a wholly-owned subsidiary of TD Bank incorporated under the *Business Corporations Act* (Ontario).

3. Each Fund will be established as a limited partnership under the *Limited Partnerships Act* (Ontario) pursuant to its own limited partnership agreement (collectively, the "Partnership Agreements", and individually, a "Partnership Agreement"). Neither Fund will be nor currently intends to become a reporting issuer in any province under the Legislation. The principal place of business of the Funds and the registered office of the General Partner will be in Toronto, Ontario.

4. The Funds will be "in-house" investment vehicles for employees of TD Bank and its affiliates invited by management of TD Bank to participate in the Funds based on a combination of performance- and seniority-based criteria. The majority of the Eligible Employees (as defined below) reside in the Province of Ontario, with no more than approximately 10% resident in any other single province. Certain Eligible Employees may be invited to participate in both Funds.

5. Fund A will invest, directly or indirectly, in private equity funds in which TD Bank and its affiliates invest. It is anticipated that the principal or sole investment of Fund A (other than short-term investments) will be in the TD Capital Private Equity Investors Fund (the "TD Capital Fund"), a private investment fund established by TD Capital Group Limited, the private equity arm of TD Bank. Fund A may also invest directly in investments in which the TD Capital Fund invests. The TD Capital Fund will be a "fund of funds" investing in private equity funds. Fund B generally will invest, directly or indirectly, in certain types of merchant banking and venture capital investments made by TD Bank and its affiliates on a global basis.

6. Each Fund will be authorized to issue Interests, which will be non-redeemable and subject to restrictions on transfer contained in the respective Partnership Agreement. Interests will not be transferable except with the express consent of the General Partner and then only to or amongst permitted transferees (each, a "Permitted Transferee") who will be:

(i) Eligible Employees who (A) have invested in a Fund, (B) were not eligible to participate in either Fund at the time of the Offerings, (C) were eligible to participate at the time of the Offerings but chose not to do so at that time, or (D) were not employees of TD Bank or its affiliates at the time of the Offerings,

(ii) TD Bank or an affiliate of TD Bank,

(iii) the spouse, parent, sibling, child, child's spouse, niece, nephew or grandchild of an Eligible Employee (the "Family Members"); or

(iv) a trust, partnership, limited liability company or other entity formed for investment by or for the benefit of one or more Family Members and/or such Eligible Employee.

6. Participation in each Fund is entirely voluntary and a decision by an Eligible Employee whether or not to invest in a Fund will in no way affect the employment relationship between the Eligible Employee and TD Bank and its affiliates.

7. An Eligible Employee who is invited and agrees to participate in a Fund may be subject to certain maximum participation amounts, subject to the discretion of management of TD Bank.

Maximum participation amounts may be set according to a particular Eligible Employee's seniority within TD Bank, determined in accordance with various tranches of maximum participation amounts that correspond to levels of seniority (each, a "Participation Tranche"). Amounts greater than the prescribed maximum amount would need to be approved by management of TD Bank and might be adjusted to appropriate levels. All Eligible Employees may be subject to the same minimum participation amount, subject to the discretion of management of TD Bank.

8. Each Fund may provide Eligible Employees with the option to finance a portion of their investment amount in such Fund by borrowing from TD Bank or its affiliates. Based upon an Eligible Employee's Participation Tranche, he or she may obtain a loan in an amount equal to a multiple of his or her equity commitment to the Fund. Participation Tranches with higher participation amounts may receive a higher leverage to equity ratio.

9. Participants in Fund A will be (i) employees and officers of TD Bank assigned to TD Securities (a division of TD Bank) who have attained the position of Vice-President or better; (ii) employees and officers of TD Bank who have attained the position of Vice-President or better; and (iii) select investment advisors, portfolio managers and discretionary money managers who are registered in the appropriate category of registration under the Legislation, each of whom is an employee of TD Bank or one of its affiliates (collectively, "Fund A Eligible Employees").

10. Participants in Fund B will be (i) employees and officers of TD Bank assigned to TD Securities (a division of TD Bank) who have attained the position of Vice-President or better; and (ii) employees and officers of TD Bank who have attained the position of Vice-President or better (collectively, "Fund B Eligible Employees", and the Fund A Eligible Employees and the Fund B Eligible Employees being the "Eligible Employees").

11. The Interests of each Fund will be offered under a confidential offering memorandum which will provide Eligible Employees with statutory and/or contractual rights of rescission or rights to damages (or both).

12. A to-be-determined percentage of an Eligible Employee's equity commitment to a Fund will be drawn down at the closing date for such Fund. Substantially all of an Eligible Employee's equity commitment to a Fund will subsequently be drawn down over a period ranging from one to several years. Each Fund will be subject to a management fee and a carried interest.

13. In the event of an Eligible Employee's termination of employment with TD Bank, and as may be otherwise permitted by the General Partner, a Permitted Transferee may purchase or otherwise assume the Interests of the departing Eligible Employee in accordance with the applicable provisions of the particular Partnership Agreement (which will set out a mechanism for the purchase and sale of Interests).

AND WHEREAS under 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 pursuant to the Legislation is that the Registration and Prospectus Requirements shall not apply to trades in Interests by the Funds to Eligible Employees provided that:

- (i) Eligible Employees are not induced to purchase Interests by expectation of employment or continued employment and each Eligible Employee's participation in a Fund is voluntary;
- (ii) a copy of the offering memorandum for each Fund is provided to each Eligible Employee prior to making a decision to invest in a Fund, and is delivered to the Decision Makers in each of the Jurisdictions; and
- (iii) the first trade in Interests to a person or entity that is not a Permitted Transferee shall be deemed to be a distribution or a primary distribution to the public.

DATED November 27th, 2001.

"Robert W. Korthals"

"H. Lorne Morphy"

Headnote

Mutual Reliance Review System for Exemptive Relief Applications - Trade in Interests of limited partnerships, formed by an investment bank and a Canadian chartered bank, to certain qualified employees and officers who meet certain suitability standards, not subject to registration and prospectus requirements of the Legislation - Relief subject to certain conditions including delivery of an offering memorandum - Decision granted prior to coming into force of OSC Rule 45-501 *Exempt Distribution* (2001) 24 OSCB 5549.

Applicable Statutory Provisions

Securities Act, R.S.O. 1990, c. 5, as am., ss. 25, 53, 74(1).