

January 14, 2005

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

Applicable British Columbia Provisions

Securities Act, R.S.B.C. 1996, c. 418, s. 48 and 171

**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 (the Jurisdictions)**

and

**In the Matter of
the Mutual Reliance Review System for Exemptive Relief Applications**

and

In the Matter of TD Waterhouse Canada Inc. (the Filer)

MRRS Decision Document

Background

1 The local securities regulatory authority or regulator (the Decision Maker) in each of the Jurisdictions has received an application from the Filer under the securities legislation of the Jurisdictions (the Legislation) to revoke a previous MRRS decision document dated May 21, 2004 (the Prior Decision) and replace it with a decision for:

(a) except in Prince Edward Island, an exemption from the requirement that a registered dealer send to clients a written confirmation of the trade setting out certain information specified in the Legislation (the Confirmation Requirement) for transactions conducted under current and future wrap account programs created by the Filer, including the Premier Managed Portfolio Program (the Programs); and

(b) except in Ontario, an exemption from the requirement to be registered as an adviser (the Registration Requirement) for certain portfolio managers who provide portfolio management services for the benefit of the Filer's clients (the

Clients) participating in a Program in Jurisdictions where the portfolio managers are not registered (the Advisers).

Under the Mutual Reliance Review System for Exemptive Relief Applications:

(a) the British Columbia Securities Commission is the principal regulator for this application; and

(b) this MRRS decision document evidences the decision of each Decision Maker.

Interpretation

2 Defined terms contained in National Instrument 14-101 Definitions have the same meaning in this decision unless they are defined in this decision.

Representations

3 This decision is based on the following facts represented by the Filer:

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

2. it offers Clients a discretionary asset management service through which Clients may invest in a portfolio of securities based on the investment advice of and/or management by Advisers, including through arrangements its affiliate, TD Asset Management Inc. (TDAM), has 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 and/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) it is appointed by each Client to act as portfolio manager with discretionary authority for the Account, including the right to delegate to TDAM who may 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 the Filer based on the market value of the Account during each applicable period, which fees will include all custodial, transaction and brokerage fees and commissions and professional or other fees of TDAM and 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 TDAM or the Adviser;

8. the Filer 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 the Filer, TDAM and the Client for whose benefit the investment advice is and/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,

and acknowledges that it cannot be relieved by Clients from this responsibility (the Assumed Obligations);

9. TDAM will enter into a written portfolio advisory agreement or similar agreement (the Advisory Agreement) with each third party 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 Advisor will assist TDAM by providing advice and/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 Advisor will communicate appropriate trading instructions to TDAM and/or to another party with the consent of TDAM and otherwise participate or assist the Filer 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 the Filer;

12. if there is any direct contact between the Client and the Adviser, a registered representative of the Filer 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 counseling 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.

Decision

4 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:

(a) the Prior Decision is revoked;

(b) the Confirmation Requirement shall not apply to the Filer in respect of a Client's Account in which the Filer acts as principal or agent in connection with the associated trade;

(c) 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 the Filer and TDAM contractually agrees with each Client that it will be responsible for the Assumed Obligations;

(iii) the Filer and TDAM are not relieved of the Assumed Obligations by Clients;

(iv) the Filer 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.

"L.E. Evans"
Lang Evans, CA
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British Columbia Securities Commission