Ontario
Securities
Commission

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IN THE MATTER OF THE *SECURITIES ACT*,
R.S.O. 1990, c. S.5, AS AMENDED

- AND -

IN THE MATTER OF
TD WATERHOUSE PRIVATE INVESTMENT COUNSEL INC.,
TD WATERHOUSE CANADA INC. AND TD INVESTMENT SERVICES INC.

ORAL RULING AND REASONS
(Section 127 and 127(1) of the Act)

Hearing:	November 13, 2014	
Oral Ruling:	November 13, 2014	
Panel:	Mary G. Condon Christopher Portner Judith N. Robertson	- Commissioner and Chair of the Panel - Commissioner - Commissioner
Appearances:	Michelle Vaillancourt Catherine Weiler	- For Staff of the Commission
	David Hausman Brad Moore	- For TD Waterhouse Private Investment Counsel Inc., TD Waterhouse Canada Inc. and TD Investment Services Inc.

ORAL RULING AND REASONS

The following ruling and reasons have been prepared for the purpose of publication in the Ontario Securities Commission Bulletin and are based on portions of the transcript of the hearing. The excerpts from the transcript have been edited and supplemented and the text has been approved by the Chair of the Panel for the purpose of providing a public record of the oral ruling and reasons.

Chair of the Panel:

[1] Staff of the Ontario Securities Commission ("**Staff**") has made a number of allegations against TD Waterhouse Private Investment Counsel Inc., TD Waterhouse Canada Inc. and TD Investment Services Inc. (collectively, the "**TD Entities**"). These allegations involve failures of the internal compliance systems within the TD Entities to ensure that investors were charged the appropriate fees for mutual fund investments. Were these allegations proven in a contested hearing on a balance of probabilities, they would represent a serious breach of the duty of registrants to deal fairly with their clients. However, Staff and the TD Entities have agreed to a settlement with respect to which the TD Entities neither admit nor deny the allegations of Staff or the facts underlying these allegations.

[2] So what is role of the Panel with respect to the matters submitted to us by the parties? The role of the Panel is to consider whether to approve the settlement, agreed to between the parties, that is intended to resolve the issues between them. The question for the Panel to determine is whether it would be in the public interest to approve this settlement agreement.

[3] In coming to a conclusion on this issue, the Panel must consider the mandate of the Commission as expressed in section 1 of the Ontario *Securities Act,* R.S.O. 1990, c. S.5, as amended (the "**Act**"), which is to protect investors from unfair, improper or fraudulent practices and to foster fair and efficient capital markets and confidence in those markets. The Panel must also consider the case law that has established the role of the Commission in making sanctions orders under section 127 of the Act. That case law requires the Commission to focus on protecting investors and preventing future harm to investors and to the capital markets (see *Committee for the Equal Treatment of Asbestos Minority Shareholders v. Ontario (Securities Commission)*, [2001] 2 S.C.R. 132 and *Re Mithras Management Ltd*. (1990), 13 O.S.C.B. 1600).

[4] In making its determination about whether this settlement agreement is in the public interest, the Panel considered the terms of the proposed settlement and the terms of *OSC Staff Notice 15-702 – Revised Credit for Co-operation Program* (2014), 37 O.S.C.B. 2583 ("**Staff Notice 15-702**"). In addition, two confidential settlement conferences were held with the parties to address a number of questions the Panel had about the proposed settlement agreement. Having said this, the Panel acknowledges that the parties to this agreement have much more detailed knowledge of the background circumstances of this matter than the Panel does.

[5] Ultimately, the panel has determined that it will approve this settlement agreement in the public interest.

[6] The major factors considered by the panel are as follows:

(a) The TD Entities came forward to self-report the alleged compliance and supervision inadequacies.

(b) The TD Entities have undertaken to provide compensation to all investors harmed by the alleged inadequacies of their compliance systems, including compensation for foregone opportunity costs, and have already taken steps to contact investors in this regard. Staff has closely analysed the process for determining this compensation and finds it to be acceptable. To date, this amounts to over $13 million of compensation payable.

(c) The TD Entities have undertaken to upgrade their compliance systems to ensure that there will be no recurrence of the practices characterized by Staff as control and supervision inadequacies. Furthermore, Staff is overseeing the process for ensuring that the enhanced compliance systems are implemented appropriately.

[7] These factors respecting compensation, improvement of compliance processes to protect investors, and self-reporting by registrants, in the Panel's view, are crucial to the acceptability of this no-contest settlement since they achieve the objectives of being protective of investors and of being forward-looking. They also signal to other market participants the importance placed by the Commission on self-reporting, remediation of harm to investors and on internal compliance systems that operate appropriately.

[8] Other important factors taken into consideration by the Panel include the following:

(d) Staff does not allege dishonest conduct on the part of the TD Entities.

(e) As referenced in the settlement agreement, a specific dispute resolution mechanism has been devised to address situations where investors dispute the amounts provided to them by way of compensation.

(f) The TD Entities have undertaken to make a voluntary payment of $50,000 to be allocated to the costs of the investigation and a further voluntary payment of $600,000. Staff counsel reported this morning that these payments have already been made.

(g) Finally, the settlement is an efficient way of avoiding the cost of a potentially lengthy hearing.

[9] One factor referenced by Staff Notice 15-702 which concerned the Panel was that of the length of time that passed between the TD Entities becoming aware of the alleged compliance and supervision issues and reporting them to Staff. The terms of Staff Notice 15-702 require that self-reporting be made in a timely manner. In this case, the settlement agreement indicates that

two years passed between the TD Entities learning of the inadequacies and reporting them to Staff.

[10] Taking all the circumstances into account, including the fact that the TD Entities ultimately did come forward and that Staff indicates that the TD Entities provided prompt and detailed co-operation once the TD Entities reported, the Panel is prepared to accept Staff's submissions as to the suitability of a no-contest settlement in this instance. However, the Panel wishes to underscore the importance of timely and fulsome self-reporting of potential regulatory infractions by market participants. Not only is this an on-going responsibility of registrants, but it is an important component of accountability to the Commission for potential regulatory inadequacies.

[11] For all the reasons identified above, this settlement agreement is approved. The Panel will issue an order in the form contained at Appendix A to the settlement agreement filed by the parties.

Approved by the Chair of the Panel on the 27th day of November 2014.

"Mary G. Condon"

Mary G. Condon