annualized cost burden of rule 12b–1 to the fund industry is $60,000 (4 funds requiring a proxy × $15,000 per proxy).

The collections of information required by rule 12b–1 are necessary to obtain the benefits of the rule. Notices to the Commission will not be kept confidential. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Please direct general comments regarding the information above to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; and (ii) Michael Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Comments must be submitted to OMB within 30 days of this notice.

Dated: May 30, 2000.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–14245 Filed 6–06–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 24486; 812–12122]

The Toronto Dominion Bank et al.; Temporary and Notice of Application

May 31, 2000.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Temporary order and notice of application for permanent order under section 9(c) of the Investment Company Act of 1940 (the ''Act'').

SUMMARY: Applicants have received a temporary order exempting them from section 9(a) of the Act, with respect to a securities-related injunction entered into in 1989, until the Commission takes final action on the application for a permanent order or, if earlier, July 31, 2000. Applicants also have requested a permanent order.

Applicants: The Toronto Dominion Bank ''TD Bank'', TD Investment Managewment Inc. (''TDIM''), TD Securities (USA) Inc., TD Waterhouse Asset Management, Inc. (''WAM''), TD Waterhouse Investor Services, Inc., and CT Investment Counsel (U.S.), Inc.

Filing Date: The application was filed on May 31, 2000.

Hearing or Notification of Hearing: Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on June 26, 2000 and should be accompanied by proof of service on applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary. An order granting the application will be issued unless the Commission orders a hearing or extends the temporary exemption.

ADDRESSES:

Secretary, Securities and Exchange Commission, 450 Fifth Street NW, Washington, DC 20549–0609

TD Bank, P.O. Box 1, Toronto Dominion Centre, Toronto, Ontario, Canada M5K 1A2

TDIM, 10th Floor, TD Tower, 55 King Street West, Toronto, Ontario, Canada M5K 1A2:

TD Securities (USA) Inc., 31 West 52nd Street, New York, NY 10019;

WAM and TD Waterhouse Investor Services, Inc., 100 Wall Street, New York, NY 10005; and

CT Investment Counsel (U.S.), Inc., 110 Yong Street, 10th Floor, Toronto, Ontario, Canada M5C 1T4.

FOR FURTHER INFORMATION CONTACT: Nadya B. Roytbalt, Assistant Director, at (202) 942–0610, Division of Investment Management, Office of Investment Company Regulation.

SUPPLEMENTARY INFORMATION: The following is a temporary order and a summary of the application. The complete application is available for a fee from the Commission's Public Reference Branch, 450 Fifth Street NW, Washington, DC 20549–0102; tel: (202) 942–8090.

Applicant's Representations

1. TD Bank is the fifth largest chartered bank in Canada. Directly and through its subsidiaries, TD Bank provides a range of financial services to individuals, corporate and commercial enterprises, financial institutions and governments.

2. WAM, a Delaware corporation, is an indirect wholly-owned subsidiary of TD Bank and is an investment adviser registered under the Investment Advisers Act of 1940 (''Advisers Act''). WAM was acquired by TD Bank in 1996 when TD Bank purchased its parent company, Waterhouse Investor Services, Inc. (''Waterhouse''). WAM serves as investment adviser to three open-end management investment companies registered under the Act, consisting of nine portfolios (''WAM Funds''), with aggregate assets of approximately $12 billion. TDIM, a Canadian corporation and a wholly-owned subsidiary of TD Bank, was formed in 1999 and is registered under the Advisers Act. TDIM currently does not provide any services to registered investment companies (''funds'').

3. On September 12, 1989, the U.S. District Court for the Southern District of New York (''District Court''), entered a Final Judgment of Permanent Injunction and Other Equitable Relief in a matter brought by the Commission (''1989 Injunction'').[1] The Commission alleged that, in connection with certain so-called ''free riding'' transactions by certain securities clearance customers, TD Bank violated the margin lending requirements of Regulation U promulgated by the Board of Governors of the Federal Reserve Board, under section 7(d) of the Securities Exchange Act of 1934. In consenting to the 1989 Injunction, TD Bank undertook, among other things, to implement and maintain certain policies, procedures and training programs designed to detect and prevent future violations of the margin regulations. Under the terms of the 1989 Injunction, TD Bank also hired an independent outside consultant to conduct an audit of TD Bank's compliance policies and procedures and to report its findings to the Commission.

4. Applicants state that, in 1996, in connection with the acquisition by TD Bank of Waterhouse, at the request of TD Bank, the Commission supported a motion by TD Bank to the District Court for the issuance of an order modifying the 1989 Induction to enable Waterhouse to continue to provide securities clearance services. The modification to the 1989 Injunction was issued in 1996.[2]

5. Applicants also state that, at the time of TD Bank's acquisition of Waterhouse in 1996, WAM already was registered under the Advisers Act. Applicants further state that, following TD Bank's acquisition of Waterhouse, on November 27, 1996, WAM filed an amended Form ADV that disclosed the 1989 Injunction. Applicants also state that TDIM disclosed the 1989 Injunction

[1] *SEC* v. *Jury Matt Hansen, et al.,* Final Judgment of Permanent Injunction and Equitable Relief as to The Toronto-Dominion Bank and the Toronto-Dominion Bank Trust Company, 89 Civ. 5242 (RO) (S.D.N.Y. Sept. 12, 1989).

[2] *SEC* v. *Jury Matt Hansen, et al.,* Stipulation & Order, 89 Civic. 5242 (RO) (S.D.N.Y. filed July 29, 1996).

on its initial Form ADV filed in December 1999.

6. Applicants state that they did not seek an order under section 9(c) around the time of the 1989 Injunction because TD Bank did not begin to engage in any fund-related activities until 1996 following the acquisition of Waterhouse. Applicants also state that they did not become aware of the section 9(a) violation until late December 1999.

7. Since the 1989 Injunction, several of TD Bank's subsidiaries—but not TD Bank, WAM or TDIM—have been involved in several administrative proceedings with state securities law administrators and self-regulatory organizations. Applicants state that none of these administrative proceedings, all of which are listed in the application, involved investment advisory or fund-related activities.

Applicants' Legal Analysis

1. Section 9(a) of the Act, in relevant part, prohibits a person who has been enjoined from engaging in or continuing any conduct or practice in connection with the purchase or sale of a security from acting, among other things, as a principal underwriter or investment adviser for a registered investment company. Applicants state that, as a result of the 1989 Injunction, TD Bank and its affiliates may be prohibited by section 9(a) from serving as an investment adviser to funds.

2. Section 9(c) of the Act provides that the Commission shall grant an application for an exemption from the disqualification provisions of section 9(a) if it is established that these provisions, as applied to the applicant, are unduly or disproportionately severe or that the conduct of applicant has been such as not to make it against the public interest or the protection of investors to grant the application.

3. Applicants seek temporary and permanent orders under section 9(c) with respect to the 1989 Injunction to permit TD Bank and its affiliates to serve an investment advisers to funds, including the WAM Funds, and in the future to provide other services to funds that might be prohibited by section 9(a). As noted above, applicants state that they did not seek an order under section 9(c) around the time of the 1989 Injunction because TD Bank did not begin to engage in any fund-related activities until 1996. Applicants also state that they did not become aware of the section 9(a) violation until late December 1999.

4. TD Bank has undertaken to develop procedures designed to prevent violations of section 9(a) by it and its affiliated persons. TD Bank's general counsel also has attested that he has reviewed TD Bank's compliance policies and procedures relating to compliance with section 9(a); that he reasonably believes that the policies and procedures have been fully implemented; and that the policies and procedures are designed reasonably to prevent violations of section 9(a) by TD bank and its affiliated persons.

5. Applicants state that the prohibitions of section 9(a) as applied to them would be unduly and disproportionately severe. Applicants assert that WAM's inability to act as an investment adviser to the WAM Funds would result in the WAM Funds and their shareholders facing potentially severe hardships. Applicants state that, at a special meeting of the boards of directors of the WAM Funds on February 10, 2000, the directors were apprised, among other things, of the circumstances surrounding the 1989 Injunction and the directors' fiduciary responsibilities in these circumstances. The boards found that the alleged misconduct underlying the 1989 Injunction does not adversely affect WAM's continuing ability to provide investment advisory services to the Funds or diminish the value of the services already provided. The boards unanimously voted to continue the Funds' current investment advisory contracts with WAM.

6. Applicants assert that if WAM were prohibited from providing services to the WAM Funds, the effect on WAM's business and employees would be severe. Applicants state that WAM has committed substantial resources over the past five years to establishing expertise in advising registered investment companies.

7. Applicants also assert that their conduct has been such as not to make it against the public interest or the protection of investors to grant the exemption from section 9(a). Applicants note that over 10 years have passed since the 1989 Injunction. Applicants also note that the 1989 Injunction did not in any way involve fund-related activities. Applicants state that all of the employees, including senior management, involved in the matters underlying the 1989 Injunction are no longer employed at TB Bank or any of its affiliates. Applicants further state that since the 1989 Injunction, neither TD Bank nor any affiliated person of TD Bank has engaged in conduct that would result in disqualification under section 9(a) of the Act.

Applicants' Condition

Applicants agree that the requested order is subject to the following condition:

Any temporary exemption granted pursuant to the application shall be without prejudice to, and shall not limit the Commission's rights in any manner with respect to, any Commission investigation of, or administrative proceedings involving or against, applicants, including without limitation, the consideration by the Commission of a permanent exemption from section 9(a) of the Act requested pursuant to the application or the revocation or removal of any temporary exemptions granted under the Act in connection with the application.

Temporary Order

The Division has considered the matter and, without necessarily agreeing with all of the facts represented or all of the arguments asserted by applicants, finds, in accordance with 17 CFR 200.30–5(a)(7), that it appears that: (i) The prohibitions of section 9(a), as applied to applicants, may be unduly or disproportionately severe; (ii) applicants' conduct has been such as not make it against the public interest or the protection of investors to grant the temporary exemption; and (iii) granting the temporary exemption would protect the interests of the investment companies served by applicants by allowing time for the orderly consideration of the application for permanent relief.

Accordingly, *It is hereby ordered,* under section 9(c), that applicants are granted a temporary exemption from the provisions of section 9(a), effective forthwith, solely with respect to the 1989 Injunction, subject to the condition in the application, until the Commission takes final action on the application for a permanent order or, if earlier, July 31, 2000.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–14246 Filed 6–6–00 8:45 am]

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