

UNITED STATES OF AMERICA
Before the
COMMODITY FUTURES TRADING COMMISSION

COMMODITY EXCHANGE ACT

March 8, 2022

In the Matter of)
)
The Toronto-Dominion Bank)
One Vanderbilt Avenue)
New York, NY 10017)
)

The Toronto-Dominion Bank (“T.D. Bank”), is a Canadian bank and provisionally registered swap dealer. On February 9, 2022, T.D. Bank submitted an application (“Application”) to the Commodity Futures Trading Commission (“Commission”) for an order under Section 4s(h) of the Commodity Exchange Act (“CEA”) and Commission Regulation 23.451(d). The order would permit T.D. Bank to offer to enter into or enter into a swap or trading strategy involving a swap with certain governmental Special Entities¹ identified in the Application within the two-year period following a contribution (“Contribution”) by a covered associate² of T.D. Bank to an official³ of those governmental Special Entities.

¹ See 17 CFR 23.451(b) and 17 CFR 23.451(a)(3) (defining a “governmental Special Entity” by reference to Commission Regulation 23.401(c)(2) or (4) as (i) a State, State agency, city, county, municipality, other political subdivision of a State, or any instrumentality, department, or a corporation of or established by a State or political subdivision of a State, or (ii) any governmental plan, as defined in Section 3 of the Employee Retirement Income Security Act of 1974).

² See 17 CFR 23.451(a)(2)(i) (defining “covered associate” to include any general partner, managing member, or executive officer, or other person with a similar status or function).

³ See 17 CFR 23.451(a)(4) (defining “official” of a governmental Special Entity to include incumbents and candidates for elective office of a governmental Special Entity if the office (i) is directly or indirectly responsible for, or can influence the outcome of, the selection of a swap dealer by a governmental Special Entity or (ii) has authority to appoint a person directly or indirectly responsible for, or can influence the outcome of, the selection of a swap dealer by a governmental Special Entity).

Pursuant to Commission Regulation 23.451(d), the Commission, upon application, may conditionally or unconditionally exempt a swap dealer from the prohibition under Commission Regulation 23.451(b) regarding contributions to an official of a governmental Special Entity made by a swap dealer or any covered associate of a swap dealer.

Drawing upon the information as set forth in the Application and certain additional information provided by T.D. Bank, the Commission has considered this matter relative to the factors set out in Commission Regulation 23.451(d)⁴ and concluded to grant the exemption. The Commission has taken into account, among other matters, T.D. Bank's policies and procedures related to contributions to officials of governmental Special Entities, the specific circumstances of the Contribution and the contributing employee ("Contributor"), T.D. Bank's response to the Contribution, and whether an exemption, in these circumstances, is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the CEA. Specifically, T.D. Bank (i) was not aware of the Contribution prior to or at the time of the Contribution; (ii) had policies and procedures in place to detect the Contribution and implement steps to ensure that the firm did not violate Commission Regulation 23.451; and (iii) has taken remedial measures against the Contributor and taken other measures to ensure that covered associates are aware of the Contribution and applicable prohibitions. In addition, although the Contributor was an employee of T.D. Bank at the time of the Contribution, the Contributor and the business unit the Contributor supervises do not solicit the related governmental Special Entities for the purpose of obtaining or retaining an engagement related to a swap, and the Contributor does not have contact with such governmental Special Entities in the Contributor's role with T.D. Bank. Moreover, neither T.D. Bank nor the Contributor sought to interfere with the government Special Entities' merit-based selection process for swap dealers. Also, the Contributor was eligible to vote for the official and appears to have been motivated to make the

⁴ See 17 CFR 23.451.

Contribution by personal reasons unrelated to T.D. Bank's swap business. Finally, the Contribution was relatively small and was returned to the Contributor.

Section 15(b) of the CEA requires the Commission to "take into consideration the public interest to be protected by the antitrust laws and endeavor to take the least anticompetitive means of achieving the purposes of [the CEA], in issuing any order or adopting any Commission rule or regulation (including any exemption under section 4(c) or 4c(b)), or in requiring or approving any bylaw, rule, or regulation of a contract market or registered futures association established pursuant to section 17 of [the CEA]."⁵ The Commission believes that the public interest to be protected by the antitrust laws is generally to protect competition. The Commission has taken into consideration the public interest to be protected by the antitrust laws to determine whether this order is anticompetitive and has preliminarily identified no anticompetitive effects. Rather, the Commission believes that this order may increase competition for the swap business of the related government Special Entities by increasing the pool of potential providers of such business. Because the Commission has determined that the order is not anticompetitive and has no anticompetitive effects, the Commission has not identified any less anticompetitive means of achieving the purposes of the CEA.

In light of the foregoing, IT IS HEREBY ORDERED, pursuant to Section 4s(h) of the CEA and Commission Regulation 23.451(d), that the exemption from the prohibition set out under Commission Regulation 23.451(b) requested by T.D. Bank is granted, effective immediately subject to the terms and conditions specified herein:

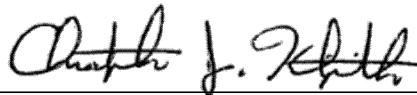
(1) New Commission Regulations. Should the Commission promulgate a regulation addressing or otherwise affecting any aspect of this Order, then such regulation will apply and supersede the applicable terms in this Order.

⁵ 7 U.S.C. § 19(b).

(2) Reservation of Rights. This Order is based upon the representations made and supporting material provided to the Commission by T.D. Bank as part of the Application. In the event of any changes to or omissions in the material facts or circumstances pursuant to which this Order is issued, or for any reason in the Commission's discretion and after appropriate notice and opportunity to respond, the Commission may condition, modify, suspend, terminate, or otherwise restrict the terms of this Order, as appropriate and as permitted by law, on its own motion.

Issued in Washington, D.C. this 8th day of March, 2022.

By the Commission.

A handwritten signature in black ink, appearing to read "Christopher J. Kirkpatrick", written over a horizontal line.

Christopher J. Kirkpatrick
Secretary of the Commission