

CONFIDENTIAL TREATMENT REQUESTED BY THE TORONTO-DOMINION BANK

UNITED STATES OF AMERICA
BEFORE THE
COMMODITY FUTURES TRADING COMMISSION
Washington, DC 20581

In the matter of

The Toronto-Dominion Bank
One Vanderbilt Avenue, New York, NY 10017

APPLICATION FOR AN ORDER PURSUANT TO SECTION
4s(h) OF THE COMMODITY EXCHANGE ACT AND
REGULATION 23.451(d), EXEMPTING THE TORONTO-
DOMINION BANK FROM REGULATION 23.451(b) UNDER
THE COMMODITY EXCHANGE ACT

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This Application consists of 22 pages

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)	ACT
_____)	

I. PRELIMINARY STATEMENT AND INTRODUCTION

The Toronto-Dominion Bank (the “Applicant” or the “Swap Dealer”) hereby applies to the Commodity Futures Trading Commission (the “Commission”) for an order, pursuant to Section 4s(h) of the Commodity Exchange Act (“the CEA”) and Commission Regulation 23.451(d), exempting the Swap Dealer from the two-year prohibition on offering to enter into or entering into a swap or trading strategy involving a swap with certain governmental Special Entities described below following a contribution by a covered associate of the Swap Dealer to a candidate for New York City mayor as described in this Application, subject to the representations set forth herein.

Section 4s(h) of the CEA authorizes the Commission to establish “standards and requirements as the Commission may determine are appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purpose of [the CEA].” Under this authority, the Commission adopted Regulation 23.451 (the “Rule”), which prohibits a swap dealer from “offer[ing] to enter into or enter[ing] into a swap or a trading strategy involving a

swap with a governmental Special Entity within two years after any contribution to an official of such governmental Special Entity was made by the swap dealer or by any covered associate of the swap dealer.”

The term “governmental Special Entity” is defined in Regulation 23.451(a)(3), with reference to Regulations 23.401(c)(2) and (4), as including 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 “[a]ny governmental plan, as defined in Section 3 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002).” The definition of an “official” of such governmental Special Entity in Regulation 23.451(a)(4) includes any candidate (and any candidate’s election committee) for elective office of a governmental Special Entity directly or indirectly responsible for, or able to influence the outcome of, the selection of a swap dealer by a governmental Special Entity or with authority to appoint a person directly or indirectly able to influence the outcome of the selection of a swap dealer by a governmental Special Entity. The “covered associates” of a swap dealer are defined in Regulation 23.451(a)(2) as including its general partners, managing members, executive officers, and other persons with similar status or function, as well as any employees who solicit a governmental Special Entity on behalf of the swap dealer and any person who supervises, directly or indirectly, such employees.

Regulations 23.451(b)(2) and (e) provide exemptions from the two-year prohibition under Regulation 23.451(b)(1), including with respect to contributions that do not exceed a *de minimis* threshold, were made by a person more than six months before becoming a covered associate, or were discovered by the swap dealer and returned by the official within a specific period and subject to certain other conditions. Should no exception be available, Regulation

23.451(d) permits a swap dealer to apply for, and the Commission to conditionally or unconditionally grant, an exemption from the Regulation 23.451(b) prohibition on offering to enter into or entering into a swap or a trading strategy involving a swap with the relevant governmental Special Entity.

In determining whether to grant an exemption, the Rule contemplates that the Commission will consider, among other things, (i) whether the exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes of the CEA; (ii) whether the swap dealer: (A) before the contribution resulting in the prohibition was made, implemented policies and procedures reasonably designed to prevent violations of the Rule; (B) prior to or at the time the contribution which resulted in such prohibition was made, had no actual knowledge of the contribution; and (C) after learning of the contribution, (1) has taken all available steps to cause the contributor involved in making the contribution which resulted in such prohibition to obtain a return of the contribution; and (2) has taken such other remedial or preventive measures as may be appropriate under the circumstances; (iii) whether, at the time of the contribution, the contributor was a covered associate or otherwise an employee of the investment swap dealer, or was seeking such employment; (iv) the timing and amount of the contribution which resulted in the prohibition; (v) the nature of the election (e.g., federal, state or local); and (vi) the contributor's apparent intent or motive in making the contribution that resulted in the prohibition, as evidenced by the facts and circumstances surrounding the contribution.

Based on those considerations and the facts described in this Application, the Applicant respectfully submits that the relief requested herein is appropriate in the public interest and is consistent with the protection of investors and the purposes fairly intended by the policy and

provisions of the CEA. Accordingly, the Applicant requests an order exempting it from the prohibition under Regulation 23.451(b) so as to permit it to offer to enter into or enter into a swap or a trading strategy involving a swap with certain governmental Special Entities, as described below, within the two-year period following the contribution identified herein. Prior to issuance of an order or other response from the Commission, if any material representation in this Application ceases to be true and complete, the Applicant will inform the Commission promptly in writing of all materially changed facts and circumstances.

II. STATEMENT OF FACTS

A. The Applicant

The Applicant is a Canadian bank provisionally registered with the Commission as a non-U.S. swap dealer under the CEA as of December 31, 2012. As a swap dealer, the Applicant regularly enters into swaps with both U.S. and non-U.S. counterparties and provides a full range of interest rate, credit, commodity, foreign exchange, and equity swaps to institutional, corporate, commercial and government clients. The nature of the Swap Dealer's swaps business includes dealing, hedging, originating, distributing and trading. Swap transactions are booked by the Applicant's Toronto, London, Singapore, and New York branches. Swap activities are primarily conducted in connection with the business segments of the Applicant's (i) wholesale division (branded as "TD Securities" in the United States and involving both the Applicant and certain subsidiaries) and (ii) treasury division, Treasury and Balance Sheet Management ("TBSM"). Swap activity conducted by TBSM focuses on managing the Applicant's interest rate risk, foreign exchange risk, and risks related to the Applicant's corporate loan portfolio, retail mortgages and cash instruments. The Applicant holds itself out as making markets in swaps and

regularly enters into swaps with counterparties in the ordinary course of business for its own account.

B. The Contributor

The individual who made the campaign contribution that triggered the two-year prohibition (the “Contribution”) is a senior employee (the “Contributor”) who supervises a front office business unit of TD Securities (the business division of the Applicant that includes the Swap Dealer) that does not offer or provide swaps to special entities. The Contributor has been an associated person of the Swap Dealer for more than five years. The Contributor has been categorized by the Applicant as a covered associate as defined by Regulation 23.451(a)(2).

As discussed in detail below, the Contributor made the Contribution to the campaign of a New York City mayoral candidate during a virtual event hosted by a friend. The Contribution was prohibited by the Swap Dealer’s written Political Contribution Policy and Process (the “Policy”) that is part of the Swap Dealer’s compliance manual.

C. The Government Entity

New York City and any instrumentality, department, corporation or employee retirement plan established by or on behalf of New York City (collectively, the “City”) is a governmental Special Entity as defined in Regulation 23.451(a)(3).

D. The Official

The recipient of the Contribution was Raymond McGuire (the “Candidate”), a candidate for New York City Mayor (“Mayor”) at the time of the Contribution. The Mayor is the chief executive officer of the Government of New York City and can influence financial decisions, including the selection of swap dealers for the city and other municipal entities overseen by boards composed of individuals appointed by the Mayor. Due to the Mayor’s office and power

of appointment, a candidate for Mayor is an “official” of a governmental Special Entity as defined in Regulation 23.451(a)(4).

However, the Candidate was a non-incumbent who lost the Democratic primary for Mayor on July 6, 2021, and, as a result, the Candidate did not exercise or obtain the appointment power reserved to the office of Mayor in relation to influencing the outcome of the selection of a swap dealer by the City.

E. The Contribution

The Contribution was recorded on May 6, 2021, for the amount of \$1,000 made out to “Ray McGuire for Mayor, Inc.” The Contributor was permitted to vote in the election for Mayor and could make a *de minimis* contribution up to \$350, but the Contribution exceeded the permissible *de minimis* contribution by \$650.

The Contribution was made by the Contributor with the intention of supporting a friend of the Contributor who had hosted a “Meet Ray McGuire” webinar. The Contributor expressed some uncertainty as to whether the Contribution was to support the costs of the webinar hosted by the friend or the campaign of Mr. McGuire, and, in any case, failed to appreciate that this Contribution would trigger the prohibition on offering to enter into or entering into a swap or trading strategy involving a swap with the City. The Contributor had no prior contact or affiliation with, or intention to contribute to, the Candidate, and did not seek out or initiate contact with the Candidate. The Contributor has had no relationship or contact with the Candidate aside from making the Contribution and requesting a refund of the Contribution, as described below. The Contributor also did not vote for Ray McGuire in the New York City Democratic Primary election for Mayor. The Contributor also reported to the Applicant that the

Contributor does not generally make political contributions and the Contributor was not fully aware of campaign practices for events like the webinar hosted by the Contributor's friend.

The Contributor did not inform or seek pre-approval from the Swap Dealer prior to making the Contribution. At no time did any employee of the Swap Dealer other than the Contributor have any knowledge that the Contribution had been made before the Contributor informed the Swap Dealer of the Contribution in July 2021, in connection with the Swap Dealer's required quarterly political contribution attestation from all covered associates. The Contributor did not appreciate the regulatory significance of the Contribution until July 2021.

F. The Swap Dealer's Activities with the Governmental Special Entity

The Swap Dealer commenced periodic swap-dealing activities with the City well before the Candidate commenced his campaign for office in October 2020 and before the Contribution was made in May 2021. The most recent activity occurred in September 2020. Since the Contribution was made, the Swap Dealer has not entered into any swap transactions with the City.

The Contributor and the business unit that the Contributor supervises do not solicit the City for the purpose of obtaining or retaining an engagement related to a swap, and the Contributor does not have contact with the City in the course of the Contributor's role with the Swap Dealer.

G. The Swap Dealer's Discovery of the Error and Response

The Swap Dealer became aware of the Contribution on July 13, 2021. Consistent with the Policy, on July 12, 2021, the Swap Dealer administered its quarterly political contribution attestation process requiring that covered associates disclose any political contributions they made in the prior quarter. At this time, the Contributor realized the Contribution may be subject

to regulations on political contributions and the Swap Dealer's Policy and immediately notified the Swap Dealer's compliance team of the Contribution. The matter was promptly escalated within the Swap Dealer's compliance team and on July 16, 2021, the Head of U.S. Wholesale Compliance (a direct report to the Swap Dealer's Chief Compliance Officer) and the Contributor's supervisor met with the Contributor and directed the Contributor to request the return of the Contribution.

On July 16, 2021, the Contributor requested the return of the full Contribution amount from the Candidate's campaign. This request was granted on July 19, 2021, and a check refunding the full Contribution amount was received and deposited by the Contributor on August 16, 2021.

To the Applicant's knowledge and belief, no offers were made by the Swap Dealer to enter into a swap or trading strategy involving a swap with the City after the Contribution was made. After identifying the Contribution, the Swap Dealer's compliance team directed a comprehensive search of the Swap Dealer's books and records for swaps with entities having identifiers indicating they are part of the City (as determined using a variety of publicly available sources) to determine if any swaps were entered into with New York City or any instrumentalities, departments or corporations that could be identified as municipal organizations tied to New York City. The results confirmed that the Swap Dealer had not entered into any swap transactions with the City after the Contribution was made.

Further, after the Swap Dealer was notified of the Contribution, the Swap Dealer's compliance team promptly hosted several calls with Swap Dealer and business unit leaders to discuss the Contribution and the likely prohibition on offering or entering into swaps and trading strategies involving swaps with the City under Regulation 23.451(b). Additionally, the Swap

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Dealer promptly provided several formal notices to relevant parties, including business units with relationships with the City as well as all Swap Dealer associated persons, regarding such prohibition, the steps taken to implement the prohibition and next steps. This included notices about the Contribution and resulting prohibition provided: (i) on July 27, 2021, to the TDS USA Region Conduct Risk Committee and TDS USA Region Front Office Supervision Forum; (ii) on July 29, 2021, to the Swap Dealer's Public Finance origination, Municipal Sales and Trading and Commercial Derivatives teams; and (iii) on August 13, 2021, to all associated persons of the Swap Dealer.

Based on the Applicant's books and records search, as well as the Applicant's discussions with its business unit leaders and issuance of notices regarding the prohibition under Regulation 23.451(b), the Applicant was also able to determine with a reasonable degree of confidence that no direct offers were made to the City after the Contribution. The Applicant generally has limited direct trading activity with the City.

The Applicant does transact with investment managers that act as agents for multiple accounts and allocate swap transactions to those accounts after trading. The Applicant cannot conclusively determine whether any offers to trade may have been made to an investment manager in a circumstance where it had the ability or may have intended to allocate a portion of the transaction to the City at the time of the offer. However, the Applicant is not aware of any such instance or any swaps with the City resulting from such a situation.

Shortly after learning of the Contribution, between approximately August 23 and 27, 2021, the Applicant also instructed relevant investment managers during telephone and teleconference meetings that the Applicant was unable to enter into swap transactions or solicit offers for swap transactions with respect to the City and the investment managers should

discontinue the allocation of swap transactions with respect to accounts they may manage for the City.

H. The Swap Dealer's Pay-to-Play Policies and Procedures

The Policy was adopted and implemented in December 2012, well before the Contribution was made.

At the time of the Contribution and presently, the Swap Dealer's Policy conforms to, and is broader than, the requirements of the Rule. In particular, the Policy establishes a more expansive definition of "covered associate" than is required under the Rule. The Policy requires that covered associates obtain pre-approval from both a supervisor and a member of the Swap Dealer's compliance team prior to making any political contribution.¹ No *de minimis* exception from the pre-approval requirement for small contributions is provided in the Policy. The Policy also provides for a quarterly attestation process requiring covered associates of the Swap Dealer to disclose any political contributions made in the prior quarter by the covered associate or a spouse, with any affirmative responses reviewed by the Swap Dealer's compliance team to ensure pre-approval had been obtained for any contributions by the covered associate. The Swap Dealer is required under the Policy to maintain a list of any governmental Special Entities with which it is prohibited from offering to enter into or entering into a swap or a trading strategy involving a swap.

In addition, the Swap Dealer implements various measures to ensure covered associates are aware of the requirements of the Policy. This includes a requirement that all associated persons of the Swap Dealer certify annually as to their understanding of and compliance with the

¹ The Policy requires new covered associates to complete a political contributions questionnaire regarding their contributions during the six months prior to becoming a covered associate. Any political contributions disclosed during this process are escalated to the Swap Dealer's compliance team to be addressed appropriately.

Applicant's Code of Conduct and Ethics for Employees and Directors. This certification requires compliance with all of the manuals and policies and procedures that relate to a person's role, including the Policy. Upon becoming a covered associate, associated persons are provided training covering the Policy's requirements. Additional trainings covering political contribution regulations applicable to the Swap Dealer and the requirements of the Policy, among other compliance requirements, are provided to all Swap Dealer associated persons at least annually. Consistent with this requirement, in the Contributor's case, prior to making the Contribution in May 2021, the Contributor had last received annual training covering compliance with political contributions requirements in December 2020. The Policy also provides that periodic email communications will be sent to Swap Dealer employees to remind them of compliance obligations with respect to political contributions. The Swap Dealer sent out such an email communication to all Swap Dealer covered associates in August 2021 after identifying the Contribution to ensure all covered associates are aware of applicable political contributions regulations and requirements under the Policy.

III. STANDARD FOR GRANTING AN EXEMPTION

In determining whether to grant an exemption, Regulation 23.451(d) states that the Commission will consider, among other things: (i) whether the exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes of the CEA; (ii) whether the swap dealer: (A) before the contribution resulting in the prohibition was made, implemented policies and procedures reasonably designed to prevent violations of the Rule; (B) prior to or at the time the contribution which resulted in such prohibition was made, had no actual knowledge of the contribution; and (C) after learning of the contribution, (1) has taken all available steps to cause the contributor involved in making the contribution which

resulted in such prohibition to obtain a return of the contribution; and (2) has taken such other remedial or preventive measures as may be appropriate under the circumstances; (iii) whether, at the time of the contribution, the contributor was a covered associate or otherwise an employee of the investment swap dealer, or was seeking such employment; (iv) the timing and amount of the contribution which resulted in the prohibition; (v) the nature of the election (e.g., federal, state or local); and (vi) the contributor's apparent intent or motive in making the contribution that resulted in the prohibition, as evidenced by the facts and circumstances surrounding the contribution.

Each of these factors weighs in favor of granting the relief requested in this Application.

IV. STATEMENT IN SUPPORT OF EXEMPTIVE RELIEF

The Applicant submits that an exemption from the two-year prohibition on offering to enter into or entering into a swap or trading strategy involving a swap is necessary and 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. The Swap Dealer's swap-dealing activity with the City has occurred on an arm's-length basis free from any improper influence as a result of the Contribution. In support of that conclusion, the Applicant notes the commencement of the Swap Dealer's swap-dealing activity with the City significantly pre-dates the Contribution and all swap transactions with the City similarly pre-date the Contribution. As stated above, the most recent activity with the City occurred in September 2020. Further, at the time of the Contribution, the Candidate, in the midst of still running for Mayor, had neither exercised nor obtained the appointment power reserved to the office of Mayor, and indeed never did so given his unsuccessful campaign.

Given the nature of the Rule violation, and the lack of any evidence that the Swap Dealer or the Contributor intended to, or actually did, interfere with any merit-based process of the City for the selection of a swap dealer, the interests of the City are best served by allowing the Swap Dealer to continue to provide swaps to the City when needed. The policy underlying the Rule is served by ensuring that no improper influence is exercised over swap activities of governmental Special Entities as a result of campaign contributions, which is evidently the case here given the unintentional nature of the violation by the Contributor and the unsuccessful nature of the Candidate's campaign, and not by prohibiting swap-dealing activity as a result of unintentional violations.

The other factors suggested for the Commission's consideration in Regulation 23.451(d) similarly weigh in favor of granting an exemption to avoid consequences disproportionate to the violation.

Policies and Procedures before the Contribution. The Applicant views its Policy and related procedures in place as reasonably designed and effective, notwithstanding the Contribution, including for the following reasons. The Swap Dealer adopted and implemented the Policy in December 2012, and the Policy has at all times been in compliance with the Rule and broader than the Rule's requirements. The Applicant has benchmarked its Policy with peer firms and against industry standards and determined that its Policy both reflects best practices and exceeds the requirements of the Rule. In particular, the Policy applies a more stringent threshold for potential conflicts than is required under the Rule by employing a more expansive definition of "covered associate." The Swap Dealer also implemented compliance training before the Contribution and at least annually conducts such training, as well as requiring annual

attestations by all employees that they understand the Swap Dealer's policies and quarterly attestations specifically as to political contributions.

In the approximately nine-year period since the Applicant registered as a swap dealer and the Policy was implemented, no other breaches of the Policy have occurred. The Applicant believes the fact that the Contribution represents the only instance of a breach of the Applicant's Policy strongly demonstrates that the Policy is reasonably designed and effective in preventing violations of the Rule.

While the Policy was not successful in preventing a political contribution in this case, the Policy was effective in providing for identification of the Contribution pursuant to the Policy, as the Contribution was self-reported as a part of the Policy's requirement that covered associates provide quarterly attestations disclosing any political contributions made in the prior quarter by them or their spouse. Once the Contribution was detected, processes were promptly initiated to prevent an actual breach of the Rule's requirements, and to the Applicant's knowledge, no such breach occurred.

The Applicant does not believe the Contribution resulted from a deficiency in the design or effectiveness of the Policy, but rather was caused by the Contributor's human error. Based on the Contributor's account, the Contribution resulted from confusion on the Contributor's part as to the purpose of the Contributor's payment, due to lack of familiarity with campaign practices notwithstanding that the Contributor had participated in multiple instances of annual training on the policy. The Contributor's personal friend was hosting an event and the Contributor's payment was motivated by a desire to support this friend in connection with the logistical costs of the event. According to the Contributor, the Contributor did not appreciate at the time that the Contribution constituted a political contribution under the Policy. The Contributor reported that

the Contributor does not have a practice of making political contributions generally (including prior to the Contributor's association with the Swap Dealer) and the Contributor was not fully aware of campaign practices for events such as that hosted by the Contributor's friend.

While the Contributor made a clear mistake, there is no indication that the Contributor intended to influence the City or its policies regarding allocation of swap business. Rather, the Contributor sought only to support a friend that was hosting an event and, due to the Contributor's own error or inattentiveness, did not fully appreciate the circumstances that led to the Contributor's payment being deemed a political contribution under the Policy.

Actual Knowledge of the Contribution. At no time did any employee of the Swap Dealer other than the Contributor have any knowledge that the Contribution had been made before the Contributor identified such payment to the Swap Dealer's compliance team in July 2021.

Swap Dealer's Response after the Contribution. After learning of the Contribution, the Swap Dealer and the Contributor promptly took steps to obtain a return of the Contribution. Within three days of the Contributor's identification of the Contribution to the Swap Dealer's compliance team, the Contributor had contacted the Candidate's campaign asking for a refund of the full amount of the Contribution, which was subsequently returned. The Swap Dealer conducted a comprehensive search confirming that the Swap Dealer had not entered into any swap transactions with the City after the Contribution was made.

The Applicant also reviewed the Policy following the Contribution and concluded that the Policy is reasonably designed to prevent violations of the Rule. In light of the occurrence of the Contribution, the Applicant has taken several remedial measures pursuant to the Policy to prevent a recurrence. In August 2021, the Applicant sent an email reminder, as provided for under the Policy, to all covered associates of the Applicant to serve as a reminder of applicable

political contributions regulations and requirements under the Policy. This notice provided, among other items, a reminder as to the definition of a “political contribution” and a reminder to be aware of the nature of any organization to which donations or contributions are made. A pre-approval continues to be required for all contributions of covered associates of the Swap Dealer to ensure other Swap Dealer employees do not make the same mistake as the Contributor.

Additionally, as detailed above, on July 27, July 29, and August 13, 2021, the Applicant issued notices to relevant persons that the Applicant is currently prohibited under Regulation 23.451(b) from offering to enter into or entering into a swap or trading strategy involving a swap with the City as a consequence of the Contribution. Between approximately August 23 and 27, 2021, the Applicant also notified relevant investment managers of the Applicant’s restriction on entering into swap transactions or soliciting offers for swap transactions with respect to the City and instructed the investment managers to discontinue any allocation of swap transactions with respect to accounts they may manage for the City.

The Applicant also updated its monthly trainings for new associated persons to emphasize the Policy’s requirements for political contributions in relation to candidates for office and mitigate the risk of recurrence of violations similar to the Contribution. This same updated material will be incorporated into the Applicant’s annual trainings that cover the Policy’s requirements.

Furthermore, as a result of the Contribution, the Contributor was referred to the Applicant’s Conduct Risk Committee and Human Resources department to formulate an appropriate disciplinary response. The Applicant determined on August 24, 2021, to issue a letter of reprimand to the Contributor, which the Contributor received in due course. As a further

disciplinary measure, the Contributor was subject to a monetary penalty in the form of a reduction to the Contributor's 2021 year-end discretionary compensation.

Status of the Contributor. The Contributor is, and has been at all relevant times, a covered associate of the Swap Dealer. However, the Contributor does not have any involvement with the City, including soliciting swaps-dealing activity, and the Contributor's business unit does not solicit the City for swap-dealing activity.

Timing and Amount of the Contribution. As noted above, the entirety of the Swap Dealer's swaps-dealing activity with the City pre-dates the Contribution. The Contributor was also permitted to vote in the election for Mayor and could make a *de minimis* contribution up to \$350, such that the Contribution exceeded the permissible amount under the Rule only by \$650.

Nature of the Election and Other Facts and Circumstances. The nature of the election and other facts and circumstances indicate that the Contributor's apparent intent in making the Contribution was purely personal and not to influence the selection of swap dealers by the City. The Contributor had a legitimate interest in expressing the Contributor's support for a personal friend, who was hosting the virtual event for the Candidate, and was not aware of the regulatory significance of the Contribution. The Contributor has had no contact with the Candidate or his campaign aside from making, and requesting a refund of, the Contribution and has no affiliation or relationship with the Candidate. At the time of the Contribution, the Candidate had not exercised or even obtained the appointment power reserved to the office of the Mayor.

V. PRECEDENTS

Although only instructive and non-precedential to the Commission's determination, the Applicant notes that the Securities and Exchange Commission ("SEC") has granted exemptions similar to that requested herein with respect to relief under Section 206A of the Investment

Advisers Act of 1940, as amended, and Rule 206(4)-5(e) thereunder, establishing similar political contribution requirements for investment advisers, including: Brown Advisory LLC, Investment Advisers Act Release Nos. 4605 (January 10, 2017) (notice) and 4642 (February 7, 2017) (order) (the “Brown Advisory Application”); and Brookfield Asset Management Private Institutional Capital Adviser US, LLC et al., Investment Advisers Act Release Nos. 4337 (February 22, 2016) (notice) and 4355 (March 21, 2016) (order) (the “Brookfield Application”). Similarly, the Applicant further notes that the Financial Industry Regulatory Authority (“FINRA”) has also granted exemptions similar to that requested herein with respect to relief under the Municipal Securities Rulemaking Board’s Rule G-37, establishing similar political contribution requirements for municipal securities dealers, including: FINRA Exemptive Letter, September 20, 2005 (the “FINRA Letter,” and together with the Brown Advisory Application and the Brookfield Application, the “Granted Applications”). The facts and representations made in this Application are, in many respects, largely consistent with the Granted Applications.

Nature of the Election and Other Facts and Circumstances. In the Granted Applications, the contributions were made to candidates for office for purely personal reasons and not with any intent to influence the selection process of a government entity. In the Brookfield Application, a contribution of \$400 was made by a covered associate to the campaign of an ultimately unsuccessful candidate for New York City Mayor under the mistaken belief that the political contribution was permitted under applicable pay-to-play rules. The Contributor here made the Contribution to a similarly unsuccessful candidate for New York City Mayor, and the Contributor also did not appreciate the regulatory consequence of such Contribution. In the Brown Advisory Application, a contribution of \$1,000 was made by a covered associate to the campaign of a gubernatorial candidate at the request of the covered associate’s friend and during

an event that the covered associate was unaware was a fundraiser for the candidate until attending the event. The Contributor here similarly made the Contribution in connection with supporting a friend at a campaign event, without appreciating fully the regulatory consequence of the Contribution. In the FINRA Letter, a contribution of \$300 was made to the campaign of a gubernatorial candidate based on a solicitation from a personal acquaintance, and not based on direct request from the candidate or his campaign. The Contributor here also made the Contribution in connection with support for a personal friend, and not as a result of any contact with or intention to support the candidate or his campaign.

Interactions with the Candidate. In the Brookfield Application, the contributor did have a personal connection to the candidate and believed they would be a good New York City Mayor; in contrast, the Contributor here has no personal connection to or affiliation with the Candidate, and indeed did not even vote for the Candidate. In the Brown Advisory Application, the extent of the contributor's interactions with the candidate consisted of a brief introduction at the campaign event, but the Contributor otherwise had no contact or affiliation with the candidate. In the FINRA Letter, the contribution was in response to a personal acquaintance's request, and not the request of the candidate or his campaign. Similarly, the Contributor here has had no contact or affiliation with the Candidate, aside from the Contribution.

Knowledge of the Contribution and Discovery of the Error. In the Granted Applications, the contributors' violations were unintentional and in contravention of established policies requiring pre-approval of the contributions. As a result, only the contributors were aware of the contributions at the time they were made. In all cases, full refunds of the contributions were sought and obtained. Similarly, in the Applicant's case, the Contributor's violation was unintentional and only the Contributor was aware of the Contribution until the Contributor

disclosed it to the Swap Dealer's compliance team in connection with the Contributor's quarterly attestation of political contributions made in the prior quarter. Upon disclosing the Contribution, the Contributor promptly sought and received a full refund of the Contribution from the Candidate's campaign.

Conclusion. As was the case in the Granted Applications, the Contributor committed an inadvertent violation of applicable political contributions rules and policies. Declining to grant an exemption for inadvertent violations would go beyond the purpose of the Rule, which is to stem pay-to-play practices and not inadvertent violations, and would be unfair. The Applicant believes the same policies and considerations that led the SEC and FINRA to grant relief in the above-referenced applications are present here. As in the Granted Applications, neither the Swap Dealer nor the Contributor sought to interfere with the City's merit-based selection process for swap dealers. In all cases, the imposition of the applicable prohibitions would result in consequences vastly disproportionate to the inadvertent mistake made.

VI. REQUEST FOR ORDER


The Applicant seeks an order pursuant to Section 4s(h) of the CEA and Regulation 23.451(d), exempting it from the two-year prohibition on offering to enter into or entering into a swap or trading strategy involving a swap with the governmental Special Entities described herein following the Contribution also identified herein to an official of such government entities by a covered associate of the Swap Dealer.

VII. CONCLUSION

For the foregoing reasons, the Applicant submits that the proposed exemptive relief, conducted subject to the representations set forth above, would be fair and reasonable, would not involve overreaching, and would be consistent with the general purposes of the CEA.

VIII. CERTIFICATION

I hereby certify that the material facts set forth in this application dated February 9, 2022 are true and complete to the best of my knowledge.


By:  Digitally signed by
Jeffrey J.R. Sundram
Date: 2022.02.09
14:06:10 -05'00'

Jeffrey Sundram
VP, Head of U.S Wholesale Compliance
The Toronto-Dominion Bank

Dated: February 9, 2022

Respectfully submitted,

The Toronto-Dominion Bank
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Jeffrey Sundram
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The Toronto-Dominion Bank