



Ontario
Securities
Commission

Commission des
valeurs mobilières
de l'Ontario

Ontario

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

- and -

**TD WATERHOUSE PRIVATE INVESTMENT COUNSEL INC.,
TD WATERHOUSE CANADA INC. and TD INVESTMENT SERVICES INC.**

**STATEMENT OF ALLEGATIONS
OF STAFF OF THE ONTARIO SECURITIES COMMISSION**

Staff (“Staff”) of the Ontario Securities Commission (the “Commission”) make the following allegations:

I. THE RESPONDENTS

1. TD Waterhouse Private Investment Counsel Inc. (“TDWPIC”) is a corporation incorporated pursuant to the laws of Canada and is registered with the Commission as an Exempt Market Dealer and Portfolio Manager.
2. TD Waterhouse Canada Inc. (“TD Waterhouse”) is a corporation incorporated pursuant to the laws of Ontario. TD Waterhouse is a member of the Investment Industry Regulatory Organization of Canada (“IIROC”) and is registered with the Commission as an Investment Dealer. The matters described below with regard to TD Waterhouse pertain to the business units within TD Waterhouse that provide advice, namely Financial Planning and Private Investment Advice.

3. TD Investment Services Inc. (“TDIS”) is a corporation incorporated pursuant to the laws of Ontario. TDIS is a member of the Mutual Fund Dealers Association of Canada (“MFDA”) and is registered with the Commission as a Mutual Fund Dealer.
4. TDWPIC, TD Waterhouse and TDIS (collectively, the “TD Entities”) are subsidiaries of The Toronto-Dominion Bank.

II. BACKGROUND

5. During the period May to September 2014, the TD Entities self-reported to Staff four separate matters which resulted in clients paying, directly or indirectly, excess fees.
6. In or about the time when the first three matters were self-reported to Staff, the TD Entities advised Staff that:
 - (a) the TD Entities intended to pay compensation to clients and former clients in connection with these matters; and
 - (b) the TD Entities had begun taking corrective action including implementing additional controls and supervision to prevent the re-occurrence of these matters in the future.

III. RESPONDENTS’ CONDUCT

7. In relation to the four matters referred to above, there were inadequacies in the TD Entities’ systems of control and supervision which formed part of their compliance systems (the “Control and Supervision Inadequacies”) which resulted in clients paying, directly or indirectly, excess fees that were not detected or corrected by the TD Entities in a timely manner.

8. The first and second Control and Supervision Inadequacies referred to below relate to investment products with embedded advisor fees, including mutual funds managed by TD Asset Management Inc. (“TDAM”), a subsidiary of The Toronto-Dominion Bank.
9. The first and second Control and Supervision Inadequacies are summarized as follows:
 - (a) certain TDAM managed mutual funds with embedded advisor fees held in fee-based accounts with TDWPIC were incorrectly included in account fee calculations, thereby resulting in some clients paying excess fees during the period November 2000 to February 2014; and
 - (b) certain investment products with embedded advisor fees held in fee-based accounts with TD Waterhouse were incorrectly included in account fee calculations, thereby resulting in some clients paying excess fees during the period December 2007 to September 2014.
10. The third and fourth Control and Supervision Inadequacies referred to below relate to investments in certain TDAM managed mutual funds that are available in different series. With regard to these mutual funds, the Management Expense Ratio (“MER”) differs for each series of the same mutual fund with the MER being lower for series with higher minimum investment thresholds (the “Premium Series”).
11. The third and fourth Control and Supervision Inadequacies are summarized as follows:
 - (a) beginning in November 2005, some clients of TD Waterhouse and TDIS were not advised that they qualified for a lower MER Premium Series of a TDAM managed mutual fund within the TD Managed Assets Program and indirectly paid excess fees when they invested in the higher MER series of the same mutual fund; and
 - (b) beginning in September 2010, some clients of TD Waterhouse were not advised that they qualified for a lower MER Premium Series of TDAM managed mutual funds (other than

those within the TD Managed Assets Program) and indirectly paid excess fees when they invested in the higher MER series of the same mutual fund.

IV. BREACHES OF ONTARIO SECURITIES LAW AND CONDUCT CONTRARY TO THE PUBLIC INTEREST

12. In each of the four instances of Control and Supervision Inadequacies, the relevant TD Entities failed to establish, maintain and apply procedures to establish controls and supervision that were:
 - (a) sufficient to provide reasonable assurance that the TD Entities, and each individual acting on behalf of the TD Entities, complied with securities legislation, including the requirement to deal fairly with clients with regard to fees; and
 - (b) reasonably likely to identify the non-compliance described in (a) above at an early stage and that would have allowed the TD Entities to correct the non-compliant conduct in a timely manner.
13. As a result, each of the four instances of Control and Supervision Inadequacies constituted a breach of section 11.1 of National Instrument 31-103 – *Registration Requirements, Exemptions and Ongoing Registrant Obligations*.
14. In addition, the failures in the TD Entities' systems of controls and supervision associated with the Control and Supervision Inadequacies were contrary to the public interest.
15. Staff reserve the right to make such other allegations as Staff may advise and the Commission may permit.

DATED at Toronto, this 7th day November, 2014.