

SECURITIES AND EXCHANGE COMMISSION

(Release No. IC-35427; File No. 812-15678)

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

December 20, 2024

Agency: Securities and Exchange Commission (“Commission”).

Action: Temporary order and notice of application for a permanent order under section 9(c) of the Investment Company Act of 1940 (“Act”).

Summary of Application: Applicants have received a temporary order (“Temporary Order”) exempting them from section 9(a) of the Act, with respect to guilty pleas entered on October 10, 2024 (“Guilty Pleas”), by TD Bank US Holding Company (“TDBUSH”) and TD Bank, N.A. (“TDBNA” and together with TDBUSH, the “Pleading Entities”) in the United States District Court for New Jersey (the “District Court”) in connection with plea agreements (“Plea Agreements”) between the Pleading Entities and the United States Department of Justice (“DOJ”), until the Commission takes final action on an application for a permanent order (the “Permanent Order,” and with the Temporary Order, the “Orders”). Applicants also have applied for a permanent order.

Applicants: The Toronto-Dominion Bank (“TD Bank”), TDBUSH, TDBNA, and Epoch Investment Partners, Inc. (“Epoch” and collectively, the “Applicants”).

Filing Date: The application was filed on December 20, 2024.

Hearing or Notification of Hearing: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by e-mailing the Commission’s Secretary at Secretarys-Office@sec.gov and serving applicants with a copy of the request, by e-mail. Hearing requests should be received by the Commission by 5:30 p.m. on

January 16, 2025 and should be accompanied by proof of service on the applicants, in the form of an affidavit, or for lawyers, a certificate of service. Pursuant to rule 0-5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by e-mailing the Commission's Secretary.

Addresses: The Commission: Secretarys-Office@sec.gov. Applicants: Jane Langford at jane.langford@td.com.

For Further Information Contact: Adam M. Large, Senior Special Counsel, or Nadya Roytblat, Assistant Chief Counsel, at (202) 551-6825 (Division of Investment Management, Chief Counsel's Office).

Supplementary Information: The following is a temporary order and a summary of the application. The complete application may be obtained via the Commission's website by searching for the file number at the top of this document, or for an Applicant using the Company name search field, on the SEC's EDGAR system. The SEC's EDGAR system may be searched at <https://www.sec.gov/edgar/searchedgar/legacy/companysearch.html>. You may also call the SEC's Office of Investor Education and Advocacy at (202) 551-8090.

Applicants' Representations:

1. TDBNA, a Pleading Entity, is a national bank headquartered in Cherry Hill, New Jersey. TDBNA is a wholly-owned subsidiary of TDBUSH. TDBNA's deposits are insured under the Federal Deposit Insurance Act, and the bank is regulated and supervised by the Office of the Comptroller of the Currency ("OCC").

2. TDBUSH, a Pleading Entity, is a Delaware corporation and a non-operating holding company with oversight over the anti-money laundering ("AML") compliance program

of TDBNA, its direct subsidiary, and is accountable for monitoring the effectiveness of TDBNA's AML program pursuant to the Bank Secrecy Act ("BSA").

3. Epoch, a Delaware corporation, is registered as an investment adviser under the Investment Advisers Act of 1940 (the "Advisers Act") and is a direct, wholly-owned subsidiary of TDBUSH. Epoch serves as a sub-adviser to the investment companies registered under the Act that are listed in Appendix A to the application.

4. TD Bank is an international banking and financial services corporation headquartered in Toronto, Canada. TD Bank is a chartered bank subject to the provisions of the Bank Act (Canada). TD Bank is the indirect parent of TDBUSH through an intermediate U.S. holding company.

5. While no existing company of which a Pleading Entity is an "affiliated person" within the meaning of section 2(a)(3) of the Act ("Affiliated Person"), other than Epoch, currently serves as an investment adviser (as defined in section 2(a)(20) of the Act) or depositor of any registered investment company, employees' securities company ("ESC"), or investment company that has elected to be treated as a business development company ("BDC") under the Act, or as principal underwriter (as defined in section 2(a)(29) of the Act) for any registered open-end investment company ("Open-End Fund"), registered unit investment trust ("UIT"), or registered face-amount certificate company ("FACC") (such persons, "Funds," and such activities performed on behalf of such persons, collectively "Fund Servicing Activities"), Applicants request that any relief granted by the Commission pursuant to the application also apply to any other current or future Affiliated Person of the Pleading Entities other than

TDBUSH and TDBNA (together with Epoch, the “Covered Persons”) with respect to any activity contemplated by section 9(a) of the Act.¹

6. On October 10, 2024, the DOJ filed a one count criminal information in the District Court charging TDBNA with conspiring to: (1) fail to maintain an adequate AML program, contrary to Title 31, United States Code, Sections 5318(h) and 5322; (2) fail to file accurate Currency Transaction Reports (“CTRs”), contrary to Title 31, United States Code, Sections 5313 and 5324; and (3) launder monetary instruments, contrary to Title 18, United States Code, Section 1956(a)(2)(B)(i), in violation of Title 18, United States Code, Section 371. On the same date, the DOJ filed a two-count criminal information in the District Court charging TDBUSH with: (1) failing to maintain an adequate AML program, in violation of Title 31, United States Code, Section 5318(h) and 5322; and (2) failing to file accurate CTRs in violation of Title 31, United States Code, Sections 5313 and 5324. According to the Statement of Facts that served as the basis for the Plea Agreements (“Statement of Facts”), between January 2014 and October 2023 TDBNA and TDBUSH failed to implement an AML program that complied with the BSA. As a result, according to the Statement of Facts, the Pleading Entities failed to remediate deficiencies in the AML program, including (a) failing to substantively update TDBNA’s transaction monitoring system between 2014 and 2022, and (b) failing to adequately train its AML and retail employees. These failures enabled, among other things, three money laundering networks to launder over \$600 million in criminal proceeds through TDBNA between 2019 and 2023. These failures also created vulnerabilities that allowed five branch-level

¹ Covered Persons may, if the Order is granted, in the future act in any of the capacities contemplated by section 9(a) of the Act subject to the applicable terms and conditions of the Order. TD Bank does not and will not serve as an investment adviser, depositor or principal underwriter to any registered investment company as it is not a Covered Person.

TDBNA employees to open and maintain accounts for one of these money laundering networks. According to the Statement of Facts, TDBNA's senior AML executives knew there were deficiencies in the Pleading Entities' U.S. AML policies, procedures, and controls. According to the Statement of Facts, the Pleading Entities willfully failed to file accurate CTRs related to one of the three money laundering schemes.

7. Pursuant to the Plea Agreements, each Pleading Entity agreed to enter a plea of guilty to the charge(s) set out in its respective information. According to the Plea Agreements, each of the Pleading Entities agreed: (1) to abide by all terms and obligations of the Plea Agreement; (2) that in the event that, during the term of the Plea Agreement, the Pleading Entity undertakes any change in corporate form, including if it sells, merges, or transfers business operations that are material to its consolidated operations, or to the operations of any subsidiaries, branches, or affiliates involved in the conduct described in the Statement of Facts, as they exist as of the date of the Plea Agreements, whether such transaction is structured as a sale, asset sale, merger, transfer or other change in corporate form, it shall include in any contract for sale, merger, transfer, or other change in corporate form a provision binding the purchaser, or any successor in interest thereto, to the obligations described in the Plea Agreements; (3) to continue to cooperate fully with the DOJ (in any and all matters relating to the conduct, individuals, and entities described in the Plea Agreements and the Statement of Facts as well as any other conduct, individuals, and entities under investigation by the DOJ at any time during the term of the Plea Agreements, until the later of the date upon which all investigations and prosecutions arising out of such conduct are concluded or the end of the term of the Plea Agreements; (4) that, should the Pleading Entity learn of any evidence of allegation of conduct by the Pleading Entity, its affiliates, or their employees that may constitute a violation of federal

criminal law, the Pleading Entity shall promptly report such evidence or allegation to the DOJ in a manner and form consistent with local law; and (5) that any fine, forfeiture, or restitution imposed by the District Court will be due and payable as specified in the Plea Agreements, and that any forfeiture or restitution imposed by the District Court will be due and payable in accordance with the District Court's order. The monetary penalties and forfeiture under the Plea Agreements totaled approximately \$1.9 billion.

8. The Pleading Entities are subject to orders by other U.S. regulatory or enforcement agencies related to the Conduct. The Federal Reserve Board ("FRB") entered a cease- and- desist order and order of assessment of a civil monetary penalty (the "FRB Order") on October 9, 2024 against the TD Bank, TDBUSH, and TD Group US Holdings ("TDGUS"), the ultimate U.S. holding company for TD Bank's U.S. operations. The Financial Crimes Enforcement Network ("FinCEN") entered into a consent order (the "FinCEN Order") on October 10, 2024 with TDBNA and TD Bank USA, National Association ("TDBUSA"), a national bank and wholly owned direct subsidiary of TDBUSH, concerning violations of the BSA, including the failure to maintain an adequate AML program, and the failure to file CTRs and Suspicious Activity Reports ("SARs"). The OCC entered into a consent order (the "OCC Order") with TDBNA and TDBUSA concerning violations of the BSA, including the failure to maintain a compliant AML program, the failure to file SARs and CTRs in accordance with law and regulations, and the failure to conduct customer due diligence as required by law and regulation.

Applicants' Legal Analysis:

1. Section 9(a)(1) of the Act provides, in pertinent part, that a person may not serve or act as an investment adviser or depositor of any registered investment company or as principal

underwriter for any Open-End Fund, UIT, or FACC, if such person within ten years has been convicted of any felony or misdemeanor, including those arising out of such person's conduct as a broker, dealer or bank. Section 2(a)(10) of the Act defines the term "convicted" to include a plea of guilty. Section 9(a)(3) of the Act extends the prohibitions of section 9(a)(1) to a company, any affiliated person of which has been disqualified under the provisions of section 9(a)(1). Section 2(a)(3) of the Act defines "affiliated person" to include, among others, any person directly or indirectly controlling, controlled by, or under common control with, the other person. The Pleading Entities are affiliated persons of each of the other Applicants within the meaning of section 2(a)(3) of the Act. Therefore, the Plea Agreement resulted in a disqualification of Epoch for ten years under section 9(a)(3) from acting in any of the capacities listed in section 9(a), by effect of a conviction described in section 9(a)(1).

2. Section 9(c) of the Act provides that: "[t]he Commission shall by order grant [an] application [for relief from the prohibitions of subsection 9(a)], either unconditionally or on an appropriate temporary or other conditional basis, if it is established [i] that the prohibitions of subsection 9(a), as applied to such person, are unduly or disproportionately severe or [ii] that the conduct of such person has been such as not to make it against the public interest or the protection of investors to grant such application." Applicants have filed an application pursuant to section 9(c) seeking a Temporary Order and a Permanent Order exempting Epoch and other Covered Persons from the disqualification provisions of section 9(a) of the Act. The Covered Persons may, if the Orders are granted, in the future act in any of the capacities contemplated by section 9(a) of the Act subject to the applicable terms and conditions of the Orders.

3. Applicants believe they meet the standards for exemption specified in section 9(c). Applicants assert that: (i) the scope of the misconduct was limited and did not involve any

of the Applicants acting as an investment adviser, depositor or principal underwriter for any Fund, or any Fund with respect to which Epoch engage in Fund Servicing Activities; (ii) application of the statutory bar would impose significant hardships on the Funds and their shareholders; (iii) the prohibitions of section 9(a), if applied to Epoch, would be unduly or disproportionately severe; and (iv) the Conduct did not constitute conduct that would make it against the public interest or protection of investors to grant the exemption from section 9(a).

4. Applicants represent that the Conduct did not involve Epoch or any Epoch personnel. Applicants further represent that the Conduct did not involve any Fund with respect to which Epoch engaged in Fund Servicing Activities. Applicants represent that the Conduct did not involve any of the Applicants acting in the capacity as an investment adviser, depositor or principal underwriter for any Fund.² Applicants state that the Conduct was confined to TDBNA and TDBUSH. Applicants state that the five former TDBNA employees identified in the Statement of Facts as having willfully opened or maintained accounts for a money laundering network have been terminated and are not employed by any affiliate of the Pleading Entities. Applicants state that TD Bank recognizes that effective AML compliance begins by setting the “tone from the top” and continues to implement significant changes in connection with relevant practices and controls, as summarized below and described in more detail in the application. Applicants assert that, in light of the limited scope of the Conduct, it would be unduly and disproportionately severe to impose a section 9(a) disqualification on the Fund Servicing Applicants. Applicants assert that the conduct of the Applicants has not been such to make it against the public interest or the protection of investors to grant the exemption from section 9(a).

² Applicants represent that the Pleading Entities do not engage, have not engaged, and will not engage in in any of the capacities contemplated by section 9(a) of the Act.

5. Applicants assert that neither the protection of investors nor the public interest would be served by permitting the section 9(a) disqualifications to apply to Epoch because those disqualifications would deprive the Funds of the sub-advisory services that shareholders expected the Funds would receive when they decided to invest in the Funds. Applicants also assert that application of the prohibitions of section 9(a) to Epoch could operate to the financial detriment of the Funds and their shareholders, including by causing the Funds to spend time and resources to engage substitute sub-advisers.

6. Applicants assert that if Epoch were barred under Section 9(a) from providing investment advisory services to the Funds and were unable to obtain the requested exemption, the effect on its businesses and employees would be severe. Applicants state that Epoch has committed substantial capital and other resources to establishing expertise in sub-advising Funds with a view to continuing and expanding this business, which Applicants consider strategically important. Applicants further state that prohibiting Epoch from engaging in Fund Servicing Activities would not only adversely affect its business but would also adversely affect its employees who are involved in these activities.

7. Applicants represent that: (1) none of Epoch's current or former directors, officers or employees had any involvement in the Conduct; (2) no current or former employee of the Pleading Entities or any Covered Person who previously has been or who subsequently may be identified by the Pleading Entities or any U.S. or non-U.S. regulatory or enforcement agencies as having been responsible for the Conduct will be an officer, director, or employee of any Covered Person; (3) the identified employees have had no, and will not have any future, involvement in the Covered Persons' activities in any capacity described in section 9(a) of the Act; and (4) because the personnel of Epoch did not engage in the Conduct, shareholders of the Funds were

not affected any differently than if those Funds had received services from any other non-affiliated investment adviser.

8. Applicants have agreed that none of the Applicants or any of the other Covered Persons will employ the former employees of an affiliate of the Pleading Entities or any other person who subsequently may be identified by the Pleading Entity or any U.S. or non-U.S. regulatory or enforcement agencies as having been responsible for the Conduct in any capacity without first making a further application to the Commission pursuant to section 9(c).

9. Applicants have also agreed each Applicant and Covered Person will adopt and implement policies and procedures reasonably designed to ensure compliance with the terms and conditions of any Orders granted under section 9(c).

10. In addition, each Applicant and Covered Person will comply in all material respects with the material terms and conditions of the Plea Agreements and with the material terms of the FRB Order, the FinCEN Order, the OCC Order and any other orders issued by regulatory or enforcement agencies addressing the Conduct.

11. Applicants further state that the Pleading Entities have undertaken and are continuing to undertake certain other remedial measures, as described in greater detail in the application. These remedial measures include: (i) implementing new transaction monitoring scenarios; (ii) enhancing policies and procedures related to the identification of parties involved in conducting transactions, the collection of such conductors' identifying information, and reporting of the conductors in CTRs; (iii) terminating, separating, and/or sanctioning certain employees involved in the Conduct; and (iv) improving the overall compliance function and increasing their investments in the program, including by hiring competent and experienced

AML compliance employees and executives and making significant investments in technology and AML systems.

12. As a result of the foregoing, the Applicants submit that absent relief, the prohibitions of section 9(a) would be unduly or disproportionately severe, and that the Conduct did not constitute conduct that would make it against the public interest or protection of investors to grant the exemption.

13. To provide further assurance that the exemptive relief being requested in the application would be consistent with the public interest and the protection of the investors, the Applicants state that with respect to each of the Funds for which Epoch is a sub-adviser, they have disclosed and discussed the circumstances that led to the Plea Agreements, as well as any effects on the Funds, with the Fund's primary investment adviser. Applicants note that they understand that each primary investment adviser has provided to each Fund's board of directors all information concerning the Plea Agreements and the Application necessary for those Funds to fulfill their disclosure and other obligations under the U.S. federal securities laws. Applicants also state that they have offered to reimburse the Funds for all reasonable out-of-pocket expenses that the Funds have incurred as a result of the impact of the Plea Agreements on Epoch.

14. Applicants represent that the sub-advisory fees that would otherwise be payable to Epoch by the primary investment advisers to the respective Funds for the period from October 10, 2024 through the date upon which the Commission grants the Temporary Order have been and will continue to be retained by the primary investment advisers in escrow arrangements. Amounts placed in the escrow arrangements will be released after the Commission has acted on the application for the Permanent Order.

15. TD Bank previously applied for, and was granted by the Commission, an exemptive

order under Section 9(c) of the Act, as described in greater detail in the application.³

Applicants note that none of the conduct underlying the previous Section 9(c) order involved the provision of Fund Servicing Activities.

Applicants' Conditions:

Applicants agree that any order granted by the Commission pursuant to the application will be subject to the following conditions:

1. Any temporary exemption granted pursuant to the application will be without prejudice to, and will not limit the Commission's rights in any manner with respect to, any Commission investigation of, or administrative proceedings involving or against, Covered Persons, 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.
2. None of the Applicants or any of the other Covered Persons will employ the former employees of an affiliate of the Pleading Entities or any other person who subsequently may be identified by the Pleading Entities or any U.S. or non-U.S. regulatory or enforcement agencies as having been responsible for the Conduct in any capacity without first making a further application to the Commission pursuant to Section 9(c).
3. Each Applicant and Covered Person will adopt and implement policies and procedures reasonably designed to ensure that it will comply with the terms and conditions of the Orders within 60 days of the date of the Permanent Order or, with respect to condition four, such later date or dates as may be contemplated by the Plea Agreements, the FRB Order, the FinCEN

³ See In the Matter of the Toronto Dominion bank., et al., Investment Company Act Release Nos. IC-24486 (June 7, 2000) (notice and temporary order) and IC-26787 (July 11, 2000) (permanent order).

Order, the OCC Order or any other orders issued by regulatory or enforcement agencies addressing the Conduct.

4. Each Applicant and Covered Person will comply in all material respects with the material terms and conditions of the Plea Agreements and with the material terms of the FRB Order, the FinCEN Order, the OCC Order, and any other orders issued by regulatory or enforcement agencies addressing the Conduct.

5. Applicants will provide written notification to the Chief Counsel of the Commission's Division of Investment Management with a copy to the Chief Counsel of the Commission's Division of Enforcement of a material violation of the terms and conditions of the Orders within 30 days of discovery of the material violation.

6. As a condition of the Temporary Order, the primary investment advisers will hold in an escrow arrangement amounts equal to all sub-advisory fees payable by the Funds to Epoch for the period from October 10, 2024 through the date upon which the Commission grants the Temporary Order. Amounts placed in the escrow arrangement will be released from the escrow arrangement after the Commission has acted on the application for the Permanent Order.

Temporary Order:

The Commission has considered the matter and finds that Applicants have made the necessary showing to justify granting a temporary exemption.

Accordingly,

IT IS HEREBY ORDERED, pursuant to section 9(c) of the Act, that the Applicants and any other Covered Persons are granted a temporary exemption from the provisions of section 9(a), effective as the date of this order, solely with respect to the Guilty Pleas entered into pursuant to the Plea Agreements, subject to the representations and conditions in the application, until the Commission takes final action on their application for a permanent order.

By the Commission.

J. Matthew DeLesDernier
Deputy Secretary