

# SECURITIES AND EXCHANGE COMMISSION

## FORM S-8

Initial registration statement for securities to be offered to employees pursuant to employee benefit plans

Filing Date: **2010-06-01**  
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### FILER

#### **TORONTO DOMINION BANK**

CIK: **947263** | IRS No.: **135640479** | State of Incorporation: **A6** | Fiscal Year End: **1031**  
Type: **S-8** | Act: **33** | File No.: **333-167234** | Film No.: **10869900**  
SIC: **6029** Commercial banks, nec

#### Mailing Address

*TD TOWER 12TH FLOOR 55  
KING STREET WEST  
P O BOX 1  
TORONTO A6*

#### Business Address

*TD TOWER 12TH FLOOR 55  
KING STREET WEST  
PO BOX 1 TORONTO  
PROVINCE ONTARIO A6  
4169828222*



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**UNITED STATES SECURITIES AND EXCHANGE COMMISSION**  
**Washington, D.C. 20549**

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**FORM S-8**

**REGISTRATION STATEMENT  
UNDER  
THE SECURITIES ACT OF 1933**

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**The Toronto-Dominion Bank**

(Exact name of Registrant as specified in its charter)

**Canada**

(State or other jurisdiction of incorporation or organization)

**13-5640479**

(I.R.S. Employer Identification No.)

**P.O. Box 1  
Toronto-Dominion Centre  
King Street West and Bay Street  
Toronto, Ontario M5K 1A2  
Canada**

**(416) 982-8222**

(Address, including zip code, of Registrant's principal executive office)

**The Toronto-Dominion Bank 2000 Stock Incentive Plan**

(Full Title of the Plan)

**Brendan O' Halloran  
The Toronto-Dominion Bank  
31 West 52nd Street  
New York, New York 10019-6101  
(212) 827-7000**

(Name, address, including zip code, and telephone number, including area code, of Registrants agent for service)

*Copies to:*

**Lee Meyerson  
Ellen Patterson  
Simpson Thacher & Bartlett LLP  
425 Lexington Avenue  
New York, New York 10017-3954  
(212) 455-2000**

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See the definitions of "large accelerated filer," "accelerated filer" and "smaller reporting company" in Rule 12b-2 of the Exchange Act. (Check one):

Large accelerated filer

Accelerated filer

Non-accelerated filer

Smaller reporting company

(Do not check if a smaller reporting company)

**CALCULATION OF REGISTRATION FEE**

Title of Securities to be Registered	Amount to be Registered (a)(b)	Proposed Maximum Offering Price Per Share(c)	Proposed Maximum Aggregate Offering Price(c)	Amount of Registration Fee(c)
Common Shares, without par value	3,900,000	\$65.87	\$256,893,000	\$18,316.47

- (a) The number of Common Shares being registered hereby shall be adjusted to include any additional shares which may become issuable as a result of stock splits, stock dividends or similar transactions in accordance with the provisions of the plans described herein.
- (b) The shares are issuable pursuant to The Toronto-Dominion Bank 2000 Stock Incentive Plan – 3,900,000 Shares.
- (c) Pursuant to Rule 457(h)(1) and Rule 457(c) under the Securities Act of 1933, as amended, the proposed maximum offering price per share, the proposed maximum aggregate offering price and the amount of registration fee have been computed on the basis of the average of the high and low prices of the Common Shares reported on the New York Stock Exchange on May 25, 2010.

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## PART II

### INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

The 3,900,000 shares of Common Stock of The Toronto-Dominion Bank (the “Company” or the “Registrant”) being registered pursuant to this Registration Statement are additional securities of the same class as other securities for which registration statements (File Nos. 333-12948 and 333-120815) on Forms S-8 were filed with the Securities and Exchange Commission (the “Commission”) on November 30, 2000 and November 29, 2004, respectively. Pursuant to General Instruction E to Form S-8, the contents of such earlier registration statements are incorporated by reference into this Registration Statement, except that the provisions contained in Part II of such earlier registration statements are modified as set forth in this Registration Statement.

#### **Item. 5. Interests of Named Experts and Counsel.**

Christopher A. Montague, Executive Vice President and General Counsel of the Registrant, owns or has the right to acquire Common Shares of the Registrant in an amount that does not exceed 0.05% of the outstanding Common Shares of the Registrant.

#### **Item 6. Indemnification of Directors and Officers.**

Under the Bank Act of Canada, a bank may not, by contract, resolution or by-law, limit the liability of its directors for breaches of the Act, including their fiduciary duties imposed under the Act. However, a bank may indemnify a director or officer, a former director or officer or a person who acts or acted, at the bank’s request, as a director or officer of or in a similar capacity for another entity, and his or her heirs and personal representatives, against all costs, charges and expenses, including an amount paid to settle an action or satisfy a judgment, reasonably incurred by him or her because of any civil, criminal, administrative, investigative or other proceeding in which he or she is involved because of that association and may advance funds to him or her for the costs, charges or expenses of such a proceeding, provided however, that a bank may not indemnify such a person unless:

- (1) that person acted honestly and in good faith with a view to the best interests of, as the case may be, the bank or the other entity for which they acted at the bank’s request as a director or officer or in a similar capacity; and
- (2) in the case of a criminal or administrative action or proceeding that is enforced by a monetary penalty, that person had reasonable grounds for believing that his or her impugned conduct was lawful.

Under the Bank Act of Canada, these individuals are entitled to be indemnified by the bank in respect of all costs, charges and expenses reasonably incurred by them in connection with the defence of any civil, criminal, administrative, investigative or other proceeding in which he or she is involved because of an association referred to above with the bank or other entity if the person was not judged by the courts or other competent authority to have committed any fault or omitted to do anything that they ought to have done and fulfilled the conditions set out in (1) and (2) above. A bank may, with the approval of a court, also indemnify these individuals in respect of, or advance amounts to him or her for the costs, charges and expenses of, a proceeding referred to above, in respect of an action by or on behalf of the bank or other entity to procure a judgment in its favor, to which the person is made a party because of an association referred to above with the bank or other entity, if he or she fulfills the conditions set out in (1) and (2) above.

The Registrant’s by-laws provide that subject to the limitations contained in the Bank Act of Canada, but without limit to the right of the Registrant to indemnify or advance funds to any person under the Bank Act of Canada or otherwise, the Registrant will indemnify a director or officer or a former director or officer, or a person who acts or acted at the Registrant’s request as a director or officer of or in a similar capacity for another entity, and such person’s heirs and legal representatives, against all costs, charges and expenses, including an amount paid to settle an action or satisfy a judgment reasonably incurred by such person in respect of any civil, criminal, administrative, investigative or other proceeding to which such person is involved because of that association with the Registrant or other entity. However, the Registrant’s bylaws further provide that the Registrant shall not indemnify any such person unless: (i) such person acted honestly and in good faith with a view to the best interests of the Registrant or the other entity for which

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they acted at the Registrant's request as a director or officer or in a similar capacity; and (ii) in the case of a criminal or administrative action or proceeding that is enforced by a monetary penalty, such person had reasonable grounds for believing that such person's conduct was lawful. These indemnification provisions could be construed to permit or require indemnification for certain liabilities arising out of U.S. federal securities laws. Insofar as indemnification for liabilities arising under the Securities Act may be permitted to directors, officers or persons controlling the Registrant pursuant to the foregoing provisions, the Registrant has been informed that in the opinion of the Commission such indemnification is against public policy as expressed in the Securities Act and is therefore unenforceable in the United States.

The Registrant maintains directors' and officers' liability insurance policies providing for the insurance on behalf of any person who is or was a director or officer of the Registrant and subsidiary companies against any liability incurred by him or her in any such capacity or arising out of his or her status as such.

The Registrant also maintains liability insurance policies providing for the insurance on behalf of any person who is or was an employee of the Registrant while acting as a director, officer, trustee, governor or executive director of any organization where such service is with the knowledge and consent of the Registrant's Board of Directors against any liability incurred by him or her in any such capacity or arising out of his or her status, provided that such insurance shall not apply to the extent that any such person is entitled to be indemnified by such organization or to the extent that such organization maintains separate insurance of behalf of the person against such liability.

### **Item 8. Exhibits.**

<u>No.</u>	<u>Exhibit</u>
5.1	Opinion of Christopher A. Montague.
23.1	Consent of Ernst & Young LLP.
23.2	Consent of Christopher A. Montague (included in his opinion filed as Exhibit 5.1 hereto).
24.1	Power of Attorney.

### **Item 9. Undertakings.**

(a) The undersigned Registrant hereby undertakes:

(1) To file, during any period in which offers or sales are being made, a post-effective amendment to this Registration Statement:

(i) To include any prospectus required by Section 10(a)(3) of the Securities Act of 1933, as amended (the "Securities Act").

To reflect in the prospectus any facts or events arising after the effective date of the Registration Statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in the Registration Statement. Notwithstanding the foregoing, any increase or decrease in volume of securities offered (if the

(ii) total dollar value of securities offered would not exceed that which was registered) and any deviation from the low or high end of the estimated maximum offering range may be reflected in the form of prospectus filed with the Commission pursuant to Rule 424(b) if, in the aggregate, the changes in volume and price represent no more than a 20 percent change in the maximum aggregate offering price set forth in the "Calculation of Registration Fee" table in the effective Registration Statement.

(iii) To include any material information with respect to the plan of distribution not previously disclosed in the Registration Statement or any material change to such information in the Registration Statement;

*Provided, however,* that paragraphs (a)(1)(i) and (a)(1)(ii) of this section do not apply if the Registration Statement is on Form S-8, and the information required to be included in a post-effective amendment by those paragraphs is contained in reports filed with or furnished to the Commission by the Registrant pursuant to Section 13 or 15(d) of the Exchange Act that are incorporated by reference in this Registration Statement.

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That, for the purpose of determining any liability of the Registrant under the Securities Act each such post-effective amendment shall

- (2) be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

- (3) To remove from registration by means of a post-effective amendment any of the securities being registered hereby which remain unsold at the termination of the offering.

(b) The undersigned Registrant hereby undertakes that, for purposes of determining any liability under the Securities Act, each filing of the Registrant's annual report pursuant to Section 13(a) or Section 15(d) of the Exchange Act (and, where applicable, each filing of an employee benefit plan's annual report pursuant to section 15(d) of the Exchange Act) that is incorporated by reference in this Registration Statement shall be deemed to be a new registration statement relating to the securities offered herein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

(c) Insofar as indemnification for liabilities arising under the Securities Act may be permitted to directors, officers and controlling persons of the Registrant pursuant to the foregoing provisions, or otherwise, the Registrant has been advised that in the opinion of the Commission such indemnification is against public policy as expressed in the Securities Act, and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the Registrant of expenses incurred or paid by a director, officer or controlling person of the Registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the Registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Securities Act and will be governed by the final adjudication of such issue.

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**SIGNATURES**

Pursuant to the requirements of the Securities Act of 1933, as amended, the Registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S-8 and has duly caused this Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in Toronto, Ontario, Canada on this 1st day of June 2010.

THE TORONTO-DOMINION BANK

By: /s/ Christopher A. Montague  
Name: Christopher A. Montague  
Title: Executive Vice President and General Counsel

Pursuant to the requirements of the Securities Act of 1933, as amended, this Registration Statement has been signed by the following persons in the capacities and on the dates indicated.

<u>Signature</u>	<u>Title</u>	<u>Date</u>
<u>*</u> William E. Bennett	Director	June 1, 2010
<u>*</u> Hugh J. Bolton	Director	June 1, 2010
<u>*</u> John L. Bragg	Director	June 1, 2010
<u>*</u> W. Edmund Clark	President, Chief Executive Officer and Director (principal executive officer)	June 1, 2010
<u>*</u> Wendy K. Dobson	Director	June 1, 2010
<u>*</u> Henry H. Ketcham	Director	June 1, 2010
<u>*</u> Pierre H. Lessard	Director	June 1, 2010
<u>*</u> Brian M. Levitt	Director	June 1, 2010
<u>*</u> Harold H. MacKay	Director	June 1, 2010
<u>*</u> Irene R. Miller	Director	June 1, 2010
<u>*</u> Nadir H. Mohamed	Director	June 1, 2010
<u>*</u> Wilbur J. Prezzano	Director	June 1, 2010

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Helen K. Sinclair

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<u>Signature</u>	<u>Title</u>	<u>Date</u>
<hr/> * Carole S. Taylor	Director	June 1, 2010
<hr/> * John M. Thompson	Director and Chairman	June 1, 2010
<hr/> * Kelvin Tran	Senior Vice President and Chief Accountant (principal accounting officer)	June 1, 2010
<hr/> * Colleen M. Johnston	Group Head, Finance and Chief Financial Officer (principal financial officer)	June 1, 2010
<hr/> /s/ Christopher A. Montague Christopher A. Montague		June 1, 2010
*Attorney-in-fact		
Authorized Representative in the United States:		
<hr/> /s/ Brendan O' Halloran Name: Brendan O' Halloran Title: Senior Vice President		June 1, 2010

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**INDEX TO EXHIBITS**

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24.1	Power of Attorney.

[TD Letterhead]

June 1, 2010

The Toronto-Dominion Bank  
P.O. Box 1  
Toronto-Dominion Centre  
Toronto, Ontario  
M5K 1A2

Dear Sirs:

I have acted as Canadian counsel to The Toronto-Dominion Bank, a Canadian chartered bank (the “Bank”), in connection with the registration with the Securities and Exchange Commission of 3,900,000 of the Bank’s Common Shares (the “Shares”) for issuance to United States citizens and employees resident in the United States pursuant to the exercise of awards granted under the Bank’s 2000 Stock Incentive Plan (the “Plan”).

As such, I have examined such questions of law and documents as I have deemed necessary or advisable in order to enable me to express the opinion hereinafter set forth including, without limitation, the Bank’s Registration Statement on Form S-8 as filed with the Securities and Exchange Commission pursuant to the Securities Act of 1933 and the Prospectus related thereto.

Based on the foregoing, I am of the opinion that when the Shares are issued in accordance with the terms of the Plan, the Shares will be legally issued, fully paid and non-assessable.

I am a solicitor qualified to carry on the practice of law in the Province of Ontario and I express no opinion as to any matters governed by any laws other than the laws of the Province of Ontario and the federal laws of Canada applicable therein.

I hereby consent to the filing of this opinion as an exhibit to the Bank’s Registration Statement and to the use of my name in that Registration Statement.

Very truly yours,

/s/ Christopher A. Montague

## Consent of Independent Auditors

We consent to the incorporation by reference in the Registration Statement on Form S-8 of The Toronto-Dominion Bank filed with the U.S. Securities and Exchange Commission and in the related prospectus of our reports dated December 2, 2009 with respect to the consolidated balance sheet of The Toronto-Dominion Bank (the "Bank") as at October 31, 2009 and 2008 and the consolidated statements of income, changes in shareholders' equity, comprehensive income and cash flows for each of the years in the three year period ended October 31, 2009 and the effectiveness of internal control over financial reporting of the Bank as at October 31, 2009 appearing in the Annual Report (Form 40-F) dated December 3, 2009.

Our audits also included the reconciliation of Canadian and U.S. Generally Accepted Accounting Principles as at October 31, 2009 and 2008 and for each of the years in the three year period ended October 31, 2009 in the Reconciliation of Canadian and U.S. Generally Accepted Accounting Principles listed in Exhibit 99.4 of the Form 40-F identified above. This exhibit is the responsibility of the Bank's management. Our responsibility is to express an opinion based on our audits. In our opinion, the information in the exhibit referred to above as at October 31, 2009 and 2008 and for each of the years in the three year period ended October 31, 2009 when considered in relation to the basic financial statements taken as a whole, presents fairly in all material respects the information set forth therein.

As discussed in the Reconciliation of Canadian and United States Generally Accepted Accounting Principles, on November 1, 2008, the Bank adopted Statement of Financial Accounting Standards No.159 (codified in FASB ASC Topic 825 – *The Fair Value Option for Financial Assets and Financial Liabilities*) and the remaining provisions of Statement of Financial Accounting Standards No. 158 (codified in FASB ASC Topic 715-20-65, *Employers' Accounting for Defined Benefit Pension and Other Postretirement Plans*) that requires the benefit obligation and plan assets to be measured at the fiscal year end date. In addition, the Bank adopted FSP FAS 115-2 and FAS 124-2 (codified in FASB ASC Topic 310-10-35, *Recognition and Presentation of Other-Than-Temporary Impairments*) effective May 1, 2009.

Toronto, Canada  
June 1, 2010

/s/ Ernst & Young LLP  
Chartered Accountants  
Licensed Public Accountants

**POWER OF ATTORNEY**  
**THE TORONTO-DOMINION BANK**

KNOW ALL MEN BY THESE PRESENTS that the undersigned, THE TORONTO-DOMINION BANK, a Canadian chartered bank (the "Bank"), and each of the undersigned directors and officers of the Bank, hereby constitute and appoint Christopher A. Montague, Theresa L. Currie and Michael Pedersen, and each of them severally, as his or her true and lawful attorneys and agents, with power to act with or without the others and with full power of substitution and resubstitution, to do any and all acts and things and to execute any and all instruments which said attorneys and agents and each of them may deem necessary or desirable to enable the Bank to comply with the United States Securities Act of 1933, as amended, and any rules, regulations and requirements of the United States Securities and Exchange Commission (the "Commission") thereunder in connection with the registration under such Act of common shares, without nominal or par value, of the Bank, to be offered or sold pursuant to the employee benefit plan referenced in the Form S-8 of the Bank to which this Power of Attorney is an exhibit, including specifically, but without limiting the generality of the foregoing, power and authority to sign the name of the Bank and the name of the undersigned, individually and in his or her capacity as a director or officer of the Bank, to a Registration Statement on Form S-8 (the "Registration Statement") to be filed with the Commission with respect to said common shares, to any and all amendments, including post-effective amendments, to the Registration Statement, and to any and all instruments or documents filed as a part of or in connection with the Registration Statement and/or any such amendments; and to file with the Commission the Registration Statement, any and all amendments thereto, and any and all instruments or documents filed as a part of or in connection with the Registration Statement and/or any such amendments; and each of the undersigned hereby ratifies and confirms all that said attorneys and agents and each of them shall do or cause to be done by virtue hereof.

This Power of Attorney may be executed in any number of counterparts, each of which shall be deemed to be an original, and all of which together shall be deemed one and the same instrument.

IN WITNESS WHEREOF each of the undersigned has subscribed these presents as of this 27<sup>th</sup> day of May, 2010.

THE TORONTO-DOMINION BANK

By: /s/ W. Edmund Clark  
W. Edmund Clark, President,  
Chief Executive Officer and Director

/s/ Colleen M. Johnston  
Colleen M. Johnston, Group Head,  
Finance and Chief Financial Officer

/s/ Kelvin Tran  
Kelvin Tran, Senior Vice President and  
Chief Accountant

/s/ Brendan O' Halloran  
Brendan O' Halloran, Authorized  
Representative in the United States

/s/ William E. Bennett  
William E. Bennett, Director

/s/ Hugh J. Bolton  
Hugh J. Bolton, Director

/s/ John L. Bragg  
John L. Bragg, Director

/s/ Wendy K. Dobson  
Wendy K. Dobson, Director

/s/ Henry H. Ketcham  
Henry H. Ketcham, Director



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Pierre H. Lessard, Director

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/s/ Brian M. Levitt

Brian M. Levitt, Director

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/s/ Harold H. MacKay

Harold H. MacKay, Director

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/s/ Irene R. Miller

Irene R. Miller, Director

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/s/ Nadir H. Mohamed

Nadir H. Mohamed, Director

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/s/ Wilbur J. Prezzano

Wilbur J. Prezzano, Director

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/s/ Helen K. Sinclair

Helen K. Sinclair, Director

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/s/ Carole S. Taylor

Carole S. Taylor, Director

/s/ John M. Thompson

John M. Thompson, Director and Chairman

/s/ Christopher A. Montague

Christopher A. Montague

Attorney-in-fact