March 1, 2019

SENT BY E-MAIL

The Secretary

Ontario Securities Commission
20 Queen Street West
22nd Floor
Toronto, Ontario M5H 3S8
comments@osc.gov.on.ca

Re: OSC Staff Notice 11-784 *Burden Reduction*

TD Wealth welcomes the opportunity to comment on the Ontario Securities Commission's (OSC) burden reduction initiative and to participate in further discussions on this topic at the roundtable that will be held on March 27, 2019.

We fully support the OSC's leadership role in its effort to reduce regulatory burden. This includes establishing a Burden Reduction Task Force with the Ministry of Finance and identifying opportunities to enhance competitiveness for Ontario businesses by addressing unnecessary requirements and inefficient processes.

We also support the OSC's continued work with members of the Canadian Securities Administrators (CSA) on initiatives described in CSA Staff Notice 81-329 *Reducing Regulatory Burden for Investment Fund Issuers* and CSA Staff Notice 51-353 *Update on CSA Consultation Paper 51-404 Considerations for Reducing Regulatory Burden for Non-Investment Fund Reporting Issuers*.

Technological innovation, shifting demographics and globalization continue to impact the needs of Canadian investors, and how financial services are offered to them. To remain both relevant and effective, regulation must evolve alongside these changes.

Our comments reflect TD Wealth's responsibility to meet current and future investor protection obligations as a registrant, while continuing to provide our clients with a broad range of products and service offerings in a manner that suits their needs, preferences, expectations and overall experience.

TD Wealth has also participated in discussions with the Investment Industry Association of Canada, the Investment Funds Institute of Canada and the Portfolio Management Association of Canada. We generally support the views expressed in those letters.

Considering the broad scope of areas and questions that the OSC has opened for comment, TD Wealth has grouped its recommendations into the following six areas:

- OSC engagement with registrants
- Forms and filing requirements
- Modernizing the registration process
- Improving rule-making and implementation processes
- Suggested rule changes
- Improved coordination with self-regulatory organizations (SROs)

1. OSC Engagement with Registrants

Effective and timely engagement is critical to ensure Ontario registrants remain competitive and responsive to the needs of their clients. We commend the OSC for its work towards identifying opportunities for better engagement with registrants, including the establishment of the OSC Registrant Outreach program to foster an interactive and open dialogue between registrants and the use of advisory committees to gather feedback on regulatory issues and industry trends.

For registrants, consistency in the regulatory approach and interpretation of requirements across branches of the OSC (and where possible, across the CSA) is an essential component of effective and timely engagement.

(a) Improved coordination and consistency amongst regulatory branches

Responding to certain industry or registrant issues or to registrant applications frequently requires the involvement of multiple OSC branches (and at times the CSA), prior to providing a response to the applicant. While we acknowledge that certain issues or applications may be novel or complex, we recommend that the OSC look for opportunities to improve its branches' internal coordination and response times when matters cross various regulatory requirements. In addition, we encourage the OSC branches to collaborate and engage with applicants earlier in the application process to help ensure expectations are managed where multiple branches must be consulted.

We would also recommend a refresh of the OSC's Service Commitment document, published in 2014, to ensure it reflects the current environment and sets reasonable expectations.

Lastly, we urge the OSC to continue to codify exemptive relief that is routinely granted to reduce unnecessary time and expense and ensure consistency in the application of rules for all registrants. For routine relief that is not yet codified, it would be helpful if the OSC website included resources to assist in identifying routine relief, either by providing access to an inventory list or providing links to examples of routine decision documents by instrument.

(b) Improved process for compliance and desk reviews

We encourage the OSC to develop service level standards and clear processes for compliance and desk reviews. We acknowledge the importance of such reviews as part of the OSC's mandate to provide effective oversight of the capital markets. However, reviews can be lengthy and may not be clearly defined at inception.

Reviews may also involve multiple follow-up requests and it would be helpful to establish a standard time range applicable to both the registrant and regulator within which responses and feedback, respectively, will be provided. Alternatively, we recommend that if a registrant is required to respond within a specific time frame, that the regulator's feedback be provided within that same time frame.

Furthermore, the mechanism used to submit responses and documentation, namely email, can be unreliable and potentially unsecure. This frequently results in problems and delays due to technological obstructions such as firewalls and file size restrictions.

We recommend the OSC consider:

- providing greater clarity on the scope and parameters of a review at its outset;
- providing an outline or review plan, including its intended purpose/focus, any specific expectations of registrants and an estimated timeline for completion; and
- establishing a secure online portal for the delivery of responses and documentation which would reduce unnecessary delays.

We believe the above changes would provide greater structure, transparency and efficiency to the review process. In addition, we recommend the OSC consider creating a single online portal for all registrant submissions to the OSC. This would assist registrants in managing scarce resources and would result in a secure, central repository for all registrant data.

(c) Presentation of Rules and Policies on the OSC Website

Improved access to the most current versions of national, multilateral and local instruments, including related policies and other guidance on the OSC website would assist registrants in their compliance efforts. Today, many Ontario market participants will use the British Columbia Securities Commission's website for this purpose. While it is helpful to have information about proposed amendments affecting the instruments, it would be highly beneficial to market participants to prominently display the current, consolidated version of instruments under the instrument number on the OSC website. For example, the last consolidated version of National Instrument 31-102 *National Registration Database* was dated September 28, 2009 despite amendments in 2013.

Improving the access, organization and currency of regulatory requirements on the OSC website would promote greater transparency and efficiency, saving time and reducing ambiguity for Ontario stakeholders.

(d) Innovation

We believe hackathons could be successfully repurposed to explore technological innovation designed to help securities regulation keep pace with changes in products, services and applications that benefit investors and reduce regulatory burden for registrants.

Technological innovation is impacting the way investors interact with financial services providers and how those providers in turn interact with their regulators. We applaud the OSC's leadership in hosting the first hackathon in November 2016. We note the OSC's comment in the March 6, 2017 white paper which highlighted key insights gained from RegHackTO: "The creation of 22 thoughtful solutions to complex problems over the course of one weekend highlighted the vast potential of utilizing data and technology to solve regulatory problems"[1]. Different OSC branches could use hackathon type events to identify opportunities for reducing regulatory burden through technological solutions.

2. Forms and Filing Requirements

Duplicate filings and unnecessary forms are key concerns for registrants who devote significant time, money and resources to ensure compliance with regulatory requirements. There are often significant technological and logistical considerations which add complexity to registrants' ability to meet form or filing requirements. We acknowledge that our comments relate to national instruments, requiring CSA engagement. However, we believe it is important to highlight these examples and recommend the OSC, together with its CSA colleagues, consider streamlining these forms and filing requirements.

(a) Form 45-106F1

We recommend the use of one report and a single filing portal for Form 45-106F1 in all CSA jurisdictions. Currently, TD Asset Management Inc., as an investment fund manager, is required to file Form 45-106F1 in Ontario using e-form, in British Columbia using eService and then for all other jurisdictions in which it distributes its funds through the System for Electronic Document Analysis and Retrieval. Filing through multiple systems is cumbersome, time consuming and costly, especially where an outside service provider has been retained to assist in meeting filing requirements.

(b) Simplified Prospectus (SP) and Annual Information Form (AIF)

We recommend combining the SP and the AIF required under National Instrument 81-101 *Mutual Fund Prospectus Disclosure* into a single document to streamline disclosures and eliminate redundancies. Now that Fund Facts is the prescribed disclosure document for delivery to investors, neither the SP nor the AIF is being delivered, except upon request. There are certain form requirements within the AIF that are repetitive, time consuming, no longer relevant or add no value to the reader. For example, the principal holder information is included in a management information circular in the event of a securityholder meeting, while large investor percentages are already included in the prospectus. Consolidating the SP and AIF into a single disclosure document would be user-

[1] Ontario Securities Commission. *OSC RegHackTO: Insights from Canada's first regulatory hackathon*. March 6, 2017 at pg 6.

friendly for investors and would reduce the overall work effort by the investment fund manager, without compromising the provision of relevant information.

3. Modernizing the Registration Process

An essential component of supporting the Government of Ontario's *Open for Business Action Plan* is to modernize and streamline the registration process and make it less time consuming and cumbersome for individuals and businesses to register in Ontario. Improved coordination between the OSC and registrants in exchanging information to complete applications would greatly benefit registrants, particularly entities that manage voluminous individual and firm registration filings, such as TD Wealth.

(a) National Registration Database (NRD)

We strongly encourage the OSC to explore opportunities to enhance the functionality, design and interface of NRD to improve user experiences. NRD is an antiquated system that has been due for an upgrade for many years. The system is not user-friendly and relies on a manual interface. NRD's lack of responsiveness in design results in a time-consuming application process that causes delays to firms and individuals, whether entering or continuing to operate in the capital markets.

(b) Registration forms and additional guidance

In recent Annual Summary Reports for Dealers, Advisers and Investment Fund Managers, the OSC has cited deficiencies with registration applications, for both firms and individuals. We believe deficiencies can be alleviated, in part, by making registration forms responsive (e.g. smart forms with conditional logic where a respondent's answer drives the appearance of the form and removes inapplicable fields) and enhancing the supporting systems. This would create significant efficiencies in the registration process. In addition, we recommend the OSC consider issuing a staff notice which outlines key areas that give rise to incomplete or deficient applications, together with guidance on how applicants can best avoid these issues (e.g. interpretative examples for items 15 and 16 in Form 33-109F4).

4. Improving Rule-making and Implementation Processes

To ease the burden of regulatory change, we recommend longer transition periods and phased-in implementation schedules based on greater dialogue and consultation with registrants. Large-scale regulatory changes often require registrants to update or build new systems and to revise or create new internal policies and procedures. Not surprisingly, registrants often struggle with short transition periods. System enhancements and new system builds demand extensive resources and may require a multi-phased approach depending on the nature of the change.

(a) Rule implementation committee

We recommend the OSC create a regulator-led implementation committee for registrants to raise questions during the transition period following the adoption of a rule, which may include applicable SROs. We believe such a committee would provide significant value for registrants, particularly on large scale projects (e.g. Client Focused Reforms). Issues may arise during implementation that were

not foreseen during the consultation stage or by the regulator at the time of finalizing the rule. The provision of timely guidance would assist registrants to update their systems or clarify controls and processes and help minimize compliance issues going forward.

(b) Consultation fatigue

TD Wealth, as a significant capital markets participant, believes that it is important for us to actively engage in consultation processes with the OSC (and CSA) as part of the rule-making process. However, there are times when TD Wealth is impacted by regulatory proposals and must implement significant operational changes with concurrent deadlines in response to new requirements from multiple regulators. In these instances, there is a risk that many registrants will not be able to dedicate sufficient resources to meaningfully and actively engage in consultations. We therefore recommend that the OSC streamline its rule-making process to help ensure it obtains timely and meaningful input from all industry participants. This may be accomplished by:

- engaging advisory committees at an earlier stage to provide feedback on draft rules. Advisory committees are often consulted prior to the publication of rule proposals, but too late in the process to effect change. Earlier engagement would provide regulators with insight into the feedback they can expect to receive from industry and the provision of guidance on alternative approaches to achieving the regulatory interest. Moreover, earlier engagement may reduce the need for subsequent consultations;
- providing more meaningful cost-benefit analyses in support of rule proposals. The cost-benefit analyses included in rule publications are typically 'conceptual' in nature, and often conclude that the benefits to investors outweigh incremental costs to registrants, without real data to support these conclusions. Cost-benefit analyses should include industry data and metrics evidencing both investor protection (i.e. the projected savings or benefit to investors, estimates of the prevention of harm to investors), and the impact to registrants and their ability to remain competitive in a global market (e.g. the costs of implementation, costs of system changes and technology builds as well as ongoing compliance costs);
- adjusting the length of comment periods depending on the scope, complexity and significance of proposals; and
- providing alternative ways for market participants to provide input and contribute to the rule-making process, such as surveys or informal forums.

5. Suggested Rule Changes

As a general comment, a focus on adopting clear and plain language rules would support a more consistent understanding of requirements, reduce reliance on legal counsel to interpret obligations and reduce time and costs associated with seeking clarity. We acknowledge that some of our comments relate to national instruments and would involve engagement with the CSA.

(a) National Policy 11-201 *Electronic Delivery of Documents* (NP 11-201)

Modernizing Part 2 of NP 11-201 is a necessary step to keep pace with technological solutions that registrants are employing to reduce costs and meet the changing needs of investors. While NP 11-201 permits the electronic delivery of documents such as prospectuses, Fund Facts, trade confirmations and account statements, among others, the OSC (and CSA) should consider ways to broaden the permissibility of electronic delivery to both dramatically reduce paper costs and to respond to investors' preferred methods of information consumption and access. To facilitate and encourage electronic delivery of documents, the current "paper default" should be changed to electronic delivery, provided that investors can opt to receive paper documentation. We also recommend the OSC consider implementing an "access equals delivery" model. In relation to these suggestions, registrants would appreciate clarity on issues such as:

- whether express consent to electronic delivery is required or negative consent is sufficient; and
- whether specific consent to electronic delivery is required on a document-by-document basis or if consent could cover all documents going forward.

(b) OSC Rule 31-509 *National Registration Database (Commodity Futures Act)* (OSC Rule 31-509)

We recommend the OSC consider whether OSC Rule 31-509 remains relevant in light of National Instrument 31-102 *National Registration Database* (NI 31-102). We note part 7 of the Companion Policy 31-102 CP indicates that if a filing under OSC Rule 31-509 and under NI 31-102 is required, with respect to the same information, then a single filing on a form required under either rule satisfies both requirements. As such, we recommend the OSC streamline its *Commodity Futures Act* submissions by consolidating OSC Rule 31-509 with NI 31-102 or, at a minimum, removing overlap and duplication.

(c) Proficiency requirements for portfolio managers advising in options

In recent years, a tremendous amount of work has been undertaken by the OSC and CSA in streamlining individuals' proficiency requirements and fully incorporating them into NI 31-103. However, we note that currently, NI 31-103 and OSC Rule 91-502 *Trades in Recognized Options* (OSC Rule 91-502) contain inconsistent requirements for individuals advising in recognized options. For example, Part 3 of OSC Rule 91-502 specifically states that those advising in options must have completed the Canadian Options Course, while under NI 31-103, a registered Advising Representative (PM) can advise in 'securities' (which includes options), without specific options proficiency training. Accordingly, we recommend the OSC clarify the application and meaning of Part 3 of OSC Rule 91-502 as it relates to registered advising representatives, and if it is determined to be duplicative, to remove such unnecessary provisions from the rule.

(d) Trade confirmations

We encourage the OSC to amend the requirement in section 14.13 of NI 31-103 to obtain client written consent to waive the delivery of trade confirmations for subsequent purchases in an automatic purchase plan. Instead, the instrument should permit firms to include, as part of their opening documentation for such plans, notice to clients that subsequent trades in the automatic plans will not require delivery of trade confirmations.

(e) Exemptions for institutional clients

We recommend modifying requirements impacting institutional clients in a manner that acknowledges their sophistication relative to individual investors, and their preference for market efficiency. Institutional investors typically determine their own investment guidelines, policies and procedures for specific portfolios or sub-portfolios and the terms of their investment management agreements direct their investment managers to comply with them. While the portfolio manager is granted discretion to manage that portfolio or sub-portfolio, the manager must do so within the confines of the institutional investor's stated investment objectives, strategies and constraints. The ability of institutional investors to impose these requirements on their portfolio managers is a necessary component of ensuring institutional investors' ability to manage all of their assets held across the institution, and to discharge their own fiduciary and other duties to maximize return on investment for their own constituents. Accordingly, we urge the OSC (and CSA) to consider providing exemptions from certain requirements, such as the suitability requirement in NI 31-103 in relation to the provision of portfolio management services to institutional clients.

(f) NI 24-101 *Institutional Trade Matching and Settlement* (NI 24-101)

We encourage the OSC (and CSA) to consider whether continued quarterly reporting pursuant to Part 4 of NI 24-101 remains appropriate and necessary, and to evaluate the value, if any, that this reporting provides to the OSC. We note there is no similar U.S. reporting requirement for trades that settle with DTC, and query whether such reporting continues to be relevant.

(g) NI 81-106 *Investment Funds Continuous Disclosure*

We recommend that the OSC (and CSA) remove the requirement to prepare interim Management Reports of Fund Performance (MRFPs). In addition, the OSC could permit notice and access to MRFPs and financial statements rather than requiring the mailing of annual opt-in-cards, which are costly and have exceptionally low investor take-up rates (generally between 2% and 3%).

(h) Investor disclosure testing

When proposing new or continuous disclosure obligations for the benefit of investors, we encourage the OSC (and CSA) to properly test the usefulness and viability of the proposed disclosure in meeting its intended objective, including consulting and surveying investors. TD Wealth is committed to providing clear and relevant disclosure that assists investors in making informed investment decisions. However, more disclosure does not equate to better disclosure and can sometimes detract from the

effectiveness of the disclosure. Investor disclosure should be properly designed and tested to ensure it reflects the appropriate balance of information investors would need in making an investment decision.

(i) Consistent treatment of Cease Trade Orders (CTO)

The CTO management framework in Canada is fragmented, with some jurisdictions relying on statutory reciprocal order provisions, while others rely on Multilateral Instrument 11-103 *Failure-to-File- Cease Trade Orders in Multiple Jurisdictions* (MI 11-103). Moreover, in Ontario, a CTO is only effective when Ontario is the issuing jurisdiction. This multifaceted framework leads to confusion and unnecessary complexity that results in additional regulatory burden for registrants seeking to comply with a CTO. The inconsistent use of CUSIPs in the CTO database and lack of clear guidance on what is expected of registrants when CTO securities go through reorganizations further complicates the management, and potentially leads to different outcomes for investors in different provinces. We recommend that the OSC look for opportunities to improve coordination and consistency of CTO management which will benefit all Canadian investors.

6. Improved Coordination with the Self-Regulatory Organizations (SROs)

Coordination between the OSC (and CSA) and the SROs is key to fostering efficient capital markets, developing effective regulation and encouraging a culture of integrity and compliance. A lack of effective cooperation and engagement among regulators can result in time-consuming and costly confusion for registrants and compromise investor confidence in the capital markets. We encourage the OSC to work closely with its SRO partners to ensure smooth oversight and operations of the capital markets and to align, streamline and rationalize requirements. In addition, as part of its oversight function, we encourage the OSC to engage the SROs as part of this burden reduction initiative, to identify areas to streamline processes and to reduce regulatory duplication.

7. Ongoing Initiatives

Lastly, it is worth noting two opportunities to reduce regulatory burden that TD Wealth previously submitted in response to the Client Focused Reforms and Embedded Commissions.

(a) Client Focused Reforms

We are concerned that the proposed Client Focused Reforms are too prescriptive to accommodate evolving technology and consumer preferences. Further to our prior written submission, we recommend various changes including (i) tailoring certain aspects of the Client Focused Reforms to address the specific needs and expectations of "do it yourself" and institutional investors; and (ii) tailoring the "know your product" requirements to encourage product innovation and preserve the range of product choices currently available to investors. To foster innovation and meet investors' changing needs and expectations, it is critical to allow registrants some flexibility in achieving regulatory objectives.

(b) Embedded Commissions

We believe the interests of retail investors are best served by providing them with choice as to how they want to invest and choice as to what investment products they want to invest in. Mutual funds in particular have enabled investors, with minimal investment, to access capital markets. We are concerned that the proposed amendments to National Instrument 81-105 *Mutual Fund Sales Practices* will impact investors' choice. In particular, the proposed prohibition of embedded dealer compensation in mutual fund products, held on the Order Execution Only ("OEO") platform, would be in our opinion, detrimental to smaller retail investors. We reiterate our comments about D-Series mutual funds that have reduced commissions tailored to the direct investing channel. These series provide a cost-effective way to continue to offer TD mutual funds, investor resources and services to "do it yourself" investors on its direct investing channel. Moreover, given the cost to provide access and services to investors, D-series mutual funds provide a value proposition to investors relative to other investment products. The potential outcome of mutual fund product offerings being removed from OEO platforms should indicate to regulators that the burden of the proposed prohibition may be disproportionate to the benefits sought to be achieved.

In closing, we appreciate the opportunity to provide our preliminary suggestions on how regulatory burden may be reduced. In addition to the above suggestions, we would also be pleased to continue to consult with various internal functions and operations within TD Wealth's different lines of business, with a view to providing more specifics and additional comments and feedback on burden reduction.

In particular, we welcome the opportunity to do this through in-person discussions with OSC staff and our participation in the March 27, 2019 roundtable.

Sincerely,

Leo Salom
Group Head, Wealth Management and TD Insurance