April 30, 2003

Joint Forum of Financial Market Regulators
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Dear Sirs & Mesdames:

Re: Request for comments on Consultation Paper 81-403 (the "Consultation Paper")

We have reviewed the Canadian Securities Administrators ("CSA") and Canadian Council of Insurance Regulators ("CCIR") Consultation Paper and welcome the opportunity to provide you with our comments. TD Asset Management Inc. ("TDAM") shares the aims of the Consultation Paper. We believe that the mutual fund industry can only benefit from efforts to harmonize point of sale disclosure and improve the way information about mutual funds and segregated funds is conveyed to consumers. As an ongoing business, however, we are very concerned with the impact some of the proposals in the Consultation Paper would have on our business and urge that the principles discussed in the Consultation Paper be carefully considered from all perspectives to ensure a workable regime is agreed upon.

By way of background, TDAM is one of Canada's largest managers and advisers of investment products with approximately $110 billion in assets under management. TDAM provides mutual funds, pooled funds, segregated fund management, and investment advisory services to individual customers, pension funds, corporations, endowments, foundations and high net worth individuals. The TD Mutual Funds division of TDAM is the sixth largest mutual fund manager in Canada managing approximately $28 billion in retail mutual fund assets on behalf of more than 1.4 million investors. The TD Quantitative Capital division manages approximately $33 billion in mutual and pooled fund assets, primarily in index and quantitative portfolios on behalf of institutional investors.

TDAM applauds the concept of the foundation and fund summary documents, the "access equals delivery" approach and the introduction of the Consumers' Guide.

The following represent our central concerns with the Consultation Paper:

- The foundation document and the fund summary document should both fall under the "continuous disclosure regime". Both documents (not just the foundation document) should be "evergreen" and provide the opportunity to include information on more than one fund. Managers should be allowed the flexibility to prepare them with all of the funds in their fund families or as they see fit, which is consistent with the current approach to disclosure. Clarification is required with regard to their content.

- Time-sensitive information pertaining to performance data and Management Expense Ratios ("MERs") should be referenced in the fund summary document, with current performance information and most recent MERs being made available on the manager's web site and SEDAR.
- "Access equals delivery" should also be applied to the fund summary document. Alternatively, if delivery is required, consumers should have the right to waive its delivery.
- Two Consumers' Guides should be prepared, one on mutual funds and the other on segregated funds. The document should be available to all investors and not be specifically required to be offered to novice investors at the early stage of the sales process, as the execution of the proposed requirement will not always be practical. The Consumers' Guide may be more effective and less confusing if information on mutual funds and segregated funds is not presented in the same document.

Our response is divided into three parts. In the first part we respond to certain specific questions raised by the CSA and CCIR in the consultation paper. Part II includes general comments addressing other issues raised by the Consultation Paper and offers recommendations as to how some of the requirements can be improved. The final section summarizes our conclusions. References below to a "company" are to a mutual fund's manager.

Part I: Specific Questions of the CSA and CCIR Concerning the Consultation Paper

1. ***Do you agree with our description of the disconnect between theory and practice in this part of the consultation paper (page 12)? Are there any differences between segregated funds and mutual funds that we should keep in mind as we work to improve their respective disclosure regimes?***

We agree that there is a disconnect between theory and practice as outlined by the Joint Forum on page 12 of the Consultation Paper and applaud the Joint Forum's efforts to address this.

Prospectus disclosure is not a particularly useful way to help a customer make a purchase decision as the document is not generally read and is usually provided to the customer after the purchase decision has already been made. In addition, the sheer volume of information makes the prospectus overwhelming, which prevents the disclosure regime from working as intended.

The introduction of the proposed four-part disclosure regime with the "access equals delivery" concept introduces significant improvements over the status quo. We, however, respectfully suggest that the Joint Forum give further consideration to the practicability and execution of some of the proposed requirements. We outline our concerns in greater detail below.

Further, as it continues to work to improve point of sale disclosure, the Joint Forum should keep in mind, that segregated funds and mutual funds are structured differently. The Joint Forum needs to recognize that segregated funds are contract based while mutual funds involve ownership of a trust or corporate security. This distinction results in conceptual and practical differences between these products that impact the type and timing of sale disclosure.

2. If you are a mutual fund industry participant (either a fund manager or a sales representative), please comment on your experience with the rights of rescission and withdrawal. Have you or your clients ever exercised them? Do they work in practice to give consumers real (as opposed to theoretical) rights? If you are a consumer, please tell us whether you knew you had these rights and whether you have ever used them.

Generally speaking, too few customers and front-line staff understand these rights or how to use them. The rights, as they currently apply throughout the industry, are geared toward different ends and operate inconsistently across provinces, as has been clearly outlined in the Consultation Paper. TDAM has had minimal experience with people using these rights and we understand that other fund managers are in a similar situation. There is consensus in the mutual fund industry that occasionally a small minority of more sophisticated investors have used the rights and may have abused them. In any event if more emphasis is placed on these rights it may well lead consumers to ‘market time’ their mutual fund purchases by using these rights as a free ‘put’ option. It is thus our position that rights of rescission and withdrawal are, at best; theoretical rights that are open to abuse and should be eliminated. The proposed availability of information before a purchase decision is made obviates the need for statutory cooling-off period(s).

3. Our Consultation Papers will require operators to post the foundation document and continuous disclosure documents for each fund they manage on their websites. The IVIC used by an insurance company for its segregated funds will also be available electronically and in paper. Please comment on the pros and cons of this approach.

The availability of a range of document delivery options being made to customers, especially in light of the “access equals delivery” approach, is certainly a highlight of the Consultation Paper. Ideally, customers should always select the documents they wish to receive and determine those they choose not to receive. This will both alleviate the many customer complaints that we have received in the past surrounding the abundance of unwanted documentation that we have been required to send and reduce the funds’ costs of printing and disseminating these documents.

The Consultation Paper raises issues, however, that need to be addressed. In particular we believe that it is impossible to make point of sale disclosure documents available on the web to all purchasers through every sales channel simply because not all consumers have Internet access.

In addition, research performed by TD Mutual Funds shows that a significant number of customers, who do have Internet access, do not always have the desire or ability to download and print documents from a web-site. Many customers still prefer paper-based documents that are mailed to them, while there is also a large number that do not want the documents in any form.

Sales representative should not be permitted to fulfil delivery requirements through printing and delivering web-posted documents, as there is no assurance they will provide the most current version of the document. A prohibition of this type would prevent obsolete documentation being presented to consumers as stocking printed versions of web-posted documents cannot be controlled by the manager. Another consideration is that web downloading could clearly be impractical for the adviser who is on the road.

TDAM strongly supports 'access equals delivery' as a convenient and financially prudent approach even though we are aware that this concept may well be unpopular with some consumers and sales representatives.

4. ***We recommend that consumers have access (either electronically or if they wish, in paper) to an individual foundation document for the fund of their choice. Would it be possible or advisable to allow a foundation document to describe more than one fund – for example, all of the funds in a fund family? Why or why not? How would such a document work?***

TDAM is supportive of the proposal that a consumer can have access (either electronically or if they wish, in paper) to the foundation document and delivery will only become necessary if the consumer requests a copy. However, it is not our view that foundation documents should be restricted to an individual document for each fund.

In addition to the administrative difficulties posed by having an individual document for each fund, for both fund companies and distributors, we are of the view that consumers may not be well served by this type of disclosure. They usually hold, purchase or want the opportunity to transfer within several funds in a fund family and a single document would no doubt seem more appropriate. In addition, having one foundation document for each fund would impede the consumers' ability to easily compare several funds from the same family; instead of examining one consolidated foundation document they would be examining several foundation documents. This may well create unnecessary repetition, work and cost for funds, which ultimately would negatively impact consumers.

We strongly recommend that related funds be included in the same document in a manner that the fund company chooses. In other words, fund companies should be allowed the flexibility to group funds in the foundation document in a way that they think most useful and appropriate for consumers and sales persons. Also, it is important to note that any required amendment to the foundation document would most likely affect many or all of the funds in a fund family. This would result in multiple revisions, separate re-filings and approvals and increase the probability of errors or omissions. The current system that allows the flexibility proposed by TDAM works well and has not been the subject of debate or difficulty to our knowledge.

5. ***We propose that mutual fund managers make the various documents available on their website, notwithstanding their availability on SEDAR. Are SEDAR postings, alone, sufficient? Is the SEDAR system structured appropriately to fulfil this function? Please comment on the usefulness of SEDAR for accessing individual disclosure documents about a mutual fund.***

SEDAR, which is designed to provide public availability of information and allow industry participants to file securities documents and remit filing fees electronically (thereby saving time and money), is not sufficiently user-friendly as currently constituted. Consideration should be given to making it more user-friendly. Despite recognizing that SEDAR could have a legitimate role in point of sale disclosure, TDAM would ultimately prefer its documentation to be available on its own web-site. Issuers will have liability on point of sale disclosure documents and they should therefore remain within their control.

6. Please give us feedback on the practical issues surrounding fund summary documents. Please explain how marketing brochures or other sales communications are distributed and kept up-to-date today, both at the operator and sales representative levels.

TDAM is of the view that it would be most practical for fund summaries to be organized by fund family as consumers usually consider more than one fund from a family when making a purchasing decision. The contents and format of the fund summary should be prescribed to ensure comparability between funds. Requiring a separate fund summary for each fund is not practical and denies or complicates the consumer obtaining the benefits of comparing related funds. From the perspective of a sales representative involved in a face-to-face sales process, a single fund summary document organized by fund family is a more practical means of supplying information to the consumer. If the regime proposed in the Consultation Paper were to be adopted we envisage that an advisor would be forced to shuffle through numerous sheets of fund summaries during the sales process making it very cumbersome and confusing to the consumer. This may also put the onus on the advisors to decide in advance which funds to recommend and to ensure that they carry the relevant supporting documentation with them to the consumer. It could also require two or more visits with a consumer in order to complete the transaction. Such a scenario is not to the advantage of either the consumer or the advisor.

The Consultation Paper provides that fund operators will be permitted to prepare fund summaries on a periodic basis, tied to the timing of performance updates. It is unclear what performance updates are contemplated. While we agree that performance information is highly relevant, we are concerned that the frequent provision of new disclosure documents by a multiplicity of funds will have negative systemic effects. We do not believe that distributors will be able to ensure that only the most current versions of fund summaries will be utilized. Therefore we believe that current fund performance data and MERs should be available on the company's web site and SEDAR.

The proposed sales process suggests the fund summary document must be offered to or reviewed with the consumer before the sale. While this may be accomplished during a face-to-face sale, it raises problems with regard to sales that occur over the telephone or electronically. Reviewing the fund summary document during a sale over the telephone contemplates a lengthy and laborious conversation that we believe, neither the consumer nor the sales representative is interested in having. Furthermore there is no guidance given with regard to the requirements that are necessary to review the document. A line-by-line recitation would obviously be inappropriate. Between this extreme and saying nothing there is a range of possibilities that would seem to be very difficult to regulate. In any event, it should be made clear that a distributor providing an oral review of the fund summary document does not do so as agent of the fund manager or fund unless the distributor has been so appointed.

The Consultation Paper suggests as one option that offering the document would be sufficient to fulfil the delivery requirement. This suggests that the consumer will have the option to waive the right. If that is the case, the ability to waive the right should be explicit. There may also be instances where the consumer wants to see the document and not delay the sales process. Given these dimensions, the sales process can become very frustrating. Rather than interrupt the sales conversation to create a two-step process we recommend that the sale be allowed to continue at the consumer's sole discretion, if the documents are not provided immediately. This should be done without the need to provide a cooling-off period for the consumer.

TDAM wishes to emphasize that providing a cooling-off period under any circumstances in the ordinary course with regard to the purchase of mutual funds and segregated funds would be inconsistent when most other securities (including the securities purchased by mutual funds) can be purchased without such safeguards. We believe that the argument that mutual fund and segregated fund purchasers are less sophisticated than those purchasing shares of listed companies or alternatively that mutual fund salespersons are more aggressive than securities advisors, does not apply. Our records show that novice investors hold 22 % of our mutual fund accounts with assets amounting to 13% of assets under management. The remaining 78% of unitholders claim to have investment knowledge ranging from "fair" to "excellent".

TDAM is not convinced that there is any difference between a mutual fund transaction and a secondary market stock or bond transaction that would necessitate the delivery of a summary document for the former and not for the latter. The CSA has acknowledged that the new issue model is not particularly appropriate to mutual funds having regard to the ample information about them in the public domain through the "continuous disclosure regime", the media, performance reporting services and over the Internet. Further, these issuers are (other than with respect to the frequency or entitlement to redemption as a selling mechanism) functionally little different than ETFs, closed-end investment companies and even corporate holding companies that are listed and traded on stock exchanges. In light of the proposed enhanced "continuous disclosure regime" for mutual funds and Bill 198 in Ontario, reliance on the "continuous disclosure regime" will be further enhanced. We believe that the continuous disclosure record in each case provides the appropriate information necessary to make an informed investment decision. Accordingly, we are of the strong view that there should be no pre-sale delivery requirement and the "access equals delivery" concept should be extended throughout the entire point of sale disclosure process.

TDAM recognizes the need for consumers to make informed investment decisions, but feels this can be accomplished with adequate training and regulation of sales staff rather than by placing regulatory requirements on the sales process that may not work as intended and / or be difficult to enforce.

7. ***Please tell us your business practices now while using the existing disclosure documents. Do you use them in the sales process? Do you give them to customers before a sale is completed? If we require you to give a printed fund summary to consumers before a sale, what impact will this have on your existing business practices? What about telling consumers what the fund summary says rather than always giving them a printed copy? Can we achieve our objectives of empowering consumers to make informed decisions without mandating a fund summary?***

Currently, TDAM's affiliates' clients typically do not use existing disclosure documents during the sales process, as they are unwieldy, do not necessarily have the most current information and are not optimal to the investor or the advisor. TDAM's affiliates offer a variety of sales materials, such as electronic wealth allocation models, C3 calculators etc. and provide selective information from the disclosure documents to the extent necessary to explain the investment. We also have limited sales collateral materials. In the retail environment, the disclosure documents are mailed out to the consumer after the sale takes place. In the independent advisor channel, the advisor is responsible for fulfilling the delivery requirements. However, our suspicion is that these documents most likely end up being discarded by consumers shortly after they are received and this is supported by the results of TD Mutual Funds' research. In any event, by maintaining a centralized fulfillment function, we can better control the process of disseminating disclosure documents.

TD Mutual Funds research showed that investors prefer one-page fund profiles and by and large, receipt of information through the mail. We believe that providing the fund summary document before a sale should be optional (at the discretion of the consumer) and not obligatory, as delivery of the fund summary document before the sale will have a tremendous impact on our existing business and sales practices. We expect difficulty in ensuring that current documentation is being used if frequent changes to fund summaries are made. Advisors will be overloaded with paper in order to maintain an adequate supply for all the funds that they sell particularly if separate individual fund summaries are required. The implication of the proposed requirement should be considered for telephone and electronic sales in both the advice and non-advice channels. Regardless, as previously stated, TDAM is not convinced that there is any difference between a mutual fund transaction and a stock or bond transaction in the secondary market. There should be no requirement for the delivery of a summary document for a mutual fund transaction if there is no similar requirement for a stock or bond transaction in the secondary market. We are of the strong view that there should be no pre-sale delivery requirement.

In addition, many dealers, particularly large discount brokers and some of the larger mutual fund dealers offer several thousand different mutual funds and the logistics of fulfilling the proposed requirement would be staggering. They will be forced to tell consumers that documents will be mailed to them and that the sales process can be completed only after they have had the opportunity to review them. If document fulfillment is done from a central source, consumers in different parts of the country will experience different lag times until documents are received and orders can be placed. Some of these lag times may be unduly long particularly in volatile markets. This could result in frustration to both the consumer and the sales representative and may well deter investments in mutual funds in favour of functionally equivalent products such as ETFs where the pre-delivery requirement does not exist. We once again strongly suggest as a minimum that "access equals delivery" should apply here with a specific requirement to fulfil the delivery process, upon request, within a required time frame.

The question was raised as to whether we can achieve the objectives of empowering consumers to make informed investment decisions without mandating a fund summary review and we believe the answer is 'yes'. Novice investors will have the availability of the Consumers' Guide in addition to the abundance of educational information that fund companies currently distribute. More experienced investors may have done their own research prior to contacting the sales representatives. Other investors rely on the expertise of their advisors and it is expected that they will usually waive the option to receive the disclosure documents in any event.

8. Please give us your views on the proposed content of the fund summary document.

Substantial consumer confusion could result from different fund families' approaches to the discussion of risks and investment objectives and strategies between the fund summary and the foundation document, particularly if one of each is required in respect of every individual fund. To avoid this, it would be necessary for uniformity of content and form in the display of this type of information. Useful and high level information should be included in the fund summary, leaving the detail to the foundation document.

As mentioned above, time sensitive performance information should not be disclosed in the fund summary document. Rather, managers should be allowed to produce current performance information separately, to be used in conjunction with that document without the need to include performance information. The fund summary document could fall under the "continuous disclosure regime" and be "evergreen".

9. What are the pros and cons of a fund summary document that includes information on more than one fund? Why is a consolidated document desirable, having regard to the potential of consolidated documents being unwieldy?

Having a fund summary document that includes information on more than one fund is desirable because consumers look at more than one fund when making purchase decisions. A consolidated document does not have to be unwieldy. These documents can be consolidated for example, by asset class, fund category or even by risk level.

From a practical perspective, as more one or two-page documents are given out in respect of each fund considered, consumers may once again be subjected to too many pieces of paper and too much information, just what they continue to complain about. Sales representatives are unlikely to carry dozens of one or two-page documents in a briefcase. TDAM currently manages 111 funds of various sorts; this would require 111-222 pages for 111 fund summary documents in a briefcase for a sales representative to have just one of each available at all times.

If all funds in a family, asset class or fund category can be effectively compared in one concise and useful summary outlining major individual features, a more useful and navigable document would be created. Fund managers and salespeople have a common interest with consumers to ensure the effective transmission of information for a more satisfying mutual fund purchase experience.

10. Please provide us with feedback on the practical questions raised by the consumers' guide.

Not all firms offer both segregated funds and mutual funds, which may make the inclusion of information about both types of investments in the Consumers' Guide confusing to consumers. A mutual fund sales representative who does not sell segregated funds may not be adequately trained to answer questions on segregated funds and the same may apply to a segregated funds representative who does not sell mutual funds. Ideally, two Consumers' Guides should be prepared, one on mutual funds and the other on segregated funds. We would recommend separate books for separate audiences.

The authors of the Consumers' Guide should be conscious of the varying practices of fund companies. Currently, quarterly account statements are distributed to all of our client name accounts while some dealers and fund managers may issue statements more or less frequently. The language in the Consumers' Guide may not accurately reflect the documents that clients actually receive.

TDAM commends joint regulatory and industry involvement in the creation of the Consumers' Guide, but wants to emphasize that industry participants using it should not be accountable for its contents. Managers may nonetheless want to brand this document so it looks and feels like one of their products without somehow endorsing any of its contents so as to create liability.

It is proposed that industry participants offer the Consumers' Guide to novice investors at an early stage of the sales process. This raises a number of practical issues. If pre-sale distribution is optional, who decides to whom distribution will be made? To what standard will the distributor be held? Managers should not be liable for distributors' errors in making this judgment. Is there a mandatory gap in time between the provision of the Consumers' Guide and the completion of the sales process? What happens if the consumer wants to proceed with the process with the intention of reading the Consumers' Guide after the investment decision has been made? Should evidence of consent to proceed with the sales process be maintained? Is the offering of the Consumers" Guide part of the sales process?

While the Consumers' Guide is no doubt a useful document for the 'novice investor', it should not be a mandatory part of the sales process, if this is the intention of the Consultation Paper. The Consumers' Guide should be an industry document that is available to all investors, who have the right to accept or refuse it. Offering the Consumers' Guide at an early stage of the sales process is not practical as indicated above. Any individual who meets with a sales representative with the intention of purchasing units in a mutual fund does not expect to be presented with a booklet then turned away until they have educated themselves on investments.

11. Please comment on the content of draft consumers' guide in Appendix 1.

The Consumers' Guide is excessively detailed and will likely be overwhelming for the novice investor. There should be two separate Consumers' Guides: one for mutual funds and the other for segregated funds. Our research has shown that targeted and simple content is preferred. The intended audience will not read it if it is too long.

12. Please comment on cooling-off periods in the context of mutual fund and segregated fund sales. If you believe one should be retained (or introduced in the case of segregated fund sales) please explain why. How should a cooling period work given the changes in market value of funds? How can we prevent market players from using a cooling-off period to play the markets? What would be a correct period for consumers to re-consider their investment?

Consumers are dealing with trained and licensed professionals who should be accountable for guiding the consumer on the most appropriate investments based on the consumer's investor profile and in this regard we see no need for a cooling-off period. In volatile markets, a cooling-off period could be seriously abused at the expense of the other unitholders. Consumers have the opportunity to receive information in advance and mutual fund purchasers, like purchasers of stocks and bonds, should bear the responsibility to do their own due diligence and should be encouraged to place purchase orders at the appropriate time.

If however a cooling-off period is retained, consumers taking advantage of it should only be entitled to a refund of any applicable sales charges and the current market value of their investment at the end of the day they withdraw their holding. This would discourage market players and encourage consumers to take advantage of the availability of the Consumers' Guide should they desire more education with regard to the products.

13. Although we will be preparing a formal cost-analysis, we are interested in your views on the costs versus the benefits of the Consultation Papers. Please comment and explain your analysis.

If the Consultation Paper's proposals were implemented, we would envisage potential significant cost reductions in printing (specifically if the fund summary documents could be aggregated) and in legal and regulatory filing fees due to the "evergreen" nature of the foundation document. Making the fund summary an "evergreen" document would further enhance cost reductions. However, if there is a mandatory two-step sales process distribution related costs will escalate. A mandatory two-step sales process may also entail opportunity costs for consumers, which could be very significant in volatile markets.

We also anticipate resistance from sales-persons if they are expected to download the latest disclosure documents from the Internet and print them in their offices, with their equipment and at their expense.

Part II: General Comments and Observations

Fund Summary Document

In our opinion there are three fundamental flaws associated with the concept of a fund summary document as proposed in the Consultation Paper. First, we believe that the fund summary document should form part of the "continuous disclosure regime", not contain time sensitive information such as performance data and MERs and be "evergreen". The time sensitive information should be referenced in the document and current data made available on the company's web site and SEDAR and form part of the funds' continuous disclosure record. Second, the fund summary document should not necessarily pertain to only one fund. Managers should be given the flexibility to produce summary documents either for fund families or in segments as they see fit, as the manager is best positioned to provide consumers the information they require. Third, TDAM believes that delivery of the fund summary document should fall under the "access equals delivery" approach. It is reasonable to mandate a specific period within which it should be delivered, if requested. Alternatively, if delivery is required, the consumer should be able to waive delivery.

Mandating delivery of any document to the consumer prior to or after an investment decision being made is unnecessary. Consumers should ultimately be able to decide what they need to see regarding an investment decision. TDAM supports the requirement to inform investors about the information that is available to them and the obligation to provide this information upon request. It also is reasonable to require managers to produce certain information that includes prescribed standard disclosure.

It is questionable whether concerns over the traditional assumptions about the lack of sophistication in mutual fund purchasers continue to apply. As our records show, 78% of our unitholders claim to have “fair” to “excellent” investment knowledge. The average mutual fund purchaser is more sophisticated than traditionally presumed and has access to a wide range of market information about mutual funds. There appears to be no need to treat mutual fund buyers differently than buyers of other securities who are not required to receive any document similar to the fund summary document prior to sale.

Our concerns are highlighted by the Consultation Paper’s suggestion that the telephone customer could be treated differently than web or face-to-face customers with respect to the method and timing of the disclosure delivery.

We wish to reiterate that the fund summary document should form part of the “continuous disclosure regime” and be “evergreen”. The document can be prepared on an annual basis for publication, in a glossy, commercial format, which both customers and sales staff may find attractive.

Foundation Document

TDAM applauds the proposal with regard to the “access equals delivery” approach and that the foundation document be “evergreen”. We view this as highly desirable and extremely economically prudent.

However, to prepare this on a single fund basis is expected to create unnecessary repetition and will not minimize the cost burden to investors.

It would be ideal to have the flexibility to produce a combined document for a fund family and include a more detailed level of information about the funds, while providing the high level information in the more concise fund summary document.

Consumer’s Guide

The Consumers’ Guide should not form part of the sales process. It should be readily available to any consumer who desires it. Some consumers will openly welcome the introduction of the Consumers’ Guide and others, regardless of their investment experience or knowledge, may not care to have it. It is our view that the Consumers’ Guide could help with explanations concerning sales charges. It should however, always present a balanced perspective.

The Consumers’ Guide should not present information on both segregated funds and mutual funds in the same document. We suggest that two separate Consumers’ Guides be prepared for the two separate products, which may have two different audiences.

Harmonization of Mutual Funds and Segregated Funds

Mutual funds and segregated funds have very different legal structures (mutual funds involve the ownership of shares of a corporation or units of trust while segregated funds involve an insurance contract with an insurance company). The former is purely investment related while the latter contains investment and insurance components. Mutual funds and the securities industry in general are regulated differently from the insurance industry. Mutual funds and segregated funds have different customer bases and those customers have different investment needs and goals. This should be taken into consideration particularly with regard to the Consumers' Guide, which ultimately should be produced as two Guides, one on mutual funds and the other on segregated funds.

National Consensus

National consensus is an imperative prerequisite to adopting the Consultation Paper. A single set of new compliance burdens on dealers will be substantial if the proposed Consultation Paper is implemented.

Need for more Detail on the new Regime

Care must be taken that we do not switch from a system that requires the creation of two documents to a system that requires the creation of four documents, without ensuring that it is appropriate to today's mutual fund investor and minimizes the cost and burden to funds, investors and dealers.

Consideration should be given to allow consumers the right to waive delivery of any or all of the disclosure documents.

Clarification of the differences in the disclosures made in the fund summary and foundation documents is also required. The Consultation Paper suggests that there might be substantial overlap in the contents of these two documents and we are of the view that the former should have concise high level information with less detail and the latter should contain more detailed information. The two should form part of the "continuous disclosure regime" and the fund summary document, like the foundation document, should be "evergreen".

Who Provides the Consumer's Perspective?

Is the Joint Forum the optimal source in developing guidelines that tell consumers what they want and need to make an informed investment decision without meaningful input from those consumers? It appears that the request for comments on the Consultation Paper has been focussed on the industry and it is expected that the bulk of the comments will be from industry participants and forums (i.e. Investment Funds Institute of Canada, FAS Mutual Fund Dealers and Canadian Life and Health Insurance Association). It will be difficult to make an effective 'consumer protection' oriented recommendation to the regulators if insufficient consumer input has been obtained through market research or otherwise.

Part III: Conclusions

Mutual fund families already voluntarily develop sales materials that are more consumer- friendly than current disclosure documents. This highlights the difference between consumer and sales representative needs and the current regulatory documents and emphasizes an industry preference for flexibility.

TDAM is supportive of the principle behind the point of sale disclosure Consultation Paper but feels that while some of the proposals represent significant progress for mutual fund managers, distributors and investors, greater consideration should be given to the practical application and execution of the requirements.

While we are of the opinion that certain proposals in the Consultation Paper require further refinement, we are very pleased with the general intention and would be happy to provide any further explanations or submissions regarding the matters raised above. We would also be very willing to make ourselves available for any further dialogue relating to the Consultation Paper.

Yours truly,

Steve Geist
President
TD Mutual Funds