Asset Management

Robert F. MacLellan
Chairman

TD Asset Management Inc.
Canada Trust Tower
161 Bay Street, 35th Floor
Toronto, Ontario M5J 2T2
T: 416 307 9871 F: 416 983 5550
rob.maclellan@td.com

DELIVERED via email

April 8, 2004

Canadian Securities Administrators, in care of:

John Stevenson, Secretary
Ontario Securities Commission
20 Queen Street West
19th Floor, Box 55
Toronto, Ontario
M5H 3S8
Email: jstevenson@osc.gov.on.ca

And

Denise Brousseau, Secretary
Commission des valeurs mobilières du
Québec
800 Victoria Square, Stock Exchange Tower
P.O. Box 246, 22nd Floor
Montreal, Québec
H4Z 1G3
Email: consultation-en-cours@cvmq.com

Dear Sirs & Mesdames:

Re: Request for Comments by the Canadian Securities Administrators ("CSA") on Proposed National Instrument 81-107 – Independent Review Committee for Mutual Funds (the "Instrument")

We have reviewed the Instrument, which follows the Concept Proposal 81-402 '*Striking a New Balance: A Framework for Regulating Mutual Funds and their Managers* ("the Concept Proposal") with great interest and once again appreciate the opportunity to provide our comments. The Instrument appears to have addressed most of our concerns on the Concept Proposal outlined in our letter dated June 4, 2002. We are generally pleased with the Instrument's recognition that the mandate of an Independent Review Committee ("IRC") should be to address conflicts of interest between a fund manager and the fund(s) it manages, but feel that further refinement to the Instrument is required to ensure the practicality of its implementation and ultimately fulfill its purpose.

We have chosen to limit our comments to those issues that we feel are most important. Our principal areas of concern are set out below.

By way of background, TD Asset Management Inc. ("TDAM") is one of Canada's largest managers, advisors and distributors of investment products and with its affiliates, has approximately $120 billion in assets under management. TDAM provides mutual funds, pooled funds, segregated account management and investment advisory services to individual customers, pension funds, corporations, endowments, foundations and high net worth individuals. TDAM manages approximately $34 billion in retail mutual fund assets on behalf of more than 1.3 million investors and is one of the largest mutual fund managers in Canada.

1. Definitions and Application
1.2 Mutual Funds subject to Instrument

We are pleased that the Instrument extends only to mutual funds governed by National Instrument 81-102 (NI 81-102) and commodity pools regulated by Multilateral Instrument 81-104, but believe that an IRC is not appropriate for mutual funds that are solely contained in fully managed accounts managed by a registered advisor. In these circumstances, the mutual funds are purchased as part of a variety of services provided by advisors to high net worth clients. These services may include, among other possibilities, the determination of appropriate investment goals having regard to client needs, objectives and risk tolerances, discretionary investment management, custody, customized investment and tax reporting and bill payment and tax/advice filing services. As such, the portfolio management services provided are not product focused and the mutual fund is simply the mechanism through which the investment management portion of the services is provided.

Although the funds inside a fully managed account are mutual funds for the purposes of NI 81-102, they are not promoted or marketed as such. They are not available for sale to the general public and are only available to those that participate in a managed account program. These "funds" are generally used to provide smaller and other managed accounts with a cost effective means of achieving asset and investment risk diversification, which they could not otherwise achieve within the confines of a segregated account. In such instances, these funds serve the very limited role of providing a vehicle for pooling assets to effectively convert some or all of the assets of a number of different segregated accounts into a much smaller number of pooled accounts for the purpose of making portfolio management expertise and services accessible to a broader range of investors. The prospectus exemption regime in Rule 45-501 includes in the definition of "accredited investor" distributions of securities to portfolio advisors who make investment decisions on behalf of managed accounts. Although Rule 45-501 has specifically excluded distributions of mutual fund securities from the definition of "managed account", we submit that there is less reason to interpose independent review committees for mutual funds where professional portfolio advisors, owing a fiduciary duty to their clients, have been granted the discretion to make investment decisions on behalf of these accounts.

Extending the Instrument to such funds would be out of keeping with investment management business practices, could fetter the discretion of a prudent portfolio manager, and would add significant costs for these clients. In most cases, the manager of both the fund and the account are already fully registered as an Investment Counsel / Portfolio Manager. Adding the

IRC oversight requirement to these relationships is inappropriate having regard to the nature of services provided and relationship between the client and investment counselor/portfolio manager. In addition, such funds are often prospectus qualified, not because they are primarily distributed to the retail market, but for convenience and technical requirements. In the interest of harmonizing the regulatory approach to discretionary managed accounts, we submit that these mutual funds distributed to portfolio managers for fully managed accounts on behalf of their clients should be exempted from any new rule arising from the Instrument.

In our response to the Concept Proposal, dated June 4, 2002, we advised and would like to reiterate that a concern was raised by the Ontario Securities Commission's chief economist who cautioned that the "...cost-benefit analysis (of the Instrument) applies primarily to actively managed funds where profit margins tend to be wider...For passively managed funds, in particular, where fund management expenses can run under 20 basis points, the potential significant savings to investors in these funds is limited. The introduction of additional costs for these types of funds makes it more difficult for them to achieve their investment objectives of replicating index returns. Adding additional costs to these funds is unlikely to generate significant net savings and could, in the case of smaller mutual funds, make them uneconomical to run." This cost assessment would also apply to mutual funds distributed to portfolio managers for fully managed accounts, where management fees are similarly low.

2. Independent Review Committee
2.3 Composition, Term of office and vacancies
2.10 Ceasing to be a member

The Instrument provides that the manager must appoint the first members of the IRC and thereafter the IRC must appoint replacement members. It also states that an IRC member can be removed by the remaining committee members or the security holders, at a special meeting called for that purpose by the manager. The Commentary elaborates that the manager should not have the authority to remove a member, to allow the member to perform his functions freely. The Instrument indicates that the independence of the member is of utmost importance to ensure freedom and impartiality in performing his duties, and we agree. We believe, however, that such independence will not be compromised if the manager and IRC must appoint and remove members jointly. We believe that this would be necessary to ensure the smooth operation and continuity of the IRC.

2.4. Independence

The Instrument authorizes the IRC to set and pay the compensation and proper expenses for the members of the IRC from the assets of the fund. Under section 2.4, the Instrument states that every IRC member must be independent and the Commentary proceeds to define persons that would not be considered independent for the purposes of the Instrument. Specifically, "*. . . a person who has accepted, directly or indirectly, at any time during the past 3 years, any*

consulting, advisory or other compensatory fee from the manager, the mutual fund or any entity related to the manager. . ." is not considered independent. Since IRC committee members are compensated by the mutual fund, in the Instrument's present form, IRC members could not sit for consecutive terms. To reappoint a committee member, 3 years would have had to lapse since the member's last term. This could lead to issues with finding suitable prospective IRC members with the depth of knowledge required to address the breadth of potential conflicts of interest that could confront the IRC, under the Instrument's current form. We recommend that the CSA allow committee members to sit for consecutive terms.

2.11 Disclosure

The disclosure requirements include *"any instances where the manager did not follow a recommendation of the independent review committee, the general nature of the recommendation and the reasons for not following the recommendation*". While we support full, true and plain disclosure, there should be a materiality threshold regarding the disclosure of the instances where a manager and IRC disagree. This threshold should be the same as that attributable to other prospectus disclosure.

3. Matters to be referred to the Independent Review Committee
3.1 Conflicts of Interest

We believe that the proposed IRC model has merit in dealing with several potential structural and situational conflicts of interest; however, we are concerned about the scope of the potential conflicts that may be subject to IRC review under Part 3 of the Instrument. The range of potential conflicts is so broad that over time the IRC's role could approximate that contemplated by the Concept Proposal. By way of example, a fund manager arguably has a conflict of interest in calculating a fund's net asset value ("NAV"), which affects the amount of the manager's management fees and the fund's performance. As drafted, NI 81-107 could require the IRC to monitor the calculation of the NAV and fund performance. The same could be said with respect to the financial statements as a whole.

As this example illustrates, the range of potential conflicts is endless. At a minimum, we believe that the Commentary on the provision should provide that certain matters where there is third party oversight, such as by fund auditors, should be excluded from the scope of this provision. Preferably, the IRC's role should be limited to dealing with the conflicts of interest addressed by the insider dealing and conflict of interest provisions of securities legislation and a finite list of other conflicts.

The Commentary includes as a potential business conflict: "*Marketing the mutual fund for sale through distributors, whether related to the manager or not, if the manager provides incentives to the distributors to sell the mutual fund and other mutual funds.*" National Instrument 81-105 -Mutual Fund Sales Practices ("NI 81-105") governs the provision of incentives by managers to distributors and sales representatives and it is our view that these types of activities should not be subject to review pursuant to NI 81-107. We believe that the IRC should not be required to assume a compliance/enforcement role with respect to specific laws, or rules or

policies of securities regulatory authorities. More specifically, we believe that the IRC does not have a role to play in overseeing any type of marketing activity (which could be interpreted to include reviewing prospectuses and continuous disclosure documents) under any circumstances and that members of an IRC would be reluctant to review or monitor such diverse and widespread activities.

Prudent fund management is the essence of what investors seek from a fund manager. Accordingly, we do not believe that investors wish an IRC to review the appointment or removal of sub-advisors or advisors.

3.2 Changes to the mutual fund

Section 3.2(1) 1 states: "(1) *The manager must refer the following matters to a mutual fund's independent review committee for its recommendation before taking any action:*

1. a proposed change to the basis of the calculation of a fee or expense, or the introduction of a fee or expense that is charged to the mutual fund or directly to its security holders by the mutual fund or its manager in connection with the holdings of securities of the mutual fund, that could result in an increase in charges to the mutual fund or to its security holders."

We believe that additional precision is required to clarify the circumstances in which the IRC is to be involved in reviewing a change in the calculation of a fee or expense, or the introduction of a fee or expense required under section 3.2(2). We submit that it should not be involved where there is an increase in current fees or the introduction of new fees payable by a fund or each of its security holders to a third party, unrelated to the fund manager. Further, section 3.2(2) should be clarified to indicate a vote is not required in these circumstances. Finally, we note that section 5.3 of NI 81-102 provides circumstances in which a security holder vote is not required for a change referred to in paragraph 5.1(a) of NI 81-102 but does not refer to paragraph 5.1 (a.1) of NI 81-102.

We are of the view that it would not be in the best interest of security holders to hold costly meetings for the approval of such ongoing administrative matters, even if these matters result in an increase in charges to the mutual fund or each security holder. Security holders have already entrusted responsibility for managing expenses to the manager and it is undisputed that security holders are not generally interested in such meetings particularly where the fund manager is not in a conflict of interest.

Before proceeding with the changes outlined in section 3.2. (1) 1. and 3. of the Instrument, the approval of security holders must be obtained at a meeting in accordance with NI 81-102. If the IRC is not going to act as a proxy for security holders in approving the proposed changes then it should not be involved where security holders are directly involved. The Instrument does not appear to allow the mutual fund to call a security holder meeting, without first having to put the matter before the IRC. It is unclear if this might be an oversight or the intention of the Instrument. If the input of the IRC is expected to heavily influence the outcome of a security holder meeting, then perhaps serious consideration should be given to eliminating such meetings,

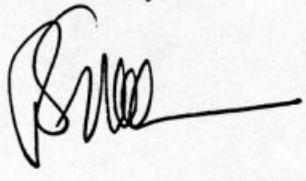
where the IRC is in favour of the proposed change. There will be considerable cost savings for the fund and ultimately the security holders. We agree with the proposal that the security holder, who is not in agreement with the recommended change, could redeem securities of the mutual fund and purchase securities of another mutual fund managed by the manager, without payment of fees, including 'early redemption fees', to the fund or manager. Please note however, that the manager has no control over switch-fees charged by a dealer and would not be in a position to control any charges that they may apply. The Instrument does not appear to have contemplated this and would therefore need to be revised appropriately.

3.3 Inter-fund trades

Section 3.3 (1) of the Instrument states that "*A mutual fund must not purchase or sell securities from or to a mutual fund managed by the same manager or from or to a pooled fund managed by the same manager (engage in inter-fund trades) unless the manager of the mutual fund refers the matter to the independent review committee for its recommendation…*" The rules do not seem to clarify whether this must be done on a case-by-case basis or whether the fund manager can refer a general inter-fund trading policy to the IRC for its recommendations. We would also like the CSA to consider that adherence to the rules outlined in the Instrument on inter-fund trades would not further require the IRC's recommendation. Further, in light of the requirements for inter-fund trading already outlined in the Instrument, the role of the IRC, in this respect, seems redundant. As previously indicated, we do not believe that the IRC should assume a compliance/enforcement role where specific laws, or rules or policies of securities regulatory authorities exist. We suggest, that the IRC review inter-fund trades 'after the fact' in the same manner the purchase of securities of related parties are reviewed.

In conclusion, we look forward to further consideration by the CSA of the concerns raised above and we would be pleased to provide further explanations or submissions regarding those matters.

Yours truly,



Robert F. MacLellan