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July 15, 2004

BY EMAIL AND COURIER

Ontario Securities Commission
20 Queen Street West
Suite 1903, Box 55
Toronto, Ontario M5H 3S8

Attention: Secretary to the Commission

Dear Sirs/Mesdames:

Re: Mutual Fund Dealers Business Arrangements

We act as counsel to TD Investment Services Inc. ("TDIS") and TD Waterhouse Canada Inc. ("TDWCI") (collectively, the "TD Dealers"). The TD Dealers have now had an opportunity to review and consider the Issues Paper dated June 2004 (the "Issues Paper") that was recently published by the Ontario Securities Commission ("OSC") in respect of the above noted matter and we are writing on their behalf to respond as follows to each of the questions posed by the Issues Paper.

Question 1: Do you agree with the description of current industry trends? Are you aware of any other similar changes?

While the TD Dealers agree with the description of current industry trends that is set out in the Issues Paper narrative which precedes this question, they wish to make two observations regarding regulatory concerns that are alluded to by the narrative. First, in the first sentence of the Executive Summary the OSC states that dealers who are registered under the *Securities Act* (Ontario) (the "Ontario Act") in the category of mutual fund dealer are licensed to deal solely in mutual fund shares or units. Although this is technically correct, it ignores the fact that many mutual fund dealers are also registered as limited market dealers under the Ontario Act so that they may trade other securities in reliance upon statutory exemptions from the Ontario Act's dealer registration requirements. Limited market dealer registrations are subsequently acknowledged in the "Current Industry Trends" subsection of the Introduction but they are cast as evidence of the industry trends that are described in this subsection when a limited market dealer registration really does nothing more than provide mutual fund dealers with the same trading flexibility in Ontario that they already have in all other jurisdictions other than Alberta.

As a further observation, the last sentence of the third paragraph of the "Current Industry Trends" subsection provides that "in order to provide clients with access to equity and fixed income securities, or other securities in which they are not registered to trade, mutual fund dealers enter into arrangements with investment dealers, who are registered to trade in these products." This sentence is problematic for two principal reasons. First, it suggests that mutual fund dealers are prohibited from trading any securities in which they are not *registered* to trade, including equity and fixed income securities, even though it is possible for them to do so, if only to a limited extent, in reliance upon a limited market dealer registration in Ontario and registration exemptions in other jurisdictions other than Alberta. Second, it suggests that mutual fund dealers enter into service arrangements with investment dealers for the sole purpose of providing their clients with access to securities which the mutual fund dealers cannot trade. While the TD Dealers are unable to comment upon the service arrangements that exist between other mutual fund dealers and investment dealers, this is not true of the service arrangement that exists between TDIS and TDWCI.

By way of background, TDIS is a wholly-owned subsidiary of The Toronto-Dominion Bank ("TD Bank"). It is registered as a mutual fund dealer or its equivalent in every province and territory of Canada and as a limited market dealer in Ontario and in Newfoundland and Labrador and it is a member of the Mutual Fund Dealers Association of Canada ("MFDA"). TDIS carries on the mutual fund distribution operation (the "MFD Operation") that was conducted by TD Asset Management Inc. ("TDAM") prior to the restructuring of TDAM that was completed on November 30, 2001 (the "Mandatory Restructuring") in order to comply with the collective impact of the MFDA membership requirements of OSC Rule 31-506 and its counterpart in other jurisdictions, the proficiency requirements applicable to restricted representatives of investment dealers pursuant to section 2.1(3) of OSC Rule 31-502 and the discretionary trading authority prohibition imposed upon MFDA members by section 2.3.4 of the MFDA Rules.

TDWCI is an indirect wholly-owned subsidiary of TD Bank and it is therefore an affiliate of TDIS. TDWCI is registered as an investment dealer or its equivalent in all provinces and territories of Canada and it is a member of the Investment Dealers Association of Canada ("IDA"). TDWCI carries on business through five different divisions which offer discount brokerage, full service brokerage, financial planning and carrying brokerage services.

The service arrangement that exists between TDIS and TDWCI is referred to as a TD Asset Accumulator Account, also known as a Triple A Account. A Triple A Account is a TDWCI account that is serviced by TDIS. TDIS offers its clients a variety of different investment options ("Eligible Securities") in reliance upon its mutual fund dealer and limited market dealer registrations, dealer registration and prospectus exemptions and several networking non-objections and approvals (the "Networking Approvals") which TDAM obtained from the Canadian securities regulatory authorities ("CSRA") between 1995 and 1999[1], prior to the Mandatory Restructuring. TDIS mutual fund representatives may not trade any securities other than Eligible Securities. Eligible Securities comprise the following:

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[1] The non-objections and approvals were obtained in response to networking notices and exemption applications dated October 27, 1995; November 22, 1996; June 8, 1998; September 21, 1998; and September 3, 1999.

- TD Mutual Funds;
- third party mutual funds;
- guaranteed investment certificates;
- Government of Canada treasury bills;
- provincial government treasury bills;
- bonds issued or guaranteed by the federal government or a provincial or territorial government;
- interests in either the principal amount or interest amount payable on government bonds (a.k.a. strip bonds);
- municipal government bonds;
- bankers acceptances;
- commercial paper;
- government guaranteed commercial paper;
- Canada Mortgage and Housing Corporation guaranteed mortgage-backed securities; and
- savings bonds including Canada Savings Bonds, Canada Premium Bonds, BC Savings Bonds and Ontario Savings Bonds.

Even though Triple A Accounts are TDWCI accounts, Triple A Accounts may only hold, and trade, Eligible Securities, they may not be operated as margin accounts and they may not hold any equity securities. But for the systems constraints described below, a Triple A Account could therefore be operated as a TDIS account.

An investor who wishes to open a Triple A Account must complete a TDWCI account application form for either a registered or non-registered account which includes a Triple A Account Direction. A Triple A Account Direction provides TDIS with a limited authorization to act as agent for the holder of a Triple A Account for the purpose of engaging in one or more of the following limited activities:

- communicating to TDWCI a Triple A Account holder's instructions regarding purchases and sales for the holder's Triple A Account, for which the Triple A Account holder is fully liable to TDWCI;
- ordering the reception from, or delivery to, others of securities for the Triple A Account;
- ordering redemption payments from, and the making of payments to, others; and
- making account enquiries to TDWCI, and obtaining account information from TDWCI, on behalf of the Triple A Account holder.

As a TDWCI account, a Triple A Account is analogous to a client name account and a Triple A Account Direction is analogous to the form of limited trading authorization that is contemplated by MFDA Rule 2.3 and MFDA Member Regulation Notice 0010. Unlike a limited trading authorization, however, a Triple A Account Direction applies in respect of all Eligible Securities, including mutual fund securities, but can be used to execute trades only through TDWCI rather than a number of different fund companies. As a result of the Triple A Account Direction and the ability of TDIS representatives to trade any Eligible Securities, Triple A Account holders do not communicate with TDWCI. All of their trade instructions are provided to TDIS representatives in person, by phone or through the internet.

Based upon the foregoing, the service arrangement that exists between TDIS and TDWCI was not established, and does not exist, to provide clients of TDIS with access to securities which TDIS is not authorized to trade. It was originally established to accommodate the sale of third party mutual funds by TDAM using TDWCI's ISM computer system because the computer system that was then used by TDAM's service providers could not accommodate securities other than units of TD Mutual Funds and this is equally true of the system that is being used by TDIS today.

Accordingly, as evidenced by Triple A Accounts, service arrangements between mutual fund dealers and investment dealers are not entirely dependent upon providing clients of mutual fund dealers with access to securities which mutual fund dealers are not authorized to trade. They can also be the product of systems constraints and this is reflected in the Issues Paper's description of second joint service arrangement scenarios[2]. Second joint service arrangement scenarios are not addressed by the Joint Regulatory Notice dated June 11, 2004 (the "Joint Notice") that has been issued by the IDA and MFDA and, as alluded to above, they are not subject to the regulatory concerns that are associated with omnibus arrangements and first joint service arrangement scenarios[3].

Based upon the foregoing, to the extent that there are any regulatory concerns associated with Triple A Accounts, they could be addressed by the development and maintenance of a second ISM computer system that would be devoted to the maintenance of Triple A Accounts. Such a system would effectively facilitate the conversion of what are now TDWCI accounts into TDIS accounts. Unfortunately, the costs associated with the development and maintenance of a second ISM system remain significant and it would take at least one year to fully implement all required systems changes. It is therefore our submission that such systems changes are unwarranted from a cost-benefit analysis perspective for reasons that are described in greater detail below.

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[2] There are two types of joint service arrangements that are identified by the Issues Paper. In a first joint service arrangement scenario, clients contact the investment dealer directly to place their orders for securities other than mutual fund securities. In a second joint service arrangement scenario, a mutual fund dealer does not have a system in place to transmit third party mutual fund orders to the relevant mutual fund companies or to maintain the necessary books and records required under current securities and self-regulatory organization requirements. As a result the mutual fund dealer uses the system of an affiliated investment dealer to transmit client orders and to maintain client records.

[3] *Ibid.*

Question 2: Are there any other relevant business arrangements that have developed in response to these industry trends?

With the exception of second joint service arrangement scenarios, such as the Triple A Accounts described above, the TD Dealers are not aware of any other relevant business arrangements that have developed in response to the current industry trends that are described by the Issues Paper.

It is worth noting, however, that the Triple A Accounts evolved from what was probably the first business arrangement that developed in response to similar industry trends that existed at least as far back as 1988. The first such business arrangement was expressly accommodated by the *Principles of Regulation respecting Full Service and Discount Brokerage Activities of Securities Dealers in Branches of Related Financial Institutions* dated November 17, 1988 (the "Brokerage Principles") and the *Principles of Regulation respecting the Distribution of Mutual Funds by Financial Institutions* dated November 4, 1988 (the "Mutual Fund Principles") (collectively, the "Principles of Regulation"). The Principles of Regulation governed the distribution and sale of securities by dealers through the branches of affiliated financial institutions subject to a number of transparency and supervisory related terms and conditions. The Principles of Regulation thereby served to meet the then perceived demand for one stop financial shopping within the branches of financial institutions. Unfortunately, the Principles of Regulation fell short of investor expectations in the long run because they served only to facilitate the establishment of financial shopping malls comprising at least two, and as many as three or four, different financial service outlets within a single branch. These outlets would typically comprise two or more of the financial institution itself, a mutual fund dealer and a full service dealer. Investors were required to identify and visit those outlets which offered the most cost effective source of the financial products and services they were seeking. Each outlet required the establishment of a separate account and generated its own trade confirmations and account documentation. An investor who sought to acquire securities through the branch of a financial institution was therefore confronted with a range of product and account administration options which could be both cumbersome and confusing. TDAM sought to simplify this process for investors by obtaining the Networking Approvals. The Networking Approvals permitted TD Bank customers to source all Eligible Securities through TDAM and to hold all Eligible Securities in a single Triple A Account. The current industry trends described in the Issues Paper were therefore the same industry trends which precipitated the establishment of the Triple A Accounts in accordance with the Networking Approvals.

Question 3: How are clients being properly served when only a portion of the portfolio held by the mutual fund dealer can be serviced by the mutual fund dealer?

The TD Dealers do not believe that clients of mutual fund dealers can be properly served under these circumstances. Accordingly, as described above, TDAM and TDIS have gone to great lengths to ensure that TDIS representatives are authorized to sell all Eligible Securities that are offered by TDIS. The TD Dealers are therefore dismayed by the prospect of having to comply with the one-size-fits-all approach that has been taken with respect to the requirements that have been imposed upon parties to omnibus and joint service arrangements by the Joint Notice,

particularly when the Triple A Accounts are the product of the Networking Approvals and have now been in existence for more than 8 years without incident.

Question 4: What actions can be taken to ensure that the mutual fund dealer salesperson is acting within the terms of his/her registration regardless of client pressure?

This question is somewhat puzzling because every market participant is susceptible to client and other pressures and the question is therefore equally applicable to international dealers, international advisers, limited market dealers and anyone who purports to trade or distribute securities in reliance upon registration and/or prospectus exemptions unless it can be demonstrated that mutual fund salespersons are more susceptible to client pressures than others. The question seems to invite the suggestion that restricted categories of dealer registration be eliminated and that the single service provider licence that is contemplated by the OSC's Fair Dealing Model Concept Paper dated January, 2004 (the "FDM Concept Paper") be adopted. According to the FDM Concept Paper, a financial services provider would only need a single licence which would cover all relevant business activities connected with a particular client.[4] Unfortunately, the FDM Concept Paper does not address the way in which the individual representatives of financial services providers will be licensed. The licensing of individual representatives is to be the subject of a second concept paper. If, as seems likely, individual registrations will be administered by one or more self-regulatory organizations ("SROs"), individual applicants for registration would undoubtedly have to continue to meet product based proficiency requirements. If so, the Fair Dealing Model will not provide a solution to the client pressures experienced by individual representatives. Perhaps then, the only real solution to the question posed is to foster a culture of compliance through the rigorous enforcement of all regulatory requirements.

Question 5: What actions, if any, are being taken by mutual fund dealers to ensure that clients are aware of the lack of coverage on assets held by mutual fund dealers at investment dealers? What actions should be taken in this regard?

As described above, to the extent that a Triple A Account is a form of service arrangement that is contemplated by the Joint Notice, it constitutes a second joint service arrangement scenario that is described in the Issues Paper. Accordingly, a Triple A Account is not an omnibus account. It is therefore eligible for full coverage by the Canadian Investor Protection Fund ("CIPF") and each holder of a Triple A Account is provided with full CIPF coverage disclosure at the time he or she establishes the Triple A Account. The TD Dealers are therefore unaware of any action that is being taken by mutual fund dealers to ensure that their clients are aware of their lack of coverage by CIPF.

As regards any action that should be taken in this regard, the investor protection concerns underlying this inquiry seem somewhat disingenuous for several reasons. First, there is no

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[4] *The Fair Dealing Model – Concept Paper of the Ontario Securities Commission*, January, 2004, pp. 83 and 84.

investor protection fund for the clients of mutual fund dealers and there has been no suggestion that mutual fund dealers should therefore be effectively advising their clients to establish their mutual fund accounts with investment dealers. It will also be interesting to see whether this type of disclosure will become an issue if any coverage that is eventually provided to clients of mutual fund dealers by either the Mutual Fund Dealers Association Investor Protection Corporation ("MFDA IPC") or CIPF is not as extensive as, or is subject to different terms and conditions than, the coverage that is available to clients of investment dealers through CIPF or *vice versa*. Second, as described in the Issues Paper, the CSRA would appear to be entertaining MFDA IPC's somewhat troubling suggestion that it cover only a client's mutual fund securities and cash. If this suggestion became a reality the question posed would be equally applicable to this situation unless mutual fund dealers would simply be required to abandon their exempt market activities to ensure that all assets held in their clients' accounts would benefit from such coverage. Third, many mutual fund dealers who wished to become investment dealers at the time the MFDA was established were precluded from doing so by section 2.1(3)(c) of OSC Rule 31-502[5] in an attempt to preserve the viability of the MFDA and any investor protection fund that might be established for clients of MFDA member firms. As a result, the clients of such mutual fund dealers who could have had the benefit of CIPF coverage now have no investor protection fund coverage and the mutual fund dealers themselves are now confronted with the prospect of losing a substantial part of their business to investment dealers without being able to transition to the IDA by virtue of section 2.1(3)(c) of OSC Rule 31-502.

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[5] Section 2.1(3) of OSC Rule 31-502 provides as follows:

> Despite subsection (1), an individual that does not meet the requirements for registration set out in that subsection may be granted registration as a salesperson of a broker, investment dealer or securities dealer if
>
> (a) the registration is restricted to the sale of mutual fund securities;
>
> (b) the individual has
>
> (i) been granted registration previously as a salesperson, partner or officer of a mutual fund dealer or as a mutual fund dealer; or
>
> (ii) completed any one of the Canadian Securities Course, the Canadian Investment Funds Course of the Investment Funds in Canada Course; and
>
> (c) at the date the registration for the individual is granted, the broker, investment dealer or securities dealer that is sponsoring the application has registered with it not more than the lesser of
>
> (i) 100 restricted representatives whose registration is restricted to the sale of mutual funds; and
>
> (ii) that number of restricted representatives whose registration is restricted to the sale of mutual funds equal to 5% of the total number of representatives registered with the broker, investment dealer or securities dealer.

In the light of these considerations, although disclosure is a possible solution to client awareness of a lack of investor protection fund coverage, the TD Dealers would recommend adoption of the Triple A Account model as a solution to all regulatory concerns associated with omnibus arrangements and joint service arrangements.

As indicated above, it is our submission that the Triple A Account model does not give rise to regulatory concerns associated with omnibus account and first joint service arrangement scenarios for several reasons. First, the only securities that are offered for sale, and sold, to clients of TDIS are Eligible Securities and TDIS representatives are authorized to trade all Eligible Securities. Second, the only securities that can be held in Triple A Accounts are Eligible Securities and Triple A Accounts may not be operated as margin accounts and they may not hold any equity securities. As a result, but for systems constraints and investor protection fund coverage issues, Triple A Accounts could be TDIS accounts. Third, Triple A Accounts are client name TDWCI accounts that benefit from full coverage by CIPF.

A Triple A Account is therefore analogous to a mutual fund client name account and a Triple A Account Direction is analogous to the form of limited trading authorization that is contemplated by MFDA Rule 2.3 of MFDA Member Regulation Notice 0010. Unlike a limited trading authorization, however, a Triple A Account Direction applies in respect of all Eligible Securities, including mutual fund securities, but can be used to execute trades only through TDWCI rather than a number of different fund companies.

A Triple A Account is also analogous to client name accounts which are established by portfolio managers with investment dealers pursuant to the trading authorization that is inherent in the discretionary authority that is granted to the portfolio manager by its client pursuant to a portfolio management agreement. A portfolio management agreement is therefore analogous to both a Triple A Account Direction and an MFDA limited trading authorization. It is simply a broader form of power of attorney than the power of attorney that is granted pursuant to a Triple A Account Direction or a limited trading authorization.

The Triple A Account model would appear to be accommodated by Section 1.7 of OSC Rule 31-505. Section 1.7 provides that the suitability requirement that is applicable to registrants pursuant to section 1.5(b) of OSC Rule 31-505 does not apply to a registered dealer or a registered salesperson, partner or officer of a registered dealer that executes a trade on the instruction of a registered adviser, another registered dealer or a Canadian financial institution. Section 1.7 recognizes that a dealer that receives trading instructions from an adviser or another dealer is entitled to rely upon the fact that the suitability requirement in respect of that trade has been addressed by the adviser or other dealer and that the adviser or other dealer is fully qualified to discharge the obligation.

Notwithstanding the exemption that is available pursuant to section 1.7, the Triple A Account model requires both parties to the arrangement to conduct a suitability review of all proposed transactions. This dual review is facilitated by the Triple A Account Direction which authorizes the mutual fund dealer to make account enquiries of the investment dealer, and to obtain account information from the investment dealer, on behalf of the client. The dual review also serves to ensure that the mutual fund dealer is acting within the terms of his or her registration because

Triple A Accounts are limited to holding Eligible Securities only and this can be monitored on a regular basis by both the mutual fund dealer and the investment dealer.

The Triple A Account model can also be modified to operate as an introducing/carrying arrangement between a mutual fund dealer and an investment dealer. Such an introducing/carrying arrangement is discussed in the "Alternatives Considered" section of the Issues Paper. According to the Issues Paper, the IDA and MFDA contemplate a model whereby the mutual fund portion of a client portfolio will be serviced by the MFDA introducer, and the non-mutual fund portion of the client portfolio will be serviced by the IDA carrier.[6] Once again, this model seems to ignore the fact that mutual fund dealers that become registered as limited market dealers can trade other securities in the exempt market, including those exempt securities which constitute a subset of the Eligible Securities traded by TDIS. The OSC Issues Paper concludes its discussion of this model by indicating that it is contingent upon the MFDA joining CIPF and receiving approval from CIPF and provincial securities regulators.

As described above, Triple A Accounts can hold and trade Eligible Securities only and TDIS and its representatives are authorized to trade all Eligible Securities. While the TD Dealers are therefore of the view that Triple A Accounts can be operated as introducing/carrying arrangements, they are unable to support the Issues Paper's proposal of having a single investment dealer account serviced by direct client contact with both a mutual fund dealer and the investment dealer due to the supervision and client confusion problems identified by the Issues Paper. The TD Dealers also take issue with the OSC's suggestion that an introducing/carrying arrangement between a mutual fund dealer and an investment dealer is necessarily contingent upon the MFDA joining CIPF. Save and except for the political issues associated with the establishment and operation of two distinct investor protection funds, there would appear to be no reason why the IDA and MFDA could not reach an understanding, and prescribe procedures, for the joint supervision of introducing/carrying arrangements between their members which would provide clients of mutual fund dealers with full coverage by CIPF.

Question 6: What controls or requirements could be put in place to ensure that mutual fund dealers are only trading and providing advice on mutual fund securities, while allowing clients to consolidate their holdings in one account?

Please see responses to questions 4 and 5 above. In addition to these responses, the TD Dealers wish to make it clear that they do not support the use of omnibus accounts to service clients of mutual fund dealers and they would not be prepared to do so unless and until all assets held in an omnibus account on behalf of a mutual fund dealer's clients were subject to the full coverage of an investor protection fund such as the MFDA IPC or CIPF.

Question 7: Under our current regulatory framework, what actions, if any, can be taken to address concerns regarding supervision of salespersons in joint service arrangements? How can clear lines of responsibility of each of the dealers

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[6] *Supra*, note 2, p. 12.

be maintained?

As described in the response to question 5 above, the TD Dealers do not support the Issues Paper's proposal of having a single investment dealer account serviced through direct client contact with both a mutual fund dealer and the investment dealer due to the supervision and client confusion problems which the Issues Paper associates with first joint service arrangement scenarios. As described in the response to question 2 above, the Triple A Accounts were actually established to address the confusion experienced by investors who sought to acquire securities through TD Bank branches in accordance with the Principles of Regulation. TDAM obtained the Networking Approvals to permit TD Bank customers to source all Eligible Securities through TDAM and to hold all Eligible Securities in a single Triple A Account. As a result, the holders of Triple A Accounts do not communicate with TDWCI and provide all of their trading instructions to TDIS mutual fund representatives. A Triple A Account is therefore a form of second joint service arrangement scenario which can operate as either a client name account or an introducing/carrying arrangement. As such, it does not serve to foster the client confusion that is associated with omnibus arrangements and first joint service arrangement scenarios.

Question 8: How can we ensure that responsibility and liability of dealers in joint service arrangements to clients is clear?

If joint service arrangements had to be established as second joint service arrangement scenarios, it should be possible to clarify the responsibilities and liability of the two parties to the arrangement through disclosure that is comparable to the type of disclosure that must be provided to clients by the parties to introducing/carrying arrangements. In an introducing/carrying arrangement, customers receive disclosure of the arrangement in one of two ways. In an Introducing Type 1 Arrangement, a customer must be provided with a disclosure statement outlining the roles and responsibilities of the introducing broker and the carrying broker at the time the customer opens an account. Subsequently, the arrangement must be disclosed on all contracts, statements and correspondence. In all other introducing/carrying arrangements, the introducing broker has the option of disclosing the nature of the introducing/carrying arrangement when an account is opened and on either an annual basis or an ongoing basis.

Question 9: What controls, if any, could be put in place to prevent client confusion?

As described above, in the context of a Triple A Account or second joint service arrangement scenario model, there can be no client confusion of the sort that is contemplated by the Issues Paper because TDIS representatives are qualified to sell all Eligible Securities and Triple A Accounts may not hold or trade any securities other than Eligible Securities. Any other client confusion can also be alleviated in several ways already discussed. First, if the model is operated as a client name account, the services provided by the mutual fund dealer are reflected in the limited trading authorization that is provided by the client and the services provided by the investment dealer are reflected in the account agreement between the client and the investment dealer. If the model is operated as an introducing/carrying arrangement, the responsibilities of the mutual fund dealer and the investment dealer are set out in the agreement that is entered into between them. Second, in either case, as described in our response to question 8 above, the nature of the arrangement between the mutual fund dealer and the investment dealer is fully

disclosed to the client. Finally, the arrangement is subject to supervision by both the mutual fund dealer and the investment dealer.

Question 10: Can you suggest any alternative solutions that would address the supervisory, accountability and liability issues that arise when salespersons act on behalf of two dealers?

Please see response to question 5 above.

Question 11: What changes, if any, would you support so as to allow the mutual fund salesperson to service the investment dealer account?

Please see response to question 5 above.

Question 12: Referral arrangements require that clients have separate accounts at each dealer, instead of one consolidated account. The need for separate accounts may raise issues of convenience from the client's perspective; beyond this, are there any issues or consequences of referral arrangements that we should be aware of?

In addition to the higher fees that would have to be paid by what is now a mutual fund dealer client if it wished to continue receiving any investment advice from a full service investment dealer, it is our understanding that a referral arrangement would be subject to the requirements imposed upon referral and commission splitting arrangements by the Canadian Securities Administrators' *Distribution Structures Committee Position Paper*[7] These requirements would compel, among other things, full disclosure of the fee that would be payable by the investment dealer to the mutual fund dealer prior to the conduct of any related transactions.

Question 13: If the MFDA/IDA introducer/carrier model contemplates two dealers servicing one client account, how can clear lines of responsibility (including supervision, accountability and liability) of each of the dealers be maintained? Alternatively, if this introducer/carrier model contemplates two dealers servicing two client accounts, how does this meet clients' needs? Furthermore, what actions can be taken to ensure that the mutual fund dealer salesperson is acting within the terms of his/her registration?

Please see response to question 5 above.

Question 14: Are you aware of any other arrangements that would allow a mutual fund dealer to service its clients' need for one consolidated account, yet do not raise the regulatory concerns described in this paper?

No. The only viable alternatives that appear to address all regulatory concerns described by the Issues Paper, while also accommodating the interests of the customers of mutual fund dealers, are

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[7] August 27, 1999 O.S.C.B. 5257.

the Triple A Account or second joint service arrangement scenario model and the introducing/carrying arrangement model described above.

Question 15: What are alternative solutions to the issues raised by the OSC relating to the joint service and omnibus account arrangements? Do these solutions require changes to the regulatory structure or requirements?

One alternative solution, already alluded to above, would involve the establishment of an introducing/carrying arrangement between a mutual fund dealer and an investment dealer that is similar to a Triple A Account, that would be subject to joint regulatory oversight by the MFDA and the IDA and that would not be contingent upon CIPF coverage of mutual fund dealer accounts. Once again, please see response to question 5 above.

Question 16: Does a restricted dealer registration category continue to be appropriate in the current business environment where clients want to have one consolidated account and be serviced by one sales representative?

As described in the response to question 4 above, it is not clear how the establishment of the single financial services provider licence contemplated by the FDM Concept Paper would accommodate the demands of mutual fund dealer clients for the accessible and cost effective advisory relationship which they now have with mutual fund dealers in the absence of an understanding of the proficiency requirements that would apply to individual representatives of financial services providers and the repeal of section 2.1(3)(c) of OSC Rule 31-502.

Question 17: If mutual fund dealers and investment dealers are required to unwind the joint service and omnibus account arrangements, what will be the impact to your firm's clients, as well as your firm, and how long do you anticipate this would take?

Generally speaking, the holders of Triple A Accounts are investors of modest means who require some investment advice even though they do not maintain significant account balances. If the TD Dealers were required to unwind the Triple A Accounts, the holders of Triple A Accounts would be required to move to either a discount broker or full service dealer platform with TDWCI or another investment dealer. If they moved to a discount broker platform they would forfeit the accessible face-to-face advisory relationship which they now have with representatives of TDIS. If they moved to a full service platform, they would incur higher trading costs for a broader range of trading expertise than they currently require.

From the perspective of the TD Dealers, the compulsory unwinding of the Triple A Accounts would serve to effectively repeal the Networking Approvals and to undermine the commercial viability of the MFD Operation which TDIS inherited from TDAM following the Mandatory Restructuring. In our submission, it would therefore constitute an excessive regulatory response to the relatively nominal investor protection concerns that are associated with second joint service arrangement scenarios, as described in greater detail in an exemption application dated June 30, 2004 which the TD Dealers have filed with the IDA and MFDA.

In conclusion, the TD Dealers have always endeavoured to be fully compliant with all securities regulatory requirements applicable to them. Accordingly, if the Triple A Account model is not considered a viable form of service arrangement between mutual fund dealers and investment dealers, the Applicants fully intend to implement a solution that is acceptable to the OSC. As described in our response to question 1 above, however, the implementation of any systems solution will involve a significant commitment of time and money. It is therefore requested that the OSC consider extending the arrangement unwind date that is contemplated by the Joint Notice from December 31, 2004 to a date that would afford all parties to omnibus and joint service arrangements a reasonable period of time in which to implement any acceptable solution. In the case of the TD Dealers, it is our submission that such an extension would not be unreasonable given the Networking Approvals underlying the establishment of the Triple A Accounts, the continuous operation of Triple A Accounts for more than 8 years without incident and the regulatory concerns, if any, that are associated with second joint service arrangement scenarios, such as the Triple A Accounts, relative to the regulatory concerns that are associated with omnibus arrangements and first joint service arrangement scenarios.

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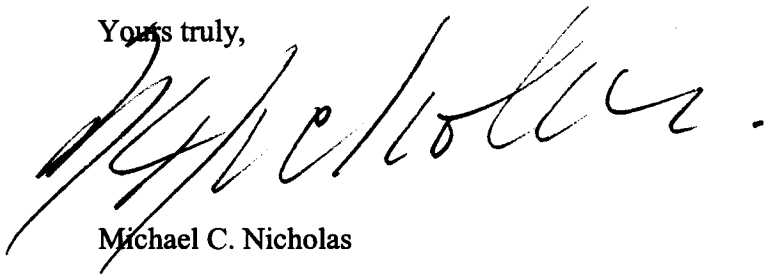
As requested, this response to the questions posed by the Issues Paper is being forwarded to the OSC in duplicate and a diskette containing a copy of the response is enclosed.

Yours truly,



Michael C. Nicholas

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