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British Columbia Securities Commission
Alberta Securities Commission
Saskatchewan Financial Services Commission
Manitoba Securities Commission
Ontario Securities Commission
Autorité des marchés financiers
Office of the Administrator, New Brunswick
Registrar of Securities, Prince Edward Island
Nova Scotia Securities Commission
Securities Commission of Newfoundland and Labrador
Registrar of Securities, Northwest Territories
Registrar of Securities, Yukon Territory
Registrar of Securities, Nunavut

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

Anne-Marie Beaudoin
Directrice du secrétariat
Autorité des marchés financiers
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Dear Sirs and Mesdames:

Re: Request for comments on Proposed National Instrument 81-106 ("NI 81-106"), Companion Policy 81-106CP and Form 81-106F1 (collectively referred to as the "Proposals")

We have reviewed the Canadian Securities Administrators' ("CSA") Proposals with interest and once again appreciate the opportunity to provide our comments. The Proposals appear to have addressed some of the concerns expressed in our letter dated December 19, 2002. We agree with the CSA's aim of providing investors with meaningful and timely disclosures, while giving them the choice of the documentation that they may want to receive. This move is particularly positive and will no doubt provide direct benefits to the investors. Nevertheless, we remain very concerned with

the impact that the Proposals will have on the investment fund industry and the investing public and urge the CSA to reconsider the practicality of implementing some of the Proposals' requirements. By way of background, TD Asset Management Inc. ("TDAM") is one of Canada's largest asset managers. As of May 31, 2004, TDAM managed approximately $34 billion in retail mutual fund assets on behalf of more than 1.4 million investors. At that date, TDAM and its affiliates managed approximately CDN$124 billion of assets for mutual funds, pooled funds and segregated accounts and provided investment advisory services to individual customers, pension funds, corporations, endowments, foundations and high net worth individuals.

Our central concerns stem from the magnitude of our business and the ability, of not only TDAM, but the industry as a whole, to meet the stringent requirements of the proposed timelines given the resources available in Canada. We again urge the CSA to recognize that in Canada there are constraining factors that have a serious impact on our industry. We might add that the CSA should take into consideration that the production times and process to satisfy printing, delivery and fulfillment requirements are not handled exclusively by TDAM and that outsourcing is the norm in the industry. These factors are not within the control of the industry. For instance, many aspects of the continuous disclosure process are outsourced and most Canadian mutual funds have a similar fiscal yearend. We expect this will result in service providers being heavily burdened beyond their capacity. It is not clear to us that service providers will incur the necessary costs to expand capacity. If they incur such costs, we expect that such costs would increase mutual funds' management expense ratios and thereby reduce investors' returns.

Financial Reports

While TDAM fully supports timely disclosure, it will be extremely challenging to meet the proposed timelines for the filing of the financial statements, due to the large number of funds that we manage in several different fund families. Not only have the timelines been shortened, but there is also the introduction of the Management Report of Fund Performance ("MRFP"), which must also be reviewed and approved by the Board of Directors and filed at the same time. Unlike the United States and other jurisdictions that support a larger investment fund industry (and larger capital markets), we question whether audit firms, print production vendors, translators and other service providers in Canada have the capacity to help us meet the proposed deadlines without substantially increasing costs that are ultimately passed on to unitholders. We suggest that the CSA reconsider our initial recommendation of moving the proposed timeline to 120 days for the filing of the annual financial statements and MRFPs to more closely coincide with the delivery and filing of the first quarter's portfolio disclosure. This could result in huge cost savings for the funds and ultimately, the investors.

Financial Disclosure Requirements

Section 3.6(1) 5 requires that the notes to financial statements provide a breakdown of services received in consideration of management fees as a percentage of the management fees. We request clarification on whether such breakdowns must be calculated on a series by series basis or on a fund-by-fund basis. While we support transparency of the allocation of fees, we also believe strongly that for this information to be useful it needs to be comparable. One of the theoretical underpinnings of National Instruments 81-101 and 81-102 is to ensure that information relating to funds is comparable. This was echoed in investor feedback that was gathered through the COMPAS survey. Our concern is that given the complexity associated with unbundling these fees and absent specific guidance on how to separate and account for the various fees, investors will

not have comparable information to make a comparison between funds. Information that is not comparable may ultimately be misleading to investors. By way of example, there are a number of variables affecting the distribution costs associated with the sale of funds under a back-end load option, including the fund manager's cost of capital and use of the "10% free" redemption privilege, that can have a very material effect on the cost. In order for distribution costs to be comparable, there must be common methods established to calculate such variables.

Management Report of Fund Performance

We commend the CSA for allowing some flexibility on the content requirement of the MFRP, but find that its preparation, approval and dissemination would be very challenging due to the time constraints. As stated above, TDAM manages over 100 funds in several fund families. The requirement to prepare a MRFP for each fund, accompanied by the need for board approval and a reduced deadline for filing annual financial statements, will create unachievable deadlines for large fund managers and the third party service providers who service them. We also seek clarification as to whether the MRFP should be prepared for top funds and/or for each of the underlying funds in a fund of funds structure. The Proposals do not appear to have addressed this.

Delivery of Financial Statements and MRFP

We again commend the CSA for recognizing that investors deserve the right to decide which documents they should receive. We would like to suggest however, that they not be burdened with solicitations for a decision on that issue during RSP and tax season, which would coincide with the 3 month period after the proposed Rule comes into force. If the CSA considers extending the 3 month timeline to 6 months, the solicitation would get the appropriate amount of attention from investors and could also result in significant cost savings that would ultimately be passed on to the investors, as the solicitation could be included with other semi-annual communications. For new accounts, we are pleased to solicit opt-in information early on in the process but would incur significant costs if forced to do so ***at the time*** a purchase order is accepted, as per section 5.2 (4). If the solicitation was done as soon as reasonably practicable after a purchase order has been accepted, we would have the ability to track this information using automated procedures in the normal course which would significantly reduce costs and the risk of error. With respect to the annual reminder requirement there are certain accounts that may be opened with a specific short-term objective, like 2 years. We would like to suggest that investors be advised that they would always have the option to choose which continuous disclosure materials they want to receive, without the need for an annual reminder, which could well be interpreted as patronizing and unnecessarily costly for mutual funds and their investors and once again, trigger numerous customer complaints.

Financial Disclosure - General

The requirement relating to the binding of financial statements is too restrictive. Despite the investor's ability to choose which documents she wants to receive, in order for information to be useful, TDAM will be required to duplicate information for those individuals with more than one fund in their portfolio. Investors will not benefit from the increased costs associated with this inefficiency. In addition, comparability, which has always been desirable from a regulatory perspective and in the industry, will be compromised. It will be incumbent on the investor to make comparisons within fund families and between fund families with only individual fund financial statements at their disposal. Therefore, unless there are compelling reasons to prohibit financial statements being bound together, we respectively submit that the status quo should remain.

Proxy Voting

TDAM firmly believes that proxies should be voted in the best interests of its funds and has comprehensive policies and guidelines regarding proxy voting. That said, producing the reports required by Part 10 of the Proposal goes beyond the reasonable needs of investors in publicly available mutual funds and is open to misuse. The same goal of transparency and accountability can be achieved by requiring funds to provide unitholders information they request on proxy voting whether this relates to specific matters or overall activity. Our experience dealing with similar requirements in other jurisdictions indicates individual investor interest in proxy voting results is quite low contrary to the results of the survey performed on behalf of the CSA and the comments submitted in response to previous iterations of the Proposals. We agree that investors should be entitled to this information if desired but would prefer being able to deal with individual requests rather than producing unwieldy records that investors may ultimately never want access to. Generally the most interest we have seen in our proxy voting records has been from special interest groups. We acknowledge that many of these comments have already been made to the CSA but urge that they be given additional consideration.

Calculation of Management Expense Ratio ("MER")

Closed-end funds have prescribed rules for determining the maximum fees that can be charged to the fund. These rules come under OSC Policy 5.4 and work on a tiered fee structure but are calculated against assets defined as being average total assets, which are valued at the lower of cost or market. Section 15.1 for the calculation of MERs does not specifically take into account closed-end funds. As a result, closed-end funds would be required to calculate their MERs based only on market value but the maximum fund expenses payable by the fund in any year must be calculated based on the lower of cost or market. As a result of the MER and maximum fund expenses being calculated on different bases and the potential application of an expense cap each year, there is the possibility of substantial year-over-year changes in MERs. Therefore, we recommend that the CSA have a separate subsection under Section 15.1 specific to closed-end funds, in which the differences in calculation methodologies is addressed.

Other

It is unclear whether a mutual fund that is not a reporting issuer must file MRFPs. Section 4.2 links the filing of MRFPs with the filing of annual and interim financial statements, except in the case of group scholarship plans. There is no specific exemption from this requirement for mutual funds that are not reporting issuers even though pursuant to Section 2.11, such issuers need not file financial statements. It is unclear whether it is to be inferred that mutual funds that are not reporting issuers need not file MRFPs if they avail themselves of the filing exemption provided in Section 2.11. Section 5.4 (1) states: " An investment fund must send the documents referred to in subsection 5.1(1) to registered holders or beneficial holders no later than ten days after filing those documents". The documents referred to are financial statements and MRFPs. Assuming a mutual fund that is not a reporting issuer need not file financial statements or MRFPs, there is no indication when such issuers must send continuous disclosure documents to registered holders or beneficial owners.

Also, Section 5.2(2) states: "An investment fund must send the documents listed in 5.1(1) to each registered holder **and** beneficial holder...." We believe that the CSA may have intended to state '**or**' instead of 'and'.

Summary

To summarize, we appreciate the time and effort the CSA has put into responding to investors and the mutual fund industry and we are pleased with the progress that has been made in making the Proposals reasonable and achievable. Before implementing the Rules we feel strongly that further consideration should be given to the stringent timelines and more flexibility should be granted with regard to the solicitation requirements under Part 5. We would be happy to provide any further explanations or submissions regarding the matters raised above and would also be willing to make ourselves available for a further dialogue.

Yours truly,

Steve Geist
President
TD Mutual Funds