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

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VIA COURIER AND EMAIL
Alberta Securities Commission
British Columbia Securities Commission
Saskatchewan Securities Commission
Manitoba Securities Commission
Ontario Securities Commission
Autorité des marchés financiers
New Brunswick Securities Commission
Nova Scotia Securities Commission
Registrar of Securities, Prince Edward Island
Superintendent of Securities, Newfoundland and Labrador
Registrar of Securities, Yukon
Registrar of Securities, North West Territories
Registrar of Securities, Nunavut

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

Anne-Marie Beaudoin
Directrice du secretariat
Autorité des marchés financiers
Tour de la Bourse
800, square Victoria
C.P. 246, 22 étage
Montreal, Quebec H4Z 1G3
Email: consultation-en-cours@lautorite.qc.ca

Dear Sirs & Mesdames:

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

We have reviewed the revised version of the Instrument and once again appreciate the opportunity to provide our comments. While we fully support the Instrument's objective to provide investor protection, in our view there are still certain aspects that concern us. We see the main aspects of concern to be the potential costs relative to the benefit to the funds and the scope of the Instrument.

By way of background TD Asset Management Inc. ("TDAM") is one of Canada's largest asset managers. As of August 31, 2005, TDAM and its affiliates managed approximately CDN$131 billion 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. TDAM managed approximately $42 billion in retail mutual fund assets on behalf of more than 1.4 million investors at that date.

Scope of the Instrument –

1. The meaning of "conflict of interest matter"

The definition of 'Conflict of Interest' in sec 1.3 of the Instrument states:

> 1.3 (i) In this Instrument, a "conflict of interest" means a matter in respect of which a reasonable person would consider the manager or an entity related to the manager to have an interest that may conflict with the manager's ability to act in good faith and in the best interests of the fund.
>
> (ii) In this section, any proposed course of action that an investment fund, a manager or an entity related to the manager is restricted or prohibited from proceeding with by a conflict of interest or self-dealing provision contained in securities legislation is a "conflict of interest matter".

As appears to be the CSA's intention, the definition of "conflict of interest matter " is very wide. While the intention to cover every possible aspect of conflict may appear prudent, the effect of too wide a scope can result in an abundance of uncertainty, unnecessary work, costs and in the end a disservice to the intended beneficiaries of the Instrument, the funds. We strongly suggest that the Instrument be clearer about the scope of "conflict of interest matter" and include an explicit materiality' component. Including a materiality component in the definition would avoid a distraction from the Instrument's fundamental purpose with the attendant problems indicated above.

In our view, the IRC should not have oversight over fundamental or strategic matters of a fund or fund manager that are set out in a fund's offering documents, including (i) a fund's investment objective, investment strategies, benchmark or performance, (ii) a fund's or fund manager's retention or termination of portfolio advisers or sub-advisers, including through investing in other funds, (iii) the amount of the maximum management fees, maximum operating expenses or other fees or expenses payable by a fund or its unitholders to the fund manager, or (iv) a fund manager's (or its affiliates') use of sales incentives. Similarly, the IRC should not have oversight over the cessation of selling units in a fund, termination of a fund, offering of units in new funds, or a fund's or fund manager's (or its affiliates') use of sales communications. All of the foregoing matters are disclosed to investors and/or are inherent within the fund manager's mandate or operations. In addition, the IRC should not have oversight over fund disclosure matters, including continuous disclosure materials, such as financial statements that are reviewed by fund auditors, and prospectuses that are reviewed by external legal counsel. We believe that these exclusions to the IRC's oversight should be explicitly set out in a revised Commentary.

2. Cost-benefit analysis

The British Columbia Securities Commission ("BCSC") said that a cost-benefit analysis should be an important factor in deciding to impose new regulatory matters and further indicated that the decision to proceed with the development of the Instrument was taken before a cost-benefit analysis was done. This process is a concern, as the funds ultimately bear the burden of the costs. In any event, we are of the view that the estimated costs related to the IRC's services, could be higher than those projected by the CSA.

The extent to which IRCs will utilize independent counsel and obtain other expert advice to reduce their potential liability does not appear to have been realistically factored into the costs associated with the IRC. We also strongly believe that management's and other employees' time in dealing with the IRC has not been appropriately reflected in the anticipated costs. We envisage the IRC hiring auditors to address accounting issues and investment consultants to address investment issues. The IRC will appoint its own counsel to provide advice on many aspects of its role. Many of the costs will be duplicated in that they will relate to matters, which would have already been considered by other professionals who have been remunerated to perform the same work. This concern relates to the IRC's role and potential liability, which we discuss further below.

We urge the CSA to seriously reconsider this matter and in addition the other questions raised by the BCSC, all being appropriate and specifically pertaining to thresholds. Materiality thresholds seemed to have been overlooked throughout the Instrument and could make a significant difference between an overreaching rule whose costs of compliance, indirectly paid by unitholders, are not justified by the results compared to a stringent, cost-effective rule. The definition of "conflict of interest matter" could be read to include an implicit materiality requirement. If that is the case, the Commentary should make the materiality requirement explicit.

We believe it is important that all Canadian jurisdictions, including British Columbia, should be onboard and with a continued focus toward uniformity. Any regulatory framework being introduced in Canada should be uniform across all Provinces. We recommend that the CSA seriously address the BCSC's concerns in an effort to proceed with a regulatory framework that will be adopted across all jurisdictions. If there are not uniform requirements across the country, the costs associated with the IRC will increase substantially.

3. The meaning of "Entity related to the Manager"

The Instrument includes an agent, associate, affiliate, partner, director, or officer of a person or company referred to in paragraph (a) of section 1.4, in the meaning of "entity related to the manager". The CSA further states in the Commentary to the section that the portfolio adviser (or sub-adviser) of the investment fund is considered to be an agent for such purposes.

We do not agree that conflict of interest matters in which a (non-related) portfolio adviser or sub-adviser may be involved should be considered as conflict of interest matters of the manager and as such, be subjected to the requirements of the Instrument. It is inappropriate for a manager to be held responsible for reporting to the IRC, conflict of interest matters in which an unrelated party may be involved. The manager is not in the position to ensure it is informed of all conflict

of interest matters. While the manager can attempt to inform itself of such conflicts, it should not be held to the same standard as if it had full knowledge of such matters and was not dependent on a third party for such knowledge. The manager must nevertheless attempt to inform itself of any portfolio adviser's or sub-adviser's conflict of interest matters and ensure those conflicts are avoided or properly addressed, all in accordance with the manager's standard of care. It is our view therefore, that the Commentary to section 1.4 of the Instrument should be revised to clarify specifically that a non-related portfolio adviser or sub-adviser is not an agent for the purposes of that section.

It would also be helpful to have additional guidance with respect to the CSA's intention in the Commentary.

4. The meaning of "Manager"

It is unclear if the meaning of the word 'manager' was intended to include a Portfolio Adviser. We assume this was not the intention of the CSA, and section 1.7 should be revised appropriately or a commentary included clarifying it's meaning. Otherwise, the definition remains ambiguous, as it could be viewed that a portfolio adviser directs the business, operations and affairs of an investment fund. If it was the intention of the CSA to include a portfolio adviser as "manager", there will be serious implications with regard to the application of the Instrument, but we choose not to elaborate, as we are confident that our former assumption is most likely correct. Finally, the Commentary on this point seems to conflict with section 3.2 of proposed Ontario Securities Commission Rule 81-802, which only contemplates one "manager".

It is also unclear in what circumstances there could be "more than one person or company as manager". We assume that this is not meant to designate service providers as managers. Given the significance of this, additional clarity is required.

5. The IRC and its role

The CSA claims that the Instrument now provides the IRC with effective methods to oversee and report on manager conflicts of interest. This is covered in Part 4 of the Instrument.

Sections 4.3, 4.4 & 4.5 all pertain to reporting; to the manager; to the securityholders and to the securities regulatory authorities. In all sections, there is a significant absence of a "materiality" concept. The CSA might want to consider the disservice it will be to securityholders by informing them of **every instance** when the manager proceeded to act in a conflict of interest matter under section 5.2(1), but did not meet a condition imposed by securities legislation, (including the Instrument), or a condition imposed by the IRC in its approval, without due considerations of materiality, intent and instances of purely technical breaches. The Commentary should provide confirmation that the IRC is not required to monitor the funds' and managers' compliance with securities legislation

Section 4.5, deals with "reporting to the securities regulatory authorities". Note also that under section 3.7 (2) "Every member of an independent review committee must comply with this Instrument and the written charter of the independent review committee required under section 3.4". Our first reaction to these specific requirements is that the IRC should be accountable to the funds and not the regulatory authorities. Do these sections and in particular section 3.7 (2) imply that the IRC members are quasi-registrants, subject to regulatory oversight and sanctions

beyond those applicable to directors of traditional corporate reporting issuers? This could effectively raise the potential liability of the members of the IRC and thus encourage micro-managing and consequently generate high legal, accounting and other advisory costs. This could also have negative implications for IRC remuneration and insurance costs and attracting and retaining IRC members. We do not believe that this was the intention of the CSA and do not see this being appropriate in the Canadian environment and recommend that these sections be revised to allow the IRC to report to the authorities if, in the IRC's judgment, it is in the best interest of the funds that they represent.

We strongly recommend that the CSA ensure that the final version of the Instrument results in governance that does not embrace micro-managing and related high costs, but one that is cost efficient and appropriate for the Canadian environment.

6. Inter-fund trades

We refer to Commentary 5 in respect of section 6.1 (c) and note that it appears to conflict with section 6.1 (e) (ii). The Commentary directs that, if the price is publicly available from a market place, newspaper or through a data vendor, this will be the price. Section 6.1 (e) (ii) states

"(e) the transaction is executed at the current market price of the security, which for the purposes of this paragraph is

(ii) for all other securities, the average of the highest current bid and lowest current ask determined on the basis of reasonable inquiry."

Therefore section 6.1(c) seems to permit the use of a single pricing source if only one is available, whereas section 6.1 (e) (ii) requires the implicit use of more than one pricing source to arrive at certain average prices.

We note also that section 6.1 (1) (d) does not appear to permit processing costs as part of the cost for the trade and look forward to clarification in this regard given that processing costs are common.

Specific requests for comments

We have chosen to respond to only certain questions of particular concern to us.

1. We are of the view that the expanded scope of the rule to include scholarship plans, labour-sponsored plans etc. is appropriate and effectively levels the playing field. It is not clear whether income trusts would be subject to the Instrument and we would appreciate clarification in this regard.

2. The CSA wanted to understand what the commenters consider to be "smaller". Our interpretation of "smaller" is a test based on the size of the fund manager. We do not fully agree with BCSC's discussion in this regard as despite the size of the fund, there will always be conflict of interest matters and those matters need to be the subject of IRC reviews.

3. No comment.

4. No comment.

5. We have already provided comments above on the IRC methods to oversee and report on manager conflicts of interest. However, we take this opportunity to add that in accordance with the Instrument, the IRC reports of breaches may be available publicly, thus creating an environment for class action suits. Accordingly we recommend that those reports maintain appropriate confidentiality, but recognize that they may be publicly available under freedom of information legislation. This availability emphasizes that such reports must only be of material breaches to avoid nuisance suits.

6. With regard to the minimum governance practices the CSA expects of the IRC and the manager, we are of the view that such specific requirements are unnecessary and adverse to the autonomy that the IRC should be afforded in fulfilling its role. We believe that the rules should be mostly principles based and such provisions be appropriately moved to the Commentary, which provides guidance.

7. The Instrument addresses the liability of the IRC members. While we do not have any serious concerns with the CSA's approach, we note that section 3.7(2) in effect subjects the IRC members to regulatory oversight and sanctions as discussed above. As a result, we once again emphasize that we see this resulting in a disservice to the funds. We strongly recommend that the CSA reconsider the effects of section 3.7 (2) with a view to revising the requirements imposed on the IRC members.

8. The revision to part 5 of National Instrument 81-102 should indicate that only non-management fees are to be approved by the IRC and not by the securityholders. Also, there should be a clear distinction between third-party fees and other operating expenses.

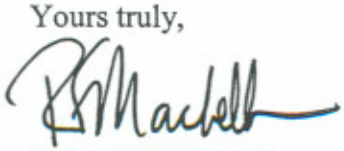
9. No comment.

Conclusion

In closing, we would again like to thank the CSA for this opportunity to comment on the proposed Instrument and plead that in drafting the final version, serious consideration be given to the scope of the Instrument and in particular, the inclusion of a materiality concept throughout and greater clarity regarding "conflict of interest matters". Otherwise, a rule that was designed in the best interests of the funds may well be a disservice to them, while costs rise due to the Manager and the IRC dealing with any possible issue that may be of a conflict of interest rather than substantial issues.

We would be pleased to provide further explanations or submissions regarding the matters raised in this letter and would be more than willing to make ourselves available for further dialogue relating to the proposed Instrument.

Yours truly,



Robert F. MacLellan