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Saskatchewan Securities Commission
Manitoba Securities Commission
Ontario Securities Commission
Autorité des marchés financiers
Nova Scotia Securities Commission
New Brunswick Securities Commission

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Dear Mesdames:

Re: Request for Comments on Notice of Proposed NI 41-101, specifically with respect to proposed amendments to NI 81-101 Mutual Fund Prospectus Disclosure

We are pleased to respond to the request for comments on the Canadian Securities Administrators ("CSA") proposed NI 41-101 General Prospectus Requirements (the

"Proposed Instrument"), specifically with respect to certain proposed amendments to NI 81-101 Mutual Fund Prospectus Disclosure, more particularly described below.

TD Asset Management Inc. ("TDAM") is a wholly owned subsidiary of The Toronto-Dominion Bank and is one of Canada's largest asset managers. As of February 28, 2007, TDAM managed approximately $160 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 $53 billion in retail mutual fund assets on behalf of more than 1.4 million investors at that date.

We are responding in our capacity as an investment fund manager.

1. ***Auditor Review of Interim Financial Statements (NI 81-101 s. 2.7)***

Under Appendix I, Schedule 1, of the Proposed Instrument, the following amendment to NI 81-101 is proposed:

> **Review of unaudited financial statements** – Any unaudited financial statements included in or incorporated by reference in a simplified prospectus must have been reviewed in accordance with the relevant standards set out in the Handbook for a review of financial statements by the mutual fund's auditor or a public accountant's review of financial statements.
>
> (hereinafter the "Proposed Amendment 2.7")

In effect, should the CSA adopt Proposed Amendment 2.7, all investment funds regulated by NI 81-102 will be required to have their interim financial statements ("Interims"), whether filed prior to or after the filing of a simplified prospectus, reviewed by an auditor.

We appreciate the CSA's desire to adopt a comprehensive set of rules for all issuers including investment funds. While we support the CSA's initiative to substantially harmonize the general prospectus requirements with the continuous disclosure rules set out in other related National Instruments, we have three main concerns with the Proposed Amendment 2.7; namely, the additional cost that would be borne by unitholders, the relative value of an auditor's review of Interims to investors and the time allocated to complete such review.

From a cost benefit perspective, we believe the additional costs associated with having an auditor review our Interims would outweigh the related benefits. We are of the opinion that in order to create added value to an investor, such a review would have to result in a quasi-audit or full audit of the Interims. However, given that investment fund managers are already held to a high degree of liability, as Interims are incorporated by reference in a simplified prospectus and the board of directors of an investment fund's manager is

required to approve the fund's Interims, we strongly believe that an auditor's review would be redundant and not justify the additional costs to be borne by investors.

TDAM believes that there would be little value to unitholders in having an auditor review its investment funds' Interims. In accordance with current policies and procedures set out in NI 81-106, our Interims are prepared in essentially the same format and employ the same accounting policies as used in our most recent annual financial statements. Having an auditor review an investment fund's Interims may not necessarily reveal any material errors nor substantially enhance their quality. By way of comparison, corporations are dramatically different from investment funds in that many corporations experience frequent and complex changes that do not occur in an investment fund. For example, such changes may include:

(a) acquisitions;
(b) sale of corporate assets; and
(c) complex judgments with respect to reserves and other matters.

Investment funds do not have the same degree of variability as corporations, and the nature of the disclosure contained in an investment fund's Interims is substantially the same as contained in its corresponding annual financial statements.

Pursuant to NI 81-106, an investment fund is required to file and deliver its Interims and interim management report of fund performance on or before the 60th day after the end of the most recent interim period of an investment fund. If we are required to have an auditor review our Interims, we would be adding significant time to an already compressed production timeline. The result may jeopardize our ability to file and deliver these documents within the required time period. Moreover, adding this extra step to the delivery process would decrease the little flexibility there currently is in our production schedule.

We do believe, however, that it may be reasonable to require an auditor to review the Interims of an investment fund, only in the following circumstances:

(a) a material change in the accounting policy of an investment fund;
(b) a material change in the regulatory or generally accepted accounting principles that would impact an investment fund's disclosure; or
(c) a new fund is launched for which a most recent annual financial report does not exist.

This would be consistent with our current practice.

It is worth noting that an auditor's review of an investment fund's Interims may serve to confuse the minds of investors as to the meaning of an "auditor review" versus an "audit".

Certain changes previously made to NI 81-106 were made with a view to conforming Canadian and U.S. regulation. The Proposed Amendment 2.7 is not a requirement in the U.S. and the proposed changes would therefore not further the CSA's objective of comparable regulation on this topic.

2. ***Disclosing a Description of a Mutual Fund's Policies and Procedures Relating to the Monitoring, Detection and Deterrence of Short Term Trades (NI 81-101F2 ss. 12(9) and 12(10))***

While we commend the CSA's initiative to amend certain form requirements of NI 81-101 to enhance disclosure, we do not feel that the adoption of this amendment is warranted.

We are of the opinion that the meaning of short term trades is synonymous with early redemptions, and as such, we currently disclose in Part A of our prospectuses the ability of the fund manager to charge an early redemption fee for redemptions made within 30 days of the purchase of units (90 days in the case of eSeries units), and our policies applicable thereto.

However, if the term "short-term trading" refers to excessive trading (i.e., multiple transactions in a fund made in a relatively short period of time), we would agree with disclosing that we have policies and procedures in place to monitor and deter such activity. However, we would not support disclosing in detail our policies and procedures. Such disclosure could potentially provide investors with an alternative method to attempt to circumvent such policies, thereby restricting our ability to take necessary action to prevent excessive trading behaviour. Also, our policies and procedures may change from time to time to keep in line with market changes. We do not believe that the legal fees and costs associated with printing and filing prospectus amendments to reflect such changes would be justified.

3. ***Adding a New Class or Series of Securities (NI 81-101CP s. 2.7)***

Under Appendix I, Schedule 2, of the Proposed Instrument, the following amendment to NI 81-101CP, is proposed, in relevant part:

> …If a mutual fund adds a new class or series of securities to a simplified prospectus that is referable to a new separate portfolio of assets, a preliminary simplified prospectus must be filed. However, if the new class or series of securities is referable to an existing portfolio of assets, the new class or series may be added by way of an amendment.

After considering the above language, we are of the opinion that if we create a new series of units of an existing mutual fund in a different simplified prospectus than other units of the same fund are offered, we could proceed to initiate the renewal by way of an amendment as opposed to filing a new preliminary prospectus.

We recommend that the CSA provide further interpretive guidance in this area.

CONCLUSION

TDAM is grateful to have had the opportunity to comment on the Proposed Instrument, specifically with respect to the proposed amendments to NI 81-101. While we appreciate the importance of the CSA creating a set of national prospectus requirements for all issuers and harmonizing such rules across Canadian jurisdictions, we strongly believe that the above amendments would add little value to investors given the existing regulatory framework in place with respect to continuous disclosure obligations.

Notwithstanding our opinion that the Proposed Amendment 2.7 would be more appropriately addressed in NI 81-106 and NI 51-102 rather than NI 81-101, we are concerned with the potential impact of adopting the Proposed Amendment 2.7 based on the limited value to investors, the additional costs to be borne by unitholders and the limited time to have such a review completed. We do believe, however, that it would be reasonable to require an auditor review in the circumstances set out above.

We would be pleased to provide any further explanations or submissions with respect to matters discussed above and would make ourselves available at any time for further discussion.

Yours truly,

Timothy Pinnington
President, TD Mutual Funds