Bank Financial Group

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Mr. Neil Mohindra
Acting Policy Manager
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Dear Sir:

Re: Request for Comments on Proposed Framework 81-406 Point of Sale Disclosure for Mutual Funds and Segregated Funds

TD Bank Financial Group ("TDBFG") is pleased to respond to the request for comments on the Joint Forum of Financial Market Regulators ("Joint Forum") Proposed Framework 81-406 Point of Sale Disclosure for Mutual Funds and Segregated Funds (the "Proposed Framework").

TDBFG offers a full range of financial products and services to over 14 million customers worldwide. The Proposed Framework is of particular interest to TDBFG's wealth management businesses, which are comprised of firms involved in the design, management and distribution of investment funds. TD Asset Management Inc. ("TDAM") is registered with all the provincial securities regulators as an investment counsellor and portfolio manager, registered as a limited market dealer with the Ontario Securities Commission ("OSC") and Securities Commission of Newfoundland and Labrador, and registered as a commodity trading manager with the OSC. As of September 30, 2007, TDAM and its affiliates managed approximately $158 billion of mutual funds, pooled funds and segregated accounts. TD Waterhouse Canada Inc. is an Investment Dealers Association of Canada member firm offering a full array of brokerage services to investors and institutions, including over 4,900 mutual funds through its Discount Brokerage, Private Investment Advice, Financial Planning and Institutional Services divisions. TD Investment Services Inc. is a Mutual Fund Dealers Association of Canada ("MFDA") member firm selling TD Mutual Funds through registered representatives located in TD Canada Trust branches, call centres and internet services.

EXECUTIVE SUMMARY

The Proposed Framework describes the Joint Forum's objective of: (1) providing investors with meaningful disclosure before they make a decision to buy into a mutual fund or segregated fund (hereinafter collectively referred to as "funds") by introducing a new mandatory fund summary document called the "fund facts" (the "Fund Facts"); and (2) introducing a new cooling off right for investors to cancel a purchase. The proposed contents of the Fund Facts should include key information about a fund in a simple, accessible and comparable format that will help investors assess potential benefits, risks and costs of investing in funds and enable investors to compare one fund with another. The Joint Forum consists of representatives from the Canadian Association of Pension Supervisory Authorities, the Canadian Council of Insurance Regulators and the Canadian Securities Administrators.

TDBFG supports the Proposed Framework's objective of providing enhanced investor protection through the provision of timely delivery of effective disclosure documents to retail consumers. We applaud the proposal to utilize a two page fund profile document as the base disclosure document for retail investors and share the Joint Forum's view that existing disclosures in a fund's simplified prospectus, annuity policy or information folder are not well received by investors, and may simply go unread. However, we believe that there are issues with the Proposed Framework that, if properly resolved, will ensure that investors obtain meaningful disclosure on their own terms.

RECOMMENDATIONS

We agree that investors should receive all relevant information with respect to a fund in order to make sound investment decisions. However, we believe that the Proposed Framework will have unintended consequences for investors and our main comments are focused on the following areas:

(1) The Proposed Framework should only apply to retail investors and should specifically exclude institutional investors, accredited investors and clients with discretionary managed accounts;

(2) The delivery of the Fund Facts should occur "at or after" the point of sale, whereby the delivery of the Fund Facts would occur either at the point of sale or after the point of sale by accompanying a trade confirmation. The delivery of the Fund Facts before or at the point of sale, either on an initial or subsequent purchase, is in many situations at best impractical and at worst impossible to fulfill without creating unnecessary delay;

(3) The Fund Facts should be delivered in the same circumstances in which prospectuses must currently be delivered;

(4) The disadvantages to investors of receiving the Fund Facts before or at the point of sale could more than offset any advantages, which could result, among other things, in the following investment exposure and investment market distortion:

a) Delayed trade execution, loss of market opportunities, delayed ability to purchase, directly or through a switch, money market funds to reduce risk;
b) Inability to make RSP contributions through dealers without cash accounts;
c) Delayed changes of investment exposure because the purchase side of a switch cannot be processed without delivery of the Fund Facts;
d) Dealers limiting funds they offer thereby limiting investor choice; and
e) Investors having to choose to directly invest in higher risk alternatives or other investments that have no pre-purchase fulfillment requirement in order to obtain the desired timely market exposure.

(5) There must be an ability to cure non-compliance with a requirement to deliver the Fund Facts prior to or at the point of sale through delivery after a trade. Rights of withdrawal and rescission should run from the sending of the Fund Facts and confirmation, respectively, regardless of whether such documents are delivered in accordance within the times set out in Proposed Framework;

(6) Simplified disclosure using language at a grade 5 level could result in perceived interpretive differences between the Fund Facts and a fund's simplified prospectus, annual information form, continuous disclosure materials, annuity policy or information folder, particularly for more complex funds; and

(7) The specific contents contained in the Fund Facts will result in considerable duplication of existing continuous disclosure materials.

SCOPE OF APPLICATION

While the basic fund information contained in Fund Facts is important and may add value for retail investors, we do not believe it will add value for institutional or accredited investors and for clients with discretionary managed accounts. Investors' levels of understanding can differ significantly. We believe that the Fund Facts disclosure using language at a grade 5 level is appropriate for retail investors purchasing mutual funds. In the case of institutional or accredited investors and clients with discretionary managed accounts, the Fund Facts disclosure would not be appropriate, and therefore, the Proposed Framework should not apply.

DELIVERING THE FUND FACTS

Our main concern with the Proposed Framework centres on the timing of delivery of the Fund Facts, in writing, before or at the point of sale. We believe that the proposed delivery standard is impossible to consistently achieve in all circumstances largely because of the diverse distribution channels in which funds can be purchased. We are of the view that investors, no matter where a purchase occurs, should not be precluded from purchasing funds simply because they have not received the Fund Facts before or at the point of sale unless that is their desire.

We respectfully urge the Joint Forum to consider adopting an "at or after" approach, whereby the delivery of the Fund Facts would occur either at the point of sale or after the point of sale by accompanying a trade confirmation. We believe this approach is consistent with the Joint Forum's view of timely delivery of fund specific information.

Below are a few examples of situations investors could face in purchasing funds through different distribution channels where the delivery of the Fund Facts must occur before or at the point of sale.

First, many investors use call centres and the internet to access their accounts. In a call centre transaction, a licensed representative will discuss a fund purchase over the telephone with investors who do not or may not have access to visit a representative in person or have access to the internet or email. In this case, the Fund Facts would need to be mailed, faxed or emailed to investors prior to completing a fund purchase. This may result in investors having to call back the call centre after they received the Fund Facts. This may be challenging during the typically high volume RSP season in February. The internet delivery channels would need costly system upgrades in order to present the Fund Facts to investors prior to a fund purchase. This disruption of the sales process may compel many retail investors to purchase higher risk securities directly or turn to other investment vehicles that may not be suitable to their investment objectives or risk tolerances.

Second, self-directed retail investors who have selected to purchase funds through suitability exempt discount brokerage services generally do not receive disclosure documents before or at the point of sale, but rather after a transaction has been completed. Investors use this distribution channel for execution only and are generally not provided with investment advice as is the case in the advisory channels. In this setting, it would be at best impractical and at worst impossible to provide the Fund Facts before or at the point of sale without creating unnecessary delay. Implementing the Proposed Framework will involve significant changes to this model and may result in a shift of trading in mutual funds to other securities that do not have a pre-purchase disclosure obligation, thereby distorting the market for investments.

Finally, institutional and accredited investors would face the same service interruptions as retail investors would face in a call center or internet transaction. The delivery of the Fund Facts, particularly in subsequent transactions, would hinder the ability for these investors to transact quickly for any reason and would potentially question the ability for funds to be used for this purpose. Also, institutional and accredited investors have a higher level of understanding than retail investors and do not need the same level of investor protection, as evidenced by the regulatory approach to the exempt market. We believe the Fund Facts will not add value to these investors, and thus, these investors should be excluded from the Proposed Framework.

In addition, we believe clients with discretionary managed accounts should not be subject to the Proposed Framework. Investment decisions for these clients are made by the investment counsellor ("IC") or portfolio manager ("PM"), not the investor. Given that these investors have delegated their investment decisions to an IC or PM, we request clarification from the Joint Forum as to how the proposed delivery requirement would apply from a discretionary managed standpoint.

With respect to subsequent purchases, once the Fund Facts has been delivered, retail investors will have access to all of the necessary fund information to make informed decisions. We would argue that the Fund Facts should only be delivered on a subsequent purchase where there has been a material change to a fund's simplified prospectus concerning information also contained in the Fund Facts. Absent this consideration, we urge the Joint Forum to waive the delivery of the Fund Facts on subsequent purchases.

We are of the opinion that in respect of switches, whereby an investor decides to redeem all or a portion of his or her units of one fund to buy units of another fund, the Proposed Framework would treat the purchase portion of the switch as an initial purchase. As such, we believe investors would be subject to receiving the Fund Facts for a new fund. However, we urge the Joint Forum to consider waiving this requirement for switches from one fund to a fund which a client already owns (absent material changes as indicated above), switches from one fund to a money market fund or switches between money market funds.

We believe it would be in the best interests of investors that money market funds be excluded from the Proposed Framework as they are primarily viewed as short-term low risk investments that are not subject to undue risk even with the current issues in a portion of the money market. We note that many MFDA participants do not allow for a cash holding position in an investor's account. As a result, a volatile market could hinder an investor from quickly switching from a higher risk investment to a money market fund because of the obligation to deliver the Fund Facts prior to or at the point of sale.

INVESTOR RIGHTS

We appreciate the importance of giving investors the opportunity to rescind or cancel their investment in a fund within the time period and in the manner prescribed in the Proposed Framework. This would generally be consistent with the current regulations contained in securities legislation. In the case of rescission rights, we suggest that they operate from the earlier of the sending of the confirmation of purchase and the sending of a client statement setting out the details of the purchase. In the case of withdrawal rights, we suggest they operate from the earlier of the sending of the Fund Facts or prospectus. A major concern is that if investors do not receive the Fund Facts or a confirmation, they should not be given rescission and withdrawal rights in perpetuity, thereby subjecting investment fund managers and dealers to unlimited liability. This could potentially result in unwarranted claims, unnecessary litigation and could expose a dealer to perpetual risk if the market value of the investment drops below the original value.

We believe that there must be an ability to cure non-compliance with a requirement to deliver the Fund Facts prior to or at the point of sale through delivery after a trade. As indicated above, rights of withdrawal and rescission should run from the sending of the Fund Facts and confirmation, respectively, regardless of whether such documents are delivered in accordance within the times set out in Proposed Framework.

FUND FACTS

While we are in favour of the benefits of creating Fund Facts for retail investors that summarize key information at a grade 5 level, we are cognizant that there may be potential risks in using such language. Although we feel that for basic funds this level of language could be achieved, funds that involve complex nuances may not be aptly described using grade 5 language. Additionally, using language at a grade 5 level could result in interpretive differences between the Fund Facts and a fund's simplified prospectus, annual information form, continuous disclosure material, annuity policy or information folder. We request that the Joint Forum provide a safe harbour for such interpretive differences and provide guidance on how to deal with them.

We are of the opinion that while the proposed contents of the Fund Facts are designed to highlight key fund information to help retail investors make informed investment decisions, many of the contents addressed in the Proposed Framework are already contained in an investment fund's Management Report of Fund Performance ("MRFP"). We wish to note that in 2006 alone, the opt-in rate for investors who wished to receive TDAM's MRFP was only at approximately two percent. Our concern, therefore, is that if investors generally do not want to receive the MRFP, which contains important information regarding a fund's risk profile, investment objectives, investment strategies, top 25 holdings, performance related information, annual expenses and management fees, we are hesitant to believe that the Fund Facts will add further value by disclosing the same or similar information that is contained in the MRFP (other than the fund's investment objective).

Further, in our advisory channels we consider investment suitability based on our account documentation. We carefully consider an individual's risk tolerance, time horizon and personal investment objectives prior to processing fund purchases. We believe an individual's investment objective should be compatible with the fundamental investment objective of a fund that is subject to purchase. We request that the Joint Forum provide clarification as to why a fund's fundamental investment objective was excluded from the contents required to be disclosed in the Fund Facts.

Although we concur with the Joint Forum that the contents of the Fund Facts will ultimately help retail investors make informed investment decisions, we recommend that the Fund Facts be a static document that addresses factors that may impact investment suitability, highlight the key features of a fund and state the consequences of not reading the information. Rather than re-stating specific portfolio and adviser compensation information that is already available, the Fund Facts should advise investors what other documentation is available to them, what information is contained in those documents, what they could use that information for and where they can obtain those documents. Such documents would include the:

1) Simplified prospectus;
2) Annual information form;
3) Interim and annual MRFP;
4) Quarterly portfolio summaries;
5) Interim and annual financial statements; and
6) The documents that will be available to clients upon implementation of the Client Relationship Model.

The investment fund manager and/or dealer will, of course, upon request provide these documents free of charge to potential or existing investors.

We note that in respect of institutional investors and other investors whose accounts are managed under discretionary authority, management fees are generally negotiated and paid directly by the investors as opposed to being imbedded in the funds. Therefore, the Fund Facts would not add any transparency with respect to management fees for such investors.

REGULATORY REQUIREMENTS

We do not believe that the Fund Facts should be created for each class or series of a fund with a separate management expense ratio ("MER"). By mandating this requirement, it is possible that retail investors may be given the Fund Facts for a series or class of a fund that is either not available to them or they did not purchase. Also, since performance and fees may be different for each class or series of a fund where the MER is different, this could potentially create confusion for investors, advisors and dealers. By way of example, under the Proposed Framework, TDAM would have to create over 350 Fund Facts at least twice a year, i.e. at least 700 Fund Facts per annum.

We reiterate our position that the Joint Forum should consider adopting the Fund Facts that would inform investors of the different class or series of a fund available, and give flexibility to investment fund managers to determine which series or class to include.

We are of the opinion that if required to create the Fund Facts for each class or series of a fund with a separate MER, the costs if implemented, would be staggering. For example, we would need to build the technology in order to place Fund Fact sheets at retail branches, dealers, internet delivery channels and call centres. As there is currently no specific industry wide delivery network to do this, dealers would need to access this information from different sources. For dealers, a substantial amount of money would be required to upgrade their systems to accommodate the vast number of Fund Facts received from different investment fund companies. This would be a new process that is not currently handled in the industry.

Additionally, there would be substantial compliance costs and opportunity costs to implement this process. In respect of compliance costs, a dealer will need to ensure and prove that the Fund Facts has been delivered to investors. In order for this to be achieved, dealers will have to build an audit process and upgrade their systems, at a substantial cost. In respect of the opportunity cost of having the Fund Facts placed in the sales process, although difficult to measure, the change in the current sales process for different channels may lead some investors to divert to different investments that may have a simpler sales process for convenience purposes where there would be no loss of market exposure. This may have the effect of narrowing dealer offerings and could result in a distortion in the investment marketplace.

With respect to the filing of the Fund Facts, we concur with the Joint Forum that the Fund Facts should be filed annually. Notwithstanding the above, we believe the only additional time that the Fund Facts should be filed is when there has been a material change in a fund's simplified prospectus concerning information also contained in the Fund Facts. Creating the Fund Facts twice a year, as it is presently proposed, would be an extremely onerous and disruptive process for both fund managers and dealers. Point of sale delivery of separate Fund Facts for each series or class of securities, twice a year, would result in inventory and delivery issues for the Fund Facts including delivery errors on account of the sheer volume of different Fund Facts. We reiterate our view that on all purchases investors will have access to all information such as the MRFP where performance and fee related information is updated and filed semi-annually.

In addition, the filing requirements in the Proposed Framework poses further concerns. If we were to create the Fund Facts for each class or series of a fund, it could potentially take the equivalent of five business days to file on SEDAR with other continuous disclosure documents. Since other fund companies will also be filing their Fund Facts together with other continuous disclosure documents at the same time, the total volume could easily overload the SEDAR system. We note that the potential lag in time that could result from mass overload on the SEDAR system could thwart fund purchases and investors may miss out on potential market opportunities. We request guidance from the Joint Forum as to what developments will be undertaken on the SEDAR system to accommodate the increased volume.

Pursuant to National Instrument 81-106, an investment fund is required to file its continuous disclosure documents with the regulators on or before the 60th day after the end of the most recent interim period of an investment fund and on or before the 90th day after the end of the investment fund's most recently completed financial year. If we are required to file the Fund Facts in accordance with the same deadlines for our other continuous disclosure documents, we would be adding significant time to an already compressed 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 schedule.

CONCLUSION

TDBFG is grateful to have had the opportunity to comment on the Joint Forum's Proposed Framework. We applaud the Joint Forum for promoting the interests of retail investors by designing the Fund Facts that will provide retail investors with meaningful information in order to make sound and informed decisions. We agree that the content of the Fund Facts should highlight key fund information investors can use to assess the benefits, risks and costs of fund investing in an easy-to-understand format. Overall, we believe the Fund Facts will be beneficial for retail investors and share the Joint Forum's view that investors should receive all relevant fund information.

TDBFG is of the view that institutional or accredited investors and clients with discretionary managed accounts should be excluded from the Proposed Framework. We are of the opinion that the Fund Facts disclosure will only provide meaningful information to retail investors. Notwithstanding the fact that using language at a grade 5 level could result in interpretive differences between the Fund Facts and a fund's simplified prospectus, annual information form, continuous disclosure materials, annuity policy or information folder, such language could be seen as unnecessary to sophisticated investors who have exercised their own diligence and research prior to purchasing funds.

We support regulations that are principles-based and provide flexibility where the latter is warranted. While we agree with the Joint Forum's intentions of creating a standardized disclosure document and generally believe it will add value for retail investors, we believe that simplifying language at a grade 5 level may not be appropriate for sophisticated investors and the more complex funds they purchase.

As previously stated, our main concern with the Proposed Framework is focused on the timing of delivery of the Fund Facts. We do not take issue with the proposed methods of delivery and support the Joint Forum's vision of timely delivery of fund specific information. However, we believe that the proposed delivery standard is impossible to consistently achieve in all circumstances largely because of the diverse distribution channels in which funds can be purchased. Thus, we believe the "at or after" approach is consistent with the Joint Forum's principle of timely delivery and the current regulatory approach in respect of the delivery of continuous disclosure materials.

We agree that investors should receive all relevant information with respect to a fund in order to make sound investment decisions. However, we believe that the Proposed Framework will have unintended consequences for investors primarily investment exposure and investment market distortions including delays in completing fund transactions at a specified time. Basically, investors who purchase funds through investment advisors, internet websites and call centres who have not received the Fund Facts before or at the point of sale will be told that their purchases cannot be completed. Investors could also face the prospect of reduced fund selection from dealers who cannot, or do not wish to, support the same breadth of fund choices while complying with the delivery requirements of the Proposed Framework. Therefore, we feel that the Proposed Framework could negatively impact the sales process given that the delivery requirement will potentially be onerous, interruptive, confusing (due to delivery errors) and cumbersome for many investors who desire to purchase a specific fund at a specific time.

We believe the proposed delivery requirements should not apply to subsequent purchases, except where there has been a material change to a fund's simplified prospectus concerning information also contained in the Fund Facts. We further believe that this requirement be waived for switches from one fund to a fund which a client already owns (absent material changes as indicated above), switches from one fund to a money market fund or switches between money market funds.

We are of the opinion that it would be in the best interests of investors that money market funds be excluded from the Proposed Framework as they are primarily viewed as short-term low risk investments that are not subject to undue risk notwithstanding the current issues in a portion of the money market.

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 P. Pinnington
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President, TD Mutual Funds