



December 16, 2008

British Columbia Securities Commission
Alberta Securities Commission
Saskatchewan Securities Commission
Manitoba Securities Commission
Ontario Securities Commission
New Brunswick Securities Commission
Securities Office, Prince Edward Island
Nova Scotia Securities Commission
Securities Commission of Newfoundland and Labrador
Registrar of Securities, Northwest Territories
Registrar of Securities, Nunavut
Registrar of Securities, Yukon Territory

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Madame Anne-Marie Beaudoin
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Dear Sirs and Mesdames:

Re: CSA Notice 81-318 – Framework 81-406 Point of Sale Disclosure for Mutual Funds and Segregated Funds

We are writing you to provide our additional comments related to the implementation of the Joint Forum's Final Framework 81-406 Point of Sale Disclosure for Mutual Funds and Segregated Funds (the "Final Framework").



TD Bank Financial Group¹ (“TDBFG”) supports the Final Framework’s objective of providing enhanced investor protection through the provision of comprehensive disclosure to retail consumers, and agrees that investors should receive all relevant information with respect to a fund in order to make informed investment decisions. While some improvements have been made to the Final Framework, our initial comments submitted to the Joint Forum raised significant issues about the effectiveness of some of the framework’s provisions. We strongly believe that the Final Framework raises additional issues and presents considerable challenges to investment dealers and the mutual fund industry that must be resolved prior to its implementation. Our specific comments are more particularly described below.

SCOPE OF APPLICATION

Institutional or accredited investors and clients with discretionary managed accounts

Although basic fund information contained in the Fund Facts is important and may add value for retail investors, it would not add value for institutional or accredited investors and for clients with discretionary managed accounts. Investors’ levels of understanding can differ significantly and we believe that the Fund Facts are only appropriate for retail investors purchasing mutual funds.

We recognize that one of the Joint Forum’s guiding principles is that “the Fund Facts should be delivered if an investor may not be in a position to make an informed decision about investing in a fund”. We believe that institutional or accredited investors are sufficiently sophisticated to review the prospectus and, more importantly, able to identify and understand the nature of their investments and any potential conflicts of interest. As a result, we believe that institutional or accredited investors should be excluded from the Final Framework.

¹ 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, the provision of investment planning and advice to retail clients, and the provision of discount brokerage services. 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 November 30, 2008, TDAM and its affiliates managed approximately \$167 billion of mutual funds, pooled funds and segregated accounts. TD Waterhouse Canada Inc. is an Investment Industry Regulatory Organization of Canada Dealer Member firm offering a full array of brokerage services to investors and institutions, including over 4,900 series of mutual fund units through its Discount Brokerage, Private Investment Advice, Financial Planning and Institutional Services divisions via electronic (online), call centre and branch network channels. TD Investment Services Inc. is a Mutual Fund Dealers Association of Canada member firm selling TD Mutual Funds through registered representatives located in TD Canada Trust branches and call centres and through the internet.

In our original submission, we expressed concern as to how the current framework will function with respect to clients with discretionary managed accounts. Given that these clients have delegated their investment decisions to investment counsellors or portfolio managers, we fail to see the benefit of the provision of the Fund Facts in these circumstances. In fact, the provision of the Fund Facts would undermine the exact reason clients use this service; that is, to delegate the entire investment decision making process to an investment counsellor or portfolio manager.

The majority of TD Asset Management Inc.'s ("TDAM") institutional business consists of providing discretionary asset management for pension funds, government institutions, insurance companies, foundations, endowments and corporations. These clients typically perform a high level of due diligence in selecting investment managers, often with the assistance of an independent third-party consultant, including a request for proposal process and presentations/interviews between the investment committee and the investment manager. If TDAM is selected as the suitable manager, these accounts do not have management fees that are similar to the fees embedded in retail mutual funds. Management fees are negotiated between the client and the investment manager and are billed directly to the client. Management fees vary based on the type of mandate, the size of the assets to be invested and the level of servicing required (i.e. number of required meetings per year, custom reporting, etc.). It is hard to imagine what value, if any, institutional or accredited investors and clients with discretionary managed accounts would gain from the provision of the Fund Facts. Consequently, we urge the Canadian Securities Administrators ("CSA") to exclude these types of investors from the scope of the Final Framework.

DELIVERY

Solicited versus unsolicited trades

The Final Framework distinguishes between trades that are investor initiated and those that are advisor recommended, which we find to be confusing.

There are essentially two ways mutual fund transactions are initiated – solicited or unsolicited. Generally, a solicited trade is one in which the advisor contacts a client. Whereas, an unsolicited trade is generally one in which the client contacts the advisor. While we understand that solicited trades that are advised will be caught by the rule, there are several dimensions of trades that could exist, which are not mutually exclusive. We are concerned about which dimensions prevail where several nuances apply.

The following examples represent common scenarios we anticipate advisors may face, but are in no way exhaustive of every situation. In respect of solicited trades, an advisor could contact his or her client for the purpose of providing information that would not result in advice being given, but a trade being made. With respect to unsolicited trades, a client could contact his or her advisor for the purpose of obtaining information about a

specific fund(s) which may result in advice being given and a trade being made. Here, the distinction to be made is between clients being informed but not advised versus clients being informed and advised.

As a result of these nuances, we request that the CSA address the different dimensions that may exist and provide what the CSA considers to be criteria for determining solicited versus unsolicited trades. Further, we recommend that the CSA clarify who will make the determination of whether a solicited or unsolicited trade resulted in advice being given and how advisors are to keep track of such determinations.

Annual delivery

The Final Framework indicates that some investors may find it useful to receive updated Fund Facts annually for each fund in their account or under their insurance contract. While this may be true for a relatively small percentage of investors², we submit that giving investors the option to receive this document annually would not be worthwhile given that they already have access to all the necessary continuous disclosure documents, which includes important information about a fund that is updated on a semi-annual basis. If implemented in its current form, many dealers and insurers would not have the systems capability to track this obligation.

As the Final Framework indicates, the Fund Facts would be made continuously available on a fund manager and insurer's website and by request in print without charge.

Investment advice channels

In advice driven channels, investors establish relationships with investment advisors for the purpose of developing and managing a customized investment strategy. Investment recommendations are backed by thorough research and analysis in respect of a client's investment objectives, time horizon, suitability and risk tolerance. In this setting, the provision of the Fund Facts may result in a shift of trading in mutual funds to other investments that are less regulated and do not have pre-purchase disclosure obligations. This could create a barrier that has a detrimental impact to this line of business.

FUND FACTS CONTENT

The fundamental purpose of the Fund Facts is to ensure that investors receive key information about a mutual fund that is provided in a simple, easy to understand and comparable format. As a matter of policy, we strongly believe that the single most important piece of information about a fund is its investment objectives. Information about a fund's investment objectives, investment strategies, risks, fund specific risks and performance are equally, if not more important, than fees and expenses for investors to consider before purchasing a mutual fund. Without providing this relevant information, it

² In 2007, the opt-in rate for investors who wished to receive TDAM's MRFP was approximately 2%.

would be difficult for investors to assess the reasonableness of the fees and expenses charged.

Fund Facts for each series or class of a fund

While the creation of the Fund Facts for each series or class of a fund is most consistent with the Joint Forum's vision, we disagree that it would be less confusing for investors to understand and make it easier for investors to link the Fund Facts to a particular purchase. Rather, we believe the creation of multiple Fund Facts for each fund would only serve to confuse investors as opposed to clarifying their understanding of mutual fund investments. At first blush, the creation of the Fund Facts for each series or class of a fund would appear less confusing, but there are significant costs which would ultimately be counterproductive. Further, for investors who desire to use electronic means to access a copy of the Fund Facts in the event they lost the original, it could be very confusing given that many investors know which funds they own, but many do not know which series or class of the fund they own.

If all fund managers are required to create the Fund Facts for each series or class of a fund, the distribution channels would not be able to handle the resulting thousands of Fund Facts. For example, TD Waterhouse currently offers 4,900 series of mutual fund units, which would result in it handling the same number of Fund Facts. Consequently, this obligation could result in dealers distributing fewer mutual funds, thereby reducing investment alternatives, which could have negative price implications for investors. In addition, this requirement could pose risks that investors may receive the wrong information and their rights of withdrawal would be extended for an inordinate length of time. An investor, for example, may desire to purchase the investor series units of a specific fund, but was given the Fund Facts for the advisor series of that fund. In this situation, not only has the investor received the wrong information, but was inadvertently given an extension to exercise his or her rights of withdrawal.

Investors should know which purchase options are available to them, not just which ones the dealer will put in front of them. This was the exact reason that financial statements and MRFPs had to disclose all series of a fund and could not be tailored to the series the investor holds. We reiterate our position that the Fund Facts should 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. The CSA have typically strived to standardize disclosure so as to facilitate comparisons. Splitting a single fund's offering of different series units into multiple documents is inconsistent with achieving this objective.

Investment objectives and strategies

The Final Framework indicates that a fund's investment objective and investment strategies need not be included since the investment section is intended to be concise. We strongly believe the Fund Facts must include a fund's investment objective. The Fund Facts, as it currently is formulated, is designed for a basic type mutual fund and

would not detail a fund's investment style, foreign content capabilities or detail the overall breadth of flexibility in asset mix ranges. Complex funds would require more wording to adequately describe what they do while also maintaining a reading level below 6.0. In addition, for new fund offerings, the Fund Facts would not have any holdings or asset mix to disclose.

While the inclusion of these items may make it difficult to maintain a two page format as contemplated by the Joint Forum, we strongly believe that the exclusion of a fund's investment objectives and strategies suggests that they are not material to a fund's operations, which we believe them to be.

Quick facts

While the quick facts section is intended to give the reader a snapshot of some basic information with respect to the mutual fund being purchased, we request clarification on the following questions which are currently addressed in standard prospectus disclosures:

- 1) Is the "date fund created" intended to show the date the fund was created or the date the specific series was created?
- 2) Is the "total value" intended to show the value of the fund or the value of the specific series?
- 3) Will the minimum investment section need to include the minimums for (a) pre-authorized contributions; (b) systematic withdrawal plans; and (c) account balances?

What does the fund invest in?

This section of the Fund Facts is intended to show investors what the fund invests in and what the fund holds at a specific point in time. As such, we request clarification on the following questions:

- 1) What are the restrictions for the as of date of the information presented, i.e. not more than 60 days prior to the date of the Fund Facts?
- 2) Are the top 10 investments to be prepared on a consolidated issuer basis or by issue?
- 3) Will the total number of investments figure need to be quoted on a consolidated issuer basis or by issue?

How risky is it?

The Final Framework contemplates the use of the Investment Fund Institute of Canada ("IFIC") risk scale at least until an acceptable alternative is developed. We believe the IFIC risk scale is solely a function of the variability in fund returns, and its use alone, would not account for any specific investment risks that may be applicable to a fund that are disclosed in a fund's prospectus. The risks associated with investing in a fund are similar to the risks associated with the securities in which the fund invests, and we

believe this to be useful information for investors to receive. We recommend that fund-specific risks be included within the scope of this section.

Sales charge options

Some investment management firms calculate the deferred sales charge (“DSC”) costs and the 10% investors can redeem in a given year without paying a DSC differently from other firms. The Fund Facts should allot space to provide a brief description of the basis of the calculation.

Ongoing fund expenses

For the vast majority of investment funds, operating expenses are not fixed. The Final Framework does not currently provide the option to explain the types of expenses a fund or series of a fund pays or could pay. We request that the CSA permit the fund manager to explain the types of fund expenses a fund can incur.

In addition, the Final Framework is silent with respect to the fees paid to an investment fund’s independent review committee (“IRC”). We request that the CSA confirm that there is no requirement to highlight the IRC in the Fund Facts in terms of what services they provide or what the associated costs to the fund.

Other fees

While this section is designed to let the investor know about some of the other fees associated with redeeming or transferring units of a fund (i.e. short-term trading fee, switch fees and change fees), it does not provide for various other fees that may be charged to unitholders including, performance fees, maintenance fees, trustee fees, registered plan fees, NSF charges, wiring fees and other specialty fees particular to a fund or series of a fund. We believe that the CSA should not limit this section to exclude such fees that may also be relevant to investors in deciding to purchase a fund and that fund managers be given the flexibility to determine what other fees are relevant to include.

General format

The Final Framework states that the Fund Facts will be a maximum of two pages, unless multiple sales charge options exist that cannot be included in the two page format. The example Fund Facts document provided is full of information and leaves no room to address the above mentioned issues. We request that the CSA reconsider its position and expand the format of the Fund Facts so that all relevant information as expressed above can be included.

FILING REQUIREMENTS

We submit that the preparation and filing of the Fund Facts should not coincide with the prospectus renewal process or the preparation and filing of MRFPs. The level of work and resources required to prepare either the prospectuses or the MRFPs would make it extremely difficult to simultaneously prepare and file the Fund Facts with either one. Investment fund managers should be given the flexibility and discretion to prepare these documents at any point in time in the year. We acknowledge that should a prospectus amendment be made during the course of the year that would impact the Fund Facts, the Fund Facts would have to be amended as well.

If we are required to file the Fund Facts in accordance with the same deadlines for our prospectus renewal process, or other continuous disclosure documents, it would add significant work to complete within already compressed timelines. The result may jeopardize our ability to file and deliver these documents within the required time period.

We feel it is important to note that the costs of preparing, filing, and printing the Fund Facts will far outweigh the cost savings associated with reduced printing of the prospectuses, leading to higher costs to investors and lower fund performance.

COMPLIANCE ISSUES

As previously mentioned, there are several dimensions of solicited and unsolicited trades. We are concerned that without proper procedures in place to track whether a solicited or unsolicited trade resulted in advice being given, it could lead to misuse. Therefore, we request that the CSA provide guidance as to who will make the determination of whether a trade resulted in advice being given and how advisors are to keep track of such determinations.

The Final Framework provides that in the case of certain full-service advisor recommended trades and in investor initiated trades, the Fund Facts may be delivered “with” the trade confirmation if the investor chooses. For the avoidance of doubt, we request that the CSA confirm that the obligation to deliver the Fund Facts lies with the dealer, irrespective of whether the dealer or fund manager is delivering the confirmations.

CONCLUSION

We support regulations that are principles-based and provide flexibility where warranted. While we agree with the Joint Forum’s general guiding principles, we believe that there are several issues concerning the implementation that the CSA needs to consider before this can be effectively implemented. Moreover, we believe that our recommendations in

this submission, if implemented, would make the Final Framework more workable for investors and the mutual fund industry.

We appreciate the opportunity to provide the CSA with our comments on the Final Framework and would be pleased to provide further explanations with respect to our comments and recommendations.

Yours truly,

A handwritten signature in blue ink, appearing to read 'TPP', with a large, sweeping flourish extending to the right.

Timothy P. Pinnington
Senior Vice President, TD Bank Financial Group
President, TD Mutual Funds