

**TD Asset Management**

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

The Secretary  
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Dear Sirs and Mesdames:

**Re: CSA Notice and Request for Comment – Implementation of Stage 2 of Point of Sale Disclosure for Mutual Funds – Proposed Amendments to National Instrument 81-101 and Related Amendments**

TD Asset Management Inc. (“TDAM”) welcomes the opportunity to provide comments related to the implementation of Stage 2 of Point of Sale disclosure for mutual funds and the proposed amendments to National Instrument 81-101 *Mutual Fund Prospectus Disclosure* (the “Rule”), Form 81-101F3 *Contents of the Fund Facts Document* (the



“Form”) and Companion Policy 81-101CP *Mutual Fund Prospectus Disclosure* (the “Companion Policy”) and related consequential amendments. We refer to the proposed amendments to the Rule, the Form and the Companion Policy together as the Proposed Amendments. TDAM, a wholly owned subsidiary of The Toronto-Dominion Bank, is one of Canada’s largest asset managers and we are responding in our capacity as an investment fund manager.

TDAM supports the Proposed Amendments requiring delivery of the Fund Facts to an investor within two days after purchasing a mutual fund. We also agree with the Canadian Securities Administrators’ (“CSA”) overarching goal to provide investors with simple, comparable and accessible information about a mutual fund in order to make informed investment decisions. Our comments are intended to strengthen the Proposed Amendments.

Our response is divided into three parts. In the first part, we respond to the specific questions raised by the CSA in the Request for Comments. In the second part, we provide comments on specific elements of the Proposed Amendments which were not captured in the questions raised in the Request for Comments. And lastly, in the third part, we provide suggestions for improving the Form and its administration based on our experience with implementing the Fund Facts.

In summary, our comments reflect the following key points:

- including a comparison to a one-year GIC benchmark is misleading;
- adding a list of “top” risks is potentially confusing to investors and could create unintended liability for the fund manager;
- we do not believe it is appropriate to disclose the conflict of interest arising from the payment of trailing commissions in the Fund Facts; and
- we recommend a two-part implementation of Stage 2 as we believe the proposed 6-month transition timeline is logistically challenging.

## **I. Specific Requests for Comment**

- 1. The proposed explanatory text included above the risk scale is based on the assumption that fund managers use risk classification methodologies based on measures of market volatility, such as standard deviation.**

**We seek feedback on whether the proposed text will assist investors in understanding how to interpret the risk scale in the Fund Facts, and whether the explanation is compatible with the risk classification methodologies used by fund managers.**

We agree that the proposed explanatory text will assist investors in understanding how to interpret the risk scale found in the Fund Facts. Our comments below are intended to improve clarity and consistency in the Proposed Amendments to the Risk section.

To more accurately recognize the role of market volatility in determining the risk rating of a fund, we propose adding reference to volatility in the text before the risk scale. We have also made some minor edits to ensure consistency throughout the text. Please see our suggested changes below:

[Insert fund manager name] is required to rate the level of risk of this fund ~~its funds~~ and review this rating each year. The scale ranges from Low to High based on how the fund is invested and the level of volatility in historical returns ~~risk and return involved~~. In most cases, a lower risk rating means lower historical volatility ~~risk~~ and lower potential returns, with a lower risk of losing money ~~chance of losses~~. A higher rating generally means higher historical volatility ~~risk~~ and higher potential returns, but ~~with~~ also a greater risk ~~chance~~ of losing money.

We also note that the connection between the scale and the rating by a fund's manager, which is currently set out in Item 5(1) of Part I of the Form, has been omitted from the Proposed Amendments. We recommend including this information as the last paragraph in Item 4(2) of Part I of the Form as follows:

[Insert name of the manager of the mutual fund] has rated this fund's risk as indicated in the scale below.

We also suggest revising the bolded text found directly below the risk scale to state:

The risk rating category shown is not fixed and may change over time. The lowest category does not mean there is no risk, and you can still lose money. ~~A fund that is rated on the end of the risk scale can still lose money. If the fund's risk rating changes, you may want to consider whether to keep holding it in your portfolio.~~

The changes above are intended to achieve the following:

- alert investors that a risk rating change may prompt them to assess the appropriateness of continuing to hold the fund in their portfolio;
- connect related concepts in a more succinct manner (i.e. risk and losing money); and
- maintain consistency with changes to the text above the risk scale.

In addition to the substantive text supporting the risk scale, we have several comments regarding the proposed changes to the section heading:

- We are concerned about the change to the title "What are the risks of this fund?" from the original "How risky is it?" for a few reasons. The original language is more conversational and less formal than the language proposed. More

importantly, the original language emphasizes the level of risk, while the new language alters the emphasis to the focus on the various factors that comprise the risk. We believe that the overall level of risk is more important than the individual components that contribute to it. If the CSA proceeds with changing the heading, we propose using “What is the risk rating of this fund?” because a complete list of risks is not disclosed in the Fund Facts and as a result, the heading may be misleading. As well, our proposed heading better reflects the risk rating chart.

- Proposed Item 4(1) of Part I to the Form includes a specified warning symbol in the heading. Please confirm if the warning symbol is a Form requirement. We take issue with adding in this warning symbol as the section already adequately highlights the risk of investing without the inclusion of this additional mark. Furthermore, importing the image of the symbol may create operational issues in the preparation of the Fund Facts. As a result, we suggest mandating an exclamation mark rather than a specific symbol. Also, the sample Fund Facts accompanying the Proposed Amendments illustrates the warning sign in yellow. If the CSA proceeds with mandating the symbol, we suggest requiring a darker colour so that it reads more clearly to investors against a white backdrop.
- 2. **The intent of the proposed requirement to list the fund’s main risks under the heading “What are the risks of this fund?” is to highlight for investors some of the specific risk factors that may impact the fund’s returns. In an effort to avoid lengthy boilerplate disclosure, we are proposing to limit the list to no more than four risk factors, as identified by the fund manager, and to not allow any narrative description of those risks.**

**We seek feedback on whether the proposed inclusion of the fund’s main risks will assist investors in better understanding the risks associated with investing in the fund. If we were to allow narrative descriptions of each risk factor, we invite feedback on how we could ensure that such descriptions convey meaningful information to investors while remaining short, simple and in plain language.**

### **Option 1 – List of “Top” Risks**

We oppose disclosing a list of “top” four risks in addition to the risk scale because it could be misleading to investors. Our comments in support of this position are as follows:

- The risk rating of the fund is determined based on the level of volatility of historical returns and not on the “top” four risks. By placing the list of risks beside the risk scale it suggests to investors that there is a direct link between the two concepts, which is misleading (i.e., another fund could have the exact same four risks but have a different risk rating).
- Different fund managers may currently use different terminology to name and describe the same risk. Listing the risks may make comparability difficult without a standardized definition of the risks.



- By limiting the number of risks that may be disclosed in the Fund Facts, a fund manager must engage in an exercise of assessing not only the factual reasons for choosing a risk but must also consider what risks may affect a fund in the future based on possible market conditions. This future-oriented analysis involves a greater degree of subjectivity than what is currently required when selecting risks that are disclosed in the simplified prospectus. This type of analysis also exposes fund managers to greater liability for failing to choose the correct risks in the current market conditions. For example, just prior to the 2008 market turmoil “liquidity risk” would have been a remote risk to debt funds when in fact such risk became material. Assuming that the Fund Facts was required in 2008, if a fund manager had failed to disclose liquidity risk in the Fund Facts filed at that time, it could have been liable for this omission.
- Selecting the “top” four risks downplays the actual range of risks that a fund could face in changing market conditions.

If the CSA proceeds with requiring a ranked list of risk factors, we recommend the following:

- Replacing the reference to the phrase “top risks” with the phrase “important risks” in the introductory language because “top risks” suggests that these risks are paramount to others which could be wrong if material market changes occur suddenly. It implies that the fund manager could necessarily foresee which risks are paramount. Exposing the fund manager to an implication that it could do so creates undue and inappropriate liability for the fund manager. Accordingly, we recommend replacing the word “top” with “important” to more accurately reflect the disclosure.
- Establishing a working group to develop common names and definitions for risk factors disclosed in the Fund Facts.
- Continuing to refer investors to the simplified prospectus for more information on specific risks, for the following reasons:
  - the simplified prospectus provides full, true and plain disclosure of risks affecting a fund;
  - the degree of disclosure in the simplified prospectus limits the fund manager’s liability for failure to disclose a material risk affecting a fund; and
  - the simplified prospectus contains a range of risk facts that could arise in changing market conditions.

Ultimately, an investor is better informed when they are aware of the complete range of risks that a fund could encounter rather than a limited number of ‘top’ risks selected at a particular point in time.

Further to our points above, please clarify in the Rule or the Companion Policy whether a fund manager will have to amend its Fund Facts if the list of risks changes materially throughout the year but is still consistent with the list of risks disclosed in its simplified prospectus.

## **Option 2 – List of “Top” Risks with Narrative Descriptions**

We are concerned with the CSA’s alternative option to permit narrative descriptions of risks. It is difficult to provide a fulsome and meaningful description of each risk in the space provided in the Fund Facts. Many risk factors require multiple paragraphs to adequately be explained. Investors will not receive an accurate understanding of risks with short, narrative descriptions.

We are also concerned about a fund manager’s liability for failing to properly disclose the nature and complexity of each risk factor in the Fund Facts. Under the Proposed Amendments, the Fund Facts will replace the simplified prospectus as the delivery document for liability purposes. While the simplified prospectus incorporates by reference the Fund Facts, the converse is not the case. This regulatory gap should be considered. If the CSA applies the legal standard of “full, true and plain disclosure” (currently reserved for the prospectus) to the Fund Facts, a fund manager faces a significant risk of liability for failure to properly disclose each risk given space constraints in the Fund Facts.

In conclusion, we oppose the listing of risks and related narrative descriptions. Instead, we support retaining the current Form requirement to reference the simplified prospectus for a full summary of risks.

- 3. We are proposing to compare the fund's performance to a benchmark of a one-year GIC, to assist investors in assessing the performance of the fund relative to its associated risk. This comparison is intended to highlight the risk of investing in a fund by illustrating how a fund may have a higher return than a GIC in some years, but its return will generally vary from year to year and may sometimes lose money.**

**We seek feedback as to whether there are other appropriate benchmarks to illustrate this comparison.**

We strongly oppose adding a comparison to a one-year GIC in the Performance section of the Fund Facts. Our main objection is that GICs are fundamentally different investment products from mutual funds and a comparison of returns would require substantial disclosure setting out all of the material differences between the two instruments consistent with Part 15 of National Instrument 81-102 *Mutual Funds*. In the absence of fulsome disclosure, the comparison would be misleading and the page limitations on the Fund Facts prevent us from disclosing the key differences between mutual funds and one-year GICs.

Additional reasons for opposing a comparison to a one-year GIC include the following:

- Since this style of chart is provided to investors in other forms including the Management Report of Fund Performance (“MRFP”), investors will conclude

from the Fund Facts that a one-year GIC is a suitable benchmark to that mutual fund.

- If the objective is to ‘assess performance of the fund relative to the associated risk’, a one-year GIC comparison across the range of risk categories is not appropriate. For investors who are seeking medium to long-term investments, a comparison to a one-year GIC is the wrong benchmark and is potentially misleading.
- If adding the comparison to a one-year GIC is intended to demonstrate volatility of fund returns, we argue that this information is captured in the existing performance chart which demonstrates the volatility of fund returns over the last 10 years.

We believe that the Fund Facts should not include either the performance of a one-year GIC or that of a benchmark. If however, the CSA feels a comparison needs to be referenced, we recommend that this section include a statement to the effect of “for a comparison of the fund’s return to a benchmark, please see the most recent Annual Management Report of Fund Performance”.

- 4. To implement Stage 2 in a reasonable time period, we are considering a six month transition period to allow for the implementation of systems to facilitate the delivery of the Fund Facts. This will also allow for necessary changes to be made to the Fund Facts template. It is the CSA's expectation that systems development to contemplate the delivery of Fund Facts will begin now.**

**We also are considering whether to require the Fund Facts be amended to include the proposed changes to the Fund Facts prior to the expiry of the transition period. Alternatively, we could allow existing mutual funds to amend the Fund Facts at the earlier of an amendment to the mutual fund or the filing of its pro forma prospectus.**

**We seek feedback on our proposed approach to implementation.**

We propose a two-part implementation of Stage 2 of Point of Sale. Our timelines below assume that the final version of the Proposed Amendments comes into force on December 31, 2012.

- On or after **June 30, 2013**, Fund Facts filed with a preliminary or pro forma simplified prospectus must contain the content changes set out in the final amendments (“Part 1”).
- On or after **June 30, 2014**, the Fund Facts must be delivered to investors within two days after purchasing a mutual fund (“Part 2”).

Part 1 will permit fund companies to ensure the content changes meet the CSA’s standards. It also allows for fund companies to include the content changes during the normal course of a prospectus renewal rather than through the amendment process. By



staggering implementation through the prospectus renewal process, regulators will not be faced with reviewing and receipting amendments to Fund Facts for all fund companies at the same time.

Part 2 will ensure sufficient time to design, test and implement the new requirements so that investors will receive the correct Fund Facts within statutory timelines.

## **II. Additional Comments on the Proposed Amendments**

We would like to note our appreciation of the CSA's proposed changes to permit data within 45 days (rather than 30 days). This change will help ease a significant burden on the business in preparing the Fund Facts.

Please find below our additional comments on the Proposed Amendments which are intended to strengthen the effectiveness and comparability of the Fund Facts:

- Given the use of the term “dealer representative” in the Fund Facts, please consider amending Form 81-101F1 *Contents of Simplified Prospectus* and Form 81-101F2 *Contents of Annual Information Form* to similarly reference “dealer representative” rather than “advisor”.
- To limit repetition and optimize space, please remove the requirement to state the name of the fund in the introductory paragraph of the Fund Facts. The fund name is already bolded in larger font above at the top of the page.
- Quick facts – We support the addition of “Date series started”, but not the addition of “Total value of series on...” This inclusion does not add significant value and will require changes in the Fund Facts to reference the series, such as in reference to a series MER.
- “What does the fund invest in?” – We oppose the requirement to add percentages to the Top 10 investments for the following reasons:
  - It adds numerous data points, but essentially becomes stale immediately after being filed. Such information, in a more accurate and up-to-date form, can be found elsewhere (such as the fund company's website).
  - It compromises compliance with the recent disclosure requests set out in OSC Staff Notice 81-717 *Report on Staff's Continuous Disclosure Review of Portfolio Holdings by Investment Funds* (the “OSC Notice”). The OSC Notice clarifies that this section of the Fund Facts should provide consistent disclosure with that of the annual MRFP. Many funds disclose their asset classifications in multiple tables in the MRFP. The OSC Notice requests that a similar presentation should occur in the Fund Facts. The Fund Facts, as currently designed, will need the space proposed for



- percentages in order to include multiple tables and will also migrate from pie charts to tables to fit the space allotted.
  - It takes away space used for the actual names of these investments that would set out the nature of the security (i.e. common shares vs. preferred shares).
- “How has the fund performed?”
  - As noted above in Part I of our comments, we strongly oppose comparing the fund’s performance to a one-year GIC.
  - Since performance is calculated on per series basis, we propose to use the generic term for the series of the fund without specifying the name of the series. Also, the introductory sentence under the heading “How has the fund performed?” should state “This chart shows you how *this series of the* fund has performed over the past 10 years.”
  - We view the inclusion of the worst quarterly return without the best quarterly return as misleading for investors. In many cases, investors are purchasing mutual funds (other than money market funds) with a long-term investment horizon. To provide short-term data does not give investors an accurate picture of the implications of holding a mutual fund over the longer term. We also have concerns with requiring the worst quarterly return since inception rather than the last ten years (consistent with the requirement to provide performance data for the last 10 years). To ensure consistency in this Performance section, we request that the best and worst quarterly return only be provided for the last 10 years.
  - Given the proposed changes to this section, we suggest that the sentence “This chart does not tell you...” should be amended to “This chart **and/or returns** do not tell you...”
- “A word about tax” – Please consider revising the phrase “fund distributions **are** included...” to state “fund distributions **must be** included...” because the use of “must be” implies that the investor must take action, unlike the term “are” which may be misleading because it is vague.
- “How much does it cost?” – We would prefer using “This series...” vs. “Series B...” because it limits the number of variable data points needed to be provided across a broad range of Fund Facts. The larger the number of data points, the more likely the chance for error. In our view, this change will not be harmful to investors as the series name is already found at the beginning of the document and at the top of each page of the Fund Facts.

- Trailing commission – While we understand that the CSA would like to highlight that trailing commission payments may create a conflict of interest, we suggest that the Fund Facts is not the appropriate place for this disclosure. Disclosure regarding commissions is more properly addressed in discussions between the dealer representative and their client. We propose that the current language in the Fund Facts, as proposed, adequately describes the trail commission and suggest the addition of a reference to read: “Ask your dealer representative for more information”.
- For more information – We are concerned with adding reference to the CSA’s brochure entitled “Understanding mutual funds”. Since the fund manager does not control the content of the brochure and the Fund Facts is a liability document, we disagree with adding a reference to it in the Fund Facts.

### **III. Comments on the Administration and Implementation of the Fund Facts**

- *Permit us to include related details necessary to enhance the investor’s understanding of information in the Fund Facts*

Please consider revising the Form to permit disclosure of certain details that are relevant to investors but that, strictly speaking, are not related to a material change. For example, a fund may only be available in US dollars. Another example is noting that performance disclosure is in US dollars. Since the performance is different for each, the investor needs the additional information to determine if the indicated performance is relevant to their purchase option. In other instances, disclosure items reflect the impact of a portfolio manager change which may occur some time after the change. For instance, the trading expense ratio (“TER”) may be higher than normal in a year due to a portfolio manager change. Additional disclosure will help investors understand that this higher TER may be an anomaly and may not reflect the ongoing cost of ownership of the fund. Increased flexibility to include these types of disclosures will benefit investors’ ability to make more informed decisions about buying, holding or selling their securities of a mutual fund.

- *Provide us with more flexibility in how we present information in the Fund Facts*

We ask that the CSA consider including provisions in the Form requirements to permit flexibility in the presentation of certain information in the Fund Facts in order to avoid the technological challenges posed by working with templates and to achieve consistency across the Fund Facts. Several sections of the current rules require us to present content in the form of a table or chart. Examples include: calendar-year bar chart, fund expenses table and “other fees” chart. If a particular fund or series is new, or has no “other fees”, the Form directs us to replace the table and/or chart with a paragraph. If the Fund Facts were created as Word documents these changes would be easy to do. However, the large volume of Fund Facts that we prepare (approximately 1,000) compels us to use an automated, template-driven solution. Our templates, which we use for numerous funds of different ages and features, do not permit us to remove a chart for one fund, but retain it

for other funds. Furthermore, by permitting us to retain a static template, investors will see a consistent approach to the Fund Facts, rather than the variability that would arise with the dynamic content changes that have been requested during a prospectus comment process.

We would appreciate flexibility in the following instances to assist us in preparing our Fund Facts:

- In the Fund Expenses section for a new fund, permit us to include the required wording along with the chart, simply stating “N/A – new fund” where the percentages would normally appear.
- In the Performance section, allow us to include an empty performance bar chart along with the statement “This information will be available when this series of the fund completes a full calendar year.”
- *Eliminate certain variables*

As noted above, increasing the number of variables to be disclosed in the Fund Facts increases the likelihood for error. We recommend the elimination of the requirement to include certain variable text, particularly variable text that is embedded in a static sentence. The inclusion of these variables increases the complexity of the document and the risk of error with nominal benefit, since the information is already included close to this area or is obvious. Examples include:

- Past performance: “This section tells you how the fund has performed over the past [insert the lesser of 10 years or the number of completed calendar years].” It is not helpful, and is very difficult, to insert a specific number of years in the sentence, especially since the number changes every year. If a fund is less than 10 years old, we prefer to state simply “since it was created” given that the fund creation data is already disclosed on page I.
- How much does it cost?
  - In the Fund Expenses section, please confirm that we may use the word “average” in the column heading “Annual rate (as a % of the fund’s average value)” as the data is taken from the MRFP and our MRFP uses the word “average”. Without the word average, it would imply that the fund expenses were a percent of the Total Net Asset Value on the first page, which is not the case.
  - In Other Fees, we prefer to simply state “...to buy, own and sell units of *this series of the fund*.” (Or shares, as applicable.).
- *Consider mandating disclosure requests in the Form*

To the extent possible, we ask that specific disclosure requests be set out in the Form rather than in staff notices and comment letters issued by the regulators. It is often very difficult to amend templates employed in preparing the Fund Facts to add or remove disclosure during the course of a prospectus filing.

#### IV. CONCLUSION

Thank you for providing us the opportunity to make comments on the Proposed Amendments. We would be pleased to provide any further explanations or submissions with respect to the matters discussed in this response and would gladly make ourselves available for any further discussion.

Yours truly,



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