



May 27, 2014

British Columbia Securities Commission
Alberta Securities Commission
Financial and Consumer Affairs Authority of Saskatchewan
Manitoba Securities Commission
Ontario Securities Commission
Autorité des marchés financiers
Financial and Consumer Services Commission (New Brunswick)
Office of the Superintendent of Securities, Prince Edward Island
Nova Scotia Securities Commission
Office of the Superintendent of Securities, Newfoundland and Labrador
Office of the Superintendent of Securities, Northwest Territories
Office of the Yukon Superintendent of Securities
Office of the Superintendent of Securities, Nunavut

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Dear Sirs and Mesdames:

Re: CSA Notice and Request for Comment – Implementation of Stage 3 of Point of Sale Delivery of Fund Facts – Proposed Amendments to National Instrument 81-101 and Related Amendments (2nd Publication)

TD Wealth is pleased to provide comments related to the implementation of Stage 3 of Point of Sale delivery of Fund Facts and the proposed amendments to National Instrument 81-101 *Mutual Fund Prospectus Disclosure* (the **Rule** or **NI 81-101**) and Companion Policy 81-101CP *Mutual Fund Prospectus Disclosure* (the **Companion Policy**). We refer to the proposed amendments to the Rule and the Companion Policy together as the Proposed Amendments or Stage 3.

Executive Summary

TD Wealth fully supports providing transparency and full disclosure to investors to help them make informed investment decisions. Our comments are intended to strengthen the

Proposed Amendments by ensuring that clients benefit in all distribution channels to the same extent (direct investing and advised-based, regardless of whether they transact online, by phone or in-person), receive comparable disclosure for functionally equivalent products and experience a smooth transition to the new delivery system, all with a view to an overall beneficial client experience. Our response is divided into three parts:

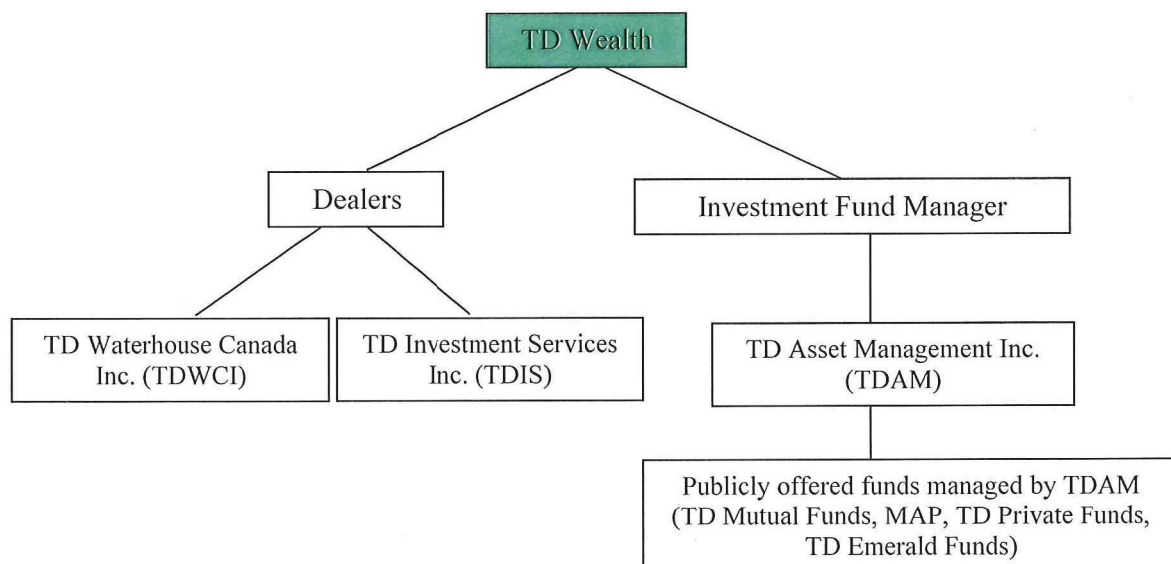
- Part I provides background on certain TD Wealth Canadian businesses;
- Part II sets out our responses to the CSA's issues for comment; and
- Part III contains additional considerations, including our submission that the CSA should implement pre-sale delivery for exchange-traded funds (ETFs) at the same time as for mutual funds.

Our key comments are summarized below and for ease of reference, we have included page numbers.

Comments	Page(s)
We request that the CSA confirm whether the proposed process, which is set out in Appendix A to our response letter, for pre-sale delivery to certain clients in direct investing (DI) and advice based businesses (ABBs) addresses the CSA's expectations.	3-4
We support the proposed exemption from the pre-sale delivery requirement for subsequent purchases under a pre-authorized purchase plan (PPP), subject to certain modifications.	5
Based on our experience with the implementation of Stages 1 and 2 of POS, we recommend that the CSA should set a minimum transition period of 12 to 18 months from the date of publication in final form of the Proposed Amendments.	7-8
We recommend that the CSA implement pre-sale delivery for ETFs at the same time as mutual funds to ensure that clients receive comparable timely disclosure about functionally equivalent products in order to make more informed investment decisions.	8-9

Part I: Background on TD Wealth Canadian businesses

The chart below sets out the entities within TD Wealth that are regulated by the CSA and are primarily impacted by the Proposed Amendments.



TD Waterhouse Canada Inc. (**TDWCI**) and TD Investment Services Inc. (**TDIS**) are registered dealers subject to National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (**NI 31-103**). TDWCI is registered as an investment dealer in each of the provinces and territories of Canada and is a member of the Investment Industry Regulatory Organization of Canada (**IIROC**). TDWCI's operations include direct investing (**DI**) and advice-based businesses (**ABBs**). DI makes available a comprehensive product and service offering to self-directed retail investors and is the largest direct investing business in Canada by assets under administration and trade volume. The overwhelming majority of DI clients transact electronically. TDWCI's ABBs provide investment solutions and advice to help clients manage and transition their wealth. In both DI and ABBs, TDWCI distributes a range of mutual funds which are offered for sale on a continuous basis pursuant to a fund facts document (the **Fund Facts**). Currently, TDWCI distributes securities of over 100 mutual fund complexes, which include proprietary and third-party mutual funds. TDIS is registered as a mutual fund dealer in each of the provinces and territories of Canada and is a member of the Mutual Fund Dealers Association of Canada. TDIS is a principal distributor of certain TD Mutual Funds offered through branches of TD Canada Trust.

TD Asset Management Inc. (**TDAM**) is registered as an investment fund manager and its publicly offered investment funds prepare and file Fund Facts pursuant to NI 81-101.

Part II: CSA Issues for Comment

Exceptions from Pre-Sale Delivery of the Fund Facts

1. *While the Proposed Amendments generally require pre-sale delivery of the Fund Facts, they also set out specific circumstances that would permit post-sale delivery.*
 - a. *Do you agree that we should allow post-sale delivery of the Fund Facts in certain limited circumstances? In particular, are there circumstances where post-sale delivery of the Fund Facts should be permitted but are not captured in the Proposed Amendments?*

While we do not believe that there are circumstances that require post-sale delivery that are not already captured in the Proposed Amendments, we are seeking the CSA's clarification regarding a model for pre-sale delivery to DI clients dealing electronically that would permit such clients urgently seeking to invest to achieve the same objective as those wishing to do so when dealing over the phone. The proposed approach would be superior to the verbal disclosure permitted in an urgent circumstance where one is transacting by phone because the complete Fund Facts would be immediately available in its entirety. Furthermore, providing the Fund Facts electronically is consistent with the current DI experience to transact online rather than over the phone.

This approach, which is set out in Appendix A, reflects the natural flow of transactions within the DI channel for online purchases, includes the following key steps:

- our client logs onto the online platform;
- our client uses extensive resources/tools available to select a mutual fund;
- before the dealer, DI, accepts the purchase order,
 - our client is sent a pop-up notice that the Fund Facts is immediately available for review (the pop up provides a link to the selected Fund Facts in the library for their review);
 - our client then confirms receipt of the Fund Facts;
- as per current process, our client places the order (if desired); and
- our client is sent electronically the trade confirmation and the Fund Facts on a T+1 basis (trade date plus one day).

Under the proposed delivery model, DI will provide the Fund Facts to clients before accepting an order in a manner consistent with section 7.2(1) of the Companion Policy. DI will also send electronically on a post-sale basis for the client's records the Fund Facts previously made immediately available, as well as the trade confirmation. We submit that investors will have the opportunity to review the Fund Facts before purchase and should they change their mind after the sale, they may withdraw from the purchase within two days of receiving the trade confirmation and Fund Facts.

If the above-noted approach is not accepted by the CSA as a form of pre-sale delivery, we submit that our current process of delivering the Fund Facts on a T+1 basis to DI clients is completely adequate in an urgent circumstance given the timeliness of the process and the available rights of withdrawal/rescission. In any event, investors urgently wishing to invest should have the same opportunity to do so regardless of whether they transact electronically, verbally or in person with an advisor.

- b. When pre-sale delivery is impracticable, one of the conditions for post-sale delivery of the Fund Facts is that the dealer provides verbal disclosure to the purchaser of certain elements contained in the Fund Facts. Please comment on whether the proposed disclosure elements are appropriate. If not, what additional disclosure should be included? Alternatively, are there any disclosure elements that should be excluded?*

We recommend that the CSA broaden the methods of communicating with clients in ABBs who wish to complete a purchase on an urgent basis. Currently, the CSA has limited communication in these circumstances to verbal disclosure. We submit that where the client has specifically requested to receive documents electronically (**e-preference client**) and/or the verbal option is not available to the client, that electronic communication should be not only acceptable, but is preferred. An e-preference client would be able to continue to receive documents electronically, as well as a client that cannot receive verbal disclosure, such as an individual with a hearing impairment, would each incur an appropriate level of disclosure and a positive, appropriate client experience. Such clients should not be

precluded from purchasing a mutual fund in the desired time frame due to these circumstances. Furthermore, receiving the complete Fund Facts is a preferred option rather than verbal disclosure as it allows the investor to review the entire document. As a result, we ask that the CSA permit use of the same electronic method proposed above for DI clients to meet the pre-sale delivery requirement where the client has consented to electronic delivery consistent with National Policy 11-201 *Delivery of Documents by Electronic Means* and e-commerce legislation.

In addition, we have minor changes to the verbal disclosure requirements:

- (i) add a new disclosure element consistent with the “For more information” section of the Fund Facts to clarify that additional information about the fund can be found in the simplified prospectus (section 3.2.1.1(3)(e) of the Rule); and
 - (ii) expand the list of disclosure elements that are not necessary to be provided to investors, such as the element related to “A word about tax” section because it could lead to clients requesting tax advice which is outside the scope of expertise of advisors and sales representatives (section 7.3(3) of the Companion Policy).
- c. *In the case of pre-authorized purchase plans, a Fund Facts would only be required to be sent or delivered to a participant in connection with the first purchase provided that certain notice requirements are met. Please comment on whether the Fund Facts should also be sent or delivered to a participant if the Fund Facts is subsequently amended and/or every year upon renewal of the Fund Facts. If so, what parameters should be put in place for such delivery? For example, should it be delivered in advance of the next purchase that is scheduled to take place after the Fund Facts has been amended or renewed? Or would post-sale delivery be more appropriate?*

We support the CSA’s proposed exemption from the pre-sale delivery requirement for subsequent purchases under a PPP. However, we ask that the CSA clarify the points below regarding the delivery and content of the annual notice:

- please confirm whether a dealer can send the annual notice electronically to a participant in a PPP (that is an e-preference client);
- please confirm whether the notice may indicate the various ways that an investors may request the Fund Facts and specify any other requirements associated with receiving investors’ instructions;
- please confirm whether the annual notice can state that the Fund Facts for the applicable class or series of the fund purchased by the client may be updated or renewed during the year; and
- whether the annual notice may include a reference to the availability of the Fund Facts on the dealer’s or the fund manager’s website and/or on SEDAR, should the investor not wish to receive a printed copy of the Fund Facts.

Compliance

2. *The CSA expect that dealers will follow current practices to maintain evidence sufficient to demonstrate effective delivery of the Fund Facts. Are there any aspects to the requirements in the Proposed Amendments that require further guidance or clarification? If so, please identify the areas where additional guidance would be useful.*

We are seeking additional guidance regarding the CSA's view on the evidence to support verbal disclosure for post-sale delivery.

- (i) Please provide guidance as to how the verbal disclosure for post-sale delivery can be documented. Our specific questions are set out below.
 - Does the CSA have a preference as to how the dealer documents that verbal disclosure was provided to investors?
 - Can a dealer document the evidence on the trade ticket, in notes to file or in a Client Relationship Management (CRM) tool, where such dealer has access to such a tool?
 - Where a dealer does not have a CRM tool, what other record-keeping tools are acceptable to the CSA?
- (ii) How long should the dealer keep documentation evidencing that verbal disclosure was provided to an investor?

Anticipated Costs and Benefits of Pre-Sale Delivery of the Fund Facts

3. *We seek feedback on whether you agree or disagree with our perspective on the benefits and costs of implementing pre-sale delivery of the Fund Facts. Specifically, do you agree with our view that the costs will be incremental in nature and/or one-time cost? We request specific data from the mutual fund industry and service providers on any anticipated costs.*

There are significant costs to implement and monitor ongoing compliance with the Proposed Amendments which are not fully reflected in the Notice for the Proposed Amendments. We have organized the costs into the following three categories: redesigning information systems; communications and training; and printing costs. We estimate that the total cost to implement Stage 3 will be between \$10 and \$15 million. The total cost may vary depending on the functionality and requirements to document both pre-sale delivery and exemptions permitting post-sale delivery across all channels (i.e. DI and ABBs).

(a) Redesigning information systems to support pre and post-sale delivery

Dealers within TD Wealth recently invested approximately \$5 million to implement Stage 2 of Point of Sale. However, since Stage 3 is based on a pre-sale delivery model several information systems implemented for Stage 2 will need to be redesigned.

Implementing Stage 3 will require a one-time cost to integrate the multiple books of record systems of the dealers to the vendor system that hosts the Fund Facts, records the history and facilitates delivery. The integration will be significant because multiple dealer systems will now have to become interactive to track the printing and sending and to retain the audit trail of Fund Facts delivered on a pre-sale basis rather than relying on the trade confirmation and Fund Facts delivery, on a post-sale basis. Ongoing charges will also apply in order to utilize the vendor system and to ensure ongoing enhancement and maintenance are kept current. Since dealer systems both within TD Wealth and across the industry vary there may not be an “off-the shelf” solution which can result in higher costs.

In addition, a tool is needed within existing systems to document post-sale delivery where an exemption is relied upon. For instance, systems will need to be tailored to each sales channel (i.e. DI and ABBs) to document instances where an investor has consented to post-sale delivery and to record that verbal (or our proposed electronic) disclosure was provided in compliance with the Rule.

(b) Communications and training

We anticipate that dealers will receive questions from clients regarding the transition to pre-sale delivery. As a result, dealers will need to prepare effective communications for clients and advisors to explain the significant transition.

In addition, dealers will need to prepare robust training and support programs in order to ensure advisors and sales representatives are educated and able to execute effectively the Proposed Amendments. For instance, dealers will need to train phone channel representatives that receive urgent requests to complete a mutual fund purchase on the proper procedures and documentation to evidence client consent to post-trade delivery.

In the ABBs, under the current post-sale delivery regime, clients would typically have one conversation with a sales representative. With the advent of pre-sale delivery, clients in these businesses may typically have two conversations with sales representatives, being an initial conversation discussing a prospective investment(s) and a second conversation in which a purchase order is placed. As a result, additional staff may need to be hired to deal with the increased volume of conversations.

(c) Printing costs

Currently, investors receive only the Fund Facts for the mutual funds which they purchase. Mutual funds incur the cost of printing and delivering Fund Facts to the dealer for fulfillment with the trade confirmation. The dealer pays the cost to deliver the Fund Facts to an investor.

In Stage 3, investors who are considering multiple fund options will be provided with printed copies of a wider range of mutual funds to consider, prior to initiating a purchase. As a result, mutual funds (manufacturers and dealers) are expected to experience an increase in administrative costs associated with printing Fund Facts for funds recommended by an advisor.

Transition Period

4. *We seek feedback from the mutual fund industry and service providers on the appropriate transition period for full implementation of the Proposed Amendments. For example, assuming that publication of final rules takes place in early 2015, please comment on the feasibility of implementing the Proposed Amendments within 3 months of publication.*

Would a longer transition period of 6 months or 1 year be more appropriate? If so, why? In responding please comment on the impact these different transition periods might have in terms of cost, systems implications, and potential changes to current sales practices.

Based on TD Wealth's prior experience implementing Stages 1 and 2 of the POS project and the complexity of Stage 3, we do not believe that a three-month transition period is feasible or practical. A brief transition period is compounded by the fact that internal and external resources are currently involved and will continue to be involved with the implementation of numerous regulatory initiatives (with overlapping and/or competing deadlines), which include CRMII, CASL, and FATCA. The resources assigned to the numerous regulatory initiatives cannot be deployed in order to implement Stage 3 given similar effective dates. As a result, we recommend a **minimum 12 to 18-month transition period** to properly design, test and implement the Proposed Amendments from the date of final publication of the Proposed Amendments. Ultimately, we want to ensure a consistent client experience that meets the regulatory requirements and can be integrated effectively with CRMII.

5. *We are currently contemplating a single switch-over date for implementing pre-sale delivery of the Fund Facts. From a business planning and business cycle perspective, are there specific months or specific periods of the year that should be avoided in terms of selecting a specific switch-over date? Please explain.*

We recommend that the CSA avoid requiring implementation during the following months:

- December and January due to RSP contributions, and RIF conversions and payments;
- February due to the RSP contribution deadline;
- April due to the preparation of tax statements; and
- July 2015 due to the implementation of account statement disclosure as part of CRMII.

Part III: Additional Considerations

We ask that the CSA consider the following substantive changes before finalizing the Proposed Amendments.

(a) Implement pre-sale delivery for ETFs at the same time as mutual funds

The Notice accompanying the Proposed Amendments states that the CSA is working towards post-sale delivery of a similar disclosure document to the Fund Facts for ETFs. We strongly support including ETFs in the scope of the pre-sale delivery requirement at Stage 3 to maintain a consistent approach to regulating functionally equivalent investments. Our reasons for this position include the following:

- A key tenet of the pre-sale delivery requirement is to provide investors with the opportunity to make more informed investment decisions by giving them key information about a fund, in a language that they can easily understand, at a time that is most relevant to their investment decision.
- The CSA currently regulates ETFs and mutual funds in a similar manner given the functionally similar nature of the investments. That being the case, it is unclear as to why the regulatory regime would regulate their times of delivery, a key tenet of investor protection, in a different matter.
- The CSA ought not to differentiate ETFs and mutual funds for the pre-sale delivery requirement; otherwise investors will not be able to compare these alternative investments at the same time in the investment decision making process.

In April 2014, the Joint Forum¹, which includes IOSCO, released a reporting entitled "Point of Sale disclosure in the insurance, banking and securities sectors" (the **Joint Forum Report**). A key recommendation of the Joint Forum Report is that a point of sale disclosure document should be provided to consumers free of charge, before the time of purchase. Given the CSA's consistent stance on the importance of point of sale for investors and the Joint Forum Report, we recommend that the CSA require pre-sale delivery of the summary disclosure document for ETFs at the same time as mutual funds.

(b) Concept of "deemed receipt" for pre-sale delivery

Currently, section 71(4) of the *Securities Act* (Ontario) stipulates that where the prospectus or prescribed disclosure document, including the Fund Facts, is sent by prepaid mail, it is deemed conclusively to have been received in the ordinary course of mail by the person to who it was addressed. We ask that the CSA confirm, and if necessary, clarify in the relevant provisions of securities legislation across Canada, that the deemed receipt concept also applies to pre-sale delivery. In the absence of the deemed receipt concept, dealers may have increased liability on the basis that there is no time period in which an investor is deemed to have received the Fund Facts to satisfy the pre-sale delivery requirement.

(c) Treatment of translated Fund Facts as sales communications

¹ Joint Forum consists of the following organizations: the Basel Committee on Banking Supervision, the International Organization of Securities Commissions (IOSCO) and the International Association of Insurance Supervisors.

Section 7.6 of the Companion Policy states that Fund Facts prepared in other languages will be considered to be sales communications. By designating translated Fund Facts as sales communications the requirements under Part 15 of National Instrument 81-102 *Mutual Funds* become applicable, this in our view is inappropriate if there is an accurate translation. Instead, we recommend that the CSA not treat Fund Facts prepared in other languages as sales communications, and permit such Fund Facts (in other languages) to be sent with the Fund Facts receipted by a CSA jurisdiction.

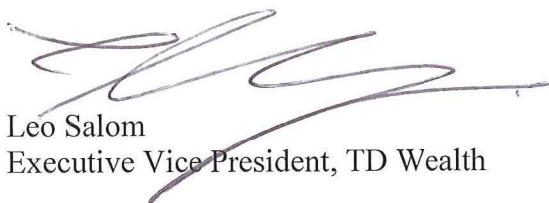
(d) Pre-sale delivery to DI investors

We also want to take this opportunity to address a comment raised by the OSC's Investor Advisory Panel (the **Panel**) in their letter regarding the Proposed Amendments dated April 30, 2014. The Panel notes that the pre-sale delivery requirement should not apply to DIY investors using an online broker. However, the Panel goes on to state that the CSA should mandate a series of funds tailored to the DIY investor that can be purchased without trailing commissions. We do not believe it is appropriate to conflate the issues associated with the timing of Fund Facts delivery and the cost of resources/tools provided in the direct investing channel. There are relevant considerations to each issue; however, they are independent of each other. Our view is that the cost of resources/tools provided in the direct investing channel is not related to the appropriate time of a Fund Fact's delivery.

III. 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,



Leo Salom
Executive Vice President, TD Wealth

Appendix A: Delivery to DI Clients

