

March 17, 2005

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

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Dear Sirs and Mesdames:

**Re: Request for comments on Proposed National Instrument 45-106 Prospectus and Registration Exemptions (“NI 45-106”)**

We have reviewed the Canadian Securities Administrators’ (“CSA”) National Instrument 45-106 (“NI 45-106”) with interest and once again appreciate the opportunity

to provide our comments. TD Asset Management Inc. (“TDAM”), like many other asset managers, is firmly of the view that any effort made to reduce or eliminate jurisdictional irregularities in the application of securities regulations will benefit both investors and the investment fund industry. To the extent that NI 45-106 attempts to harmonize prospectus and registration exemptions nationally, it is a significant improvement over the current regime. Despite this, we believe that NI 45-106 still contains many carve outs and exceptions. We again urge the CSA to recognize that in Canada fragmented securities regulation is a constraining factor that has a serious impact on our industry.

### **General Commentary**

By way of background, TD Asset Management Inc. (“TDAM”) is one of Canada's largest asset managers. As of October 31, 2004, TDAM manages approximately \$34.7 billion in retail mutual fund assets on behalf of more than 1.3 million investors at that date. TDAM and its affiliates manage approximately CDN\$124 billion for mutual funds, pooled funds and segregated accounts and provided investment advisory services to individual customers, pension funds, corporations, endowments, foundations and high net worth individuals. TDAM manages several pooled funds that are distributed across Canada pursuant to prospectus and registration exemptions. For these products our client base is made up of both institutional and high net worth clients.

### **Fully Managed Accounts (Section 1.1, “accredited investor” subsection (q))**

Ontario’s decision to adopt an expanded definition of *accredited investor* so that fully managed accounts may invest in investment funds is one of the most welcome consequences of NI 45-106. As you know, Ontario previously extended this exemption to all issuers other than mutual funds and non-redeemable investment funds. TDAM has long believed that the risk associated with investing in pooled funds is, in many cases, no different or considerably less than the risk associated with investing in many issuers who were previously able to rely on the managed account exemption. Under NI 45-106 a fully managed account is subject to the oversight of a registered investment adviser. By allowing pooled funds to rely on this exemption, NI 45-106 eliminates an unnecessary distinction between pooled funds and other issuers while continuing to ensure proper oversight of the account.

One potential issue for consideration is Ontario’s decision to exclude adviser’s registered in foreign jurisdictions. Given the registration regime in Ontario we would like clarification on the policy issues this exception addresses. Our understanding is that anyone who advises an Ontario resident must either be fully registered as an adviser or an international adviser. As a result, the Ontario carve-out appears aimed at advisers registered in a foreign jurisdiction who are advising non-Ontario residents. We request clarification on the policy reasons behind Ontario’s decision to exclude advisers registered in a foreign jurisdiction.

### **Minimum Purchases (Section 2.10)**

The reintroduction of the minimum purchase exemption is another harmonization effort that TDAM fully supports. Like the accredited investor exemption, requiring a minimum purchase ensures that investors have a minimum level of sophistication. By harmonizing this rule, the CSA will ensure consistent standards are applied across all jurisdictions.

We have two concerns with the current formulation of the minimum investment rule:

- the requirement that the cost of the securities be paid in cash is overly restrictive. To facilitate transactions and reduce transaction costs in specie transfers are an effective method of purchasing units. Requiring that securities be liquidated prior to purchasing units creates unnecessary transaction costs; and
- the attempt to prevent entities created primarily to permit purchases of securities under exemptions or used primarily to make such purchases may have unintended consequences for entities that would otherwise be considered sophisticated.

### **Offering Memorandum Exemption (Section 2.9)**

Outside of Ontario, the offering memorandum exemption has continued to be a difficult exemption for investment funds to utilize due to the disclosure required in the offering memorandum. TDAM encourages the CSA to tailor the necessary disclosure in relation to investment funds. Specifically, portions of the offering memorandum's required disclosure do not apply to certain investment funds including, information requirements related to working capital deficiency and short term objectives.

Ontario's decision not to offer this exemption despite it being available in all the other provinces raises questions about how the capital markets in Ontario differ from the rest of the country in relation to this exemption. Various checks and balances have been built into the offering memorandum exemption by the other provinces to ensure that issuers relying on this exemption have appropriately sophisticated investors that understand the associated risks. TDAM advocates for the establishment of an offering memorandum exemption in Ontario.

### **Investment Fund Re-Investment (Section 2.18)**

TDAM welcomes a cross jurisdictional exemption for the reinvestment of dividends or distributions (together, "Distributions"). Currently various provinces have different approaches to this which inevitably results in expensive and time-consuming exemption applications. We believe the exemption, as currently drafted, may be too

restrictive by insisting that Distributions may only be reinvested in the same class or series as the securities to which the Distributions are attributable. We urge the CSA to permit Distributions into other series or classes with the same portfolio holdings to provide the flexibility needed to ensure portfolios as a whole are appropriately balanced.

### **Additional Investment in Investment Funds, (Section 2.19)**

Consistent with our comments above, TDAM advocates that additional investment in an investment fund should be exempt as long as the fund maintains the same or similar portfolio assets. The current wording of the exemption only provides relief where the additional purchase is for the same class or series as the initial purchase.

### **Limited Market Dealer**

A notable Ontario exception contained in NI 45-106 is the retention of universal registration and, as a consequence, the limited market dealer registration. By removing various registration exemptions for market intermediaries, Ontario is the only province where registered advisers must still maintain a limited market dealer registration when investing managed accounts in investment funds. The policy basis for Ontario retaining this requirement while the rest of the provinces make exemptions available to market intermediaries is not clear. TDAM is of the view that NI 45-106 presents an excellent opportunity to eliminate an additional layer of regulation that most of the provinces have already dispensed with.

### **Summary**

To summarize, we appreciate the time and effort the CSA has put into responding to investors and the mutual fund industry and we are pleased with the progress that has been made in achieving a harmonized exemptions rule in Canada. Before implementing the rules we feel strongly that further consideration should be given to creating a truly harmonized instrument that does not include carve-outs and provincial exceptions. We would be happy to provide any further explanations or submissions regarding the matters raised above and would also be willing to make ourselves available for a further dialogue.

Yours truly,