

Headnote

NP 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions.

Relief granted to permit (i) interfund trading at 'last sale price' based on UMIR Rules, between a manager's pooled funds, NI 81-102 mutual funds, and managed accounts, (ii) principal trading of debt securities between the manager's pooled funds or managed accounts with an affiliate of the manager, (iv) in-species transactions involving the NI 81-102 funds, pooled funds and managed accounts, (v) purchases by the pooled funds in the primary market, of debt securities issued by related issuers, and (vi) purchases by the pooled funds in the secondary markets, of debt and equity securities issued by a related issuer- conditions of prior relief applied to each type of transaction.

Applicable Alberta Statutory Provisions

Securities Act, R.S.A., 2000, c.S-4, sections 185(2), 185(3) 192(2), 211.41 and 213
Section 31(6) of the Regulations

Citation: TD Asset Management Inc., Re, 2009 ABASC 316

Date: 20090702

IN THE MATTER OF
THE SECURITIES LEGISLATION OF ONTARIO

AND

ALBERTA, SASKATCHEWAN, NEW BRUNSWICK,
NOVA SCOTIA, NEWFOUNDLAND AND LABRADOR

AND

IN THE MATTER OF
THE PROCESS FOR EXEMPTIVE RELIEF APPLICATIONS IN MULTIPLE
JURISDICTIONS

AND

IN THE MATTER OF
TD ASSET MANAGEMENT INC.
(the Filer)

Decision

Background

- A. The securities regulatory authority or regulator in Ontario has received an application (the **Application**) from the Filer under the securities legislation of the principal regulator (the **Legislation**) for:
- (a) a decision (the **Trading Prohibition Exemption Sought**) providing an exemption (a **Passport Exemption**) from the requirement (the **Trading Prohibition**) that prohibits a portfolio manager from knowingly causing an investment portfolio managed by it to purchase or sell the securities of any issuer

from or to the account of a responsible person, any associate of a responsible person or the portfolio manager to permit:

- (i) existing mutual funds and future mutual funds to which National Instrument 81-102 – *Mutual Funds* (**NI 81-102**) applies (each, an **NI 81-102 Fund** and, collectively, the **NI 81-102 Funds**) managed by the Filer, or any affiliate of the Filer (each, **TDAM**) to purchase securities from or sell securities to existing mutual funds and future mutual funds managed by TDAM to which NI 81-102 does not apply (each, a **Pooled Fund** and, collectively, the **Pooled Funds**) or a fully managed account managed by TDAM (each, a **Managed Account** and, collectively, the **Managed Accounts**);
 - (ii) an NI 81-102 Fund to purchase exchange-traded securities from or sell exchange-traded securities to another NI 81-102 Fund at the last sale price, as defined in the Market Integrity Rules of the Investment Industry Regulatory Organization of Canada, prior to the execution of the trade (the **Last Sale Price**) in lieu of the closing sale price (the **Closing Sale Price**) as contemplated by the definition of current market price referred to in paragraph (e) of Section 6.1(2) of National Instrument 81-107 – *Independent Review Committee for Investment Funds* (**NI 81-107**);
 - (iii) a Pooled Fund to purchase securities from or sell securities to another Pooled Fund, an NI 81-102 Fund or a Managed Account;
 - (iv) a Managed Account to purchase securities from or sell securities to a Pooled Fund or an NI 81-102 Fund;
 - (v) the transactions contemplated in (iii) and (iv) to occur at Last Sale Price instead of Closing Sale Price;
 - (vi) a Pooled Fund or a Managed Account to purchase debt securities from or sell debt securities to an affiliate of TDAM that is a principal dealer in the Canadian debt securities market (a **Principal Dealer**);
 - (vii) a Pooled Fund and a Managed Account to engage in *In Specie* Transactions, as described below; and
 - (viii) a Pooled Fund and an NI 81-102 Fund to engage in *In Specie* Transactions;
- (b) a decision (the **Related Issuer Exemption Sought**) providing an exemption (also, a **Passport Exemption**) from the requirement (the **Related Issuer Prohibition**) that prohibits a portfolio manager from knowingly causing an investment portfolio managed by it to invest in any issuer in which a responsible person or an associate of a responsible person is an officer or director unless the specific fact is disclosed to the client and the written consent of the client to the investment is obtained before the purchase to permit a Pooled Fund to purchase securities of an

issuer (a **Related Issuer**) in which a director, officer or employee of TDAM, or an associate of a director, officer or employee of TDAM, is a director or officer without the prior written consent of the securityholders of the Pooled Fund; and

- (c) a decision (the **Related Securityholder Exemption Sought**) providing an exemption (also, a **Passport Exemption**) from the requirement (the **Related Securityholder Prohibition**) that prohibits a mutual fund from knowingly making or holding an investment in any person or company who is a substantial securityholder of the mutual fund, its management company or distribution company or in an issuer in which any person or company who is a substantial securityholder of the mutual fund, its management company or distribution company, has a significant interest to permit a Pooled Fund to purchase and hold securities of The Toronto-Dominion Bank (the **Bank**) or an issuer in which The Toronto-Dominion Bank has a significant interest (also, the **Bank**).
- B. The securities regulatory authority or regulator (the **First Coordinated Exemptive Relief Decision Makers**) in each of Ontario and Newfoundland and Labrador (the **First Jurisdictions**) has received an application from the Filer for a decision (the **First Coordinated Exemptive Relief**) under the securities legislation of the First Jurisdictions (the **Legislation**) for the Trading Prohibition Exemption Sought to permit the transactions described in paragraph A above.
- C. The securities regulatory authority or regulator (the **Second Coordinated Exemptive Relief Decision Makers** and, together with the First Coordinated Exemptive Relief Decision Makers, the **Coordinated Exemptive Relief Decision Makers**) in each of Ontario, Alberta, Saskatchewan, New Brunswick, Nova Scotia and Newfoundland and Labrador (the **Second Jurisdictions**) has received an application from the Filer under the securities legislation of the Second Jurisdictions (the **Legislation**) for a decision (the **Investment Counsel Exemption Sought**) providing an exemption (the **Second Coordinated Exemptive Relief**) from the requirement (the **Investment Counsel Prohibition**) that prohibits the purchase or sale of any security in which an investment counsel or any associate of an investment counsel has a direct or indirect beneficial interest from or to any portfolio managed or supervised by the investment counsel to permit the transactions described in paragraph A(a) above.

Under the Process for Exemptive Relief Applications in Multiple Jurisdictions:

- (a) the Ontario Securities Commission is the principal regulator for the Application;
- (b) the Filer has provided notice that Section 4.7 of Multilateral Instrument 11-102 – *Passport System* is intended to be relied upon in respect of each of the Passport Exemptions in the provinces and territories of Canada (the **Passport Jurisdictions**) other than Ontario as follows:
 - (i) in respect of the Trading Prohibition Exemption Sought, British Columbia, Alberta, New Brunswick, Saskatchewan, Quebec and Nova Scotia;

- (ii) in respect of the Related Issuer Exemption Sought, British Columbia, Alberta, New Brunswick, Saskatchewan, Quebec and Nova Scotia; and
- (iii) in respect of the Related Securityholder Exemption Sought, Alberta;
- (c) the decision is the decision of the principal regulator; and
- (d) the decision evidences the decision of each Coordinated Exemptive Relief Decision Maker.

Interpretation

Terms defined in the securities legislation of Ontario and the Passport Jurisdictions, National Instrument 14-101 – *Definitions*, NI 81-102 or NI 81-107 have the same meanings in this Decision. Certain other defined terms have the meanings given to them above or below under “Representations”.

Representations

1. The Filer’s head office is located in Toronto, Ontario.
2. TDAM is, or will be, registered as an investment counsel and portfolio manager or the equivalent in Ontario and each of the Passport Jurisdictions.
3. TDAM is, or will be, the manager and/or portfolio manager of each of the NI 81-102 Funds and the Pooled Funds (each, a **Fund**, and, collectively, the **Funds**).
4. TDAM is, or will be, the portfolio manager of each of the Managed Accounts.
5. The Bank is, or will be, a substantial securityholder of TDAM and has a significant interest in other issuers.
6. A director, officer or employee of TDAM or an associate of a director, officer or employee of TDAM may be a director or officer of the Bank or another Related Issuer.
7. Each of the Funds is, or will be, an open-end mutual fund trust or mutual fund corporation.
8. Each of the NI 81-102 Funds is, or will be, a reporting issuer in Ontario and in each of the Passport Jurisdictions. Each of the Pooled Funds is, or will be, qualified for distribution on a private placement basis pursuant to the Legislation and will not be a reporting issuer.
9. A Fund may be an associate of TDAM.
10. The Filer and the Funds are not in default of securities legislation in any jurisdiction of Canada.

11. TDAM may wish to cause an NI 81-102 Fund to purchase securities from or sell securities to an NI 81-102 Fund, a Pooled Fund or a Managed Account.
12. TDAM may wish to cause a Pooled Fund to purchase securities from or sell securities to another Pooled Fund, an NI 81-102 Fund or a Managed Account.
13. TDAM may wish to cause a Managed Account to purchase securities from or sell securities to an NI 81-102 Fund or a Pooled Fund.
14. TD Securities Inc. (**TDSI**), or another affiliate of TDAM (also, **TDSI**), is, or may be, a Principal Dealer.
15. TDAM may wish to place an order to purchase or sell debt securities on behalf of an NI 81-102 Fund, a Pooled Fund or a Managed Account directly with TDSI, acting as principal.
16. There is a limited supply of debt securities available to the NI 81-102 Funds, the Pooled Funds and the Managed Accounts.
17. TDSI is, frequently, a principal source of debt securities.
18. The NI 81-102 Funds can purchase debt securities from TDSI pursuant to relief they have received from the Trading Prohibition and the Investment Counsel Prohibition.
19. TDAM may wish to invest the portfolio of an NI 81-102 Fund or a Pooled Fund in securities issued by the Bank or other Related Issuers.
20. The NI 81-102 Funds can invest in securities of the Bank or other Related Issuers pursuant to Section 6.2 of NI 81-107 and pursuant to relief they have received from the Related Issuer Prohibition and the Related Securityholder Prohibition.
21. TDAM may wish to or be required to deliver securities to an NI 81-102 Fund in respect of the purchase by a Pooled Fund or a Managed Account of units of an NI 81-102 Fund and may wish to or be required to receive securities from an NI 81-102 Fund in respect of a redemption of units of an NI 81-102 Fund by a Pooled Fund or a Managed Account. (Such transactions are referred to as *In Specie* Transactions.)
22. TDAM may wish to or be required to cause a Managed Account to engage in *In Specie* Transactions with a Pooled Fund or an NI 81-102 Fund in respect of the purchase or redemption of units of a Pooled Fund or an NI 81-102 Fund by a Managed Account.
23. TDAM has received relief from the Trading Prohibition and the Investment Counsel Prohibition to permit *In Specie* Transactions between Managed Accounts and certain NI 81-102 Funds.
24. TDAM has established, or will establish, an independent review committee (**IRC**) in respect of each NI 81-102 Fund in accordance with the requirements of NI 81-107.

25. TDAM will establish an IRC (the members of which may also be members of the IRC of the NI 81-102 Funds) in respect of the Pooled Funds which rely on the Exemptions Sought.
26. The IRC of the Pooled Funds will be composed by TDAM in accordance with Section 3.7 of NI 81-107 and will be expected to comply with the standard of care set out in Section 3.9 of NI 81-107.
27. The mandate of the IRC of a Pooled Fund will include:
 - (i) approving purchases and sales of securities between the Pooled Fund and another Pooled Fund, an NI 81-102 Fund or a Managed Account;
 - (ii) approving purchases and sales of debt securities from or to a Principal Dealer; and
 - (iii) approving purchases of securities issued by the Bank or a Related Issuer; andon behalf of the Pooled Fund.
28. The IRC will not provide any of the approvals referred to in paragraph 27 unless it has made the determination set out in subsection 5.2(2) of NI 81-107.
29. Purchases and sales of securities involving an NI 81-102 Fund will be referred to the IRC of the NI 81-102 Fund under subsection 5.2(1) of NI 81-107 for approval on behalf of the NI 81-102 Fund.
30. If the IRC of an NI 81-102 Fund or a Pooled Fund becomes aware of an instance where TDAM, as manager of the NI 81-102 Fund or Pooled Fund, did not comply with the terms of this decision or a condition imposed by the IRC in its approval, the IRC of the NI 81-102 Fund or the Pooled Fund will, as soon as practicable, notify in writing the securities regulatory authority or regulator in the jurisdiction under which the NI 81-102 Fund or Pooled Fund is organized.
31. At the time of any transaction contemplated by this Decision, TDAM will have in place policies and procedures to enable the NI 81-102 Funds to engage in the transactions contemplated by the Decision with Pooled Funds and Managed Accounts.
32. The investment management agreement or other documentation in respect of a Managed Account will contain the authorization of the client for TDAM to purchase securities from or sell securities to an NI 81-102 Fund or a Pooled Fund, engage in *In Specie* Transactions with a Pooled Fund and purchase debt securities from a Principal Dealer.
33. TDAM cannot rely on the exemption from the Trading Prohibition and the Investment Counsel Prohibition codified under Section 6.1(4) of NI 81-107 unless the parties are both reporting issuers and the purchase or sale occurs, in the case of exchange-traded securities, at the Closing Sale Price.

34. When TDAM engages in a transaction which involves the purchase and sale of exchange-traded securities between two NI 81-102 Funds, two Pooled Funds, one NI 81-102 Fund and one Pooled Fund or between a Managed Account and a Fund it will follow the following procedures:
- (a) the portfolio manager will deliver the trade instructions in respect of a purchase or a sale of a security by a Fund or Managed Account (**Fund A**) to a trader on a TDAM trading desk;
 - (b) the portfolio manager will deliver the trade instructions in respect of a sale or purchase of a security by a Fund or Managed Account (**Fund B**) to a trader on a TDAM trading desk;
 - (c) the trader on a TDAM trading desk will have the discretion to execute the trade as an interfund trade between Fund A and Fund B at the Last Sale Price of the security, prior to the execution of the trade;
 - (d) the policies applicable to TDAM trading desks will require that all orders are to be executed on a timely basis and will remain open for a period not to exceed 30 days unless the portfolio manager cancels the order sooner; and
 - (e) the trader on a TDAM trading desk will advise the portfolio managers of Fund A and Fund B of the price at which the purchase or sale occurs.
35. TDAM cannot rely on the exemption from the Related Issuer Prohibition and the Related Securityholder Prohibition codified under Section 6.2(2) of NI 81-107 in respect of purchases by the Pooled Funds because that exemption does not apply to the Pooled Funds.
36. Each non-exchange traded security issued by a Related Issuer or the Bank that is purchased by a Pooled Fund in a primary distribution or treasury offering (a **Primary Offering**) pursuant to the Related Issuer and Related Securityholder Exemptions Sought will be a debt security, other than an asset backed commercial paper security, with a term to maturity of 365 days or more that has been given and continues to have, at the time of purchase, an “approved credit rating” by an approved credit rating organization.
37. Each non-exchange traded security issued by a Related Issuer or the Bank that is purchased by a Pooled Fund in a Primary Offering pursuant to the Related Issuer and Related Securityholder Exemptions Sought will be purchased in a Primary Offering where the terms of the Primary Offering, such as the size and the pricing, will be a matter of public record as evidenced in a prospectus, offering memorandum, press release or other public document.

Decision

The principal regulator is satisfied that the decision meets the test set out in the Legislation for the principal regulator to make the decision.

The decision of the principal regulator is that the Trading Prohibition Exemption Sought and the Investment Counsel Exemption Sought are granted provided that:

- (a) the purchase or sale of securities is consistent with the investment objective of the NI 81-102 Fund, the Pooled Fund or the Managed Account, as the case may be;
- (b) TDAM refers a transaction that involves an NI 81-102 Fund or a Pooled Fund to the IRC of the Pooled Fund or the NI 81-102 Fund, as the case may be, in the manner contemplated by Section 5.1 of NI 81-107 and TDAM and the IRC of the NI 81-102 Fund or the Pooled Fund as the case may be, comply with Section 5.4 of NI 81-107 in respect of any standing instructions the IRC provides in connection with the transaction;
- (c) in the case of the purchase of exchange-traded securities from or sale of exchange-traded securities to an NI 81-102 Fund by an NI 81-102 Fund, the requirements of Section 6.1 of NI 81-107 apply except that for purposes of paragraph (e) of subsection 6.1(2) of NI 81-107 the current market price of the security may be the Last Sale Price;
- (d) in the case of the purchase of securities from or sale of securities to a Pooled Fund or a Managed Account by an NI 81-102 Fund:
 - (i) the IRC of the NI 81-102 Fund has approved the transaction on behalf of the NI 81-102 Fund in accordance with the terms of subsection 5.2(2) of NI 81-107;
 - (ii) if the transaction is with a Pooled Fund, the IRC of the Pooled Fund has approved the transaction on behalf of the Pooled Fund in accordance with the terms of subsection 5.2(2) of NI 81-107;
 - (iii) if the transaction is with a Managed Account, the investment management agreement or other documentation in respect of the Managed Account authorizes the transaction; and
 - (iv) the transaction complies with paragraphs (c) to (g) of subsection 6.1(2) of NI 81-107 except that for purposes of paragraph (e) of subsection 6.1(2) in respect of exchange-traded securities the current market price of the security may be the Last Sale Price;
- (e) in the case of the purchase of securities from or sale of securities to another Pooled Fund, an NI 81-102 Fund or a Managed Account by a Pooled Fund:
 - (i) the IRC of the Pooled Fund has approved the transaction on behalf of the Pooled Fund in accordance with the terms of subsection 5.2(2) of NI 81-107;

- (ii) if the transaction is with another Pooled Fund, the IRC of the other Pooled Fund has approved the transaction on behalf of the other Pooled Fund in accordance with the terms of subsection 5.2(2) of NI 81-107;
 - (iii) if the transaction is with an NI 81-102 Fund, the IRC of the NI 81-102 Fund has approved the transaction on behalf of the NI 81-102 Fund in accordance with the terms of subsection 5.2(2) of NI 81-107;
 - (iv) if the transaction is with a Managed Account, the investment management agreement or other documentation in respect of the Managed Account authorizes the transaction; and
 - (v) the transaction complies with paragraphs (c) to (g) of subsection 6.1(2) of NI 81-107 except that for purposes of paragraph (e) of subsection 6.1(2) in respect of exchange-traded securities the current market price of the security may be the Last Sale Price;
- (f) in the case of the purchase of securities from or sale of securities to an NI 81-102 Fund or a Pooled Fund by a Managed Account:
- (i) the investment management agreement or other documentation in respect of the Managed Account authorizes the transaction;
 - (ii) if the transaction is with an NI 81-102 Fund, the IRC of the NI 81-102 Fund has approved the transaction on behalf of the NI 81-102 Fund in accordance with the terms of subsection 5.2(2) of NI 81-107;
 - (iii) if the transaction is with a Pooled Fund, the IRC of the Pooled Fund has approved the transaction on behalf of the Pooled Fund in accordance with the terms of subsection 5.2(2) of NI 81-107; and
 - (iv) the transaction complies with paragraphs (c) to (g) of subsection 6.1(2) of NI 81-107 except that for purposes of paragraph (e) of subsection 6.1(2) in respect of exchange-traded securities the current market price of the security may be the Last Sale Price;
- (g) in the case of the purchase of debt securities from or sale of debt securities to a Principal Dealer by a Pooled Fund or a Managed Account:
- (i) if the transaction is by a Pooled Fund, the IRC of the Pooled Fund has approved the transaction on behalf of the Pooled Fund in accordance with the terms of subsection 5.2(2) of NI 81-107;
 - (ii) if the transaction is by a Managed Account, the investment management agreement or other documentation in respect of the Managed Account authorizes the transaction;
 - (iii) the transaction occurs in the secondary market;

- (iv) the bid and ask price of the security is readily available, as provided in Commentary 7 to Section 6.1 of NI 81-107;
 - (v) a purchase is not executed at a price which is higher than the available ask price and a sale is not executed at a price which is lower than the available bid price;
 - (vi) the purchase or sale is subject to applicable “market integrity requirements” as defined in NI 81-107; and
 - (vii) the Pooled Fund or Managed Account, as the case may be, keeps the written records required by subparagraph 6.1(2)(g) of NI 81-107;
- (h) in the case of an *In Specie* Transaction between a Pooled Fund and a Managed Account:
- (i) if the transaction is the purchase of units of a Pooled Fund by a Managed Account:
 - (A) TDAM obtains the prior written consent of the relevant Managed Account client before it engages in any *In Specie* Transactions in connection with the purchase of units of a Pooled Fund;
 - (B) the Pooled Fund would, at the time of payment, be permitted to purchase those securities;
 - (C) the securities are acceptable to TDAM, as portfolio adviser of the Pooled Fund, and consistent with the investment objective of the Pooled Fund;
 - (D) the value of the securities is at least equal to the issue price of the securities of the Pooled Fund for which they are payment, valued as if the securities were portfolio assets of that Pooled Fund;
 - (E) the account statement next prepared for the Managed Account will include a note describing the securities delivered to the Pooled Fund and the value assigned to such securities; and
 - (F) the Pooled Fund will keep written records of an *In Specie* Transaction in a financial year of the Pooled Fund, reflecting details of the securities delivered to the Pooled Fund and the value assigned to such securities, for five years after the end of the financial year, the most recent two years in a reasonably accessible place;
 - (ii) if the transaction is the redemption of units of a Pooled Fund by a Managed Account:

- (A) TDAM obtains the prior written consent of the relevant Managed Account client before it engages in any *In Specie* Transactions in connection with the redemption of units of a Pooled Fund;
 - (B) the securities are acceptable to TDAM, as portfolio adviser of the Managed Account, and are consistent with the Managed Account's investment objective;
 - (C) the value of the securities is equal to the amount at which those securities were valued in calculating the net asset value per security used to establish the redemption price;
 - (D) the holder of the Managed Account has not provided notice to terminate its Managed Account with TDAM;
 - (E) the account statement next prepared for the Managed Account will include a note describing the securities delivered to the Managed Account and the value assigned to such securities; and
 - (F) the Pooled Fund will keep written records of an *In Specie* Transaction in a financial year of the Pooled Fund, reflecting details of the securities delivered by the Pooled Fund and the value assigned to such securities, for five years after the end of the financial year, the most recent two years in a reasonably accessible place; and
- (iii) TDAM does not receive any compensation in respect of any sale or redemption of units of a Pooled Fund (other than redemption fees which have been disclosed) and, in respect of any delivery of securities further to an *In Specie* Transaction, the only charge paid by the Managed Account is the commission charged by the dealer executing the trade; and
- (i) in the case of an *In Specie* Transaction between an NI 81-102 Fund and a Pooled Fund:
- (i) if the transaction is the purchase of units of an NI 81-102 Fund by a Pooled Fund:
 - (A) the IRC of the NI 81-102 Fund has approved *In Specie* Transactions on behalf of the NI 81-102 Funds in accordance with the terms of subsection 5.2(2) of NI 81-107;
 - (B) the NI 81-102 Fund would, at the time of payment, be permitted to purchase those securities;
 - (C) the securities are acceptable to TDAM, as portfolio adviser of the NI 81-102 Fund, and consistent with the investment objective of the NI 81-102 Fund;

- (D) the value of the securities is at least equal to the issue price of the securities of the NI 81-102 Fund for which they are payment, valued as if the securities were portfolio assets of that NI 81-102 Fund;
 - (E) the account statement next prepared for the Pooled Fund will include a note describing the securities delivered to the NI 81-102 Fund and the value assigned to such securities; and
 - (F) the NI 81-102 Fund will keep written records of an *In Specie* Transaction in a financial year of the NI 81-102 Fund, reflecting details of the securities delivered to the NI 81-102 Fund and the value assigned to such securities, for five years after the end of the financial year, the most recent two years in a reasonably accessible place;
- (ii) if the transaction is the redemption of units of an NI 81-102 Fund by a Pooled Fund:
- (A) the IRC of the NI 81-102 Fund has approved *In Specie* Transactions on behalf of the NI 81-102 Fund in accordance with the terms of subsection 5.2(2) of NI 81-107;
 - (B) the securities are acceptable to TDAM, as portfolio adviser of the Pooled Fund, and consistent with the investment objective of the Pooled Fund;
 - (C) the value of the securities is equal to the amount at which those securities were valued in calculating the net asset value per security used to establish the redemption price;
 - (D) the account statement next prepared for the Pooled Fund will include a note describing the securities delivered to the Pooled Fund and the value assigned to such securities; and
 - (E) the NI 81-102 Fund will keep written records of an *In Specie* Transaction in a financial year of the NI 81-102 Fund, reflecting details of the securities delivered by the NI 81-102 Fund and the value assigned to such securities, for five years after the end of the financial year, the most recent two years in a reasonably accessible place; and
- (iii) TDAM does not receive any compensation in respect of any sale or redemption of units of an NI 81-102 Fund (other than redemption fees which have been disclosed) and, in respect of any delivery of securities further to an *In Specie* Transaction, the only charge paid by the Pooled Fund is the commission charged by the dealer executing the trade.

The decision of the principal regulator is that the Related Issuer Exemption sought and Related Security Exemption Sought are granted provided that:

1. the IRC of the Pooled Fund has approved the transaction on behalf of the Pooled Fund in accordance with the terms of subsection 5.2(2) of NI 81-107;
2. the purchase or holding is consistent with, or is necessary to meet, the investment objective of the Pooled Fund;
3. TDAM, as manager of the Pooled Fund, complies with Section 5.1 of NI 81-107 and TDAM and the IRC of the Pooled Fund comply with Section 5.4 of NI 81-107 for any standing instructions the IRC provides in connection with the transactions;
4. if the transaction occurs in the secondary market:
 - (a) if the security is listed and traded the purchase is made on an exchange on which the securities are listed and traded;
 - (b) if the security is not listed on an exchange:
 - (iv) the security is a debt security that has been given, and continues to have, at the time of the purchase, an “approved credit rating” by an approved credit rating organization, within the meaning of those terms in NI 81-102;
 - (v) the price payable for the security is not more than the ask price of the security; and
 - (vi) the ask price of the security is determined as follows:
 - (A) if the purchase occurs on a marketplace, the price payable is determined in accordance with the requirements of that marketplace; or
 - (B) if the purchase does not occur on a marketplace,
 - (1) the Pooled Fund may pay the price for the security, at which an independent, arm’s-length seller is willing to sell the security, or
 - (2) if the Pooled Fund does not purchase the security from an independent, arm’s-length seller, the Pooled Fund must pay the price quoted publicly by an independent marketplace or obtain, immediately before the purchase, at least one quote from an independent, arm’s-length purchaser or seller and not pay more than that quote;
 - (c) the transaction complies with any applicable “market integrity requirements” as defined in NI 81-107; and

- (d) on or before the 90th day after the end of each financial year of the Pooled Fund, TDAM, as manager of the Pooled Fund, files with the securities regulatory authority or regulator the particulars of any such investments;
5. if the transaction occurs in a Primary Offering:
- (a) the size of the Primary Offering is at least \$100 million;
 - (b) at least two purchasers who are independent, arm's-length purchasers, which may include "independent underwriters" within the meaning of National Instrument 33-105 – *Underwriting Conflicts*, collectively purchase at least 20% of the Primary Offering;
 - (c) no Pooled Fund shall participate in the Primary Offering if following its purchase the Pooled Fund would have more than 5% of its net assets invested in non-exchange traded debt securities of the Related Issuer or the Bank;
 - (d) no Pooled Fund shall participate in the Primary Offering if following its purchase the Pooled Fund together with related Pooled Funds will hold more than 20% of the securities issued in the Primary Offering; and
 - (e) the price paid for the securities by the Pooled Fund in the Primary Offering shall be no higher than the lowest price paid by any of the arm's-length purchasers who participate in the Primary Offering; and
 - (f) on or before the 90th day after the end of each financial year of the Pooled Fund, TDAM, as manager of the Pooled Fund, files with the securities regulatory authority or regulator the particulars of any such investments.

“James E.A. Turner”

Vice-Chair
Ontario Securities Commission

“Mary G. Condon”

Commissioner
Ontario Securities Commission