



**VIA SEDAR**

July 10, 2002

Osler, Hoskin & Harcourt LLP

**Attention: Linda G. Currie**

Dears Sirs/Mesdames:

**Re: TD S&P/TSX Composite Index Fund, TD S&P/TSX Capped Composite Index Fund, TD Select Canadian Growth Index Fund and TD Select Canadian Value Index Fund (collectively, the “Index Funds”, individually, an “Index Fund”)  
- MRRS Exemptive Relief Application under section 19.1 of National Instrument 81-102 Mutual Funds (“NI 81-102”) for relief from subsection 4.1(1) of NI 81-102  
- SEDAR #449075 and 449092; App. No. 423/02**

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By letter dated May 17, 2002 (the “Application”), you applied to the securities regulatory authority or regulator in each of the provinces and territories of Canada (collectively, the “Decision Makers”), on behalf of TD Asset Management Inc. (“TDAM”), as manager of the Index Funds, for an exemption from the investment prohibition in subsection 4.1(1) of NI 81-102 (the “Investment Prohibition”). The exemption from the Investment Prohibition is requested to enable the Index Funds to invest, to the extent required to meet their investment objectives, in securities of the same class as each of the constituent securities (the “Constituent Securities”) of their respective target index, during an offering to the public of a Constituent Security (the “Offering”) and for a period of 60 days after the closing of the Offering, even if TD Securities Inc. (“TDSI”) or any other affiliate of TDAM (together with TDSI, the “Affiliated Underwriters”) acts as underwriter of the Offering.

From our review of the Application, we understand the relevant facts and representations to be as follows:

1. TDAM is a “dealer manager” as such term is defined in section 1.1 of NI 81-102 of each of the Index Funds so that each of the Index Funds is a “dealer managed mutual fund” as such term is defined in section 1.1 of NI 81-102. The head office of TDAM is situated in Toronto, Ontario.
2. Each of the Index Funds is an “index mutual fund” as such term is defined in section 1.1 of NI 81-102.
3. The fundamental investment objective of each of the Index Funds is to provide long-term growth of capital by replicating, to the extent possible, the performance of a specified target index. To achieve this objective, each of the Index Funds holds a portfolio comprised of the

Constituent Securities which make up the specified target index in substantially the same weight as they are included in the specified target index. The respective target index (the “Target Index”) of each of the Index Funds is as follows:

<u>Index Fund</u>	<u>Target Index</u>
TD S&P/TSX Composite Index Fund	S&P/TSX Composite Index
TD S&P/TSX Capped Composite Index Fund	S&P/TSX Capped Composite Index
TD Select Canadian Growth Index Fund	Dow Jones Canada TopCap Growth Index
TD Select Canadian Value Index Fund	Dow Jones Canada TopCap Value Index

4. Each Target Index is a “permitted index”, as such term is defined in section 1.1 of NI 81-102.
5. Each Index Fund issues units (an “Issue of Units”) to the underwriters (the “Underwriters”) of the Index Fund on a continuous basis in exchange for baskets of Constituent Securities. It is possible, from time to time, that such baskets will include Constituent Securities that are, or have recently been, the subject of an Offering in which an Affiliated Underwriter has acted as underwriter.
6. Each Index Fund may also acquire Constituent Securities that are subject to the Investment Prohibition whenever adjustments (the “Adjustments”) are made to a Target Index. The Adjustments may consist of the following:
  - (i) upward adjustments to the relative weight of a Constituent Security further to an additional Offering to the public of such Constituent Security; and
  - (ii) the addition of a Constituent Security to a Target Index further to an initial public offering of a significant issuer.
7. In circumstances in which any Adjustments to the Target Index require the Index Fund to adjust its portfolio, it does so through the designated broker (the “Designated Broker”) of the Index Fund by exchanging shares which are no longer required by the Index Fund for those which are required. The exchange may be accompanied by an Issue of Units to the Designated Broker in exchange for baskets of Constituent Securities or the redemption of units held by the Designated Broker.
8. Except in the context of an Issue of Units or Adjustments to the Target Index, each Index Fund does not acquire Constituent Securities.
9. TDSI is currently one of the Underwriters for the Index Funds. In addition, TDSI is currently the only Designated Broker for the TD S&P/TSX Composite Index Fund and the TD S&P/TSX Capped Composite Index Fund. TDSI is one of two Designated Brokers for the TD Select Canadian Growth Index Fund and the TD Select Canadian Value Index Fund.
10. TDSI is not a “responsible person” within the meaning of securities legislation in respect of the Index Funds as TDSI does not participate in the formulation of advice in respect of the

Index Funds, nor does it have access prior to implementation to investment decisions made or advice given to the Index Funds.

11. Units of each of the Index Funds are listed on the Toronto Stock Exchange (the “TSX”).
12. If an Index Fund receives a subscription order from an Underwriter for an Issue of Units, or there is an Adjustment to the Target Index of an Index Fund, the Investment Prohibition may prevent the Index Fund from acquiring the relevant Constituent Securities if any of such securities are at the time subject to the Investment Prohibition. This will cause the Index Funds to be unable to track the performance of their Target Index as efficiently and as fully as possible.

### **Decision**

This letter confirms that, based on the information provided in the Application and the facts and representations above, and for the purposes described in the Application, the Decision Makers hereby grant the exemption from subsection 4.1(1) of NI 81-102, to enable each Index Fund, during the Offering period or during the 60-day period after the Offering, to invest in the same class of securities as a Constituent Security of the Target Index, even if an Affiliated Underwriter of TDAM acts as an underwriter of the Offering,

#### **provided that,**

- A. at the time of each investment made pursuant to this Decision, the following conditions are satisfied:
  - i. each Target Index, and any successor index to a Target Index, is a “permitted index” as such term is defined in section 1.1 of NI 81-102;
  - ii. the investment represents the business judgment of TDAM uninfluenced by considerations other than the best interests of the Index Fund, or is in fact in the best interests of the Index Fund;
  - iii. the investment is consistent with, or is necessary to meet, the investment objective of the Index Fund as disclosed in its prospectus;
  - iv. the investment is made in connection with the Issue of Units by the Index Fund in exchange for baskets of Constituent Securities or in connection with Adjustments to the Target Index of the Index Fund, in each case in accordance with the description of the operation of the Index Fund as disclosed in its prospectus;
  - v. each of the Index Funds purchases no more than the number of shares of the same class as the Constituent Security that are necessary in order for the Index Funds to hold them in substantially the same proportion as those securities are reflected in the Target Index;

- vi. each Index Fund's simplified prospectus discloses that, if necessary to meet its investment objective, the Index Fund may acquire Constituent Securities pursuant to this Decision;
- B. the following particulars of each investment made by each Index Fund pursuant to this Decision are set out in a report certified by TDAM and filed on SEDAR within 30 days after the end of each month in which the investment was made:
- i. the date of the Offering, the Offering price, and the date that the investment was made;
  - ii. the issuer of the Constituent Security, the lead underwriter of the Offering and, if an Affiliated Underwriter of TDAM was not the lead underwriter, the portion of the Offering underwritten by one or more Affiliated Underwriters of TDAM;
  - iii. the number of shares of the same class as the Constituent Security that were acquired by the Index Fund;
  - iv. the purchase price or cost amount;
  - v. the Designated Broker or the Underwriter from whom the purchase of shares of the same class as the Constituent Security was made, and the fees (if any) paid by the Index Fund in respect of such purchase, and
  - vi. a certification by TDAM that the investment represented the business judgment of TDAM uninfluenced by considerations other than the best interest of the Index Fund, or was in fact in the best interests of the Index Fund; and
- C. this Decision, as it relates to the jurisdiction of a Decision Maker, will terminate after the coming into force of any legislation or rule of that Decision Maker dealing with matters regulated by section 4.1 of NI 81-102.

Yours truly,

"Paul A. Dempsey"  
Paul A. Dempsey  
Manager, Investment Funds  
Capital Markets