Ontario Securities Commission
Commission Des valeurs mobilières de l'Ontario

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VIA SEDAR ONLY

February 7, 2002

Osler, Hoskin & Harcourt
Barristers & Solicitors
Box 50, 1 First Canadian Place
Toronto, Ontario M5X 1B8

Attention: Linda G. Currie

Re: Emerald Canadian Bond Index Fund (the "Emerald Fund") and TD Canadian Bond Index Fund (the "TD Fund") (together, the "Index Funds") - MRRS Application under National Instrument 81-102 ("NI 81-102") - Sedar Proj. Nos. 366871 & 366875

By letter dated June 4, 2001 (the "Application"), you have applied on behalf of TD Asset Management Inc. ("TDAM"), as manager of the Index Funds, to the securities regulatory authority or regulator in each province and territory of Canada (collectively, the "Decision Makers") for exemptions from subsection 4.1(1) and 4.2 of NI 81-102.

Subsection 4.1(1) of NI 81-102 prohibits a dealer-managed mutual fund from investing in a class of securities of an issuer more than 5% of the public offering ("Offering") of which is underwritten by the dealer manager or its associates or affiliates, during the Offering period or during the 60-day period after the Offering. Discretionary relief is requested from this provision to enable the Index Funds to invest in corporate debt securities ("Corporate Debts") of an issuer more than 5% of the Offering of which is underwritten by TD Securities Inc. ("TDSI"), during the Offering period or during the 60-day period after the Offering.

Section 4.2 of NI 81-102 prohibits a mutual from purchasing or selling a security from/to, among others, the mutual fund's manager, portfolio adviser or trustee acting as principal in the transaction. An exemption from this provision is requested to enable the Index Funds to purchase Corporate Debts from TDSI as principal, during the Offering of such Corporate Debts, where TDSI is an underwriter of the Offering. In a letter dated December 13th 2001, staff informed you that they were not prepared to recommend relief from section 4.2 that would enable the Index Funds to purchase underwritten Corporate Debts from TDSI or any other affiliate of TDAM acting as principal, during the Offering period or during the 60-day period after the Offering. This staff position is consistent with the decision of the Canadian securities regulatory authorities or regulators when they granted an exemption from subsection 4.1(1) of NI 81-102 to permit dealer managed mutual funds to participate in the first-time Offering of securities of insurance companies.

Accordingly, the rest of this letter relates only to the request for discretionary relief from subsection 4.1(1) of NI 81-102.

From our review of the Application, your responses dated August 24, 2001 and October 15, 2001 to our comments on the Application, the current simplified prospectus of each Index Fund, and other information available to staff, we understand the relevant facts and representations to be as follows:

1. TDAM is a "dealer manager", so that each Index Fund is a "dealer managed mutual fund", within the meaning of section 1.1 of NI 81-102. The head office of TDAM is situated in Toronto, Ontario.

2. TDAM and TDSI have the same Chief Compliance Officer, who never has any participation in the formulation of, or access prior to implementation to, any investment decisions made by TDAM on behalf of the Index Funds.

3. Each Index Fund is an "index mutual fund" within the meaning of NI 81-102. The name of the Emerald Fund has been changed so that its name now includes the word "index".

4. The investment objective of the Emerald Fund is to track the performance of the Scotia Capital Markets Universe Bond Index (the "Universe Index"), by investing primarily in a group of bonds included in the Universe Index that are selected and weighted mathematically to approximate the overall return and risk characteristics of the Universe Index (the "Sampling Strategy").

5. The investment objective of the TD Fund is to maximize total return through both interest income and capital appreciation by tracking the performance of the Universe Index. The Index Fund's portfolio adviser seeks to track the Universe Index by using a stratified sampling indexing technique, which involves selecting a subset of bonds from each component of the Universe Index and holding them in the same proportion as the components of the index (the "Stratified Sampling Indexing Strategy"). The Index Fund may also purchase index participation units and specified derivative instruments, such as options, futures and forward contracts, whose value is based on all or part of the Universe Index.

6. The Universe Index currently consists of approximately 950 securities, of which approximately 570 are Corporate Debts and the balance is made up of government debt securities.

7. The Universe Index was established and is maintained by Scotia Capital Inc. ("Scotia"). The Index Funds, TDAM and TDSI are unrelated to Scotia.

8. It is not always possible for the Index Funds to invest in all of the debt securities included in the Universe Index because

   (a) subsection 4.1(1) of NI 81-102 prohibits the Index Funds from knowingly investing in Corporate Debts that are subsequently included in the Universe Index, if more than 5% of the Offering of such securities are underwritten by TDSI, and such prohibition applies during the Offering period and for a period of 60 days after the Offering;

(b) new issues of Corporate Debts that the Index Funds are permitted to acquire (and which are subsequently included in the Universe Index) are often oversubscribed, so that the Index Funds do not get a full allocation of the new issue;

(c) Corporate Debts are generally not listed on a stock exchange, and the over-the-counter trading in Corporate Debts is not as active as the exchange trading in equity securities, so that it is not always possible for the Index Funds to purchase Corporate Debts that are included in the Universe Index; and

(d) the Emerald Fund generally does not purchase Corporate Debts that are rated below a level that is acceptable to its unitholders.

9. During the past few years, the federal and provincial governments have been engaged in reducing significantly their outstanding debt obligations ("Government Debt"). This has resulted in the demise of new government issues as well as a sharp decrease in the amount of outstanding Government Debt. This has, in turn, led to a collapse in the secondary market liquidity for bonds and short term debt as the vast majority of investors hold to maturity any debt that can be acquired in the course of its original distribution. It has also led to a dramatic increase in the issuance of Corporate Debt in response to increased demand for fixed income securities.

10. The developments described in paragraph 9 have resulted in the fixed income securities market becoming a primary market. There is now very little secondary trading in fixed income securities following their initial distribution. TDAM estimates, for example, that less than 2% of all commercial paper sold is traded in the secondary market. It also estimates that only approximately 10% of any new issue of corporate bonds will change hands in the secondary market prior to maturity.

11. Given the investment constraints on the Index Funds as described in paragraph 8 above and the market developments described in paragraphs 9 and 10, which added to the Index Funds' difficulty in acquiring meaningful positions in high quality fixed income security, the Index Funds' investment portfolios include approximately only 70% in the case of the Emerald Fund, and only 32% in the case of the TD Fund, of the securities comprised in the Universe Index. However, on a market-capitalization-weighted basis, the securities held in each Index Fund's portfolio represent approximately 91% in the case of the Emerald Fund, and approximately 74% in the case of the TD Fund, of the debt securities included in the Universe Index.

12. TDSI almost always underwrites more than 5% of any Offering of Corporate Debts because an issuer cannot successfully market a Corporate Debt offering, unless TDSI and most of the other major investment banks in Canada take up more than 5% of the Offering.

13. Corporate Debts are priced relative to a Government of Canada benchmark bond (the "GOC Benchmark"). Due to significant recent demand for offerings of Corporate Debts, it has almost always been the case over the last two years that the price of the Corporate Debts on the 60th

day, or following the 60-day period, after the Offering is higher relative to the price of the GOC Benchmark than would have been the case at the time of issue.

14. The pricing of an Offering of a Corporate Debt, whether or not pursuant to a prospectus, is negotiated between the lead underwriter or underwriters (the “Lead Underwriters”) and the issuer.

15. The price to be paid by the Index Funds for the purchase of Corporate Debt during the Offering period will not be higher than the price negotiated with the issuer by the Lead Underwriters. Such price will be disclosed in the final prospectus of the issuer if the Offering is made pursuant to a prospectus, or will be available from the Lead Underwriters or the issuer if the Offering is made pursuant to a prospectus exemption.

16. Even where TDSI is an underwriter of an Offering of a Corporate Debt, the Index Funds may or may not end up purchasing the Corporate Debt from TDSI. This is because, when the Lead Underwriters of the Offering allocate portions of the Offering to the dealers involved in the Offering, they also allocate the purchasers who have expressed an interest (or are expected to have an interest) in the Offering, resulting in a list that determines which purchasers (usually portfolio managers) will buy from which dealers. This way, an orderly process is created because each dealer only has to solicit those clients allocated to it on the list. This process also means that the Lead Underwriters of the Offering, not the portfolio managers, determine who will buy from whom. The Lead Underwriters will not necessarily know for whose account a portfolio manager is purchasing the Corporate Debt under the Offering.

17. All underwriters earn a pro rata share, based on the portion of the Offering allocated to each underwriter, of the total commissions resulting from the Offering of a Corporate Debt. Accordingly, if TDSI is an underwriter of the Offering, TDSI will receive a share of the commissions allocable to the Corporate Debt that will be purchased by the Index Funds, even if such purchase is not made from TDSI.

18. Even if the Index Funds purchase Corporate Debt more than 5% of the Offering of which is underwritten by TDSI, no fee or commission will be paid by the Index Funds to the underwriter or dealer from whom the Corporate Debt is purchased. It is the issuer of the Corporate Debt that pays the fees or commissions to the underwriters.

19. A new issue of Corporate Debt is added to the Universe Index on the same day that it is distributed if

(a) it is rated BBB or higher,

(b) the minimum original distribution amount is $100 million; and

(c) the distribution is made to at least 10 institutional buyers.

For medium-term Corporate Debts, the required minimum original distribution amount is $40 million.

Decision

This letter confirms that, based on the information provided in the Application and the facts and representations above, and for the purpose described in the Application, the Decision Makers hereby grant exemption from section 4.1 of NI 81-102, to enable the Index Funds to invest in Corporate Debt more than 5% of the Offering of which is underwritten by TDSI or other affiliates or associates of TDAM (together with TDSI, the "Affiliated Underwriters"), during the Offering period and during the 60-day period after the Offering, provided that,

A. at the time of each investment by each Index Fund pursuant to this Decision, the following conditions are satisfied:

   i. TDAM determines that the investment is necessary in carrying out the Sampling Strategy of the Emerald Fund, or the Stratified Sampling Indexing Strategy of the TD Fund, for tracking the performance of the Universe Index;

   ii. the investment is made only in Corporate Debts described in paragraph 19 above;

   iii. each Index Fund purchases no more than the amount of Corporate Debt necessary to enable the Index Fund to track the performance of the Universe Index pursuant to its investment strategy;

   iv. the Index Fund does not place the order to purchase the Corporate Debt, on a principal or agency basis, with the Affiliated Underwriters or their affiliates or associates;

   v. each Index Fund's simplified prospectus discloses

      (a) that, if necessary to meet its investment objective, the Index Fund may purchase Corporate Debt more than 5% of the Offering of which is underwritten by the Affiliated Underwriters, during the Offering period or during the 60-day period after the Offering; and

      (b) a website or toll-free telephone number that unitholders of the Index Fund can access at any time to obtain information whether a particular Corporate Debt is included in the Universe Index; and

   vi. each Fund's annual information form discloses and discusses the policies, practices or guidelines relating to transactions involving actual or potential conflicts of interest;

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 Corporate Debt, the Lead Underwriter of the Offering and, if an Affiliated Underwriter was not the Lead Underwriter, the portion of the Offering underwritten by one or more Affiliated Underwriters;

iii. the principal amount of the Corporate Debt purchased by the Index Fund,

iv. the purchase price, and

v. the dealer with whom the order to purchase the Corporate Debt was placed, and the fees (if any) paid by the Index Fund in respect of such purchase; and

vi. that TDAM has determined that the purchase of Corporate Debt was necessary to meet the investment objective, and was in the best interest, 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 the matters regulated by section 4.1 of NI 81-102.

Yours truly,

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