



March 1, 2019

VIA ELECTRONIC MAIL

c/o:

The Secretary
Ontario Securities Commission
20 Queen Street West
22nd Floor
Toronto, Ontario M5H 3S8
comments@osc.gov.on.ca

Re: OSC Staff Notice 11-784 – Consultation on Burden Reduction

We are writing in response to the request for comments on Ontario Securities Commission (“OSC”) Staff Notice 11-784 – Consultation on Burden Reduction, published on January 14, 2019. This letter is being submitted on behalf of National Bank Investments Inc. and its four divisions (CABN Investments, NBIN Financial Services, Investment Fund Manager – Manufacturer and Mutual Fund Dealer – Distribution) and National Bank Financial Inc. and its four divisions (National Bank Independent Network, National Bank Direct Brokerage, Private Banking 1859 and National Bank Financial - Wealth Management).

We appreciate the opportunity to provide our comments on the Burden Reduction Consultation and commend the efforts of the OSC to reduce unnecessary regulatory rules and processes while protecting investors and the integrity of our market. We believe that such consultation prior to suggesting any changes will render the regulatory framework amendment process more efficient.

Most of our industry’s regulations were written many years ago. Over the years, adjustments have been made to the rules, but they have not been rewritten in a comprehensive manner. Innovation and technology are taking significantly more space in our industry. To keep pace, regulations must reflect today’s realities and be modernized accordingly – with more speed and regularity. Moreover, compliance cultures must also evolve and modernize.

As proposed in the notice, we reiterate the comments provided in response to the Targeted Reforms and Embedded Commissions projects and we will not repeat them in our letter. We submit a few comments and suggestions outlined below.

Risk-Based Approach

We believe a risk-based approach should be used, among other things, in terms of monitoring, opening of account, householding approach in supervision and reporting, rules application, enforcement, etc. We also believe a risk-based approach protects clients, meets their needs and achieves the objectives of regulation. We often experience a lack of flexibility and a case-by-case approach which bring additional costs and delays for market participants, including clients.

Exemptive Relief

In many cases, regulations provide for the possibility of requesting exemptive relief. The objective of exemptions is to obtain relief from certain securities regulation requirements subject to specified terms and conditions. Exemptive relief is usually granted on an exceptional basis. We notice that in certain situations, although it is common practice in the industry, we must still obtain exemptive relief even if it is granted systematically. Moreover, exemptive relief is often required to be obtained repeatedly and/or renewed.

To reduce this avoidable burden, we suggest that exemptive relief granted repeatedly be codified more quickly into applicable regulations. Once included, it will no longer be required to seek relief repeatedly. Remaining exemptions would therefore be used for exceptional cases only. We also believe that exemptive relief should remain valid unless and until there are changes to the specified conditions. If a situation remains unchanged, there is no added value in renewing the relief, under the same conditions. In addition, if the principal regulator has approved the exemptive relief, other regulators should automatically approve. A more collaborative approach among regulators is highly desirable.

A good example is the need to request exemptive relief for derivatives registration. In all provinces and territories in Canada, other than Ontario and Quebec, there is no requirement to register as a derivatives advisor. Registration with respect to securities (e.g. as dealer representative) includes registration with respect to derivatives. In Quebec, it is not required to obtain exemptive relief from the Autorité des marchés financiers (“AMF”) in this regard. If the representative has two years of relevant experience and earned a CFA Charter (ref. Derivatives Regulation, Division II.1, section 11.6), the AMF will accept the request. If this representative also wants to register in Ontario (and has the required 3 years of relevant experience), an exemptive relief must be obtained and a fee of \$1 800 for each derivatives registration request must be paid (ref. R.R.O. 1990, Reg. 90: General, Part III, subsection 37(1)) because the CFA Charter is not recognized in Ontario. From our experience, the request is usually granted. The OSC is the only regulator who requires exemptive relief for each request. This adds unnecessary burden to the registration process and imposes additional and recurring costs. We recommend codifying requirements directly in the regulations, as such it would no longer be required to obtain exemptive relief.

Documentation

In 2017, the OSC and the AMF undertook, via Project RID (Reducing Unnecessary Disclosure Obligations), an analysis of the regulatory disclosure environment applicable to investment funds. We welcome the Project RID initiative given the modernization of the documentation given to investors, and we are pleased to continue working with the OSC and the AMF on this project. We believe that some of the comments raised as part thereof remain relevant.

Personal Information Form (PIF)

- Under Regulation 41-101 respecting General Prospectus Requirements and Regulation 81-101 respecting Mutual Fund Prospectus Disclosure, a personal information form must be completed for some individuals related to an issuer and must be updated every two years.

- We suggest eliminating the personal information form requirement for registrants. Currently, the issuer must complete the form and update it while individuals on behalf of whom he/she completes it are registrants. We recommend that personal information form requirements which require information already filed through the National Registration Database (“NRD”) either be eliminated or be set up so that the information can be populated through the NRD.

Prospectus and Annual Information Form

- Under regulatory requirements, the issuer must complete and make available to the client many documents: prospectus or simplified prospectus and annual information form, financial statements, management reports of fund performance, etc. There is a lot of duplication of information, especially since the Fund Facts document must also be produced.
- As part of project RID, comments have been submitted on this subject. We believe that many of these disclosures are burdensome for the issuer, while they are without added value for the client. Indeed, the same information is repeatedly disclosed on all documents. A rationalization of the disclosure requirements eliminating duplication and minimizing annual renewal strictly to elements that justify such a burdensome process is sought. We recommend that the simplified prospectus and annual information form be combined into one disclosure document which must be prepared and filed annually.
- Moreover, the Fund Facts or ETF Facts documents are the essential disclosure documents that provide key information to investors. These documents are important for investors and need to be refreshed annually. The prospectus must currently be annually renewed and filed, which is a costly exercise that requires significant resources and time while the information contained in the prospectus does not change materially each year. We recommend the elimination of the annual filing process for investment fund issuers, including all the accompanying documents other than the Fund Facts or ETF Facts document.
- Another example of burden reduction would be to simplify the communications process with securityholders (Regulation 81-106 respecting Investment Fund Continuous Disclosure and Regulation 54-101 respecting Communication with Beneficial Owners of Securities of a Reporting Issuer). It may be redundant for securityholders to be reminded annually of their choice for the financial statements of a fund, particularly as they are available on SEDAR and on the fund manager's website (and are available on demand, at any time, from the fund).

Modernization

- In addition to the modernization of the regulations, the means of delivering the documentation to investors must also be modernized to reflect today's realities. We live in a time where most of the Canadians have access to the internet. More and more investors ask for electronic documents and use online services to access documentation such as account statements. To meet clients' expectations and modernize according to new technologies, we suggest making significant changes to National Policy 11-201 Electronic Delivery of Documents. Considering the high volume of communications with clients related to the use of new technologies, a risk-based approach should be used for supervision and retention of these electronic communications. Supervision and retention of all exchanges with clients take time, resources and high costs that do not add value to the process.



Electronic Beneficiary Designations for Registered Plans

- Under Ontario's Electronic Commerce Act and Succession Law Reform Act, holders of registered plans (RRSPs, RRIFs, TFSAs, etc.) can't make electronic beneficiary designations. Like the proposed changes to the Pension Benefits Act and to keep pace with innovation and technology, we recommend that similar changes be made for registered plans to allow the designation of beneficiaries using an electronic signature.

Passport System

In all provinces and territories in Canada, except Ontario, a passport system in certain areas of securities regulation is used. Under the passport system, market participants can generally gain access to markets across Canada by dealing only with their principal regulator and complying with harmonized legislative provisions. Since the Ontario government has not adopted Regulation 11-102 respecting the passport system, streamlined interfaces have been developed to ensure that the passport system is as effective as possible for all market participants. The OSC is the only regulator who has a different regime in place. To have a consistent approach across Canada, we suggest including the OSC in the passport system.

Consistent Interpretation and Enforcement

Having clear rules in force and providing sufficient clarification to educate the industry to ensure consistency in the way rules are applied, would reduce unnecessary pressure on issuers and registrants. By way of example, rules on sales incentives for investment funds existed and were applied for a great many years, until a sudden change in enforcement practices, took many players in the industry by surprise. If stricter interpretations of existing rules are brought forward, publishing a notice with clear examples of acceptable and unacceptable situations should be considered. Having regulators go directly from tolerance to enforcement fosters uncertainty and distrust, rather than compliance and collaboration.

By way of conclusion, we have found that as for some situations indicated above, arbitration has been created between regulators and various activities have become burdensome for market participants. We encourage a collaborative approach among regulators to avoid these situations.

Roundtable

In response to your invitation to participate in the discussion at the roundtable on March 27, 2019, we confirm that National Bank would be pleased to participate and send one or two representatives to the roundtable.

Thank you for the opportunity to provide our comments and suggestions regarding the Consultation on Burden Reduction. Should you require any further information or have any concerns regarding the foregoing, please do not hesitate to contact us.

Yours truly,

A handwritten signature in black ink, appearing to read 'M. Gagnon', written over a horizontal line.

Martin Gagnon, Executive Vice-President, Wealth Management
National Bank of Canada