NEXUS

Portfolio Management & Financial Counsel

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May 29, 2008

British Columbia Securities Commission
Alberta Securities Commission
Saskatchewan Securities Commission
Manitoba Securities Commission
Ontario Securities Commission
New Brunswick Securities Commission
Securities Office, Prince Edward Island
Nova Scotia Securities Commission
Securities Commission of Newfoundland and Labrador
Registrar of Securities, Northwest Territories
Registrar of Securities, Nunavut
Registrar of Securities, Yukon Territory

c/o John Stevenson, Secretary
Ontario Securities Commission
20 Queen Street West
Suite 1903, Box 55
Toronto, Ontario M5H 3S8

- and -

Madame Anne Marie Beaudoin
Directrice du sécretariat
Autorité des marchés financiers
800, square Victoria, 22e étage
C.P. 246, Tour de la Bourse
Montréal (Québec) H4Z 1G3

Dear Sirs and Madams:

Re: Proposed National Instrument 31-103

Nexus Investment Management Inc. ("Nexus") appreciates the opportunity to provide these comments on the proposed National Instrument 31-103.

By way of background, Nexus is a Toronto-based investment manager that provides discretionary portfolio management and financial counselling services to private clients, trusts and charitable foundations. We manage investments on both a segregated account basis and through a family of pooled funds. The firm was established in 1988 and is owned by its principals.

Prohibition on certain managed account transactions

Section 6.2(2)(c) prohibits any trade of a security between any two portfolios managed by an adviser, even if no "responsible person" or affiliate has an interest in either portfolio. Presumably this prohibition is designed so that advisers do not effect "internal cross trades" between client portfolios, but rather structure all purchases or sales of securities for client portfolios so that they are conducted with arm's length third parties.

One effect of the rule is to prevent an adviser with full discretionary authority from conducting something as simple as a trade between a client's taxable and registered (i.e., RRSP) portfolios when both are managed by the adviser. Also prevented would be small purchases or sales between modest-sized client portfolios in circumstances where such smaller transactions largely offset each other, can be conducted at market prices, and without incurring the transaction and trading costs that would otherwise result from trading through third parties.

This rule conflicts with an adviser's fiduciary duty to conduct the discretionary management of client portfolios in the best interests of the clients – i.e., in such a fashion as to avoid unnecessary transaction costs. It is an absolutely normal occurrence in the management of individual private client portfolios for an adviser to be seeking to raise small amounts of cash for one client while simultaneously investing small amounts for another. Provided the securities transfers between the portfolios take place at market prices both client portfolios will benefit from lower transaction costs (in the form of reduced trading commissions and narrower bid/offer spreads than are frequently applicable to small/odd quantities) if the purchases and sales can be effected between portfolios.

In the case of exchange-traded securities the higher costs of having to trade only through a third party will be borne principally by the individual client portfolios involved. However, we are genuinely concerned that there will be adverse consequences for all our fixed income trading – to the detriment of all clients for whom we manage fixed income portfolios – if we are obliged to ask investment dealers to take on odd lot bond trades. Dealers are under no obligation to trade with us. In order to achieve best execution for our clients, we take great care to ensure that we conduct our trading so as not to regularly call upon dealers to take on small, "nuisance" trades. Through appropriate use of internal crosses, using prices from more than one dealer to assure fairness, we have been able to obtain a better result on those small trades, while at the same time achieving very high quality execution on larger, bulk trades

It is surprising that policymakers would appear to regard the existing legislation as in some way deficient in addressing such conflicts of interest. Section 6.2(2)(c) represents an unnecessary restriction on discretionary investment managers that goes well beyond the limitations contained in section 118 of the *Securities Act* (Ontario).

Insurance – adviser / Insurance – investment fund manager

All Nexus client portfolios, including those of our pooled funds, are held by a substantial and reputable custodian. In the case of our pooled funds, the custodian acts as fund accountant, recordkeeper, transfer agent, and portfolio custodian. Aside from an entitlement to have the custodian remit investment management fees to us quarterly (and leaving aside any temporary access we may have to client cheques that are not payable to us), we have no access to client or fund assets. Nevertheless, as an "investment fund manager" we will become subject to an insurance requirement equal to 1%, not just of the one third of our assets under management represented by our pooled funds, but of the firm's entire assets under management. By contrast, were we simply a manager of segregated portfolios, our insurance requirement would be a mere $200,000.

Thus, for a discretionary portfolio manager that serves private clients by managing both segregated portfolios and pooled funds, the combined effect of sections 4.22 and 4.23 is to dramatically increase the requirement for insurance. We are not aware of any increase in the risk of our business that warrants $6 million of insurance, rather than the $200,000 we now carry. Indeed, neither insurers nor insurance brokers, both of whom would benefit handsomely if they could induce us to purchase more insurance, have ever suggested that we are under-insured at the $200,000 level.

Ironically, by pooling the investment capital of smaller clients into a few, larger pooled funds, the task of investment management is made easier and the risk to clients of errors on our part is reduced, not increased. Despite sub-contracting to a custodian much of the responsibility for administering the pooled funds, we do supervise the custodian and retain ultimate responsibility for the management of the funds. However, the burden on Nexus and the attendant risk of errors – to say nothing of the cost to our clients – would doubtless be greater if we sought to manage these monies by retaining them in the form of many, small portfolios. And yet in those circumstances, there would be no change required to our current insurance coverage.

In short, aside from increasing the business volumes of the insurance industry, there would appear to be no benefit to the investing public from the higher insurance coverage required by the Instrument.

It would be a simple enough refinement of section 4.23 to exempt from the higher insurance requirements those investment fund managers which are advisers, whose principal business is managing discretionary accounts, and who distribute those self-managed pooled funds to such fully-managed accounts. The language from section 2.2 ("Exemption from dealer registration for advisers") would be a useful starting point for a new sub-section 4.23(3): "This insurance requirement does not apply to a registered adviser that buys or sells a security of a pooled fund administered by the adviser for a fully-managed account that is created and managed by the adviser."

We trust you will find these comments useful and persuasive, and would welcome the opportunity to discuss them with you or respond to any questions you may have.

Yours truly,

P.P.

R. Denys Calvin
Partner