



Portfolio Management & Financial Counsel

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June 18, 2014

The Secretary
Ontario Securities Commission
20 Queen Street West
22nd Floor
Toronto, Ontario
M5H 3S8

Dear Sirs:

Re: Proposed Form 45-106F10 Report of Exempt Distribution for Investment Fund Issuers

Nexus Investment Management Inc. ("Nexus") provides discretionary portfolio management and financial counseling services for over 400 private client households and foundations. Portfolio management is provided by way of a "managed account" relationship on both a segregated and pooled basis. The Nexus North American Pooled Funds are available only to clients of the firm, and have been in existence since 1997. The three funds are straightforward, long-only pools that are managed according to the same investment philosophy as the firm's segregated portfolios. They provide an efficient and cost-effective means – for both the firm and its clients – to achieve growth, balanced or income objectives.

Nexus is registered as both a portfolio manager and an investment fund manager. The Ontario Securities Commission is the firm's principal regulator.

We offer the following comments on the proposed Form 45-106F10 ("F10").

Privacy Risk for Investors

The significantly more detailed information contained in the F10 increases risk for a purchaser that his/her privacy could be violated. It increases risk by requiring significantly more information about the purchaser to be assembled in a single report. The F10 will include, in addition to all the information already required on Form 45-106F1 ("F1"), a purchaser's (i) email address; (ii) age bracket; and, through the requirement that an investment fund list not just one, but *all* of the various exemptions, paragraphs and subparagraphs under which a purchaser qualifies, (iii) a rough financial profile of the purchaser.

The purchaser is also exposed to increased risk as a consequence of having an electronic record of this information stored, not just in the record-keeping systems of the investment fund manager, but also in the electronic databases of several provincial securities regulators. There is already a cautionary note on both the F1 and proposed F10 about the possibility that a regulator might be compelled under freedom of information legislation to divulge this confidential data. However, to this risk must be added the

possibility of data theft. If the secure records of Canada Revenue Agency, eBay Inc. and Target Corporation can be breached, so, too, can those of a securities regulator.

Significant Systems Challenge

The requirement to include in Schedule 1 to the F10 a list of *all* the paragraphs under which every acquisition by a purchaser qualifies is a very significant database design and recordkeeping challenge for investment managers. We clearly have the requisite information to be able to answer an ad hoc inquiry easily enough. However, it will be expensive and very time-consuming to implement the necessary systems changes to provide this data on an on-going, recurring basis. The \$500 quarterly filing fees for each fund are a small fraction of the true cost of complying with the new requirement.

Currently, it is enough to simply determine whether a specific purchaser qualifies as an accredited investor, and to code the purchaser's account accordingly. For example, if Nexus manages at least \$1 million of financial assets for a couple, the firm has firsthand knowledge that both persons qualify as accredited investors under paragraph (j) of the definition. Accounts for both parties are coded as belonging to "accredited investors" and all purchases for those accounts, including any recurring, pre-authorized monthly purchases, are reported on Schedule 1 to the F1 and marked as relying on exemption 2.3. On an ongoing basis, it is a simple exercise to check periodically that there has not been a sharp drop in the couple's Nexus-managed investments that might result in their no longer qualifying as an accredited investor under paragraph (j).

However, in order to fulfill the proposed reporting requirements, existing systems and processes will need to be very substantially overhauled to continually assess and record, not just one, but all of the various bases upon which each client *could* qualify, not just on a client or account basis, but on a time series or transaction basis. This will be a very significant undertaking for investment managers, even those that open their funds for subscriptions only episodically or infrequently. However, the burden is considerably greater for firms such as Nexus which use self-managed pooled funds on an ongoing basis for the active management of client portfolios, to effect asset mix shifts in client portfolios, and to facilitate regular, recurring contributions by clients from their bank accounts. This is far from a simple "tweak" to existing processes and systems.

It is ironic that this burdensome requirement should arise at exactly the same time that paragraph (q) of the accredited investor is to be amended to remove the existing carve out for investment funds in Ontario. We would respectfully recommend that Schedule 1 to the F10 be simplified so that only one qualification need be cited for a purchase. In Nexus's case, all purchases would be then be reported as relying up on "2.3(1) – (q)". Any additional need of regulators to ensure registrant compliance with the exempt purchase regime or to gather information about exempt market activity could much more easily be met through targeted reviews or "sweeps" of registrants, and/or specific ad hoc questionnaires or surveys.

Suggested Operational Improvements

The hardcopy-based method of submitting an F1 was actually quite straightforward for an investment manager. Admittedly, the information was likely significantly less accessible to regulators in this format. Consequently, we are supportive of the move to electronic submission. However, based on the description of the anticipated workings of the electronic submission process, we believe the following refinements to the system would make the task of data submission significantly easier for investment fund managers while at the same time improving the accessibility of the data for regulators.

Simplistically, there are two basic types of information: that about the investment fund ("Fund Data"), and that about its exempt distributions ("Distribution Data"). Fund Data is principally included in Items 1 through 9, and Distribution Data in Items 10 through 19. The Fund Data will typically persist unchanged from report to report, whereas most of the Distribution Data will be different for each report. It would be much more effective to have these two groups of data handled separately and differently. First, the system could be designed so the investment fund manager can "set up" the fund initially on the web portal with all applicable Fund Data, and update the Fund Data only when information changes. Then the "high frequency" Distribution Data could be uploaded and filed quarterly "against" the previously-established record for the fund. This more "relational" structure will be significantly simpler for registrants to provide information, and will equip regulators with a dramatically more flexible architecture for analyzing investment funds, investment fund managers and exempt distributions.

The use of on-screen forms is effective for "one-off" information gathering. However, for regular, recurring data entry, it is significantly easier for a registrant to deliver information electronically if it can be uploaded in one or more "flat" data files in prescribed format. It is much quicker to upload a data file than to fill in fields on an e-form. In addition, uploading a data file sharply reduces the incidence of errors that can arise when manually transcribing information from a registrant's records into e-forms on a web browser.

The information about an investment fund manager that is called for in Items 7 and 8 of an F10 is already filed and required to be kept current on NRD. The risk of inconsistent information being entered on the F10 could be avoided if a registrant simply provided its NRD number, and the requisite information were retrieved from NRD. It would also simplify the data entry process for registrants.

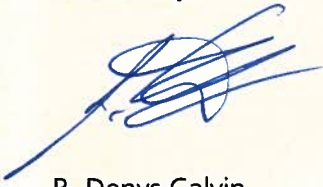
Striking the Right Balance

These comments speak to potential improvements and simplifications. However, unaddressed are the specific questions posed in the Notice: whether the right balance between benefits and burdens has been struck, and whether the information required is either excessive or insufficient.

We are told that the objectives for the F10 are to "enhance our understanding of exempt market activity", "facilitate more effective regulatory oversight", and "inform our decisions about regulatory changes". It is difficult to ascertain with any precision how the *incremental data* available to regulators in *quarterly* F10s would contribute specifically to achieving these objectives. Certainly, more information is better. But the infrastructure required to mount and sustain this effort – both for registrants and regulators – will be considerable.

It would seem to be a reasonable question whether this enormous data-gathering undertaking could not be tackled more effectively in stages. Indeed, a worthwhile first step might be to analyze the considerable volume of information about investment funds that the Ontario Securities Commission is due to receive from registrants over the next month in response to last week's Risk Assessment Questionnaire. The results of such an analysis could then be used to determine if the additional, ongoing, more frequent data called for in the F10 is actually required, or if the objectives might be better met through a series of more targeted, one-off requests for information or sweeps. Given the privacy risks to investors of the proposed data-gathering exercise, to say nothing of the burden on both registrants and regulators, there is a compelling case for proceeding in stages here.

Yours truly,

A handwritten signature in blue ink, appearing to be 'R. Denys Calvin', written over a horizontal line.

R. Denys Calvin