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May 11, 2006

Headnote

Mutual Reliance Review System for Exemptive Relief Application – National Instrument 81-105 s. 9.1 - Mutual Fund Sales Practices - A mutual fund wants relief from the prohibitions in sections 2.1 and 2.2 of NI 81-105 to permit it to pay a novel form of compensation to sales representatives and investors - The compensation arrangement does not provide a monetary incentive for representatives to recommend one product over another; the compensation arrangement is clearly outlined in the fund's prospectus; the fund will remind participating dealers that they must comply with the usual suitability and good faith obligations in the legislation.

Applicable British Columbia Provisions

National Instrument 81-105 *Mutual Fund Sales Practices*, s. 9.1

**In the Matter of the Securities Legislation of
British Columbia, Alberta, Ontario, and Québec
(the Jurisdictions)**

and

**In the Matter of the Mutual Reliance Review System
for Exemptive Relief Applications**

and

**In the Matter of Nexgen Financial Limited Partnership (Nexgen)
and the Funds in Schedule A (the Nexgen Funds)**

MRRS Decision Document

Background

The local securities regulatory authority or regulator (the Decision Maker) in each of the Jurisdictions has received an application from Nexgen for a decision under the securities legislation of the Jurisdictions (the Legislation) that exempts:

1. Nexgen from the prohibition in paragraph 2.1(1)(a) of National Instrument 81-105 – Mutual Fund Sales Practices (NI 81-105) in connection with the payment of the Nexgen Founders Benefit (the Benefit); and
2. dealers that are members of the Investment Dealers Association of Canada (IDA), the Mutual Fund Dealers Association of Canada (MFDA), or dealers

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that are duly registered in Québec, that will distribute securities of the Nexgen Funds (the Participating Dealers) from the prohibition in subsection 2.2(1) of NI 81-105 in connection with the Participating Dealers' acceptance of the Benefit;

(collectively, the Requested Relief).

Under the Mutual Reliance Review System for Exemptive Relief Applications:

- (a) the Ontario Securities Commission is the principal regulator for this application; and
- (b) this MRRS decision document evidences the decision of each Decision Maker.

Interpretation

Defined terms contained in National Instrument 14-101 *Definitions* or in Québec Commission Notice 14-101 have the same meaning in this decision unless they are defined in this decision.

Representations

This decision is based on the following facts represented by Nexgen:

1. Nexgen is a limited partnership formed under the laws of the Province of Ontario having its head office in Toronto, Ontario. Nexgen is registered as an adviser in the categories of investment counsel and portfolio manager and as a dealer in the categories of mutual fund dealer and limited market dealer. Nexgen will be the manager, principal distributor, and trustee of the Nexgen Funds.
2. On January 25, 2006, Nexgen filed with the securities regulatory authorities in each of the Jurisdictions, a preliminary simplified prospectus (the Preliminary Prospectus) and annual information form for the Nexgen Funds, a group of 26 open-end mutual funds to be established under National Instrument 81-102, consisting of 13 mutual fund trusts and 13 investment portfolios within a mutual fund corporation. A preliminary receipt was issued on January 27, 2006 for the Preliminary Prospectus.
3. The securities of the Nexgen Funds will be distributed through independent third party brokers and dealers. In consideration for ongoing services, advisors will receive both a sales commission and ongoing trailer commission in respect of an investment in the Nexgen Funds as described in the Preliminary Prospectus. Specifically, a participating dealer shall be entitled to

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receive a 5% sales commission from Nexgen in respect of the sale of deferred load securities and 0% to 5% sales commission from the investor in respect of the sale of front load securities. In addition, a dealer is entitled to receive a trailer commission payment (the Standard Trailer Payment) monthly based upon the value of securities held in an investor account of up to 1% for front load securities and .50% for deferred load securities (except in the case of the money market and bond funds where such amounts are 0.35% and 0.25% respectively).

4. In addition to the Standard Trailer Payment, Participating Dealers and investors of the Nexgen Funds who purchase the regular, loyalty, high net worth, ultra high net worth front-end load series or the deferred series of the Nexgen Funds will be eligible to receive the Benefit from Nexgen. The Benefit will entitle such investors and their Participating Dealers to receive from Nexgen, a payment equal to a portion of the value of Nexgen at the end of the seven year vesting period from the date of purchase or deemed date of purchase of such Nexgen Fund securities, subject to the terms and conditions described in the Preliminary Prospectus.
5. The Benefit will be temporary. Nexgen may terminate the offering of the Benefit at any time, but will terminate the offering of the Benefit no later than 7 years from the date the Nexgen Funds receive a final receipt for their prospectus.
6. The Benefit does not share the attributes of a standard trailing commission as envisioned in section 3.2 of Part 3 of National Instrument 81-105 because it is not derived from the application of a fixed commission rate to the balance of Nexgen Fund units held by the investor. The Benefit is calculated based upon the growth of Nexgen, as manager of the Nexgen Funds, and is contingent upon the performance of Nexgen. Also, the Benefit, if paid, will be paid in a lump sum at the end of the 7 year vesting period rather than periodically.
7. An investor and their Participating Dealer are entitled to share one Benefit payment for each 100 securities of Nexgen Funds that the investor holds for 7 years. The value of a Benefit payment is based upon the growth in the value of Nexgen over the 7 year holding period. The Benefit's value is equal to the fully diluted value of one Nexgen common partnership unit on a payment date less an initial base price of \$1 per Benefit and less a compounding inflator of 8% per annum applied in respect of the initial base price. Nexgen will pay one half of the Benefit to investors in the form of additional securities of the Nexgen Funds. Nexgen will pay the remainder of the Benefit to Participating Dealers in cash.

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8. The Participating Dealers' share of the Benefit is subject to the following limit in connection with front load securities (the Front Load Maximum). Participating Dealers will receive a cash payment equal to the lesser of: (1) one half of the value of the Benefit, as calculated in paragraph 7 above; and (2) the difference obtained by subtracting the total Standard Trailer Payments paid over the 7 year period from the standard trailing commissions that Nexgen would have paid over the 7 year period if the standard trailing commission rate was 1.25%. Consequently, the cash payment to Participating Dealers, comprised by the Benefit and the Standard Trailer Payment, will at all times be no more than the cash payment represented by a 1.25% standard trailing commission paid throughout the 7 year vesting period.
9. The Front Load Maximum will only be achieved assuming that Nexgen has approximately \$20 billion in assets under management at the end of its first 7 years of operation. If Nexgen has approximately \$10 billion in assets under management at the end of its first 7 years of operation, the value of the Benefit and the Standard Trailer Payment will be less than the cash payment represented by a 1.15% standard trailing commission paid throughout the 7 year vesting period. If Nexgen has approximately \$5 billion in assets under management, the value of the Benefit and the Standard Trailer Payment will be less than the cash payment represented by a 1.04% standard trailing commission paid throughout the 7 year vesting period.
10. The Participating Dealers' share of the Benefit is subject to the following limit in connection with deferred load securities (the Deferred Load Maximum). Participating Dealers will receive a cash payment equal to the lesser of: (1) one half of the value of the Benefit, as calculated in paragraph 7 above; and (2) the difference obtained by subtracting the total Standard Trailer Payments paid over the 7 year period from the standard trailing commissions that Nexgen would have paid if the standard trailing commission rate was .75%. Consequently, the cash payment to Participating Dealers, comprised by the Benefit and the Standard Trailer Payment, will at all times be no more than the cash payment represented by a .75% standard trailing commission paid throughout the 7 year vesting period.
11. The Deferred Load Maximum will only be achieved assuming that Nexgen has approximately \$20 billion in assets under management at the end of its first 7 years of operation. If Nexgen has approximately \$10 billion in assets under management at the end of its first 7 years of operation, the value of the Benefit and the Standard Trailer Payment will be less than the cash payment represented by a .65% standard trailing commission paid throughout the 7 year vesting period. If Nexgen has approximately \$5 billion in assets under management, the value of the Benefit and the Standard Trailer Payment will

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be less than the cash payment represented by a .54% standard trailing commission paid throughout the 7 year vesting period.

12. The Benefit is contingent and based upon the performance of Nexgen, which will in turn be dependent upon numerous factors including superior investment performance of the Nexgen Funds throughout the seven year vesting period of the Benefit.
13. The Benefit, unlike a standard trailing commission, provides a benefit to eligible investors of the Nexgen Funds. The value of the Benefit to investors will be equal to or greater than the value of the Benefit paid to Participating Dealers. Investors, however, will be paid through the issuance of additional securities of the Nexgen Funds rather than cash. The Benefit has been designed to reinforce the rewards provided to long-term investors of the Funds.
14. The Participating Dealers are registrants under the Legislation that are subject to an obligation to ensure that an investment in Nexgen Funds is suitable and in keeping with the client's investment objective. The Participating Dealers that are members of the MFDA are subject to "Know Your Product" obligations that require them to review each product including "an assessment of the commissions and other compensation to be paid to the dealer and the advisor for selling the product, and consideration of potential conflict issues that may arise under the compensation structure". The Benefit is required to be included in any such review as "other compensation". The Participating Dealers that are members of the IDA or that are subject to the Legislation of Québec are subject to similar obligations.
15. The Preliminary Prospectus contained and the Nexgen Funds' final simplified prospectus (the Final Prospectus) will contain full, true, and plain disclosure regarding the Benefit including how it is calculated. Nexgen will also disclose the value of Nexgen for purposes of the calculation of the Benefit on an annual basis in each renewal simplified prospectus.

Decision

Each of the Decision Makers is satisfied that the test contained in the Legislation that provides the Decision Makers with the jurisdiction to make the Decision has been met.

The Decision of the Decision Makers under the Legislation is that the Requested Relief is granted so long as:

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1. The Nexgen Funds continue to disclose the Benefit in each renewal simplified prospectus and annual information form.
2. Nexgen discloses the value of Nexgen for purposes of the calculation of the Benefit in the Nexgen Funds renewal simplified prospectus and annual information form.
3. Nexgen ceases to offer the Benefit no later than 7 years after the date of its Final Prospectus.
4. The total cash payment to Participating Dealers is subject to the Front Load Maximum and the Deferred Load Maximum, as applicable.
5. Nexgen provides each Participating Dealer with a copy of this Decision and specifically refers each Participating Dealer to paragraph 14 above.
6. Nexgen pays at least one half of the value of the Benefit to investors.

Paul Moore

David Knight

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Schedule A

**Nexgen Canadian Cash Registered Fund
Nexgen Canadian Cash Tax Managed Fund
Nexgen Canadian Bond Registered Fund
Nexgen Canadian Bond Tax Managed Fund
Nexgen Canadian Growth Registered Fund
Nexgen Canadian Growth and Income Tax Managed Fund
Nexgen Canadian Balanced Growth Registered Fund
Nexgen Canadian Balanced Growth Tax Managed Fund
Nexgen Canadian Dividend and Income Registered Fund
Nexgen Canadian Dividend and Income Tax Managed Fund
Nexgen Canadian Large Cap Registered Fund
Nexgen Canadian Large Cap Tax Managed Fund
Nexgen Canadian Growth and Income Registered Fund
Nexgen Canadian Growth Tax Managed Fund
Nexgen North American Dividend and Income Registered Fund
Nexgen North American Dividend and Income Tax Managed Fund
Nexgen North American Large Cap Registered Fund
Nexgen North American Large Cap Tax Managed Fund
Nexgen North American Value Registered Fund
Nexgen North American Value Tax Managed Fund
Nexgen North American Growth Registered Fund
Nexgen North American Growth Tax Managed Fund
Nexgen North American Small/Mid Cap Registered Fund
Nexgen North American Small/Mid Cap Tax Managed Fund
Nexgen American Growth Registered Fund
Nexgen American Growth Tax Managed Fund**