

Headnote

Prospectus Disclosure Relief

A mutual fund manager seeks relief from the requirement for a mutual fund to disclose in a prospectus a fee paid to a related person of the mutual fund - The fund is not a reporting issuer; investors in the fund are all purchasing under an exemption from the prospectus requirement; the account documentation, subscription agreement, offering memorandum and/or applicable disclosure document discloses agreements to pay fees to related persons

Reporting Relief

A mutual fund manager seeks relief from the requirement to file a report respecting trades through a related person, for which the related person received a fee from the mutual fund and/or the other person to the trade - Exemption orders were previously granted in this situation because the applicant satisfied the Commission that its application satisfied the purpose of the reporting requirement in section 9 of BC Instrument 81-513, which is to provide information on related party transactions. Relief may be appropriate on the basis that this information is made available to the appropriate parties on a timely basis.

Applicable British Columbia Provisions

Securities Act, s.130(b)

BC Instrument 81-513 *Self-Dealing*, s.8 (Prospectus Disclosure Relief) and 9(c) (Reporting Relief)

February 26, 2025

Exemption Order

Nicola Wealth Management Ltd.

Section 130(b) of the *Securities Act* (British Columbia)

Background

¶ 1 Nicola Wealth Management Ltd. (the Filer) has applied to the British Columbia Securities Commission (the Commission) under s.130(b) of the *Securities Act* (British Columbia) for an exemption from:

- (a) the requirement in section 8 of BC Instrument 81-513 *Self-Dealing* (BCI 81-513) that restricts a mutual fund from making an investment in consequence of which a related person of the mutual fund will receive a fee or other compensation unless the fee is paid under a contract that is disclosed in a preliminary prospectus or prospectus filed by the mutual fund and accepted by the executive director (the Disclosure Requirement), in respect of Fees (as defined below) and Other Fees (as defined below) in relation to an investment by the Funds; and
- (b) the requirement in section 9(c) of BCI 81-513 that requires a mutual fund manager to file a report in the required form for each mutual fund to which the mutual fund manager provides services or advice in respect of a purchase or

sale of a security or a trade in an exchange contract effected by the mutual fund through any related person for which the related person received a fee from the mutual fund or from the other person to the transaction, or both (the Reporting Requirement), in respect of Transactions (as defined below).

Interpretation

- ¶ 2 Terms defined in National Instrument 14-101 *Definitions* have the same meaning if used in this order, unless otherwise defined.

Representations

- ¶ 3 This decision is based on the following facts represented by the Filer:

The Filer

1. the Filer is a corporation organized under the laws of British Columbia, with a head office in Vancouver, British Columbia;
2. the Filer is registered as a portfolio manager and exempt market dealer in all Canadian provinces and territories, and an investment fund manager in British Columbia, Ontario, Quebec, and Newfoundland and Labrador;
3. the Filer is not a reporting issuer in any jurisdiction of Canada;
4. the Filer is not in default of securities legislation in any jurisdiction of Canada;

The Funds

5. the Filer has established a number of mutual funds as trusts and limited partnerships under the laws of British Columbia (the Current Funds) and may create additional mutual funds as trusts, limited partnerships, corporations or other entities from time to time (the Future Funds and collectively with the Current Funds, the Funds);
6. the Current Funds are not in default of securities legislation in any jurisdiction in Canada;
7. the Filer is the investment fund manager and portfolio manager of the Current Funds, and will be the investment fund manager and portfolio manager of the Future Funds;
8. the Current Funds are not reporting issuers in any jurisdiction of Canada and therefore are not subject to National Instrument 81-102 *Investment Funds* or National Instrument 81-107 *Independent Review Committee for Investment Funds*;
9. the issued and outstanding securities of each of the Funds consist of trust units, limited partnership units or other securities (Securities) that are redeemable by investors in certain circumstances;

The Disclosure Requirement

10. one or more Current Funds wish to and certain Future Funds may wish to engage Ninth Avenue Capital Ltd. (Ninth Avenue) to act as a mortgage broker to originate mortgage loans, act as a mortgage servicer to service mortgage loans, and/or provide mortgage-related services generally in relation to those Funds that invest in mortgages. Currently, Ninth Avenue is wholly-owned by the Filer;

11. Ninth Avenue is a related person for the purposes of the Disclosure Requirement;
12. Ninth Avenue may receive certain broker fees, mortgage loan servicing fees and/or other fees or compensation as a consequence of the Funds making investments in mortgages originated or serviced by or through Ninth Avenue (Fees);
13. related persons other than Ninth Avenue may also receive other fees or compensation in consequence of the Funds making investments other than investments in mortgages originated or serviced by or through Ninth Avenue (Other Fees);
14. the Disclosure Requirement provides that a mutual fund must not make an investment in consequence of which a related person of the mutual fund will receive a fee or other compensation unless the fee is paid under a contract that is disclosed in a preliminary prospectus or prospectus filed by the mutual fund and accepted by the executive director;
15. the Filer is seeking relief from the Disclosure Requirement in respect of the Funds because, in the absence of the Requested Relief, the Funds would be prohibited from making an investment in consequence of which Ninth Avenue will receive Fees or a related person other than Ninth Avenue will receive Other Fees, unless the Fees or Other Fees are paid under a contract that is disclosed in a preliminary prospectus or prospectus filed by the Funds;
16. securities of the Funds are issued to investors on a private placement basis in reliance on the accredited investor prospectus exemption in section 2.3 of National Instrument 45-106 *Prospectus Exemptions* (NI 45-106) and may be issued in reliance on other prospectus exemptions from time to time, and are not qualified for sale under a preliminary prospectus or prospectus;
17. prior to purchasing securities of a Fund, each investor will have received from the Filer the applicable account documentation related to their account(s) with the Filer and/or the applicable subscription agreement, offering memorandum or other disclosure document regarding the investor's investment in the Fund;
18. the Filer submits that since all investors in the Funds will be purchasing pursuant to the accredited investor exemption or another exemption from applicable prospectus requirements, it would not be prejudicial to the public interest to disclose that the Funds may make investments in consequence of which Ninth Avenue or another related person will receive Fees or Other Fees in the applicable account documentation, subscription agreement, offering memorandum or other disclosure document, rather than in a preliminary prospectus or prospectus;

The Reporting Requirement

19. one or more Current Funds wish to and certain Future Funds may wish to purchase and sell mortgages originated and/or serviced by or through Ninth Avenue or another related person in respect of which Ninth Avenue or such other related person receives Fees from the Funds or borrowers or other parties to the transactions, or make other investments in consequence of which related persons other than Ninth Avenue receive Other Fees (collectively, Transactions);

20. Ninth Avenue is a related person for the purposes of the Reporting Requirement; and
21. the Filer is seeking relief from the Reporting Requirement in respect of the Funds because, in the absence of the Requested Relief, the Filer will need to prepare a report in the required form for each Transaction and file such report with the Commission within 30 days of the end of the month in which the Transaction occurs.

Order

¶ 4 Considering that it is not prejudicial to the public interest, the Commission orders that the Requested Relief is granted provided that:

1. each Fund that is relying on the Requested Relief uses account documentation, a subscription agreement, an offering memorandum or other disclosure document for investors that discloses, as applicable, that:
 - (a) Fees will be paid to Ninth Avenue in consequence of the Fund making investments in mortgages originated and/or serviced by or through Ninth Avenue, and/or Other Fees will be paid to a related person other than Ninth Avenue in consequence of the Fund making other investments, including a description of types of investments that will give rise to payment of the Fees and/or Other Fees, as applicable, and the name of the related person that the Fees and/or Other Fees will be paid to, as applicable; and
 - (b) investors may obtain the information required by the Reporting Requirement from the Filer upon request (the Required Disclosure);
2. the Filer or each Fund that is relying on the Requested Relief provides the Required Disclosure to investors in a Fund at or prior to the time of purchase of Securities of the Fund or otherwise prior to the making of an investment that triggers the application of the Disclosure Requirement or the Reporting Requirement, as applicable;
3. each Fund that is relying on the Requested Relief is, and will remain for the term of its reliance, a non-reporting issuer in any jurisdiction of Canada;
4. each Fund that is relying on the Requested Relief will provide the Required Disclosure to the Commission upon request;
5. upon request by a securityholder, each Fund that is relying on the Requested Relief from the Reporting Requirement will provide the securityholder with the information required by the Reporting Requirement in relation to any Transactions involving the Fund during the applicable month; and
6. within 30 days of the end of any month in which a Transaction occurs, each Fund that is relying on the Requested Relief from the Reporting Requirement will deliver to the Commission (on a non-public basis) the information required by the Reporting Requirement in relation to Transactions involving the Fund during the applicable month.

John Hinze
Director, Corporate Finance

British Columbia Securities Commission