



February 15, 2013

The Secretary
Ontario Securities Commission
20 Queen Street West
Suite 1900, Box 55
Toronto, Ontario M5H 3S8

and

Me Anne-Marie Beaudoin
Directrice du secrétariat
Autorité des marchés financiers
800, square Victoria, 22e étage
C.P. 246, tour de la Bourse
Montréal, Québec H4Z 1G3

Re: Response to CSA Notice and Request for Comment: Proposed Amendments on NI 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations and to Companion Policy 31-103CP Registration Requirements, Exemptions and Ongoing Registrant Obligations (OBSI)

Dear Sir and Madam:

The National Exempt Market Association (NEMA) appreciates the opportunity to comment on the referenced proposed amendments. The proposal, if adopted, would require that all registered advisors and registered firms in all provinces, save Quebec, use the Ombudsman for Banking Services and Investments (OBSI) for their dispute resolution and mediation services for investor disputes under section 13.16 of NI 31-103 (the OBSI proposal).

As background, the National Exempt Market Association was originally named the Western Exempt Market Association; it was founded in 2011 by a number of key participants in the exempt market securities industry, who saw a need for a collective voice to preserve the flexibility and unique culture of the Canadian capital markets and the exempt market in general. Our association grew to include national representation, and so we changed our name to the National Exempt Market Association in 2013 to better reflect our mandate and membership base. We are now are 227 members nationwide, comprised of issuers, exempt market dealers, individual dealing representatives, and their service providers. For more information on our association and its mandates, please visit <http://www.nemaonline.ca/>.

NEMA does not support this proposal. We understand the need for a mechanism whereby investor complaints can be addressed and resolved by an unbiased third party. However, we believe that it is premature to mandate the use of OBSI, a service provider which has little experience or history of dealing with participants in the exempt market.¹

¹ OBSI 2010 Annual Report, p. 52, OBSI 2011 Annual Report p. 82

As the exempt market in its current form has only existed since NI 31-103 was implemented in 2010, meaningful data on investor complaints and arbitration needs are not as clear as in other areas of the capital markets. NEMA can advise that none of our member EMDs have reported a need for an arbitration service so far. We are concerned about imposing a requirement to use OBSI without a demonstrated need. We believe that it would be more reasonable to at least wait for a few years and see what the experience of exempt market investors is before making the OBSI proposal mandatory for our industry.

OBSI has no direct experience in arbitrating exempt market complaints. OBSI's core experience and background, as its name suggests, has been to resolve consumer complaints in retail banking and in retail brokerage. Therefore, they would not be selected by our members for this need when it arises as they lack the specialized skill set and experience to understand exempt market products. The dynamics and the characteristics of this market segment are significantly different from the exempt markets.

It is also a concern to us about the effectiveness of the OBSI complaint resolution process indicated by two of the largest Canadian banks, RBC and TD have withdrawn from using the OBSI for banking complaints in 2008 and 2012 respectively. **If the OBSI were given a monopoly on this service, their effectiveness would likely get worse, not better.**

The biggest threat to investors is erosion of investment yield and investment choice due to the increasing burden of compliance costs. Although NEMA and our members see the need for efficient investor dispute resolution services, registrants should have options in mediator and arbitrator services.

If the CSA is concerned that there could be a lack of a uniform standard, the CSA could articulate standards to be adhered to by all dispute resolution services. It would then be up to registrants to select from among approved service providers who met the standard.

If the CSA proceeds with the OBSI proposal, then NEMA would submit as follows.

First, users should be charged on a per use basis, and the fee should not be based on the dollar volume of transactions or the assets under administration or similar size-based measure. We do not believe that registrants who do not avail themselves of the service should in effect be subsidizing those who make more frequent use.

Second, it is recommended that the exempt market have active representation in OBSI governance, as do IIROC and the MFDA. As stated, if there is to be a single service provider, we are concerned that the needs and views of our members be reflected at a senior level.

If you would like further elaboration on NEMA's comments, please feel free to contact Cora Pettipas at cora@nemaonline.ca or at (403) 992-9809.

Regards,

National Exempt Market Association



Craig Skauge
President, NEMA



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Vice President, NEMA

CC:

British Columbia Securities Commission

Alberta Securities Commission

Financial and Consumer Affairs Authority of Saskatchewan

Manitoba Securities Commission

Ontario Securities Commission

Autorité des marchés financiers

New Brunswick Securities Commission

Superintendent of Securities, Department of Justice and Public Safety, Prince Edward Island

Nova Scotia Securities Commission

Office of the Superintendent of Securities, Newfoundland and Labrador

Superintendent of Securities, Northwest Territories

Superintendent of Securities, Yukon

Superintendent of Securities, Nunavut