



February 22, 2013

John Stevenson, Secretary
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and

Me Anne-Marie Beaudoin,
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Re: Response to CSA Consultation Paper 33-403: The Standard of Conduct for Advisors and Dealers: Exploring the Appropriateness of Introducing a Statutory Best Interest Duty When Advice is Provided to Retail Clients (the Consultation Paper)

Dear Sir and Madam:

The National Exempt Market Association (NEMA) appreciates the opportunity to comment on this proposal for amendments proposing a statutory fiduciary or best interest standard to address investor protection concerns in the Canadian financial services industry. For information on our association and its mandates, please visit nemaonline.ca.

Advisor standards should be harmonized across registrant categories. Our member exempt market dealers have made great strides over the short history of our newly regulated industry to promote professional competence. A common frustration expressed by our member dealing representatives that they are perceived to be held to a lower standard and thus held in less regard than advisors licensed in other categories, even if the same advisor is also registered in another category. Secondly, a harmonized standard would decrease the opportunity of regulatory arbitrage and add simplicity so advisors and investors know where they stand and what their rights are. In our view, the establishment of a best interest standard would not change the daily behavior of most advisors as such a standard of conduct is already required and expected of Certified Financial Planners,¹ Investment Dealer Registrants,² Mutual Fund Registrants,³ Chartered Financial Analysts,⁴ and Insurance Agents.⁵ It was revealed in a recent study that 70% of investors thought their advisor had a fiduciary responsibility,⁶ most likely because their advisor thought so as well.

¹ FPSC Financial Planners Code of Ethics (for CFP designation) Rules 101 and 202,
http://www.fpsc.ca/sites/default/files/documents/Code_of_Ethics_April_2005.pdf

² Canadian Securities Institute CSC course (for IIROC licensing) Volume 1, Chapter 3, p. 15

³ Mutual Fund Dealers Association, Business Conduct, Rule 2, <http://www.mfda.ca/regulation/Rule2.html>

⁴ CFA Code of Ethics and Standards of Professional Conduct p. 2 <http://www.cfapubs.org/doi/pdf/10.2469/ccb.v2010.n14.1>

⁵ Code of Ethics for Life Insurance Agents in Ontario p.1

<http://www.fscs.gov.on.ca/en/insurance/lifehealthbulletins/Archives/Documents/CodeofEthics.pdf>

⁶ Investor Behavior and Beliefs: Advisor relationships and investor decision-making study. Investor Education Fund. 2012.

<http://www.getsmarteraboutmoney.ca/en/research/Our-research/Documents/2012%20IEF%20Adviser%20relationships%20and%20investor%20decision-making%20study%20FINAL.pdf>



Adoption of a best interest standard could potentially be a very positive step for Canadian investors, if harmonization across regions and sectors could be achieved. NEMA does have the following concerns:

1. **Implementation Costs.** The biggest threat to investors is erosion of investment yield due to the increasing burden of compliance costs as our industry as a whole is being smothered in compliance rigor and superfluous paperwork. Canada's regulatory and compliance costs are high enough. The CSA is cautioned on going forward with the best interest standard if it would result in increased costs for advisors for E&O Insurance, overhead, technology, legal, and registration fees. NEMA's concern with our industry and with small to mid-size financial firms in general is the fast pace of regulatory change and onerous regulation procedures puts a firm's solvency at risk, regardless of business model because it does not have the economies of scale to absorb these costs, like the chartered banks can. If the CSA facilitates an environment that increases costs and limits compensation models that can be offered, the top talent in our industry will leave and go elsewhere. This is contrary to investor interests.
2. **Need to allow for unsolicited trades/subscriptions on client request.** A fiduciary or best interest standard should not be confused with a paternalistic relationship with the client. Nothing gets a client more frustrated than being told what they can or cannot do with their money. Ideally, an advisor gives client advice and recommendations, based on suitability. The advice is intended to educate the client to allow them to make an informed choice. Afterwards, a client should be able to refuse some or all the advice given by an advisor, and if they so choose, make an investment without a recommendation by signing off on the risks. The rules should allow for unsolicited trades and directions where the client demands it. The client will be even worse off by having a pure transactional account, and no guidance, with a discount brokerage. A client taking some of an advisor's objective advice is better than them taking none.
3. **Accommodation of different business models.** In implementing a harmonized standard for all dealers, regulators must be able to accommodate different business models. For example, compared to exempt market dealers, full service securities dealers have a broader range of products that they can offer their clients. In determining 'best interests of the client' it should not be assumed that selecting from a narrower range of products automatically makes it more difficult for an advisor to demonstrate best interest. There should be regulatory guidance so that a dealing representative of an exempt market dealer is complying with the best interest standard when the representative acts in a way that a reasonable person would view as in the best interests of the client within the range of options available to such representative.

There has been a concern about a salesperson being called an advisor, but really, most professionals are salespeople in some capacity, whether compensation is collected in commission, salary, billable hours, or some combination. The problem is when an advisor's gain is a client's loss. An advisor's work should



leave a client financially better off. The majority of Dealing Representatives in our industry are doing the right things for their client and putting the client first, as it is the best way to insure client loyalty, future business and referral business. Canada should absolutely formalize this if it can be done in an efficient and cost effective manner, as it is already really best practices and would raise the bar for advisor competency and help Canada live up to the evolving Global standard.

If you would like further elaboration on NEMA's comments, please feel free to contact Cora Pettipas at cora@nemaonline.ca.

Regards,
National Exempt Market Association

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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