



CANADIAN BANKERS ASSOCIATION

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British Columbia Securities Commission
Alberta Securities Commission
Manitoba Securities Commission
Ontario Securities Commission

c/o John Stevenson, Secretary
Ontario Securities Commission
20 Queen Street West
Suite 1903, Box 55
Toronto, Ontario M5H 3S8
Email: jstevenson@osc.gov.on.ca

and to:

Anne-Marie Beaudoin, Directrice du secrétariat
Autorité des marchés financiers
Tour de la Bourse
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Montréal, Québec H4Z 1G3
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Dear Sirs and Madames

Re: CP 23-402 on Best Execution and Soft Dollar Arrangements

We are pleased to submit our comments on the Canadian Securities Administrators' Concept Paper CP 23-402, *Best Execution and Soft Dollar Arrangements*.

Our members are affected in a variety of differing ways by the issues discussed in the Concept Paper, and some of our members or their securities dealer or mutual fund dealer subsidiaries are likely to submit separate comment letters, either in response to the Concept Paper at this preliminary stage, or later, once proposals have been developed more fully. We accordingly propose at this stage to offer only relatively brief comments.

Our comments are as follows:

- We do not believe that it is possible to apply meaningful “bright line” tests to the evaluation of *best execution* which is a qualitative test. What amounts to *best execution* will often be complex, and depends on the type of security being traded (e.g. fixed income or equity). As a result, it is difficult to reduce the measurement of *best execution* to a few static criteria and numbers.
- We note that the list of *best execution* criteria left out the following:
 - Liquidity (dealer putting up capital);
 - The depth of market for a security;
 - The quality and reliability of price quotes; and
 - Quality of settlement.
- We note that “analytics” services available in some larger markets that are used to assess aspects of order execution, are not feasible in Canada due to the limited breadth and depth of our small capital market.
- We believe that ensuring that instructions concerning transactions are clear and communicated appropriately is vitally important to the interests of both client and dealer, and it is not necessary and would not be helpful for regulators to mandate disclosure or education programs. We also do not believe that adding more required disclosure to the client-dealer relationship would be of any benefit.
- With regard to Question 5, asking whether the “suggested description [of *best execution*] emphasizing the process to seek the best net result for a client” is appropriate and provides sufficient clarity, we wonder whether the suggested description or definition inappropriately expands the concept of *best execution* by importing into the proposed definition, the qualification “in light of the client's stated investment objectives”. The proposed definition reads as follows: “*best execution* means the best net result for the client, considering the relevant elements (including price, speed of execution, certainty of execution, and total transaction cost) in light of the client's stated investment objectives”. We are concerned that the concluding phrase will shift the focus from *best execution* as a matter relating to the efficient execution of specific transactions, and could broaden the concept to include the assessment of the merits of the transaction in relation to stated investment objectives. Furthermore, institutional clients rarely disclose their investment objectives. We accordingly suggest that the reference to “investment objectives” be deleted.
- We do not mean to suggest, however, that *best execution* should be limited to individual transactions. The goal of *best execution* must be seen to be achievable even where the execution of some individual transactions is not optimized, if there is a demonstrable process to ensure, to the extent reasonably possible, that the client's net cost is minimized, in light of the qualitative factors at play.
- With regard to Question 8, whether the internalization of orders represents an impediment to obtaining *best execution*, we do not believe the question can be answered in a meaningful way. The internalization of orders may be an element of *best execution* for institutional clients, and thus requiring that all orders be treated identically regardless of size or other characteristics could be an impediment to *best execution* for some clients.

- With regard to Question 9, whether there should be requirements for dealers and advisers to obtain multiple quotes for OTC securities, and whether there should be a mark-up rule, we note:
 - Multiple quotes may not be available in many instances;
 - Our members are not very active in OTC markets, and often engage in transactions in these markets primarily as an accommodation for clients; and
 - Added regulatory requirements affecting trades in these markets could result in our members' withdrawing from these markets and/or tipping the market to intended transactions, which could adversely impact clients.

Thank you again for this opportunity to provide our initial comments. We would be pleased to answer any questions that you may have.

Yours truly,


WL/DI/sh