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TD Newcrest (here-in after referred to as TD) is pleased to provide comments on CSA concept paper 23-402 – Best Execution and Soft Dollar Arrangements. We applaud the CSA for the consultative process that lead to the creation of this report, and feel that discussion and debate of these key issues will ensure that regulators in Canada create a market structure framework going forward that is both competitive and flexible enough to compete in the ever-changing world of investment management. Note: we apologize for the late date of our response.

Question 1. Are there any changes to current requirements that would be helpful in ensuring best execution? Do you think that clients are aware of their role in the best execution or would some form of investor education be helpful?

TD believes that any organization that is involved in the order handling lifecycle should be required to have a process document in place to ensure best execution is achieved. The actual process itself should not be mandated because the definition of best execution will vary from one organization to another. However, there should be regular reviews of the process to ensure on-going compliance and amendments should be made to keep the process current. The sell-side is currently governed by specific order handling rules that have been designed to ensure that retail and institutional orders are receiving the best possible prices available. We believe that buy side institutions are becoming increasingly aware of their best execution responsibilities. The level of understanding and commitment to best execution tends to vary depending upon the scale and sophistication of the institution. The main reason why best execution has come under the spotlight for the Canadian investment community is as a result of regulatory initiatives in both the US and the UK. We believe that further investor education would be helpful. There seems to be some confusion with respect to who has best execution responsibility and concern that, if some form of best execution legislation is mandated by regulators, then the cost of monitoring and reporting best execution practices may exceed the end benefit to investors.

Several other issues not discussed directly in the CSA report are worth mentioning in the context of a discussion on best execution in the Canadian marketplace:

Trade Through Executions on Canadian Stock Exchanges

Over the past several weeks, the possibility of trade throughs on Canadian stocks has surfaced. This is as a result of the pending launch of competing marketplaces (or ECNs) registered in Canada to trade Canadian stocks. For background, a trade through takes place when a stock trade occurs at a price worse than the posted best bid or offer at the time of execution. US regulators (in particular the SEC) took steps earlier this year, albeit controversially, to introduce trade through protection on all US listed and OTC securities on all marketplaces. Despite talk of some marketplace exemptions, it appears the SEC is holding firm that top of market price protection will exist when Reg NMS rules are enacted in mid-2006. In Canada, trade throughs have not been a concern since the elimination of competing marketplaces back in the late 1990s. However, with the pending launch of competing ECNs, the possibility of trade throughs will once again exist. Fundamentally, we believe that no trade throughs should be allowed on single stock orders and that all market participants should be treated under the same set of rules for all marketplaces. We believe that marketplaces should be required to create an infrastructure to ensure that trade throughs do not take place. While we support the CSA's consultative approach to addressing trade through concerns in Canada, we would prefer that rules be enacted immediately to ensure that no trade throughs take place during the lengthy interim consultation period. Canadian equity market participants, including less sophisticated retail investors, have grown accustomed to trade through protection of their limit orders by virtue of the fully electronic single marketplace of the TSX Central Limit Order Book.

Exemptions to Trade Through Rule in Canada – Principal Portfolio Trades and Hidden (Iceberg) Orders

With the above discussion in mind, it is important that certain exemptions apply to trade through protection to account for hidden (or iceberg orders) and principal portfolio trades. First, hidden orders should not be protected from trade through obligations in order for a market participant to be sure of the amount of displacement required across marketplaces to execute a trade. This will encourage more display of order size in the central limit book and improve the price discovery mechanism for equity trading in Canada.

Secondly, while best execution is synonymous with best price in a fully accessible single security context, there may be exceptions to best price necessary in a portfolio context. Specifically, we believe that principal portfolio trades (or basket trades) meeting certain predefined terms and conditions should be exempted from the best price obligation. Principal portfolio trades and blind bid baskets are an important tool for buy side managers to achieve best execution. Under current market convention (a convention unique to Canada's capital markets), investors in Canada will ask dealers to bid in real time on portfolios of stock trades. Quite often, these trades are on lists of up to 100 securities. Typically, principal portfolio trades are market and sector neutral, but can be market directional as well. When dealers quote on these trades, it tends to be using risk factors, meaning quantitative factors such as liquidity, momentum of the portfolio, residual risk and other factors are considered. The trade is quoted to the client in notional terms, and individual stock prices are determined only after the trade is awarded to the dealer with the lowest cost to the client. This is referred to as a net transaction, meaning the explicit commission amount is embedded in the net price to the investor and individual share prices are adjusted for settlement to arrive at the agreed upon all-in portfolio price. There is full

disclosure on pricing of these trades, and clients will often be running the portfolio with real time pricing alongside the dealers. A more recent development in this space in Canada is the use of blind portfolio trades where, to minimize information leakage, only certain quantitative portfolio metrics are known by the dealers in advance of quoting on the transaction (note: blind portfolio trades have been popular in the US and UK markets for several years).

We are concerned that there is some talk in Canada of late of changing market convention on principal portfolio trades. Specifically, this talk revolves around limiting commissions on portfolio trades to "normal" agency commissions and thus requiring any excess commission built into the principal bid to be factored into the trade execution prices. In some cases, this will result in displacement obligations causing unwanted portfolio risks and dealers will be forced to increase pricing to reflect the uncertain nature of their post trade risk. Increased costs of portfolio trades will act as a tax on the investment community and hurt investment returns. Given the fact that portfolio trades are quoted in aggregate notional terms, there is really no harm to resting bids or offers on individual securities within the portfolio as the trade is thought of as a package. We strongly encourage regulators to consult with the investment community prior to adjusting market conventions on portfolio trade executions as changes to market practices may be harmful to Canada's capital markets and put as at a competitive disadvantage to other developed marketplaces where these types of trades take place frequently.

Non-Economic Trading Markers

Another issue that continues to hamper trade cost measurement and thus the development of best execution trading strategies in Canada is the ability of market participants to differentiate real from non-economic trades in Canadian stocks on the TSX. By our estimates, between 15 and 20% of volume on the S&P/TSX 60 stocks on the TSX involves trades with no economic transfer of risk such as single stock, basket and index total return swaps, forwards, Exchange for Physicals (EFPs), and option and convertible delta hedge trades. A non-economic transaction takes place when the two parties involved in a cross on the TSX are exchanging the offsetting risk in a separate but related transaction. Given the beneficial change in ownership of the underlying stock positions, these trades must be printed on the TSX currently (with some exceptions depending on the parties involved). Unfortunately, there is no way for a buy side investor to tell if a transaction is real or represents a non-economic trade (normally referred to by dealers as "derivative related") other than to call and ask the executing broker. Of course, the simple act of calling provides some unnecessary information to the dealer counterparty on the other end of the phone and causes leakage that could hurt investment returns. While the TSX approved amendments a few years ago to add a trading marker for this type of trade, the rule change has yet to make its way through the regulatory channels and out for public comment. Meanwhile, as pre trade cost measurement becomes a bigger and bigger part of best execution strategies and day orders and VWAP orders become more common, buy side investors (and their dealer agents) are growing increasingly frustrated with the lack of transparency of real order flow on Canadian stocks.

Question 2. Should there be more prescriptive rules than those which currently exist for best execution or should the methods for meeting the best execution obligation be left to the discretion of registrants.

TD believes that more prescriptive rules will likely be necessary. However, we continue to stress that best execution should be monitored through internal process. As mentioned above, dealers are currently subject to rules that ensure their clients are achieving the best possible price in the marketplace. Buy side institutions should be required to draft internal policies that include a process to ensure they are achieving best execution.

Question 3. Do you believe that there are other elements of best execution that should be considered? If so, please describe them.

TD believes that the four elements of best execution detailed in the white paper are sufficient (price, speed of execution, certainty of execution and total transaction costs). Unfortunately, when measuring transaction costs, it is very difficult to measure market impact costs with any degree of certainty or consistency. There has yet to be an industry established standard to measure market impact costs. This is also true for opportunity costs in trading caused by delayed completion of orders. Although we believe that organizations should attempt to monitor their all-in transaction costs (ie. beyond standard commissions), we do not think that firms should be mandated to provide transparency of their transaction costs beyond standard commission numbers and portfolio turnover.

Question 4. If audit trail information is not in easily accessible electronic form, how is the information used to measure execution quality. Is there information that provides useful measurement?

TD does not believe that an industry standard should be applied to each organization to measure execution quality (as a result of the reasons cited in the response to Question 3). We believe that clients do monitor their execution quality (albeit qualitatively in many circumstances). We also believe that the quality of execution is reflected in the over-all investment performance of the organization (i.e., poor execution performance hurts investment returns). Therefore, we do not believe that any further explicit information is necessary to measure execution quality.

Question 5. Do you believe the suggested description emphasizing the process to seek the best net result for a client is appropriate and provides sufficient clarity and, if not, can you suggest an alternative description?

TD agrees with the description emphasizing a process that seeks the best net result for a client. We believe that the investment/execution process should be structured with the goal of maximizing the value of a client's assets/portfolio.

Question 6: Do you believe that there are any significant issues impacting the quality of executions for:

- ***a) listed equities***
- ***b) unlisted equity securities***
- ***c) derivatives***
- ***d) debt securities***

No response.

Question 7: How should dealers in Canada monitor and measure the quality of executions received from foreign executing brokers?

We believe it to be reasonable for Participants to be held to the same level of accountability regarding foreign (US Executions) client flows as they are for their domestic flows. Specifically, adhering to UMIR 5.1 Best Execution of Client Orders & UMIR 5.2 Best Price Obligations.

In the United States the SEC has adopted Exchange Act Rule 11Ac1-5 requiring all market centres to publicly make available information on their firms order execution practices. The SEC also adopted rule 11Ac1-6 requiring all Broker Dealers that route equity & Option securities a general overview of their routing practices.

We believe a similar rule should be instituted for Canadian participants routing client flow to the US for execution. A number of Independent service providers are available who provide uniform statistical measures of execution quality for the various US Market centres. Enacting such a rule would deter Participants from engaging in routing practices for reasons other than Best Execution of client flows.

Question 8: Do you think that internalization of orders represents an impediment to obtaining best execution?

We believe that allowing Participants to commit capital to facilitate client flow actually improves the quality of execution, which leads to superior best execution practices. UMIR Policy 8.1 Client Principal Trading & UMIR policy 5.1 Best Execution of Client Orders provides a framework to ensure participants are providing their clients with the best possible trade executions.

Question 9: Should there be requirements for dealers and advisers to obtain multiple quotes for OTC securities? Should there be a mark-up rule that would prohibit dealers from selling securities at an excessive mark-up from their acquisition cost (similar to National Association of Securities Dealers, Inc. (NASD) requirements dealing with fair prices)?

We do not believe there should be specific requirements for participants to obtain multiple quotes form OTC securities. Participants are still bound by UMIR 5.1 Best Execution of Clients Orders when facilitating these OTC flows.

Question10: How is best execution tracked and demonstrated in a dealer market that does not have pre-or-post trade transparency such as the debt or unlisted market?

The lack of transparency in debt markets complicates the measurement of best execution but, without further study, we are not certain that requiring all trades to take place in a regulated and transparent fashion will necessarily improve execution quality. This is because, unlike equities, a significant portion of the fixed income market is made up of tightly controlled, off the run securities with virtually no secondary activity. We would be reluctant to associate the measurement of BE in the debt market with pre and post-trade analytics. TD believes they are useful tools in practicing BE, but we do not believe that they should be used as a benchmark for measuring BE.

Question 11: How does an adviser ensure that its soft dollar arrangements are consistent with its general obligations to its clients?

TD believes this process begins with consultation between the investment manager (IM) and their clients. If clients agree that soft dollar arrangements may be suitable for the IM, then a specific document should be drafted by the IM outlining what resources fall within the IMs soft dollar arrangements. The IM should also be required to disclose the amount of soft dollar business they conducted during the period and indicating what resources those soft dollars were used to acquire. It is essential that there is complete transparency and disclosure of conflicts of interest, such as broker-consultant relationships that are under scrutiny in the United States following the SEC release on May 16, 2005 of a report concerning examinations of select pension consultants.

Question 12: Are there any other additional benefits or concerns with soft dollar arrangements that are not noted above.

TD acknowledges that soft dollar arrangements allow smaller firms to compete with large organizations whose cost structure benefits from economies of scale. The existence of these small organizations is good for the marketplace. It creates competition, both from an investment performance perspective as well as a management fee perspective, and often provides an element of independent research long coveted by the buy-side. This competition also prevents the likelihood of a monopoly forming within the investment management industry.

TD believes that one downside to soft dollars is that they may inadvertently result in unnecessary portfolio turnover. This happens when buy side investors are required to meet incomplete soft dollar obligations late in the year and do not have "natural" flow with which to do so. Unnecessary turnover is not in the best interests of the investors of the fund. Therefore, soft dollars as a percentage of expected total commissions paid needs to be kept at a very low level, perhaps a maximum of ten percent. Further, buy side managers should monitor the execution performance of soft and hard commission orders separately to determine whether execution quality is as good for all types of orders (note: in theory, some sell side dealers receiving soft orders may not work as hard on these orders, or will hold back execution unnecessarily in order to match off against natural hard commission paying order flow, thereby creating increased opportunity costs for the investor).

Question 13: If it is acceptable to pay for goods and services using soft dollars, which services should be included as "investment decision-making services" and "order execution services" and which services should be specifically not included.

TD believes that investment decision-making services should include broker/third party research. It should also include payment for specialty services that assist in the investment process, such as pre and post trade analytics. Order execution services should include trade execution, execution software packages, and charges associated with accessing capital to assist execution. TD believes the following services should not be included- periodicals, newspapers, basic vendor services, computer hardware, office supplies, and static free carpet (this puts us in line with the CFA Society, which did in fact come across static free carpet a few years ago, clearly one of the most far fetched soft dollar expenses to date). Generally speaking, any expense that the

investment firm must incur within the regular operation and administration of their organization that is separate from the investment process should not qualify as eligible soft dollar services.

Question 14: Should there be additional disclosure requirements beyond those specified in OSC Policy 1.9 and AMF Policy Statement Q-20, National Instrument 81-101 and proposed in National Instrument 81-106? Should the disclosure requirements be the same for third party soft dollar payments and bundled commissions.

We believe that the disclosure requirements for soft dollar arrangements should be more granular and detailed with respect to the specific services acquired under the soft dollar arrangement. The difficulty associated with disclosing bundled commissions is that the investment adviser must estimate what percentage of their commission is paying for execution and what percentage is paying for research. The problem is that the value placed on execution and research is at the discretion of each individual portfolio manager. Therefore, establishing an industry standard will be quite difficult. Furthermore, the percentage of commission allocated for execution and research will vary according to the trade executed and the difficulty of the transaction (ie. the tax placed on the executing broker to ensure best execution). Given the lack of a uniform disclosure policy within the industry, it could result in confusion among investors who do not have the appropriate knowledge base to appreciate the information provided.

Question 15: What, if any, are the practical impediments to an advisor:

a. Naturally, the largest practical impediments to reporting soft dollar and bundled commissions is the administrative cost associated with performing these tasks. It would require implementation of a process, an audit trail to ensure compliance, and an appropriate method of reporting. As well, it would require portfolio managers to make inferences regarding the value of the different services provided by bundled commissions. As mentioned in our response to Question 14, this process would be highly subjective and not necessarily consistent. It would also require administration by the portfolio manager, which would take time away from the investment process. All of these impediments would be an added cost to investors, either in the form of higher MERs or in the form of lower investment returns.
b. The same costs cited above apply to the process of allocating the cost of investment decision-making services to the beneficiaries of those services.

Question 16: If the split between order execution and "investment decision-making services" cannot be measured reliably, should the entire commission be accounted for as an operating expense in the financial statements? If it can be measured reliably, should the "investment decision-making services" portion of the commission payments be accounted for as an operating expense in the financial statements?

TD does not believe that the entire commission should be accounted for as an expense in the financial statements. If mandated, then TD believes that expensing commissions would result in an industry wide movement towards net trading. Net trading would effectively reduce explicit commission to zero by embedding commission costs into trade execution prices. We do not believe that this would be in the best interests of the investment community and would provide no transparency with respect to transaction costs. Even if the split between execution and

investment decision-making can be measured reliably, we do not believe that the investment decision-making portion should be accounted for as an expense to the financial statements. We believe that it would be useful for firms to disseminate the breakdown of their transaction costs between services provided and execution. However, this would likely require an industry wide standard for the portion of commissions represented by execution. We believe that it is very difficult to set this standard, as execution costs vary depending on the nature and difficulty of the trade executed. We believe that only "soft" guidelines should be implemented to assist firms in approximating how much of their commission dollars are comprised of execution versus investment decision-making services.

Question 17: Would it be appropriate for the MER to be based on amounts that differ from the expenses recognized in the audited financial statements? For example, should the entire commission continue to be accounted for as an acquisition/disposition cost in the financial statements but the MER calculation be adjusted either to include all commissions or to include only that portion that is estimated to relate to "investment decision-making services".

TD believes that the MER should not include the commissions or costs associated with performing the investment process. TD recognizes that commissions are deducted from the investment performance of the manager. Therefore, commissions are captured within the performance of the fund, which is disclosed publicly. TD believes that if the MER was adjusted to reflect commissions paid, then it would create incentive for investment managers to execute net trades (ie. not paying explicit commission). Also, TD would be concerned that if MERs included commissions, then investors may erroneously conclude that higher MERs means higher commissions and increased portfolio turnover, which may not necessarily be the case. We believe that MERs should remain unrelated to commissions.

Question 18. Should directed brokerage or commission recapture arrangements be limited or prohibited?

TD does not generally support the notion of directed brokerage or commission recapture, and feedback from the investment community is consistent with this view. In the case of commission recapture, it seems unclear to us why a pension fund would pay a middleperson to reduce aggregate commissions paid by the fund. If the goal of the fund is to reduce commissions paid, then commission rates should simply be lowered and the middleperson cut out of the equation. That said, we do not support the elimination of commission recapture without a clearer understanding of the industry fall-out from such a decision. TD believes that investors who direct brokerage or subscribe to commission recapture agreements should fully disclose these activities within their public filings, including potential agency conflicts in the corporate pension community between commissions paid by the fund, and funds recaptured by the parent corporation. Also, like soft dollars, the portion of aggregate commissions recaptured or directed should be kept low so as to ensure that no trades need to be sent to brokers for reasons other than best execution.

Question 19. Should disclosure be required for directed brokerage or commission recapture?

TD strongly believes that disclosure be required for both directed brokerage and commission recapture. We believe that total shares and value transacted under both arrangements should be monitored and disclosed in public filings. In the case of commission recapture we believe that

the amount recaptured by the fund should also be disclosed publicly. TD believes that the simple act of disclosing these practices will likely be enough to curtail their usage.

If you would like to discuss our thoughts in further detail, please contact the undersigned.

Yours Truly,

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