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British Columbia Securities Commission
Alberta Securities Commission
Saskatchewan Securities Commission
Manitoba Securities Commission
Ontario Securities Commission
New Brunswick Securities Commission
Securities Office, Prince Edward Island
Nova Scotia Securities Commission
Securities Commission of Newfoundland and Labrador
Registrar of Securities, Northwest Territories
Registrar of Securities, Nunavut
Registrar of Securities, Yukon Territory

c/o John Stevenson, Secretary
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Madame Anne-Marie Beaudoin
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Dear Sirs and Mesdames:

Re: Request for Comments on Notice of Proposed National Instrument 23-102 Use of Client Brokerage Commissions as Payment for Order Execution Services or Research ("Soft Dollar" Arrangements)

We are pleased to respond to the request for comments on the Canadian Securities Administrators ("CSA") proposed National Instrument 23-102 Soft Dollar Arrangements (the "Proposed Instrument").

TD Asset Management Inc. ("TDAM") is a wholly-owned subsidiary of The Toronto-Dominion Bank and is one of Canada's largest asset managers. As of August 31, 2006, TDAM managed approximately $120 billion for mutual funds, pooled funds and segregated accounts and provided investment advisory services to individual customers, pension funds, corporations, endowments, foundations and high net worth individuals. TDAM managed approximately $46.1 billion in retail mutual fund assets on behalf of more than 1.4 million investors at that date.

GENERAL COMMENTS

Best execution has been a subject of continued debate by regulators, market participants and investors in securities markets around the world. One concern in respect of Soft Dollar Arrangements in Canada is the potential lack of transparency and accountability of advisers and broker-dealers as well as reporting to investors on how client commissions are being spent.

Absent the complete elimination of Soft Dollar Arrangements, we support the CSA's interim efforts in the Proposed Instrument, subject to some reservations as discussed below.

We welcome the acknowledgement of the CSA's desire to increase transparency and accountability with respect to the governance of Soft Dollar Arrangements. We support the CSA in their initiative to create a system with checks and balances in place as well as their efforts to clarify the scope of what constitutes execution services and research.

While we appreciate the importance of regulating potential conflicts of interest that arise in Soft Dollar Arrangements, the CSA should be concerned that prescriptive rules may result in unintended consequences for advisers and broker-dealers. Consequently, we believe that prescribed rules should not be so stringent as to make it impossible to transact.

We are responding in our capacity as an investment adviser.

Question 1: Should the application of the Proposed Instrument be restricted to transactions where there is an independent pricing mechanism (e.g., exchange-traded securities) or should it extend to principal trading in OTC markets? If it should be extended, how would the dollar amount for services in addition to order execution be calculated?

While we support the CSA's goal of increased transparency and accountability in attempting to limit conflicts of interest in Soft Dollar Arrangements, we believe the Proposed Instrument should be limited to exchange-traded securities and should not apply to principal trading in over-the-counter markets or otherwise.

Principal traded securities ("PTS"), such as fixed income securities, embed dealer fees within the price of the security. Often, PTS may involve more risks and increased costs.

The fees associated with PTS may not be easily measured because such fees cannot be readily identified in the overall value of a trade. We do feel that the increased costs involved with keeping enhanced records in order to attempt to separate execution only and research costs would also not be justified given the lack of precision in the data.

TDAM recommends the CSA adopt rules consistent with the U.S. and the U.K. Adopting different rules than those of the U.S. and U.K. would encourage regulatory arbitrage and place our current system at a competitive disadvantage with other jurisdictions. Market participants regulated by the CSA, having foreign affiliated asset managers, could avoid the application of a more rigid regime on trades done in foreign markets. Moreover, we believe that the convergence of rules governing Soft Dollar Arrangements would be consistent with the CSA achieving its regulatory objectives.

Finally, where an adviser utilizes a sub-adviser(s) in foreign jurisdictions, it may be virtually impossible for the sub-adviser to transact under different regulatory rules when trades would typically be bundled or amalgamated.

Question 2: What circumstances, if any, make it difficult for an adviser to determine that the amount of commissions paid is reasonable in relation to the value of goods and services received?

In section III(b) of the Notice of Proposed Instrument, "an adviser's responsibilities include determining whether a good or service, or a portion thereof, may be paid for with brokerage commissions, and to ensure both that the good or service meets the definition of order execution services or research and that it benefits the client". Registered dealers and advisers have a duty to act fairly, and in good faith with their clients.

Determining if commissions paid are reasonable in relation to goods and services received is complicated and based on subjective elements. Although theoretical pure execution costs may be determined for a particular trade, albeit based on objective criteria, the value of research received is dependent upon the specific nature of the services provided and the circumstances under which it is provided. As such, we recommend the CSA adopt the approach taken by the Securities Exchange Commission ("SEC"), namely, that advisers make good faith determinations that commissions paid are reasonable in relation to the value of goods and services received. Given that relative investment performance is a major criterion in the success of an adviser's business, advisers are highly sensitive to any cost which has the potential to reduce investors' returns.

In transactions involving execution and research, the lack of broker-dealer documentation makes it difficult for the adviser to determine what portion of the commissions the broker-dealer considers allocable to execution only costs and what portion of commissions are allocable to research. Broker-dealers price the relevant components of commissions, whereas advisers look at the overall level of commissions relative to the services received. We remain of the view that the ability of advisers to unbundle commissions is entirely dependent on the broker-dealers on the "sell side" and that as an

adviser on the "buy side", we cannot unbundle commissions with any degree of accuracy. We would look forward to regulatory leadership that would result in sell-side participants being required to unbundle brokerage commissions, thereby providing more specificity for advisers to unbundle costs.

Question 3: What are the current uses of order management systems? Do they offer functions that could be considered to be order execution services? If so, please describe these functions and explain why they should, or should not, be considered "order execution services".

The Proposed Instrument defines order execution services as "order execution, and other goods or services directly related to order execution". As reflected in the Proposed Instrument, order execution services may include: trading advice, custody, clearing and settlement services, algorithmic trading software and raw market data, all to the extent they assist in the execution of orders.

Order Management Systems ("OMS") may encompass a myriad of features, and with the emergence of enhanced technology, may change over time. For example, OMS may be used, among other things, to:

1) design trades and portfolios;
2) route trade orders;
3) provide direct contact from the adviser to the trading desk;
4) provide direct access to market activity;
5) provide analytic tools to assist in the investment decision-making process;
6) facilitate the expediency of the execution process;
7) provide advisers with valuable research tools to assist in investment decision-making;
8) analyze portfolio strategies; and
9) assist compliance in evaluating execution quality.

We strongly believe that OMS are an integral part of the order execution process and are so intertwined with this process that OMS cannot function independently.

While TDAM agrees that there are aspects of OMS that may not necessarily fall within the ambit of the CSA's definition of "order execution services", we do feel that the OMS are indeed part of order execution that should come within the scope of this definition. Moreover, as investment professionals, advisers should be able to determine if such OMS functions qualify as order execution services in carrying out their responsibilities of acting fairly, honestly and in good faith with their clients.

Question 4: Should post-trade analytics be considered order execution services? If so, why?

We agree with the CSA that post-trade analytics ("PTA") should not fall within the definition of order execution services, but believe they should be considered research.

The Proposed Instrument defines research as advice, analyses or reports that relate to investments or trading, which contains original thought and the expression of reasoning or knowledge. An adviser has the responsibility of ensuring that research adds value to investment or trading decisions.

From our perspective, PTAs add value to advisers and their clients in the investment decision-making process. For example, PTAs, among other things:

1) provide advisers with necessary information to determine the impact of historic and prospective transaction costs of trading for their clients;
2) assist the adviser in achieving best execution for their clients;
3) lower transaction costs for their clients;
4) manage risk associated with certain transactions for their clients; and
5) enhance the portfolio investment decision making process on behalf of their clients.

PTAs can help advisers achieve best execution and assist in the adviser's investment decision-making process in the future. We urge the CSA to consider our position and recommend that the CSA provide guidance as to what post-trade analytic tools may constitute research.

Question 5: What difficulties, if any, would Canadian market participants face in the event of differential treatment of goods and services such as market data in Canada versus the U.S. or the U.K.

As stated in our response to question 1 above, we fervently believe in consistent regulation among Canada, U.S. and the U.K as it relates to Soft Dollars. We support the initiative of enhancing the concept of harmonized legislation among the world's financial markets. Adopting conflicting regulatory requirements would put Canada at a severe competitive disadvantage with its peers and would encourage regulatory arbitrage.

In the event that the CSA desires to adopt different rules from the U.S. and the U.K., with respect to the treatment of goods and services, we are of the view that such rules may favour multi-national market participants that can operate in multiple jurisdictions and would in turn penalize and discriminate against those market participants that are regulated only by the CSA. In other words, we would not have a level playing field in Canada.

Question 6: Should raw market data be considered research under the Proposed Instrument? If so, what characteristics and uses of raw market data would support this conclusion?

Raw market data ("RMD"), which is information or data that has not been analyzed or manipulated in a way that reflects original thought or the expression of reasoning or knowledge, should not be considered research under the Proposed Instrument. However, we do feel that RMD pertaining to market conditions should fall within the

definition of execution services because it is directly relevant from the time at which an investment or trading decision is made to the point in time when the transaction is completed.

Question 7: Do advisers currently use client brokerage commissions to pay for proxy-voting services? If so, what characteristics or functions of proxy-voting services could be considered research? Is further guidance needed in this area?

Client commissions are not used by TDAM to pay for proxy-voting services. Proxy voting firms generally provide two types of services: (1) reports/analysis on items to be voted on, which in most instances, include a recommendation on how to vote; and (2) the administrative aspects of obtaining, voting and reporting on the votes cast.

In section 3.4 of the Proposed Instrument, the CSA has defined mixed-use items as "those goods and services that contain some elements that meet the definitions of order execution services or research and other elements that either do not meet the definitions or that would not meet the requirements of Part 3 of the Instrument." TDAM believes that the CSA should follow the SEC's view that, at best, proxy-voting services be considered a mixed-use item.

To some degree, proxy-voting analysis may provide original thought, knowledge and expression of reasoning. These qualities are usually found in non-routine items, i.e. mergers and acquisitions, takeover situations, private placements and proxy contests. Proxy-voting research may provide added value to the adviser to the extent such research assists the adviser in assessing the impact of such proposal(s) on shareholder value and in making investment decisions in respect of whether to sell or purchase a particular security.

TDAM is of the view that no further guidance is necessary in this area.

Question 8: To what extent do advisers currently use brokerage commissions as partial payment for mixed-use goods and services? When mixed-use goods and services are received, what circumstances, if any, make it difficult for an adviser to make reasonable allocations between the portion of mixed-use goods and services that are permissible and non-permissible (for example, for post-trade analytics, order management systems, or proxy-voting services)?

In bundled arrangements where soft dollars are paid by way of a single rate, advisers cannot specifically negotiate what it will receive in terms of bundled services originating from the transaction. Often, full service broker-dealers provide many goods and services, which may include mixed-used or unsolicited items. Nevertheless, advisers neither have a formal mechanism in place to break down the actual cost of these items nor has there been any regulatory agreement on this issue. Advisers would have to spend an inordinate amount of time and resources to determine the value of either unsolicited or mixed-use items that advisers receive.

Although we acknowledge potential conflicts that may arise in bundled arrangements with respect to advisers' duties, should the CSA decide to adopt a rule requiring broker-dealers to unbundle their services, it could involve significantly expensive systems development and recording keeping functionality and related costs, which would likely ultimately be paid by investors.

We are of the view that research, order execution and other components of mixed-use goods and services may be so inextricably intertwined that separating mixed-use goods and services into their constituent parts cannot be effectively achieved by advisers (or even broker-dealers) with a precise degree of accuracy. In any event, it would be virtually impossible for advisers to determine the actual costs of mixed-use items originating from bundled brokerage.

Question 9: Should mass-marketed or publicly-available information or publications be considered research? If so, what is the rationale?

TDAM believes that mass-marketed information should not be considered research for which client commissions should be used and are routine expenses for which hard dollars should be paid.

Mass-marketed publications may include newspapers, magazines, periodicals, on-line news, on-line publications, etc. We believe there is a distinction to be made between "mass-marketed" information and information that is "publicly available". While we agree with the CSA that mass-marketed publications should be excluded from the definition of research, we do feel there should be consideration of certain publicly available information.

For example, publicly available information may include limited purpose technical trade journals which provide highly detailed information that may add value to an adviser's investment or trading decisions. The nature of the topics presented caters to a narrower audience, i.e., members of particular industries, investment managers and specialists, and the publications are not targeted to the public at large. We are of the view that public, but not mass marketed, publications, can be considered research in appropriate circumstances. We recommend the CSA provide further interpretative guidance in this area.

Question 10: Should other goods and services be included in the definitions of order execution services and research? Should any of those currently included be excluded?

TDAM encourages the CSA to permit seminars as research for which soft dollars may be paid, as is the case in the U.S. Seminars are simply an alternative medium to present research in lieu of written materials and are thus in substance research. We feel very strongly that seminars on issues that pertain to investment decision-making or order execution services should be encouraged, in the same way that the provision of educational, investment and other information is addressed in National Instrument 81-105 ("NI 81-105"). The attendance at such seminars should be subject to a similar constraint

as contained in subsection 5.2(d) of NI 81-105. Seminars facilitate the free-flow of ideas which fuels creative and original thought. Seminars that focus on investment strategies and industry issues will ultimately benefit clients.

Further, we also encourage the CSA to allow direct telephone lines to fall within the ambit of order execution for which soft dollars may be paid, as is the case in the U.S. Direct telephone lines assist advisers in the timely and accurate entry, handling or facilitation of an order by a dealer, which is particularly important in volatile markets. Given that direct telephone lines are precisely related to the execution of trade orders, the CSA should permit their use as an order execution service.

Question 11: Should the form of disclosure be prescribed? If prescribed, which form would be most appropriate?

Section 4.1 of the Proposed Instrument would require an adviser to disclose, among other things:

1) the names of the broker-dealers and third parties that provide goods and services received by the adviser;
2) the types of goods and services received;
3) total commissions paid during the period for all accounts or per account;
4) estimates for execution only commissions, bundled commissions and commissions used for third party research; and
5) weighted average commission per security.

In considering this form of disclosure, the key issue to be determined is the utility of such disclosure to the recipient relative to the costs of providing such disclosure. Disclosure may allow investors to determine the nature of an adviser's use of Soft Dollar Arrangements, and to quantify such usage to some extent.

We commend the CSA for encouraging increased transparency and accountability in respect of Soft Dollar Arrangements. However, we strongly believe it would not be practical, and in some cases not possible, particularly in the case of bundled brokerage, to obtain the necessary data contemplated by the CSA and that a cost benefit analysis would indicate the costs of doing so would outweigh the related benefits.

We believe that increased disclosure will likely result in increased costs to investors as advisers would be required to alter their current recordkeeping practices substantially. In order for advisers to meet the proposed disclosure requirements, broker-dealers should be required to quantify the value of each of research and execution services provided and to provide advisers with the information contemplated in section 4.1(2)(a) and (d).

On the one hand, we are of the view that commissions are but one quantitative factor to consider and merely represent one element of best execution. On the other hand, qualitative factors can be crucial elements of best execution. If the nature of the required disclosure is so specific as to place undue importance on quantitative factors alone,

advisers may be implicitly forced to select broker-dealers based solely on quantitative factors, which may not ultimately benefit the client.

Question 12: Are the proposed disclosure requirements adequate and do they help ensure that meaningful information is provided to an adviser's clients? Is there any other additional disclosure that may be useful for clients?

No comment.

Question 13: Should periodic disclosure be required on a more frequent basis than annually?

No.

Question 14: What difficulties, if any, would an adviser face in making the disclosure under Part 4 of the Proposed Instrument?

No Comment.

Question 15: Should there be specific disclosure for trades done on a "net" basis? If so, should the disclosure be limited to the percentage of total trading conducted on this basis (similar to the IMA's approach)? Alternatively, should the transaction fees embedded in the price be allocated to the disclosure categories set out in sub-section 4.1(c) of the Proposed Instrument, to the extent they can be reasonably estimated?

As indicated above, we do not believe that the Proposed Instrument should apply to principal traded securities. If the Proposed Instrument so applies, we believe the disclosure should be limited to the percentage of total trading conducted on this basis due to the inherent lack of precision in identifying the amount of embedded commissions.

CONCLUSION

As indicated in our response to question 11, given the costs to implement substantial systems development and record keeping functionality, a reasonable transition period should be afforded to industry participants.

TDAM is grateful to have had the opportunity to comment on the Proposed Instrument and commends the CSA for further addressing the concept of best execution and the goal of increased transparency and accountability in the Canadian investment industry. While we agree with the CSA that some guidance may be necessary in certain areas, we do not support the shift to a more stringent regime than that of the U.S. and the U.K. due to the global, integrated nature of investment management. We believe that the convergence of rules governing Soft Dollar Arrangements would be consistent with the CSA achieving its regulatory objectives.

We would be pleased to provide any further explanations or submissions with respect to matters discussed above and would make ourselves available at any time for further discussion.

Yours truly,

Barbara Palk
President