



October 17, 2006

British Columbia Securities Commission
Alberta Securities Commission
Saskatchewan Financial Services Commission
Manitoba Securities Commission
Ontario Securities Commission
Autorité des marchés financiers
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, Yukon Territory
Registrar of Securities, Nunavut

c/o John Stevenson, Secretary
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Suite 1903, Box 55
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email: jstevenson@osc.gov.on.ca

and

Anne-Marie Beaudoin, Directrice du secretariat
Autorité des marchés financiers
800, square Victoria, 22e étage
C.P. 246, Tour del la Bourse
Montréal (Québec) H4Z 1G3
email: consultation-en-cours@lautorite.qc.ca

Dear Mr. Stevenson and Ms. Beaudoin:

SUBJECT: Proposed National Instrument 23-102 – Use of Client Brokerage Commissions as Payment for Order Execution Services or Research (“Soft Dollar” Arrangements)

I Introduction

Greystone Managed Investments Inc. (“Greystone”) takes pleasure in responding to the Request for Comments to the Proposed National Instrument 23-102 issued by the Canadian Securities Administrators (CSA).

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Incorporated in 1988, to provide investment management to Saskatchewan based institutions, Greystone has grown significantly since then. Greystone now provides discretionary investment management services to institutional clients across Canada. Client assets under management at September 30, 2006 amount to \$27 billion and include public and trade union pension funds, foundations, trusts and endowments, charitable and religious organizations and other corporate accounts. We provide management on both a segregated and a pooled fund basis.

We take our duty as fiduciaries to our clients very seriously, ensuring that Greystone policies are fair and equitable, and all clients benefit from our policies. It is with this in mind that Greystone introduced the use of client brokerage commissions in 1999 under a rigorous policy and procedure regime put in place at that time.

Our “soft dollar” policy is modeled after best practices (CFA Guidelines and OSC Policy 1.9). The Policy sets out the rules under which we use commissions as well as the reporting requirements necessary to provide to clients.

An internal committee made up of Greystone senior managers is struck to be responsible for all aspects of the operation of the policy including evaluation criteria, best execution, selection of brokers, client-directed brokerage, disclosure, and record keeping. That committee is under the oversight of our independent Board of Directors through the Conduct Review and Standards Committee (now the “Compliance Committee”).

The committee is now a sub-committee of the Trade Oversight Committee which is charged with ensuring Greystone attains Best Execution on all of our trading. The reporting remains the same to our independent Board of Directors.

It is against this back drop of an effective process in place since 1999 of:

1. a strict policy governing use of client commissions;
2. full transparency to clients on brokers and commissions utilized;
3. full transparency to clients on services used; and,
4. full transparency to our independent Board

that we have monitored, with keen interest, the events taking place in the United Kingdom (FSA) and the United States (SEC) on using client commissions. We welcome therefore the CSA’s attempt to put some definition on the practice of using client commissions for services used by the managers.

That is not to say that the proposal as presented totally meets with our views as to what would be appropriate hence our general comments and responses to the questions posed in the request for comments attached.

II Greystone Managed Investments Inc. – General Comments Regarding Proposed National Instrument 23-102

1. Broad Objectives

Greystone agrees in principle with the broad objectives and spirit of Proposed National Instrument 23-102. In our view the principle of “best execution” is the common basis of all issues related to clients’ commissions. We believe that there should be clarity with respect to the definition of the investment based services that are appropriate for payment via commission dollars. In addition, it is important that there be high standards of disclosure to clients of the details of commission usage. In short, the same standards of fiduciary care should apply to trading execution costs as apply to the management of the securities themselves.

With respect to the some of the specific details of the Proposed National Instrument 23-102, we have some suggestions as to how it could be improved.

2. Term “Soft Dollars”

During the past several years, security regulators globally have focused attention on what should encompass the best practices for the treatment of client commission dollars. Indeed many positive principles have been developed as a result of these reviews.

The term “soft dollars” has a history related to industry practices and processes, some of which date back a half-century or more. Unfortunately, the term has very negative connotations, especially for the uninitiated. At best it is confusing and at worst, suggests unethical, underhanded, if not illegal conduct.

We believe that the implementation of National Instrument 23-102 would be an opportune time to officially discontinue its usage. If a broad objective of National Instrument 23-102 is to provide clarity, transparency and a sense of integrity to client brokerage commission practices, then further institutionalizing the term “soft dollars” in regulations would be totally counterproductive. Greystone does not believe that there should be a distinction between “brokerage services” and other “third party services.” Accordingly, the reference to “soft dollars” should be discontinued at the regulatory level.

The British Financial Services Agency (FSA) uses the descriptor “Legitimate Use of Commissions” and the US Securities Exchange Commission refers to it as, “Commission Guidance Regarding Client Commission Practices”. The point being that these newly defined policies are totally prudent, ethical and in clients’ best interests. Using the term “soft dollars” adds nothing and in our opinion is a significant detractor.

We suggest that a descriptor such as “Commission Related Investment Services” would be more appropriate.

3. Definition of “Non-permitted Goods and Services”

Greystone concurs with the need to define what “is”, and what “is not”, an appropriate commission related good or service. Nevertheless, there are instances where a blanket classification is not appropriate and caution should be exercised in rigidly applying conceptual definitions of “order execution” and “research”.

In our view, the two key defining criteria are:

- Is the good or service a direct and integral part of the advisor’s investment decision making process?
- Is the good or service (adjusted for “mixed use”) exclusively in clients’ best interests?

These criteria clearly exclude many of the same goods and services (e.g. rent, salaries, furniture, seminars etc.) that are identified as “non-permitted” in the Proposed Instrument. There are however other cases where the determination of eligibility may not be as clear cut. Whether these goods or services meet the above criteria will depend upon the advisor’s investment process and the arrangements he has with his clients.

For goods and services such as this, we believe the role of the National Instrument should be to:

- Identify specific goods and services that require special assessment as to their eligibility.
- In cases where an advisor utilizes these services, require them to provide detailed disclosure that demonstrates why the good or service is appropriate in the context of its investment management process and the arrangements it has with its clients.

This then places the onus on investment managers to demonstrate to clients how their commission dollars have been optimized for those services whose appropriateness may not be readily apparent.

In Section III *Comments on Specifically Identified Issues*, Greystone details its position on the permissibility of several goods and services; this includes:

- Question 3 - Trade Order Management
- Question 4 – Post-trade Analytics
- Question 6 – Raw Data
- Question 5 – Proxy Voting Services

Each of these services is an integral part of Greystone’s investment decision making process and is a part of the management arrangements we have with our clients. In addition, we believe that each, in whole or in part, serves the exclusive best interests of our clients. Accordingly, in our view, they qualify as appropriate for commission payment arrangements. We are fully prepared to provide detailed explanatory disclosures regarding these goods and services. This would be above and beyond the current disclosures that we provide to each of our clients regarding commission payment arrangements.

4. Disclosure Obligations

Equal Treatment

Greystone believes that there should not be any distinction as between goods and services provided by brokers and those provided by independent third parties. From a client's perspective, they are all expenses that are being paid for with commission dollars, all of which are drawn from the same custodial account. Accordingly, complete clarity is required for both. It is therefore puzzling why the Proposed Instrument suggests that there should be differing standards of disclosure, depending upon the provider of the good or service.

The transition to a much expanded usage of "transaction only" trading/commissions will necessitate brokers explicitly pricing their goods and services (e.g., refer to Part III Answer 2). We see no reason why these details would not be readily available to investment managers, which they in turn would disclose to clients, on the same basis as third party items. To require less than uniform disclosure would only serve to perpetuate the myth that "broker based" goods and services are somehow unique and therefore should be afforded some special status.

Comparative Transaction Costs

Section 4 (b) through (d) of the Proposed Instrument, details the disclosure requirements for investment managers to their clients. This includes:

"In addition, advisors are also required to estimate and disclose the weighted average brokerage commission per unit of security corresponding to the commissions underlying each of these percentages".

We assume that the reason for this disclosure is to provide a basis of trade cost comparison among the various categories outlined. Although we do not dispute the need for such a comparison, we strongly disagree with the view that "commission costs" are the equivalent of "transaction costs". They are by no means one and the same.

In addition to commission costs, market impact must also be considered when assessing the full transaction cost of a trade. Indeed market impact in many cases is the most significant part of a trade's total cost. To simply disclose commission cents per share as a comparative measure of transaction costs would be very misleading and lead to very erroneous conclusions. Therefore in Greystone's view, if some comparative measure of transaction costs is to be disclosed, then it should be a complete measure; one that includes market impact as well as commissions.

There are several independent services that analyze an investment manager's trade costs. Market impact costs are typically included in these analyses. Greystone subscribes to one such service. An aspect of Greystone's trade cost report is an analysis of trades whose commissions were used to buy execution and research services. Details of this analysis are included in our annual disclosure to clients.

5. Transition Period

Adopting and implementing the commission management and disclosure standards contained in Proposed National Instrument 23-102, will involve a sea change of adjustments for all related participants. It will require major changes in process for brokers, investment managers and clients alike. Arguably, some such change is overdue; however, it must also be recognized that existing procedures are the consequence of a half century of industry practice and tradition. Accordingly, existing procedures or the lack thereof are deeply embedded. Because this constitutes such fundamental change, we believe that in addition to very material costs (far in excess of those estimated in Appendix A: Cost Benefit Analysis); a significant transition period will be required for participants to adapt. Indeed, this adjustment period will occur whether regulators officially plan for it, or not.

Brokers

Canadian broker/dealers will have to come to grips with implementing competitive business plans that will incorporate “execution only” trading at their core. In theory execution only trading has been possible since commissions became negotiated in the late 1970s, but in practice, the industry has continued to operate according to “bundled commission” business models. Now that bundling will no longer be the industry norm, all brokers will be required to cost out their various services. Presumably, investment managers and their clients will demand and accept nothing less.

Brokers will not know for certain what the appropriate price of their various services is until they are subjected to the scrutiny of the marketplace. Realistically, the process of establishing and verifying competitive price points, will take several quarters to fully establish.

Investment Managers

The challenge facing investment managers, as it relates to the Proposed Instrument involves the practicalities of defining, developing and implementing appropriate management information systems. Such systems must have the capacity to assess, monitor and ultimately disclose the entirety of a manager’s commission management arrangements, on an extremely detailed basis. Putting such a system in place will not be an incidental undertaking. It will take considerable time and represent a very material incremental systems cost.

There are independent firms that specialize in the design and ongoing maintenance of commission management software. However, even if managers engage such firms, it will still be necessary for them to undertake major projects that involve: identifying and detailing their specific requirements; finding and customizing third-party software; and implementing a trial development period. In Greystone’s view, a period of at least several quarters will be required for managers to fully establish the necessary management information and reporting systems.

Clients

Greystone's impression is that the general level of understanding among Canadian pension fund trustees regarding "soft dollar" issues is extremely low. Because of this, most investment board members either are not aware of or do not appreciate the relevance of these issues to their fiduciary responsibilities. Trade costs, including those used for other services, are relevant, because they are expenses that are borne directly by the investment portfolio. Trustees have a responsibility to ensure that all such costs are appropriate and represent value. Of course, for this to occur, the specific expenses must be transparent and appropriately disclosed.

For this reason since 1999, Greystone has annually disclosed details of its "soft dollar" arrangements on a client-by-client basis. In spite of this, we are not confident that all our clients necessarily have a complete appreciation of the related governance issues. Therefore, we believe the introduction of the National Instrument will represent a new and material addition to trustee oversight responsibilities.

In preparation for this, many investment boards will require considerable background briefings on the National Instrument before they can begin to consider the bases of the disclosure/communication relationship they wish to have with their investment managers. This process of education and consultation by trustee/investment boards will require considerable time to fully assimilate and complete.

6. Proposed Transition Milestones

Given the necessity of time for all major entities to prepare for and adjust to the scope of new commission usage standards, as outlined in the Proposed Instrument, Greystone recommends the CSA develop a series of realistic milestones that will guide the industry towards full compliance. If such milestones were established in consultation with industry participants (i.e. broker dealers, investment managers and clients), it would clarify expectations as to how and when industry wide compliance to these new standards will be achieved.

For example, three milestone dates that Greystone considers critical are:

1. The date by which investment managers should have completed their firm's Commissions Usage Policy. By this date managers should have forwarded copies to each of their clients and filed it with their principle regulator.
2. The date by which investment managers will have disclosed their firm's aggregate commission payment arrangements (as per the National Instrument definitions) to their clients and principle regulator.
3. The date by which investment managers should be in full compliance with all aspects of the National Instrument. In particular, this would include detailed disclosure, on a client-by-client basis, of commission usage.

In instances where an investment manager is unable to meet a particular deadline, the transition process should provide a means by which the manager can apply for an extension. This would involve a submission to the investment manager's principle regulator outlining the reasons why an extension is necessary and the revised date as to when the milestone will be met. In addition, it would be necessary that copies of this submission be sent to each of the manager's clients.

III Comments on Specifically Identified Issues

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?

The Proposed Instrument should be extended to principal trading in OTC markets. For many years there have been proprietary broker-based fixed income research services that have been paid for via the commissions implicit in bond spreads. The calculation of the dollar amount is quite straight forward: A) Broker/dealers place specific prices on each such research service. B) After the execution price of the trade has been agreed to, an extra amount is added and is identified as a research service payment. Please refer to earlier comments regarding Disclosure Obligations.

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?

Historically, with "bundled commissions", there has been vagueness as to exactly what portion of the commission was for execution and what related to research goods and services. Prospectively however, with the implementation of the Proposed Instrument, we anticipate that "execution only" trades will become more commonplace. As a result, industry norms will evolve as to what represents a competitive "execution only" commission for a particular trade. As this process unfolds, there will be far greater clarity as to what price is being paid for goods and services relative to their value.

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 trade order management system used by Greystone has three primary functions: blotter, workbench and a pre-trade compliance engine.

The blotter facilitates the order entry, splitting orders for multi-day trades, routing orders to traders, merging multiple intraday trades, automates pro-rata trade allocation, captures broker, commissions, notes (e.g. for soft dollar trades or cross trades). Each of these sub-routines is integral to Greystone’s trading process; therefore, in our opinion, the *blotter* function meets the definition of “order execution services”.

The workbench generates scenario analysis. For example, increasing a position weighting consistently across multiple clients’ portfolios, buying or selling an entire position, facilitating trading to all accounts in a particular mandate/category e.g. small cap. The workbench is also frequently used for trade allocation to multiple clients. In addition, the *workbench* is used for scenario analysis that does not involve trading activity. Therefore, because *workbench* functionality is a combination of trade facilitation and a trade analysis tool (i.e. best execution at a macro level); Greystone believes that it meets the definition of “order execution services”.

Pre-trade compliance reduces trading errors by flagging non-compliant trades prior to execution. This in turn reduces time and costs of settlement issues with trade errors (e.g. correcting the trade prior to settlement). Arguably, because avoiding errors is a key component of cost control (a responsibility of the investment manager), *pre-trade compliance* should not be considered a part of “order execution services”.

Question 4:

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

Yes, post-trade analytics should be considered an order execution service. Greystone believes that the fundamental objective of all its trading is to achieve “best execution” for its clients. In our view, “best execution” is a process not an event. A key part of our ongoing process is an assessment of past trading, on both an absolute and comparative basis. Insights gained here provide a basis for improvements in future trading; for example, the efficacy of particular trading tactics and the selection of broker/dealers.

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.?

Differential treatment of eligible goods and services as between regulatory jurisdictions could cause problems, particularly if the differences are between Canada and the US. Many Canadian investment advisors also manage investments for US clients and therefore are also regulated by the Securities Exchange Commission. Complying with two materially different compliance disclosure standards would, at best, impose a significant administrative burden. Differences already exist as between Canadian and US investment management fee schedules. A more restrictive interpretation of “eligible goods and services” conceivably may provide a basis for an upward reassessment of Canadian investment management fee schedules.

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?

Greystone does not agree with the view that data must be subjected to analysis, manipulation, or intellectual rigor, in order to meet the qualifying definition of “research”. We believe there are many instances where raw data adds value to the investment decision making process. Excluding raw data as an appropriate good or service ignores two important considerations:

Timeliness – Although much raw data does ultimately become widely available in the public media, it is not on a real time basis. The fact that real time data must be purchased from specialty vendors attests to this. Having immediate access to real time data does add value regarding investment and trading decisions that must be made on a time sensitive basis. Conversely, the value of the data depreciates quickly as it becomes widely available and dated.

Investment Process - Many investment management decision making processes utilize raw data as the sole input. These investment decisions do not rely on qualitative assessments rather they are based on the output of dynamic quantitative models. Accordingly, real time raw data is the “research service” for these models. If raw data is excluded as an eligible “research service”, it would be very prejudicial to quantitative managers and their clients.

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?

For several years, Greystone has been utilizing client commissions to pay for proxy-voting services. The critical component of the service is a comprehensive analysis of individual proxy resolutions, followed by a specific recommendation in the context of Greystone's Proxy Voting Guidelines.

Greystone is of the view that the proxy voting process it follows is in clients best interests and adds to the overall investment decision making process. Specifically, ensuring that investee companies are following appropriate standards of corporate governance is integral to our investment process. Provided that proxy research is an integral part of a proxy-voting service, Greystone believes that the proposed instrument should include it as an eligible investment research service.

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)?

Historically, Greystone has not used client commissions for goods and services that it deemed to be "mixed-use". In our view, all "mixed-use" goods and services are open to differences of opinion as to the appropriate split between manager and client. A possible pragmatic approach for managers would be to make allocations as judiciously as possible and include their underlying rationale as part of the disclosure process to clients.

Question 9:

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

Clearly, information gleaned from many mass-marketed or publicly-available information or publications can be a material part of an investment decision making process. However, how well most of these publications meet the tests of analytical rigor and timeliness is open to debate. Accordingly in most instances, these are costs that should be borne exclusively by the investment manager.

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?

Other than the aforementioned views related to order management systems, post-trade analytics, raw data and, proxy voting services, Greystone does not believe that there are other major goods or services that currently should be deemed eligible for commission payment. Alternatively, we do not perceive that any of the goods and services deemed appropriate by the Proposed Instrument should be excluded.

Question 11:

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

In Greystone's opinion, there is a strong case to be made for ultimately prescribing the form of commission disclosure to clients. Indeed, this could go as far as determining formatting details. The reason for this relates to client needs and the fundamental objective for them to have complete transparency regarding brokerage commission management. Many Canadian institutional funds, including pension plans, have several investment advisors that manage the same asset class – e.g. equities. Therefore, to facilitate report consolidation and comparisons among managers, a common basis of disclosure in the same format would have clear advantages for clients.

Although Greystone generally agrees with the nature of disclosure outlined in the Proposed Instrument, we strongly recommend that **specific prescribed disclosure requirements and formatting should not be unilaterally imposed without extensive consultation with clients**. There is a wide spectrum of existing reporting arrangements between investment managers and their clients. Given that the Proposed Instrument is for the benefit of clients, it is important that these reporting relationships be considered. In our view, it is unlikely that clients will know the detail of disclosure they require, until they have had an opportunity to receive and study initial draft reports from their managers. Given time and a focused consultation process, perhaps a consensus could be reached on these details.

Greystone recommends that the CSA organize a formal working committee comprised of client and investment manager representatives. The committee's mandate would be to formulate a recommendation regarding appropriate prescribed disclosure, including perhaps the details of a reporting format(s).

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?

Refer to the response to Question 11.

Question 13:

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

Greystone has been reporting to clients since 1999 on the details of goods and services paid for by commission dollars. The reporting has been done annually on a calendar year-end basis. This arrangement seems to have worked well as it conforms to the calendar year budgeting processes of both our clients and Greystone. There have been no requests for reporting on a more frequent basis save for mutual funds which are subject to the requirements of National Instrument 81-106 that requires semi-annual reporting.

Question 14:

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

Despite the fact that Greystone has been reporting to its clients since 1999 on commission payment arrangements, the level of disclosure contemplated by the Proposed Instrument will be at a significantly higher level. But because Greystone is in full agreement with the broad objectives of the Proposed Instrument, it is prepared to do whatever is necessary administratively to fully comply with these new standards of disclosure.

However, the CSA should be aware that it will take time for Greystone to fully meet these new reporting requirements. Specifically, software applications must be developed, installed and tested. Software vendors, based in the UK and the US, have developed and are offering packages that address the various aspects of client commission management. Understandably, these software applications have been designed to comply with UK and US regulatory requirements. To date we have not yet found a software package that fully satisfies Greystone's needs and the likely disclosure requirements of the Proposed Instrument. We are nevertheless confident that appropriate applications will be developed in due course. Much will necessarily depend upon the timing of the finalization of the National Instrument.

Please refer to our earlier comments regarding a transition period.

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 subsection 4.1(c) of the Proposed Instrument, to the extent they can be reasonably estimated?

Given the inherent uncertainties regarding the “effective commission” on “net” equity trades, any approach to establishing commissions, whether on an aggregate or a trade-by-trade basis, will at best be an approximation. Greystone believes that the clearest disclosure is achieved by applying a percentage to the aggregate amount of principal trading. In addition, there should also be a descriptive disclosure as to how the percentage applied was established.

Yours truly,

Greystone Managed Investments Inc.

Greystone Managed Investments Inc.

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