October 18, 2006

British Columbia Securities Commission
Alberta Securities Commission
Saskatchewan Financial Services Commission
Manitoba Securities Commission
Ontario Securities Commission
Autorité des marchés financiers
Nova Scotia Securities Commission
Prince Edward Island Securities Office
Securities Commission of Newfoundland and Labrador
Registrar of Securities, Department of Justice, Government of the Northwest Territories
Registrar of Securities, Legal Registries Division, Department of Justice, Government of Nunavut
Registrar of Securities, Government of Yukon

c/o John Stevenson, Secretary
Ontario Securities Commission
20 Queen Street West
Suite 1903, Box 55
Toronto, Ontario M5H 3S8

- and -

c/o Anne Marie Beaudoin
Directrice du secrétariat
Autorité des marchés financiers
Tour de la Bourse
800 square Victoria
C.P. 246, 22e étage
Montréal, Québec
H4Z 1G3

Dear Sir or Madam:

Re: Proposed National Instrument 23-102 - Use of Client Brokerage Commissions as Payment for Order Execution or Research

Thank you for the opportunity to provide comments on the proposed National Instrument 23-102 – Use of Client Brokerage Commissions as Payment for Order Execution Services or Research (NI 23-102).

About Commission Direct Inc.

Commission Direct Inc. (CDI) was established in 1992 to help institutional investors pay for qualified independent research and brokerage services with commission dollars. As much as we help advisors pay for research services, we help independent research providers compete for a share of the advisor commissions spend for investment decision making services. In addition, CDI provides discount trading to money managers and commission recapture services to pension plans.

CDI is a member of the Investment Dealers Association and is regulated by Market Regulation Services. A more detailed look at CDI and the services it provides is available at www.commissiondirect.com.

Context in which we make our comments

Our comments on proposed NI 23-102 are focused on the arrangements between registered advisors (money managers) and investors who place their funds under the management of money managers for a fee. This management fee secures the money management services of the money manager but does not cover the costs incurred with respect to the client's portfolio transactions which costs are colloquially referred to as "commissions".

"Commissions" are fully disclosed on trade contracts and cover payment for a bundle of services including trade execution, research and related investment-decision making services. Until regulatory changes were made that allowed commissions to be negotiable (1975 in the United States and 1983 in Canada) these services were only available on a bundled basis from full-service investment dealers. Once commissions were deregulated, the services became available on an unbundled basis both from full service dealers and from independent providers of research and related investment-decision making services. Many full service dealers started to allow money managers acting on behalf of their clients to direct some of the commission dollars to third parties to acquire such services. New single purpose brokers began to service the independent research market.

Unfortunately, the ability to unbundle or identify trade execution costs from the other services covered by commission dollars (the commission spend) led to the view that the balance of the commission spend was an inappropriate cost to be borne by the client. This situation was aggravated by some questionable services being included.

We firmly believe that when investors hire an advisor, they expect that advisor to use all the tools available to him/her including outside research to make sound investment decisions. In this context, the benefit of the commission spend belongs to the clients and that money managers have a fiduciary responsibility to those clients to ensure that the total commission spend relates to their interests whether it is used to acquire trade execution and/or research and related investment decision making services. We have structured our business operations to assist money managers in carrying out their fiduciary obligations.

Regulatory treatment of eligibility of services, accountability of financial advisors and disclosure requirements on the commission spend has a profound impact on the viability of the Canadian money management industry domestically and internationally. Money management may be the most portable industry on earth and easily moves to the most hospitable location. It is important that Canadian regulators recognize this and ensure that their requirements are consistent with those of the competing marketplaces – the United States and the United Kingdom.

General Comments

We strongly support the CSA in their initiative to improve disclosure on the money manager's use of client commissions and to provide greater clarity as to what services qualify for payment with those commissions.

We believe that regulatory harmonization both domestically and internationally is important as it concerns commission use and linking those who pay the commissions with the benefits received is paramount.

Concern expressed about the conflict of interest facing money managers spending client commissions to pay for research and brokerage services is valid. However, it is important to recognize that there would be an equal or greater conflict of interest facing money managers if they could not pay for research and related investment decision-making services with client commissions. If this were the case, money managers would have to make a decision each time they bought investment advice or brokerage services, whether or not, to cut into their profit margins to pay for additional inputs. British, American and Canadian Regulators have chosen wisely to permit advisors to pay for research, related investment-decision making and brokerage services with client commissions and to create a system where transparency and disclosure will prevent abuses.

In creating such system, it is essential that regulators recognize that investors have a choice in having their money managed to have it managed actively or passively. If commission payments are a concern, the investor may want to choose a passive manager who pays execution only commission rates. An active management mandate will require more research inputs to identify trading opportunities where overvalued securities are sold and undervalued securities are purchased. Tying research costs to various transactions keeps these costs variable since they are only paid when a transaction is executed and more than an execution only commission is paid. Linking research costs with transactions aligns the interests of advisors to their clients as they continually use research to identify miss-priced securities and execute trades on behalf of their clients to increase the value of their portfolio.

Proposed National Instrument 23-102

Defining Principle

Our understanding is that NI 23-102 is intended to be "principles based" and provide guidance for the use of client commissions. This being the case, it is important to clearly articulate its fundamental guiding objective that would become the "defining principle" against which to measure the implementation of its goals and provide for consistent interpretation.

The CSA has set four goals for this policy initiative:

1. To provide investors with more information about their advisor's use of soft dollar commissions.

2. To harmonize the rules for goods and services that can be purchased with client commission across the CSA and to take into account international developments

3. To clarify which goods and services can be acquired with client commissions and to assess their true management expense

4. To increase confidence that commissions are ultimately benefiting those that pay them

These goals are indicative of a regulatory intent to align the interests of the investor and the advisor or money manager. We recommend that this be clearly stated as the fundamental defining objective or principle of the policy and that this be accomplished by adding a simple statement that: "The objective of NI 23-102 is to provide a framework that aligns the interests of the investor and the money manager or advisor."

The addition of such a statement would:

- Tie the CSA's goals together much more effectively under the umbrella of the proposed overall objective.

- Make it easier to define the scope of each goal so that only meaningful information need be provided.

- Make it easier to define and eliminate inconsistencies.

The adoption of this objective will also insure that the interpretation of the requirements of this Instrument as it addresses innovation and change will remain consistent.

Specific Concerns

We have some concerns that as proposed NI 23-102 has some serious shortcomings in that it does not meet impartiality standards that would treat all investors equally, it does not harmonize with regulation in the United Kingdom or the United States of America and it places onerous and costly disclosure demands on money managers which do not appear justified as measured against meaningful disclosure.

More specifically, we are concerned that the proposed instrument:

- Is inconsistent with regulatory treatment of commission use in the USA and accountability standards in the United Kingdom. The impact of this is discussed below under the heading Inconsistent Regulatory Treatment.

- Does not recognize that Canada's markets are tiny as related to the global markets for equity securities. Canadian investors would be much better served by a money management industry comprised of both large and small firms competing in a meritocracy where ease of entry insures innovation and competition.

- Clings to the "soft dollar" term that other regulators have recognized as having served its time and have dispensed with because the term is confusing and leads to the treatment of research based on source rather than content as well as having taken on a pejorative connotation.

- Imposes unnecessary disclosure and record keeping at the Advisor/money manager level (that will add to costs) with no demonstrable benefit to the investor.

- Discriminates against certain styles of money management through prescriptive definitions of permitted services.

- Fails to recognize that advisors outside of Canada can compete very effectively with domestic managers for Canadian mandates. Any cost advantages enjoyed by these international advisors could translate into the decimation of the Canadian money management industry.

- Fails to recognize that "money management" is a very transportable business where each function can be located where the regulation and the cost structure are most favorable. Initially, multinationals will take advantage of regulatory inconsistencies by relocating their research departments in the USA if the proposed Instrument is not changed. Domestic advisors will eventually have to make the choice of accepting lower margins as research cost are shifted to them or moving to more receptive jurisdictions. Hollowing out Canada's money management industry would not be in the interests of investors or advisors.

<u>Inconsistent Regulatory Treatment</u>

Inconsistent regulation in the USA and the United Kingdom (see attached table comparing regulation and definitions in the United Kingdom, the USA and Canada) makes it impossible to harmonize Canadian policies with both of those countries. The

CSA must determine the most favorable alignment of its requirements respecting the use of commission dollars with those regulators.

FSA Policy Statement 05/9 vs. SEC Section 28(e) – Research & Brokerage Services

FSA Policy 05/9

- The FSA Policy favors using more prescriptive definition of permitted services and is more restrictive on the use of commission dollars (dealing commissions) to buy research than the SEC**.**

- The FSA restrictions transfer more costs from the investor to the advisor; thus increasing fixed costs and lowering variable costs

- The FSA Policy favors larger advisors that can absorb these costs.

- Ease of entry into the money management business restricted by increased costs

SEC Section 28(e)

- Is less prescriptive and allows more latitude in defining permitted services resulting more use of client commissions to purchase research, investment decision-making and brokerage services

- Results in overall costs borne by investors remaining more variable – costs for research are only incurred when a trade is executed and a commission greater than execution only level is paid

- Does not discourage larger advisors but protects viability of smaller money management firms

- Ease of entry into money management business not restricted by the costs

CSA Proposed NI 23-102

- Is more restrictive in defining permitted services than the SEC

- Transfers more costs to advisor – raises fixed costs – lowers variable costs

- Favors “big is beautiful” in order to absorb more costs

- Makes entry to money management industry more costly

- Could lead to more consolidation and less competition where today’s meritocracy would disappear – Investors lose.

Commentary

The CSA's decision to align with the FSA in restricting permitted services is not optimal.

The Canadian market is small and is best served by a money management industry in which all sizes of money managers can compete. The FSA treatment of permitted services transfers more variable research cost from the investor to the advisor. This transfer obviously favors larger managers with deep pockets and promotes consolidation.

The CSA must align more with the SEC in its permitted services definition to protect the viability of small firms, encourage competition and new entry and not lose research functions and managers to the USA.

As well most of Canada's qualified money managers are Chartered Financial Analysts and have the ability to evaluate research and related services to make investment decisions. The arbitrary decision that CFAs domiciled in Canada cannot use commissions to acquire services like raw data and publications to compete with American CFAs (hours away and in the same time zones) does not bode well for the Canadian industry.

FSA 05/9 vs. SEC Section 28(e) – Accountability & Disclosure

FSA 05/9

- Bundled and third party research treated the same (by content)
- Commission spend must provide value to advisors' clients
- Requires disclosure of commission allocation policies, a description of the service and why commissions were used to pay for it, research cost breakdown and evidence that final cost of research has been negotiated (implies a need for monetization of research)
- Disclosure of those paying for the service and those benefiting from its use

SEC Section 28(e) and Advisor Act Form ADV

- Bundled and third party research treated the same (by content)
- Commissions must be reasonable in relation to the value of the services acquired
- Requires disclosure of commission allocation policies, description of services acquired linked to brokers providing them – at present no costing of each service is required but a "concept paper" is expected shortly to add disclosure and accountability factors so that plan administrators are not blind to commission expenditures
- Disclosure of those paying for the service and those benefiting from its use

Proposed CSA NI 23-102

- Bundled and third party research treated differently
- Commissions must be reasonable in relation to the value of services acquired
- Does not require commission allocation policy and only requires an overall description of bundled research services acquired – no monetization.
- Third party research accounted for separately and monetized
- Disclosure of those paying for a service and those benefiting from its use

Commentary

We believe that disclosure requirements in the US Advisor's Act and Form ADV Part II are very close to the new FSA disclosure standard in England. The CSA's proposed NI 23-102 is more closely aligned with SEC Section 28(e) as it stands today. The expected SEC concept paper could easily call for additional costing or monetization of bundled research to address the concern expressed by an SEC commissioner that plan administrators are blindfolded to plan commission costs. Should this take place, Canada would be left behind in disclosure standards by failing to require disclosure of the advisor's commission allocation policy and by failing to require monetization of bundled research and related services.

Proposed NI 23-102 differs from other regulatory rules in that it does not call for a commission allocation policy from advisors. Most money managers have commission allocation policies. Other regulators recognize that investors need these policies to evaluate and anticipate advisors' use of plan assets. These policies can be used as a benchmark to compare the actual commission spend.

Unlike the UK and the USA, proposed NI 23-102 treats bundled and third party research differently for accounting purposes. To our knowledge, this is the first time that a regulator has distinguished research based on source rather than content. There is no basis for this choice which places additional compliance costs on Canadian money managers. It discourages the acquisition of third party research possibly penalizing investors and adds a sales hurdle to independent research providers. The disclosure of the overall cost of research as related to assets under administration along with a description of the research received is far more meaningful to the investor than separating such research by source

The global direction on accountability and disclosure requirements is clear. Why not demand standards at least as high as England and force industry participants to innovate, cooperate and produce the necessary reports now.

Terminology

Regulators in the United States and the United Kingdom as well as the CFA Institute have recognized that the term “soft dollar” is confusing; has served its time; dropped it; and now target the entire commissions spend. They recognize that investors are more interested in their commission costs as related to assets under administration. Those who are interested in breaking out research costs from overall commission are not interested in research origin – if they are they can go directly to their managers.

The term “soft dollar” is probably the most hated and misunderstood term in our industry. Unfortunately, when misused publicly by industry participants or the press, regulators have never stepped in to demand correction or amplification. A good example is the statement by a number of US Mutual Funds that they no longer “soft”, yet they continue to pay full commission rates to bundled dealers. If the CSA insists on retaining the term, Canadian regulators must commit to ensuring that it will not be misused in the public press or by industry participants.

The term “soft dollars” confuses investors and serves no purpose because on any trade (especially with a bundled dealer) the execution costs can change and the portion of the commission going to other services not disclosed.

The term “soft dollars” is used in NI 23-102 to distinguish research by source whereas content is a much better measure of research value.

We urge regulators to ensure that the accountability and disclosure standards targeting research and brokerage expenditures treat all research, whether bundled or independent, equally as part of the commissions spend. The proposed NI 23-102 will not do this as long as “soft dollars” only target independent research. Regulatory discrimination in requiring more disclosure for independent research seriously impairs the competitive position of independent research providers.

Much better disclosure measures for commission expenditures have been introduced by commission management systems hosted by Cogent Consulting in the USA and Rontech in England. Both firms currently market their systems in Canada. We urge the CSA to take these into account.

We urge the CSA to join their regulatory counterparts in England and the USA by targeting the entire commissions spend for disclosure and accountability. Disclosure and accountability requirements cannot favor one provider of research over another.

We favor more disclosure on all commission expenditures on an unbiased basis. More accountability for commission expenditures will result in more execution only trading as total research costs come under more scrutiny and limits are placed on the total spend for research. Execution only commissions, once disclosed, will attract more analysis, more comparison and therefore, more competition.

Test of Time

If you review the attached "Framework Respecting the Use of Commission Dollars to Acquire Goods and Services" and the letter written to the then Chairman of the Ontario Securities Commission (Edward Waitzer) you will find that the recommendations in this framework have withstood the test of time. One of the prime tenants of that framework was to drop the term "soft dollar" and to focus on the appropriate or acceptable use of commissions.

This document was part of our submission to the Financial Services Authority (FSA) in England, to the United States Securities and Exchange (SEC) and to the CFA Institute in response to their respective requests for comments. All of these bodies saw the merits of the Framework's recommendations and have revised (or are in the process of revising) their policies to deal with trading commissions and you will not see the term "soft dollar" in their revised policies.

This "Framework" was not the work of one firm or individual. The Framework incorporates contributions from a broad cross section of Canada's investment industry and has served as an operating and regulatory guide for the industry. The Framework's content and recommendations are as valid now as they were then and we urge the CSA to adopt the recommendations in this submission.

Mandated Disclosure – Use vs. Cost – Material vs. Immaterial

We strongly believe that the CSA is correct in using transparency and disclosure to make advisors more accountable to their clients. However, disclosure has costs attached, both in monetary expenditures and time commitments. If investors don't care or don't want details of certain processes or expenditures, then money managers should not have to bear the expense of providing that information. Using the attached table outlining different regulatory treatment of commissions, we question the need for disclosure of the following items:

- Commissions by asset class. Trading activity by asset class will vary depending on market conditions, interest rate movements, rebalancing etc. One should not expect consistency from one period to the next. It is the total commission cost related to assets under management that investors care about and that they can understand.

- Distinguishing treatment of bundled and third party research. Research is research regardless of the source.

- Date goods or services were received. The requirement for this disclosure involves tremendous time and expense on part of the advisor to log phone calls, emails, report reception and the like. We question the relevance of this information to investors and fail to see how investors would or could use this very costly information.

- Breakdown of execution only commissions by asset class and broker. These statistics would only confuse investors and require that money managers tip their hand to competitors as to how they do business.

Style Discrimination Present in NI 23-102 Must be Eliminated

- Classifying raw data as not permissible research service disadvantages quantitative and momentum investors that need this data to build and test investment models. Quantitative analysts are constantly mining raw data to find security relationships, reversion trends and historical reactions to economic stimuli to identify investment opportunities. As competitors discover these same opportunities, they have to move on to new tests. Only raw data can be used for this type of research.

- The blanket removal of investment seminars from the permitted list hurts small advisors, especially those specializing in exotic areas or high tech areas where the fast pace of change requires constant upgrading of knowledge and innovation. Many industry leaders will only address the investment community through public seminars where all attendees have equal access to their presentations. Seminars with more social content than research content can be disqualified.

- Industry Publications are a "must have" for advisors attempting to stay abreast of change and opportunities in specific industries. Advisors should be able to use commission dollars to obtain these aids to investment-decision making.

Conclusion

In conclusion, we urge the CSA to modify NI 23-102 to provide for:

- Aligning NI 23-102 to conform most favorably and strategically with the policies of other regulators to protect Canadian investors and provide the best environment for investment.

  In this respect, we recommend that NI 23-102 adopt the SEC definition of permitted services as being much more aligned with Canada's need for market participants of all sizes and entry costs being kept to a minimum.

  The FSA's more stringent demands on disclosure and transparency in pricing research may be more difficult to comply with short term. However, if plan administrators or trustees are to get value from their commissions spend, they must have that information. Research providers will become more efficient in delivering only value added services.

- Introducing an overall objective into NI 23-102 to expressly align the interests of the investor and the money manager. This will serve as the underlying guiding principle of a principles-based system that can protect the investor and retain the flexibility necessary to allow innovation. Expressly aligning the interests of the investor and the advisor will serve as the back-drop to all future interpretation of the rules.

- Eliminating the term “soft dollar’. The term soft dollar has served its time. Let it go and stop the discrimination against independent providers. Treat research as other regulators treat it – by content not source.

- Ensuring that additional disclosure requirements serve a purpose. The acid test is whether investors will actually use the reports generated.

  Canadian regulators could take a leadership role by allowing services that enhance compliance reporting as permitted services. The investor pays for compliance sooner or later. Full disclosure of the price of compliance may result in marginal requirements being dropped or at least minimized to save money without sacrificing protection.

- Recognizing that shifting variable costs from the investor to fixed costs for money managers sets up conflicts of interest between the investor and the money manager and must be minimized. The investor eventually pays for research and is better served by attaching costs to transactions.

- Eliminating the prescriptive regulatory definitions in NI 23-102 of permitted services that favor one style of money management over another.

We believe that these recommended changes in the proposed NI 23-102 will level the playing field for Canadian advisors competing at home and abroad for money management mandates. Investors will be well served and have more and better information from which to make decisions on advisor selection. The Canadian money management industry will remain competitive and grow as a meritocracy to the benefit of Canadian investors.

Yours very truly,

Commission Direct Inc.

Wayne B. McAlpine, President & CEO

COMMISSION DIRECT INC. RESPONSES TO SPECIFIC QUESTIONS ASKED IN PROPOSED NATIONAL INSTRUMENT 23-102

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 only way that client funds should be used to pay for research and brokerage services is on a fully disclosed basis. The trade contracts, whether they cover principal trading in an OTC market or agency trading in any market must disclose the gross trading spread or dealing commission. In fact on a principal trade contract, only disclosing the amount used to pay for eligible services need be done. This disclosure provides investors the transparency that they need to determine the price paid for bundled and or third party services combined with trade execution costs. Allowing principal trading spreads to be used without disclosure on trade tickets would obscure any audit trail available to regulators or investors when attempting to determine that fair prices were paid for a service. For example, an internal cross of corporate debentures to rebalance holdings in client accounts under an advisor could be done net, with undisclosed exorbitant spreads to pay for bundled debt research and go totally undetected by investors paying for the service or regulators examining the advisors trading blotters.

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?

Value by Price Paid
Bundled research is not priced as a total service or by its component parts. The absence of a robust, independent commission management system (this system can be created and managed internally or purchased and hosted externally) makes it all but impossible <u>to monetize the value of bundled research</u> or execution services paid for with commissions. The only way to relate value of a service and price is to examine them in the same currency. Independent firms like Rontech (UK) and Cogent Consulting (USA) are actively marketing their services in Canada and can integrate with Order Management Systems (OMS) to help advisors get the most out of their commissions spend. These

services have the capability to monetize bundled research. (Interestingly, both Cogent and Rontech advise that once their systems are installed, a new broker ranking for research often results when valuing research providers) Most third party or independent research has a price attached to the service and is therefore fully disclosed.

Value by Performance

The cost of research or brokerage on a per share basis is miniscule at two to three cents per share. Any perceptible move in a stock's price easily covers the price of research to the benefit of the investor. (A one percent (1%) move on a $25.00 stock is twenty five cents) As the percentage move on a stock price increases (Alpha only) on a long position or decreases on a short position, the research costs reflect more value. For advisors targeting minimum ten percent moves in a security, correct research advice is very cheap.

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 main function of a robust order management system (OMS) is to track the progress of an order from its initiation to its completion. Extended functionality might include enhanced reporting capabilities, portfolio management and compliance functions, direct execution and routing facilities and messaging services.

We would define "order execution services" as any tool used to transmit or analyze trading information until the trade is completed (filled or cancelled). At a minimum, trading information includes:

- Any and all market data related to the issue being traded such as price quotes, depth of market data, electronic and printed news.
- Messages between the trader and the broker (and/or the executing exchange(s)).
- Messages between the trader and the initiator of the order (typically, the portfolio manager).

A responsible trader must continuously monitor the disposition of all orders for which he is accountable. Without current "live" quotes and market depth information, a trader cannot make an informed decision on how to execute or manage a trade. Also, without messaging capabilities between the trader and the execution venue, the immediate status of any trade cannot be known, and the trade cannot be managed optimally.

In NI 23-102, Canadian regulators have given a different time frame than the SEC for order execution services to apply. The SEC has identified the beginning of the order execution time frame from the time an order is communicated to a broker-dealer. In Canada and England, the time frame for order execution services or brokerage begins with the investment decision. (We strongly support the CSA in choosing this time frame) This time frame coincidentally is the same time frame as order management systems apply and could make the entire OMS service eligible for commission payment as an execution or brokerage service.

Question 4:

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

An analysis of how a trade was executed can uncover weaknesses or problems in a trading strategy, execution method, executing venue or dealer capabilities. It can also validate the same, and thus we feel that it is an extension of the execution of the order execution and should be a permitted service because the investor benefits when adjustments are made.

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.?

Specific money management styles would be discriminated against because these managers could not use client commissions to pay for the research inputs they need vs. money managers using another style. Value managers could pay for research suited to their style. Quantitative managers could not pay for the raw data that they need to develop investment models.

Quantitative managers in Canada would incur higher expenses to purchase data and suffer a cost disadvantage to US quantitative managers in all markets.

Money Management is a very portable industry and will locate in the most hospitable location. An advisor does not have to be domiciled in Canada to compete effectively with Canadian money managers for money management mandates here or anywhere in the world.

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 data is extremely important to quantitative and momentum styled money managers. It is needed to build and back test investment models in order to remain competitive and provide satisfactory returns. Also, market data can be very "time sensitive" in valuing current holdings or investment opportunities. More and more investment decisions are made on a best of or worst of class across international boundaries. No computer model will work unless the data input is consistent and provided on a timely basis. Market feeds; global earnings and cash flow statements must be analyzed instantaneously and continuously by quantitative computer models to assist advisors attempting to maximize investment returns.

Regulators must also recognize that the system can be "jobbed" by only allowing manipulated or analyzed data for commission expenditures. Advisors with proprietary analytical systems will merely subscribe to more expensive adjusted data feeds using commissions as payment and reconvert back to raw data (for entry into their proprietary analytical systems) in order to compete with American competitors who are allowed to pay for raw data with commissions.

Innovation in money management practices is very dependent on raw data. These innovations have to be back-tested (again using raw data) before implemented. US advisors or analysts would have a significant cost advantage over Canadian money managers in researching for better ways to manage portfolios.

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?

To the extent that proxy-voting systems help in making investment decisions they should qualify for commission payment by money managers. Otherwise, they do not qualify. However, if investors instruct their money managers to vote their proxies responsibly, then it becomes a plan expense and can be paid for with commissions through a recapture or directed commission process. If this is the case then, commissions that pay for that service must be plan specific and no commingling of commissions allowed. It would be advisable for money managers to have those instructions in writing to show auditors.

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)?

Money managers should seek the help of mixed-use service providers to break down the service into component parts that qualify or do not qualify for commission payment and assign a price to each component. Best practices would be for the service provider to invoice separately for permitted and non-permitted services. In order to avoid predatory pricing on the qualified components that would "subsidize" the price of the non-qualifying component a detailed breakdown of the timelines of each component within the entire service as well as proprietary program assignments to each component should be recorded in writing. These price assignments should be updated at least annually. The CSA should recognize that a transition period may be beneficial once proposed NI 23-102 becomes NI 23-102 so that mixed use service providers can adjust their invoicing practices. In discussions with Bloomberg, we were advised that they are working with the SEC to determine qualified vs. non-qualified goods and services currently so that they can invoice clients separately for permitted and non-permitted services.

Question 9:

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

Mass-marketed or publicly-available information has already been banned by the FSA and the SEC and Canada should follow suit only as far as the information is immediately available or "at our finger tips". It is our belief that Canadian Money Managers should neither benefit nor be penalized because our regulatory system is inconsistent with our major trading partners. As Canadian managers reach into the global markets for investment opportunities, consideration should be given to the fact that they subscribe to mass-produced newspapers in foreign countries. The only reason for doing this is to keep abreast of changing political influences or stimuli in those markets as well as any news that might influence the prospects for companies that they have targeted for investment. These investors should not have to rely on foreign brokers to relay this information to them and expect to get paid a higher fee than what the advisor would pay through a subscription.

We do not view trade journals or specialty publications as mass marketed or more beneficial to advisors than their clients. Money Managers should not avoid investing or becoming experts in an industry because it is more expensive to purchase all the input necessary to make investment decisions. In our comments, we supported the fact that in-house research should be able to compete with "street research". These input costs have already been built into broker or independent research that qualifies for commissions and it only makes sense that in-house researchers have the same access.

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?

Any service that harnesses information that is required by regulators regarding commission spend should be eligible for fully disclosed commission expenditure. (Commission Management System) These systems help advisors get the most out of their commissions spend to the benefit of the investor. The cost of compliance and regulatory reporting has been soaring and born initially by broker-dealers and money managers. Eventually these costs get passed on to the investor. Investors should be able to identify the costs of these regulatory requirements and determine whether or not they want to pay for various disclosure documents or dispense with them (because they do pay sooner or later).

Currently, broker-dealers offer “free” custodial services to their clients and thus gain an advantage over independent money managers whose clients have to pay custodial services to trust companies. Custodial services are not free from costs. Regulators must recognize that this inducement is paid for with bundled commissions and allow independent advisors similar access to the commissions spend.

Question 11:

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

The most expedient way that <u>minimum</u> standards of disclosure and transparency will be maintained is for a standard form of disclosure to be established. This form will set the benchmark for disclosure. In the USA form ADV part one and two require that money managers disclose the services purchased with client commissions. If any changes in disclosure are introduced by American Regulators, they can be added to the disclosure requirement on this form. A similar form in Canada would align us with the USA and meet FSA requirements. Advisors should be given the scope to develop their own forms or documents that provide this and more information to the benefit of their clients.

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?

The proposed disclosure requirements force advisors to treat bundled and independent research differently for reporting purposes. This is wrong and must be corrected in the final version of NI23-102. In the USA and England the source of the research is immaterial. The proposed separation in reporting expenditure on independent and

bundled research amounts to prejudicial treatment of research by source. This treatment adds costs to advisors using independent research, thereby discouraging its use to the detriment of the investor and independent research provider.
If the CSA disagrees and believes that proposed disclosure for the cost of independent research adds value, then why not require the same disclosure for bundled research.

Question 13:

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

Annual disclosure is adequate. .

Question 14:

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

We reiterate our view that bundled and independent research should be treated the same for reporting purposes. Determining the commissions on a principal or net trade presents problems unless published bid ask spreads are recorded on the trade contract. Recording the date that the service was received is an onerous and expensive task especially when you consider travel, vacation time, and the different mediums of communication. We fail to understand how that information will help the investor.

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?

Where a transaction fee can be reasonably estimated, market spreads or other market information that supports the estimate must be recorded for audit purposes (preferably on the trade contract).