October 19, 2006

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

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

And/et

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

Subject: Proposed NI 23-102 Use of Client Brokerage Commissions as Payment for Order Execution Services or Research.

Mr. Stevenson and Madame Beaudoin:

The Canadian Advocacy Council of CFA Institute Canadian Societies (CAC)[1] is pleased to respond to the Request for Comments dated July 21, 2006, where the Canadian Securities Administrators (CSA) invited interested parties to submit comments on the Proposed NI 23-102 Use of Client Brokerage Commissions as Payment for Order Execution Services or Research (so-called "soft dollar arrangements").

[1] The CAC represents the 12 Canadian member societies of the CFA Institute constituting over 11,000 members who are active in Canada's capital markets. Members of the CAC consist of portfolio managers, investment analysts, corporate finance professionals, and other capital markets participants. The CAC's has been charged by Canada's CFA Institute member societies to review Canadian regulatory, legislative and standard setting activities.

General Comments

The CSA have recognized that prohibiting soft dollar commissions could put Canada at a competitive disadvantage and threaten the viability of Canadian independent research. The goals of this policy initiative were to provide investors with more information about their adviser's use of soft dollar commissions, to harmonize and clarify the rules for goods and services that can be purchased with client commissions and to increase confidence that commissions are ultimately benefiting those that pay them. The CSA are also committed to delivering cost-effective regulation.

The Canadian Advocacy Council (CAC) agrees with the broad objectives and principles of the proposal, although, we would like to comment in respect of some aspects which seem difficult or prohibitively expensive to comply with.

We urge the CSA to consider the approach taken towards the use and disclosure of soft dollars as outlined in the CFA Institute's Soft Dollar Standards. These standards can be found at http://www.cfainstitute.org/centre/ethics/softdollar/pdf/SoftDollarStandards2004.pdf.

Specific Comments

Competitive Disadvantages to US counterparts

Canadian regulators should align themselves with American regulators. American advisers are the Canadian advisers' true competition as far as institutional investment management is concerned. Imposing different regulations on Canadian advisers than their US counterparts are subject to in terms of soft dollars would generate a significant competitive threat. As a number of US domiciled advisers work on behalf of Canadian pension funds and institutional clients, then under the current proposed rules, these advisers would be eligible to claim additional items (eg. raw data feeds) towards their soft dollar accounts than their Canadian counterparts. As Canadian advisers will pay for these expenses from their own operating budget in order to maintain their competitive advantage, the result of this type of activity will be lower institutional investment management fees from US advisers in relation to their Canadian peers and accordingly a flight of capital from the Canada's institutional investors..

As outlined, some aspects of the proposal differ from the US context and we believe it would be detrimental to Canadian market participants. The soft dollar rules should be the same throughout Canadian jurisdictions and be aligned with the US rules as, in effect, the North American capital markets is a single market. Different rules and requirements would not be justified from either an investor protection or market efficiency point of view. The following are a few issues we have identified:

- The draft rule takes no position on whether soft dollars could be used to purchase order management systems, while the SEC permits this.

- Raw data is not considered research under the draft rule and therefore soft dollars cannot be used to pay for it, while the SEC includes raw data in research.

- The treatment of raw data may be problematic as raw data is often bundled with analytics – mixed use products such as Bloomberg, Reuters and Thomson services contain both kinds of data.

- The Canadian disclosure requirements are more detailed than current US rules, but we do not feel that these proposed additional disclosures will provide a benefit to clients.

Disclosure Issues

We are of the view that the disclosure requirements should also be readdressed and reviewed. While we agree that the disclosure of soft dollar expenditures should be mandatory, client-specific and provided to clients on a regular basis, the level of specificity is key. We believe that the a number of the proposed disclosure requirements are too complex to implement and have little added value to advisers' clients.

Disclosure should be limited to client-specific and not account-specific information. Disclosure on an aggregate or on a weighted average basis should not be required as it would be meaningless due to the varying nature of portfolios, portfolios managers, soft dollar arrangements and commission recapture agreements. The required disclosure by "category" (i.e. execution only, execution & bundled services, execution & third party research and brokerages services) for each client would also be extremely complicated for advisers to produce and expensive for any benefit received by an advisers' clients.

If there are client specific items that were paid for using soft dollars by an adviser then these items should be specified in any client specific disclosure. Assessing benefits on a client-by-client basis for firm-wide expenditures would be most difficult for advisors to produce as benefits to a particular client for a service may change over time; thus the use of soft dollars to benefit clients should be fair on a firm-wide basis. For general items that are utilized firm-wide and paid for with soft dollars, a pro-rata amount of this expense for the client account in relation to the total firm's assets would seem to be a reasonable proxy for client specific disclosure purposes. While we value the merit of the proposed rule, we also believe that meeting these new disclosure requirements would generate some misconceptions about soft dollars and create undeserved liability risks to ethical advisers.

We strongly recommend that the CSA consider the materiality and type of disclosure required to clients as outlined in the CFA Institute's Soft Dollar Standards (revised November 2004).

Principal Based Transactions

The CSA also needs to be clearer and to provide guidance on how to deal with principal-based transactions as some firms use soft dollars on fixed income securities. The CSA should acknowledge the acceptable practices in today's marketplace and include a practical methodology to address these principal-based transactions in any new proposal. Lack of additional elaboration on principal based transaction soft dollars by the CSA will result in the potential "gaming" of soft dollar expenses by advisers with fixed income components amongst their investment mandates when compared to equity only advisers and investment management firms.

Transition Period

We contend that the CSA should allow a reasonable transition period for Canadian investment managers to become compliant. If the proposal is accepted as is, significant changes will need to be incorporated into accounting and reporting systems in order to comply with the new legislation. Extensive work will have to be done with service providers and the dealers involved to generate the necessary inputs. Investment managers or advisers must be given the appropriate time to implement procedures and systems that will provide the information meeting the NI 23-102's requirements.

Summary

We hope the CSA will take our comments into consideration and review the proposal for NI 23-102. These proposed new rules will have a significant impact and we do not believe that, in their current form, these CSA rules and policies are achieving the goals originally set forth. Moreover these rules place an unfair financial burden upon Canadian advisors in order to attain their compliance and may reduce their global competitiveness. In short, we feel more consultation is required prior to adopting new rules on soft dollars.

We thank you for the opportunity to provide the foregoing comments, we welcome any questions you may have and we appreciate the time you are taking to consider our point of view. Please feel welcome to contact us at chair@cfaadvocacy.ca.

Regards,

Blair Carey, CFA
Co-Chair

Robert Morgan, CGA, CFA
Co-Chair