

October 19<sup>th</sup>, 2006

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 & Labrador  
Registrar of Securities, Northwest Territories  
Registrar of Securities, Nunavut  
Registrar of Securities, Yukon Territory

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

Dear Mr. Stevenson:

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

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***About TD Securities - TD Securities Inc. (TDSI) is the securities trading arm of the TD Bank Financial Group. TDSI is one of leading broker-dealers in Canada with an underlying client base of over 3.5 million investors. TD Waterhouse, a separate division of TD Bank Financial Group, is the largest discount brokerage firm in Canada and has over 425 full service investment advisors. TD Newcrest, the institutional equities arm of TDSI, is the number one equity trader in Canada based on dollar value and shares traded.***

TD Securities Inc. is pleased to have the opportunity to comment on these important proposals. For ease of reference we have reproduced your questions before our response. The proposals are thorough and will lead to increased disclosure and transparency with respect to the uses of clients' commissions. That said, we believe the level of disclosure down to the individual portfolio requires a very significant amount of up front work by buy side firms in order to be compliant with the new standards. As such we encourage the CSA to consider phasing in the requirements over 12 to 18 months.

**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?**

TD Securities Inc. believes that this initiative should be limited to exchange traded instruments at first in order to limit the scope of the analysis.

**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?**

TD Securities Inc. believes that an important step in determining the reasonableness of commissions is that of differentiating the various execution services that dealers provide. Execution services come in various shapes and sizes – orders requiring special execution handling instructions should pay a higher straight execution charge than, say, a simple order to lift the available offer on Nortel. Further, some buy side investors pay different execution rates for orders executed directly in the market (DMA) versus orders entered into an algorithmic server. Finally, orders that involve capital provision are normally charged a higher fee than the previous examples. As such, we are concerned that as part of a determination of order execution fees, there will be a tendency to aim to the lowest commission rate under a “one size fits all” approach to order execution services.

**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".**

Order Management Systems may contain many different features, and have many different uses. TDSI believes that to the extent that an OMS assists an advisor in actually delivering an order to a dealer or market (Execution Management System) that this cost should definitely qualify under execution services. An OMS may also assist in managing trade allocations, monitoring portfolio risk, or have certain compliance features. These should also qualify for soft dollar reimbursement, but should be judged on their individual characteristics as to whether they are execution oriented or perhaps research oriented.

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

TDSI believes that post trade analytics are an extremely important tool for advisors in evaluating best execution. This type of evaluation should be used in making future trading decisions and should therefore be included in order execution services.

**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.?**

TDSI believes that the cost of raw market data is quite low and would therefore be a very small factor in the overall decision making process.

**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?**



TDSI believes that for the most part raw market data should not be classified as research. Simple quotations and volume information are cheap and easily available. However, some market data is more difficult and expensive to obtain and may be used in trading decisions. For example, historical depth of market data used in the development of trading algorithms should be classified as research.

**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?**

TD Securities Inc. has no comment with respect to this portion of the proposed rule.

**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)?**

TD Securities Inc. has no comment with respect to this portion of the proposed rule.

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

TD Securities Inc. has no comment with respect to this portion of the proposed rule.

**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?**

TD Securities Inc. has no comment with respect to this portion of the proposed rule.

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

TDSI believes that disclosure rules should be similar to those in the United Kingdom: specifically that they should be market guided, not prescriptive.

**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?**

TDSI believes that the proposed disclosure requirements are adequate and will provide meaningful information to adviser's clients.

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



TDSI believes that disclosure on account opening and annually thereafter is sufficient.

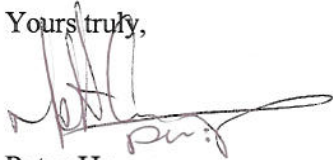
**Question 14: What difficulties, if any, would an adviser face in making the disclosure under Part 4 of the Proposed Instrument?**

TD Securities Inc. has no comment with respect to this portion of the proposed rule.

**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 noted above in our response to Question 1, TDSI believes that this discussion should be initially limited to exchange traded equities. In these circumstances we believe that the required disclosures on trade confirmations will provide adequate disclosure to advisers as to the amount paid to a dealer in commission. This number can then be reported the same as explicit commission.

Yours truly,



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Managing Director  
Index and Portfolio Research and Sales



Ray Tucker  
Managing Director  
Trade Execution Group

