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October 19, 2006

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

Madame Anne-Marie Beaudoin
Directice du secretariat
Autorite des marches financiers
800, square Victoria, 22e etage
C.P. 246, Tour de la Bourse
Montreal (Quebec), Canada H4Z1G3

Re: Notice of Proposed NI 23-102 Use of Client Brokerage Commissions as Payment for Order Execution Services or Research **("Soft Dollar" Arrangements)**.

Dear Mr. Stevenson and Mme Beaudoin:

The T. Rowe Price group of advisers[1] ("TRP), including T. Rowe Price (Canada), Inc. **("TRP Canada")**, an Investment Adviser registered with the Ontario Securities Commission, the British Columbia Securities Commission, and the Manitoba Securities Commission, welcomes the opportunity to comment on proposed National Instrument 23-102 **(the "Proposed Instrument")** issued by the Canadian Securities Administrators **("CSA")** regarding the use of client brokerage commissions as payment for order execution services or research. As of 30 June 2006, TRP managed over $293 billion of client assets.

TRP has been actively involved in the debate over soft dollars, submitting a number of comment letters to and meeting with regulators and industry groups over the years. TRP recognizes that the use of client brokerage commissions has been a source of great debate and controversy in both Canada and many other markets. We have consistently supported improved disclosure and a more restrictive definition of "softable" services. We have also stressed that regulators should work together to ensure a consistent approach to rules and other pronouncements related to the use of client commissions and brokerage in general. This would ensure that investment advisers with a global presence will not be disadvantaged by having to maintain conflicting or redundant processes. Failure to seek such coordination would, in our opinion, negatively impact the trading process and unduly increase burdens on such investment advisers. We appreciate the fact that the CSA has specifically indicated a desire to provide as much consistency as possible between its proposal and, for example, the rules and interpretations of the U.S. Securities Exchange Commission **("SEC")** and the U.K. Financial Services Authority **("FSA")**.

[1] The T. Rowe Price group of advisers includes T. Rowe Price Associates, Inc. , T. Rowe Price International, Inc., T. Rowe Price (Canada), Inc., T. Rowe Price Global Investment Services Limited, and T. Rowe Price Global Asset Management Limited.

TRP generally supports the overall framework of the Proposed Instrument, and the scope of the definitions of order execution services and research. We agree with the CSA's determination that commission dollars may be used to obtain eligible services regardless of whether through brokers or independent, non broker-dealer third parties. We also support fair and reasonable disclosure of those arrangements so that clients may be informed of how their commission dollars are being used. We agree with the CSA's decision not to require investment advisers to attempt to unbundle research provided by full service brokers. We continue to believe that until such costs are explicitly broken out by the brokers, the requirement for investment advisers to provide disclosure to clients based on estimated costs does not result in fair, comparable and meaningful disclosure. We believe it is more appropriate to wait and learn from the FSA's new rules in this regard. However, we also have some concerns regarding certain aspects of the Proposed Instrument, and would like to take this opportunity to comment more specifically, with a particular emphasis on the proposed disclosure requirements.

**Scope of the Instrument**

Security Types

We are concerned that the scope of the Proposed Instrument is too broad. We believe that to require firms to provide soft dollar disclosures related to all security types will force firms to rely on imputed commission assumptions and varied transaction cost analyses. As the SEC learned through its publication of its Transaction Cost Disclosure Concept Release,[2] such assumptions and analyses are complex, with no universal acceptance as to methodology or efficacy. We believe that broad application across all security types will result in inconsistent and ineffective disclosure. Further, some applications run counter to the goal of seeking consistency between regulatory approaches. Therefore, we believe that the Proposed Instrument should be limited to equity transactions with explicit commissions. Perhaps once the CSA has time to evaluate the impact of its final rules, and implements the final Instrument, the CSA could determine whether broadening the scope of the Instrument would be an effective next step.

Territorial Scope

We believe that further clarification should be provided regarding the territorial scope of the Proposed Instrument. TRP, in common with many other global investment management complexes, has a number of adviser entities that are regulated in various jurisdictions. Often, more than one such entity is involved in servicing client relationships. These functions range from trade execution services to full delegation of discretionary management services. Therefore, in today's environment, substantial changes to the regulation of brokerage and transaction practices will have a global effect and, depending on such changes, can impact non-

[2] SEC Release Nos. 33-8349, 34-48952 and IC-26313 (December 18, 2003), 68 FR 74820 (December 24, 2003) ("Concept Release").

Canadian registered firms. We would seek to clarify whether the Proposed Instrument applies when a Canadian Registered Investment Adviser has delegated full discretionary investment management authority to a non-Canadian registered affiliate.

**Framework Regarding Client Brokerage Commission Practices**

Overall Benefit

We would request clarification that the Proposed Instrument does not obligate investment advisers to specifically match, allocate or track client commissions to the services received. In the Request for Comments, the CSA states the need for *"a connection between the client(s) whose brokerage commissions were used as payment for goods and services and the benefits received"*. Most investment advisers utilize research for the benefit of multiple clients. Without such clarification, it could be inferred that an investment adviser would not be permitted to view the benefits of brokerage services across its client base. We believe the vast majority of investment advisers have historically analyzed order execution and research services in light of the overall benefit to their clients, consistent with U.S. and U.K. law. As discussed later in the context of disclosure, the current framework applicable to brokerage and the receipt of related services and research will not support a specific order by order matching requirement.

Mixed Use

We would like to comment in a general sense on the discussions regarding "mixed use" services. We agree with the general principle that investment advisers must make a "reasonable allocation" between permissible and impermissible services to ensure appropriate use of client commissions. Although the documentation is vital, we are cognizant that allocations are rarely an exact science, and therefore the accompanying documentation also may not be exact. Another complicating factor is the difficulty investment advisers might have in terms of requiring a mixed use analysis of services provided in connection with bundled brokerage. We believe that this issue is inextricably tied to the larger issue of unbundling and that any final requirements in this area should follow a full discussion and analysis of that complex issue. Further, we believe that investment advisers can receive incidental services that are not considered in the determination as to the reasonableness of commissions charged in relation to the services received. Due to the way broker-dealers and other firms today offer and deliver

information to their clients, we believe it is inevitable that investment advisers will have access to and obtain, on an incidental basis, information and material from such entities with whom they place client orders. The problem arises when all or a portion of such material is not permitted to be obtained in consideration of client commission dollars. An example of such an issue could be where a firm has access to a protected website in order to collect daily research reports but that site also includes information that does not satisfy the definitions of execution or research in the Proposed Instrument. Further, a broker-dealer may send its clients copies of articles or other newsletters that would not satisfy the elements of research in the Proposed

Instrument. However, if an investment adviser is not taking such incidental services into consideration when making its evaluation of the value of the broker's services in relation to the commissions paid, then such receipt should not be perceived as a violation of the mixed use requirements. We recognize that investment advisers need to be mindful that taking this approach too far could result in a violation of their fiduciary duties and statutory or regulatory requirements.

**Eligible Order Execution Services and Research**

As noted above, TRP believes the scope of permissible order execution and research is clear. However, in light of the confusion in the industry related to other regulatory approaches, we believe it would be helpful for the final Instrument to clarify whether the use of dedicated broker lines falls within the definition of "execution services". We believe that although the provision of such lines may be solely incidental and not a consideration in an investment adviser's order routing system decisions, the lines nevertheless may be deemed to satisfy the "temporal standard" in the Proposed Instrument.

**Disclosure Requirements**

TRP is supportive of disclosure requirements that allow a client to be fully informed while not burdening investment advisers or clients with unnecessary, ineffective or confusing disclosure. A fundamental aspect of the investment adviser-client relationship is the disclosure of an investment adviser's brokerage and trading policies and practices, including any potential or actual conflicts of interest. TRP agrees with the CSA that such disclosure should be provided prior to the inception of the client relationship and annually thereafter. We also believe that full and appropriate disclosure can be achieved without a prescribed format and we support a flexible disclosure regime. Currently, investment advisers take various approaches to disclosing their brokerage practices. For example, in addition to making appropriate disclosure in client contracts, SEC registered investment advisers disclose brokerage practices in their Form ADV, Part II, a disclosure document provided prior to the start of an advisory relationship, and offered annually. Also, many firms voluntarily, or at the request of individual clients, provide client-specific information. FSA registered advisers are required to disclose their brokerage practices as well. In light of the FSA rule, many have adopted the Investment Management Association's Level I and II framework. Level I is a general description of a firm's brokerage policies; Level II is tailored to the use of each client's actual commissions.

We strongly suggest that the CSA, in the final Instrument, adopt a policy more closely aligned with the general disclosure approach of the ADV and Level I. We believe such a narrative is best suited to creating a regime of full, fair, and understandable disclosure to clients. We support disclosure that provides the type of information that best describes an investment adviser's general trading policies, such as describing the firm's policy on external research and how it is purchased. We believe it is important to include a discussion on the types of research

and order execution services received, and the process by which brokerage allocation decisions are made and monitored. We would also support certain statistical disclosure such as average commission rates, turnover, percentage of commissions executed at full service vs. execution only rates, and percentage of commissions used for third party research. Following these principles and limiting statistical information to quantifiable data will further the goal of providing meaningful and comparable disclosure.

Section 4.1(1)(a) of the Proposed Instrument requires investment advisers to provide a list of the names, types, and description of order execution and research services provided by each of the broker-dealers and third parties used by the investment adviser. We do not understand the value of requiring disclosure of each broker-dealer. Investment advisers such as TRP may utilize the services of hundreds of broker-dealers during any given year. We believe clients are better served by receiving information on the type of broker-dealers utilized and a general description of the services offered, rather than being confused or distracted by static lists.

In Section 4.1(2), the Proposed Instrument specifically requires the retention of "details" of each service or product received in consideration of client commissions. We believe that this level of detail is overly burdensome and would provide little value to clients. Such an approach is also inconsistent with an adviser's view toward measuring the overall benefit to its clients of the services received.

From a practical perspective, receipt of certain items such as research reports could be documented and the reports could be retained while other items, such as sales calls, access to company management and capital commitment on trades, are intangible in nature and more difficult to quantify. Also, broker-dealers often provide multiple services. Therefore, a single trade cannot be "matched" to the provision of a particular service or product. Even if it could be matched, as noted above, most investment advisers do not route trades on this basis and should not be required to do so. Allocation of brokerage should be viewed in light of the value of the brokerage services received based on the Advisers overall responsibilities, consistent with best execution. Accordingly, we feel strongly that the detailed disclosure requirements as proposed should be eliminated from the final National Instrument.

Finally, although TRP does not currently use commissions to pay for independent third party non broker-dealer services, we are unsure of the practical application of Section 4.1(1)c(iii). We understand that an investment adviser likely does not have access to commission sharing arrangements between broker-dealers and such third parties. Further, it is not clear whether this section would apply in broker to broker arrangements such as via "step out" transactions between an executing broker and an introducing broker. In such situations, the investment adviser is generally not aware of the commission split. Therefore we suggest that this provision be clarified.

**Conclusion**

TRP appreciates the opportunity to express our thoughts regarding these important issues. We fully support the goal of enhancing the alignment of interests between investment advisers and their clients. Consistent with that goal, we believe a more narrow interpretation of permissible commission practices and appropriate disclosure, along with an effort to coordinate such practices across regulatory schemes, will prove to be an effective tool in furthering investor protection and client confidence.

Sincerely,

Henry H. Hopkins
Vice President & Chief Legal Counsel

David Oestreicher
Vice President and Associate Legal Counsel

Christopher P. Hayes
Associate Legal Counsel