



Fidelity Investments Canada Limited

250 Yonge Street, Suite 700
Toronto, Ontario
M5B 2L7

Peter S. Bowen
Tel: (416) 307-5230
Fax: (416) 307-5535
Email: peter.bowen@fmr.com

October 26, 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 and Labrador
Registrar of Securities, Northwest Territories
Registrar of Securities, Nunavut
Registrar of Securities, Yukon Territory

c/o John Stevenson, Secretary
Ontario Securities Commission
20 Queen Street West
Suite 1903, Box 55
Toronto, Ontario M5H 3S8
e-mail: jstevenson@osc.gov.on.ca

- and -

Madame Anne-Marie Beaudoin
Directrice du secrétariat
Autorité des marchés financiers
800, square Victoria, 22e étage
C.P. 246, Tour de la Bourse
Montréal, Québec H4Z 1G3
Email: consultation-en-cours@lautorite.com

Dear Sirs/Mesdames:

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

We are writing in response to the request for comments on proposed National Instrument 23-102, Use of Client Brokerage as Payment for Order Execution Services or Research (the “Proposal”).

Fidelity Investments Canada Limited is one of Canada's largest mutual fund companies and part of the Fidelity Investments organization of Boston, one of the world's largest providers of financial services. In Canada, Fidelity manages more than \$40 billion in mutual fund and corporate pension plan assets. It offers Canadian investors a full range of domestic and foreign-content mutual funds. Fidelity funds are available through a number of advice-based distribution channels including financial planners, investment dealers, banks, and insurance companies. Fidelity also administers defined contribution and defined benefit assets on behalf of corporate clients across Canada.

Fidelity commends the Canadian Securities Administrators for seeking improved transparency for soft dollar brokerage and research services. In the main, Fidelity supports the proposals; however, we offer some comments designed to enhance transparency and efficiency.

Part 3 of the Proposal - Use of Commissions on Brokerage Transactions

Section 3.1(2) of the Proposal requires that advisers must ensure that the order execution services or research “benefit the adviser’s client(s)”. We are concerned that this could be viewed as requiring a direct connection between the *specific* research received and the client whose account generated the commission. The nature of soft dollars is that the goods and services received benefit a number of clients and, most importantly, may not benefit the account that generated the commission. We recommend that the phrase be expanded to “benefit one or more of the adviser’s client(s)”.

Part 4 of the Proposal - Disclosure Obligations

We have significant concerns that the disclosure obligations required by the Proposal are overly extensive and, to a large degree, not useful to investors. In particular:

- 4.1(1)(b) requires disclosure of the total brokerage commissions paid by all accounts or portfolios. Most advisers are responsible for a variety of mandates in a variety of geographical locations. For a client to compare commissions on his/her specific account to the blended average across all accounts is meaningless. Accordingly, we strongly recommend narrowing the disclosure obligation to those commissions paid by the client’s account or portfolio.
- 4.1(1)(b) refers to disclosure being required for “each class of security”. We understand that this is meant to refer to broad classes of securities such as equities, options, etc. (through 5.2(2) of Part 5 of the Companion Policy); however, we are aware that some have interpreted this as relating to individual securities. We suggest

clarifying in 4.1(1)(b) itself – perhaps using “each type of security, for example, equity securities, options, etc.”.

- 4.1(1)(c) requires disclosure of percentages relating to specific categories. While we can appreciate a desire to differentiate order execution-only trades from soft dollar trades, we do not think it appropriate to differentiate orders based on whether the services are proprietary or third party. Rules governing the use and disclosure of soft dollars should not provide for different or better treatment for proprietary research compared to third party research. We do not believe it advances sound public policy to require disclosure of only third party research expenses, because such a rule would discriminate against independent research, and would also provide unhealthy incentives for advisers to send trades to dealers for reasons other than achieving best execution of fund trades.

We strongly urge the CSA to refrain from any rulemaking that treats third party research differently from proprietary research. If disclosure of amounts is necessary, it is critical that an evaluation of research bundled with execution be included in any soft dollar expense estimate. The bundling of research and execution is the least transparent aspect of transaction costs, and the CSA should not do anything to favour it over other legitimate uses of commissions. At Fidelity, we have historically estimated that research bundled with execution represents a larger share of commissions than third-party research, and we expect this would be true at other firms as well. Thus, in addition to giving rise to competitive unfairness for third party research providers, quantifying third party research without quantifying bundled research would significantly understate total soft dollar use and would be highly misleading to investors.

4.1(1)(c)(ii) and (iii) should be merged and the requirement to disclose the percentage relating to third party research deleted – or, in the alternative, require that the adviser must make efforts to ascertain from the dealer the amount of proprietary research provided by dealers via bundled services, and must estimate the amount in cases where the dealer does not provide an indication of the amount.

- 4.1(2) requires that “details of each good or service received” be maintained. Even if this is limited to written research reports, the number of reports received could easily run into the tens or even hundreds of thousands for a large adviser. (We recommend that the Canadian Securities Administrators contact aggregators such as Thomson Financial or Reuters to get a better understanding of the volume of research reports produced globally each year.) Many such reports arrive unsolicited. Tracking the reports would represent a costly bookkeeping exercise, and provide limited or no benefit to clients. Further, research services may also be provided by telephone and in personal meetings with securities analysts, corporate and industry spokespersons, economists, academics, government representatives, and others with relevant professional expertise. To document such services verges on the impossible, with little relevance to any one client. This requirement should be deleted.

Part 3 of the Companion Policy – Order Execution Services and Research

3.5(1) describes certain goods and services that are not permitted. We note that “legal and accounting services” are listed in the last sentence. We suggest this be changed to “legal and accounting services used to manage the adviser’s own affairs”, as it is otherwise unduly restrictive. For example, legal services relating to the likelihood of a company winning a patent fight should be considered as legitimate research relating directly to an investment.

Part 4 of the Companion Policy – Obligations of Advisers and Registered Dealers

4.1(2) requires an allocation of goods and services received to its clients. The July 21 Notice indicates that “This is necessary so that there is a connection between the client(s) whose brokerage commissions were used as payment for goods and services and the benefits received.” While it is possible (provided there is a requirement to estimate the value of proprietary research) to allocate the *costs* on some basis, we do not believe that it is possible to allocate the actual goods and services to each client on a reasonable basis. As noted earlier in this letter, the nature of soft dollars is that the goods and services received benefit a number of clients.

Conclusion

We appreciate the opportunity to comment on the Proposal. If you wish to discuss any of the above, please contact the undersigned.

Yours very truly,

[signed] “Peter S. Bowen”

Peter S. Bowen
Vice-President & Fund Treasurer
Fidelity Investments Canada Limited