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BARCLAYS GLOBAL INVESTORS

November 3, 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
Fax: (416) 593-2318
Email: jstevenson@osc.gov.on.ca

- and -

Madame Anne-Marie Beaudoin
Directice du secrétariat
Autorité des marchés financiers
Tour de la Bourse
800 Victoria Square
P.O. Box 246, 22nd Floor
Montreal, Québec H4Z 1G3
e-mail: consultation-en-cours@lautorite.qc.ca

Dear Sir and Madam,

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

With the release of Proposed National Instrument 23-102 (the "Proposed Instrument"), the Canadian Securities Administrators ("CSA") have taken an important step in furthering the discussion on the issues of Soft Dollar Arrangements it initiated with the release of Concept Paper

23-402 (the “Concept Paper”). We thank you for considering our comments made in response to the Concept Paper and for your invitation to comment on the Proposed Instrument. We continue to strongly believe in the value of meaningful dialogue between regulators and industry participants and commend the Canadian Securities Administrators for undertaking a thorough public consultation in connection with the Proposed Instrument.

Introduction

Barclays Global Investors Canada Limited (“Barclays Canada”), which currently manages approximately $60 billion in assets, is one of Canada’s largest and fastest growing investment managers. Barclays Canada is part of a global investment management business (“Barclays”) that manages over one and a half trillion dollars in assets and we therefore have very broad experience in regulatory approaches applied to this industry, including trading related matters. Given the global scope of our business and our experience across different regulatory regimes, we strongly support the CSA’s stated intention in the Proposed Instrument of making regulation in Canada consistent with that in other leading, developed capital markets. In addition, as suggested by the CSA, there is a need to provide more guidance and clarity to market participants in Canada as to the appropriate use of commission dollars.

Barclays is now, and has throughout its history, been committed to best execution in the trading activities we undertake on behalf of our clients. As a fiduciary we have the responsibility to act in the best interests of our clients and to place the interests of our clients before our own. As such, we have in place globally an explicit policy on best execution to address this fiduciary obligation and to create a framework that will help us to make consistently good trade execution decisions over time. This policy provides that we will not to engage in any soft dollar, directed brokerage or commission recapture arrangements. Our trading relationships and all trading activities are structured solely with a view to achieving best execution and commissions are used exclusively to pay for execution services. These practices are consistent with our own views and meet regulatory requirements in the other jurisdictions in which we do business including the United Kingdom and United States. Finally, as discussed in more detail below, we negotiate our fee schedules in a way that reflects the “touch” or the magnitude of the actual execution services involved in the relevant trade. This approach sets out commission rates that reflect a continuum of execution service levels from (1) low service direct market access through (2) low to medium service algorithmic trading to (3) high-service execution involving liquidity search, monitoring and reporting the status of an order, providing feedback and execution advice, and providing capital.

We are supportive of requiring advisers to provide more complete information on trading and best execution processes and to disclose potential conflicts related to portfolio transactions, such as soft dollar and directed broker arrangements in an effective and appropriate manner. We also support the narrowing of the range of services that advisers can pay for using commissions and clarification around the relevant definitions to explicitly exclude items that relate to the operational and overhead expenses of an advisers business. Barclays has invested considerable resources to create and maintain a variety of independent or broker neutral technology solutions that are integral to our investment management and best execution processes. These solutions include a proprietary

portfolio management system, order management system, and trade analysis and reporting system. We have paid all development expenses and pay all ongoing maintenance expenses for these systems out of our own funds as we see them as being operationally necessary to provide the services we promise our clients.

While we believe the Proposed Instrument asks many relevant specific questions, we believe that our concerns with the Proposed Instrument are better understood if seen as four separate issues: (1) inconsistency with other regulatory regimes; (2) ambiguity around definitions; (3) inappropriate disclosure requirements and (4) implementation timing. Rather than addressing each of the Proposed Instrument's specific questions, this submission sets our concerns in each of these four areas.

Regulatory Consistency

It is a stated objective of the CSA in releasing the Proposed Instrument to make Canadian regulation in this area more consistent with regulation in other jurisdictions, the UK and US in particular. It is therefore surprising and unfortunate that several aspects of the Proposed Instrument although motivated by the same concerns appear to be inconsistent with, and significantly more onerous than, the recently established regulatory regimes in those two jurisdictions. One area of inconsistency concerns us above all others and that relates to the types of transactions to which the Proposed Instrument could apply.

The Proposed Instrument applies to advisers and registered dealers in any transaction where a dealer charges brokerage commissions. The Companion Policy provides that "brokerage commissions" includes any commission or similar transaction-based fee. The Instrument would therefore apply to trades executed by the dealer on both a principal or agency basis, so long as brokerage commissions are charged. This may include transactions done on a net basis, if a fee can be separately broken out. Therefore the instrument could apply to trades executed by a dealer on a principal or agency basis and could apply to all types of securities. The first specific question asked in the Request for Comments relates to this issue and for the reasons described below we strongly believe that the types of securities and transactions covered by the rule needs to be clarified and limited.

The CSA acknowledge that the SEC and the FSA have more narrowly limited the application of similar rules. The SEC restricts the application of Section 28(e) of the Exchange Act to agency transactions and to riskless principal transactions. The FSA takes an even narrower view and limits the application of the rules to shares and certain related instruments. In principal transactions the investment manager transfers risk to the broker in exchange for a risk premium. The risk premium can be included in the price of the transaction (a "net trade") or included as a commission or as a blend of price and commission. The risk premium will vary depending on factors such as the liquidity and risk of the security or portfolio, market conditions, hedging opportunities, and the state of the dealer's book. Therefore commissions on principal transactions are not readily comparable to commissions on agency transactions. This makes it difficult to identify and break out "similar transaction based fees" on principal risk trades. In addition, including transactions

done on a net basis could possibly result in trades in securities in multiple asset classes (e.g., equities and fixed income) being captured by these rules which would, amongst other things, complicate the disclosure process even further than is discussed below. As a result, the application of the Proposed Instrument should be explicitly limited to agency transactions where there is an independent pricing mechanism.

Ambiguity Around Scope and Definitions

The second broad area of the Proposed Instrument that causes us significant concern is the ambiguity around certain important premises upon which the Proposed Instrument is based and ambiguity around the definition of various terms used in the Proposed Instrument. Of most concern to us in this area is what might broadly be referred to as the issue of "bundled commissions". The very concept of requiring commissions in all cases to be "unbundled" reflects an assumption about how trading and commissions work in practice that we believe to be mistaken.

Put as directly as possible, there is no such thing as a single "execution – only" rate for a trade in a particular security. Barclays Canada has negotiated commission rates with a broad number of brokerage firms that are paid solely to compensate the brokerage firms for providing execution services. We determine appropriate rates by considering a variety of factors related to the nature of the execution service we require, the size of our volumes, and the competitive landscape. We strongly believe that commission rates should reflect the potential value added by broker intermediation and the level of execution service that we expect to receive. Our commission rates are reflective of a continuum of service levels from (1) low service direct market access through (2) low to medium service algorithmic trading to (3) high-service execution involving liquidity search, monitoring and reporting the status of an order, providing feedback and execution advice, and providing capital.

Commissions are only one component of costs. However, as the most visible component of costs commissions tend to be the most emphasized component. Barclays defines costs to be total transactions costs as indicated by what is commonly referred to as the "implementation shortfall". The implementation shortfall includes visible costs such as commissions, taxes, and spreads and less visible costs such as market impact, timing costs, and opportunity costs. Implementation shortfall is widely accepted as the most accurate measure of trading costs, capturing implicit as well as explicit costs. This is important because the implicit costs of a trade can be significantly greater than explicit costs, such as commissions. This distinction is very important in looking at the amount of commission paid in respect of any particular trade or series of trades. It is clearly in the best interest of our clients for us to limit this more broadly defined "cost". By assuming that "execution only" services can be simply defined and attributed a consistent value and that the difference between that value and the amount of commission paid must be attributable to non-execution services the CSA appears to be overlooking this fundamental point. Every trade is unique to some extent – it takes place with a view to our clients' individual investment objectives and constraints - and much greater attention and clarity needs to be focused on the overall cost to the client of a given trade before prohibiting certain types of payments and enforcing disclosure of others.

Finally, we note that in competing for orders, brokers very commonly send investment managers or advisers research notes that are not solicited by the investment manager and are not used in the investment process. Simply because an investment manager receives such research the commissions received by the manager should not be deemed to include a payment for research. In determining whether commissions paid by an investment manager include payments for research services, investment managers and regulators should consider whether or not the investment manager has made an explicit commitment to execute a minimum volume of orders through the broker to pay for research.

Disclosure Requirements

The final broad area of concern we have with the Proposed Instruments is the proposed disclosure requirements and relates somewhat to the first concern we identified – regulatory inconsistency. As noted above, we strongly believe that more appropriate and effective disclosure in this area is important. This is consistent with our longstanding view that where there is a bona fide regulatory concern, disclosure is a preferable remedy than blanket prohibitions on activities. However, we have as consistently asserted that because in a competitive market the costs of such disclosure will ultimately largely be borne by investors, the required disclosure needs to be truly appropriate and effective. Our concern is that the level of detail disclosure required by the Proposed Instrument is neither appropriate nor likely to be effective.

We have looked at the analysis undertaken by the FSA and the SEC as well as the experience in those markets subsequent to the enhancement of their soft dollar related regulations. What we see in each case, though there are differences between them, is less focus on breaking down amounts paid by advisers to the last penny and more focus paid to the broader issues of total amounts paid, how those amounts were arrived at and what considerations the adviser took into account in agreeing to pay such amounts.

The level of detailed and individualized disclosure contemplated in section 4.1 of the Proposed Instrument would impose significant burdens on investment advisers to record and track information that we do not believe would be useful to clients. Section 4.1(2) states that advisers must maintain details of each good or service received for which payment was made with brokerage commissions, and make this information available on request to its clients. Similarly sub-sections 4.1(1)(c) and (d) require the calculation of detailed percentage estimates of various types of costs and transactions and reasonable estimates of the weighted averages of those commissions. Moreover, the engagement of research services is commonly done at a macro level and trading on behalf of clients is more and more commonly being done in practice through pooled investment funds. Any unbundling of the transaction and research services on a client-by-client basis level will involve assumptions, ambiguities and/or estimates on allocations of cost. Beyond the resulting uncertain accuracy and reliability of this data, we emphasize again the significant costs we believe could arise.

Any disclosure of trades done on a net basis should be limited to the percentage of total trading conducted on a net basis. As we have noted previously, since there is no generally accepted method to break commission like fees out of net trades, regulations should not require investment managers to do so. Therefore they should not be required to break any such fees into order execution only trades, bundled trades, or trades where a portion of the commission is set aside for payments to third parties.

There is a strong case to be made for some disclosure along the lines contemplated by the Proposed Instrument in the case of the straight forward purchase of third party provided goods or services where there is clear, objective and easily documented cost or charge for the payment of the goods or services purchased . However, in the context of certain types of "bundled brokerage services" such a level of disclosure would be at best costly and resource intensive and at worst impossible to meet. On a daily basis investment managers communicate with brokers by telephone, e-mail, mail, and in person. Much, if not most, of this communication involves recommendations or changes in recommendations based on analysis and could arguably fall within the proposed instrument's definition of "research". The requirement to record, archive, and report the contemplated information would require significant additional resources and would be very costly without adding additional benefits to investors. Further, there is no evidence cited that the costs incurred in providing this detailed level of disclosure are being proposed in response to any particular perceived demand for this information from investors. It is very much worth noting that neither the FSA nor the SEC have required such a level of recordkeeping and disclosure though their rules are motivated by the very same concerns as those enunciated by the CSA in releasing the Proposed Instrument.

Timing and Implementation

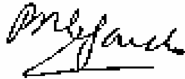
The CSA have proposed that there be no transition period because the "Existing Provisions" are in place and the Proposed Instrument and Companion Policy provide additional guidance. However, the disclosure requirements contemplated in the Proposed Instrument are significantly more detailed than the disclosures currently made by investment managers. To comply with the Proposed Instrument investment managers would have to review their existing practices, identify gaps between their existing practices and the revised requirements, and make necessary changes. This would not be a trivial exercise and would require the managers to make investments in new systems or make significant changes to existing systems to support the additional requirements. We understand that in the U.S., service providers of many firms captured by the soft dollar rules are still in the process of finalizing major changes to billing technology and related systems and processes evidencing that there is a real need for a transition period. Finally, we note that in the U.K. the FSA allowed a 6 month period for investment managers to comply with the new requirements, which, again, are much less onerous than contemplated in NI 23-102.

Conclusion

As stated above, this is a topic upon which Barclays places great emphasis and has significant experience from an industry and regulatory perspective. We therefore thank you again for the opportunity to comment on the Proposed Instrument. Please contact the undersigned or Warren Collier (416-643-4075 or warren.collier@barclaysglobal.com) if you have any questions, or would

like additional information in respect of any of the points made in this letter. We would be happy to discuss any of the matters raised in this letter or any other matters related to the Proposed Instrument with you further at your convenience.

Sincerely,



Rajiv Silgardo
Chief Executive Officer

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Geoff Keith, Barclays Canada
Minder Cheng, Barclays
Ananth Madhavan, Barclays
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