

March 18, 2008

British Columbia Securities Commission
Alberta Securities Commission
Saskatchewan Financial Services Commission
Manitoba Securities Commission
Ontario Securities Commission
Autorité des marchés financiers
Nova Scotia Securities Commission
Prince Edward Island Securities Office
Securities Commission of Newfoundland and Labrador
Registrar of Securities, Department of Justice, Government of the Northwest Territories
Registrar of Securities, Legal Registries Division, Department of Justice, Government of Nunavut
Registrar of Securities, Government of Yukon

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

- and -

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

Dear Sir or Madam:

Re: Proposed National Instrument 23-102 - Use of Client Brokerage Commissions
as Payment for Order Execution or Research and Companion Policy 23-102CP

Thank you for the opportunity to provide comments on the “Revised” Notice of Proposed National Instrument 23-102 Use of Client Brokerage Commissions as Payment for Order Execution Services or Research Services and Companion Policy 23-102CP.

We described Commission Direct Inc. and the Context in which we make our comments in our previous submission and though they apply to this submission as well, we will not repeat them here for the sake of brevity.

We applaud the revisions that you have made to the proposed national instrument in response to industry comments and the United States Securities and Exchange Commission (SEC) guidance on client commission arrangements issued subsequent to the July 26, 2006 release of the original document.

We are particularly pleased that the CSA has joined the Financial Services Authority (FSA) and the SEC in dropping the term “Soft Dollar” as requested by Canadian Industry Participants since 1995. We believe that common language among the regulators and industry participants addressing the use, and disclosure of the use, of client commission by advisers in all three jurisdictions without the pejorative connotation attributed to the term soft dollar will be welcomed by all independent research providers.

The re-alignment of NI 23-102 and Companion Policy 23-102CP with the SEC’s interpretive release on 28e with more focus on use of the goods or services:

- Keeps the playing field level for advisors on both sides of the Canadian/USA border for the use of commissions (where competition is most prevalent)
- Determines research disclosure standards based on content rather than the source of the research – a reversal from the 2006 release.
- Removes the investment style penalties directed at quantitative managers versus value managers that were present in the 2006 release
- Recognizes the competitive nature of money management and the transportability of all or part of the process to the most favorable regulatory jurisdiction to lower costs or excessive disclosure requirements

We have updated our Regulatory Comparison Spreadsheet for England, United States of America and Canada to include revisions to FSA Policies, SEC revisions to form ADV and the revisions to NI 23-102 and Companion Policy 23-102CP. It is enclosed for reference to clarify our comments that follow.

We are surprised at the absence of written linkage between “Best Execution” and Client Commission Use in the Proposal National Instrument and Companion Policy. This linkage is firmly in place in the UK (COBS 11.6.11) and USA (SEC Interpretive Release No. 34-54165 Page 3) where “Best Execution” takes precedence. We believe that we are correct in stating that Best Execution take precedence in Canada but there is no written linkage in the most recent release of this document here in Canada. We strongly recommend that written linkage be established in the final release of the Instrument.

Guidance in section 3.5 of the Proposed Policy is appreciated. In as much as this instrument and companion policy parallels SEC’s 28e we recommend that any controversial commission use addressed in the SEC’s release should be addressed in the Canadian instrument as well. For example the SEC defined the ineligibility of “Correcting Errors” as a brokerage service.

We believe this practice is ineligible for commission payment in Canada but cannot find any reference to it in IDA or OSC rules. This Instrument and Companion Policy provide the framework to rule on this practice.

Finally, all references to the Instrument or Companion Policy being "Principles Based" have been dropped. In the interests of guiding future interpretations or revisions to NI 23-102 or Companion Policy 23-102CP we suggest that a single common overriding principle or objective be included. This Principle or Objective would basically serve as the "Mission Statement" of the CSA in guiding the use of client commissions. In our previous submission we suggested that this overall objective for NI 23-102 and Companion Policy 23-102CP should be to expressly "align the interests of investor and the advisor" to serve as the backdrop to all future interpretation of the rules. As business practices change and new products are introduced, the eligibility of new services for commission payment should be predictable.

Yours very truly,

A handwritten signature in black ink, appearing to read "W.B. McAlpine". The signature is written in a cursive, flowing style.

Commission Direct Inc.

Wayne B. McAlpine, President & CEO

Question 1:

What difficulties might be caused by a temporal standard for order execution services that might differ from the standard applied by the SEC, especially in the absence of any detailed disclosure requirements in the U.S.? In the event difficulties might result, do these outweigh any benefit from having a temporal standard that results in consistent classification of goods and services based on use?

The benefits of applying the temporal standard for order execution chosen by the CSA outweigh any problems arising from a different time period defined by the SEC. First, the CSA has chosen correctly to define the temporal standard where “best execution” measurements should be applied and logically should fall under order execution. Anyone controlling a trade order from the time an investment decision is made until the trade settles has the ability to enhance or detract from “Best Execution”. Products or services used during this time frame must provide value added benefits (enhancing best execution) in order to qualify for commission use. Defining brokerage services in any other time frame weakens the use of a “Best Execution” benchmark to judge the value of products or services paid for with client commissions.

The difference in temporal standards does not change the eligibility for products or services like trade analytics for commission application. In the USA trade analytics are classified as research; in Canada these same analytics are classified as brokerage. The brokerage definition seems to fit better with benefit of these services.

Question 2:

What difficulties might be encountered by requiring the estimate of the aggregated commissions to be split between order execution and goods and services other than order execution? What difficulties might be encountered if instead the requirement was for the aggregate commissions to be split between research services and order execution services?

When splitting commission expenditures between order execution and other than order execution, the definition of order execution cost becomes clear. Basic Order Execution Costs are the no frills charges applied to trades that cover the trading desk costs of a broker (with suitable margins applied in a competitive environment). Factors like Exchange Fees, Ticket Costs, Data Feeds, Communication Costs, Technology outlays and Trader Compensation are applied as well as Overhead Allocations including rent, building operating costs per square foot, management cost allocation etc. Dealers will normally quote this basic execution only charge in cents per share for eligible trades

meeting size, delivery & settlement and liquidity constraints. Street-wide competition for this “execution only” business will provide a basic benchmark pricing. Applying this price to an advisers trading volumes and deducting it from total commissions paid will disclose how much was paid for the research and brokerage component of the commission spend. Execution Prices Only may vary from broker to broker but a general average price would be sufficient to deduce the annual amount paid by an adviser for research and brokerage services. Advisers could then provide their breakdown of commissions paid for research and brokerage services. Price comparatives and trends by advisers and the industry would be revealing to plan administrators and investors trying to control costs. Adviser investment style should be consistent with their commission spend and the commission allocation breakdown among execution only, research and brokerage products and services. Advisers may be encouraged to use more “execution only” trading in this system as they have to justify their commission spend on research and brokerage.

Splitting the commission spend between research and brokerage does not break out the premium paid over and above “execution only” pricing. Allocations to research and brokerage are far more arbitrary with very little disclosure as to actual real cost to the investor for research and brokerage services. Transparency is much better when “execution only” costs are split out from the commission spend.

In both cases, special services like the use of capital provided by brokers to reduce market risk, accumulation (inventory) costs and special settlements costs may not be revealed. The adviser’s ability to determine and the client’s ability to accept whether the costs of various research services are justified are dependent on transparency. The isolation of “execution only” from the total commission spend provides the framework for analyzing research and brokerage cost incurred on a client’s behalf.

Question 3:

As order execution services and research services are increasingly offered in a cross-border environment, should the Proposed Instrument allow an adviser the flexibility to follow the disclosure requirements of another regulatory jurisdiction in place of the proposed disclosure requirements, so long as the adviser can demonstrate that the requirements in that other jurisdiction are, at a minimum, similar to the requirements in the Proposed Instrument? If so, should this flexibility be solely limited to quantitative disclosure given that the issues associated with differences in quantitative disclosure requirements between regulatory jurisdictions are likely greater than the problems associated with differences in narrative disclosure requirements? In addition, should there be limitations on which regulatory jurisdictions an adviser may look to for purposes of identifying suitable alternative disclosure requirements and, if so, which jurisdictions should be considered eligible and why?

Investors look to their regulators to provide protection from abuse as well as a framework that governs fiduciaries that set up as financial advisers or money managers. These investors have the right to expect that their regulators have the authority and tools available to protect their interest. It follows then that advisers with Canadian clients should be governed by the proposed instrument regardless of where they operate. By the same token, Canadian advisers with investors domiciled in other jurisdiction must abide by the rules of that jurisdiction. Just as brokers registered in Canada and the USA must answer to two or more regulators, advisers must operate under the same restrictions. The answer is to apply the most restrictive rules to each activity performed.

Question 4:

Should a separate and longer transition period be applied to the disclosure requirements to allow time for implementation and consideration of any future developments in the U.S.? If so, how long should this separate transition period be?

The transition period is adequate. Regulatory changes affecting the eligible use of client commissions or disclosure standards should be addressed as they are introduced in the USA or England in the future.

REVISED REGULATOR COMPARISONS

	Financial Services Authority (FSA)	United States Securities Exchange Commission (SEC)	Canadian Securities Administrators (CSA)
Rule or Policy*	COBS 11.6 Use of dealing commission	Section 28(e) of the Securities Exchange Act of 1934	National Instrument 23-102 & Companion Policy 23-102CP P. 539
Application	Use of dealing commission to purchase goods or services	Use of client commissions to acquire services other than execution only services - (Research and Brokerage)	Use of Client Brokerage Commissions as Payment for Order Execution Services or Research Services P.539
Application Date*	January and July 1, 2006	January 24, 2007	Concept Paper - comments due 04/10/08. Transition Period - Implementation 6 months after approval P. 497, 523
Term "Soft Dollar"	Dropped, replaced by "Use of Commissions" COBS 11.6	Dropped, replaced by "Commission Guidance Regarding Client Commission Practices" P. 4	Dropped, Replaced by Use of Client Brokerage Commissions as Payment for Order Execution Services or Research Services P. 489, 527
Best Execution	Takes Precedence COBS 11.6.11	Takes Precedence P. 3	Takes Precedence (Should be added)
Who owns Commissions?	Plan, Fund or Investor	Plan, Fund or Investor	Plan, Fund or Investor P. 539, 518
Record Keeping*	A record of each payment of disclosable commission must be kept for at least 5 yrs from payment date -Bundled and Independent research treated the same 11.6.19	Form ADV - Under the Advisors Act, Form ADV requires disclosure of all commission arrangements whether or not they fall under the safe harbor of 28(e) Records must be maintained for at least 5 yrs.	A record of the services paid, the amount paid for any specific period must be kept for 5 years. Bundled and Independent Research treated the same

	Financial Services Authority (FSA)	United States Securities Exchange Commission (SEC)	Canadian Securities Administrators (CSA)
Dealing Commissions*	Disclosable commissions on Shares, Share warrants, Share options & Share rights	Commissions on agency transactions and no-risk principal transactions where both sides of the trade are the same price (NASDAQ)	Transaction based fee, charged for a trade where amount paid for the security is clearly separate and identifiable (agency commissions) P. 539, 522
Reasonable Commissions	Commission spend must provide value to clients paying for research and trade execution services	Commissions paid must be reasonable in relation to the value of the goods & services acquired P. 47	Commissions paid must be reasonable in relation to the value of the goods & services acquired P. 541, 501
Principal Trading (spreads)	Not Eligible	Not Eligible	Not Eligible P. 540, 500
Research Services (Requirements)*	Adds value to investment or trading decision, original thought, intellectual rigour, involves analysis or manipulation of data prior to investment decision. Maybe provided by broker or third party	Lawful and appropriate assistance standard applies P44 Must be used in making investment or trading decisions. Consists of advice as to the value of availability of securities or purchasers or sellers of securities. Must furnish analyses and reports concerning issuers, industries, securities, economic factors and trends, portfolio strategy, and the performance of accounts. Must contain expressions of reasoning & knowledge about the subject matter and provided before investment P.27,28 Must be provided before the investment decision is made. Must be provided by a broker. P.58	Research services defined as advice, analyses or reports regarding various subject matter relating to investments, as well as databases and software that support these services. In order to be eligible, research services generally should reflect the expression of reasoning or knowledge and be related to the subject matter referred to in the definition (ie securities, portfolio strategy etc.) Must be provided before the investment decision is made P. 540 May be provided by a broker or third party.
Brokerage Temporal Definition*	Time frame - From time investment decision is made until the trade settles (COBS 11.6.4 1-b)	Time frame - From time order is placed with Broker-Dealer until the trade settles P. 40	Time frame - From time investment decision is made until the trade settles P. 540

	Financial Services Authority (FSA)	United States Securities Exchange Commission (SEC)	Canadian Securities Administrators (CSA)
Specific Research Services	Permitted	Permitted	Permitted
Computer hardware	No COBS 11.6.8	No P. 33	No P. 541
Dedicated phone lines	No COBS 11.6.8	No P. 33	No P. 510, 511
Seminar fees*	No COBS 11.6.8	Yes - if justified for investment decision making Not associated travel, lodging or entertainment P.28	Yes - if justified for investment decision making Not associated travel, lodging or entertainment P. 540
Subscriptions for publications*	No COBS 11.6.8	Yes - if not mass marketed & adds value and target a narrow audience with specific interests P.31	Yes if not mass marketed to a broad audience, adds value and targets a narrow audience with specific interests P. 540
Raw Data*	No COBS 11.6.7	Yes P.36	Yes - Quantitative analytical software, market data that has been or will be analysed or manipulated to arrive at meaningful conclusions P. 506, 540
Pre & Post trade analytics*	Yes - if justified for investment decision making	Yes if justified for investment decision making P. 34, 39	Yes if it helps determine a subsequent investment decision P. 502
Proxy Voting Services	Not mentioned - possible justification Not for Voting	Yes - Only Part Applied to Investment Decision Making Not for voting p36	Yes - Depending on content, could be a "mixed use" service if used for investment decisions Not for voting P. 507
Travel/Accomodation/Entertainment	No COBS 11.6.8	No P. 28, 29	No P. 540
Office Admin - related computer soft	No COBS 11.6.8	No P. 32, 33	No P. 541
Membership fees	No COBS 11.6.8	No P. 32, 33	No P. 541
Office Furnishings	No COBS 11.6.8	No P. 32, 33	No P. 541
Employee Salaries	No COBS 11.6.8	No P. 32, 33	No P. 541
Direct Money Payments	No COBS 11.6.8	No	No
Mass Marketed or Publicly Available Information	No COBS 11.6.8	No P. 30, 31	No P. 509
Qualified Legal & Expert Opinions			Yes P.511
Performance Measurement	No	Yes - for investment purposes - not for marketing P.45	No P. 541
Internally Generated Research	No	No Must come from broker	No P. 541
Internet and/or E-mail Service	No	No P.28	No P. 511
Order Management System (OMS)	No	Yes P. 34,39	Yes - to the extent that they provide research or assist with the research process P. 540
Direct Lines	No	No P.33	No P. 510, 511

	Financial Services Authority (FSA)	United States Securities Exchange Commission (SEC)	Canadian Securities Administrators (CSA)
Specific Brokerage Services	Permitted	Permitted	Permitted
Dedicated Phone Lines*	No	Yes p 41	No P. 510, 511
Order Management Systems*	No	Yes P. 41 P. 41	Yes - mixed use- written allocation P. 540, 541
Trade Analytics*	No COBS 11.6.6	No (Falls into research time frame - see above)	Yes - Mixed Use P. 503
Correcting Errors	No	No p 43	No (Should be added)
Custody services related to a trade	Yes - must be incidental to a trade and only if provided in brokerage time frame COBS 11.6.8	Yes - must be incidental to a trade and only if provided in brokerage time frame P. 39, 40	Yes - must be incidental to a trade and only if provided in brokerage time frame P. 540
Raw Data	Yes (if justified)	Yes	Yes (if justified) Assists order execution P. 540
Algorithmic trading software	Yes	Yes	Yes P. 540
Mixed Use Items		Documented reasonable allocation of cost supported by fact based analysis of how the good or service is used inferring relative cost from relative benefits. (ie. Time used for eligible and ineligible services) P. 45,46	Documented reasonable allocation of cost supported by fact based analysis of how the good or service is used inferring relative cost from relative benefits. (ie. Time used for eligible and ineligible services) P. 540
(OMS)	No	Yes Written, detailed cost allocation P.41	Yes - Written, detailed cost allocation P. 541
Custodial	Yes - Must be incidental to execution of trades	Yes Written, detailed cost allocation P. 43	Yes - Written, detailed cost allocation P. 540
Proxy Voting Services	Not Mentioned	Yes Written, detailed cost allocation P. 36	Yes - Written, detailed cost allocation P. 507
Burden of Proof for Eligibility*	Money Manager	Money Manager P.26 and Broker P.60, 61	Advisers and Registered Dealers P. 539
Prior Disclosure (Timing)*	New Client - Before conducting any investment activity for a new client Existing Clients - Before July 1, 2006	New Client - Under proposed changes to Form ADV the adviser must deliver firm brochures and brochure supplements to prospective clients before or at the time an advisory contract is entered into Existing Clients - Within six months from the time revised Section 28 (e) is published (1/24/07)	New Client - Before conducting any business for a new client P. 542 Existing Clients - The earlier date of six months from date the Instrument takes effect or the first

	Financial Services Authority (FSA)	United States Securities Exchange Commission (SEC)	Canadian Securities Administrators (CSA) scheduled periodic review P. 542
Prior Disclosure* (Content)	<p>Prior Disclosure should include advisor's policy relating to receipt of goods and services that relate to execution of trades and provision of research including why it is desirable or necessary to use dealing commission to purchase such goods and services 11.6.15 &16</p>	<p>Under proposed changes to Form ADV, the adviser must create a Brochure written in plain English providing clear, current and meaningful disclosure of their business practices, conflicts of interest with clients (including those related to commission use) as well as service fees. This Brochure would be filed with the SEC and delivered to all clients other than a "qualified purchaser" or investment company under the Investment Company Act of 1940.</p> <p>ADV part 2 would cover 19 disclosure topics and require that all conflicts of interest be addressed. Item 12 would require an adviser that receives "soft dollar" benefits in connection with client securities transactions to disclose its practices. (Practices include a description of how brokers are selected and the reasonableness of broker compensation.</p> <p>The advisers brochure would describe products and services acquired as well as any conflict of interest that the adviser encounters and how the adviser addresses them. The adviser must disclose whether all clients benefit from services acquired or only clients that pay as well as any policy regarding proportional allocation of cost and benefit. The adviser must disclose whether it pays up for soft dollar benefits (ie. Pays commissions higher than those obtainable from other brokers in return for products and services)</p>	<p>Disclosure of any arrangements relating to the use of brokerage commissions entered into and whether those services are provided by a broker-dealer or third party</p> <p>Process and factors used in broker selection</p> <p>Procedures for ensuring over time that clients receive benefits for use of commission spend.</p> <p>Adequate Policies and Procedures (Commission Policy) in place to ensure that all clients whose commissions are used as payments for goods and services receive reasonable benefit from such use.</p> <p>P. 493</p>
Periodic Disclosure*	<p>Periodic Disclosure - at least once per year and records kept of this disclosure for 5 years 11.6.18 & 19</p>	<p>Form ADV brochures must be updated at least annually if there are no changes. If any information in the brochure becomes materially inaccurate it must be updated promptly.</p>	<p>Periodic Disclosure - at least once per year and adequate books & records kept (suggest min. 5 yrs)</p>

	Financial Services Authority (FSA)	United States Securities Exchange Commission (SEC)	Canadian Securities Administrators (CSA)
Disclosure Obligations* Format	Prior Disclosure should form part of the summary form disclosure under the rule on Inducements (COBS 2.3.1 R)	Under proposed changes to Form ADV, the adviser must deliver a Brochure to clients written in plain English providing clear, current and meaningful disclosure of the business practices, conflicts of interest (including those related to commission use) as well as a background of the investment adviser and advisory personnel and service fees. This brochure would also be filed with the SEC.	No specific form of disclosure is mandated. It may be determined by the adviser based on needs of the client but should be provided in conjunction with prior and periodic disclosure related to the management and performance of the portfolio. Could be supplement to management agreements and statements of portfolio performance.
Disclosure Obligation (Cont'd) Details	Details of goods and services related to execution of trades and details of goods and services attributable to the provision of research Commission breakdown by security class and client, collectively and individually identifying those paying and those benefiting from service. Advisor must prove he is getting value for clients. (Monetization of services paid for)	Description of goods and services paid for with commissions relating to execution & research linked to the broker providing them Proposed changes to Form ADV focus on conflicts of interest with clients encountered by the adviser using commissions to acquire eligible products and services; how the clients are informed about them and how the adviser addresses them. (See Prior Disclosure, Content above for details)	Shift to narrative from quantitative - Adequate policies and procedures in place to ensure that all clients whose brokerage commissions were used as payment for research and brokerage services receive fair and reasonable benefit from such usage - No need to link each good or service received with particular clients P. 493 Disclosure of the type of goods and services provided by each dealer and third party named - sufficiently detailed to provide a adequate description of the goods and service received including arrangements entered into and the general mechanics of converting commissions into payments P.542 Associating type of service received to each provider not necessary except for affiliated entities. P. 542 Description of process and factors considered in selecting dealer to execute trades including whether receipt of goods & services other than execution were a factor Total client brokerage commission paid by advisor with reasonable estimate of portion paid to acquire goods & services other than order execution. Level

	Financial Services Authority (FSA)	United States Securities Exchange Commission (SEC)	Canadian Securities Administrators (CSA) of granularity sufficient to inform client of commission use relating particular clients' commissions to total commission spend
Accountability*	Advisors must have commission management system that is robust enough to demonstrate that the advisor is getting value for the commission spend and that cost of the research has been negotiated - implies monetization of individual products in the overall research service in order to provide full accounting of the commission spend	Statutory requirement that money managers must make a good faith determination that commissions paid are reasonable in relation to the value of the products and services provided by broker-dealers in connection with the managers' responsibilities to the advisory accounts for which the managers exercise investment discretion. In their Brochure, conflicts of interest must be identified and addressed by advisers who use commissions to purchase goods and services in addition to execution only as well as disclosure provided as to whether or not the adviser has "paid up" for these products.	Requirement that money managers must make a good faith determination that commissions paid are reasonable in relation to the value of the products and services provided by broker-dealers in connection with the managers' responsibilities to the advisory accounts for which the managers exercise investment discretion. Dealers may only accept commission as payment for order execution and research services.
Commission Sharing*	Yes - Service does not have to be provided by executing broker	Yes - under certain circumstances as follows - Service provider must be one of executing broker, correspondent broker, introducing broker with obligation to pay for the research whether it is generated internally or from a third party (Open for comments regarding commission sharing)	Yes - Service does not have to be provided by executing broker
Transition Period*	Pension Funds - January 1, 2006 - Other July 1, 2006	Six Months - January 24, 2007	Six Months from approval of this instrument. P. 496, 523