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April 8, 2008

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

-and-

Madame Anne Marie Beaudoin
Directrice du sécretariat
Autorité des marchés financiers
800, square Victoria, 22e étage
C.P. 246, Tour de la Bourse
Montréal (Québec) H4Z 1G3

Dear Sirs and Madams:

Re: Response to Canadian Securities Administrators' (CSA's) Notice of Proposed National Instrument 23-102 – *Use of Client Brokerage Commissions as Payment for Order Execution Services or Research Services ("NI23-102")* and Companion Policy 23-102CP

The Investment Counsel Association of Canada ("ICAC"), through its Industry, Regulation and Tax Committee, is pleased to be given the opportunity to submit the following comments regarding NI23-102 on behalf of its members.

The ICAC is the representative organization for investment counsel and portfolio managers in Canada. The ICAC was established in 1952 and its current members are responsible for managing in excess of over $650 billion of client assets in Canada. Member firms are only in the business of managing investments for clients in keeping with each client's needs and objectives and risk tolerances.

The ICAC commends the CSA for publishing materially revised versions of the 2006 Documents (as defined in the CSA Notice). In particular, the ICAC and its members note that many of the proposed changes contained in the ICAC's comment letter dated October 30, 2006 to the 2006 Documents have been incorporated into the republished versions of NI23-102 and the Companion Policy 23-102CP. Of particular importance are:

1. the efforts to harmonize the new regime with other jurisdictions (particularly the United States),
2. the inclusion of databases and software in the definition of "research services",
3. the narrowing of application to trades where brokerage commissions are charged by a dealer; and
4. revisions to the mandated disclosure.

That said, the ICAC believes that there are certain areas which would benefit from further clarification by the CSA:

1. Disclosure to clients; and
2. Application to Foreign advisors used by Canadian investors, including Canadian advisors.

1. Disclosure Obligations

The ICAC agrees that any regime governing the use of client brokerage commissions must be based on principles of transparency and accountability. The ICAC supports the initiative to impose uniformity of reporting to clients on the use of client brokerage, however, we have some concerns with the specific terms of the disclosure mandated by NI23-103. In particular, ICAC members agree generally with the requirements of sections 4.1(a) through (f) of the Proposed National Instrument 23-102, but we have reservations with the potential application of the second part of section 4.1(g).

Before turning to section 4.1(g), we wish to clarify the manner in which we would view the application of section 4.1(f) to client accounts that are invested in pooled funds operated by advisors. In such situations, we believe the requirements of NI23-102 should be satisfied if the advisor discloses the total client brokerage commissions paid by the pooled fund and any amounts paid to independent third parties for research and other services out of those commissions. That is, it would be unreasonable to break out the level of detail down to the pro rata

amounts attributable to each client (unitholder) in the pool as this would require an analysis of each client's pro rata holding on every day during the applicable period as client percentage holdings will vary due to cash flows made by any unitholder in the fund. Such an exercise would impose an extremely high administrative burden with little apparent benefit.

Turning to section 4.1(g), while the first part of that section (reporting total client brokerage commissions on an aggregated basis) is useful, we do not agree that advisers should be required to provide a "...reasonable estimate of the portion of those commissions that represents the amounts paid or accumulated to pay for goods or services other than order execution...".

At first instance, a distinction needs to be made between independent third party research and services purchased with client brokerage commissions and bundled commissions which inherently have both an execution component and a component representing payment for research or services. ICAC members believe it is both reasonable and practical to track payments for independent third party research and services both across client accounts individually and across the firm in aggregate. Such information could also be disclosed to clients and would be useful information for clients.

However, in our view, in relation to bundled commission charges, we strongly believe that such disclosure will provide neither meaningful nor relevant information to clients. The reason we state this is because any such analysis will be open to interpretation by the advisor community which may mean that there will be differences in the methodologies applied to form the basis of this subjective analysis. In practical terms, it may be that each advisors' analysis will not be uniform or comparable to the analysis used by their competitors which makes the information less useful to the end user, the clients. In the result, we do not believe that the goal of obtaining clear, understandable, uniform data or analysis on the use of client brokerage commissions will be achieved by this form of required disclosure.

To view the issue from the other side, the ICAC would suggest that if such information is viewed as crucial for clients, that it would make more sense if an obligation is imposed on the broker-dealer community to provide an estimate of the costs of goods or services provided to advisors in addition to the execution costs of any trades. The broker-dealers are in a much better position to ascribe a certain cost or value to such services as compared to the advisors who will necessarily need to use a subjective form of analysis in order to quantify the perceived value received.

Another issue arises in relation to the interpretation of the aggregation requirement under proposed section 4.1(g). While we believe it is relevant to clients to show them the total brokerage commissions paid in their account (or the pooled fund into which they have invested) and the amounts paid to independent third parties for research and other services, we do not believe that advisors should be required to disclose a total amount of commissions paid by

the firm across all accounts. What would be relevant to clients is disclosure of the aggregate percentage of client brokerage commissions that are used to pay for independent third parties for research and other services on a firm-wide basis, such that the client is able to compare the percentage they have paid as compared to the other clients of the advisor. However, we do not agree that clients (or any third parties) should be privy to the total commissions paid by an advisory firm. Such information is extremely confidential and disclosure to clients (and to other third parties which will occur if clients are provided this information) may have adverse competitive consequences for advisors. In our view, disclosure of such information could potentially result in impairment of service levels received by advisory firms from third parties which, ultimately, impairs the services and value provided to clients of the advising firms.

2. Application to Foreign Advisors

In Question 3 of the Notice of Proposed NI 23-102, the CSA has posed several questions relating to the issue of operating in a cross-border environment, where there are several regulatory regimes in place governing the use of client brokerage commissions. Given the relative size of Canada's equity markets on a global basis, this is an important issue as many Canadian investors (including advisors) will retain the services of foreign advisory firms that may utilize client brokerage in accordance with the regulatory regime in their home jurisdictions and, not necessarily in specific compliance with the terms of the proposed CSA Notice.

In the view of the ICAC, it would be unreasonable and impractical to impose the requirements of Proposed NI23-102 on foreign advisors, particularly those that are registered in the United States with the SEC or in the United Kingdom with the FSA. For such foreign advisors, the ICAC would suggest that such advisors be entitled to rely fully on the rules and regulations of their home jurisdictions. In this way there should be avoided any unnecessary tailoring of foreign firms for the provision of services to Canadian investors. Although the services of the foreign advisors are ultimately being provided to a resident in Canada, in our view, if the foreign advisor's jurisdiction has in place requirements governing the use of client brokerage similar to the requirements of the Proposed Notice 23-102, that should suffice. It is important to recognize that the investment industry in Canada should strive to achieve regulations that address principles while realizing that Canadian registrants face a competitive marketplace involving registrants from other jurisdictions.

We would be pleased to discuss any of our foregoing comments further with you at your convenience. If you have any questions or concerns regarding our submission, please do not hesitate to contact Katie Walmsley at (416) 504-7018.

Yours truly;

Katie A. Walmsley
President