

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

M<sup>c</sup> Anne-Marie Beaudoin  
Directrice du secretariat  
Autorité des marchés financiers  
Tour de la Bourse  
800, Square Victoria  
C.P. 246, 22<sup>e</sup> étage  
Montréal (Québec) H4Z 1G3

April 9, 2008

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

Dear Mr. Stevenson and M<sup>c</sup> Beaudoin:

The Institutional Brokerage Committee of the Securities Industry and Financial Markets Association (SIFMA)<sup>1</sup> is pleased to have the opportunity to respond to certain of the matters set forth in the above referenced notice on which the Canadian Securities Administrators (“CSA”) have specifically requested input.

At the outset, we wish to applaud the thoughtful and thorough manner in which the CSA arrived at the positions set forth in the notice, as well as its clear commitment to achieving as much cross-border compatibility as possible in the regulation of client commission arrangements. As reflected in our comments below, we believe the CSA has been largely successful in its efforts.

---

<sup>1</sup> The Association, or “SIFMA,” brings together the shared interests of more than 650 securities firms, banks and asset managers. SIFMA’s mission is to promote policies and practices that work to expand and perfect markets, foster the development of new products and services and create efficiencies for member firms, while preserving and enhancing the public’s trust and confidence in the markets and the industry. SIFMA works to represent its members’ interests locally and globally. It has offices in New York, Washington D.C., and London and its associated firm, the Asia Securities Industry and Financial Markets Association, is based in Hong Kong.

### **Temporal Standard**

We believe the Commission has made a thoughtful amendment to section 3.2 of the proposed standard. We also tend to agree with the CSA's assessment that the differences in the SEC and CSA approaches to the temporal standard will not in practice cause material problems in managing client commission arrangements. While the definitional differences might cause some services to be treated as research, rather than order execution in nature, in the aggregate all of the services contemplated should fall within the range of permitted services under either the proposed policy or Section 28(e) of the Securities Exchange Act of 1934.

### **Disclosure**

We strongly agree with the CSA's focus on narrative qualitative disclosure regarding the nature and scope of services received pursuant to client commission arrangements, as well as their recognition of the practical difficulties and limitations of quantitative disclosure. We concur that an aggregate approach to commission disclosure to advisers by broker-dealers who provide execution and research services is the most sensible, and enables advisers to employ appropriate algorithms to determine that such commissions are reasonable in relation to the services received and inure to the benefit of their clients. We would also note that such narrative disclosure should include a meaningful discussion of potential conflicts of interest. This approach is reflected in the Securities and Exchange Commission proposed amendments to Form ADV<sup>2</sup>, which was published for comment after the release of Proposed NI 23-102.

### **Cross-Border Issues**

Given the globalization of the marketplace and the correspondingly increased likelihood of encountering potentially incompatible regulatory schemes, we would greatly welcome a flexible approach regarding the application of a given regulatory regime. At the same time, the ability to select a particular regulatory framework should be predicated on there being a reasonable relationship between the parties to the regulated arrangement and the jurisdiction whose regulations are sought to be applied. For example, jurisdiction could be based on the principal place of business or residence of the parties or the location where services are delivered. However, parties should not be able to choose a jurisdiction simply because it has a less developed regulatory regime or provides a competitive advantage.

### **Implementation Period**

As noted above, the SEC recently published proposed amendments to Form ADV, some of which impact disclosure of soft dollar/client commission arrangement practices. The comment period on that proposal runs until May 16<sup>th</sup>, and it is expected that the SEC

---

<sup>2</sup> See SEC Release No. IA-2711 (March 3, 2008)

Mr. John Stevenson

April 9, 2008

Page 3 of 3

will take several months to evaluate the comments received before finalizing any proposal.<sup>3</sup> Therefore, while we are not recommending a specific timeframe for implementation of the CSA's disclosure requirements, we do respectfully suggest that the CSA take the SEC process into account in setting its own timetable.

### **Compatibility With U.S. Regulations**

We wish to note at least a few of the proposed revisions or clarifications which we believe further enhances compatibility between U.S. and Canadian regulation. This includes narrowing the application of the proposed instrument with regard to principal transactions, which are excluded from the application of Section 28(e) of the Securities Exchange Act of 1934. It also includes clarification that not every service received in conjunction with a client commission arrangement has to benefit every client of the adviser, and that targeted and specialized publications, as opposed to mass market publications, are eligible products or services pursuant to such arrangements. These clarifications are consistent with SEC interpretive guidance issued in 2006.

We are most pleased to have this opportunity to comment. If you have any questions, or we can otherwise be of assistance, please do not hesitate to contact Mike Udoff of SIFMA staff at (212) 313-1209, or [mudoff@sifma.org](mailto:mudoff@sifma.org).

Sincerely,

Mark Conforti  
Chair  
SIFMA Institutional Brokerage Committee

cc: Jonathan Sylvestre, Ontario Securities Commission

---

<sup>3</sup> SIFMA expects to file a comment letter on the Form ADV proposal