April 9, 2008

Alberta Securities Commission
British Columbia Securities Commission
Manitoba Securities Commission
New Brunswick Securities Commission
Nova Scotia Securities Commission
Registrar of Securities, Northwest Territories
Registrar of Securities, Nunavut
Registrar of Securities, Yukon Territory
Saskatchewan Financial Services Commission
Securities Commission of Newfoundland and Labrador
Securities Office, Prince Edward Island

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

Madame 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

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

Mr. Stevenson and Madame Beaudoin:

Leith Wheeler Investment Counsel Ltd. is pleased to respond to the Request for Comments dated January 11, 2008 regarding the Proposed National Instrument 23-102 Use of Client Brokerage Commissions as Payment for Order Execution Services or Research Services. Leith Wheeler is a registered Investment Counsel and/or Portfolio Manager in BC, Alberta, Saskatchewan, Manitoba, Yukon, Ontario, Quebec, New Brunswick and Nova Scotia. Our Firm manages approximately $9 billion in segregated and mutual/pooled funds for pension, private and institutional clients.

SPECIFIC REQUESTS FOR COMMENTS

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?

Having a defined temporal standard does create consistency in classification across 'Canadian only' advisers. However, this benefit may not outweigh the difficulties or confusion caused by having a different standard than the SEC.

For advisers who manage both Canadian and U.S. securities, this difference in classification may cause difficulties. Although there may be no detailed disclosure requirements in the U.S., clients should be presented with consistent disclosure of their commission 'types' through all asset classes. Having to explain that the classification is different in the U.S. than in Canada would cause confusion to clients and would be counterproductive to the objective of achieving transparent disclosure. To a client, how could the same service be classified as 'execution' in Canada but 'research' in the U.S.?

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?

At Leith Wheeler, we do not see the distinction between non-order execution services and research services. We put those two services in the same category. If a client's commission is not paid towards execution services, then it will be for research services. We do not use the client's commission to pay for 'other' services.

However, we sympathize with advisers who do pay for non-order execution services with client commissions. It would definitely be cumbersome for these advisers to split up and classify these services. In this situation, we would propose that the CSA come up with a guideline or list of services and their costs to make the exercise easier and more standardized.

The main difficulty we see from splitting research and execution services would be estimating the 'true costs' for these services. We believe this to be highly subjective. Should 'execution only' costs from Dealer A be the same or different than Dealer B? Should the true 'execution only' cost be 1 cent or 2 cents? How will we achieve consistency across advisers? As well, most 'proprietary research' services are paid on a

basic understanding. There is usually no 'hard' dollar amount agreed to or contract drawn up.

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?

As the Investment management business trends towards a more globalized environment there needs to be more consistency in disclosure requirements. However, until international regulations are developed or harmonized, it would be logical for the adviser to follow the rules and standards of the jurisdiction in which the client is domiciled. If, for example, an adviser is registered in both Canada and the U.S., then disclosure reporting should follow the domicile of the client. Unless there is uniformity among all jurisdictions, this will always be a problem. We believe the more 'exceptions' you have, the less regulated the environment becomes.

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?

Yes, we believe a longer transition period would be justified.

Firstly, this transition period should depend on what the eventual disclosure requirements are. The more comprehensive the eventual requirements are, the longer the transition period should be. This will give advisers adequate time to prepare for the disclosures.

Secondly, we should allow time for possible developments in the U.S. to unfold. As the U.S. relationship is so close and unavoidable, it would be prudent to have our standards as similar as possible. This again, will present clients with uniform reporting and minimize confusion.

Based on the above, a transition period of anywhere between 12 to 24 months would be appropriate.

Thank you for attention and for the opportunity to provide our thoughts. Please feel free to contact us should you have any questions.

Regards,

LEITH WHEELER INVESTMENT COUNSEL LTD.

"Bob Lau", CFA
Head of Equity Trading