INVESTMENT INDUSTRY ASSOCIATION OF CANADA
ASSOCIATION CANADIENNE DU COMMERCE DES VALEURS MOBILIÉRES

Ian C.W. Russell, FCSI
President & Chief Executive Officer

April 9, 2008

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 secretariat
Autorité des marches financiers
Tour de la Bourse
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C.P. 246, 22e étage
Montréal QC
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Dear Mr. Stevenson and Madame Beaudoin:

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

Further to the CSA request for comments dated January 11, 2008 the Investment Industry Association of Canada ("IIAC") makes the following submission, based on input from our members.

The IIAC is pleased that much of the industry feedback from the first request for comments has been adopted in this amended proposal (the Proposed Instrument). The Proposed Instrument is much improved in terms of its narrowed scope and recognition of the practicalities of complying with the quantitative disclosure requirements.

There are, however, a few remaining issues of concern and matters that require clarification in the Proposed Instrument.

- It is not clear whether the CSA approves of accumulated soft dollar payments that could be "banked" for future use, and how such payments should be disclosed, recognizing that those funds could be spent on items that can not be easily traced back to the commissions that may have been paid in a previous year.

- The expectations relating to the responsibility of the dealer in assessing the eligibility of the soft dollar payment and the extent to which due diligence should be conducted should be clarified. In determining the appropriate level of responsibility, it should be recognized that in many cases, the dealer will never see the end product provided by the service provider in order to make the evaluation of eligibility. As such, it is not appropriate that dealers be subject to the same level of responsibility as the advisor for evaluating the eligibility of the services. The consumer of the service is, in most cases, the only person that can provide a meaningful evaluation. For example, many research services require a log-in to view their sites so dealers may be unable to evaluate their services, and have no way to determine if these services are eligible. We suggest that due diligence should be only required on services that are proposed, sponsored or offered by the dealer to the advisor.

- It appears that under the Proposed Instrument, dealers are not permitted to give "free" services to their clients. The ability to provide free services is important, as many businesses offer such loss leaders to attract business. Also, certain of these services are not appropriately categorized within the soft dollars context, and to do so would be impractical and unwieldy. For instance, including additional tools in an Order Management System may help Compliance or Finance with book-keeping, and does not require a specific payment. It would likely cost dealers more to remove such functionality from application than to give it away for free. There are many services that a dealer may offer a client for free, and it is not practical for advisors to track them all, value which ones they use, and then restrict their organizations from using the ones they are not valuing and/or paying for. For example, a corporate website may provide a host of free information including quotes, third party research, charting, news, watch lists etc. for all of its customers as a matter of goodwill. Tracking, valuing and perhaps excluding services at this level of detail is unworkable. We suggest that the dealer be responsible for tracking what is offered for free, as long as it is free to all customers, on the condition that customers with execution only accounts have the same access to these services as the customers that pay the higher "bundled" commission rates.

- It should be recognized that market data fees that are part of trading systems should not be a "billable" service. They are a required component and have never been charged as a soft dollar expense. For the same reason, retail

discount traders do not pay discrete fees for the trading technology they use (which could include pre-trade analysis, charting, live level 2 quotes, portfolio analysis tools etc.) institutional clients should not be required to track these services separately.

We have the following responses to the specific questions posed by the CSA:

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 proposed rule has generally addressed this issue appropriately, however, it should be more broadly interpreted by including databases as eligible services, given that the use of technology in order to make an investment decision is one of the reasons for the expanded the timeframe.

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?

By definition, bundled commissions make this difficult. As such, estimates will likely be arbitrary and will not result in clarity or comparability.

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?

We suggest that the Proposed Instrument allow advisors to rely on the disclosure requirements of a foreign jurisdiction for both qualitative and quantitative disclosure, provided that the requirements are similar to the requirements in the Proposed Instrument. The advisor would still be responsible for evaluating the eligibility of the services. The CSA should specifically recognize the UK and US rules eligible for this purpose, and expand the list as appropriate as more information is obtained about the disclosure requirements in other jurisdictions.

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?

We propose that advisors should be given a transition period that runs until their next annual information statement (or the following if the next one is within six months of publishing this rule).

Thank you for providing us with the ability to comment on this important proposed Instrument. If you have any questions or comments regarding this submission, please do not hesitate to contact the undersigned.

Yours truly,

cc c/o: Mr. John Stevenson, Secretary
Ontario Securities Commission:

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 & Labrador
Registrar of Securities, Northwest Territories
Registrar of Securities, Nanavut
Registrar of Securities, Yukon Territory