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

I. INTRODUCTION

The Canadian Securities Administrators (the CSA or we) are publishing the following revised documents for a 90-day comment period:

- Proposed National Instrument 23-102 – *Use of Client Brokerage Commissions as Payment for Order Execution Services or Research Services* (Proposed Instrument); and

- Proposed Companion Policy 23-102 CP (Proposed Policy).

We seek to adopt the Proposed Instrument as a rule in each of British Columbia, Alberta, Manitoba, New Brunswick, Nova Scotia, Ontario and Québec, as a Commission regulation in Saskatchewan and as a policy in each of the other jurisdictions represented by the CSA. The Proposed Policy would be adopted as a policy in each of the jurisdictions represented by the CSA.

II. BACKGROUND

On July 21, 2006, the CSA published the following documents for comment (collectively, the 2006 Documents):

- Notice of Proposed National Instrument 23-102 – *Use of Client Brokerage Commissions as Payment for Order Execution Services or Research ("Soft Dollar" Arrangements)* (2006 Notice);

- Proposed National Instrument 23-102 – *Use of Client Brokerage Commissions as Payment for Order Execution Services or Research ("Soft Dollar" Arrangements)* (2006 Instrument); and

- Proposed Companion Policy 23-102 CP (2006 Policy).

The CSA invited public comment on all aspects of the 2006 Documents and specifically requested comment on fifteen questions. Forty-three comment letters were received. We have considered the comments received and thank all the commenters for their submissions. A list of those who submitted comments, as well as a summary of comments and our responses to them, are attached as Appendix "A" to this Notice.

III. RECENT DEVELOPMENTS

Also in 2006, the U.S. Securities and Exchange Commission (SEC) issued guidance on client commission arrangements. The transition period for implementation of the SEC's 2006 interpretive release (SEC Release)[1] ended early in 2007. The final rules of the Financial Services Authority[2] had already taken effect by the time the 2006 Documents were published.

[1] The SEC Release was issued on July 18, 2006 under Exchange Act Release No. 34-54165. These were effective July 24, 2006 with a six-month transition period to January 24, 2007.

More recently, statements have been made by various representatives of the SEC that suggest that SEC staff continue to work on recommendations to their Commission that may help to increase transparency and improve oversight in relation to the use of client commissions. We will continue to monitor the developments in the U.S.

IV. SUBSTANCE AND PURPOSE OF THE PROPOSED INSTRUMENT AND PROPOSED POLICY

In response to comments received, and after further consideration by the CSA, the 2006 Documents have been materially revised. The purpose of the Proposed Instrument and Proposed Policy remains the same although their content has changed.

The Proposed Instrument continues to provide a specific framework for the use of client brokerage commissions by advisers. It clarifies the broad characteristics of the goods and services that may be acquired by advisers with these commissions and also describes the advisers' disclosure obligations in relation to such use of client brokerage commissions.

The Proposed Policy gives additional guidance regarding the types of goods and services that may be obtained by advisers with client brokerage commissions, as well as non-permitted goods and services. It also gives guidance on the disclosure that would be considered acceptable to meet the requirements of the Proposed Instrument.

V. SUMMARY OF THE PROPOSED INSTRUMENT AND PROPOSED POLICY

A. Common Themes from Comments on the 2006 Documents

The common themes that emerged from the comments received on the 2006 Documents were: (1) difficulties could arise regarding the application of the 2006 Instrument to principal transactions in securities where there is no independent pricing mechanism; (2) the requirements should be harmonized to the greatest extent possible with those in the U.K. and U.S., with preference for harmonization with the U.S.; (3) the proposed disclosure requirements would be difficult to meet and may not be useful to many clients; and (4) a transition period should be considered.

As noted above, we have considered the comments and have made substantive changes to the 2006 Documents (reflected in the current Proposed Instrument and Proposed Policy). These changes are summarized below. Several non-substantive changes have also been made in response to the comments received. These changes and the reasons for them are discussed in the summary of comments and responses included at Appendix "A".

B. Summary of Substantive Changes to the Proposed Instrument and Proposed Policy

The following summary of the substantive changes to the Proposed Instrument and Proposed Policy is divided into five parts: (i) application of the Proposed Instrument; (ii) the definitions of order

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[2] The FSA's final rules were published in July 2005 in Policy Statement 05/9, Bundled Brokerage and Soft Commission Arrangements: Feedback on CP 05/5 and Final Rules. These were effective January 1, 2006 with a six-month transition period.

execution services and research services; (iii) the framework for client brokerage commission practices; (iv) disclosure of client brokerage commission practices; (v) transition period.

(i) Application of the Proposed Instrument

We are now proposing a narrower application of the Proposed Instrument in response to comments regarding difficulties in meeting the requirements if the Proposed Instrument were to apply to all trades in securities. These comments suggested that:

- fees associated with securities traded on a principal basis are imbedded in the price of these securities and cannot be easily measured;
- the lack of pre- and post-trade transparency in the OTC markets makes it difficult to separate the price of a security from the additional services provided; and
- consideration should be given to limiting the application of the proposed instrument to trades in securities where an independent pricing mechanism exists in order to help harmonize with the scope of the SEC and FSA requirements.

Section 2.1 of the Proposed Instrument provides that the application of the Proposed Instrument will be limited to any trade in securities for an investment fund, a fully managed account, or any other account or portfolio over which an adviser exercises investment discretion on behalf of third party beneficiaries, where brokerage commissions are charged by the dealer. Additional guidance has been proposed in subsection 2.1(1) of the Proposed Policy to clarify that the reference in the Proposed Instrument to “client brokerage commissions” includes any commission or similar transaction-based fee charged for a trade where the amount paid for the security is clearly separate and identifiable (e.g., the security is exchange-traded, or there is some other independent pricing mechanism that enables the adviser to accurately and objectively determine the amount of commissions or fees charged).

Subsection 2.1(2) of the Proposed Policy has also been added to provide clarification regarding the basis for limiting the application of the Proposed Instrument, and to clarify that advisers that obtain goods and services other than order execution in conjunction with trades such as principal trades where a mark-up is charged (e.g., fixed income traded in the OTC markets), will remain subject to their general fiduciary obligations to deal fairly, honestly and in good faith with clients, but will not be able to rely on the Instrument to demonstrate compliance with those obligations.

(ii) The Definitions of Order Execution Services and Research Services

Generally, commenters indicated that we should harmonize requirements with the U.S. and U.K. in relation to the definitions of order execution services and research services, and the interpretations of those definitions in relation to the eligibility of certain goods and services. Many of these commenters may have overlooked the differences between these two jurisdictions regarding such definitions and eligibility. Those that noted the differences favoured harmonization with the U.S.

In response to the comments received, we have made changes to the definitions and corresponding guidance. The substantive changes relate to the following:

- The temporal standard for order execution services;
- The definition and characteristics of research services; and
- Views on the eligibility of various specific goods and services.

(a) The temporal standard for order execution services

There were no changes made to the proposed definition of order execution services. The definition remains consistent with that contained in the existing OSC Policy 1.9 and AMF Policy Statement Q-20[3] (Existing Provisions). However, we have made amendments to clarify the proposed temporal standard for order execution services in light of various comments received, which included suggestions that "order execution services" start from the point at which an order life cycles begins (after the investment decision is made), and would generally include those goods and services that are used to decide how, when or where to place an order or effect a trade.

Comments received in relation to questions asked on the eligibility of specific goods and services also indicated that different interpretations of the starting point for the temporal standard exist. For example, comments received relating to the eligibility of post-trade analytics indicated that some parties considered certain uses to be "order execution services" while others considered those same uses to be "research services". This may have been a result of the temporal standard proposed in the 2006 Documents that started at the point after which an adviser makes an investment or trading decision, but did not provide any further clarification as to delineation.

As a result, section 3.2 of the Proposed Policy has been revised and now proposes a temporal standard for order execution services which would generally include goods and services provided or used between the point at which an adviser makes an investment decision (i.e., the decision to buy or sell a security) and the point at which the resulting securities transaction is concluded.

We have also amended the definition of "research services"[4] in the Proposed Instrument by removing reference to "the advisability of effecting securities transactions in securities" and replacing it with language that is intended to help to avoid any future misinterpretation of the proposed temporal standard.

We think that clarifying the starting point for the temporal standard for order execution services would help to ensure consistency in the categorization of goods and services involved in the execution process regardless of the extent to which the adviser relies on the dealer for execution decisions, or contributes to or makes these decisions itself.

While we believe the temporal standard may be different from that included in the SEC Release[5], we do not believe the difference would cause any issues regarding the eligibility of particular goods or services between jurisdictions. Rather, this should only result in differences in how an eligible good or service has been categorized between the two jurisdictions; for example, a good categorized as research under the SEC's temporal standard might be categorized as order execution services under the Proposed Instrument.

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

[3] AMF Policy Statement Q-20 gained the force of a rule in June 2003 through Section 100 of *An Act to amend the Securities Act* (S.Q. 2001, chapter 38).
[4] The term "research services" replaces the term "research" used in the 2006 Instrument and 2006 Policy.
[5] For its temporal standard, the SEC Release states that "brokerage begins when the money manager communicates with the broker-dealer for the purpose of transmitting an order for execution and ends when funds or securities are delivered or credited to the advised account or the account holder's agent" (SEC Release, pp. 40-41).

outweigh any benefit from having a temporal standard that results in consistent classification of goods and services based on use?

(b) The definition and characteristics of research services

We have made substantive changes to both the definition of research services and the associated guidance as a result of comments received regarding the 2006 Documents. These comments included that the characteristics of research services proposed, combined with the proposed obligation for advisers to ensure that research received adds value to investment or trading decisions, do not allow for eligibility of those goods and services that might not contain the specific proposed characteristics, or may not on their own add value to the investment trading decision, but do add value when used by an adviser as an input to its own analyses and research processes. We also re-examined whether an approach more consistent with that taken in the SEC Release, which places more focus on the use of the goods and services, should be adopted.

As a result, the following substantive changes were made:

- The proposed guidance included in section 3.3 of the Proposed Policy was revised to reduce the focus on the characteristics of research.
- The obligation proposed in paragraph 3.1(2)(b) of the 2006 Instrument for the adviser to ensure that research services add value to the investment decision was also removed in conjunction with amendments to place more focus on the use of goods and services for determining eligibility for payment with client brokerage commissions. (Other reasons also contributed to the removal of this obligation and these are discussed below in the section: *The Framework for Client Brokerage Commission Practices*.)

(c) Views on the eligibility of certain goods and services

We considered and re-examined the eligibility, as research services, of goods and services such as raw market data, proxy-voting services, and mass-marketed or publicly-available information or publications, and the eligibility, as order execution services, of order management systems and post-trade analytics. In response to comments, we also considered the eligibility of other goods and services such as seminars, telephone / data communication lines, expert opinions, pre-trade analytics, as well as databases and software.

Commenters provided various compelling reasons for why certain goods and services should be considered eligible, whether as order execution services or research services. These reasons generally included a concern relating to not being harmonized with the views in the SEC Release.

As a result, we have made the following substantive changes:

- The proposed definition of “research services” in the Proposed Instrument now includes databases and software to the extent they are designed mainly to support the other services referred to in the proposed definition of “research services”, as is currently included in the definition of “investment decision-making services” in the Existing Provisions.
- The proposed guidance in subsections 3.2(3) and 3.3(2) of the Proposed Policy, which provide examples of goods and services that might be considered order execution services and research services, respectively, has been amended.

- The proposed guidance in section 3.5 of the Proposed Policy, which provides examples of goods and services that we would consider to be clearly outside the permitted goods and services under the Proposed Instrument, has been amended.

The summary of comments and our responses included at Appendix "A" provide more information regarding our views on various specific goods and services, and the reasons for the amendments made or not made to the Proposed Policy.

We emphasize that it is not feasible to attempt to include in the Companion Policy a comprehensive list of all possible goods and services that might be considered eligible as order execution services or research services. The examples proposed are intended solely to help an adviser with its assessment of whether a good or service meets the definition of order execution services or research services. Even if certain goods or services were specifically mentioned in a final Companion Policy, the adviser would still have to meet the obligations under Part 3 of the Proposed Instrument in order to be able to justify its use of client brokerage commissions as payment for those goods or services.

(iii) The Framework for Client Brokerage Commission Practices

In response to comments received, we have also made changes to the obligations proposed for advisers that use client brokerage commissions as payment for order execution services or research services. The substantive changes relate to the following:

- The relationship between the use of goods and services and the obligation to ensure such use is for the benefit of the client(s);
- The relationship between benefits received and particular clients;
- The ability to assess value received in relation to value paid; and
- Unsolicited goods and services.

There were no significant comments received relating to a dealer's obligations under the 2006 Instrument that resulted in substantive changes.

(a) The relationship between the use of goods and services and the obligation to ensure such use is for the benefit of the client(s)

As noted earlier in this notice, we have made amendments to the proposed definition and characteristics of research services in order to place more focus on the use of the goods and services for determining whether payment could be made for these with client brokerage commissions.

In conjunction with these amendments, we reassessed the general framework for the use of client brokerage commissions. Paragraph 3.1(2)(a) of the Proposed Instrument continues to require an adviser that uses client brokerage commissions as payment for order execution services or research services to ensure that the services benefit the client(s).

Additional guidance has also been proposed in subsection 4.1(2) of the Proposed Policy that indicates that in order to benefit a client, the goods and services obtained should be used in a manner that provides appropriate assistance to the adviser in making investment decisions, or in effecting securities transactions. The guidance also indicates that the adviser should be able to

demonstrate how the goods and services paid for with client brokerage commissions are used to provide appropriate assistance.

Further, as a result of changes made to the proposed guidance regarding the characteristics of research services, and because of the refocus of the proposed framework towards the use of the goods and services, we have also removed the obligation proposed in the 2006 Instrument requiring the adviser to ensure that the research received adds value to investment or trading decisions. We believe that the additional proposed guidance relating to the use of goods and services in a manner that provides appropriate assistance should be sufficient.

(b) The relationship between benefits received and particular clients

In order to clarify that it is not our intention to require advisers to ensure that a direct connection exists between each specific good or service received and particular clients, we have made amendments to the proposed guidance.

Subsection 4.1(3) has been added to the Proposed Policy to acknowledge that a specific order execution service or research service may benefit more than one client, and may not always directly benefit each particular client whose brokerage commissions were used as payment for the particular service. The proposed guidance also indicates that advisers should have adequate policies and procedures in place to ensure that all clients whose brokerage commissions were used as payment for these goods and services have received fair and reasonable benefit from such usage.

(c) The ability to assess value received in relation to value paid

We considered those comments that suggested it might be difficult to ensure that the amount of client brokerage commissions paid is reasonable in relation to the value of goods and services received when there is a lack of cost information provided by dealers that bundle goods and services with order execution. We also considered those suggestions of adopting the SEC approach by instead requiring that a good faith determination be made of the reasonableness of the amounts paid.

We have therefore amended subsection 3.1(2) of the Proposed Instrument to now propose that the adviser must ensure that a good faith determination has been made that the amount of client brokerage commissions paid is reasonable in relation to the value of the order execution services or research services received. Additional guidance has been proposed in subsection 4.1(4) of the Proposed Policy regarding how the adviser might make this determination, including that the determination can be made either with respect to a particular transaction or the adviser's overall responsibilities for client accounts.

(d) Unsolicited goods and services

From the comments received, we note that a level of uncertainty exists regarding the treatment under the Proposed Instrument of unsolicited goods and services, and of access to goods and services provided by dealers, when the goods and services provided or offered are either not eligible under the Proposed Instrument or not used by the adviser. We also note concerns associated with the lack of control over what goods and services a dealer might send or provide access to in return for client brokerage commissions.

To address these concerns, we have proposed guidance in subsection 4.1(4) of the Proposed Policy to clarify that the relevant measure for any good faith determination under paragraph 3.1(2)(b) of the Proposed Instrument is the reasonableness of the client brokerage commissions paid in relation to the goods and services received and used by the adviser. This means an adviser that, by virtue of paying client brokerage commissions, is provided with access to goods and services, or receives goods or services on an unsolicited basis and does not use such goods and services, will not be considered to be in violation of this obligation if it does not include these in its assessment of value received in relation to commissions paid. The proposed guidance also indicates that if an adviser uses the goods or services, or considers their availability a factor when selecting dealers, the adviser should include these in its assessment.

We think this approach could also be extended to the situation when an adviser is making allocations with respect to a mixed-use good or service. We would not expect an adviser to allocate cost to, and pay with its own funds for, an ineligible portion of a good or service received on an unsolicited basis that was not used. However, the adviser would still have the obligation to make a good faith determination that the amount of client brokerage commissions paid was reasonable in relation to the value of the eligible portion of that good or service received.

(iv) Disclosure of Client Brokerage Commission Practices

Numerous comments were received in relation to the disclosure proposed in the 2006 Instrument. There were a number of arguments received for why the detailed proposed disclosure would be overly onerous to produce, and why it might be of questionable use to clients. However, we maintain the view that additional disclosure relating to the use of client brokerage commissions is necessary in order to increase the transparency to clients regarding such use, to help clients understand the services they are receiving, and to ensure appropriate rigour in the processes of all advisers.

To respond to the comments, though, we have made changes to the proposed disclosure requirements that we think provide an appropriate balance between the need for transparency and accountability, the associated burden and costs that might be imposed on advisers, and the aim for consistency with disclosure in the U.S. The substantive changes relate to the following:

- Clarification of the meaning of “client” for purposes of disclosure;
- The scope of the proposed narrative disclosure;
- The scope of the proposed quantitative disclosure; and
- Additional details to be maintained and made available upon request.

We do not believe any changes are necessary in relation to the form or frequency of disclosure.

(a) Clarification of the meaning of “client” for purposes of disclosure

As a result of the uncertainty evident from the comments regarding the meaning of “client” for purposes of disclosure, we have proposed guidance in section 5.1 of the Proposed Policy to clarify that the recipient of the disclosure should typically be the party with whom the contractual arrangement to provide advisory services exists. For example, for an adviser to an investment fund, the client would typically be considered the fund, unless the adviser is also the trustee and/or the manager of the fund, or is an affiliate of the trustee and/or manager of the fund, in which case the

adviser should consider whether its relationship with the fund presents a conflict of interest matter under National Instrument 81-107 Independent Review Committee for Investment Funds that requires review by the Independent Review Committee established in accordance with that National Instrument, and whether it would be more appropriate for the disclosure to be made instead to the Independent Review Committee.

(b) The scope of the proposed narrative disclosure

We have revised the proposed disclosure requirements to increase the scope of the narrative disclosure to be provided so that clients will be better able to understand how their brokerage commissions are used by advisers as payment for goods and services other than order execution.

In formulating the new proposed narrative disclosure requirements we considered the suggestions received from commenters, and re-examined the current narrative disclosure included in Part II of the SEC's Form ADV and in the Investment Management Association's Pension Fund Disclosure Code.

The narrative disclosure requirements proposed in paragraphs 4.1(a) through (e) of the Proposed Instrument would essentially maintain requirements proposed in the 2006 Instrument for disclosure of the nature of the arrangements entered into relating to the use of client brokerage commissions as payment for order execution services or research services, as well as disclosure of the names of dealers and third parties that provided goods and services other than order execution, and the types of goods and services provided. However, we have also proposed that each dealer or third party named through this disclosure that is an affiliated entity should be separately identified, along with separate disclosure of the types of goods and services provided.

Additional narrative disclosure requirements that we have proposed include a description of the process for, and factors considered in, selecting dealers to effect securities transactions; the procedures for ensuring that, over time, clients receive reasonable benefit from the usage of the brokerage commissions charged to them; and the methods by which the determination of the overall reasonableness of client brokerage commissions paid in relation to order execution services and research services received is made.

Additional proposed guidance to help the adviser understand the expectations with respect to the proposed narrative disclosure requirements is included in subsections 5.3(2) and (3) of the Proposed Policy.

(c) The scope of the proposed quantitative disclosure

We have also revised the proposed disclosure requirements by decreasing the scope of the quantitative disclosure that was proposed in the 2006 Instrument. As an initial step in increasing accountability and transparency through quantitative disclosure, we have proposed in paragraph 4.1(f) of the Proposed Instrument to reduce the client-level quantitative disclosure requirements to disclosure of the total client brokerage commissions paid by the client during the period. In addition, in paragraph 4.1(g) of the Proposed Instrument we have proposed requiring disclosure on an aggregated basis of the total client brokerage commissions paid during the period, along with a reasonable estimate of the portion of those aggregated commissions that represents the amounts paid, or accumulated to pay for, goods and services other than order execution. Guidance has also been proposed in subsection 5.3(4) of the Proposed Policy in relation to the level of aggregation of

client brokerage commissions for these disclosure purposes. The proposed guidance allows advisers flexibility to determine the appropriate level of aggregation based on their business structure and client needs.

We believe the quantitative disclosure proposed is consistent with that currently required to be made by investment funds to clients under NI 81-106, except that the proposed disclosure requires the adviser to make a reasonable estimate of the amounts paid or accumulated to pay for goods and services other than order execution, as opposed to requiring disclosure of these amounts to the extent ascertainable.[6]

We are also of the view that the scope of the quantitative disclosure requirements currently being proposed should not create any unreasonable burden on advisers, or that any apparent lack of harmonization between the quantitative disclosure requirements in the Proposed Instrument and those currently required in the U.S. and U.K. will cause any significant issues. Regardless, we will continue to monitor the developments in the U.S., including whether amendments to their disclosure regime are proposed, and are prepared to revisit the approach we have taken at that time.

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?

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?

(d) Additional details to be maintained and made available upon request

We have removed the requirement proposed in subsection 4.1(2) of the 2006 Instrument that would have required the adviser to maintain specifics about each good or service received in the event that a client were to make a request for such information. We are of the view that disclosure of the provider names and types of goods and services currently proposed under paragraph 4.1(c) of the Proposed Instrument should generally provide clients with sufficient detail relating to the specific goods and services paid for with client brokerage commissions.

Despite removal of this explicit requirement, advisers are reminded of the general requirement to maintain adequate books and records in order to be able to demonstrate compliance with the Proposed Instrument.

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[6] Consideration will be given to the need for harmonization between the disclosure requirements in the Proposed Instrument and those in the National Instruments governing disclosure by investment funds.

(v) Transition Period

In response to commenter concerns regarding the need to include a transition period, in particular those concerns relating to the need for time to meet the disclosure requirements proposed in the 2006 Instrument, we have proposed an effective date for the Proposed Instrument of six months from its approval date. This is included in section 6.1 to the Proposed Instrument.

We believe that the amendments made to Proposed Instrument since those proposed in the 2006 Instrument, including the removal of some of the more onerous reporting requirements, should address many of the commenter concerns, and therefore a longer transition period should not be needed.

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?

VI. SPECIFIC REQUESTS FOR COMMENTS

In summary, we specifically request comment on the following issues:

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?

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?

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?

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?

VII. AUTHORITY FOR THE PROPOSED INSTRUMENT

In those jurisdictions in which the Proposed Instrument is to be adopted as a rule or regulation, the securities legislation in each of those jurisdictions provides the securities regulatory authority with rule-making or regulation-making authority in respect of the subject matter of the Proposed Instrument.

In Saskatchewan , the Proposed Instrument is being made under the following provisions of the *The Securities Act, 1988* (Saskatchewan) (Act):

- subclause (c)(i) of subsection 154(1) of the Act allows the Commission to make regulations in respect of standards of practice and business conduct of registrants in dealing with their customers and clients, and prospective customers and clients.
- subclause (c)(ii) of subsection 154(1) of the Act allows the Commission to make regulations in respect of requirements that are advisable for the prevention or regulation of conflicts of interest.
- clause (f) of subsection 154(1) of the Act allows the Commission to make regulations prescribing requirements in respect of the disclosure or furnishing of information to the public or the Commission by registrants.

VIII. RELATED INSTRUMENTS

The Proposed Instrument and Proposed Policy are related to the Existing Provisions. The AMF and OSC intend to revoke the Existing Provisions and to replace them with the Proposed Instrument and the Proposed Policy, if and when adopted. The revocation of the Existing Provisions is not intended to take effect until the effective date of the Proposed Instrument.

IX. ALTERNATIVES AND ANTICIPATED COSTS AND BENEFITS

Most of the alternatives considered, and the anticipated costs and benefits of implementing the Proposed Instrument, are discussed in the cost-benefit analysis entitled *Cost-Benefit Analysis: Use of Client Brokerage Commissions as Payment for Order Execution Services and Research.* An updated cost-benefit analysis is being published together with this Notice and is included at Appendix “B”.

An additional alternative was proposed by the British Columbia Securities Commission (BCSC) with the 2006 Notice. The BCSC suggested that the existing duty for advisers to act fairly, honestly and in good faith, together with guidance and the use of other regulatory tools including compliance reviews and education, would be an appropriate way to regulate client brokerage commission arrangements. Although the BCSC is participating in this republication, the BCSC Board has not yet decided whether the BCSC will adopt the Proposed Instrument. The BCSC looks forward to reviewing further comments in response to the Proposed Instrument.

X. UNPUBLISHED MATERIALS

In developing the Proposed Instrument, we have not relied on any significant unpublished study, report, or other material.

XI. COMMENTS AND QUESTIONS

Interested parties are invited to make written submissions with respect to the Proposed Instrument, Proposed Policy, and the specific questions set out in this notice. Please submit your comments in writing before April 10, 2008.

Submissions should be sent to all securities regulatory authorities listed below in care of the OSC, in duplicate, as indicated below:

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
e-mail: jstevenson@osc.gov.on.ca

Submissions should also be addressed to the Autorité des marchés financiers (Québec) as follows:

Me 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
courriel: consultation-en-cours@lautorite.qc.ca

A diskette containing the submissions should also be submitted. As securities legislation in certain provinces requires a summary of written comments received during the comment period be published, confidentiality of submissions cannot be maintained.

Questions may be referred to:

Susan Greenglass
Ontario Securities Commission
(416) 593-8140

Jonathan Sylvestre
Ontario Securities Commission
(416) 593-2378

Tony Wong
British Columbia Securities Commission
(604) 899-6764

Ashlyn D'Aoust
Alberta Securities Commission
(403) 355-4347

Doug Brown
Manitoba Securities Commission
(204) 945-0605

Serge Boisvert
Autorité des marchés financiers
(514) 395-0337 x4358

January 11, 2008