

National Instrument 23-102 – Use of Client Brokerage Commissions as Payment for Order Execution Services or Research Services

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PART 1 – DEFINITIONS

1.1 Definitions – In this Instrument

“affiliated entity” has the meaning ascribed to it in section 1.3 of National Instrument 21-101 *Marketplace Operation*.

“client brokerage commissions” means brokerage commissions paid for out of, or charged to, the client accounts or investment funds managed by the adviser.

“fully managed account” has the meaning ascribed to it in section 1.1 of National Instrument 45-106 *Prospectus and Registration Exemptions*.

“order execution services” means:

- (a) order execution; and
- (b) other goods or services directly related to order execution.

“research services” means:

- (a) advice relating to the value of securities or the advisability of buying, selling or holding securities;
- (b) analyses or reports concerning securities, portfolio strategy, issuers, industries, or economic or political factors and trends; and
- (c) databases and software to the extent they are designed mainly to support the services referred to in (a) and (b).

PART 2 – APPLICATION

2.1 Application – This Instrument applies to advisers and registered dealers in relation 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 a dealer.

PART 3 – USE OF COMMISSIONS ON BROKERAGE TRANSACTIONS

3.1 Advisers – (1) An adviser may not enter into any arrangements to use client brokerage commissions, or any portion thereof, as payment for goods and services other than order execution services or research services.

(2) An adviser that uses client brokerage commissions as payment for order execution services or research services must ensure that:

- (a) the goods or services benefit the client(s); and
- (b) 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.

3.2 Registered Dealers – A registered dealer may only accept commissions received from brokerage transactions, or forward to a third party any portion of such commissions, as payment for order execution services or research services.

PART 4 – DISCLOSURE OBLIGATIONS

4.1 Disclosure – An adviser that uses client brokerage commissions, or any portion thereof, as payment for goods and services other than order execution, must provide to its clients on an initial basis and, thereafter, at least annually, disclosure of:

- (a) a description of the process for, and factors considered in, selecting dealers to effect securities transactions, including whether receiving goods and services

in addition to order execution is a factor, and whether and how the process may differ for dealers that are affiliated entities;

- (b) a description of the nature of arrangements entered into relating to the use of client brokerage commissions as payment for order execution services or research services;
- (c) the names of the dealers and third parties that provided goods and services other than order execution under those arrangements and the types of goods and services provided, separately identifying each affiliated entity and the types of goods and services provided by each such affiliated entity;
- (d) the procedures for ensuring that, over time, all clients whose brokerage commissions were used as payment for these goods and services have received reasonable benefit from such usage;
- (e) the methods by which the overall reasonableness of the amount of client brokerage commissions paid to dealers in relation to the order execution services or research services received is determined;
- (f) the total client brokerage commissions paid by the client during the period reported upon; and
- (g) on an aggregated basis, where the level of aggregation has been determined by the adviser, the total client brokerage commissions paid during the period reported upon, along with the adviser's reasonable estimate of the portion of those commissions that represents the amounts paid or accumulated to pay for goods and services other than order execution during that period.

PART 5 – EXEMPTION

5.1 Exemption – (1) The regulator or the securities regulatory authority may grant an exemption from this Instrument, in whole or in part, subject to such conditions or restrictions as may be imposed in the exemption.

(2) Despite subsection (1), in Ontario, only the regulator may grant such an exemption.

(3) Except in Ontario, an exemption referred to in subsection (1) is granted under the statute referred to in Appendix B of National Instrument 14-101 *Definitions* opposite the name of the local jurisdiction.

PART 6 – EFFECTIVE DATE

6.1 Effective Date – This Instrument comes into force six months from its approval date.