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National Instrument 23-102 – Use of Client Brokerage Commissions

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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*; (*entité du même groupe*)

“client brokerage commissions” means brokerage commissions paid for out of, or charged to, a client account or investment fund managed by the adviser; (*courtages*)

“managed account” has the meaning ascribed to it in section 1.1 of National Instrument 31-103 *Registration Requirements and Exemptions*; (*compte géré*)

“order execution goods and services” means

- (a) order execution; and
- (b) goods or services to the extent that they are directly related to order execution; (*biens et services relatifs à l'exécution d'ordres*)

“research goods and services” means

- (a) advice relating to the value of a security or the advisability of effecting a transaction in a security,
- (b) an analysis, or report, concerning a security, portfolio strategy, issuer, industry, or an economic or political factor or trend, and
- (c) a database, or software, to the extent that it supports goods or services referred to in paragraphs (a) and (b) (*biens et services relatifs à la recherche*).

1.2 Interpretation – Security – For the purposes of this Instrument,

- (a) in Alberta, British Columbia, New Brunswick and Saskatchewan, “security” includes an exchange contract; and
- (b) in Québec, “security” includes a standardized derivative.

1.3 Interpretation – Adviser – For the purposes of this Instrument, “adviser” means

- (a) a registered adviser; or
- (b) a registered dealer that carries out advisory functions but is exempt from registration as an adviser.

PART 2 – APPLICATION

- 2.1 Application – This Instrument applies to an adviser or a registered dealer in relation to a trade in a security if brokerage commissions are charged by a dealer for an account, or portfolio, over which the adviser has discretion to make investment decisions without requiring the express consent of the client, including, for greater certainty,
- (a) an investment fund; and
 - (b) a managed account.

PART 3 – COMMISSIONS ON BROKERAGE TRANSACTIONS

- 3.1 Advisers – (1) An adviser must not direct any brokerage transactions involving client brokerage commissions to a dealer in return for the provision of goods or services by the dealer or a third party, other than any of the following:
- (a) order execution goods and services;
 - (b) research goods and services.
- (2) An adviser that directs any brokerage transactions involving client brokerage commissions to a dealer, in return for the provision of any order execution goods and services or research goods and services by the dealer or a third party, must ensure that:
- (a) the goods or services are to be used to assist with investment or trading decisions, or with effecting securities transactions, on behalf of the client or clients; and
 - (b) a good faith determination is made that the client or clients receive reasonable benefit considering both the use of the goods or services and the amount of client brokerage commissions paid.
- 3.2 Registered Dealers – A registered dealer must not accept, or forward to a third party, client brokerage commissions, or any portion of those commissions, in return for the provision to an adviser of goods or services by the dealer or a third party, other than any of the following:
- (a) order execution goods and services;
 - (b) research goods and services.

PART 4 – DISCLOSURE OBLIGATIONS

- 4.1 Disclosure – (1) An adviser must provide the following disclosure to a client if any brokerage transactions involving the client brokerage commissions of that client

have been or might be directed to a dealer in return for the provision of any good or service by the dealer or a third party, other than order execution:

- (a) before the adviser opens a client account or enters into a management contract or a similar agreement to advise an investment fund,
 - (i) a description of the process for, and factors considered in, selecting a dealer to effect securities transactions, including whether receiving goods or services in addition to order execution is a factor, and whether and how the process may differ for a dealer that is an affiliated entity;
 - (ii) a description of the nature of the arrangements under which order execution goods and services or research goods and services might be provided;
 - (iii) a list of each type of good or service, other than order execution, that might be provided; and
 - (iv) a description of the method by which the determination in paragraph 3.1(2)(b) is made; and
- (b) at least annually,
 - (i) the information required to be disclosed under paragraph (a) other than subparagraph (a)(iii);
 - (ii) a list of each type of good or service, other than order execution, that has been provided;
 - (iii) the name of any affiliated entity that provided any good or service referred to in subparagraph (ii), separately identifying each affiliated entity and each type of good or service provided by each affiliated entity; and
 - (iv) a statement that the name of any other dealer or third party that provided a good or service referred to in subparagraph (ii), if that name was not disclosed under subparagraph (iii), will be provided to the client upon request.

(2) An adviser must maintain a record of the name of any dealer or third party that provided a good or service, other than order execution under section 3.1, and must provide that information to the client upon request.

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 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 AND TRANSITION

6.1 Effective Date – This Instrument comes into force on June 30, 2010.

6.2 Transition – On or before December 31, 2010, an adviser must provide to a client, if the client was a client on June 30, 2010, the disclosure required under paragraph 4.1(1)(a) or (b).