

Document Type: National Instrument

Document N°: 23-102

Subject: *Use of Client Brokerage Commissions as Payment for Order Execution Services or Research ("Soft Dollar" Arrangements)*

Publication Date:

Effective Date:

NATIONAL INSTRUMENT 23-102

USE OF CLIENT BROKERAGE COMMISSIONS AS PAYMENT FOR ORDER EXECUTION SERVICES OR RESEARCH ("SOFT DOLLAR" ARRANGEMENTS)

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PART 1 - DEFINITIONS

1.1 Definitions

In this Instrument

"order execution services" means:

- (a) order execution; and
- (b) other goods or services directly related to order execution (*services d'exécution d'ordres*).

"research" means:

- (a) advice relating to the value of securities or the advisability of effecting transactions in securities; and
- (b) analyses or reports concerning securities, portfolio strategy, issuers, industries, or economic or political factors and trends (*recherche*).

PART 2 - APPLICATION

2.1 Application

This Instrument applies to advisers and registered dealers in circumstances where brokerage commissions are charged by a dealer in connection with the execution of a trade in securities.

PART 3 - USE OF COMMISSIONS ON BROKERAGE TRANSACTIONS

3.1 Advisers

- (1) An adviser may not enter into any arrangements to use brokerage commissions, or any portion thereof, as payment for goods and services other than order execution services or research.
- (2) An adviser that uses brokerage commissions as payment for order execution services or research must ensure that:

- (a) the order execution services or research benefit the adviser's client(s);
- (b) the research received adds value to investment or trading decisions; and
- (c) the amount of brokerage commissions paid by its client(s) for order execution services or research is reasonable in relation to the value of the order execution services or research received.

3.2 Registered Dealers

A registered dealer may not use or forward to a third party any portion of the commissions received from brokerage transactions as payment for goods and services other than order execution services or research.

PART 4 - DISCLOSURE OBLIGATIONS

4.1 Disclosure

- (1) An adviser that enters into an arrangement where brokerage commissions, or any portion thereof, are used as payment for goods and services other than order execution, must provide to each of its clients on an initial basis and, thereafter, at least annually, disclosure of:
 - (a) the arrangements entered into relating to the use of brokerage commissions as payment for order execution services or research, including the names of the dealers and third parties that provided order execution services or research under those arrangements, and the types of goods and services provided by each of those dealers and third parties;
 - (b) the total brokerage commissions paid during the period reported upon, for each class of security, by all accounts or portfolios, and by the particular client's account or portfolio;
 - (c) for each of the brokerage commission amounts disclosed under subsection 4.1(b), a reasonable estimate of the percentages paid for:
 - (i) order execution only trades,
 - (ii) trades where order execution is bundled with other proprietary services by the dealer(s), and
 - (iii) trades where a portion of the commission is set aside for payment to third parties, including a breakdown of the

fraction of this percentage that represents the amount for third party research, the amount for other third party services and the amount retained by the dealer(s); and

- (d) a reasonable estimate of the weighted average brokerage commission per unit of security that corresponds to each of the percentages disclosed in subsections 4.1(c)(i) through (iii).
- (2) An adviser must maintain details of each good or service received for which payment was made with brokerage commissions, and make this information available upon request to its clients. These details shall include:
- (a) a description of the good or service received;
 - (b) the name of the dealer who used, or forwarded to a third party, the brokerage commissions as payment for the good or service;
 - (c) the name of the third-party provider, if any, of the good or service; and
 - (d) the date the good or service was received.

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.
- (4) In Québec, this exemption is granted pursuant to section 263 of the *Securities Act* (R.S.Q. c. V-1.1).