

M.O., 2010**Order number V-1.1-2010-02 of the Minister of Finance, January 31, 2010**

Securities Act
(R.S.Q., c. V-1.1)

CONCERNING the Regulation 23-102 respecting use of client brokerage commissions and the Regulation to repeal Policy Statement Q-20 Use by dealers of brokerage commissions as payment for goods or services other than order execution services ("Soft Dollar" Deals)

WHEREAS subparagraphs 1, 3, 8, 9, 26 and 34 of section 331.1 of the Securities Act (R.S.Q., c. V-1.1), amended by section 138 of chapter 58 of the statutes of 2009, stipulate that the *Autorité des marchés financiers* may make regulations concerning the matters referred to in those paragraphs;

WHEREAS the third and fourth paragraphs of section 331.2 of the said Act stipulate that a draft regulation shall be published in the *Bulletin de l'Autorité des marchés financiers*, accompanied with the notice required under section 10 of the Regulations Act (R.S.Q., c. R-18.1) and may not be submitted for approval or be made before 30 days have elapsed since its publication;

WHEREAS the first and fifth paragraphs of the said section stipulate that every regulation made under section 331.1 must be approved, with or without amendment, by the Minister of Finance and comes into force on the date of its publication in the *Gazette officielle du Québec* or any later date specified in the regulation;

WHEREAS the draft Regulation 23-102 respecting Use of Client Brokerage Commissions as Payment for Order Execution Services of Research Services was published in the *Bulletin de l'Autorité des marchés financiers*, volume 5, no. 1 of January 11, 2008;

WHEREAS on December 23, 2009, by the decision no. 2009-PDG-0198, the *Autorité des marchés financiers* made Regulation 23-102 respecting use of client brokerage commissions;

WHEREAS the Policy Statement Q-20 Use by dealers of brokerage commissions as payment for goods or services other than order execution services ("Soft Dollar" Deals) was adopted pursuant to decision no. 2001-C-0253 dated June 12, 2001 (*Bulletin hebdomadaire* vol. 32, no. 25, dated June 22, 2001);

WHEREAS there is cause to repeal this regulation;

WHEREAS the draft Regulation to repeal Policy Statement Q-20 Use by dealers of brokerage commissions as payment for goods or services other than order execution services ("Soft Dollar" Deals) was published in the *Bulletin de l'Autorité des marchés financiers*, volume 3, no. 29 of July 21, 2006;

WHEREAS, by the decision no. 2009-PDG-0199 dated December 23, 2009, the *Autorité des marchés financiers* made the Regulation to repeal Policy Statement Q-20 Use by dealers of brokerage commissions as payment for goods or services other than order execution services ("Soft Dollar" Deals);

WHEREAS there is cause to approve those regulations without amendment;

CONSEQUENTLY, the Minister of Finance approves without amendment Regulation 23-102 respecting use of client brokerage commissions and the Regulation to repeal Policy Statement Q-20 Use by dealers of brokerage commissions as payment for goods or services other than order execution services ("Soft Dollar" Deals) appended hereto.

January 31, 2010

RAYMOND BACHAND,
Minister of Finance

Regulation 23-102 respecting Use of client brokerage commissions

Securities Act
(R.S.Q., c. V-1.1, s. 331.1, par. (1), (3), (8), (9), (26) and (34); 2009, c. 58, s. 138)

PART 1 DEFINITIONS

1.1. Definitions

In this Regulation,

"affiliated entity" has the meaning ascribed to it in section 1.3 of Regulation 21-101 respecting Market-place Operation;

"client brokerage commissions" means brokerage commissions paid for out of, or charged to, a client account or investment fund managed by the adviser;

"managed account" has the meaning ascribed to it in section 1.1 of Regulation 31-103 respecting Registration Requirements and Exemptions;

"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;

"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.

1.2. Interpretation – Security

For the purposes of this Regulation,

(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 Regulation, "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 Regulation 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 Regulation, 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 Regulation 14-101 respecting Definitions opposite the name of the local jurisdiction.

PART 6

EFFECTIVE DATE AND TRANSITION

6.1. Effective Date

This Regulation 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*.

Regulation to repeal policy statement Q-20 use by Dealers of Brokerage Commissions as Payment for Goods or Services Other than Order execution Services (“Soft Dollar” Deals)*

Securities Act
(R.S.Q., c.V-1.1, s. 331.1, pars. (1), (8), (16) and (34);
2009, c. 58, s. 138)

1. Policy Statement Q-20 Use by Dealers of Brokerage Commissions as Payment for Goods or Services Other than Order Execution Services (“Soft Dollar” Deals) is repealed.

2. This Regulation comes into force on June 30, 2010.

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* Policy Statement Q-20 Use by Dealers of Brokerage Commissions as Payment for Goods or Services Other than Order Execution Services (“Soft Dollar” Deals), was adopted pursuant to Decision No. 2001-C-0253 dated June 12, 2001 and published in the weekly Bulletin of the *Commission des valeurs mobilières du Québec* Volume XXXII, No. 25, dated June 22, 2001, and has not been amended since its adoption.