



February 21, 2025

Submitted via Email

Attention: Phil Devault, Vice President, Member Regulation Policy

Member Regulation Policy

Canadian Investment Regulatory Organization

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Dear Mr. Devault:

Re: Non- tailored Advice in the Order Execution Only Channel

We are pleased to provide comments in response to CIRO's consultation on Non-tailored Advice in the Order Execution Only (OEO) Channel. This letter is being submitted on behalf of TD Waterhouse Canada Inc. ("TDW" or "we").

We support CIRO's initiative to evaluate whether OEO dealers can provide non-tailored advice to meet the needs of DIY investors. We agree with CIRO that the limitations in Guidance Note 3400-21-003 *Guidance on order execution only account services and activities* (the "OEO Guidance") is preventing OEO dealers from providing important information, tools and resources to DIY investors, who are increasingly relying on incomplete and misleading advice from unregistered channels. Revising the OEO Guidance to clarify the range of resources and tools that OEO dealers can provide without contravening the recommendation prohibition would help counter this trend and allow DIY investors to make better informed investment decisions.

The demographic of DIY investors has changed over the years. DIY investors are increasingly digitally native individuals who expect to have relevant information to support their independent investment decision-making in a manner that is easily available and easily understood. OEO dealers should be able to provide relevant information to investors in a manner that meets this expectation in the form of non-tailored advice or support.

Included in this letter are our general comments on the OEO Guidance, as well as responses to CIRO's specific consultation questions.

General Comments – OEO Guidance

The OEO Guidance sets out a very broad definition of "recommendation", which includes any information that could reasonably be expected to "influence" an investor or might be "relevant" to their decision-making. Such a broad definition could include almost any form of information. Information should not be construed as a recommendation merely because it is relevant for the investors' decision-making process. Crossing the line into a "recommendation" would of course have significant regulatory implications for an

OEO dealer. As a result, many OEO dealers have been unwilling to make certain supports available, notwithstanding their potential value, due to concerns about regulatory compliance.

For those OEO dealers that make information, resources and tools available on their website, it is our understanding that they have refrained from "pushing" these out to their clients as a result of the distinction made in the OEO Guidance between information that is "pushed" versus "pulled". Simply having information, tools and resources available on an OEO dealer's website does not meet the DIY investor where they are at (i.e. they are accustomed to receiving information in a contextual and timely manner on the channels they navigate). Clients would be more inclined to use the information, resources and tools of the OEO dealers, if the restrictions on how and when an OEO dealer can "push" out its resources is eliminated.

Further, OEO dealers that choose to provide non-tailored advice to their clients should be able to do so in reliance on the existing exemptions from suitability and Know-Your Client (KYC) requirements. Imposing additional regulatory obligations, such as suitability and KYC, would likely simply result in the status quo, due to concerns about regulatory compliance.

Providing support to DIY investors by making available or sending self-help tools such as self-assessment tools, model portfolio, filters, curated factual information, etc., should not constitute "advice". Rather, it should be construed as general assistance or support only. We are of the view that this approach would not have any detrimental impact on investors, nor would it diminish the value and importance of established advice channels that do provide tailored advice, that are subject to robust KYC and suitability requirements. In fact, it would help to close the current information gap between those in advised and those in non-advised channels.

We agree with CIRO that any revised OEO Guidance should be subject to further consultation which may help ensure any guidance ultimately promulgated will achieve the intended outcomes for DIY investors.

1. Notification and Alerts

We support OEO dealers having the ability to notify clients of information, resources or tools relevant to their holdings, provided the OEO dealer does not express an opinion or judgement. For example, we think OEO dealers should be allowed (but not required) to notify clients of:

- Curated information based on clients' investments (e.g., earnings announcement, third-party news, articles or research reports, corporate actions, related securities with comparative information to client's holdings, investment performance);
- Point in time notification. For example, where a client has cash holdings and/or has not made any investments for a certain period after funding their account, we believe it would be appropriate to reach out with educational information about investing some or all of their cash holdings; and,
- Educational information and tools, including supportive self-assessment tools.

The above would empower investors to make more informed investment decisions related to positions they hold. With the availability of such curated, factual information, investors would also be more engaged and hopefully more pro-active in their approach to investment management.

We also recommend that CIRO not introduce a requirement for OEO dealers to alert or notify clients under prescribed circumstances and/or require OEO dealers to make subjective determinations regarding a security, such as identifying whether a security is a "meme stock" or other reasons to issue an "alert" or "warning" regarding a security. This could result in undue reliance by investors on these alerts and could thereby also expose OEO dealers on an ongoing basis to potentially significant civil liability claims from clients and issuers. Further, such "alerts" or "warnings" about a security, would be difficult to implement consistently, in practice, across the industry. Investors could receive varying notifications on the same security from different dealers, thereby causing client and market confusion. In our view, if clients are provided with curated information, based on their holdings, they will have sufficient access to relevant information needed to make their own decisions regarding potential risks associated with certain securities.

If CIRO pursues the issuing of 'warnings' regarding specific securities, we recommend regulators publish such warnings, which could then be pushed or made available to clients by Dealer Members.

2. Self-help tools

We support CIRO providing a non-exhaustive list of self-help tools. There is continuous innovation in the development of tools for clients and CIRO guidance should not inadvertently slow or prevent this innovation by being overly prescriptive.

The guidance should offer flexibility to allow dealers to determine how and when to use client information. This will facilitate OEO dealers providing clients with helpful tools that are more likely to assist them in making their investment decisions. Our view is that the providing of these helpful tools and information should not be restricted provided the OEO dealer is not collecting client KYC for the purposes of an ongoing suitability assessment, nor representing that the information or output of the tool is suitable for the client.

Model portfolios: The OEO Guidance should further allow OEO dealers the opportunity to support DIY clients in making well-informed investment decisions. Sample model portfolios that include specific securities, which are, for example based on personal risk profile or desired investment theme selected by the client (e.g. Aggressive Growth risk profile, or Electric Vehicles), should not be considered a recommendation. We are also of the view that a self-help tool that supports a client in determining their own risk profile or desired investment theme and that then provides sample model portfolios, which would present broad-based ETFs or list of securities that are indicative of the asset class, sectors, or industries, outlined in the model portfolio (e.g., technology, electric vehicles, debt, equity, etc.), should not be considered a recommendation. Ultimately the client will always still have the decision-making authority, and the portfolios are not set, or force selected.

Self-assessment tools: We support allowing OEO dealers to provide tools that help clients determine what class of investor they are, with a view to helping those clients be more mindful and aware of their own investment goals and objectives.

Combining tools: We are comfortable with the combining tools capability (e.g., allowing clients to use a self-assessment tool, an asset allocation tool, a securities filter and a rebalancing tool) that could be used by DIY clients and empower them to make informed decision related to their investments.

Filters: We support allowing OEO Dealers to provide their clients with tools for filtering the investments available on their platforms (e.g., large cap Canadian equities or TSX 60 index tracking ETFs). We would

not support the imposition of limits on how specific such tools can be made (e.g., narrowing down large sets of investments such as those in the example above by price, performance or other criteria). The DIY investor should have the option to filter the information as they desire.

3. Finfluencers

We are of the view that CIRO should assess the necessity of providing a regulatory framework for finfluencers who provide recommendations.

Finfluencers continue to influence the investment decisions of many Canadians, as more investors turn to them for help, rather than the more traditional, regulated, advice channels. A Canada-wide survey released by CIRO's Office of The Investor reveals that 1-in-5 Canadians say they use social media, forums, or finfluencers for financial information and advice. While finfluencers may have resulted in increased financial education for the average investor, there are dangers to the public of relying on the recommendations of finfluencers. These dangers are highlighted by CIRO's Office of The Investor in a recent post on its website (<https://www.ciro.ca/office-investor/avoiding-fraud-and-protecting-your-investments/finfluencers-investing>).

While it is common practice for marketers to pay for celebrity endorsements, what is different about finfluencers is that they are giving recommendations in what is otherwise a highly regulated industry with stringent rules about conflicts of interest. Finfluencers often do not have the experience or qualifications necessary to guide investors on what is best for them. The prevalence of finfluencers has given rise to herd behaviour that lacks any analysis or judgement. This herd behaviour is exacerbated by "Trade Now" functionalities on finfluencer posts, forums and videos. It is imperative the regulators take action, as investor education alone on the dangers of finfluencers has not proven to be effective.

4. Copy trading

While we support having the ability and flexibility to provide potentially relevant and important information to clients, in our view this should not be extended to allowing copy trading. This practice could result in harm to investors. More specifically, copy trading allows and even encourages investors to simply rely on the views of and the trading style of unregistered individuals, without doing their own research on the risks and costs of the transactions they are copying. Automated copy trading, in our view, should constitute a registerable activity such as providing "advice" or even a form of discretionary trading. Copy trading would also expose investors who apply it to risks associated with unannounced changes to trading strategies and/or the type of products, and to excess fees associated with frequent trading.

We appreciate the opportunity to provide our comments and welcome the opportunity to discuss these important issues with you in further detail. Should you require any further information please do not hesitate to contact us.



Paul Clark, Senior Executive Vice President, Wealth Management