

CIRO Consultation - Non-tailored Advice in the OEO Channel

February 26, 2025



Submission to the Canadian
Investment Regulatory
Organization (**CIRO**)

The Canadian Bankers Association (**CBA**)¹ appreciates the opportunity to provide input on the consultation with respect to Non-tailored Advice in the Order Execution Only (**OEO**) Channel (**Consultation**). Below we provide our responses to the specific questions set out in the Consultation.

CIRO Consultation Questions

1. Notifications and alerts.

a) Are there particular products or services in respect of which you think OEO Dealers should be encouraged to issue alerts or other proactive information?

We do not believe that it is appropriate for OEO Dealers to be encouraged, or have any other suggestion made that may imply there is a CIRO expectation, to issue alerts or other proactive information regarding particular products or services. Encouraging or creating an expectation that OEO Dealers issue alerts or other proactive information to clients could expose dealers to unreasonable litigation risk and potential civil liability, for example, based on allegations of failure to warn, or warning when unwarranted, as a cause of action by clients to recover losses or damages for lost opportunity. In addition, third parties (such as issuers) may sue for damages if they are warned against by OEO Dealers.

Further it would not be feasible to monitor for when to provide such alerts and “proactive information” nor would it be possible to do so consistently as between OEO Dealers as there is no uniform applicable criteria in the circumstances. As a regulatory expectation, it is unclear how to practically meet and uncertain how OEO Dealer compliance would be assessed

Moreover, certain alerts or proactive communications may not engender a positive client experience or may confuse clients who would expect to see alerts emanating from an

¹ The Canadian Bankers Association is the voice of more than 60 domestic and foreign banks that help drive Canada’s economic growth and prosperity. The CBA advocates for public policies that contribute to a sound, thriving banking system to ensure Canadians can succeed in their financial goals.

overseeing regulator as they are accustomed to today. To the extent that information of third parties that is shared online may be incomplete or misleading, and in some cases may not comply with securities laws, it is appropriately the role of regulatory enforcement to address and regulators may wish to issue alerts and warnings as they do in certain cases today. Such a new ambiguous standard with its increased risks may make OEO Dealer business untenable to conduct and may thus be counterproductive to the objective of updating the OEO Guidance to facilitate OEO Dealer ability to improve client service with non-tailored advice in the registered channel rather than outside of it.

However, to the extent that generic risk disclosures concerning leverage or derivatives, for example, are already being provided to clients pursuant to CIRO requirements, and that there is also a “no recommendation” disclaimer mandated by CIRO IDPC Rule 3241(3); we recommend that the updated OEO Guidance include standard disclaimer language respecting non-tailored advice tools/products (such as model portfolio products) that OEO Dealers can adopt to similarly support clarity on the standard for non-tailored advice. For example:

“Information or advice offered through the OEO Dealer’s tools or products is not unique to an individual client’s personal circumstances (“non-tailored advice”) and is not investment advice; the OEO Dealer is not responsible for making a suitability determination for the client, and will not consider the client’s personal and financial circumstances, investment needs and objectives, investment knowledge, risk profile, investment time horizon, nor other similar factors, and will not be responsible for making a determination that any investments are appropriate for the client. The client is solely responsible for their investment decisions when using non-tailored advice tools and products including those that may reference specific securities.”

Overall, the updated OEO Guidance should focus on facilitating OEO Dealers’ ability to make non-tailored advice tools available to clients who can use them to help make better investment decisions within the registered channel, while reinforcing that the client continues to be solely responsible for their investment decisions when using the tools/information.

See also our response to question 1 b) below.

b) What consistent criteria could OEO Dealers use in choosing to issue alerts or other proactive information?

As noted above, there is no consistent criteria that will be feasible for OEO Dealers to use to “choose” to issue alerts or other proactive information. We support that it remain open to OEO Dealers to exercise professional judgment to determine what tools or information to offer clients that are purely factual and not unique to an individual client’s personal circumstances.

We also support the ability of OEO Dealers to provide tools/information if such tools/information may be relevant to the client based on the client’s self-directed investments (e.g., earnings announcement, research report, client “sitting” in cash, etc.). Offering tools or information to clients that conforms to non-tailored advice in these scenarios should remain the business purview of the OEO Dealer, rather than be imposed by regulatory criteria, expectation or encouragement.

2. Self-help tools

a) Specific tools. Are there any specific tools or services you believe should be included or excluded from the list of non-tailored advice?

The following tools should be included in non-tailored advice:

- Tools that build investment strategies based on clients’ inputs.
- Market commentators’ outlook and opinions.
- Automatic rebalancing tools requiring the user’s explicit instruction, without the requirement to “re-confirm” with the client on a quarterly basis as suggested in the current OEO Guidance Section 3.3.9(c) Confirmation of Rebalancing Instructions. Periodic “notifications” or “reminders” from the OEO Dealer would be more appropriate than the “re-confirm” requirement.

b) Model portfolios. The current guidance contemplates model portfolio tools that are “limited to class of investor, asset class, industry sector and/or time horizon.”

Model portfolios that reference specific securities are not contemplated. Would you support allowing model portfolios that do reference specific securities, providing no recommendation is made by the OEO Dealer based on client information?

Yes, we support allowing model portfolios that reference specific securities, including if created by Portfolio Managers, provided that no representation is made by the OEO Dealer based on an individual client's personal information and provided that the list is indicative of the sectors outlined in the model portfolio (e.g., technology sector, energy, etc.), in conjunction with a standard disclaimer concerning non-tailored advice such as the example we provide in our response to Question 1 above.

c) Self-assessment tools. The current guidance does not contemplate OEO Dealers providing tools that help clients determine what class of investor they are. Would you support allowing OEO dealers to provide self-assessment tools?

Yes, we support allowing OEO Dealers to provide clients access to self-assessment tools based on the client's own input in the tool.

As the industry continues to introduce new tools, the guidance should clarify guiding principles as to when providing a particular tool does not constitute a "recommendation". This should include the following criteria as indicators that a tool is not a recommendation:

- The client chooses to use the tool (regardless as to whether it is "pushed" or "pulled").
- The client inputs their own information into the tool themselves.
- The client has sole decision-making with respect to how the outputs of the tool may be used for their investing.

d) Filters. OEO Dealers 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). Would you impose 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)?

We support curated/pre-defined filters from which clients can choose securities to invest in (e.g., for clients who want to focus on AI, the filters would include a list of securities in that sector).

We would not impose limits on how specific such tools can be made, so long as the tool is only curating the list based on the inputs of the client and the input criteria is clearly defined.

e) Combining tools. What is your opinion on the potential effects of combining tools of various kinds (e.g., if a client uses each of the following in succession: a self-assessment tool, an asset allocation tool, a securities filter and a rebalancing tool)?

Since clients have access to these tools at their disposal, (whether through a Dealer's site or any other public website or unregistered channel) they should be able to use these resources freely to make their own informed decisions. Use of disclaimers concerning the use of tools individually or in combination can clarify that they are for information only and do not constitute investment advice.

f) Limited client-specific information. Should there be greater allowance for the use of limited client-specific information that does not include a recommendation and is not based on KYC information? For example, in situations where a new client has funded their account but has not made any investments after a certain period, would it be appropriate to reach out with educational information about the benefits of investing some or all of their cash holdings?

Yes, this would be appropriate as limited client-specific information would be educational for the client, as in the example referenced in the question, or, for another example, reminders related to the Registered Retirement Savings Plan contribution deadline. However, we reiterate our position in response to Question 1 above that OEO Dealers should not be encouraged or expected to issue alerts or proactive information to clients but be permitted to exercise their judgment independently on what non-tailored advice may be offered to clients as well as when it is offered.

3. Finfluencers. Some CIRO OEO Dealers have entered into referral arrangements with

Finfluencers and in certain cases have integrated their trading platform with the third-party platform, (e.g. “Trade Now” functionality that provides the ability to trade directly through the third-party platform).

What are your views on this practice and to what level of initial due diligence and ongoing monitoring should be required on the part of the OEO Dealer?

We do not have a view on this practice.

4. Copy trading.

a) Should OEO Dealers be allowed to provide their clients with “copy trading” functionality that provides the ability to automatically replicate the trades of other investors?

While the Consultation does not provide details on the full scope of what can be considered “copy trading”, our general view is provided below and depends on the type of copy trading being considered.

i) Copying static positions or trade strategies

We are supportive of OEO Dealers enabling their clients to copy the trades of other investors that have already been executed, provided that:

- The OEO Dealer makes no representations on the merit, or potential of the trade/strategy (other than the client being able to view information like factual statistical performance or back-tested results). The client having access to “pull” this information and use their own judgment to decide what trades they would like to effect through the OEO Dealer’s platform, is aligned with the principles of an OEO Dealer/client relationship.

Example 1.

- Portfolio holds shares in companies A, B and C.

- Investor wishes to copy that portfolio, and opens a pre-populated trade ticket to enter in the number of shares/dollar value to purchase.

Example 2.

- A trade strategy is shown by an investor to buy shares of Company XYZ when the TSX crosses its 200-day moving average.
- Investors should be able to copy that strategy and enter in the number of shares they would like to buy.

ii) Copying Ongoing “Trades” (including Strategies and Portfolios):

Copy trading by automatic replication of ongoing decisions being made by another investor should not be permitted as it may cause the investor who is being copied to be acting in the capacity of a Portfolio Manager. While such automated copy trading should not be permitted, we support copy trading where the client choosing to copy another investor’s trades actively assesses each trade, portfolio, or strategy before submitting to the market.

b) What measures can be implemented to ensure that copy trading is used in a way that is beneficial to investors?

As in the case of model portfolios or other non-tailored advice tools, disclaimers could be provided so that clients are aware that the “copied” investors’ portfolio(s) are presented for informational purposes only, and therefore, clients must use their own judgment to interpret the trading strategies of other investors. The OEO Dealer’s role is simply to provide means of execution.

5. Delivery of tools and information. Should the guidance distinguish information and tools provided directly on OEO Dealer websites or by email or made available through apps or social media sources?

It would be helpful if CIRO could clarify the scope of this question.

In principle, OEO Dealers should have the same obligations which are neutral to the technology/

medium used to provide tools or distribute information to clients. How an OEO Dealer satisfies their obligations may be different, but effective for the specific platform. Additional context is needed to provide a fulsome answer to this question.

We thank you for taking the time to consider our views regarding the Consultation and trust that you will find these comments helpful. We would be pleased to discuss our comments further at your convenience.