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Submitted via Email

Member Regulation Policy

Canadian Investment Regulatory Organization
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RE: NON-TAILORED ADVICE IN ORDER EXECUTION ONLY CHANNELS

We support CIRO's commitment to new policies that expand options available to investors across CIRO regulated firms. The rise in Do-It-Yourself Investors and the continued rapid development of technology is broadly known and issues raised by CIRO's consultation questions are being considered globally.¹ We are glad that CIRO recognizes that swift technological growth includes beneficial services to investors and wishes to avoid impeding the availability of these services in a responsible fashion.

We thank CIRO for considering and accepting our [prior recommendations](#) that:

- i) Significant changes to some of the terminology in the OEO Guidance are warranted, particularly concerning the meaning of "recommendation" within the context of the recommendation prohibition.
- ii) The current emphasis on whether information provided by an OEO Dealer could reasonably be expected to "influence" an investor or might be "relevant" to their decision-making and whether information is "pushed" or "pulled" to a client or group of clients, requires reconsideration.
- iii) The key distinction should be whether the advice is non-tailored and intended to assist clients in making better decisions *for themselves*.
- iv) It is beneficial to revisit the lists of examples of permitted tools to provide OEO Dealers with a reasonable degree of certainty regarding the regulatory intent of the revised guidance.

¹ <https://www.iosco.org/news/pdf/IOSCONEWS749.pdf>

In providing responses to the consultation questions posed, we:

- i) Also fully support the value of advisory channels and their knowledgeable financial professionals.
- ii) Recognize that technological tools are profoundly impacting the securities industry, challenging our thinking and presenting new, different regulatory considerations.
- iii) Further recognize that on an OEO platform, the investor has chosen to drive all investment decisions. The investor is provided with a series of tools. These tools are non-tailored and do not comprise a recommendation to purchase, sell, hold or exchange any security, including any class of security or security of a class of issuer. The investor may choose to use these tools (or not) to tailor investments decisions for themselves.
- iv) Appreciate that the current prevalence of investment tools, including copy trading, and influencers, is likely to grow rather than dissipate.
- v) Emphasize the importance of plain language material disclosure to the investor of:
 - a) Key information regarding the referral arrangement, tool, strategy, risk and fees, as applicable.
 - b) The lack of a suitability review by the dealer and the implications for the investor.

Question #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?**

Investor alerts and warnings are ably issued by the Canadian Securities Administrators: <https://www.securities-administrators.ca/investor-alerts/> who should continue to do so or, alternatively, choose to delegate the important function to CIRO.

In this Consultation, CIRO has helpfully confirmed its view nothing in the OEO Guidance is intended to suggest that providing clients with purely factual information or advice in the form of notifications “pushed” to them on a proactive basis is contrary to CIRO’s current recommendation prohibition, provided that such information or advice is not unique to an individual client’s personal circumstances or portfolio (non-tailored advice). Apart from alerts, OEO dealers may choose to proactively provide general information to investors concerning products or services, including leveraged products, meme stocks, options trading, and margin.

b) What consistent criteria should OEO dealers use in choosing alerts or other proactive information?

Please see the answer to question 1 a) above. The CSA may consider disclosing its criteria for investor alerts and expanding it as it deems prudent.

Question #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?

Canadian regulators should be mindful of specific tool and services broadly available to investors in Canada² and in other jurisdictions, particularly the US, and ensure investors in Canada have the same benefits.³

Also, with respect to the US, FINRA Rule 2214 explicitly provides for the use of investment analysis tools. An "investment analysis tool" is defined as an interactive technological tool that produces simulations and statistical analyses that present the likelihood of various investment outcomes if certain investments are made or certain investment strategies or styles are undertaken, thereby serving as an additional resource to investors in the evaluation of the potential risks and returns of investment choices.

According to FINRA Rule 2214(c), an investment analysis tool and related communications may be provided for an investor's independent use where they:

(1) describe the criteria and methodology used, including the investment analysis tool's limitations and key assumptions.

(2) explain that results may vary with each use and over time.

(3) if applicable, describe the universe of investments considered in the analysis, explains how the tool determines which securities to select, discloses if the tool favors certain securities and, if so, explains the reason for the selectivity, and states that other investments not considered may have characteristics similar or superior to those being analyzed; and

² For example: <https://www.theglobeandmail.com/investing/tools/>;
<https://www.theglobeandmail.com/investing/tools/markets-tools/>;
<https://www.theglobeandmail.com/investing/markets/portfolio/#/>;
<https://globeandmail.my.site.com/helpcentre/s/article/Introduction-to-the-Globe-Investor-Portfolio-Tool>
<https://www.theglobeandmail.com/investing/tools/markets-tools/fund-comparison/>
<https://www.theglobeandmail.com/investing/personal-finance/tools/>
<https://www.theglobeandmail.com/investing/tools/markets-tools/etf-portfolio-manual/>

³ For example: <https://www.schwab.com/invest-with-us/self-directed-investing/>;
<https://us.etrade.com/platforms/>;

(4) display the following additional disclosure: "IMPORTANT: The projections or other information generated by [name of investment analysis tool] regarding the likelihood of various investment outcomes are hypothetical in nature, do not reflect actual investment results and are not guarantees of future results."

For investment analysis tools that favor certain securities, the disclosure required must indicate whether the investment analysis tool searches, analyzes or in any way favors certain securities within the universe of securities considered based on revenue received by the member in connection with the sale of those securities or based on relationships or understandings between the member and the entity that created the investment analysis tool. The disclosure also must indicate whether the investment analysis tool is limited to searching, analyzing or in any way favoring securities in which the member makes a market, serves as underwriter, or has any other direct or indirect interest. Members are not required to provide a "negative" disclosure (i.e., a disclosure indicating that the tool does not favor certain securities).⁴

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, as per above and our [prior recommendations](#).

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. Self-assessment tools will help investors determine, for themselves, matters such as their asset allocation, investment product selection and risk management strategies. Self-assessment tools are broadly available to investors on public (including regulatory) websites and social media.⁵

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)?

⁴ [2214. Requirements for the Use of Investment Analysis Tools | FINRA.org](#)

⁵ For example: <https://www.ciro.ca/office-investor/understanding-risk/investor-questionnaire>;
<https://www.investright.org/tools-resources/quizzes/investor-personality-quiz/>;
<https://www.getsmarteraboutmoney.ca/tools/investor-personality-quiz/>;
<https://lautorite.qc.ca/en/general-public/calculators-and-tools/calculators/your-investor-profile>

No. Narrowing down large sets of investments by price, performance or other criteria brings benefits to the investor and remains non-tailored advice. Generally, for order execution only platforms, the following tools have not been seen as recommendations⁶:

- i) Search engines that enable investors to sort through data available about the performance of a broad range of securities, company fundamentals and industry sectors. The data is not limited to favoured securities or buy recommendations and investors use and direct these tools on their own. Search results may rank securities using any criteria selected by investors and may display news, quotes and links to related sites.
- ii) Research tools that allow investors to screen through a wide universe of securities (e.g., all exchange-listed and Nasdaq securities) or an externally recognized group of securities (e.g., certain indexes) and to request lists of securities that meet broad, objective criteria (e.g., all companies in a certain sector with 25 percent annual earnings growth). There are no limits on the way the research tool searches through a wide universe of securities or controls on the generation of the list to favor certain securities. Similarly, the algorithms for these tools are not programmed to produce lists of securities based on subjective factors that the firm has created or developed, nor do the algorithms, for example, produce lists that favor those securities in which the firm makes a market or for which the firm has made a "buy" recommendation.

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)?

Combining tools should also assist investors with making more informed decisions for themselves. From the investor's perspective, it is unclear how limiting the tools an investor can choose to combine for themselves is of benefit to the investor. The key facts and circumstances for investors on an order execution only platform is that they have chosen to make all investment decisions. As stated, the tools themselves are non-tailored to any given investor and do not comprise a recommendation to purchase, sell, hold, or exchange any security, including any class of security or security of a class of issuer. They may be used or combined by an investor to tailor investment decisions for themselves.

- 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?**

⁶ [Notice to Members 01-23 | FINRA.org](#)

Yes. It remains the investor's option to review the information, to invest, and if so, to select themselves the amount of investment and the investments.

Question #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?

Referral arrangements with Finfluencers are widespread, the subject of global regulatory review and not specific to OEO platforms.⁷

In February 2023, FINRA published its expected practices for social media and referral programs following its targeted exam sweep in September 2021.⁸ Their June 25, 2024, podcast, Finfluencers: New Marketing Strategies Meeting Existing Compliance Obligations provides best practices with reference to both the targeted exam sweep and enforcement actions. Generally, firms are to review and approve influencer posts, which are to be fair and balanced, retain their communications and have a reasonable system in place for supervising them.

Due diligence and ongoing monitoring of referral arrangements and influencers can be addressed by the following CIRO IDPC Rules and Guidance:

3109: Conflict of Interest Policies and Procedures

3900 Supervision

3600 Communications with the Public

3804 Books and Records

GN-3600-21-002: Review of Advertisements, Sales Literature and Correspondence

Question #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?

Yes. Copy trading meets the definition of non-tailored advice. Copy trading platforms are currently available to Canadian investors.

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

⁷ <https://www.iosco.org/library/pubdocs/pdf/IOSCOPD775.pdf>

⁸ <https://www.finra.org/rules-guidance/guidance/targeted-examination-letters/sweep-update-feb2023>

Copy trading is also widespread and the subject of global regulatory review.⁹ In the US, the SEC oversees copy trading platforms. Firms offering copy trading services must register as advisors or broker dealers, depending on their model, and provide clients with key information about strategies, risks and fees involved in copy trading.¹⁰

Question #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?

Generally, the same principles should apply based on the premise that securities regulation is generally technology neutral and applies regardless of the technology being used to conduct a given activity.

We thank you for the opportunity to comment and look forward to revisions to related CIRO IDPC Rule 3242(3)(i)(a) and CIRO IDPC Rule 399955(1)(ii)¹¹ and [Guidance Note 3400-21-003 Guidance on order execution only account services and activities](#).

Respectfully submitted,

THE INVESTMENT INDUSTRY ASSOCIATION OF CANADA

⁹ <https://www.iosco.org/library/pubdocs/pdf/IOSCOPD776.pdf>

¹⁰ ["Country by Country: A Breakdown of Copy Trading Regulations Around the World" - Haswell Capitals](#)

¹¹ See [IIAC Recommendations CIRO Phase 4](#)