

INVESTOR ADVISORY PANEL

February 26, 2025

Member Regulation Policy
Canadian Investment Regulatory Organization
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Re: Non-Tailored Advice in the Order Execution Only Channel

On behalf of the Ontario Securities Commission's Investor Advisory Panel (the "Panel"), I wish to thank you for this opportunity to comment on the Canadian Investment Regulatory Organization's ("CIRO") evaluation of the limitation of advice in the order execution only ("OEO") channel (the "Evaluation").

The Panel is an initiative of the Ontario Securities Commission ("OSC") to ensure investor concerns and voices are represented in the OSC's policy development and rulemaking process. Our mandate is to solicit and articulate the views of investors on regulatory initiatives that have investor protection implications.

General Comments

The Panel supports revisions to the OEO Guidance to allow non-tailored advice that would assist DIY investors. We believe that investor protection will be enhanced if investors in the OEO channel can easily access timely, accurate information and tools that will allow them to learn more about investing and develop investment strategies that are appropriate for their needs, and make informed decisions, without the added cost of advisory services.

In previous comments on the OSC's draft statement of priorities, we recommended the use of measures that could be implemented to protect investors in the OEO channel, potentially including:

- risk warning pop-ups and/or product disclaimers, and requiring investors to acknowledge that they have read and understood such warnings prior to placing an order;
- regulatory spot audits on OEO platforms with respect to such warnings and disclaimers;
- a targeted review of Finfluencers to determine whether measures are needed to regulate their conduct; and
- reducing or restricting digital engagement practices and gamification in the OEO channel.

The Panel recognizes that the OEO channel is designed to allow investors to make their own investment decisions without any recommendations or suitability assessment. However, given the rise in DIY investing,¹ and the proliferation of non-advisor sources of investment information (including friends,

¹ 2024 CSA Investor Index, p. 7; CIRO Investor Survey, p. 7; British Columbia Securities Commission DIY Investing Report, p. 9; FAIR Canada Understanding DIY Account Holders, p. 4.

family, social media, Finfluencers, websites, blogs and investment apps),² the Panel believes that OEO Dealers should be encouraged to provide their clients with as much information as possible, while maintaining the prohibition on tailored advice.

The Panel recommends that both notifications and other tools should be made available by OEO Dealers to their clients. Recent research indicates that DIY investors are relying on various sources of information to make their decisions, without any indication as to the accuracy or completeness of the information they are relying on to trade. In our view, allowing OEO Dealers to provide reliable information to their clients will promote investor protection and build trust in the capital markets. Notifications, such as pop-ups, could help investors learn more about the nature of various types of investments, including where those investments are generally considered to carry higher risk or are more volatile than others. Tools can take a variety of forms, including model portfolios, filtering, and automatic rebalancing.

The Panel believes that the current Guidance with respect to tools is unclear, inconsistent and not aligned to the recent evolution of DIY investing, where a growing number of investors with low investment knowledge are accessing OEO platforms. We recommend that the Guidance be revised to allow OEO Dealers to provide investors with educational resources and timely, reliable information, including a variety of tools, so long as the same resources are made available to all investors in similar circumstances and do not contain tailored advice or recommendations. For example, the Guidance currently states that whether a particular Educational Tool is considered a recommendation depends on whether the purpose of the tool is to educate clients or to influence the client's investment decisions.³ The Panel suggests that this distinction could be seen as arbitrary, given that investment decisions may be influenced by the information that is available to an investor. Similarly, the Guidance currently suggests that most investing tools that include non-tailored information, such as model portfolios, do not cross the line and become recommendations if they are only available for an investor to access independently, rather than being "pushed" to the investor in some form.⁴ However, if all investors are simply made aware that these tools exist, even through a notification, it is unclear how that would transform a generic model portfolio, which does not make specific investment recommendations, into tailored advice rather than an educational tool. Finally, certain investment tools, such as research reports, are considered acceptable despite the fact that they may contain an analyst's recommendation, due in part to investors' familiarity with these sources of information.⁵

In sum, the Panel commends CRO for this initiative. We agree that DIY investors will benefit from additional tools, alerts and information, and that the Guidance should be revised to address the issues identified in the Evaluation. If all DIY investors are provided with information and investing tools in the OEO channel, this could reduce reliance on misleading or inaccurate information from other sources, and enhance investor protection. We agree with CRO's preliminary view that the terminology in the Guidance would benefit from revision, and we urge CRO to revise the Guidance to clearly indicate what constitutes tailored advice as opposed to educational resources, information, and non-tailored investing tools.

² CRO Investor Survey, p. 11; British Columbia Securities Commission DIY Investing Report, p. 13-14.

³ Guidance on order execution only account services and activities ("Guidance"), s. 3.3.12(q).

⁴ Guidance, s. 3.3.12(u)(iii).

⁵ Guidance, s. 3.3.12(r).

Specific Comments

- 1a. *Are there particular products or services in respect of which you think OEO Dealers should be encouraged to issue alerts or other proactive information?*

The Panel believes that alerts should be provided to notify investors about complex investment products, and investments that are generally considered to be more volatile or carry higher risk. Since the products and services offered by OEO Dealers are not static and will evolve over time, we recommend that OEO Dealers adopt policies and procedures to classify products and services as complex or high-risk and provide notifications and alerts accordingly. This recommendation is discussed further in our comments on question 1b below.

Some examples of products that would warrant a notification or additional information prior to purchase by a DIY investor include products with inherent leverage in their structure (leveraged ETFs, leveraged closed-end funds, and split shares), less liquid instruments and other investments with an increased bid-ask spread, single stock ETFs, alternative investments, and products comprised of such investments (such as cryptocurrency ETFs).

Similarly, if an investor wishes to engage in options, futures, or options on futures trading or open a margin account, or use other services that could expose the investor to additional risk, we recommend that clients be directed to educational resources that will help them learn about the risks and benefits of doing so, and assess whether to use these services. An alert should also be provided before the investor makes a trade or opens a margin account.

- 1b. *What consistent criteria could OEO Dealers use in choosing to issue alerts or other proactive information?*

The Panel recommends that any policies or procedures implemented by OEO Dealers to determine when an alert or other proactive information should be provided to clients should be based on specific principles, rather than a list of specific products or services. We suggest that these principles could include the following, where applicable to account structures, investment products or investment strategies:

- risks based on complexity, leverage and liquidity,
- tax implications,
- cost implications, and
- exposure to unlimited liability or a permanent loss of capital.

We believe that notifications should help DIY investors learn about and understand the risks associated with certain investing decisions but are concerned that overly broad criteria for alerts could ultimately dilute or negate their impact and usefulness.

The Panel believes that context is important when deploying warnings and alerts. A generic multiple-paragraph pop-up covering all types of securities, or multiple risk factors, is unlikely to serve its purpose. Instead, alerts and warnings should be specific to the security being considered and the type of risk.

Notifications may be more meaningful if they include context specific to the client, such as a portfolio analysis tool, but the Panel recognizes that this may be difficult for OEO Dealers to do without violating the prohibition on providing tailored advice.

2a. *Are there any specific tools or services you believe should be included or excluded from the list of non-tailored advice?*

The Panel believes that OEO Dealers should be encouraged to provide their clients with tools and services that will help them better understand their risk tolerance or risk profile, general information about investment strategies for various risk profiles, and portfolio analysis tools that would allow investors to compare their existing investments against their self-identified risk profile. We also recommend that OEO Dealers provide their clients with access to tools that will allow them to evaluate and compare investment products, such as screening within an industry-standard peer group. The Panel suggests that OEO Dealers should also be allowed to provide investors with educational information about investing strategies that may be of interest, such as sustainable investing, which itself is facing an advice gap.

We note that Generative Artificial Intelligence (“AI”) may be of assistance in providing investors with information and data for educational purposes, and could be utilized by OEO Dealers in making information available to their clients, but caution must be exercised to ensure that these tools source answers from verified, trusted sources as opposed to social media forums or the internet more broadly. We also recommend that Dealers inform investors if AI is used to source information.

Non-tailored advice should not highlight any particular product or service offered by an OEO Dealer. We believe that DIY investors should be provided with tools and services that will help them make investment decisions based on verified information, but those tools and services should not be used as a promotional or sales tool.

2b. *Would you support allowing model portfolios that do reference specific securities, providing no recommendation is made by the OEO dealer based on client information?*

The Panel believes that these types of model portfolios can be viewed in two ways. On one hand, the Panel is concerned that model portfolios that refer to specific securities may, in certain circumstances, be more akin to investment advice than an educational resource that would allow an investor to make their own investing decisions. The basis for providing these types of models to investors in the OEO channel is unclear, as they may constitute recommendations (without a suitability assessment of the investor), potentially without additional information that would allow an investor to determine why a particular security is included in the model portfolio. We are also concerned that model portfolios could be used to promote OEO Dealers’ proprietary products, without providing investors sufficient information to determine whether those products would be appropriate for their circumstances or self-identified risk profile.

On the other hand, the Panel is also aware that if OEO Dealers do *not* provide models that reference specific securities, DIY investors will likely seek the same elsewhere, which we believe is a key concern and one of the reasons for the Evaluation. Moreover, we contrast the US market (where robust marketplaces

for model portfolios exist, lowering barriers for retail investors) to Canada, where professionally managed models are typically only accessible via proprietary distribution channels. Allowing for model portfolios from multiple professional providers on OEO platforms would have the potential to increase competition among model providers in Canada. Put another way, models can be considered a different form of strategy wrapper, not unlike mutual funds or ETFs. In this context, it is possible that simply displaying models on an OEO product shelf would not be considered advice.

2c. *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?*

The Panel believes that self-assessment tools would be helpful for DIY investors and we support allowing and encouraging OEO dealers to provide these tools to their clients. We believe that tools such as CIRO's Investor Questionnaire do not constitute tailored advice, and do not violate the prohibition on suitability assessments in the OEO channel, so long as the assessment is being conducted by the investor rather than the dealer. We also note that tools are more likely to be effective if they are designed using behavioural science or research, or have been tested before being implemented.

2d. *Would you impose limits on how specific filtering tools can be made (e.g. narrowing down large sets of investments by price, performance, or other criteria)?*

The Panel would not suggest imposing any limits on filtering tools. However, in keeping with our recommendation for alerts to increase investor awareness of complexity and volatility, we recommend that filtering tools should be designed to make information about risk metrics readily available, and that OEO Dealers should be encouraged to develop filtering tools that align with the criteria in their notification procedures and policies.

2e. *What is your opinion on the potential effects of combining tools of various kinds (e.g. if a client uses a self-assessment tool, an asset allocation tool, a securities filter and a rebalancing tool in succession)?*

The Panel recommends that OEO Dealers should be allowed to provide clients with various tools that can be used in combination at the client's discretion. These tools are an important element of investor education and should not be restricted. However, we reiterate our earlier concern that conflicts of interest inherent in the tools should be avoided. For example, tools provided by OEO Dealers should not be made available for the purpose of promoting a Dealer's products or services, or products or services that earn higher fees for the Dealer.

2f. *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, if a new client has funded their account but not made any investments within a certain time period, would it be appropriate to reach out with educational information about the benefits of investing some or all of their cash holdings?*

The Panel is supportive of providing clients with information and education, but we are concerned that these types of notifications or contacts with clients could be provided with insufficient information about the client's circumstances and potentially unduly influence an investor to trade in circumstances when they might be best advised not to. Furthermore, these alerts or contacts could be considered advice by virtue of the fact that they are connected to the client's previous activity. For example, providing information about the benefits of investing in the example provided could imply that failing to invest would be detrimental to the client, even if investing would not be appropriate for the investor's circumstances at the time the notification is received. As stated above, we are also concerned that non-tailored advice should not be used as a promotional or sales tool by OEO Dealers.

3. *What are your views on the practice of referral arrangements between OEO Dealers and Finfluencers, and to what level of initial due diligence and ongoing monitoring should be required on the part of the OEO Dealer?*

The Panel's primary issue with Finfluencers is that the term refers to a broad sector of sources (social media, internet forums, and financial influencers) of investing information, opinions, and advice. We have been concerned about the rise of investor reliance on Finfluencers due to the potential for individuals or organizations to provide advice or recommendations without adequate qualifications, expertise or knowledge, or conflict of interest disclosure.

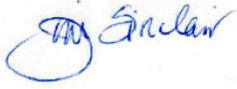
The objective of the Evaluation is to "enhance investor protection by ensuring access to high-quality information from verified sources to allowing the use of tools designed to help investors make better investment decisions". We are concerned that these referral arrangements may not be in keeping with this objective, without a framework in place to ensure that Finfluencers are "verified sources" that provide high-quality information. We are also concerned that investors may not have easy access to information about the referral arrangements, including the benefits to the OEO Dealer of the arrangement, and the potential risk to the investor of relying on the Finfluencer's advice. If CRO integrates the practice of referral arrangements between OEO Dealers and Finfluencers in its Guidance, the Guidance should remind registrants to establish appropriate policies, procedures and controls to monitor and oversee their arrangements with marketing partners and verify that claims and statements made about the firm's products and services are fair, substantiated, and not misleading.

4. *Should OEO Dealers be allowed to provide their clients with "copy trading" functionality, and what measures can be implemented to ensure that copy trading is used in a way that is beneficial to investors?*

The Panel does not recommend that OEO Dealers be allowed to provide this functionality to their clients. In our view, copy trading is essentially a tool that provides an investing strategy or advice, which is not appropriate for the OEO channel. We are also concerned that if this functionality is made available to all clients, investors with low investment knowledge may not fully understand this tool and how to use it.

Again, thank you for the opportunity to comment on the Evaluation. We would be pleased to clarify or elaborate on our comments should the need arise.

Sincerely,

A handwritten signature in blue ink, appearing to read "James Sinclair". The signature is written in a cursive style with a large, circular flourish at the beginning.

James Sinclair
Chair, Investor Advisory Panel