



DELIVERED BY EMAIL

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Canadian Investment Regulatory Organization
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Attention: Member Regulation Policy

Dear Sirs/Mesdames:

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

We thank CIRO Member Regulation Policy for requesting feedback on whether CIRO investment dealers offering order execution only account services (OEO Dealers) can provide non-tailored advice to meet the needs of do-it-yourself (DIY) investors. We applaud CIRO for reconsidering whether Guidance Note 3400-21-003 - *Guidance on order execution only account services and activities* (OEO Guidance) continues to serve the needs of the DIY investing segment in Canada.

About Wealthsimple

Wealthsimple is one of Canada's fastest growing and most trusted financial institutions. We offer a full suite of simple, sophisticated products across managed investing, do-it-yourself trading, cryptocurrency, tax filing, spending and saving. Wealthsimple serves more than 3 million Canadians, including 1 in 5 adults under 40, and holds over \$50 billion in assets.

Wealthsimple has a track record of launching innovative and inclusive financial products, including digital advice, Canada's first Shariah-compliant ETF and fractional shares trading. In 2020 we became Canada's first regulated crypto platform and, in 2022, we became the first ever non-bank, non-credit union to be granted approval for a settlement account with the Bank of Canada. This progress has been possible due to early and ongoing engagement with the CIRO and other regulators.

Redefining "Recommendation"

We support making significant changes to the terminology in the OEO Guidance, particularly the definition of the term "recommendation". The term "recommendation" is not defined in the Investment Dealer and Partially Consolidated Rules (IDPC), nor in Canadian securities law. While the OEO Guidance was meant to provide a definition of "recommendation", this definition

is overly broad and has led to confusion about the tools and information that OEO Dealers may provide to DIY investors.

We believe that CIRO should align the revised definition of the term “recommendation” with the securities law exemption from adviser registration in section 8.25(2) of National Instrument 31-102 (NI 31-101) and section 34 of the *Securities Act* (Ontario) (OSA). Both NI 31-101 and the OSA have an exemption from the requirement to register as an adviser where the advice provided does not purport to be “tailored to the needs” of the person receiving the advice. We believe, therefore, that the revised definition of “recommendation” should be narrowed to encompass only advice tailored to the needs of the recipient.

OEO Dealers should be permitted to make tools available to clients that provide non-tailored advice and that are intended to assist clients in making better decisions for themselves.

Consistent with section 8.25 of the Companion Policy to NI 31-103, advice about specific securities should not be considered tailored to the needs of the recipient if it:

- is a general discussion of the merits and risks of a security;
- is delivered through investment newsletters, articles in general circulation, newspapers or magazines, websites, e-mail, internet chat rooms, bulletin boards, television, or radio; and
- does not claim to be tailored to the needs and circumstances of any recipient.

The revised OEO Guidance should make clear that OEO Dealer activities that align with section 8.25 of the Companion Policy to NI 31-103 do not constitute “recommendations”.

A principles-based approach to what constitutes a “recommendation” will be easier for OEO Dealers to interpret and apply, and will benefit DIY investors by enabling OEO Dealers to provide more tools and information about specific securities. This approach will also address areas of confusion with the existing guidance regarding what constitutes a “recommendation”, including whether the information is “relevant” or might “influence” an investor, or whether the information is “pushed” or “pulled” to a client. We believe that none of these terms should be used in the revised OEO Guidance, as they have led to unnecessary confusion and inconsistent application in the industry about what constitutes a “recommendation”. This has inhibited OEO Dealers from developing tools that may benefit DIY investors by providing information that is not tailored, but may be a relevant consideration when making an investment decision.

This principles-based approach should also guide CIRO in reformulating the remainder of the revised OEO Guidance. While CIRO may choose to provide examples of tools that are permitted, including why they are permitted under the revised approach to what constitutes a “recommendation”, we do not believe the OEO Guidance should contain an exhaustive list of tools that are and are not permitted. OEO Dealers should have the flexibility to develop new and effective tools to inform and support clients, as long as they provide non-tailored advice that enable investors to make better investment decisions for themselves. OEO Dealers should be empowered to provide DIY investors with unbiased and informed resources to aid in their investment decision-making.

Investors that use OEO platforms have chosen a self-directed approach to investing. In providing tools to investors, the OEO Guidance should require OEO Dealers to provide clear disclosure to clients that the tools do not constitute tailored investment advice, which will maintain the distinction that OEO Dealers do not make suitability determinations for clients. As long as clients understand the nature of the advice that they receive from investment tools, CIRO should have no concerns with OEO Dealers providing tools that inform investors' investment decisions.

Our responses to your specific questions are set out below. For convenience, we have included your questions in italics.

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

We believe that the OEO Guidance should permit, but not require, OEO Dealers to provide notifications and alerts to clients. We believe that the current OEO Guidance has led to differing interpretations within the industry about whether alerts are permitted, which results in different experiences for investors depending on the platform they use. We applaud CIRO for already clarifying its view that nothing in the current OEO Guidance is intended to suggest that providing clients with purely factual information or advice in the form of notifications “pushed” to clients on a proactive basis is contrary to the recommendation prohibition, provided that such information or advice is not unique to an individual client’s personal circumstances or portfolio.

There are many examples of alerts that do not provide advice that is tailored to the circumstances of the specific client, but that the client may nonetheless find helpful, such as:

- Price movement alerts for securities in the client’s portfolio. The revised guidance should permit price movement alerts both as determined by the dealer and by the client.
- Price movement alerts for securities that are not in the client’s portfolio, but that the client has included in a “watch list” or has identified as relevant to them.
- Alerts as part of an order entry order flow (prior to the submission of the order) that the security that the client has selected is experiencing market volatility.
- Alerts that are indicative of volatility in the market. These alerts could be provided by the OEO Dealer on its own initiative or according to preferences set by the client. For example, alerts about movements in particular indices or assets (such as Bitcoin, in the case of crypto assets) may provide the client with information about overall market volatility.
- Alerts when a client’s portfolio/account experiences gains or losses beyond certain thresholds, which may be set by the dealer or by the client.

We believe that in terms of setting criteria, the OEO Dealer should be permitted to develop internal policies about the circumstances and thresholds that will trigger alerts, provided that it is clearly disclosed to the client why an alert has been triggered. The OEO Guidance should not set out a prescriptive set of criteria for dealers that require alerts or notifications. OEO Dealers should have the flexibility to establish their own internal policies for alerts, based on the dealer's knowledge of the type of information their client base wants, and the technological capacity of the dealer's systems. Dealers should provide explanations for why alerts are generated, so investors can understand the differences they might encounter between dealers.

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?

As discussed above, we urge CIRO to take a principles-based approach to the definition of "recommendation". With such an approach, we do not believe that any tool that provides non-tailored advice should be excluded from the suite of tools OEO Dealers may provide to investors. If the revised OEO Guidance lists specific tools or services as examples, we believe CIRO should make clear that the tools discussed are not an exhaustive list of permitted tools, and that OEO Dealers should take a principles-based approach to evaluating new tools. As technology changes, the tools that are possible will also change. For example, OEO Dealers may in the future choose to use AI-related tools that may be beneficial to clients. The revised OEO Guidance must not hinder the ability of OEO Dealers to adapt to new technology.

(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?

We are strongly supportive of revised guidance that explicitly permits model portfolio tools that reference specific securities, provided that the model portfolio is not tailored to the specific client. We take the view that model portfolios of this nature are permitted by the current OEO Guidance, but would appreciate CIRO using model portfolios of this nature as an example of a tool that is explicitly permitted in the revised OEO Guidance.

(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?

We are strongly supportive of allowing OEO Dealers to provide self-assessment tools to investors. We believe that tools that help investors understand their risk tolerance are essential for investors to make informed investment decisions for themselves. Importantly, we believe that the revised OEO Guidance should make clear that OEO Dealers are permitted to combine tools.

This is not novel, as the current OEO Guidance states that dealers may couple permitted model portfolio tools with filtering tools. We can envision a tool that starts with a self-assessment tool, and then surfaces to the investor model portfolios designed for the risk tolerance identified through the investor's self-assessment. Similarly, a self-assessment tool coupled with a portfolio analyzer tool would be beneficial to investors as it would help investors understand whether their existing portfolio aligns with their risk tolerance.

(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 are strongly supportive of permitting OEO Dealers to provide clients with filtering tools, and do not believe that CIRO should impose limits on how specific such tools can be made. We note that other players in the Canadian capital markets, such as newspapers and exchanges, have investor websites that allow investors to apply layers of filters that enable investors to identify specific securities that they may choose to invest in. These entities are relying on the advisor registration exemption in section 8.25 of NI 31-101 and section 34 of the OSA. There is no reason to be more restrictive regarding the filters that OEO Dealers may present to clients, as long as the principle that the OEO Dealer is providing non-tailored advice to the client is maintained. Model portfolio tools and tax loss harvesting tools are both examples of tools that, at their core, apply a series of filters to help investors identify specific securities. These are tools that should be permitted.

(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)?

Yes, as discussed above in our response to 2(c), we believe that OEO Dealers should be permitted to combine tools. We believe that a set of tools that allows investors to select securities that they believe are consistent with their risk profile and/or other filters that the investor determines are relevant to their investment objectives, and then automates order entry through a rebalancing tool, would provide tremendous value to the investor.

(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?

We believe OEO Dealers should be able to use client-specific information, as long as that information is not used to provide tailored advice to the client. For example, several of the

notifications we proposed in our response to Question 1 above would be based on client information related to the securities in the client's portfolio. A communication to a client who has funded their account but has not yet made any investments would be similar. This communication could provide the client with general information about the benefits of investing and/or information about the tools the dealer has available to help the client get started - such as self-assessment tools and model portfolios.

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?

We note that CIRO's existing guidance on advertising, Guidance Note GN-3600-21-002 - *Review of Advertisements, Sales Literature and Correspondence* (Advertising Guidance) and IDPC Rule 3600 provide dealers with the flexibility to design policies and procedures related to communication with the public that are appropriate for the dealers' size, structure, business and clientele. We appreciate that the current Advertising Guidance and Rule 3600 are principles based, and that these principles can be applied to all kinds of advertisements, whether via social media influencers or otherwise. In 2022, we provided CIRO staff with feedback on potential revisions to the Advertising Guidance. We believe CIRO should address any proposed new requirements regarding the use of influencers through a consultation process on the Advertising Guidance rather than through this consultation on the OEO Guidance. The use of social media and influencers is not specific to OEO Dealers, and is a topic that warrants its own consultation process.

We do note that if the influencer and the OEO Dealer can satisfy themselves that the use of a "trade now" function is non-tailored advice, such functionality should be permitted by the revised OEO Guidance.

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

As discussed throughout our comments, we believe that the revised OEO Guidance should employ a principles-based approach to the tools that OEO Dealers. Therefore, if an OEO Dealer can satisfy itself that a copy trading tool is providing non-tailored advice to clients, it should be permitted.

The measures that OEO Dealers should implement to ensure copy trading is used in a way that is beneficial to investors are the same measures that OEO Dealers employ in all other aspects of their business - education and disclosure to investors about what copy trading is, the limitations and risks of copy trading, and information on applicable fees.

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?

We do not believe that the revised OEO Guidance should distinguish between tools and information provided on a website, by email, through an app or through social media. The requirements of NI 31-103 are explicitly technology neutral. Section 8.25 of the Companion Policy to NI 31-103 is also technology neutral, referring to non-tailored advice provided through “investment newsletters, articles in general circulation, newspapers or magazines, websites, e-mail, internet chat rooms, bulletin boards, television, or radio.” We believe that CIRO should adopt this technology neutral approach in the revised OEO Guidance, particularly since technology changes rapidly. We believe the principles-based approach to the revised OEO Guidance we have advocated for above will continue to be a useful interpretive device as technology changes, particularly as OEO Dealers introduce AI tools to investors.

We acknowledge that CIRO is overseeing an industry in a period of rapid change. The profile of an average retail investor is changing, how they invest is changing and the importance of their investments to their financial security is only increasing due to factors like the cost of housing, longer life expectancies and lower rates of pension coverage. These are not easy changes for a regulator to address, nor are these conditions static. Wealthsimple applauds CIRO’s effort to pursue reforms that prioritize the best interests of Canadian investors and the public’s confidence in the capital markets.

We hope that our comments will be considered positively by CIRO and helpful in revising the OEO Guidance. We welcome the opportunity to discuss our comments with you.

Yours very truly,

“Blair Wiley”

Blair Wiley
President & Director
Wealthsimple Investments Inc.