



**Comments Received in Response to IIROC Notice 16-0251 – Rules Notice – Request for Comments –
Guidance on Order Execution Only Services and Activities**

On November 3, 2016, we published IIROC [Notice 16-0251](#) requesting comments on proposed guidance ([Proposed Guidance](#)) regarding order execution only (OEO) services offered by Dealer Members (OEO firms) pursuant to IIROC's Dealer Member Rules. We received 32 comment letters from the following commenters:

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| AGF Securities (Canada) Limited | Aligned Capital Partners Inc. | Alan Blanes |
| BMO InvestorLine Inc. | The Canadian Advocacy Council for Canadian CFA Institute Societies | Canadian Foundation for Advancement of Investor Rights |
| George Christison | CIBC Investor's Edge | Credential Financial Inc. |
| Desjardin Online Brokerage | HSBC Securities (Canada) Inc. | Interactive Brokers Canada Inc. |
| The Investment Funds Institute of Canada | Investment Industry Association of Canada | Investor Advisory Panel |
| Kenmar Associates | Leede Jones Gable Inc. | Jean Lespérance |
| Manulife Securities Incorporated | National Bank Correspondent Network | National Bank Direct Brokerage |
| Peters & Co. Limited | PI Financial Corp. | Qtrade Securities Inc. |
| Questrade, Inc. | RBC Direct Investing Inc. | Recognia Inc. |
| Arthur Ross | Scotia iTRADE | TD Direct Investing |
| Andrew Teasdale | Peter Whitehouse | |

Copies of these comment letters are available on [IIROC's website](#) or by clicking on any of the commenters names listed above. We would like to thank all commenters for their time reviewing the material and providing their comments. A summary of the comments we received and our responses to them are set out in the table below. *Unless otherwise indicated: (a) capitalized terms not defined in this table are as defined in the Notice or the Proposed Guidance, as applicable, and (b) section references are to the Proposed Guidance.*



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| <p>General Comments</p> | <p>Most commenters were supportive of IIROC providing new guidance to address the evolution of the OEO business.</p> <p>In particular, commenters were supportive of IIROC providing greater clarity on the scope of tools, services, activities and information (collectively, tools) which an OEO firm can properly provide to its clients without being considered a recommendation.</p> | <p>Thank you for your comment.</p> |
| | <p>Some commenters commented that the current OEO regulatory model is sufficiently clear and new guidance is not required.</p> | <p>As described in Notice 16-0251, the OEO business model has evolved significantly since its development in the early 2000s. OEO firms now offer a wide variety of products, account types and tools. In addition, broader changes have occurred in the investment industry that have impacted the OEO business model.</p> <p>Having been developed nearly 20 years ago, the existing OEO regulatory model could not have contemplated the extent of evolution in the OEO business model. As a result, some of the tools currently offered by OEO firms provide clients with implicit, if not explicit, recommendations.</p> <p>New guidance is necessary to provide our views on what constitutes a recommendation and the scope of tools that we consider to be consistent with the OEO regulatory framework.</p> |
| | <p>Some commenters expressed concern that IIROC was introducing significant changes through guidance instead of a rule change.</p> | <p>Neither the Proposed Guidance nor the final guidance (Guidance) introduces changes to the OEO regulatory framework.</p> <p>However, as a result of comments received, and to provide greater clarity, we've included within the recently published proposed IIROC Dealer Member Plain Language Rule Book (PLR Rule Book) (see Notice 18-0014) certain proposed rule amendments which relate to OEO activities. For example, we:</p> <ul style="list-style-type: none"> provided OEO firms with an exemption from Product/Account Type Appropriateness (as defined in the Guidance)(see clause 3211(1)(ii)), and clarified that the OEO Suitability Exemption exempts OEO firms from all suitability obligations (order and non-order related) (see PLR subsection 3404(1)). |

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| Proposed Amendments | Summary of Comment | IIROC Response and Additional IIROC Commentary |
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| | <p>A number of non-OEO firm commenters expressed their concern with the appearance of an “un-level playing field” between OEO firms and non-OEO Dealers (full-service firms).</p> <p>In particular, commenters indicated that some OEO firms make available tools that perform equivalent functions as full-service firms (i.e., they provide recommendations). If offering such tools, then OEO firms should be held to the same standard (e.g., suitability obligations, etc.) as full-service firms; otherwise, full-service firms are at a significant competitive disadvantage.</p> | <p>We agree with this concern.</p> <p>Where an OEO firm makes available tools that provide recommendations, it is carrying on activities that fall within the full-service regulatory model, without the corresponding regulatory obligations and costs incurred by full-service firms.</p> <p>As such, one of the primary purposes of the Guidance is to provide OEO firms with our views on the scope of tools that we consider consistent with the OEO regulatory framework.</p> |
| | <p>Some individual investors expressed satisfaction with the current OEO business model and the tools currently offered by OEO firms. Commenters highlight that, as a result of the advice gap*, many investors are forced to turn to OEO firms to meet their investment needs.</p> <p><i>* The “advice gap” is discussed in subsection 4(b) of Notice 16-0251. In short, due to many full-service firms having implemented minimum assets-under-management thresholds for new clients, many investors are unable to become clients of full-service firms and may not have access to investment advice.</i></p> | <p>We understand that the advice gap has resulted in investors turning to OEO firms to meet their investment needs.</p> <p>The development of tools by OEO firms which provide recommendations may have been due, in part, to the competitive pressure on OEO firms to provide clients with these tools as means of reducing the “advice gap”.</p> <p>However, OEO firms are prohibited from providing recommendations and investors cannot use OEO firms as means to get advice. Under our current regulatory framework, investors may receive advice only from firms approved by us to offer advisory services.</p> |
| | <p>One commenter stated that if OEO firms were required to discontinue offering certain tools, the high demand for such tools by investors would likely be filled by unregulated sources (e.g., unregistered foreign entities).</p> | <p>OEO firms are not permitted to make available tools that provide recommendations. Tools that provide recommendations relating to securities may only be made available by registrants who are permitted to provide advice under securities laws. Any firm (foreign or domestic) that would make such tools available to clients in Canada would be required to be appropriately registered.</p> |
| | <p>Some commenters would like IIROC to ban OEO platforms from selling products that include embedded trailing commissions.</p> <p>Commenters point out that the rationale for the payment of a trailing commission is, in theory, to provide compensation for ongoing advice to the client. However, since OEO firms are not permitted to provide any recommendations or advice, by offering such products, OEO firms are being paid for advice they are not providing clients.</p> | <p>We acknowledge that funds that pay an ongoing trailing commission to registrants (often described as a payment for advice and services provided to the investor by the registrant), and are made available by OEO firms (e.g., a Series A fund), raise a conflict of interest. Under our rules, a Dealer Member must address conflicts of interest considering the best interests of the client or clients. See section 42.3 of Rule 42 – Conflicts of Interest.</p> <p>In the Guidance, we indicate that OEO firms should consider how they will address any compensation-related conflicts when deciding which series (or series equivalent in the case of a PTF) of a fund to make (or not make)</p> |

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| | | <p>available on their platforms. We recognize that many OEO firms have already implemented practices to address this conflict.</p> <p>We expect that OEO firms will make available, whenever possible, funds that do not pay a trailing commission for ongoing advice (often referred to as a Series D fund).</p> <p>When a Series D fund is not available (e.g., because a fund family does not offer that type of series) and an OEO firm makes available another series that pays a trailing commission, we also expect the firm to address the conflict by rebating to the client the portion of the trailing commission for ongoing advice, or taking other similar steps.</p> <p>A large majority of the publically available funds include a trailing commission. Management of the conflicts of interest relating to trailing commissions by OEO firms allows investors continued access to the widest possible range of investments.</p> |
| | Some commenters requested IIROC to publicly disclose detailed results of all its research and consultations related to the Proposed Guidance. | <p>Section 3 of Notice 16-0251 provides a summary of our consultations and the information from the online investor survey.</p> <p>It is not our current practice to publicly disclosure all our work product relating to policy initiatives.</p> |
| | One commenter felt that the Proposed Guidance may be contrary to industry's efforts to support innovative FinTech solutions. | <p>We do not agree with this comment.</p> <p>We are very supportive of new and innovative business models, including FinTech solutions. However, any new business models must be allocated to the appropriate regulatory model/framework.</p> |
| <p>1. IIROC Regulatory Regime</p> <p>Part 1 of the Proposed Guidance provides a summary of IIROC's regulatory regime applicable to the OEO business model</p> | A number of commenters confirmed their understanding that the OEO suitability exemption does not exempt OEO firms from all suitability-related obligations. | <p>We agree with this comment. OEO firms are required to comply with all IIROC requirements other than those for which they are specifically exempted (e.g., suitability).</p> <p>To avoid any confusion on this issue, we included in our proposed PLR Rule Book publications of March 2016 and March 2017 (see Notice 16-0052 and Notice 17-0054), the following language:</p> <p>2155. Approval as an order execution only account services provider</p> <p>...</p> <p>(2) A Dealer Member that is offering order execution only account services must comply with all IIROC</p> |

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| | | <p><i>requirements</i> other than those for which compliance is specifically exempted.</p> <p>Notwithstanding, we note that there may be circumstances where an OEO firm satisfies an IIROC requirement differently than a full-service firm due to the nature of the OEO regulatory framework (e.g., the know-your-client (KYC) obligations). Please refer to section 2.3 of the Guidance.</p> |
| | <p>One OEO firm commented that the statement in section 1.4 of the Proposed Guidance that the “OEO Suitability Exemption only exempts OEO firms from certain specific suitability obligations relating to “orders”” is very confusing.</p> <p>The commenter added that “like most OEO firms, we consider ourselves exempt from all suitability obligations”.</p> | <p>Currently, the OEO Suitability Exemption is set out in Dealer Member Rule 1300.1(t), which uses the limiting language “<u>when accepting orders</u>” and “to make a determination that the <u>order</u> is suitable”. This language suggests that OEO firms are only exempt from suitability obligations relating to “orders”.</p> <p>However, in light of comments received, and upon further consideration, we have clarified that the suitability exemption for OEO firms exempts OEO firms from all suitability obligations (order and non-order related).</p> <p>We have reflected this in the recently published proposed PLR Rule Book amendments (see subsection 3404(1) included in Appendix 2 of Notice 18-0014). See also section 2.1 of the Guidance.</p> |
| <p>2. <i>Products and Account Types Appropriate for OEO Business Model</i></p> <p>Part 2 of the Proposed Guidance discusses the appropriateness of OEO firms offering a wide variety of products and account types</p> | <p>Some commenters considered the appropriateness analysis to be a new regulatory obligation. Further, a few commenters felt that the appropriateness analysis should be introduced via formal rule-making and not through guidance.</p> | <p>As described in the Proposed Guidance, the appropriateness analysis was not intended to be a new regulatory obligation as it was previously discussed in Notice 12-0109.</p> <p>However, given its importance, we codified it as a requirement applicable to all Dealer Members and included it in the proposed PLR Rule Book published for comment in March 2017 (see section 3211 included in Appendix 1 of Notice 17-0054).</p> |
| | <p>Many OEO firms were opposed to Product/Account Type Appropriateness. Comments included:</p> <ul style="list-style-type: none"> • most OEO firms currently do not conduct Product/Account Type Appropriateness analysis and its introduction would be a material change to their business • it would result in significant operational impact and implementation cost which would be borne by clients • it may result in client confusion regarding the obligations of OEO firms. | <p>In light of these comments, we reconsidered the applicability of Product/Account Type Appropriateness to the OEO business model. In re-evaluating our position, we also considered the following factors:</p> <ul style="list-style-type: none"> • the potential benefits and risks to clients • fostering investor protection • the importance of maintaining the OEO business model as a low-cost option for investors. <p>In balancing these factors, we consider determining Product/Account Type Appropriateness as inconsistent with a suitability-exempt business</p> |

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| | | <p>model. Accordingly, as part of the January 2018 PLR publication, we confirmed that OEO firms are only required to conduct Account Appropriateness (as defined in the Guidance) and not Product/Account Type Appropriateness (by providing OEO firms with an exemption from Product/Account Type Appropriateness). We believe this approach is consistent with current practices and client expectations and have reflected this in the Guidance (see section 2.2).</p> <p>However, we remind OEO firms that they continue to have regulatory obligations when:</p> <ul style="list-style-type: none"> • determining the scope of products they choose to make available on their platform generally (e.g., product due diligence and obligations relating to conflicts of interest) • offering certain specific products or account types to a client(s) (e.g., margin accounts, options, futures contract and futures contract options products). <p>See subsection 2.2.2 of the Guidance.</p> |
| | <p>Some commenters expressed concern that imposing an appropriateness analysis would, in effect, amount to the introduction of a suitability requirement for OEO firms.</p> | <p>We agree that the terms “appropriate” and “suitable” could be confusing for Dealer Members.</p> <p>To address this confusion, in the proposed PLR Rule Book, we have clarified that the account appropriateness obligation is a one-time obligation to be conducted “prior to opening an account” for a potential client (see subsection 3211(1) of the proposed PLR Rule Book in Appendix 3 of Notice 18-0014). In contrast, the suitability requirement is an ongoing obligation.</p> |
| | <p>Some non-OEO firms expressed support for the concept of an appropriateness analysis to apply to OEO firms.</p> <p>One commenter stated that the appropriateness analysis carried out only at the time of account opening is not sufficient. Rather, reconfirmation of the analysis should be required on some reasonable interval thereafter.</p> | <p>The basic framework of the OEO model is predicated on the OEO client making its own investment decisions (self-directed investing) without the benefit of receiving a recommendation or suitability determination from the OEO firm. We believe it would be inconsistent with this framework that an OEO client does not receive any recommendations or suitability determination from the OEO firm, but does receive a general determination whether certain products and account types are appropriate for the client.</p> <p>In the proposed PLR Rule Book published in January 2018, we have introduced an exemption from Product/Account Type Appropriateness for OEO firms.</p> |

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| <p>3. Meaning of “Recommendation”</p> <p>Part 3 of the Proposed Guidance sets out a proposed meaning for the term “recommendation” (section 3.2)</p> | <p>Some commenters commented that the proposed meaning of the term “recommendation” is overly broad and far reaching.</p> | <p>In our view, the proposed meaning of the term “recommendation” is neither overly broad nor far reaching.</p> <p>As discussed in the Proposed Guidance, the terms “advice” and “recommendation” are not specifically defined in Canadian securities laws. However, Canadian securities laws do provide various rules and exemptions which set out the foundation and parameters for the meaning of the terms advice or recommendation.</p> <p>The meaning of the term “recommendation” we provided in the Proposed Guidance is consistent with Canadian securities laws and with international standards.¹</p> |
| | <p>One commenter suggested that an important factor in considering whether a communication or tool is a recommendation should be whether - given the content, context and presentation of a particular communication or tool – a client would reasonably view it as a suggestion to take action or refrain from taking a particular action with respect to an investment.</p> <p>The commenter suggested including the language: “a client would reasonably view it as a suggestion to take action or refrain from taking a particular action” within the meaning of recommendation.</p> | <p>We agree that the “content, context and presentation of a particular communication or tool” are important factors in analyzing all the relevant facts and circumstances of a particular case. In the Proposed Guidance we emphasized this point by including specific language that whether a recommendation exists will “depend on the applicable facts and circumstances”. To emphasize this point further, we have included the wording “based on the context and circumstances” into the meaning of recommendation (see section 3.1 of the Guidance).</p> <p>As discussed in the Proposed Guidance, the application of the meaning of “recommendation” turns on whether the communication or tool could reasonably be expected to influence persons to make an investment decision. We do not propose to amend the meaning of recommendation to incorporate language that “a client would reasonably view it as a suggestion to take action or refrain from taking a particular action”. As set out in clause 3.1(e) of the Guidance, the term “investment decision” includes the purchasing, selling, holding or exchanging of securities. We believe the concept of “refraining from taking action” is captured by use of the term “holding”.</p> |
| | <p>One commenter felt that the definition of “recommendation” should not be included in a guidance note, but rather should be developed through the formal rule-making process.</p> | <p>The prohibition on OEO firms from providing a “recommendation” is set out in IIROC’s Dealer Member Rules. By providing a meaning of the term</p> |

¹ For example, in Australia, section 766B of the *Corporations Act 2001* provides the following meaning of “financial products advice”:

(1) *For the purposes of this Chapter, financial product advice means a recommendation or a statement of opinion, or a report of either of those things, that: (a) is intended to influence a person or persons in making a decision in relation to a particular financial product or class of financial products, or an interest in a particular financial product or class of financial products; or (b) could reasonably be regarded as being intended to have such an influence.*

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| | | <p>"recommendation," IIROC staff is providing its interpretation of a term used within an existing rule.</p> <p>Further, in developing the Guidance, we have, in all material respects, engaged in the same process as the formal rule-making process (e.g., consultation and publication for comment).</p> |
| <p>4. Application of Recommendation</p> <p>Section 3.3 of the Proposed Guidance set out our analysis of some of the more prominent tools currently being offered by OEO firms</p> | | |
| <p>Pricing Incentives</p> <p>Subsection 3.3.1 of the Proposed Guidance provides that pricing incentives are generally acceptable, depending on the facts and circumstances</p> | <p>One OEO firm disagreed that a pricing incentive that favours proprietary products would likely constitute a recommendation. The commenter stated that a pricing incentive on proprietary products should not be prohibited as it simply passes on savings to the client, which is in the best interest of the client.</p> | <p>Generally, proprietary and third-party products should be treated equally by the OEO firm. For example, a pricing incentive across all ETFs (proprietary and third-party manufactured) is generally acceptable.</p> <p>In our view, a price incentive which favours proprietary products is not acceptable as it could reasonably be expected to influence a person to make an investment decision.</p> <p>Further, an OEO firm should ensure the fair visibility, availability and accessibility of all products on its shelf. It is inappropriate for an OEO firm to favour certain products (e.g., proprietary products) over other products (e.g., third-party products) by making it more difficult to execute trades or access research in the less favoured products.</p> <p>We have included a discussion on this topic in subsection 3.3.2 of the Guidance.</p> |
| <p>Hyperlinks and Portals.</p> <p>Subsection 3.3.2 of the Proposed Guidance provides that hyperlinks and portals are generally acceptable, depending on the facts and circumstances</p> | <p>Some OEO firms commented that the use of hyperlinks and content from third party websites and affiliated/related companies are an important and standard part of the information validation process and should not be prohibited outright.</p> | <p>In Proposed Guidance we confirmed that Hyperlinks are generally acceptable, depending on the facts and circumstances.</p> <p>Consistent with Notice 11-0349, whether or not a Hyperlink (or third-party communication) would reasonably be considered to be the OEO firm's communication will depend on the facts and circumstances of each case. As discussed in Notice 11-0349, OEO firms should consider:</p> <ul style="list-style-type: none"> (a) the use of disclaimers (b) the nature of their involvement in the preparation of the third-party communication prior to posting (c) any evidence of explicit or implicit endorsement or approval of the communication by the OEO firm |

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| | | <p>to help determine whether or not the third-party post reflects the views of the OEO firm.</p> <p>Notice 11-0349 also provides suggested best practices relating to third-party communications.</p> |
| | <p>A few commenters felt that the use of disclaimers would address any potential concerns relating to the use of hyperlinks and portals.</p> <p>One firm stated that hyperlinks should not be considered “recommendations” as long as an OEO firm provides a disclaimer that makes it clear:</p> <ul style="list-style-type: none"> • that the hyperlink is not endorsed by the OEO firm, and • by clicking the hyperlink, the client is leaving the OEO firm’s website. | <p>As described in the Guidance, Part VI of Notice 11-0349 discusses the use of disclaimers when a Dealer Member providing links on its website to a third party website:</p> <p><i>Dealer Members should note that the use of disclaimers will not necessarily relieve Dealer Members’ of their responsibility for third-party posts [emphasis added].</i></p> <p>Consistent with Notice 11-0349, OEO firms should note that using disclaimers will not necessarily relieve them of their responsibility for Hyperlinks or third-party communications.</p> |
| | <p>Some OEO firms commented that they should be permitted to integrate their clients’ OEO accounts with tools offered by third-parties to facilitate an integrated client experience.</p> <p>OEO firms suggested that the integration of third-party tools should be permitted only where the OEO firm clearly indicates that it is neither endorsing nor responsible for any investment decisions as a result of the client’s usage of third party’s tool.</p> | <p>We agree with this comment and have included a discussion on Integrated Tools in subsection 3.3.5 of the Guidance.</p> |
| <p>Social Media</p> <p>Subsection 3.3.3 of the Proposed Guidance provides our views regarding OEO firms engaging in social media activities</p> | <p>No material comments were received on this topic.</p> | |
| <p>Trading Tools</p> <p>Subsection 3.3.4 of the Proposed Guidance provides that trading tools constitute recommendations and should therefore not be offered by OEO firms</p> | <p>Some commenters agreed that trading tools that automatically trade on behalf of an investor or suggest trades based on a set of rules pre-defined by the OEO firm would constitute recommendations.</p> | <p>We agree with this comment.</p> <p>Trading Tools (as described in the Proposed Guidance) inform an investor of <i>what</i> trades should be made. Accordingly, as Trading Tools are intended to influence clients’ investment decisions, we consider them to be recommendations and therefore should not be made available by OEO firms.</p> |

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| | | <p>However, we note that, depending on the facts and circumstances, Automatic Rebalancing Tools (as described in the Proposed Guidance) are generally permitted to be offered by OEO firms. In contrast to Trading Tools, Automatic Rebalancing Tools merely carry out instructions provided by a client, rather than suggesting trades.</p> |
| | <p>Two commenters stated that, with the appropriate safeguards, OEO firms should be permitted to provide trading tools to its clients.</p> | <p>We do not agree with this comment. See our previous response.</p> |
| <p>Trade Execution Tools [entitled <i>Trade Execution Assistant Tools</i> in the Guidance]</p> <p>Subsection 3.3.5 of the Proposed Guidance provides that trade execution tools constitute recommendations and should therefore not be offered by OEO firms</p> | <p>One commenter stated that a trade execution tool which provides clients with information on how or when to trade a security would be a recommendation.</p> | <p>Trade Execution Assistant Tools (as defined in the Guidance) may be a recommendation depending on how they are offered. See subsection 3.3.7 of the Guidance.</p> |
| | <p>One commenter opined that a trade execution tool which allows the investor to define the rules on how or when a trade is executed would not be a recommendation.</p> <p>The commenter believes this view is consistent with the Proposed Guidance which clarifies that OEO firms can offer clients the option of how to execute trades so long as the choice is made by the client.</p> | <p>We agree with this comment.</p> <p>So long as the Trade Execution Assistant Tool is merely made available on an OEO firm's website to be "pulled" by the client, without prompting or influence by the OEO firm, we would not consider it to be a recommendation.</p> <p>For example, OEO firms may offer their clients the option of how to execute trades (e.g., Volume Weighted Average Price, Percentage of Volume or Time). So long as the choice is made by the client, on their own initiative, without any recommendation provided by the OEO firm regarding which of these options, if any, a client should choose, we would consider such options acceptable.</p> |
| <p>Pre-entering of Orders</p> <p>Subsection 3.3.6 of the Proposed Guidance provides that pre-entering of orders is acceptable, assuming that the order is pre-entered solely by the client, on their own initiative, without any</p> | <p>No material comments were received on this topic.</p> | |

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| <p>recommendation being provided by the OEO firm</p> | | |
| <p><i>Automatic Rebalancing Alerts and Tools</i></p> <p>Subsection 3.3.7 of the Proposed Guidance provides that Automatic Rebalancing Alerts & Tools are generally acceptable provided that the OEO firm did not influence the client’s selection of their rebalancing instructions</p> <p>OEO firms should be mindful of risks relating to transparency, confirmation of instructions and unforeseen circumstances relating to Automatic Rebalancing Tools</p> | <p>A few OEO firms noted that they would prefer to provide an annual reminder of automatic rebalancing instructions instead of obtaining client confirmation, no less than quarterly, as detailed in the Proposed Guidance.</p> | <p>As discussed in clause 3.3.9(c) of the Guidance, Clients who create rebalancing instructions using an Automated Rebalancing Tool may forget that they created the instructions or experience a change in circumstance necessitating a change in their instructions.</p> <p>In our view, an annual reminder would not adequately address these concerns as:</p> <ul style="list-style-type: none"> • a reminder does not guarantee that the client has read or sufficiently turned their mind to the content and purpose of the reminder • we do not believe that annually is frequent enough given the pace at which market conditions or client circumstances may change. <p>Accordingly, OEO firms should obtain periodic confirmations (no less than quarterly) from clients that the automatic rebalancing instructions should continue.</p> |
| | <p>In connection with clause 3.3.7(d) (<i>Unforeseen Circumstances</i>) of the Proposed Guidance, two commenters questioned how OEO firms would be expected to foresee an event that is “unforeseen”, much less make decisions about what is potentially harmful to clients.</p> | <p>We agree that the wording “unforeseen circumstances” may be confusing. For greater clarity, we have revised the language in clause 3.3.9(d) of the Guidance to reference “unintended consequences” rather than “unforeseen circumstances”.</p> |
| | <p>Two commenters suggest that the discussion in clause 3.3.7(d) (<i>Unforeseen Circumstances</i>) of the Proposed Guidance would place an onerous burden on OEO firms if they are required to foresee any potential scenarios that may result in unforeseen circumstances to a client and/or are required to make a subjective determination of what constitutes a significant risk to a particular client.</p> | <p>We do not agree with this comment.</p> <p>The discussion contained in clause 3.3.7(d) of the Proposed Guidance does not require OEO firms to manage risks of unforeseen circumstances (or unintended consequences) associated with Automatic Rebalancing Tools <u>to a particular client</u>. Rather, it is to manage those risks created by the Automatic Rebalancing Tools that would negatively impact clients generally.</p> <p>Recall the example we provided in the Proposed Guidance where a catastrophic event causes the price of a security to plummet and, as a result of rebalancing instructions, the Automatic Rebalancing Tool sells off a client’s other securities to purchase more of the plummeting security. In</p> |

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| | | <p>this example, <u>any client</u> who has rebalancing instructions in place with respect to a plummeting security would be negatively impact by the Automatic Rebalancing Tool.</p> <p>As suggested in the Guidance, OEO firms should implement safeguards to manage the risks to clients related to unintended consequences of Automatic Rebalancing Tools; for example, implementing appropriate alerts to clients should the value of any single security change significantly in a short period. We do not believe that the implementation of such a safeguard would be unduly burdensome on OEO firms and would certainly be outweighed by the potential investor protection impact.</p> |
| <p><i>Filters/Lists of Available Securities</i></p> <p>Subsection 3.3.8 of the Proposed Guidance provides that tools that merely sort or filter the list of available products are not recommendations, so long as the sorting is conducted at the initiative of the client (i.e., “pulled” by the client)</p> | <p>One commenter agreed with IIROC that tools that merely allow clients to sort or filter the list of available securities offered by a firm should not be recommendations provided that the client initiates the sorting.</p> | <p>We agree with this comment.</p> <p>Filtering Tools that merely sort/filter all securities the OEO firm has available for purchase and sale are not considered to be recommendations, so long as the client initiates (pulls) the sorting/filtering. See subsection 3.3.10 of the Guidance.</p> |
| | <p>The commenter went on to state that tools that provide examples or suggestions of what a particular client profile would look like with respect to general asset classes should not be considered recommendations.</p> | <p>We consider tools that provide examples or suggestions of what a particular client profile would look like to be a Model Portfolio Tool (as defined in the Guidance) and not a Filtering Tool.</p> <p>Model Portfolio Tools are discussed below and in clause 3.3.12(e) of the Guidance.</p> |
| | <p>A commenter highlighted that concerns arise where a client’s profile is linked to a filter or list of available securities tool. In such cases, in the commenter’s view, a recommendation is made and suitability and KYC obligations should apply.</p> | <p>We agree that a tool which suggests certain securities based on a client’s profile would be considered to be a recommendation. As discussed in the Guidance:</p> <p><i>An OEO firm should not narrow the list of securities available to a client on its own initiative or suggest any product(s) based on client-related information (e.g., asking the client leading questions, data mining of previous purchases and/or sales or using any KYC-type information gathered about the client).</i></p> <p>However, we do not agree with the commenter’s statement that where an OEO firm provides a recommendation, suitability and KYC obligations should apply. OEO firms are not permitted to provide recommendations. If a firm wants to provide a recommendation, it would require registration as a full-service firm.</p> |

Appendix C

IIROC Notice 18-0075 – Rules Notice – Notice of Implementation – Guidance on Order Execution Only Services and Activities



| Proposed Amendments | Summary of Comment | IIROC Response and Additional IIROC Commentary |
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| <p>Informative Tools</p> <p>Subsection 3.3.9 of the Proposed Guidance provides that Informative Tools are generally acceptable, depending on the facts and circumstances.</p> <p>Informative Tools that (a) contain future predictive information, or (b) are pushed to clients, are more likely to be a recommendation</p> | <p>One OEO firm commented on the importance of OEO firms being able to provide investors with access to information, tools and resources to help them make more informed investment decisions. The commenter stated that OEO firms play a vital role in promoting financial literacy and empowering investors to make informed investment decisions.</p> | <p>We agree with this comment.</p> <p>As discussed in the Proposed Guidance, Informative Tools, designed to inform and/or educate clients, are undoubtedly helpful to clients and play a crucial role in fostering investor protection. However, they may be considered recommendations if they could reasonably be expected to influence a person's investment decision.</p> <p>OEO firms should review and evaluate their Informative Tools to ensure they are not providing recommendations. The Guidance is intended to assist OEO firms conduct such reviews.</p> |
| | <p>One OEO firm commented that where general Informative Tools are made available to all clients, irrespective of their nature, they should not be considered recommendations.</p> | <p>We do not agree with this comment.</p> <p>Informative Tools may, depending on the facts and circumstances, be considered to be recommendations if they could reasonably be expected to influence a person's investment decision.</p> <p>In clause 3.2(a) of the Guidance we provide an example of a circumstance when general information made available to all investors would be considered a recommendation: "publishing a general communication advising investors to purchase a particular class of security".</p> |
| | <p>One commenter expressed concern over IIROC's analysis of historic/factual information vs. future/predictive tools. The commenter felt that clients should have access to historical and present data, as well as predictive tools in order to have a complete understanding of a product.</p> <p>The commenter stated that predictive tools contribute to increasing the knowledge of clients which is in the best interest of investors. In addition, predictive tools that do not contain a "call to action" or viewpoint, should not be considered recommendations.</p> | <p>We agree that both historical and predictive tools provide clients with helpful information.</p> <p>However, providing a prediction on how an issuer, security or market segment, will/may likely perform in the future would generally be considered a recommendation because it would reasonably be expected to influence clients' investment decisions. Accordingly, OEO firms should ensure that their tools do not include any future and/or predictive information regarding an issuer, a security or market segment. See clause 3.2(c) of the Guidance.</p> <p>Notwithstanding, making available research reports and Permitted Model Portfolios (as defined in the Guidance) to clients (even though they include future/predictive information) will not generally be considered a recommendation so long as, among other things, they are not pushed to clients. See clauses 3.3.12(b) and (e) of the Guidance.</p> |



| Proposed Amendments | Summary of Comment | IIROC Response and Additional IIROC Commentary |
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| | <p>One commenter suggested that future information derived from mathematical calculation on publicly available data should not be considered a recommendation.</p> | <p>We do not agree with this comment.</p> <p>In determining whether information may be a recommendation, it irrelevant whether the information is a mathematical calculation, computer generated, made by a live person or based on publicly available or proprietary information. The test, as described in the Proposed Guidance is whether the information could reasonably be expected to influence that investor to make an investment decision.</p> <p>We have update clause 3.1(a) of the Guidance to clarify this point.</p> |
| | <p>A number of commenters agreed with our view that where an OEO firm pushes an Informative Tools to a client (or class of client), then this would be viewed as a recommendation.</p> | <p>We agree with this comment.</p> |
| | <p>One commentator requested clarification on the distinction between “push” versus “pull”.</p> | <p>We have included additional discussion in the Guidance regarding “push vs. pull” (see clause 3.2(b)).</p> |
| <p>Educational Tools Clause 3.3.9(a) provides that Educational Tools are generally acceptable, so long as their primary purpose is to educate clients (in contrast to a selling tool)</p> | <p>Two OEO firms would like IIROC to clarify the content an educational tool must have to be considered complete and sufficient to give authorization to clients to open a specific type of account or trade in certain products.</p> | <p>This comment appears to relate to Product/Account Type Appropriateness.</p> <p>Please see above responses (relating to Part 2 of the Proposed Guidance) for a discussion on our views in this area as reflected in the proposed PLR Rule Book published in January 2018 (Notice 18-0014).</p> |
| | <p>One OEO firm stated that making available rich educational content, accurate data and research content meets the demand of independent investors and the Proposed Guidance, if implemented, will have the effect of limiting access to this content rather than benefiting or protecting investors.</p> | <p>We agree that Educational Tools, whose primary purpose is to educate clients, are an invaluable source of information to clients.</p> <p>However, OEO firms are not permitted to make available tools that provide recommendations. While “investor demand” is certainly an important consideration for a firm in making business decisions, “investor demand” does not permit or justify an OEO firm providing tools beyond what is permitted by IIROC regulatory requirements.</p> |

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IIROC Notice 18-0075 – Rules Notice – Notice of Implementation – Guidance on Order Execution Only Services and Activities



| Proposed Amendments | Summary of Comment | IIROC Response and Additional IIROC Commentary |
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| | <p>One commenter expressed concern that, if the guidance is implemented, clients may use online educational tools, products and information containing inaccurate data and information from unreliable sources in order to make investment decisions.</p> | <p>Tools that provide recommendations relating to securities may only be made available by registrants who are permitted to provide advice under securities laws. Any firm that would make such tools available to clients in Canada would be required to be appropriately registered.</p> |
| <p>Research Reports</p> <p>Clause 3.3.9(b) provides that research reports that are merely made available on OEO firms' websites are not generally considered to be recommendations provided they are not pushed to the client</p> | <p>One commenter felt that a research report made available on an OEO website to be pulled by a client should generally be considered a recommendation. In its experience, the purpose of most research reports is to drive an investment decision (i.e., to buy, hold or sell).</p> | <p>As set out in Guidance, normally a research report contains an analyst's recommendation about the purchase, sale or holding of a security. Notwithstanding, we do not generally consider these 'recommendations' as providing sufficient motivation to influence a client's investment decision, due in part to investors' increased familiarity with research reports.</p> <p>However, research reports may be a recommendation depending on how the information is presented to clients. So long as they are merely made available on an OEO firm's website to be "pulled" by the client, without prompting or influence by the OEO firm, we would not consider them recommendations.</p> |
| <p>Portfolio Analyzer Tools</p> <p>Clause 3.3.9(c) provides that portfolio analyzer Tools are generally acceptable so long as they merely provide a breakdown of a client's existing holdings</p> | <p>No material comments were received on this topic.</p> | |
| <p>Model Portfolios</p> <p>Clause 3.3.9(d) provides that model portfolios constitute recommendations and should not be offered by OEO firms</p> <p>Notwithstanding, in Part 6 of the Notice we sought comments on potential standardized exemptive relief which would allow OEO firms to make available Permitted Model Portfolios</p> | <p>Many commenters expressed support for the proposed standardized exemptive relief approach relating to Permitted Model Portfolios.</p> <p>However, some commenters would like IIROC to incorporate the conditions/requirements relating to the Permitted Model Portfolios directly into the Proposed Guidance to permit Permitted Model Portfolios to be offered on OEO platforms (as opposed to through standardized exemptive relief). These commenters view Permitted Model Portfolios as not being a recommendation.</p> | <p>We agree with this comment.</p> <p>Generally, we view Model Portfolio Tools (as defined in the Guidance) as a recommendation. However, depending on the context in which they are made available, certain limited Model Portfolio Tools may be acceptable, provided they:</p> <ul style="list-style-type: none"> (i) are limited to class of investor, asset class, industry sector and/or time horizon, (ii) do not reference specific securities (as defined below) or issuers, and (iii) are only made available on OEO firms' websites to be "pulled" by the client, without prompting or influence by the OEO firm, and are not "pushed" to clients. |



| Proposed Amendments | Summary of Comment | IIROC Response and Additional IIROC Commentary |
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| | | <p>We refer to such limited Model Portfolio Tools as “Permitted Model Portfolios”.</p> <p>We do not generally consider Permitted Model Portfolios as providing sufficient motivation to influence a client’s investment decision, due in part to investors’ increased familiarity with model portfolios.</p> <p>Accordingly, in the Guidance we have indicated that, depending on the context in which they are made available, Permitted Model Portfolios may be acceptable to be made available by OEO firms. Please see clause 3.3.12(e) of the Guidance. This approach is consistent with our position on research reports (see clause 3.3.12(b) of the Guidance).</p> <p>If an OEO firm wants to make available a model portfolio tool that extends beyond these conditions (e.g. if it would like to include specific securities in the model portfolio), it would need to be approved by us to offer advisory services (advisory services includes both discretionary and non-discretionary account offerings). We currently have full-service dealers that have similar offerings. OEO firms may offer advisory accounts through a separate legal entity or separate business unit within the existing legal entity. Such arrangements are subject to IIROC approval and compliance with IIROC’s requirements applicable to advisory accounts.</p> <p>We encourage firms to speak with us about how their current or proposed tools can be accommodated on the IIROC platform.</p> |
| | <p>Some commenters felt that it should be acceptable to make available any model portfolios, so long as it is not personalized to a client.</p> | <p>We do not agree with this comment. A tool need not be personalized (or tailored) to a specific investor to be considered a recommendation (see clause 3.2(a) of the Guidance).</p> <p>Please refer to clause 3.3.12(e) of the Guidance for details regarding Permitted Model Portfolios which may be made available by OEO firms.</p> |
| | <p>One commenter stated that the decision whether or not to utilize a model portfolio is up to the investor. Since the investor has a choice to use the model portfolio, it should not be considered to be a recommendation.</p> | <p>We do not agree with this comment.</p> <p>OEO firms are prohibited from providing any recommendations, regardless of whether or not an investor chooses to use such recommendation.</p> |

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| Proposed Amendments | Summary of Comment | IIROC Response and Additional IIROC Commentary |
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| <p><i>Technological Impacts and Transition Period</i></p> <p>As described in the Notice, once finalized, the guidance will replace the Recommendation Notice effective on a date approximately six months from the publication date of the Notice of Approval</p> <p>The six month implementation period is to allow OEO firms sufficient time to evaluate their existing OEO business activities against the guidance</p> | <p>Many OEO firms commented that the suggested six-month implementation period may not be enough time to implement the necessary technology, documentation and procedural changes required for compliance with Product/Account Type Appropriateness.</p> | <p>As previously discussed, in the proposed PLR Rule Book, we have introduced an exemption from Product/Account Type Appropriateness for OEO firms. As a result, we do not believe that a transition period is necessary as OEO firms will be exempted from this requirement.</p> <p>The Guidance will be effective immediately and OEO firms should evaluate their existing and future OEO activities against it to determine whether they are consistent with the OEO regulatory framework.</p> |