

CIRO proposes new conception of the OEO Dealer model

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The Canadian Investment Regulatory Organization (CIRO) has issued [proposed guidance](#) (the Proposed Guidance) regarding the ability of Investment Dealer Members offering order execution only (OEO) account services (OEO Dealers) to provide “decision-making supports” to do-it-yourself (DIY) investing clients. The Proposed Guidance is intended to replace current CIRO Guidance Note 3400-21-003 *Guidance on order execution only account services and activities*. Of note, stakeholder feedback received by CIRO on previous requests for comment have led to the drafting of net new OEO Guidance, instead of the typical revisions to the existing document. Comments on the Proposed Guidance are due by November 10, 2025.

Background to the Proposed Guidance

Industry has long called for updates to the current OEO guidance, which, due to broad language in certain areas, such as the current recommendation prohibition, the stark “push” versus “pull” distinction, and the term “non-tailored advice”, has caused confusion for OEO Dealers, as well as perceived limitations of what support OEO Dealers may provide to DIY clients. There has also been growing concern with investors seeking information from unregulated sources, including social media.

With the Proposed Guidance, CIRO signals that it sees the value of OEO Dealers providing educational and informative resources to support DIY clients’ decision-making (referred to as “decision-making supports”) while upholding the prohibition on OEO Dealers providing recommendations to such clients.

These decision-making supports can take various forms, more fully discussed below, subject to being used with appropriate safeguards. Key safeguards include managing or avoiding conflicts of interest; providing clear, fulsome, prominent client disclosure; and supplementary information that the OEO Dealer cannot recommend a specific investment decision to a client.

Key features of the Proposed Guidance

Revised recommendation prohibition

Having determined that the current recommendation prohibition is overly broad and may unintentionally catch purely informative resources, the Proposed Guidance clarifies that a recommendation is prohibited “if it endorses a specific investment decision for the client” (the revised recommendation prohibition).

This change narrows prohibited recommendations to client communications made by the OEO Dealer that endorse a specific investment decision (with the policy rationale being that there should be no such specific recommendations without corresponding suitability assessments).

Even as it outlines what is prohibited, the Proposed Guidance likewise makes clear that OEO Dealers are allowed to provide informative resources and decision-making supports that do not endorse specific investment decisions, subject to these being delivered to investors alongside adequate safeguards.

Decision-making supports

Decision-making supports are intended to allow DIY investors to access trustworthy information in a regulated forum to help them make their own informed investment decisions. CIRO expects decision-making supports to be timely and relevant, helping investors better understand fundamental investing principles. The supports should help investors self-assess risk tolerance and financial goals and accurately align investment decisions with their self-defined financial goals on continuous basis.

Decision-making supports can take the form of alerts, notifications, and tools that are designed to allow clients to self-assess their investment goals and make decisions against those goals. Some examples include self-assessment questionnaires, filtering mechanisms, and rebalancing tools that allow investors to self-assess their risk tolerance and capacity, choose specific securities that align with their investment strategies, and maintain those positions over time.

The output of a decision-making support will generally not be considered a prohibited recommendation if: 1) all inputs are made by the client; 2) the OEO Dealer does not endorse a specific investment decision; and 3) it is provided alongside adequate safeguards.

Decision-making supports may rely on (and create outputs that are contingent on) a client’s specific information, such as investment objectives and risk tolerance.

The OEO Dealer must avoid the sum output of decision-making supports resulting in a prohibited recommendation to a client. Generally, the output of a combination of decision-making supports will not violate the revised recommendation prohibition where the outputs do not endorse any specific investment decisions, and where it is made clear that all outputs are general and have not been tailored, nor assessed as suitable, to any specific client.

Timely alerts and revision of the push/pull distinction

Under the current OEO guidance, there is an important distinction between information that is actively sent by an OEO Dealer to a client (“pushed”) or that the client seeks out

on the OEO Dealer's platform ("pulled"). Currently, whether information is pushed or pulled is a material factor in determining whether a communication is a prohibited recommendation.

The Proposed Guidance changes this, reflecting the desirability of investors having access to timely, relevant information. Under the Proposed Guidance, the substantive content of the communication will usually be the determinative factor as to whether the OEO Dealer has made a prohibited recommendation. CIRO notes that targeted but purely informative resources not endorsing specific decisions will be acceptable.

Notwithstanding this general and important shift, CIRO notes that there will remain some instances where the method of delivery is relevant, specifically if the communication contains language regarding a specific investment decision, in which case, an OEO Dealer that "pushes" this information could raise the specter of the OEO Dealer endorsing that specific decision for the recipient client.

Sample portfolios

An area of important focus in the Proposed Guidance – and a consultation question of note - is the ability of OEO Dealers to offer some form of 'model' portfolios¹ to DIY clients. Under the current OEO Guidance, this would not be permitted. Stakeholder feedback previously received by CIRO on this issue was divided, citing concerns around the blurring of lines between OEO services and investment advice, conflicts of interest (particularly regarding proprietary products), and investor protection.

With the Proposed Guidance, CIRO has taken the position that OEO Dealers may make sample portfolios available that only set out asset allocations, but that they may not select specific investment products for sample portfolios, as doing so would, in CIRO's view, amount to endorsing a specific investment decision. Subject to providing the key safeguards discussed below, OEO Dealers may also provide filtering tools alongside sample portfolios, allowing clients to select investment products to fill in the asset allocations.

In its consultation questions, CIRO has asked for feedback on this approach, including asking how OEO Dealers could provide sample portfolios that reference specific investment products while being compliant with the revised recommendation prohibition.

Safeguards

To counter the risk that clients may mistake the wider swath of decision-making supports under the Proposed Guidance as being recommendations, CIRO suggests key safeguards designed to ensure that investors are continuously aware of the limitations of the OEO channel, these include:

- Clear disclosures and disclaimers about the tool, methodology, or alert and limitations of any decision-making supports. There should be emphasis on clients being aware that an OEO Dealer is never able to review their accounts, trading activities, or information such as financial circumstances, investment needs, or risk profile, for the purpose of making specific recommendations.

- Transparent methodology and objective criteria must be used. All filter criteria must be explicitly defined and reproducible to enable clients to understand how a tool generates results and replicate them, if needed.
- Material conflicts of interest must be managed or avoided. There is a specific focus on conflicts that arise when a dealer prioritizes references to proprietary or affiliated products, or to products that the OEO Dealer has an incentive to prefer, in any decision-making supports. CIRO notes that disclosure alone will be insufficient to address these material conflicts and that management through robust policies, procedures, and controls will be required.
- OEO Dealers must regularly monitor and, if needed, update decision-making supports such that they remain relevant and accurate, and reflect changes in market conditions, regulatory standards, advancements in technology, etc.
- OEO Dealers should provide educational resources to clients about how to properly use any decision-making supports.

OEO Dealers are ultimately responsible for compliance

OEO Dealers are responsible for ensuring that marketing, advertising practices, referrals and any conflicts of interest the OEO Dealer is party to are compliant with regulations. OEO Dealers must also consider whether they are making prohibited recommendations – and/or facilitating registrable activity by an unregistered person, such as a “influencer”, if the OEO Dealer facilitates copy-trading functionality, enters into certain referral arrangements, and/or links to or hosts third-party content.

Consultation

The Proposed Guidance and corresponding consultation questions present an opportunity for marketplace participants, not just OEO Dealers, to assess the workability of CIRO’s new conception of the role of the OEO Dealer channel. We encourage you to reach out to your usual BLG lawyer or BLG Beyond AUM Law lawyer with any questions about the impact of the Proposed Guidance on your business, or to assist you in drafting a response to CIRO.

Footnote

¹ To avoid confusion with the industry term “model portfolios”, CIRO is adopting the term “sample portfolios” to describe general examples of portfolios that are not personalized to a particular client.

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