OSC releases digital engagement report – Finding stability amidst change

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In its latest draft Statement of Priorities, the Ontario Securities Commission (OSC) indicated some concerns with advice being provided by order execution only firms, and stated that information shared online may be incomplete, or misleading. In a potentially related move, the OSC recently released the results of a study Digital Engagement Practices: Dark Patterns in Retail Investing, which looked at the use of digital engagement practices, such as dark patterns, in the investment context used by self-directed investors. The OSC partnered with the Behavioural Insights Team (BIT) for the study. In the report, a "dark pattern" is described as a practice that uses online interfaces to coerce, steer, and/or deceive users into making decisions that benefit a business but may not align with an investor's best interests.

Examples given for dark patterns include the use of prompts, where visual or auditory stimuli are used to get a user's attention and encourage specific behaviours or choices, as well as scarcity claims that a product or service will not be available for long. The report also reviews other techniques in use, including dark nudging, sludging and targeted advertising, "dark nudging" being tactics that make it easy for consumers to make choices that decrease their welfare, such as removing confirmation buttons. Sludging refers to the use of elements within a user interface that actively impede activities in the consumer's best interests, such as overly complex language. In the study, targeted advertising refers to digital marketing practices that use data about individuals to select and display specific commercial content.

According to the report, a defining characteristic of dark patterns, dark nudges, and sludges is that they undermine investor welfare, interests, and/or preferences. The study states that some techniques hide the cost of investing, gather personal information without informed consent, and make it more difficult to withdraw funds, close an account, or end a premium subscription service.

The regulatory responses in each of Canada, the U.S. and the European Union are then described in detail. While much of the current regulation relates to privacy and consumer protection, it is noted that regulatory bodies in the U.S. and the EU are amending the current frameworks and adding new legislation to control unfair and deceptive practices, including recent efforts by the Federal Trade Commission to identify dark patterns and propose new rules (e.g., a "click to cancel" rule). The Competition Bureau of Canada's relatively new prohibition on drip pricing is also

mentioned. The report ends with a note indicating that there appears to be additional room for more enforcement and regulation in Canada when compared to the two other jurisdictions.

By

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