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**Re: CIRO Consultation Request: Proposed New Guidance on
Order Execution Only Account Services and Activities**

The Osgoode Investor Protection Clinic (“IPC”) appreciates the opportunity to comment on the Canadian Investment Regulatory Organization’s (“CIRO”) proposal to update the Guidance for Order Execution Only (“OEO”) dealers working with Do-It-Yourself (“DIY”) investors.

By way of background, the IPC, the first clinic of its kind in Canada, is dedicated to providing pro bono legal advice and services to retail investors across the country who have faced financial harm and cannot afford a lawyer. Since launching in 2016, we have worked with a wide range of clients who have suffered investment losses. From seniors whose advisors mismanaged their entire life savings on the cusp of their retirement, to low-income individuals whose advisors recommended leveraged loans, we have helped many navigate a complex system and obtain redress.

We are pleased to bring their voices to the proposal.

We appreciate your consideration of our comments. In the spirit of brevity, we have focused on the questions for which we believe our answers will best add value to the consultation process. We have also included commentary which follows on the IPC’s comments, dated February 25, 2025, on CIRO’s Phase 1 consultation on this matter.

Sincerely,

The Osgoode Investor Protection Clinic

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Introduction

The rapid growth of Do-It-Yourself (“DIY”) investing has raised critical questions about whether the current investor protection regulatory framework—designed around the investor-advisor relationship—adequately addresses the unique risks and realities faced by DIY investors.¹ While DIY investing was originally intended for knowledgeable investors capable of independently managing their portfolios, the current landscape reveals a different reality: many retail investors are navigating these platforms without sufficient financial literacy, guidance, or regulatory safeguards to protect them against harm.² Indeed, 45% of retail investors in Canada do some DIY investing, and one-third of those started in the last two years.³ Without adapting the regulatory investor protection framework, the consequences of this shift are profound, with DIY investors increasingly vulnerable to financial harm, misleading or inadequate advice from influencers, and information disparity amongst the investing community.

At the Osgoode Investor Protection Clinic (“IPC”), we have seen numerous instances of investors suffering harm while utilizing Order Execution Only (“OEO”) platforms. Many of the DIY investors we assist have suffered significant losses due to access to high-risk investments and a lack of protections. The current OEO framework was established under the assumption that investors using these platforms were highly knowledgeable and capable of making informed decisions without professional advice. However, there are no mechanisms preventing inexperienced investors from making high-risk trades without a proper understanding of the potential negative consequences. This was the issue in one of our cases where the OEO platform’s onboarding process failed to detect that a DIY account was inappropriate for two of our clients, who had little formal education and demonstrated a significant lack of investment knowledge and financial literacy, and whose first language was not English. The onboarding process lacked the mechanisms to deny them entry onto the OEO platform or refer them to the dealer’s advice channel, giving them essentially unrestricted access to high-risk investments despite their low investment knowledge and risk tolerance. As a result, our clients engaged unknowingly in high-risk penny stock trading and suffered a significant loss of their investments to a ‘pump and dump’ scheme. This case illustrates the reality that DIY investing is not a level playing field, and retail investors—particularly those with lower financial literacy, limited investment experience and lower incomes—are disproportionately exposed to the risk of financial loss and the accompanying physical and mental health consequences.⁴

The current investor protection regulatory framework has not adapted to the demographics of these DIY investors who may seek or need advice, information, or support from a number of sources. Many turn to unregulated sources such as social media, online influencers, and friends and family for investment information. According to a recent survey, 53% of primary DIY investors rely on

¹ The IPC has observed a rise in DIY investing cases in recent years, with 9 cases in 2025, 7 in 2024, 5 in 2023, and 5 in 2022.

² Canadian Securities Administrators (“CSA”), “2024 CSA Investor Index” (April 2024), online (pdf): <<https://www.securities-administrators.ca/wp-content/uploads/2024/06/CSA-2024-Investor-Index-Executive-Summary-ENG.pdf>>.

³ *Ibid*, at 4.

⁴ Fair Canada, “Understanding Do-It-Yourself (DIY) Account Holders” (October 2024), online (pdf): <https://faircanada.ca/wp-content/uploads/2024/09/2024_10_01_FAIR_Understanding-DIY-Account-Holders_Eng_ver.0.pdf>.

online sources, and 38% use social media to guide their investment decisions.⁵ Younger investors, in particular, are more likely to trust information from social media platforms such as TikTok, raising concerns about the quality and reliability of the advice they receive.⁶ Without regulatory oversight, these sources can expose investors to a number of risks that an advisor might be able to safeguard them against, including misinformation, speculative trading trends, and fraud. This increases the risk of financial harm.

The barriers to accessing registered advisors further exacerbate these risks. The traditional wealth management industry has evolved in ways that exclude many retail investors, particularly those with smaller investment portfolios. As a result, younger investors and those with lower incomes often turn to OEO platforms, not by choice but by necessity.⁷ Yet, DIY investing was never intended to be the default option for retail investors. It can require a high level of financial literacy, independent research, and risk assessment—skills that many DIY investors lack. According to the CSA Investor Index, 37% of DIY investing Canadians have low investment knowledge, and those with lower incomes score the lowest in financial literacy.⁸ Additionally, as of 2024, 39% of investors did not have an advisor, with the largest decline in recent years occurring among those under 45 and those with portfolios under \$100,000.⁹ Given these realities, it is clear that the preconditions for the OEO model are no longer substantiated and must be reconceptualized.

To continue to address these challenges, we believe regulatory change is necessary in three key areas:

1. Continuing to refine the wording and conceptualization of what constitutes a “Recommendation” to consider behavioural impacts on retail investors. Published analysis by CIRO of proposed decision-making supports is recommended to fully support this process, in addition to providing investors with stronger and safer decision-making supports to rely on.
2. Addressing the potential misuse of ‘push’ models to ensure alerts do not improperly influence investors through engagement or product promotion, or by using behavioural impacts to influence decision-making.
3. Ensuring safeguards are expanded to address both potential conflicts of interest in decision-making supports and tailored support during the account suitability process.

The IPC continues to work with DIY investors who have been harmed and have witnessed firsthand the consequences of inadequate regulatory protections. One of our recent cases involved an investor who, despite having no prior investment experience and low financial literacy, was directed to an OEO platform by a leading Canadian bank. The investor purchased over 100 different penny stocks, priced at less than \$1 per unit. Several stocks were subject to price adjustments due to reverse stock splits, which the investor misinterpreted as reporting gains and

⁵ British Columbia Securities Commission [BCSC], “DIY Investing National Survey Report” (April 2024), online (pdf): < <https://www.bsc.bc.ca/-/media/PWS/New-Resources/About/Reports-and-Publications/2024-DIY-Investing-Full-Report.pdf>>.

⁶ *Ibid.*

⁷ *Supra* note 2, at 3.

⁸ *Ibid.*, at 4.

⁹ *Ibid.*, at 3.

consequently they did not understand that continued penny stock trading was destroying their entire savings. This case illustrates how DIY investing with a lack of financial literacy on an OEO platform can lead to significant losses. For inexperienced investors, speculative trading in capital markets may lead to significant financial losses. This case highlights the urgent need for regulatory reform. Digital know-your-client updates alone are insufficient to capture investors' personal circumstances, cognitive decline, or other potential vulnerabilities over time.

A recurring theme in our cases involving DIY investing is that, without meaningful safeguards, OEO platforms will continue to expose retail investors to significant and preventable harm. Recently, the IPC worked with a client who incurred losses due to unfamiliarity with the OEO platform's settings and functionality. Over two months, the client executed more than 100 option orders, intending them to be subject to trailing stop-loss orders; however, due to a lack of familiarity with differences in how the platform processed "native" regular stop-loss orders and "synthetic" trailing stop-loss orders, the client inadvertently became exposed to auto-cancellation of their stop losses by the OEO platform's trading system. Despite possessing basic financial knowledge, the client struggled to navigate the platform effectively, underscoring the need for proper training and safeguards. This case reflects a broader issue: retail investors are permitted to conduct complex trades on OEO platforms without sufficient protections or training.

The regulatory framework must evolve to reflect the realities of today's investment landscape. With nearly half of Canadians now holding DIY accounts and increasing numbers of investors unable to access professional financial advice,¹⁰ it is imperative to modernize the guidance for OEO dealers. By addressing these three critical areas, CIRO can take meaningful steps to enhance investor protection, reduce regulatory gaps, and ensure that OEO platforms operate in a manner that truly serves and protects retail investors.

1. The IPC's Phase 1 Comment Letter (February 25, 2025)

Our concerns regarding OEO platforms have been outlined in our previous comment letter in response to CIRO's Consultation Request for Non-tailored Advice in the OEO Channel. We would like to readdress these concerns and how they relate to this consultation.

Recommendation Definition

Our previous comment letter called for clarifying the definition of "Recommendation." We drew important distinctions between a recommendation, information, and education. While we agree that a recommendation to implicitly or explicitly influence an investor's decision-making should be prohibited, we believe that neutral informational and educational materials should not be restricted.

In our previous comment letter, we put forward a definition of a "Recommendation" as a "communication or statement of opinion specifically designed or intended to influence an investor (or class of investors) to take a particular action with respect to a security (including buying, selling, holding, or exchanging that security)". A "Recommendation" must be tailored to the

¹⁰ *Ibid*, at 4.

individual investor’s circumstances or financial goals (including their risk tolerance, portfolio composition, or investment preferences) with the intention of influencing the investor’s decision.

While we agree with the narrowing of the scope of the new definition of “Recommendation” as outlined in the Guidance, we would highlight that it does not consider the behavioural impacts on retail investors.

Significant research has been conducted by the Ontario Securities Commission (“OSC”) on the behavioural impacts of features traditionally seen on OEO platforms. While it may not be the intention of the OEO platforms to endorse specific investment decisions, the context, type of information, language, and timing may be mistaken by an investor as recommendations on their investment decision-making.

For example, “top movers” and “popular stocks”, often displayed on OEO platforms, constitute general information that does not endorse a specific investment decision, however there are inherent behavioural impacts on investors. The OSC found in a 2022 study that stocks on one “Top Mover” list were 36 times more likely to be traded by investors than those that were not.¹¹ While there may be multiple stocks on these lists, the timing, language, and context of this information suggests that the behavioural impacts affect retail investors.

With the broadened scope of content that can be shared by OEO platforms through the revised recommendation prohibition, we would recommend that CRO clearly define what constitutes implied recommendations and endorsements by an OEO platform in consideration of the behavioural impacts to retail investors.

This approach would give both investors and dealers regulatory certainty while reinforcing investor protection goals. Additionally, this would continue to support neutral educational and informational content to be shared with DIY investors.

The concerns related to the revised recommendation prohibition and its connection to behavioural impacts on retail investors correlate with the new approach to ‘pushing’ information by OEO dealers.

‘Push’ Functionality

In our previous comment letter, we addressed the limitations that a ‘pull’ only model has on the investors’ OEO experience. This model required investors to actively seek out and engage with information and education provided by the OEO platform, rather than allowing platforms to proactively send informative and educational content to investors. This ultimately left a gap for investors to seek out information using untrustworthy and unreliable sources, such as social media or influencers. We recommended that the Guidance be amended to allow OEO dealers to ‘push’ specific types of notifications to enhance investor protection and bridge the gap for investors to educate themselves.

¹¹ OSC Research Report, “Digital Engagement Practices in Retail Investing: Gamification and Other Behavioural Techniques”, (November 17, 2022), online (pdf): < https://www.osc.ca/sites/default/files/2022-11/inv_research_20221117_gamification-of-retail-investing_EN.pdf > at 27.

Our recommendation has been addressed through the Guidance by considering the method of delivery (whether a ‘push’ or ‘pull’) to only be relevant in the context of what information is being shared to the investor. This shift responds to the concern that OEO platforms were limited in ‘pushing’ educational and informative content to their users. However, the broadened use of ‘push’ models may allow OEO platforms to encourage content that will be in their own interest, rather than in the interest of educating and protecting investors. For example, most OEO platforms earn profits from the active trading of their users, therefore it is in their best interest to encourage more trading. Their push notifications to promote stocks making large intra-day moves may inherently have behavioural impacts that influence investor decision-making.¹²

We recommend and encourage CIRO to clarify that the push functionality on OEO platforms should be used primarily for investor protection purposes, rather than for engagement or product promotion. This would achieve the goal of broadening push functionality to ensure that retail investors are better informed, educated, and protected, while also eliminating potential risks that arise with the behavioural impacts of push functionality. Examples of these protective push notifications included in our previous comment letter are as follows:

- Alerts about known scams or fraud attempts targeting investors.
- Pop-up notifications regarding extreme market movements or speculative activity in specific securities that may entice investors into risky behaviour.
- Warnings based on aggregate client activity that signal common risky behaviours, helping investors recognize potential pitfalls.
- Security alerts related to data breaches, phishing attempts, or vulnerabilities in online accounts to safeguard investors from cyber threats.

Allowing OEO platforms to utilize push functionality will likely help move investors towards more reliable and trustworthy sources of information that are properly regulated, rather than turning to online influencers. This could achieve a positive outcome for retail investors, so long as investor protection and education remain at the forefront of push functionality utilization.

2. Consultation Question 1: Additional Safeguards to prevent Conflicts of Interest and Strengthen the Suitability Process

The IPC supports the amendments to the Guidance to allow dealer-supported decision-making tools. A 2021 OSC study highlighted that 67% of investors use at least one tool offered by their dealer. Furthermore, when asked about tools they would use if available, 74% of investors questioned said they would use a tool to assess the performance of their investments.¹³

To protect investors, safeguards are essential to ensure they understand that these tools are intended solely for educational and supportive purposes.

¹² OSC Digital Engagement Practices, “Dark Patterns in Retail Investing” (February 23, 2024), online (pdf): <https://www.osc.ca/sites/default/files/2024-02/inv-research_20240223_dark-patterns.pdf>.

¹³ Ontario Securities Commission [OSC], “Self-Directed Investors: Insights and Experiences” (April 2021), online (pdf): <https://www.osc.ca/sites/default/files/2021-04/inv_research_20210421_self-directed-investor-survey.pdf>.

We welcome the guidance in section 3, which provides examples of decision-making supports and safeguards that OEO dealers can implement to limit the likelihood that investors perceive these supports as personalized recommendations.

Another important safeguard that should be encouraged and explored is the determination of account appropriateness. Many of our clients have limited investment knowledge, and more attention being paid to the appropriateness of OEO accounts in their circumstances and the investing options available to them could offer better protection.

This could be an avenue to tailor the specific safeguards to the needs of individual investors. For example, based on information provided by the client during the account opening process, account settings could be tailored to provide more educational information and notifications about risks and investments.

3. Consultation Question 3: Analysis of Alert and Notification Decision-Making Support Tools to Encourage Innovation Through Predictability

The IPC encourages CIRO to further support the Guidance with analysis and commentary on different decision-making supports examples, especially in the context of a revised recommendation prohibition. We believe a principle-based approach can be compatible with an approach informed by relevant analysis and examples. Through taking such a holistic approach, CIRO can provide predictability for dealers and protection for investors, fostering innovation that still prioritizes safeguarding vulnerable investors. Without proper protection, individual investors bear the burden of innovation and the responsibility to properly bring wrongdoing to light. To address this, the IPC seeks specific analysis for decision-making supports such as alerts and notifications, which may inform investors about common scams or warn them of extreme market movement or speculative activities.

In this context, the IPC also believes CIRO's analysis of educational and informational content would provide investors with quality information, tools, and supports needed to make informed decisions.

Analysis of Supports to Reinforce the Recommendation Prohibition and Foster Predictability in Innovation

CIRO's analysis of decision-making supports, rather than serve as a static reference point, can instead foster the development of principles to shape later innovation. The need for creating an initial framework is especially crucial for fostering innovation which not only builds, but also protects, keeping in mind safeguards for new or vulnerable investors who use OEO platforms.

The broadened scope of content that can be shared by OEO dealers as a result of the revised recommendation prohibition is an opportunity for CIRO to provide new analysis which clarifies barriers on markedly prohibited behaviour, including precluding the use of decision-making supports which constitute recommendations or seek to improperly influence investors. Investors will benefit from these decision-making supports which avoid reaching the level of recommendation but still assist in distributing timely and relevant information, building

confidence in investing. Instead of preventing innovation, dealers will have valuable benchmarks around which to base new tools and supports. Similarly, the development of other kinds of decision-making supports will benefit from such analysis.

Investors seek and depend on information and tools to assist their decision-making. One study found 57% of DIY-only investors bought or sold a specific investment after using tools offered on a DIY platform.¹⁴ Developing supports and tools with clear analysis and guidelines from CIRO will assist a wide range of investors in using OEO platforms safely and confidently.

CIRO's analysis of decision-making supports can also address the usage of opaque and "dark" methods of recommendation, as described earlier in this comment letter, in such supports. CIRO can bring attention to the use of behavioural science data on investor behaviour and its responsible use in decision-making support tools.

Decision-Making Support Examples: Alerts and Notifications

In the OEO context, decision-making supports are valuable tools which help investors make informed and confident decisions in a world of financial choices and instruments. In confronting a multitude of such choices, decision-making supports such as alerts and notifications, embedded directly in OEO platforms, serve an especially valuable role at the forefront of how and where investors interact with their investments.

In this structure, alerts and notifications, which are timely and relevant, constitute valuable decision-making supports which the IPC believes CIRO-led analysis would benefit investors. These supports can inform investors directly for relevant investment-related risks, whether they be highly volatile assets or potential scams. Alerts and notifications may be targeted and rely on specific investor information, therefore specific CIRO analysis could focus on the extent to which these supports can responsibly use client-specific information, such as patterns and previous activity. At the same time, CIRO's analysis could also set boundaries on the use of alerts and notifications for endorsement, especially in high-risk situations where investors actively seek support.

By automating information delivery based on active trade activities or potential risk factors (such as market volatility or sudden price drops), platforms can provide essential context at the moment of decision-making. CIRO analysis of such tools can highlight them as a viable option for protecting investors, enhancing investor awareness without entering the realm of offering advice. Recently, the IPC worked with a client who fell victim to a "pump and dump" scheme through trades made on an OEO platform. Despite the volatile and extreme market movement of the stock, the investor, with limited investment experience, was not given notice at this critical juncture. A push notification appearing before purchase of the stock would have informed the investor of this abnormal volatility and inherent risk by providing valuable context, potentially disrupting the pump and dump scheme in its tracks.

¹⁴ *Supra* note 4, at 71-72.