



Canadian Foundation *for*
Advancement *of* Investor Rights
Fondation canadienne *pour* l'avancement
des droits *des* investisseurs

December 19, 2016

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RE: Request for Comment Guidance on Order Execution Only Services and Activities

FAIR Canada is pleased to offer comments on IIROC's Guidance on Order Execution Only Services and Activities (the "OEO Guidance").

FAIR Canada is a national, charitable organization dedicated to putting investors first. As a voice for Canadian investors, FAIR Canada is committed to advocating for stronger investor protections in securities regulation. Visit www.faircanada.ca for more information.

1. Introduction

- 1.1. FAIR Canada urges IIROC to make it a priority to prohibit OEO platforms from selling products with embedded trailing commissions before resources are expended on regulating the tools OEO firms provide. We remind IIROC that investors who use OEO platforms are purchasing these products independently, not through an advisor, and should therefore not be charged a fee for advice since no recommendation is provided or permitted to be provided, and no ongoing advice is provided or permitted. FAIR Canada urges IIROC to work expeditiously with other securities regulators, as may be necessary, to end this unjust situation.
- 1.2. FAIR Canada views IIROC's definition of "recommendation" provided in the OEO Guidance to be overly broad as it could capture any and all marketing and advertising materials, as presently drafted. A revised definition of recommendation from what currently exists in our securities regulatory framework should not be made in the absence of a broad consultative process with all stakeholders as well as benchmarking to other leading jurisdictions.
- 1.3. In the OEO Guidance, IIROC has proposed to introduce regulations that offer exemptive relief for OEO firms that provide investment tools to the clients that use their platforms. IIROC has proposed exemptions from the suitability standard for OEO firms that provide "limited advice" to their clients by offering "Permitted Portfolio Models", which includes model portfolio recommendations based on specific types of investors, asset class, industry sector, and investment time horizon. This "limited advice" is not to include any KYC features and is not to

reference any specific securities. FAIR Canada calls on IIROC to explain why the model portfolios amount to a personal “recommendation” under the existing securities regulatory framework and how they differ from model portfolios provided by bloggers, journalists and others.

- 1.4. FAIR Canada strongly suggests that IIROC conduct additional research and provide additional information so that stakeholders can engage in a more productive discussion on the tools OEO firms provide to their clients and the important role that OEO firms provide in the investment services landscape. FAIR Canada also notes that any and all research IIROC generates relating to OEO firms should be made publicly available. If it is not, it should not be relied upon. This is essential to the integrity of the policy-making process.
- 1.5. FAIR Canada notes that IIROC’s assumption that OEO clients consist of retail investors who are unable to obtain advice from full-service brokers due to minimum assets under management requirements, is asserted without any disclosed empirical evidence and appears to be speculative. FAIR Canada questions the soundness of IIROC’s analysis. It may very well be the case that many OEO investors have specifically and rationally chosen not to use the “advice channel” given either its (a) cost or (b) the quality of the “advice” that is on offer given that conflicted advice is not objective, professional advice in the client’s best interest. Asserting “Advice Gap” arguments in the seeming absence of real evidence and analysis is unhelpful to the policy-making process.

2. OEOs should not sell products with embedded trailing commissions

- 2.1. FAIR Canada reminds IIROC that the rationale for the payment of a trailing commission is that, in theory, the intermediary provides valuable ongoing investment advice to the client. When investors purchase funds that include trailing commissions through an OEO platform we fail to see the justification for a trailing commission given that a recommendation or advice was not, and could not, be provided. Many investors who purchase such funds through OEO platforms are not aware of the existence of the trailing commission and are not aware that a trailing commission will negatively impact their rate of return. As such, these investors do not know how to avoid funds that include embedded commissions, and are susceptible to purchasing them.
- 2.2. FAIR Canada therefore calls on IIROC to ban OEO platforms from selling products that include embedded trailing commissions immediately as there is no legitimate basis upon which to collect such commissions. To take such action will further IIROC’s investor protection mandate. If the involvement of provincial securities regulators is required, then both IIROC and the provincial regulators should work together expeditiously to rectify this unjust practice.

3. Research

Make all past research publicly available

- 3.1. The OEO Guidance says that the proposed changes were made in response to a 2013 survey of OEO firms and a 2015 OEO working group that considered “the products and tools offered by OEO firms in the context of the current regulatory framework...” as part of a mandate to “help inform [IIROC’s] decision on the appropriate regulatory response to address issues raised as a

result of the evolving OEO business model and the new tools being offered by OEO firms.” IIROC says the group included IIROC staff and compliance and legal staff from OEO firms and full service firms. In addition to the working group, IIROC says it conducted an extensive consultation with industry participants and associations, investor advocacy groups¹ and other domestic and international regulators.

- 3.2. FAIR Canada calls on IIROC to release the results of the 2013 survey, the 2015 Working Group and subsequent stakeholder consultations. Proposing regulatory changes based on research that is not publicly disclosed harms the integrity of the policy-making process and lessens accountability. The results of IIROC’s research, including the surveys, working group and stakeholder consultations should be required to be made public if IIROC wishes to use them as a basis upon which to recommend regulatory changes. Confidence in the integrity of the policy-making process will be furthered if this step is taken.

Conduct further research and disclose the results

- 3.3. In addition to disclosing the research already done, FAIR Canada urges IIROC to conduct behavioral testing before continuing with the changes proposed in the OEO Guidance (if this has not yet been done). IIROC says that the tools provided by OEO firms are influencing investors’ decisions. Full consideration of the behavioural implications of the tools is needed before changes are made including investor testing. The results should be made publicly available.
- 3.4. For example, testing should be conducted to see whether, as IIROC has stated in the OEO Guidance, “...the majority of investors who have used or would consider using a tool believe that OEO firms could and should be held financially responsible (fully or at least partially) in the event of a sizable investment loss resulting from the use of the tool.” The results of the testing that produced this finding should be made publicly available for review and analysis.
- 3.5. In addition, research should be conducted on how investors utilize the model portfolios. The choice amongst the model portfolios (are there 3 or 5 to choose from) are likely to influence which one is chosen.²
- 3.6. Finally, IIROC’s findings regarding how often OEO firms take investors through questions to determine which products are suitable to be offered to investors should be made public. The structure of these processes should also be subject to investor testing, to ensure that the process is sound.
- 3.7. FAIR Canada urges IIROC to conduct this research and make the results publicly available so that its stakeholders can engage in a more meaningful discussion about the tools OEO firms provide.

Questions about the Permitted Portfolio Models

¹ FAIR Canada acknowledges that it attended one meeting with IIROC representatives to discuss OEO platforms, however, we note that the discussion was brief and that we are unaware of other investor advocacy groups being consulted.

² Reference individual from BCE Works who spoke about this at OSC Dialogue.

- 3.8. We ask that, as a part of this guidance and consultation process, IIROC provide information about the current range of model portfolios and model portfolio tools available through OEO firms. This information cannot be accessed unless one has registered to use an OEO firm's platform. IIROC should therefore provide details about what is currently being offered so that anyone wishing to provide comments is able to understand the current tools available and how those tools are provided to investor clients.
- 3.9. We also ask IIROC to provide clarification on the difference between the Permitted Portfolio Models described in the OEO Guidance and the model portfolio tools provided online by investment industry journalists, bloggers and industry groups. To that end we also ask IIROC to explain how it plans to distinguish between tools provided by, for example, a journalist, and tools provided by an OEO firm.

We thank you for the opportunity to provide our comments and views in this submission. We welcome its public posting and would be pleased to discuss this letter with you at your convenience. Feel free to contact Marian Passmore at 416-214-3441/marian.passmore@faircanada.ca or Kate Swanson at 416-214-3442/kate.swanson@faircanada.ca.

Sincerely,



Canadian Foundation for Advancement of Investor Rights