



IIROC NOTICE

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Contact:

Charles Piroli
 Director, Member Regulation Policy
 416-943-6928
cpiroli@iiroc.ca

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Guidance on Order Execution Only Services and Activities

Introduction

IIROC is publishing guidance regarding order execution only (**OEO**) services offered by Dealer Members to outline our expectations and requirements applicable to all Dealer Members engaged in OEO activities (**OEO firms**). In this Guidance, we provide our views on the scope of tools and services (collectively, **tools**), products and account types that we consider to be consistent with the OEO regulatory framework.

We have included, as **Appendix A**, a summary of the key matters discussed in this Guidance. OEO firms should evaluate their existing and future OEO business activities against this Guidance to determine whether they are consistent with the OEO regulatory framework. Whether or not a particular tool or service is appropriate under the OEO regulatory framework depends on the relevant facts and circumstances of the particular case, and will be evaluated in that context. As a result, this Guidance is not intended to be exhaustive. We encourage Dealer Members to contract us for interpretive guidance when necessary.



Table of Contents

1.	IIROC Regulatory Regime.....	3
1.1	<i>General Rule</i>	3
1.2	<i>IIROC Preapproval Requirement</i>	3
1.3	<i>No Recommendation Condition</i>	3
1.4	<i>OEO Suitability Exemption</i>	4
2.	Products and Account Types Appropriate for OEO Business Model.....	4
3.	Recommendation / Advice.....	5
3.1	<i>Background</i>	5
3.2	<i>Meaning of “Recommendation”</i>	6
3.2.1	Advice vs. Recommendation.....	7
3.3	<i>Application of “Recommendation”</i>	8
3.3.1	Pricing Incentives	8
3.3.2	Hyperlinks and Portals	8
3.3.3	Social Media	9
3.3.4	Trading Tools	9
3.3.5	Trade Execution Tools	10
3.3.6	Pre-entering of Orders.....	11
3.3.7	Automatic Rebalancing Alerts & Tools	11
3.3.8	Filters/Lists of Available Securities	13
3.3.9	Informative Tools.....	13
	(a) Educational Tools	14
	(b) Research Reports.....	15
	(c) Portfolio Analyzer Tools.....	15
	(d) Model Portfolios.....	16
4.	Conclusion	16
5.	Attachments	16



1. IIROC Regulatory Regime

1.1 General Rule

Under the heading “Exemptions from the suitability assessment requirements”, [Dealer Member Rule 1300.1\(t\) \(Rule 1300.1\(t\)\)](#) sets out the basic framework for the OEO business model. Rule 1300.1(t) provides that:

[e]ach Dealer Member that has applied for and received approval from the Corporation pursuant to Rule 1300.1(w), is not required to comply with Rules 1300.1(p), 1300.1(r) and 1300.1(s), when accepting orders from a client where no recommendation is provided, to make a determination that the order is suitable for such client.

The basic elements of Rule 1300.1(t) are:

- (a) Dealers Members must have applied for and received prior approval from IIROC pursuant to Rule 1300.1(w) (**IIROC Preapproval Requirement**)
- (b) when a Dealer Member accepts an order from a client where no recommendation is provided (**No Recommendation Condition**), then the Dealer Member is not required to comply with Rules 1300.1(p), 1300.1(r) and 1300.1(s)¹, to make a determination that the order is suitable for such client (**OEO Suitability Exemption**).

The IIROC Preapproval Requirement, the No Recommendation Condition and the OEO Suitability Exemption are discussed in further detail below.

1.2 IIROC Preapproval Requirement

To satisfy the IIROC Preapproval Requirement, Dealer Members must comply with [Rule 3200 - Minimum Requirements for Dealer Members Seeking Approval Under Rule 1300.1\(t\) to Offer an Order-Execution Only Service \(Rule 3200\)](#). Rule 3200 sets out, among other things, details relating to documentary, procedural and systems requirements.

1.3 No Recommendation Condition

We set out our views on the meaning of the term “recommendation” for purposes of the No Recommendation Condition in Part 3 of this Guidance. In particular, section 3.2 provides a meaning of the term “recommendation”.

To assist OEO firms in evaluating their existing and future tools, we provide our analysis of the more common tools currently offered by OEO firms in section 3.3 of this Guidance.

¹ [Rules 1300.1\(p\), 1300.1\(r\) and 1300.1\(s\)](#) are as follows: (a) Rule 1300.1(p) - *Suitability determination required when accepting order*, (b) Rule 1300.1(r) - *Suitability determination required for account positions held when certain events occur*, and (c) Rule 1300.1(s) - *Suitability of investments in client accounts*.



1.4 OEO Suitability Exemption

The OEO Suitability Exemption is contained solely within Rule 1300.1(t). Under Rule 1300.1(t), Dealer Members who have met the IIROC Preapproval Requirement and the No Recommendation Condition are exempt from certain specific suitability assessments (Rules 1300.1(p), 1300.1(r) and 1300.1(s)) in determining whether the *order* is suitable for the client.

As discussed in Part 2 below, *the OEO Suitability Exemption does not, and was not intended to, provide a blanket exemption to OEO firms from all suitability-related obligations* with respect to a client. The OEO Suitability Exemption only exempts OEO firms from certain specific suitability obligations relating to “orders”.

2. Products and Account Types Appropriate for OEO Business Model

With the evolution of the OEO business model, OEO firms now offer their clients a wide range of products, including fixed income products, mutual funds and exchange traded funds (ETFs) and complex, risky or illiquid products (e.g., leveraged and inverse ETFs, contracts for differences, OTC forex, structured products and options and private placements). In addition, OEO firms offer a variety of account types (e.g., registered accounts, margin accounts, tax-free savings accounts and corporate accounts).

IIROC has considered the appropriateness of OEO firms offering a wide variety of products and account types under the existing IIROC regulatory requirements. For example, we considered whether it is appropriate for OEO clients to have access to complex, risky or illiquid products or to purchase using margin in circumstances where such clients are not receiving any specific advice/recommendations or a suitability assessment with respect to such purchases.

We determined that, under existing IIROC requirements, it is acceptable for OEO firms to offer clients a wide variety of products and account types. This determination is based on the fact that the OEO Suitability Exemption is a limited exemption – it provides exemption from certain specific order-related suitability requirements (see section 1.4). As noted above, the OEO Suitability Exemption does not exempt OEO firms from account appropriateness² and other regulatory obligations, such as product due diligence and know your client (**KYC**) related obligations, as applicable in the context of an OEO business model.³

IIROC expects OEO firms to analyze and determine (referred to as an **appropriateness analysis**), as part their account opening process: (a) whether it would be appropriate for a potential client to become a client of the OEO firm, and (b) the scope of products and account types which would be appropriate for

² Please refer to IIROC [Rules Notice 12-0109 – Know your client and suitability – Guidance \(Notice 12-0109\)](#) which provides that “[t]he Dealer Member and Registered Representatives, at the time of account opening, should ensure that the account type (margin, trust, option accounts, etc.) is appropriate for the client given the client’s particular circumstances”.

³ Please refer to Notice 12-0109 and IIROC [Rules Notice 09-0087 – Best Practices for product due diligence](#). As discussed in Notice 12-0109, “pursuant to section 3.4 of NI 31-103 and its Companion Policy, understanding the structures, features and risks of each security recommended to a client (known as know-your-product (“KYP”)) is a proficiency requirement. This requirement is imposed in addition to the suitability obligation and is applicable even where there is an exemption from the suitability obligations.”



the OEO client to have access to. In circumstances where it would not be appropriate for an OEO client to have access to a particular product or account type (e.g., complex products, private placements⁴, margin accounts, etc.), the OEO firm should restrict access to such product(s) and/or account type(s) for that OEO client, as applicable.

The benefit of this approach is that it fosters investor protection by ensuring that OEO clients do not have access to inappropriate products and/or account types. It also allows OEO clients access to a wide-range of products and account types, where appropriate.

IIROC does not require a single model or approach to the appropriateness analysis. Rather, each OEO firm should ensure the process it implements is appropriate relative to its business model (e.g., scope of tools, products and account types offered) and the clients it serves.⁵ For example, we expect an OEO firm with a broad product shelf which includes complex, risky or illiquid securities to have a more robust appropriate analysis process than an OEO firm that only offers simple, low-risk and highly-liquid securities.

IIROC expects OEO firms' appropriateness analysis to be sufficiently robust to allow them to determine whether a client should be restricted from accessing certain products and/or account types. OEO firms should be able to demonstrate why they determined that a particular product or account type was or was not appropriate for a client.

3. Recommendation / Advice

3.1 Background

As described above, Rule 1300.1(t) provides that when an OEO firm accepts an order from a client "where no recommendation is provided" (the No Recommendation Condition), then such OEO firm is not required to comply with Rules 1300.1(p), 1300.1(r) and 1300.1(s), to make a determination that the order is suitable for such client (the OEO Suitability Exemption). In other words, the OEO Suitability Exemption is only available where the OEO firm does not provide a "recommendation" to the OEO client with respect to an order.

With the evolution of the OEO business model, OEO firms have faced the difficult challenge of having to assess whether a tool they offer (or propose to offer) constitutes a "recommendation" for purposes of the No Recommendation Condition (hereafter, a **recommendation**). This is particularly challenging because no definition of the term "recommendation" currently exists under Canadian securities laws.

In this Part 3, we provide our views on what may and may not constitute a "recommendation". In addition, we have analyzed the more common tools currently offered by OEO firms and provided our views on the circumstances where providing such tools may constitute a recommendation.

⁴ IIROC expects OEO firms will ensure private placements are only made available to investors who qualify to purchase such products (e.g., accredited investors) under applicable securities laws.

⁵ As discussed in paragraph 3.3.9(a), OEO firms may develop and use their own "educational tools" to help satisfy themselves of these account opening obligations.



3.2 Meaning of “Recommendation”

IIROC is of the view that a “recommendation” means:

*any communication or statement of opinion sent or made available to an investor (or class of investor) that could reasonably be expected to influence that investor (or class of investor) to make an investment decision regarding a security⁶ (including any class of securities and the securities of a class of issuers) (collectively, **securities**).*

When assessing whether a particular tool may constitute a recommendation, OEO firms should consider the following guidance:

- (a) The phrase “any communication or statement of opinion” should be interpreted broadly to include, but not be limited to, any of the following:
 - any tool offered by an OEO firm
 - any direct or indirect communication sent or made available to an investor (or class of investor) by an OEO firm (e.g., a posting on an OEO firm’s website, a message sent to a client(s), etc.)
 - any form of communication or statement of opinion (e.g., written or spoken).
- (b) The term “investment decision” includes, but is not limited to, any of the following:
 - the buying, selling, exchanging or holding of securities
 - the manner in which the purchase, sale or exchange of securities should be effected (e.g., the timing of a purchase(s))⁷.
- (c) It is irrelevant whether the communication or statement of opinion is automatically generated (through a computer program) or provided by a live person.
- (d) *Use of KYC Information*
 - (i) *General.* IIROC views any tool offered by an OEO firm that uses client (or class of client) specific KYC-type information (e.g., time horizon, risk tolerance, etc.) as a recommendation. However, use of client-specific KYC-type information is not the only determinant of whether a recommendation has been provided. A tool offered by an OEO firm may be a recommendation even where it does not use client (or class of client) specific KYC-type information (e.g., a tool advising a client to be in a particular class of security without having assessed any KYC-type information).
 - (ii) *Account Opening.* The No Recommendation Condition arises “when a Dealer Member accepts an order from a client”. The No Recommendation Condition does

⁶ While the meaning of “recommendation” provided in this Guidance uses the specific term “security”, we believe it would be impractical, and potentially confusing to clients, for OEO firms to adopt a different meaning for investment products which may not be securities. Accordingly, we would expect OEO firms to apply this Guidance to all investment products offered, and not merely securities.

⁷ See subsection 3.3.5 (*Trade Execution Tools*) in of this Guidance.



not generally arise in connection with opening an account on a client's behalf. Accordingly, we are of the view that gathering and use of applicable client KYC-type information at account opening (as contemplated by the appropriateness analysis set out in Part 2 of this Guidance (e.g., to determine the appropriateness for clients to have access to certain products or account types)) does not contravene the No Recommendation Condition.

- (e) *"Push" vs. "Pull"*. Generally, a tool (or any information) that is merely available on an OEO firm's website and is able to be "pulled" by a client is less likely to be a recommendation.⁸ In contrast, a tool (or information) that is "pushed" to a client (or class of clients) will likely be considered a recommendation.⁹ The rationale for this general distinction is that a tool (or information) that is pushed to clients is more likely to be relied on by clients as relevant to them. Further, the tool (or information) pushed to clients would typically be based on KYC-type (or data-mining) information gathered about the client(s). In Part 3 of this Guidance, we apply the "push vs. pull" guidance to various tools currently offered by OEO firms.

3.2.1 *Advice vs. Recommendation*

The terms "advice" and "recommendation" are often used interchangeably. Like "recommendation", the term "advice" is not specifically defined in Canadian securities laws.¹⁰

IIROC does not distinguish between the terms "recommendation" and "advice" for purposes of this Guidance. We view the two terms to have the same meaning for purposes of the No Recommendation Condition. From an OEO client's perspective, being provided with a recommendation or advice regarding the purchase, sale, exchange or holding of a security by an OEO firm are functionally equivalent.¹¹

⁸ As set out in this Guidance, we consider certain tools to be recommendations regardless of the fact that they are merely available on an OEO firm's website to be "pulled" by clients. For example, see subsections 3.3.4 (*Trading Tools*) and 3.3.5 (*Trade Execution Tools*) and paragraph 3.3.9(d) (*Model Portfolios*) of this Guidance.

⁹ Specific examples of the application of the "push vs. pull" distinction are provided in sections 3.3.8 (*Filters/Lists of Available Securities*) and 3.3.9 (*Informative Tools*) and paragraph 3.3.9(b) (*Research Reports*) of this Guidance.

¹⁰ However, the term "advising others" is a component of the adviser registration requirement in Canada. "Adviser" is defined in subsection 1(1) of the *Securities Act* (Ontario) (**OSA**) to mean "a person or company engaging in or holding himself, herself or itself out as engaging in the business of advising others as to the investing in or the buying or selling of securities" and the adviser registration requirement is set out in subsection 25(3) of the OSA.

¹¹ This view is also consistent with exemptive relief granted by several Canadian provincial securities regulatory authorities to Dealer Members who carried out OEO activities prior to the implementation of Rule 1300.1(t). For example, see [In The Matter of TD Waterhouse Investor Services \(Canada\) Inc.](#) (December 7, 2000), [In the Matter of Scotia Discount Brokerage Inc.](#) (January 17, 2001), [In the Matter of Qtrade Investor Inc.](#) (January 22, 2001), [In the Matter of Credential Securities Inc. and Credential Direct](#) (April 27, 2001) and [In the Matter of Versus Brokerage Services Inc.](#) (September 7, 2001) which use the general term "advice or recommendations".



3.3 Application of “Recommendation”

To assist OEO firms to evaluate their existing and future tools, we set out below IIROC’s application of the No Recommendation Condition to the more common tools currently offered by OEO firms.

It should be noted that this Guidance could not possibly contemplate all existing and future tools offered by OEO firms. *Whether a particular tool constitutes a recommendation will depend on an analysis of all the relevant facts and circumstances of the particular case* and whether a reasonable person in similar circumstances would believe a recommendation has been made.

3.3.1 Pricing Incentives

OEO firms occasionally use (and post on their websites) pricing incentives (e.g., offering “commission free” or “low commission” ETF trades). While such incentives may provide a financial incentive or encouragement for an OEO client to trade in a particular class of product (due to the lower fees), generally, and depending on the facts and circumstances, IIROC does not view pricing incentives as being a recommendation.

Generally, OEO firms are free to establish trading fees for the products available on their platforms. If pricing incentives were considered a recommendation, then taken to the extreme, OEO firms would be required to implement a single trading fee across their entire platform to avoid violating the No Recommendation Condition.

While IIROC generally does not consider pricing incentives as providing a recommendation, the particular facts and/or circumstances may lead to a different conclusion. For example, the following pricing incentives would likely constitute a recommendation:

- a pricing incentive on a specific security (or small number of securities)
- a pricing incentive on a class of securities where the OEO firm only offers a single (or small number) of products within that class
- a pricing incentive which favours proprietary products.

We believe each of the above pricing incentives could reasonably be expected to influence persons to make an investment decision regarding securities and therefore, such pricing incentives would likely be a recommendation.

3.3.2 Hyperlinks and Portals

Depending on the applicable facts and circumstances, IIROC views hyperlinks and portals offered by an OEO firm to a third-party website (collectively, **Hyperlinks**) as potentially constituting a recommendation.

Where the content of the Hyperlink provides a recommendation, OEO clients: (a) may consider the content of the third-party website to be attributed to or endorsed by the OEO firm, or (b) may not be aware that they have left the OEO firm’s website. These concerns are magnified where the Hyperlink is to the website of an affiliate/related company of the OEO firm with a similar business name.



Consistent with [Rules Notice 11-0349](#) - *Guidelines for the review, supervision and retention of advertisements, sales literature and correspondence (Notice 11-0349)*¹², 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 set out in Notice 11-0349, OEO firms should consider: (a) the use of disclaimers, (b) the nature of their involvement in the preparation of the third-party communication prior to posting, and (c) any evidence of explicit or implicit endorsement or approval of the communication by the OEO firm to help determine whether or not the third-party post reflects the views of the OEO firm.

OEO firms should note that using disclaimers will not necessarily relieve OEO firms of their responsibility for Hyperlinks or third-party communication. Notice 11-0349 provides suggested best practices relating to third-party communications.

3.3.3 Social Media

OEO firms should ensure they do not engage in social media activities that could be considered recommendations. For example, re-tweeting or sharing of a third-party post or providing a “thumbs-up” or “liking” the post may be considered an endorsement and potentially a recommendation.

Some OEO firms offer chat rooms for their clients to discuss investment related topics. IIROC does not view chat rooms for clients only as inappropriate. However, a recommendation may occur if an OEO firm representative participates in chat room discussions with the intention (or effect) to influence a person(s) to make an investment decision regarding securities (e.g., by discussing the merits of a specific security or class of securities).

Please refer to subsection 3.3.2 on Hyperlinks and Notice 11-0349 for guidance and suggested best practices on social media issues relating to third-party communications, including the development of policies and procedures relating to social media issues.

3.3.4 Trading Tools

IIROC considers a “trading tool” to be a method or plan of trading in investment products that uses a predefined set of rules for making trading decisions. In other words, trading tools inform an investor of *what* trades to make.

The investment firm may create the trading tool itself, or they may purchase or license it from a third party. Often, trading tools are delivered to, and used by, investors through computer programs (e.g., algorithmic trading programs) which either: (a) automatically trade on the investor's behalf; or (b) provide the investor with suggested trades which they subsequently execute on their own.

¹² See Part VI - *Third-Party Communications and Research* of Notice 11-0349.



As trading tools are intended to influence clients' investment decisions regarding a security, IIROC views trading tools offered by OEO firms to their clients¹³ as recommendations and therefore a violation the No Recommendation Condition. As such, trading tools should not be offered by OEO firms.

Further, except for Automatic Rebalancing Tools¹⁴, we note that offering of a trading tool that automatically trades on a client's behalf may be considered to be offering managed account services requiring registration as a portfolio manager with IIROC and/or a Canadian provincial or territorial securities regulator.

3.3.5 Trade Execution Tools

As discussed above, while a "trading tool" informs an investor of *what* trades should be made, IIROC considers a "trade execution tool" to be a method or plan on *how* or *when* to most effectively execute a trade(s). For example, assuming a client wanted to make a large purchase of a single security, a trade execution tool would inform the investor on how or when to affect the purchase(s) in a manner to minimize the total purchase price of the security and/or reduce market impact.

Like a trading tool, a trade execution tool may be delivered to, and used by, investors through computer programs which either: (a) automatically trade on behalf of the investor; or (b) provide the investor with suggested trade instructions which they would use to execute on their own.

We consider trade execution tools recommendations as they could reasonably be expected to influence a person's investment decisions regarding securities. Accordingly, trade execution tools should not be offered by OEO firms. As described in paragraph 3.2(a), IIROC considers the phrase "investment decision" to include not only influencing a person on which particular security to purchase or sell, but influencing the manner in which the purchase or sale should be made.

However, we note that while we consider trade execution tools to generally be recommendations, 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.

Further, OEO firms remain subject to best execution obligations in effecting trades on behalf of their clients.¹⁵ An OEO firm using an automated trade execution program to meet its best execution obligations can be distinguished from a trade execution tool as described above. A trade execution program designed to meet an OEO firm's best execution obligations applies equally to all OEO client

¹³ This may also include the endorsement of third-party trading tools. Please refer to subsection 3.3.2 of this Guidance for a discussion on third-party communications.

¹⁴ As discussed in subsection 3.3.7, an Automatic Rebalancing Tool automatically re-balances a client's account in accordance with a client's pre-determined instructions. In contrast, a trading tool does not utilize a client's predetermined instructions. Rather, the trading tool itself generates the trade instructions and either automatically trades on behalf of the investor or provides the investor with suggested trades which they would then subsequently execute on their own.

¹⁵ OEO firms should refer to the applicable Canadian securities laws and IIROC rules, regulations and guidance notices relating to best execution.



trades. In contrast, a trade execution tool is tailored to a client, or class of clients, to most effectively execute a trade(s).

3.3.6 *Pre-entering of Orders*

A common tool offered by many investment dealers is the ability for clients to “pre-enter” an order (i.e., on the client’s own initiative and without any recommendation from the investment dealer). For example, a client may wish to place an order for a security for a later date or when the security attains a particular price (e.g., a limit order). This tool is permissible for an OEO firm to offer.

3.3.7 *Automatic Rebalancing Alerts & Tools*

Some OEO firms offer clients the ability to rebalance their account holdings to pre-determined levels.

For example, a client who holds four different securities in their account may wish to maintain a balanced account such that each security represents 25% of the total account. An OEO firm could facilitate this client’s desire to maintain the 25% balance in one of two ways:

- (a) the OEO firm could offer a service whereby an alert message is sent to the client if the client’s account moves outside the client’s desired pre-determined levels (**Rebalancing Alert**), or
- (b) the OEO firm could automatically make the appropriate transactions to re-balance the account in accordance with the client’s desired pre-determined levels (**Automatic Rebalancing Tool** and, together with the Rebalancing Alert, **Rebalancing Tools**).

Assuming the OEO firm did not influence the client’s determination of their desired pre-determined levels or rebalancing instructions (in other words, the OEO firm did not provide any recommendations) then, depending on the applicable facts and circumstances and subject to the below discussion, IIROC does not view Rebalancing Alerts or Automatic Rebalancing Tools as recommendations.

A Rebalancing Alert alerts the OEO client that their account has moved outside their pre-determined levels. Upon receiving an alert, the OEO client may or may not choose to rebalance the account as they see fit (though always without any recommendation from the OEO firm).

For Automatic Rebalancing Tools, in executing rebalancing transactions, the OEO firm would merely be acting on the OEO client’s instructions (provided when the client selected its pre-determined levels). Therefore, Automatic Rebalancing Tools would not be considered to be influencing the client’s investment decisions regarding securities. Notwithstanding IIROC’s view that Rebalancing Tools are generally not recommendations, these tools raise certain risks and concerns that OEO firms should consider and address.

- (a) *Recommendations must not be provided in connection with a client’s decision/selection of its desired pre-determined levels/rebalancing instructions.* As discussed above, OEO firms should not provide any recommendations which could influence a client’s selection of his/her desired pre-determined levels or rebalancing instructions for any Rebalancing Tool. Further, OEO firms should never retain any level or form of discretion to carry out investment decisions (e.g., purchases, sales, exchanges or holds of securities) on a client’s behalf through a Rebalancing Tool.



We note that if an OEO firm were to provide a recommendation in connection with the client's initial rebalancing instructions and then offers the client an Automatic Rebalancing Tool, this may be considered to be managed account activities requiring registration as a portfolio manager with IIROC and/or a Canadian provincial or territorial securities regulator.

- (b) *Transparency.* In dealing with clients honestly, fairly and in good faith, OEO firms should ensure that their clients understand details relating to the Automatic Rebalancing Tool including, but not limited to, the following:
- frequency of the Automatic Rebalancing Tool's review of the client's account for conformity with the client's rebalancing instructions
 - frequency of rebalancing trades (i.e., monthly/quarterly rebalancing or concurrent with the Automatic Rebalancing Tool's account review)
 - cost/fee implications¹⁶
 - details with respect to which securities will be purchased and sold to rebalance the client's account and rebalancing parameters.¹⁷
- (c) *Confirmation of Rebalancing Instructions.* Clients who create rebalancing instructions using an Automated Rebalancing Tool may: (i) forget that they created the rebalancing instructions, or (ii) experience a change in circumstance necessitating a change in their rebalancing instructions. Accordingly, OEO firms should obtain periodic confirmations (no less than quarterly) from clients that the automatic rebalancing instructions should continue.
- (d) *Unforeseen Circumstances.* Automatic Rebalancing Tools could be potentially harmful to clients in circumstances where there is a negative event impacting an issuer or securities. For example, recall the example of a client who holds four different securities in their account and wishes to maintain a balanced account where each security represents 25% of the account total. Assume that one of the securities is of an issuer who experiences a catastrophic event causing its security price to plummet. Under the pre-determined rebalancing instructions, as the value of the client's holdings in this particular security drops, the Automatic Rebalancing Tool would automatically sell some of the client's holdings in the remaining three securities to purchase more of the plummeting security. While the client selected their pre-determined levels and rebalancing instructions with the goal of maintaining a "balanced" account to minimize their risk of over-exposure to any one

¹⁶ For example, an OEO firm normally charges a commission/fee per transaction. However, under an Automatic Rebalancing Tool, the client/OEO firm may not know the number of transactions which would be effected as a result of the Automatic Rebalancing Tool.

¹⁷ Consider the previously cited example of a client wishing to maintain each of his/her four securities at 25% of the account total. OEO clients should be provided with details on when will the Automatic Rebalancing Tool take effect (e.g., when any one security represents greater than 30% or less than 20% of the account total, or another amount?).



of the four securities, the unintended consequence of the Automatic Rebalancing Tool is that it could over-expose the client to a security rapidly declining in value.

OEO firms should implement safeguards to manage the risks to clients of unforeseen circumstances associated with the Automatic Rebalancing Tools; for example, implementing appropriate alerts to clients should the value of any single security change significantly in a short period of time.

3.3.8 Filters/Lists of Available Securities

Many OEO firms allow clients to sort or filter the list of all securities the OEO firm has available for purchase and sale. These lists are normally sortable by such criteria as the name of the issuer, industry sector, trading volume or other factual criteria relating to the security.

IIROC does not consider tools that merely allow clients to sort or filter the list of available securities to be recommendations, so long as the client initiates the sorting (i.e., the filtering is “pulled” by the client). In contrast, where an OEO firm “pushes” (or suggests) a security or list of securities to a client, then we would likely view this as a recommendation.

Other than during the account opening process (as described in Part 2), OEO firms should not narrow the list of securities available to a client on its own initiative or suggest any product(s) based on client (or class of client) related information (e.g., asking the client leading questions, data-mining of previous purchases and/or sales¹⁸ or using any KYC-type information gathered about the client).

For example, consider a scenario where an OEO firm offers 20 securities of technology sector issuers on its platform. Where a client searches for all securities of technology sector issuers offered by the OEO firm, the firm’s filtering tool should list all 20 securities in response to the client’s query. If the OEO firm narrows the list to provide the client with less than 20 securities, they would be providing a recommendation.

In the above example, the client could narrow the list of 20 securities based on some additional factual criteria (e.g., trading volume), but the resulting list produced by the filtering tool should be reflective of the entire list of available products meeting the client’s query.

3.3.9 Informative Tools

Many OEO firms offer clients access to a variety of informative tools on their platforms (collectively, **Informative Tools**). These tools include, but are not limited to, educational tools, research analysis, market, issuer or security analysis, asset allocation tools and model portfolios. Informative Tools, designed to inform and/or educate clients, are undoubtedly helpful to clients. However, they 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 regarding securities.

¹⁸ For example, we consider an OEO firm that provides clients with suggested securities based on previous transactions (or data-mining) to be providing a recommendation.



OEO firms should review and evaluate their Informative Tools to ensure they are not providing recommendations. Set out below is general interpretive guidance to help OEO firms conduct such evaluations:

- *Historical/Factual Information vs. Future/Predictive Information.* Generally, where an Informative Tool merely provides historical or factual information, such tool would likely not be considered to be recommendation. This includes historical information on the past performance of an issuer, security or market segment.

In contrast, providing a prediction on how an issuer, security or market segment, will/may likely do in the future would generally be considered a recommendation. This is because, generally, such future/predictive information would reasonably be expected to influence clients' investment decisions regarding securities. Accordingly, other than as set out in this Guidance, OEO firms should ensure that their Informative Tools do not include any future and/or predictive information regarding an issuer or security.

- *"Push" vs. "Pull".* OEO firms should not push any Informative Tool to a client (or class of client). For example, pushing Informative Tools to clients based on client-specific information such leading questions, data-mining of previous transactions or use of any KYC-type information gathered about the client.¹⁹

In addition to the general interpretive guidance set out above relating to Informative Tools, outlined below are IIROC's views on some of the more common Informative Tools currently used by OEO firms.

(a) *Educational Tools*

Educational tools are made available by OEO firms to educate clients on, among other things, a particular class of securities or trading in general (**Educational Tools**).

Whether a particular Educational Tool constitutes a recommendation is contextual. The appropriate test is whether, on balance, the primary purpose of the Educational Tool is to educate clients or whether it is to influence the client's investment decisions regarding securities.

For example, consider an Educational Tool on "*What are Options?*". Depending on the specific facts and circumstances, if the primary purpose of the tool is to educate clients on options and option trading, then IIROC would not view this to be a recommendation. However, if the tool reasonably appeared to be a selling tool (e.g., recommending a specific option trading strategy/strategies or option product(s) or describing the ease of option trading and potential for profit), then such Educational Tool would likely be a recommendation and violate the No Recommendation Condition.

Further, we note that OEO firms may use Educational Tools to help satisfy themselves of the appropriateness of a security (or class of securities) to a particular client (as discussed in Part 2). For example, OEO firms may require that clients review and understand particular Educational Tools prior to

¹⁹ See paragraph 3.2(e) for additional discussion of "Push" vs. "Pull".



being given access to trade in certain products (or classes of products). IIROC is supportive of such practices.

(b) *Research Reports*

Research reports provided to clients may be considered a recommendation depending on how the information is presented to clients. Research reports that are merely made available on OEO firms' websites (i.e., not "pushed" to clients) are not generally considered to be recommendations.

As set out in [Rule 3400](#) – *Research Restrictions and Disclosure Requirements*, a "research report" is defined as:

any written or electronic communication that the Dealer Member has distributed or will distribute to its clients or the general public, *which contains an analyst's recommendation* concerning the purchase, sale or holding of a security (but shall exclude all government debt and government guaranteed debt). *[Emphasis added]*

Notwithstanding the fact that research reports contain an "analyst's recommendation", IIROC does not generally consider research reports as being a recommendation. Although research reports contain "analysts' recommendations" (e.g., to "buy", "sell" or "hold" a security), we do not generally consider these 'recommendations' as providing sufficient motivation to influence a client's investment decision regarding securities. This, in our view, is due in part to the increased familiarity with research reports by investors.

As previously discussed, research reports may be a recommendation if they are "pushed" to clients. Providing research reports to clients will not generally be considered a recommendation if they are merely made available on OEO firms' websites and available to be pulled by the client without prompting by the OEO firm.²⁰

(c) *Portfolio Analyzer Tools*

Portfolio Analyzer Tools (sometimes referred to as "Asset Allocation Tools") provide a breakdown, sorting, grouping or distribution (collectively, a **breakdown**) of a client's existing holdings by class of security, industry sector or other criteria.

For example, an OEO client may wish to learn the breakdown of his/her account by class of asset (e.g., equity, debt and mutual funds). In such case, the OEO client would use the Portfolio Analyzer Tool to evaluate their existing account holdings. The Portfolio Analyzer Tool would merely reveal the breakdown of the client's account to be: X% of the client's assets is invested in equities, Y% is in debt and Z% is in mutual funds.

Portfolio Analyzer Tools do not provide clients with suggestions or indications on future trades a client should/could make to achieve a particular breakdown. Rather, Portfolio Analyzer Tools are limited to

²⁰ Note, in accordance with Part 2, where an OEO firm has determined, as part of the account opening process, that a particular class of securities would not be appropriate for a client, then the firm should limit the ability of such clients to "pull" research reports relating to such class of securities. For example, where an OEO firm has determined that structured products would not be appropriate to a particular client, then the OEO firm should limit the ability for such client to "pull" research reports on structured products.



evaluating a client's existing holdings. In other words, Portfolio Analyzer Tools provide clients with information of what the breakdown of their account currently is (rather than a breakdown of what it should be).

Our view is that Portfolio Analyzer Tools do not constitute a recommendation as they merely provide factual information regarding a client's existing holdings and are not meant to influence an OEO client's investment decision regarding securities.

(d) *Model Portfolios*

A model portfolio tool provides clients (or classes of clients) with examples of portfolios or portfolio distributions which purport to be an appropriate guide for building a portfolio (collectively, **model portfolios**). For example, a model portfolio may show a suggested portfolio by security, class of asset or industry sector, be based on a specific type of investor (e.g., conservative or aggressive, etc.) and/or over a specified time horizon (e.g., short-term, mid-term or long-term hold period).

In contrast to a Portfolio Analyzer Tool, which provides information regarding the distribution of a client's existing holdings (or, a breakdown of what a client's account current is), a model portfolio assists or influences a client in making future investment decisions (or, a breakdown of what the account should be) by suggesting model portfolios which the client may attempt to emulate. As model portfolios could reasonably be expected to influence clients' investment decisions regarding securities (including classes of securities), IIROC views any model portfolio made available by OEO firms to their clients as a recommendation and accordingly a violation of the No Recommendation Condition. As such, model portfolios should not be made available by OEO firms.

4. **Conclusion**

This Guidance provides our views on the scope of products, tools and account types that we consider to be consistent with the regulatory framework applicable to the OEO business model. OEO firms should use this Guidance to evaluate their existing and future tools.

This Guidance is not intended to be exhaustive. Whether or not a particular tool constitutes a recommendation will depend on an analysis of all the relevant facts and circumstances of the particular case. We encourage OEO firms to contact us for interpretive guidance when necessary.

5. **Attachments**

Appendix A – *Guidance Summary*



Summary of Guidance

Guidance Reference	Topic	Summary
Part 1.	IIROC Regulatory Regime Applicable to OEO Business Model	Describes IIROC’s regulatory regime.
Part 2.	Products and Account Types Appropriate for OEO Business Model	<p>It is generally acceptable for OEO firms to offer clients a wide variety of products and account types.</p> <p>However, OEO firms must, as part their account opening process, conduct an analysis to determine: (a) whether it would be appropriate for a potential client to become a client of the OEO firm, and (b) the scope of products and account types which would be appropriate for the OEO client to have access to.</p>
Part 3.	Recommendation / Advice	Describes what may or may not constitute a “recommendation”.
Section 3.2	Meaning of “Recommendation”	<p>Provides that “recommendation” means:</p> <p><i>any communication or statement of opinion sent or made available to an investor (or class of investor) that could reasonably be expected to influence that investor (or class of investor) to make an investment decision regarding a security (including, any class of securities and the securities of a class of issuers).</i></p>
Section 3.3	Application of “Recommendation”	<p>Sets out our analysis of some of the more prominent tools currently being offered by OEO firms.</p> <p>Whether a particular tool constitutes a recommendation will depend on an analysis of all the relevant facts and circumstances of the particular case and whether a reasonable person in similar circumstances would believe a recommendation has been made.</p>
Subsection 3.3.1	Pricing Incentives	<p>Pricing incentives are generally acceptable, depending on the facts and circumstances. A pricing incentive may constitute a recommendation where it:</p> <ul style="list-style-type: none"> • is on a specific security (or small number of securities) • is on a class of securities, but the OEO firm only offers a single (or small number) of securities within that class, or • favours proprietary products.



Section of Guidance	Topic	Summary
Subsection 3.3.2	Hyperlinks & Portals	<p>Hyperlinks and portals are generally acceptable, depending on the facts and circumstances.</p> <p>Consistent with Notice 11-0349, OEO firms should consider:</p> <ul style="list-style-type: none"> • the use of disclaimers • the nature of involvement in preparation of third-party communication • any evidence of explicit or implicit endorsement.
Subsection 3.3.3	Social Media	<p>OEO firms engaging in social media activities is generally acceptable, so long as they do not engage in activities that would be considered to be recommendations.</p>
Subsection 3.3.4	Trading Tools	<p>Trading tools constitute recommendations and accordingly violate the No Recommendation Condition. Trading tools should not be offered by OEO firms.</p>
Subsection 3.3.5	Trade Execution Tools	<p>Trade execution tools constitute recommendations and accordingly violate the No Recommendation Condition. Trade execution tools should not be offered by OEO firms.</p> <p>However, 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 being provided by the OEO firm.</p>
Subsection 3.3.6	Pre-entering of Orders	<p>Pre-entering of orders is acceptable, assuming that the order is pre-entered solely by the client, on their own initiative, without any recommendation being provided by the OEO firm.</p>
Subsection 3.3.7	Automatic Rebalancing Alerts & Tools	<p>Automatic Rebalancing Alerts & Automatic Rebalancing Tools are generally acceptable provided that the OEO firm did not influence the client's selection of their desired pre-determined levels / 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>



Section of Guidance	Topic	Summary
Subsection 3.3.8	Filters/Lists of Available Securities	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).
Subsection 3.3.9	Informative Tools	<p>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>
Paragraph (a)	Educational Tools	Educational Tools are generally acceptable, so long as their primary purpose is to educate clients (in contrast to a selling tool).
Paragraph (b)	Research Reports	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.
Paragraph (c)	Portfolio Analyzer Tools (sometimes referred to as “Asset Allocation Tools”)	Portfolio Analyzer Tools are generally acceptable so long as they merely provide a breakdown of a client’s <u>existing</u> holdings.
Paragraph (d)	Model Portfolios	Model portfolios constitute recommendations and accordingly violate the No Recommendation Condition. Model portfolios should not be offered by OEO firms.