



February 3, 2017

Via Email

Mr. Charles Piroli  
Director, Member Regulation Policy  
Investment Industry Regulatory Organization of Canada  
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Toronto, Ontario M5H 3T9  
E-mail: cpiroli@iiroc.ca

**Re: Request for Comments on Guidance on Order Execution Only Services and Activities**

Dear Mr. Piroli:

We are writing on behalf of Qtrade Securities Inc., a full-service securities firm and an order execution-only ("OEO") services investment dealer, in response to the request for comments issued by the Investment Industry Regulatory Organization of Canada ("IIROC") on the Guidance on Order Execution Only Services and Activities ("Proposed Guidance Notice") published on November 3, 2016.

IIROC has stated that if the Proposed Guidance Notice is implemented, it will replace existing MR Notice 0098, *"What Constitutes a 'Recommendation'? Is a Suitability Determination Required under Regulation 1300.1?"* ("MR Notice"). The MR Notice was published on September 6, 2001 and was intended to provide guidance to the industry on what may or may not constitute a recommendation. The MR Notice is applicable to both OEO firms and to full-service advice firms. If the Proposed Guidance Notice is issued in much of its current form, it will cause significant disruption, and confusion for the industry as a whole. Namely, the impact will be felt as a result of the introduction of an "appropriateness test", and the definition of what is a "recommendation". In addition to this, we are surprised that IIROC would have proposed such very significant changes through a guidance notice instead of a rule change.

1. Use of Guidance for Significant Industry Changes

We would like to comment on the reason that a "guidance notice" is issued by securities regulators to dealers. Regulatory guidance is given to clarify or resolve an issue or confusion based on an existing set of rules and laws. Guidance is not a replacement of those rules or laws. A guidance notice is the place to help support the industry in clarifying information not to re-write the rule book. With the introduction of a new regulatory definition (recommendation), and supervisory requirement (appropriateness), IIROC has used the guidance process in replacement of a rule making one. Given the significance of these changes and the corresponding impact to the industry and clients, these must be introduced through the rule making process.

## 1. What Is a Recommendation?

If IIROC wishes to clearly define the term “recommendation”, it should be carried out through an industry-wide consultation that is not tucked away in a notice that is targeted to OEO firms. Including it in an OEO Guidance Notice creates confusion for the industry and full service advice dealers will either, not be aware of the Proposed Guidance Notice, or will believe that it does not apply to them.

How all dealers communicate with their clients, both full-service and on-line will be impacted by the proposed definition of “recommendation”. If a definition is to be drafted, IIROC must be more precise and change “investor” to “client” and “potential client”. Using the term “client” will align the dealer closer to the activity of the person making the decision on their account. The definition must align with the fact that the dealer can only be responsible for the actions of their clients when they are making transacting within that dealer. Using the term “investor” is overly broad and may result in a dealer becoming responsible for the investment decisions of any investor, no matter where they hold their account. The firm may be held liable if an investor reviews their website or tools, but trades with another dealer, either OEO or full service.

As it relates to the proposed definition of “recommendation” we suggest these changes:

*“Any investment-related suggestion or proposal ~~communication or statement of opinion~~ sent or made available to ~~an investor (or class of investor)~~ a retail client or potential retail client that could reasonably be expected to influence that ~~investor (or class of investor)~~ retail client to make an investment decision regarding a security (including any class of securities and the securities of a class of issuers) (collectively, securities).”*

## 2. Introduction of an Appropriateness Analysis

The weightiest change that has been introduced in the Proposed Guidance Notice is the concept of an “Appropriateness Analysis” (“the Analysis”). To help IIROC in the drafting of the Proposed Guidance Notice, a Working Group (“WG”) was created to secure industry information. Qtrade volunteered our time and expertise over the course of several months and participated in 5 WG meetings. The WG discussed the following 6 broad topics: Current Regulatory Framework; What is a Recommendation / Advice? Treatment of investment information or informative information; Filters / List of Available Securities; Allocation of model and portfolio tools; and Suitability.

During these meetings, there was no discussion about an Appropriateness Analysis. With the WG, it was outlined by IIROC Staff that the cornerstone of the OEO model is that the OEO dealer (a) must not provide a client with any recommendation (or advice) and (b) is not required to make a determination that an order is suitable for a client. The proposed Analysis will impact both of the cornerstones of the OEO model. The Analysis is a form of suitability determination because we are required to inform the client what products and services are appropriate. From the client perspective, they may believe that certain products and services are offered to them as a recommendation. Using IIROC’s definition of a recommendation, it is possible that the Analysis will trigger the recommendation definition which will cause the ensuring violation of both principles noted above.

IIROC has stated that the OEO dealer is only exempted from suitability when accepting an order from a client where no recommendation is provided, and that this exemption does not extend to account opening. When the OEO dealer model was first developed, it was never contemplated that the firm would require an account opening suitability review or assessment. Furthermore, it is expressly prohibited under the rules to conduct a suitability assessment and therefore we do not see how “account opening assessments” can be performed and the OEO stay in compliance with IIROC regulation. If there is an account opening obligation, then OEO firms must collect further KYC information from the client to determine what products and services they may purchase. If this is the expectation, then the industry must develop further systems and structures to not only obtain the KYC information but ensure it is current for the lifetime of the client relationship. Furthermore, if the account Analysis is required, the Dealer may need to have contact with the client to discuss questions and clarify the information to meet the Analysis obligation. This, may lead to further conversation with the client about their investment needs and goals which then becomes an issue of client expectation that the OEO will provide advice, guidance and recommendations. This appears to be the territory of a full-service dealer. If a client wishes to have an account opening assessment, they can be directed to a full service dealer. There will also be increased liability to the OEO dealers as clients will believe that they have been approved for investments that may be suitable to their personal circumstances.

It may be possible that IIROC considered the credit checks that are performed for certain accounts (i.e. margin) to be part of the Analysis process. If that is what IIROC had in mind, we would consider the Proposed Guidance Notice to include a financial inquiry to ensure that the client has the ability to pay in reference to the type of account that they are opening with the OEO dealer.

### 3. Next Steps

As a result of the points raised above, we ask that IIROC delay the introduction of the Proposed Guidance Notice in order to consider a different strategy. Specifically, after considering the industry comments, review and update the existing MR Notice to include some of the broad concepts discussed in the Proposed Guidance Notice. This is a first step in addressing the concerns that IIROC has and will provide further opportunity for IIROC to explore some of the more substantive issues for further discussion and comment. If IIROC is still focused on updating the definition of a recommendation and introducing the Appropriateness Analysis, then it must be done through the rule making process. The Proposed Guidance Notice will impact the full service advice dealers and their clients and therefore there must be proper representation by those firms. For the proposed changes to a definition of a recommendation, if it is still necessary, it should be issued as a general notice and not targeted to the OEO dealers only. In the case of the Appropriateness Analysis we do not believe that it is necessary at this time for the OEO dealers. However, if IIROC would like to move forward with this, a cost impact study is necessary.

In conclusion, we support a healthy and successful investment industry with a transparent rule-making process; this can be accomplished through a broadly understood process, awareness of the differences between the use of rule change and guidance notice, and a regulator that develops policy based on the verification that a problem exists with which the policy solution is based upon.

The Proposed Guidance Notice attempted to address some concerns, however IIROC has focused too heavily on attempting to “pin down” a definition and prescription measures in order to try and regulate

the part of the industry that does not have significant regulatory issues. We believe that in order to continue to regulate in an effective and efficient manner, IIROC ought to consider paring down the Proposed Guidance Notice to an update of the existing MR Notice. Further, in order to meaningfully implement changes to the industry, IIROC ought to re-consider its use of a guidance notice and remove the Assessment Analysis and the definition of recommendation.

We would be pleased to speak with you further as a follow up to this comment letter if you have further questions on this very important industry matter.

Yours truly,

Qtrade Securities



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Senior Vice President and Head of  
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