

**Submitted by Email**

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Dear OSC and CIRO:

**RE: CONTINUED MODERNIZATION OF OEO REGULATORY FRAMEWORK**

We are writing to acknowledge with appreciation the inclusion in the OSC's draft 2024-2025 Statement of Priorities, the review of the limitation of advice in the order execution only ("OEO") channel and CIRO's efforts in recognizing there are challenges raised by quickly evolving technologies and investor demand in this channel.

In consultation with members, we provide the recommendations below and attached Schedule "A" in efforts to work with you to inform the progression of this valuable dealer registration category:

**A. Overview of Recommendations**

We recommend that OEO channels who wish to provide non-tailored advice be permitted to do so.

The availability of non-tailored advice through OEO channels assists in closing the advice gap in an affordable fashion for the investing public.

This may be achieved through a narrower regulatory definition of “recommendation” and other amendments to the regulatory framework as described below and in the attached. To preserve accessibility and lower cost value for investors, these changes should be made without imposition of Know Your Client and suitability obligations.

## **B. Reasons for Recommendations**

### **I. Unmet Investor Needs**

Investors open OEO accounts because they have chosen not to receive tailored, personalized advice regarding investments. In so doing, they waive a suitability review. OEO investors need objective, informed resources to aid in their independent investment decision-making.

Due to the pace of new technologies, the continued proliferation of investment information of varying quality on social and other media, and the resulting investor needs, the IIAC believes that GN-3400-21-003 *Guidance on order execution only account services and activities* (“**OEO Guidance**”) already requires further modernization and strongly supports efforts to do so.

### **II. The Current Regulatory Framework**

#### **i) Prohibitions and Gaps**

OEO dealers are currently prohibited from making “recommendations”. The principle and its genesis are understandable. Its implementation in the current day merits further consideration.

According to CIRO Rule 1201 (2), an “order execution only account” is:

An account which is not subject to a suitability determination (other than as required by clauses 3402(3)(i) and 3403(4)(i)) where: (i) the client is solely responsible for making all investment decisions, and (ii) the *Dealer Member* provides no recommendation to purchase, sell, hold, or exchange any security, including any class of security or security of a class of issuer.

An order execution only account is exempt from suitability determination requirements pursuant to Rule 3404(1)(i).

A “recommendation” is not specifically defined in the Ontario *Securities Act*, R.S.O. 1990, c.S.5 (“**Ontario Securities Act**”), National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (“**NI 31-103**”), or CIRO Rules.

The OEO Guidance has broadly defined a recommendation for the purposes of that guidance to include:

Any communication or statement of opinion sent or made available to an investor (or class of investor) that could, based on the context or circumstances, reasonably be expected to influence that investor (or class of investor) to make an investment decision regarding a security.

For reasons further explained, this definition is overly broad and brings unintended negative consequences.

#### **ii) Further Considerations**

Section 8.25(2) of NI 31-103 states:

The adviser registration requirement does not apply to a person or company that acts as an adviser if the advice the person or company provides does not purport to be tailored to the needs of the person or company receiving the advice.

This section does not apply in Ontario. Measures like those in section 8.25 of NI 31-103 are in section 34 of the Ontario *Securities Act*:

34(1) Each of the following persons and companies is exempt from the requirement to be registered as an adviser under this Act while engaging in the business of providing advice with respect to investing in or buying or selling securities:

1. A person or company that engages in or holds himself, herself, or itself out as engaging in the business of providing advice, either directly or through publications or other media, with respect to investing in or buying or selling securities, including any class of securities and the securities of a class of issuers, that are not purported to be tailored to the needs of anyone receiving the advice.
2. Such persons or companies as may be prescribed by the regulations or whose activities are prescribed by the regulations.

Greater reliance may be placed on the adviser registration exemption in efforts to meet the needs of OEO investors, for the reasons further explained below.

### **III. Unintended Harms from Current Regulatory Framework**

Unregistered individuals provide recommendations to the public, for example, through widespread social and other media, while registered OEO dealers are unduly restricted.

Similarly, though the OEO Guidance acknowledges that informative tools are “undoubtedly helpful to clients”, several are prohibited based on concern that they “could reasonably be expected to influence ...an investment decision”.

The unintentional result is that the OEO Guidance drives investors to third-party sites and third-party tools, not subject to registration requirements or regulatory oversight.

### **C. Proposed Solutions**

Appended at Schedule “A” are excerpts of the OEO Guidance, annotated in blue to show certain areas that may be amended or deleted. They are summarized as follows:

#### **i) Narrowing the Definition of Recommendation**

The definition of “recommendation” should be significantly narrowed to encompass only advice tailored to the needs of the recipient. This is consistent with the adviser registration exemption in section 8.25(2) of NI 31-103 and section 34(1) of the Ontario *Securities Act*. Narrowing this definition would alleviate the discrepancy between activities currently permitted for unregistered individuals, but prohibited for OEO dealers.

In other words, like unregistered individuals, an OEO dealer may choose to engage in the business of providing advice, either directly or indirectly, with respect to investing in or buying or selling securities, that are not purported to be tailored to the needs of anyone receiving the advice. According to section 8.25 of the Companion Policy of NI 31-103, the CSA would not consider advice about specific securities to be tailored to the needs of the recipient if it:

- is a general discussion of the merits and risks of a security;
- is delivered through investment newsletters, articles in general circulation, newspapers or magazines, websites, e-mail, Internet chat rooms, bulletin boards, television, or radio; and,
- does not claim to be tailored to the needs and circumstances of any recipient.

The above elements may be met on an OEO platform.

The result is that OEO investors who choose to receive non-tailored advice, without a suitability review, may do so, where at an OEO dealer who has elected to provide the service.

#### **ii) Permitting Informative Tools to Benefit Investors**

The approach described in paragraph i) above would also better allow for the expanded use of informative tools, including trading tools, trade execution assistant tools, and filtering tools, which are broadly available outside of OEO dealers. The below tools are from the AMF and TMX for options, respectively:

- <https://lautorite.qc.ca/en/general-public/calculators-and-tools/calculators/your-investor-profile>
- <https://www.m-x.ca/en/trading/tools/educational-trading-tools>

The OEO dealers' options to use model portfolios should be expanded. The OEO Guidance properly recognizes investors' increased familiarity with model portfolios. It currently permits model portfolios by asset classes or industry sectors. These model portfolios do not claim to be tailored to the needs and circumstances of an individual recipient. The model portfolios are based upon OEO investors determining their own profile and choosing the portfolio they wish, while waiving a suitability review. These principles and processes can be expanded to include securities selected on an objective basis. Information on the securities and the basis upon which the securities were selected is provided to the investor.

#### **iii) Eliminating "Push" vs. "Pull"**

In an evolving landscape where investors expect seamless, just-in-time information, emphasizing "pull" over "push" has a declining relevance. Whether presented via "push" or "pull", where it remains the client's option to use or discard legitimate, informative tools, OEO dealers should be able to notify their clients about the availability of informative tools through "push" notifications, as well as making the tools available to clients on the dealer's website or app for the client to "pull".

We welcome your considered review and the opportunity to discuss with you.

Respectfully submitted,

***Investment Industry Association of Canada***

*Laura Paglia*

Per: Laura Paglia, President and CEO

## Schedule A

### Excerpts from GN-3400-21-003, March 12, 2021: Guidance on Order Execution Only Services and Account Agreements

<https://www.iiroc.ca/news-and-publications/notices-and-guidance/guidance-order-execution-only-account-services-and-activities>

#### 3. Recommendations

As discussed in Part 2, the Recommendation Prohibition prohibits an OEO Dealer from providing recommendations. So long as an OEO Dealer does not provide any recommendations, it:

- is exempt from the suitability requirements
- need not conduct a Product/Account Type Appropriateness analysis with respect to a potential client.

In this Part 3, we provide our views on the meaning of the term “recommendation” for purposes of the Recommendation Prohibition. In addition, we have analyzed the more common tools currently offered by OEO Dealers and provided our views on the circumstances where such tools may constitute a recommendation.

#### 3.1 Meaning of “Recommendation”

We are of the view that, for purposes of the Recommendation Prohibition, the term “recommendation” means:

any communication or statement of opinion sent or made available to an investor (or class of investor) that could, based on the context or circumstances, 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) (collectively, securities).<sup>15</sup>

We set out below our interpretation of certain wording used in the meaning of the term “recommendation”:

#### 1. The phrase “any communication or statement of opinion” should be interpreted broadly to include:

- any tool offered or made available by an OEO Dealer
- any form of communication (e.g., written or spoken).

How the communication or statement of opinion is generated or created is irrelevant. For example, it could be a simple mathematical calculation, computer generated, made by a live person or based on publicly available or confidential information (or a combination thereof).

#### 2. The phrase “sent or made available” includes both direct and indirect communications. For example, it includes a message sent or directed to a particular client (or class of client) or merely posted on the OEO Dealer’s website that any investor may access.

#### 3. The phrase “that could, based on the context or circumstances, reasonably be expected to” is intended to emphasize that whether or not a particular tool is considered to be a recommendation *will depend on the relevant facts and circumstances of the particular case, and should be evaluated in that context.*

#### 4. The phrase “investor (or class of investor)” should be interpreted broadly to include:

- any investor (and not merely clients of the OEO Dealer)

- any class of investor (e.g., conservative investors, investors within a certain demographic, etc.).

The primary focus of this Guidance is on tools an OEO Dealer makes available to its clients. However, we use the term “investor” in the meaning of recommendation to avoid the circumstance where an OEO Dealer posts a recommendation on its website that is accessible by any investor (client or non-client). OEO Dealers are prohibited from providing recommendations to clients and non-clients alike.

In this Guidance, the term “investor” means both an individual investor and any class of investor. Similarly, the term “client” or “OEO account client” means both an individual client and any class of client of an OEO Dealer.

5. The term “investment decision” includes any of the following:

- the purchasing, selling, holding or exchanging of securities
- the manner in which the purchase, sale or exchange of securities should be effected (e.g., the timing of a purchase).[16](#)

### 3.2 General Application of “Recommendation”

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

#### 3.2.1 Tailored Information vs. General Information

Tailored Information is information that is customized or personalized to an investor using KYC-type information regarding the investor. Examples of tools providing tailored information include:

- informing a client that the OEO Dealer believes the client to be of a particular class of investor (e.g., based on asking the client questions or using any KYC-type information such as transaction history, etc.)
- providing information to clients based on their transaction history (e.g., informing the client “as you purchased Product X in the past, you may be interested in Product Y”).

Generally, we consider a tool that provides tailored information to be more likely to be a recommendation as it is more likely to be relied on by clients as relevant to them. However, there are circumstances where tailored information would not be considered a recommendation and would be appropriate under the OEO account model.[17](#)

General Information is information that is not tailored or personalized to an investor.

**Tools providing general information to clients are less likely to be a recommendation. However, general information may be a recommendation if it could reasonably be expected to influence an investor to make an investment decision; for example:**

- publishing a general communication advising investors to purchase a particular class of security
- **pushing (see below) general information to a client.**

#### 3.2.2 “Push” vs. “Pull”

Generally, a tool that is merely made available on an OEO Dealer’s website and can be “pulled” by a client is less likely to be a recommendation. **In contrast, a tool (or information) that is “pushed”, or sent/directed, to a client is more likely to be considered a recommendation.**

**We believe that a tool that is pushed or pushes information to clients is more likely to be relied on by clients as relevant to them.**

**The relative importance of the “push vs. pull” consideration will depend on the tool and the facts and circumstances.** In section 3.3 of this Guidance, we apply the “push vs. pull” consideration to various tools currently offered by OEO Dealers.[18](#) **As discussed, we consider certain tools to be recommendations regardless of the fact that they are merely available on an OEO Dealer’s website to be “pulled” by clients.[19](#) Conversely, we consider other tools to not be recommendations so long as they are merely available on an OEO Dealer’s website and are not pushed to clients.[20](#)**

### 3.2.3 Historical/Factual Information vs. Future/Predictive Information

Generally, where a tool merely provides historical or factual information, it would likely not be considered to be a recommendation. This includes 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 perform in the future would generally be considered a recommendation because it would reasonably be expected to influence clients' investment decisions. Accordingly, other than as discussed in this Guidance,<sup>21</sup> OEO Dealers should ensure that their tools do not include any future and/or predictive information regarding an issuer, a security or market segment.

### 3.3.3 Hyperlinks and Portals

Depending on the applicable facts and circumstances, we view hyperlinks and portals offered by an OEO Dealer to a third-party website (collectively, Hyperlinks) as generally acceptable.

However, where the content of the Hyperlink provides a **recommendation**, OEO account clients may:

1. consider the content of the third-party website to be attributed to or endorsed by the OEO Dealer
2. not be aware that they have left the OEO Dealer's website.

These concerns are magnified where the Hyperlink is to the website of an affiliate/related company of the OEO Dealer with a similar business name.

Consistent with GN-3600-20-002 - Review of Advertisements, Sales Literature and Correspondence (GN-3600-20-002),<sup>22</sup> whether or not a Hyperlink (or third-party communication) would reasonably be considered to be the OEO Dealer's communication will depend on the facts and circumstances of each case. As discussed in GN-3600-20-002, OEO Dealers should consider:

1. the use of disclaimers
2. the nature of their involvement in the preparation of the third-party communication prior to posting
3. any evidence of explicit or implicit endorsement or approval of the communication by the OEO Dealer

to help determine whether or not the third-party post reflects the views of the OEO Dealer.

OEO Dealers should note that using disclaimers will not necessarily relieve them of their responsibility for Hyperlinks or third-party communications. GN-3600-20-002 provides suggested best practices relating to third-party communications, including the development of policies and procedures to address the issues related to Hyperlinks.

### 3.3.5 Integrated Tools

Some OEO Dealers offer tools that are integrated with third-party tools (Integrated Tools). For example, a third party may offer research reports<sup>23</sup> that provide a "trade now" functionality linked to an OEO Dealer's platform. With a single click of the "trade now" button on the third party's website, the client is automatically directed to the OEO Dealer for trade execution where the trade details (e.g. security name, etc.) are automatically populated.

Depending on the applicable facts and circumstances, we view Integrated Tools as generally acceptable. However, as discussed in connection with Hyperlinks, OEO account clients may:

1. consider the content of the third-party website to be attributed to or endorsed by the OEO Dealer, or
2. not be aware that they have left the OEO Dealer's website.

These concerns are magnified where the Integrated Tool is linked to the website of an affiliate/related company of the OEO Dealer with a similar business name. OEO Dealers should take steps to mitigate these risks.

Please refer to subsection 3.3.3 on Hyperlinks and GN-3600-20-002 for guidance and suggested best practices relating to third-party communications, including the development of applicable policies and procedures.

### 3.3.6 Trading Tools

We consider 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 OEO Dealer 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 that they subsequently execute on their own.

**As Trading Tools are intended to influence clients’ investment decisions, we view Trading Tools made available by OEO Dealers to their clients<sup>24</sup> as recommendations and therefore a violation of the Recommendation Prohibition. As such, Trading Tools should not be made available by OEO Dealers.**

**Further, except for Automatic Rebalancing Tools,<sup>25</sup> we note that making available a Trading Tool that automatically trades on a client’s behalf may be considered to be providing managed account services requiring registration as a portfolio manager with IIROC or a Canadian securities regulatory authority.**

### 3.3.7 Trade Execution Assistant Tools

As discussed above, while a “Trading Tool” informs an investor of *what* trades should be made, we consider a “trade execution assistant tool” to be a method or plan on *how* or *when* to most effectively execute a trade(s) (Trade Execution Assistant Tool). For example, assuming a client wanted to make a large purchase of a single security, a Trade Execution Assistant Tool would inform the investor on how or when to effect the purchase(s).

**Trade Execution Assistant Tools may be a recommendation depending on how they are offered.<sup>26</sup> So long as the Trade Execution Assistant Tool is merely made available on an OEO Dealer’s website to be “pulled” by the client, without prompting or influence by the OEO Dealer, we would not consider it to be a recommendation.**

For example, OEO Dealers 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 Dealer regarding which of these options, if any, a client should choose, we would consider such options acceptable.

Further, OEO Dealers remain subject to best execution obligations and other regulatory requirements in effecting trades on behalf of their clients.<sup>27</sup> An OEO Dealer using an automated “smart order router” to meet its best execution obligations for *all OEO account client trades* can be distinguished from a Trade Execution Assistant Tool in that a Trade Execution Assistant Tool is tailored to a specific client, or class of clients.

### 3.3.8 Pre-entering of Orders

A common tool made available by many OEO Dealers permits clients to “pre-enter” an order (i.e., on the client’s own initiative and without any recommendation from the OEO Dealer). For example, a client may wish to place an order for a security for a later date or when the security reaches a particular price (e.g., a limit order). This type of tool does not, in our view, constitute a recommendation.

### 3.3.9 Automatic Rebalancing Alerts & Tools

Some OEO Dealers 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. To facilitate, an OEO Dealer could:

1. 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
2. automatically make the appropriate transactions to re-balance the account in accordance with the client’s desired levels (Automatic Rebalancing Tool and, together with the Rebalancing Alert, Rebalancing Tools).

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



A Rebalancing Alert notifies the OEO account client that his/her account has moved outside their chosen pre-determined levels (without any recommendations from the OEO Dealer). Upon receiving an alert, the OEO account client may or may not choose to rebalance the account.

If an Automatic Rebalancing Tool was merely acting on an OEO account client's instructions (provided when the client acted alone in selecting its pre-determined levels or rebalancing instructions) to execute rebalancing transactions, we would not consider this activity to influence a client's investment decisions.

Notwithstanding our view that Rebalancing Tools are generally not recommendations, these tools raise certain risks and concerns that OEO Dealers should consider and address.

1. *As discussed above*, OEO Dealers should not provide any **recommendations that could influence** a client's selection of his/her desired pre-determined levels or rebalancing instructions. Further, OEO Dealers 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.

**If an OEO Dealer were to provide a recommendation in connection with the client's initial rebalancing instructions and then make available an Automatic Rebalancing Tool, this could be considered to be equivalent to discretionary management and require registration as a portfolio manager with IIROC or a Canadian securities regulatory authority.**

2. In dealing with clients honestly, fairly and in good faith, OEO Dealers should ensure that their clients understand details relating to the Automatic Rebalancing Tool, including:
  - the frequency of the Automatic Rebalancing Tool's review and rebalancing of the client's account for conformity with the client's instructions
  - cost/fee implications<sup>28</sup>
  - details about which securities will be purchased and sold to rebalance the client's account and rebalancing parameters.<sup>29</sup>
3. *Confirmation of Rebalancing Instructions*

Clients who create rebalancing instructions using an Automated Rebalancing Tool may forget that they created the instructions or experience a change in circumstance necessitating a change in their instructions.

Accordingly, OEO Dealers should obtain periodic confirmations (no less than quarterly) from clients that the automatic rebalancing instructions should continue.

4. *Unintended Consequences*

There may be circumstances where an Automatic Rebalancing Tool creates an unintended consequence that could be potentially harmful to clients.

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 that 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 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 Dealers should implement safeguards to manage the risks to clients related to unintended consequences of Automatic Rebalancing Tools; for example, implementing appropriate alerts to clients should the value of any single security change significantly in a short period.

### 3.3.10 *Filtering Tools*

Many OEO Dealers allow clients to sort or filter the list of all securities the OEO Dealer has available for purchase and sale (Filtering Tools). These Filtering Tools allow clients to sort all available securities by criteria such as the name of the issuer, industry sector, trading volume or some other factual criteria relating to the security.

**We do not consider Filtering Tools to be recommendations, so long as the client initiates (pulls) the sorting/filtering.**

An OEO Dealer should not narrow the list of securities available to a client on its own initiative or suggest any product(s) based on client-related information (e.g., asking the client leading questions, data mining of previous purchases and/or sales<sup>30</sup> or using any KYC-type information gathered about the client).

For example, consider a scenario where an OEO Dealer 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 Dealer, the firm's Filtering Tool should list all 20 securities in response to the client's query. If the OEO Dealer narrows the list to provide the client with less than 20 securities, then it would be providing a recommendation.

In the above example, the client could choose to 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..

### 3.3.11 Informative Tools

Many OEO Dealers make a variety of tools available to their clients that are designed to inform and/or educate clients (collectively, *Informative Tools*). *Informative Tools 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.*

In addition to the general considerations set out in section 3.2, below are our views on some of the more common Informative Tools currently made available by OEO Dealers.

#### 1. Educational Tools

Educational tools are often made available by OEO Dealers 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.**

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 we would not view this as a recommendation. However, if the tool reasonably appears 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 it would likely be considered a recommendation.

#### 2. Research Reports

Normally, a research report contains an analyst's recommendation about the purchase, sale or holding of a security.<sup>31</sup> *Notwithstanding, we do not generally consider these 'recommendations' as providing sufficient motivation to influence a client's investment decision, due in part to investors' increased familiarity with research reports.*

**However, research reports may be a recommendation depending on how the information is presented to clients. So long as they are merely made available on an OEO Dealer's website to be "pulled" by the client, without prompting or influence by the OEO Dealer, we would not consider them recommendations.**

#### 3. Multiple Fund Series

OEO Dealers may offer various series of the same or equivalent funds (e.g., Series A or D of the same fund or the equivalent PTF).<sup>32</sup>

We do not consider it to be a recommendation when an OEO Dealer provides factual information to a client of the availability of a lower-cost series of a fund the client holds or is in the process of acquiring (e.g., the availability of Series D, or the equivalent PTF, where the client holds or is in the process of acquiring Series A of that fund).

#### 4. 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 another criteria.

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

Portfolio Analyzer Tools do not provide clients with suggestions or indications of future trades a client should/could make to achieve

a particular breakdown. They provide clients with information on what the breakdown of their account currently is (rather than 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 account client's investment decision.

## 5. Model Portfolio Tools

A Model Portfolio Tool provides clients with examples of portfolios or portfolio distributions that purport to be an appropriate guide for building a portfolio. For example, a model portfolio may show a suggested portfolio by security, class of asset or industry sector, or be based on a specific type of investor and/or time horizon.

In contrast to Portfolio Analyzer Tools, **Model Portfolio Tools assist or influence clients 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 such, we generally view them as a recommendation.**

**However, depending on the context in which they are made available, certain limited Model Portfolio Tools may be acceptable, provided they:**

- i. **are limited to class of investor, asset class, industry sector and/or time horizon**
- ii. **do not reference specific securities (as defined below) or issuers, and**
- iii. **are only made available on OEO Dealers' websites to be "pulled" by the client, without prompting or influence by the OEO Dealer, and are not "pushed" to clients.<sup>33</sup>**

We refer to such limited Model Portfolios as "Permitted Model Portfolios".

We do not generally consider Permitted Model Portfolios as providing sufficient motivation to influence a client's investment decision, due in part to investors' increased familiarity with model portfolios.

**We interpret "specific securities" broadly to include any security that may be purchased by an investor, including but not limited to any equity, debt or fixed-income product, mutual fund, ETF and/or PTF. Model Portfolio Tools should not refer to specific securities or issuers, as we consider any model portfolio that names specific securities or issuers to be significantly more likely to influence a client's investment decision than a model portfolio that is limited to broader asset classes and/or industry sectors.**

Additional guidance is provided below regarding each of the four acceptable bases for Permitted Model Portfolios.

1. **Class of Investor.** Examples of "Classes of Investors" include "Conservative Investor", "Balanced Investor", "Aggressive Investor", or other such names as determined by an OEO Dealer.

Regardless of the name used to describe them, an OEO Dealer should provide a definition for each Class of Investor used in its Permitted Model Portfolio. Clients may then use these definitions to determine, for themselves (without any assistance or suggestion provided by the OEO Dealer), which Class of Investor best suits them.

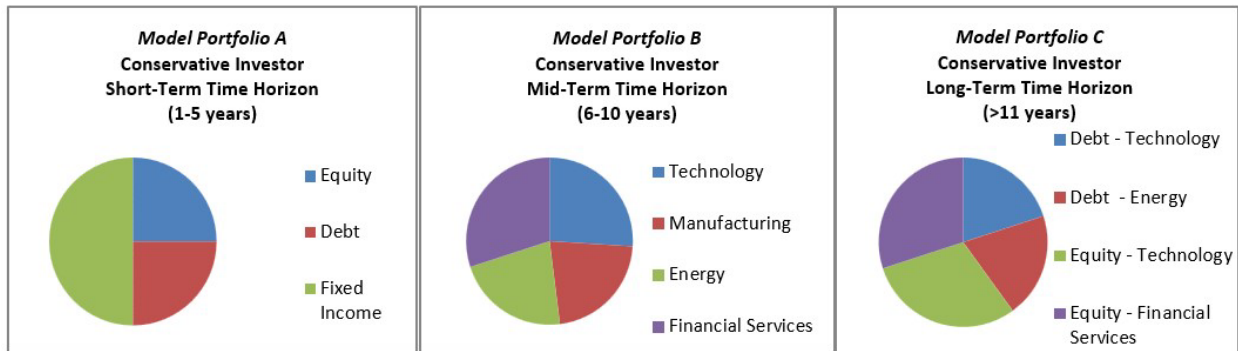
**An OEO Dealer should not:**

- **help a client determine what Class of Investor he/she is,<sup>34</sup> or**
  - **inform a client that the OEO Dealer believes the client to be a particular Class of Investor (e.g., by asking the client questions, using KYC-type information or transaction history, or by any other method).**
2. **Asset Class.** Examples of "Asset Classes" include "Equities", "Debt", "Mutual Funds" and other such name(s) as determined by the OEO Dealer. OEO Dealers should provide a definition for each Asset Class used in their Permitted Model Portfolios.
  3. **Industry Sector.** Examples of "Industry Sectors" include "Financial Services", "Agriculture", "Manufacturing", etc. OEO Dealers should provide a definition for each Industry Sector used in their Permitted Model Portfolios.
  4. **Time Horizon.** "Time Horizons" help ensure that OEO account clients appreciate whether the Permitted Model Portfolio is designed for "short-term", "mid-term" or "long-term" investment. OEO Dealers should define each Time Horizon used in their Permitted Model Portfolios (e.g., "short term" means "less than 2 years").

OEO Dealers may couple their Permitted Model Portfolios with their Filtering Tools (see subsection 3.3.10) to allow clients to identify those specific securities that are consistent with a Permitted Model Portfolio. For example, where a Permitted Model Portfolio identifies a particular Asset Class or Industry Sector (such as “Manufacturing Sector”), the OEO Dealer may provide a link to its Filtering Tool to identify *all* Manufacturing Sector securities it offers.

We set out examples of certain Permitted Model Portfolios in Appendix B. We also include examples of model portfolios that we consider inappropriate for OEO Dealers to make available to clients (referred to as Non-Permitted Model Portfolios).

Permitted



Not Permitted

