

## **Notice of General Order – Ontario Instrument 81-508 “Temporary Exemptions from the OEO Trailer Ban to Facilitate Dealer Rebates of Trailing Commissions and Client Transfers”**

The Ontario Securities Commission (the “**Commission**”) is providing temporary exemptions to members of the organization of mutual funds (“**investment fund managers**” or “**IFMs**”) and participating dealers that are not required to make a suitability determination such as investment dealers offering order execution only accounts (“**OEO dealers**”) from a trailing commission ban (“**OEO trailer ban**”) that prohibits the payment of trailing commissions by IFMs to OEO dealers in Ontario securities law effective June 1, 2022 (the “**effective date**”), subject to terms and conditions, in order to facilitate dealer rebates of trailing commissions and client transfers under securities legislation.

### **Description of Order**

The order provides the following temporary exemptions from the OEO trailer ban to IFMs and OEO dealers, effective on June 1, 2022, subject to terms and conditions, such that during the period from June 1, 2022 to November 30, 2023:

- (a) OEO dealers and IFMs are exempted from the OEO trailer ban where a trailing commission is paid by the IFM to the OEO dealer to facilitate rebates to an OEO dealer client (“**client**”) by an OEO dealer, equal to the amount of the trailer paid by the IFM to the OEO dealer in respect of the client’s trailer paying mutual fund security, for as long as the client holds the trailer paying mutual fund security in the OEO dealer account (“**dealer rebates**”) for
  - (i) clients holding mutual funds in OEO dealer accounts prior to June 1, 2022 (“**current holdings**”), and
  - (ii) clients who transfer mutual funds to OEO dealer accounts on or after June 1, 2022; and
- (b) OEO dealers and IFMs are exempted from the OEO Trailer Ban for a period of 45 days (“**grace period**”) upon the acceptance of client-initiated transfers of mutual funds on or after June 1, 2022, where a trailing commission is paid by the IFM to the OEO dealer (“**client transfers**”), to facilitate processing of such client transfers.

The temporary exemptions provided above are subject to the following terms and conditions:

- No IFM or OEO dealer may rely on this order to facilitate dealer rebates for current holdings unless a like-to-like switch (a switch, initiated by an investment fund manager or an OEO dealer, of a mutual fund security held in an OEO dealer account from a trailer paying class or series to a non-trailer paying class or series of the same mutual fund, where the only difference is a lower management fee for the non-trailer paying class or series, and where there are no tax consequences for effecting such switch) or a like-to-similar switch (a switch, initiated by an investment fund manager or an OEO dealer, of a mutual fund security held in an OEO dealer account from a trailer paying class or series to a non-trailer paying class or series of the same mutual fund, where the only differences are a lower management fee for the non-trailer paying class or series, and a difference in distribution policy and/or currency, and where there are no tax consequences for effecting such switch) is not available or not effected by the effective date, and a management fee rebate (a rebate to a client by an investment fund manager, equal to the amount of the trailer that would otherwise be paid by the investment fund manager to the OEO dealer in respect of the client’s trailer paying mutual fund security, for as long as the client holds the trailer paying mutual fund security in an

OEO dealer account) is also not used, and no IFM or OEO dealer may rely on this order to facilitate dealer rebates for pending switches (client-initiated transfers of trailer paying mutual fund securities to OEO dealer accounts made shortly before the effective date where a like-to-like switch or a like-to-similar switch might be available but it is not operationally reasonable to effect a switch), unless it is not operationally reasonable to effect a like-to-like switch, a like-to-similar switch, or a management fee rebate, even if available.

- Any IFM or OEO dealer relying on this order to facilitate dealer rebates for current holdings and pending switches must not redeem a client nor subject a client to DSC redemption fee as a result of the like-to-like switches and like-to-similar switches, in order for the IFMs and OEO dealers to comply with the OEO trailer ban.
- Any OEO dealer relying on this order for the purpose of facilitating dealer rebates for current holdings and pending switches must
  - (a) not charge any fees to clients in connection with like-to-like switches, like-to-similar switches, or dealer rebates initiated by an OEO dealer, as applicable,
  - (b) no later than the effective date, provide notification through a completed survey, to be hosted by Fundserv, advising that the OEO dealer has the operational and technological capacity to process dealer rebates or will implement such a process within 4 months from the effective date,
  - (c) pay a dealer rebate to its impacted clients equal to the amount of the trailer received from the IFM on at least a quarterly basis, and any OEO dealer who does not have the operational or technological capacity to process dealer rebates prior to the effective date must implement such process within 4 months from the effective date and, in such case, must retroactively pay dealer rebates, within 7 months from the effective date,
  - (d) prior to facilitating each dealer rebate for current holdings, confirm that no like-to-like switch or like-to-similar switch is available, and a management fee rebate is also not used,
  - (e) prior to facilitating each dealer rebate for pending switches, confirm that it is not operationally reasonable to effect a like-to-like switch or like-to-similar switch or a management fee rebate, even if available,
  - (f) if the OEO dealer is unable to locate a client for whom the dealer rebate is intended to be paid because the client has closed his/her account with the OEO dealer prior to payment of the dealer rebate, donate such dealer rebate to a registered charity within 12 months of receipt of the trailer by the OEO dealer, where permitted by applicable law,
  - (g) where (f) above applies, keep a record of the amount and dates of donations to a registered charity in respect of such current holdings and pending switches, and, the name and charity registration number of each registered charity that received such donations,
  - (h) keep a record of the actions taken relating to each current holding and pending switch,
  - (i) provide a statistical summary of the following items in Excel, and in the form set out in Annex A of the order to the Director of the Investment Funds and Structured Products Branch by email at IFSPDirector@osc.gov.on.ca by August 1, 2022

- (i) the number of client accounts with current holdings where a like-to-like switch or a like-to-similar switch was effected,
    - (ii) the aggregate amount of current holdings in client accounts where a like-to-like switch or a like-to-similar switch was effected,
    - (iii) the number of client accounts with current holdings and pending switches where a dealer rebate was effected,
    - (iv) the aggregate amount of current holdings and pending switches in client accounts where a dealer rebate was effected,
    - (v) the aggregate amount of dealer rebates provided for current holdings and pending switches, and
  - (j) upon request, provide the record in (g) above to the Director of the Investment Funds and Structured Products Branch by email at IFSPDirector@osc.gov.on.ca.
- Any IFM relying on this order for the purpose of paying trailers to OEO dealers for dealer rebates for current holdings and pending switches must
    - (a) not charge any fees to clients in connection with like-to-like switches, like-to-similar switches, or management fee rebates initiated by an IFM, as applicable,
    - (b) waive any DSC redemption fees for current holdings that are triggered by the like-to-like switches or the like-to-similar switches,
    - (c) confirm through Fundserv that the OEO dealers have sent a notification through Fundserv, as described in subsection 35(b) or where such notification is not available for a particular OEO dealer, confirm with that OEO dealer that it has the operational and technological capacity to process dealer rebates or will implement such a process within 4 months from the Effective Date,
    - (d) keep a record of each OEO dealer for which dealer rebates are expected to be paid,
    - (e) keep a record of the actions taken relating to current holdings,
    - (f) provide a statistical summary of the following items in Excel, and in the form set out in Annex B of the order to the Director of the Investment Funds and Structured Products Branch by email at IFSPDirector@osc.gov.on.ca by August 1, 2022
      - (i) the number of client accounts with current holdings where a like-to-like switch was effected,
      - (ii) the aggregate amount of current holdings in client accounts where a like-to-like switch was effected,
      - (iii) the number of client accounts with current holdings where a DSC redemption fee was waived in connection with a like-to-like switch,

- (iv) the aggregate amount of DSC redemption fees waived in connection with a like-to-like switch,
  - (v) the number of client accounts with current holdings where a like-to-similar switch was effected,
  - (vi) the aggregate amount of the current holdings in each client account where a like-to-similar switch was effected,
  - (vii) the number of client accounts with current holdings where a DSC redemption fee was waived in connection with a like-to-similar switch,
  - (viii) the aggregate amount of DSC redemption fees waived in connection with a like-to-similar switch,
  - (ix) the number of client accounts with current holdings and pending switches where a management fee rebate was effected,
  - (x) the aggregate amount of the current holdings and pending switches in client accounts where a management fee rebate was effected,
  - (xi) the aggregate amount of the management fee rebates provided to client accounts with current holdings and pending switches, and
- (g) upon request, provide the record in (d) above to the Director of the Investment Funds and Structured Products Branch by email at IFSPDirector@osc.gov.on.ca.

***Transfers of Mutual Fund Holdings with Trailers to OEO Dealer Accounts***

- No IFM or OEO dealer may rely on this order to facilitate dealer rebates for client transfers unless a like-to-like switch or a like-to-similar switch is not available, and a management fee rebate is also not used.
- Any IFM or OEO dealer relying on this order to facilitate dealer rebates for client transfers must not redeem a client nor subject a client to a DSC redemption fee as a result of the like-to-like switches and like-to-similar switches, in order to comply with the OEO trailer ban.
- Any OEO dealer relying on this order for the purpose of facilitating dealer rebates for client transfers must
  - (a) not charge any fees to clients in connection with like-to-like switches, like-to-similar switches, or dealer rebates initiated by an OEO dealer, as applicable,
  - (b) no later than the effective date, provide notification through a completed survey, to be hosted on Fundservy, advising that the OEO dealer has the operational and technological capacity to process dealer rebates or will implement such a process within 4 months from the effective date,
  - (c) pay a dealer rebate to its impacted clients equal to the amount of the trailer received from the IFM on at least a quarterly basis and any OEO dealer who does not have the operational or

technological capacity to process dealer rebates prior to the effective date must implement such process within 4 months from the effective date and, in such case, must retroactively pay dealer rebates, within 7 months of the effective date,

- (d) if the OEO dealer cannot manually effect like-to-like switches and like-to-similar switches, prior to facilitating each dealer rebate for client transfers on or after the effective date and before June 30, 2023 (“**Fundserv date**”), confirm no management fee rebate is used,
- (e) if the OEO dealer can manually effect like-to-like switches and like-to-similar switches, prior to facilitating each dealer rebate for client transfers on or after the effective date and before the Fundserv date, confirm no like-to-like switch or like-to-similar switch is available and no management fee rebate is used,
- (f) prior to facilitating each dealer rebate for client transfers on or after the Fundserv date, confirm no like-to-like switch or like-to-similar switch is available, and no management fee rebate is used,
- (g) for all client transfers made on or after the effective date and prior to the Fundserv date, and for pending switches, execute like-to-like switches and like-to-similar switches based on the fund code destination provided by the IFM in Fundserv within 45 days after the Fundserv date,
- (h) for all client transfers made on or after the Fundserv date, execute like-to-like switches and like-to-similar switches based on the fund code destination provided by the IFM in Fundserv within 45 days,
- (i) if the OEO dealer is unable to locate a client for whom the dealer rebate is intended to be paid because the client has closed his/her account with the OEO dealer prior to payment of the dealer rebate, donate such dealer rebate to a registered charity within 12 months of receipt of the trailer by the OEO dealer, where permitted by applicable law,
- (j) where (i) above applies, keep a record of the amount and dates of donations to a registered charity in respect of such client transfers, and, the name and charity registration number of each registered charity that received such donations,
- (k) keep a record of the dealer rebates provided for client transfers,
- (l) provide a statistical summary of the following items for the period from June 1, 2022 to June 30, 2023 in Excel, and in the form set out in Annex C of the order to the Director of the Investment Funds and Structured Products Branch by email at IFSPDirector@osc.gov.on.ca by August 31, 2023
  - (i) the number of client accounts with client transfers where a dealer rebate was effected,
  - (ii) the aggregate amount of client transfers where a dealer rebate was effected,
  - (iii) the aggregate amount of dealer rebates provided for client transfers, and

- (m) upon request, provide the record in (j) above to the Director of the Investment Funds and Structured Products Branch by email at IFSPDirector@osc.gov.on.ca.
- Any IFM relying on this order for the purpose of paying trailers to OEO dealers for dealer rebates for client transfers must
  - (a) not charge any fees to clients in connection with like-to-like switches, like-to-similar switches, or management fee rebates initiated by an IFM, as applicable,
  - (b) confirm through Fundserv that the OEO dealers have sent a notification through Fundserv, as described in subsection 39(b),
  - (c) keep a record of each OEO dealer for which Dealer Rebates are expected to be paid,
  - (d) keep a record of the actions taken relating to client transfers,
  - (e) provide a statistical summary of the following items for the period from June 1, 2022 to June 30, 2023 in Excel, and in the form set out in Annex D of the order to the Director of the Investment Funds and Structured Products Branch by email at IFSPDirector@osc.gov.on.ca by August 31, 2023
    - (i) the number of client accounts with client transfers where a management fee rebate was effected,
    - (ii) the aggregate amount of client transfers where a management fee rebate was effected,
    - (iii) the aggregate amount of management fee rebates provided for client transfers, and
  - (f) upon request, provide the record in (c) above to the Director of the Investment Funds and Structured Products Branch by email at IFSPDirector@osc.gov.on.ca.
- Any OEO dealer relying on this order for the purpose of processing client transfers during the grace period must
  - (a) rebate to the client, by way of dealer rebate, any trailers paid by IFMs in respect of the client transfers and accepted by OEO dealers during the grace period, and
  - (b) keep a record of the actions taken relating to client transfers, and
  - (c) upon request, provide the record in (b) above to the Director of the Investment Funds and Structured Products Branch by email at IFSPDirector@osc.gov.on.ca
- Any OEO dealer relying on the temporary exemptions in this order must provide clients with the communications described in section 13 and section 26.
- Any IFM or OEO dealer relying on the temporary exemptions in this order must have appropriate resources in place to address clients' questions with respect to the implementation of the OEO trailer ban, including like-to-like switches, like-to-similar switches, management fee rebates and

dealer rebates for current holdings and client transfers.

- Any IFM and any OEO dealer relying on this order must, as soon as reasonably practicable and prior to relying on this order for the first time, notify the Director of the Investment Funds and Structured Products Branch by email at [IFSPDirector@osc.gov.on.ca](mailto:IFSPDirector@osc.gov.on.ca) stating their intention to rely on this order.
- Reference made in a notice pursuant to section 44 of this order to an equivalent exemption granted by a securities regulatory authority or regulator in another jurisdiction of Canada that is the principal regulator of the IFM of the OEO dealer, as defined in MI 11-102, will be deemed to constitute a reference to the relevant exemption in this order.

### **Reasons for the Order**

For current holdings where like-to-like switches and like-to-similar switches are not effected and management fee rebates are not used, and for pending switches, the Commission considers that it would not be prejudicial to the public interest to allow IFMs to knowingly pay trailers to OEO dealers and allow OEO dealers to accept such trailers for the purpose of facilitating a dealer rebate, which would result in a better outcome for clients, compared to a redemption or payment of a DSC redemption fee.

For client transfers on or after the effective date, where like-to-like switches, like-to-similar switches are not effected and management fee rebates are not used, the Commission considers that it would not be prejudicial to the public interest to allow IFMs to knowingly pay trailers to OEO dealers and allow OEO dealers to accept such trailers for the purpose of facilitating a dealer rebate, which would result in a better outcome for clients, compared to a redemption or payment of a DSC redemption fee.

For client transfers on or after the effective date, the OSC considers that it would not be prejudicial to the public interest to allow a grace period, during which the OEO trailer ban does not apply, in order for the OEO dealer to identify whether a like-to-like switch, a like-to-similar switch is available, or a management fee rebate can be used, and during the grace period, if there is no management fee rebate, the OEO dealer will implement the like-to-like switch or a like-to-similar switch, as applicable, after the Fundserv date, or after such earlier date on which like-to-like switches and like-to-similar switches can be effected manually by the OEO dealer, or failing which, provide a dealer rebate, which would result in a better outcome for clients, compared to a redemption or payment of a DSC redemption fee.

### **Day on which the Order Ceases to Have Effect**

The order comes into effect on June 1, 2022 and expires on November 30, 2023.