
B. Ontario Securities Commission

B.1 Notices

B.1.1 Notice of Board Approval of OSC Rule 81-509

NOTICE OF BOARD APPROVAL OF OSC RULE 81-509

EXTENSION TO ONTARIO INSTRUMENT 81-508 TEMPORARY EXEMPTIONS FROM THE OEO TRAILER BAN TO FACILITATE DEALER REBATES OF TRAILING COMMISSIONS AND CLIENT TRANSFERS

August 31, 2023

Introduction

On July 18, 2023, the Ontario Securities Commission (the **OSC** or **we**) made as a rule under the *Securities Act* (Ontario) local OSC Rule 81-509 *Extension to Ontario Instrument 81-508 Temporary Exemptions from the OEO Trailer Ban to Facilitate Dealer Rebates of Trailing Commissions and Client Transfers* (the **Rule**).

Under the OEO trailer ban, which came into effect on June 1, 2022 (the **Effective Date**),

- (a) investment fund managers (**IFMs**) are prohibited from paying trailing commissions where the dealer is not required to make a suitability determination in connection with a client's purchase and ongoing ownership of prospectus qualified mutual fund securities, and
- (b) dealers are prohibited from soliciting or accepting trailing commissions from an investment fund manager, in connection with securities of the mutual fund held in an account of a client of the dealer if the dealer is not required to make a suitability determination, including, among others, order-execution only (**OEO**) dealers.

The Rule extends the blanket relief issued on March 18, 2022 by Ontario Instrument 81-508 *Temporary Exemptions from the OEO Trailer Ban to Facilitate Dealer Rebates of Trailing Commissions and Client Transfers* (the **OSC Blanket Order**) by 18 months. The OSC Blanket Order provides temporary exemptions from the OEO trailer ban for OEO dealers and IFMs to facilitate dealer rebates of trailing commissions to clients holding mutual funds in OEO dealer accounts and process client transfers. The OSC Blanket Order came into effect on June 1, 2022 and will cease to be effective on November 30, 2023. The Rule will cause the relief provided in the OSC Blanket Order to be in force for an additional 18-month period from December 1, 2023 to May 31, 2025.

The text of the Rule is contained in Annex A of this notice and is also available on the OSC website at www.osc.ca.

Substance and Purpose

On June 1, 2022, the Canadian Securities Administrators (**CSA**) adopted amendments to National Instrument 81-105 *Mutual Fund Sales Practices* to implement the OEO trailer ban. The amendments comprise the CSA's policy response to the investor protection and market efficiency issues identified with the payment and acceptance of trailing commissions where no suitability determination was required.

To facilitate implementation of the OEO trailer ban, the CSA issued blanket orders to provide temporary exemptions from the OEO trailer ban for IFMs and OEO dealers to facilitate dealer rebates of trailing commissions to clients holding mutual funds in OEO dealer accounts and process client transfers.

To comply with the OEO trailer ban, IFMs and OEO dealers transitioned mutual funds held in OEO dealer accounts prior to the Effective Date for which trailing commissions are paid (**Current Holdings**) as follows:

- (a) switched to a non-trailing commission paying class or series of the same mutual fund,
 - (i) where the only difference is a lower management fee and where there are no tax consequences for effecting such switch (a **Like-to-Like Switch**), or

- (ii) where the only differences are a lower management fee and a difference in distribution policy and/or currency, and where there are no tax consequences for effecting such switch (a **Like-to-Similar Switch**), or
- (b) provided with a rebate by the IFM, equal to the amount of the trailing commission that would otherwise be paid by the IFM to the OEO dealer in respect of the client's trailing commission paying mutual fund security, for as long as the client holds the security in an OEO dealer account (a **Management Fee Rebate**), and
- (c) where a Like-to-Like Switch or a Like-to-Similar Switch (each, a **Switch**) is not available or a Management Fee Rebate is not used, relief from the OEO trailer ban would be required to facilitate a rebate to a client by an OEO dealer, equal to the amount of the trailing commission paid by the IFM to the OEO dealer in respect of the client's trailing commission paying mutual fund security, for as long as the client holds the trailing commission paying mutual fund security in the OEO dealer account (a **Dealer Rebate**), which would result in a better outcome for a client compared to a redemption, which may have tax consequences.

For client-initiated transfers of trailing commission paying mutual fund securities to OEO dealers on or after the Effective Date (**Client Transfers**), where a Switch or a Management Fee is not available or used, respectively, or where a Switch is available but the trailing commission paying mutual fund securities remain subject to a redemption fee under a deferred sales charge option (**DSC**), relief from the OEO trailer ban would be required to facilitate a Dealer Rebate, which would result in a better outcome for a client, compared to a redemption or payment of a DSC redemption fee.

As Client Transfers are largely a manual process, OEO dealers and IFMs require a period of up to 45 days (the **Grace Period**), during which relief from the OEO trailer ban would be required, in order for the OEO dealer to determine whether a Switch is available, or a Management Fee Rebate can be used, or failing which, provide a Dealer Rebate, which would result in a better outcome for a client compared to a redemption or payment of a DSC redemption fee. During the Grace Period, a Switch will generally be executed by OEO dealers within 15 days of the date of the Client Transfer, following which, within the remaining 30 days of the Grace Period, the OEO dealer will assess whether the Switch has been properly processed, failing which the OEO dealer will take action to ensure the relevant switch is properly processed. Any trailing commissions paid by IFMs in respect of the Client Transfers and accepted by OEO dealers during the Grace Period will be rebated to the client by way of a Dealer Rebate.

The OSC Blanket Order will cease to be effective on November 30, 2023. However, the relief provided in the OSC Blanket Order is required after November 30, 2023 because:

- (a) for Current Holdings where a Switch or a Management Fee Rebate was not available or used, respectively, a Dealer Rebate should continue to be provided for a client, which is a better outcome for the client compared to a redemption, which may have tax consequences,
- (b) for Client Transfers, a Grace Period should continue to be provided
 - (i) for the OEO dealer to determine whether a Switch is available, or a Management Fee Rebate can be used, or failing which, provide a Dealer Rebate, which is a better outcome for a client compared to a redemption, which may have tax consequences, or payment of a DSC redemption fee, if applicable, and
 - (ii) for the OEO dealer to rebate to the client any trailing commissions paid by IFMs in respect of the Client Transfers and accepted by OEO dealers during the Grace Period by way of a Dealer Rebate.

The purpose of the Rule is to cause the blanket relief issued under the OSC Blanket Order to be extended for an additional 18-month period, from December 1, 2023 to May 31, 2025. Without an extension, IFMs and OEO dealers in Ontario would no longer be able to rely on the relief provided in the OSC Blanket Order after November 30, 2023. This would result in an unlevel playing field for IFMs and OEO dealers in Ontario as equivalent blanket orders issued by the other CSA jurisdictions continue to be in effect and are not subject to an expiration date, with the exceptions of certain other CSA jurisdictions. The equivalent blanket orders in other CSA jurisdictions that expire on November 30, 2023 are expected to be extended.

Authority for the Local Amendments

Paragraph 143.11(3)(b) of the *Securities Act* (Ontario) provides the authority for the making of a rule which extends a blanket order for a further period of up to 18 months, in accordance with sections 143.3 to 143.6.

Delivery of Rule to Minister

The OSC delivered the Rule to the Minister of Finance on or about August 31, 2023. The Minister may approve or reject the Rule or return it for further consideration. If the Minister approves the Rule or does not take any further action, the Rule will come into force on December 1, 2023.

Questions

Please refer any questions to the following OSC staff:

Irene Lee
Senior Legal Counsel
Investment Funds and
Structured Products Branch
Ontario Securities Commission
416-593-3668
ilee@osc.gov.on.ca

Stephen Paglia
Manager
Investment Funds and
Structured Products Branch
Ontario Securities Commission
416-593-2393
spaglia@osc.gov.on.ca

ANNEX A

OSC RULE 81-509

**EXTENSION TO ONTARIO INSTRUMENT 81-508
TEMPORARY EXEMPTIONS FROM THE OEO TRAILER BAN TO
FACILITATE DEALER REBATES OF TRAILING COMMISSIONS AND CLIENT TRANSFERS**

Purpose

1. This Rule provides, in Ontario, a temporary extension to the exemptions provided in Ontario Instrument 81-508 *Temporary Exemptions from the OEO Trailer Ban to Facilitate Dealer Rebates of Trailing Commissions and Client Transfers*, pursuant to paragraph 143.11(3)(b) of the *Securities Act* (Ontario).

Extension of temporary exemptions

2. **Section 46 of Ontario Instrument 81-508 *Temporary Exemptions from the OEO Trailer Ban to Facilitate Dealer Rebates of Trailing Commissions and Client Transfers* is amended by replacing “November 30, 2023” with “May 31, 2025”.**

Effective date

3. This Rule comes into force on December 1, 2023.