

# OSC SIGNALS CONCERNS ABOUT GAMIFICATION OF INVESTING

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The delivery of investment services is evolving rapidly. In an all but completely digitized world, Canadians are increasingly turning to online trading platforms (“**OTPs**”) that offer the ability to initiate trades at the push of a button through mobile applications. In addition to convenience, OTPs are associated with low commissions and trading fees when compared to traditional brokers.

In a [Staff Notice](#) released on November 17, 2022 (the “**Notice**”), the Ontario Securities Commission (the “**OSC**”) signalled its concerns about the use of digital engagement practices to influence investment through tactics commonly referred to as “gamification”. The Notice was issued in connection with a research report (the “**Report**”) prepared by the Behavioural Insights Team in collaboration with the Investor Office Research and Behavioural Insights Team (IORBIT) of the OSC. The Notice suggests that gamification may induce investor behaviour, resulting in positive or negative consequences depending on application.

Gamification can take many forms. Techniques identified in the Report include non-financial rewards, such as points for achieving a goal within the platform, and leaderboards that allow investors to compare their performance against others. Other behavioural techniques that may influence investor activity include displaying stock market picks in ways that attract investor attention and that signal social norms. While these methods offer the investor negligible tangible benefit in exchange for a trade, they may nonetheless influence investment activity.

The Report notes that the effect of gamification can be beneficial – for instance, by encouraging Canadians to contribute to the capital market through making deposits into investment accounts and diversifying their portfolios. However, the effect of psychological rewards may cause investors to treat their investments in a risky, short-sighted manner, and investors who engage in frequent trading tend to earn diminished returns over time compared to benchmarks.<sup>[1]</sup> Use of other behavioural techniques could also allow platforms to improperly influence specific investments through capitalizing on herd mentality.

Are gamification techniques effective? Through an experimental study observing the trading activity of 2,430 Canadians given \$10,000 in simulated cash, the Report concludes that at least some of these methods can be used to induce investment and influence investor behaviour on OTPs. To encourage thoughtful decision-making, participants were compensated based on the value of their investment portfolio at the end of the

study. Participants made 39% more trades when they were rewarded points with negligible value for each trade compared to participants who were not given points. Likewise, participants were 14% more likely to invest in stocks from a list of top stocks that they were provided compared to participants who did not have access to this list. A crossover effect did not occur – points did not cause participants to pick stocks off the top stocks list, and access to the top stock list did not increase trading frequency.

The significance of these results must be viewed cautiously given the simulated nature of the study. Nonetheless, the results hint at the effectiveness of behavioural techniques and the Report recommends further empirical studies to observe the real-world influence of gamification on investor behaviour.

### **Takeaway**

While highlighting the importance of investor protection and the role that OTPs can play in influencing their behaviour, the OSC's commentary acknowledges that techniques encouraging investment into the market can be a net positive for Canadians when they are applied cautiously. Given the power they appear to yield, the Notice asks registrants to use digital engagement practices to encourage positive outcomes.

Still, there are currently no rules in place prohibiting the use of gamification techniques per se. The Notice and Report suggest that the OSC will be exploring regulation of digital engagement practices on OTPs as a means of investor protection. The OSC is not alone on this front, according to recent statements by the U.S. Securities and Exchange Commission.<sup>[2]</sup> Given the apparent influence that offering points can have on trading activity, the Report goes as far as recommending that regulators consider limiting OTPs from offering points to incentivize trading activity altogether.

The observed effect of a top trades list in influencing investor activity leads to an important question about the role that OTPs play in soliciting specific trades. From the phenomenon of herd mentality observed here, to subtly promoting a particular issuer using the platform's user interface, the line between solicited and unsolicited appears to be blurred as OTPs gain new tools to encourage specific investment activity. A solicited trade may trigger additional requirements for the platform, such as assessing whether it is suitable for the investor.

Trends in the OSC's regulatory position and enforcement priorities suggest that crypto trading platforms ("CTPs") should be particularly cautious when it comes to implementing digital engagement practices with users. Through collectible non-fungible tokens to metaverse currency with real-world value, the gamified blockchain industry has likely received more attention than any other asset class. Proponents of crypto have expressed support for the idea that gamification is an important tool that can be used for widespread adoption of the technology.<sup>[3]</sup> Despite that view, recent events in the crypto space and statements by the OSC about the importance of regulation of crypto<sup>[4]</sup> mean that the practices of CTPs will likely be closely scrutinized for their

engagement practices with users.

With the barriers to retail investing continuing to reduce alongside developments in technology, this Report is a reminder to trading platforms of the OSC's mandate to balance access to capital markets with investor protection. Best practice for any OTP or CTP is to assess the gamification techniques they currently have in place and determine whether they are being used to encourage beneficial investment behaviour, as well as to adopt policies and procedures reflecting positive goals. If this Report is any indication, expect to see the OSC take steps toward cracking down on practices used by trading platforms if they directly or indirectly encourage potentially harmful activity.

Any member of McMillan's Capital Markets Group would be pleased to discuss the OSC's commentary and to assist your organization in implementing effective policies and procedures.

[1][ps2id id='1' target='/'] "Attention Robinhood power users: Most day traders lose money", *CNBC*, November 20, 2020: [online](#).

[2][ps2id id='2' target='/'] "Investor protection in the age of gamification: Game over for regulation best interest?", *U.S. Securities and Exchange Commission*, October 13, 2021, [online](#).

[3][ps2id id='3' target='/'] "Why gamification will drive wider block chain adaptation", *Coindesk*, December 16, 2021, [online](#).

[4][ps2id id='4' target='/'] "OSC CEO Grant Vingoe speaks at the Economic Club of Canada", *Ontario Securities Commission*, October 6, 2022, [online](#).

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### **A Cautionary Note**

The foregoing provides only an overview and does not constitute legal advice. Readers are cautioned against making any decisions based on this material alone. Rather, specific legal advice should be obtained.

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