

## OSC releases digital engagement report – Finding stability amidst change

February 29, 2024

In its latest draft Statement of Priorities, the Ontario Securities Commission (OSC) indicated some concerns with advice being provided by order execution only firms, and stated that information shared online may be incomplete, or misleading. In a potentially related move, the OSC recently released the results of a study [Digital Engagement Practices: Dark Patterns in Retail Investing](#), which looked at the use of digital engagement practices, such as dark patterns, in the investment context used by self-directed investors. The OSC partnered with the Behavioural Insights Team (BIT) for the study. **In the report, a “dark pattern” is described as a practice that uses online interfaces to coerce, steer, and/or deceive users into making decisions that benefit a business but may not align with an investor’s best interests.**

Examples given for dark patterns include the use of prompts, where visual or auditory stimuli are used to get a user’s attention and encourage specific behaviours or choices, as well as scarcity claims that a product or service will not be available for long. The report also reviews other techniques in use, including dark nudging, sludging and targeted advertising, **“dark nudging” being tactics that make it easy for consumers to make choices that decrease their welfare, such as removing confirmation buttons. Sludging refers to the use of elements within a user interface that actively impede activities in the consumer’s best interests, such as overly complex language. In the study, targeted advertising refers to digital marketing practices that use data about individuals to select and display specific commercial content.**

According to the report, a defining characteristic of dark patterns, dark nudges, and sludges is that they undermine investor welfare, interests, and/or preferences. The study states that some techniques hide the cost of investing, gather personal information without informed consent, and make it more difficult to withdraw funds, close an account, or end a premium subscription service.

The regulatory responses in each of Canada, the U.S. and the European Union are then described in detail. While much of the current regulation relates to privacy and consumer protection, it is noted that regulatory bodies in the U.S. and the EU are amending the current frameworks and adding new legislation to control unfair and deceptive practices, including recent efforts by the Federal Trade Commission to identify dark patterns and propose new rules (e.g., a “click to cancel” rule). The Competition Bureau of Canada’s relatively new prohibition on drip pricing is also mentioned. The

report ends with a note indicating that there appears to be additional room for more enforcement and regulation in Canada when compared to the two other jurisdictions.

By

[Kimberly Poster](#)

Expertise

[BLG Beyond AUM Law](#)

---

## **BLG | Canada's Law Firm**

As the largest, truly full-service Canadian law firm, Borden Ladner Gervais LLP (BLG) delivers practical legal advice for domestic and international clients across more practices and industries than any Canadian firm. With over 725 lawyers, intellectual property agents and other professionals, BLG serves the legal needs of businesses and institutions across Canada and beyond – from M&A and capital markets, to disputes, financing, and trademark & patent registration.

[blg.com](http://blg.com)

### **BLG Offices**

#### **Calgary**

Centennial Place, East Tower  
520 3rd Avenue S.W.  
Calgary, AB, Canada  
T2P 0R3

T 403.232.9500  
F 403.266.1395

#### **Ottawa**

World Exchange Plaza  
100 Queen Street  
Ottawa, ON, Canada  
K1P 1J9

T 613.237.5160  
F 613.230.8842

#### **Vancouver**

1200 Waterfront Centre  
200 Burrard Street  
Vancouver, BC, Canada  
V7X 1T2

T 604.687.5744  
F 604.687.1415

#### **Montréal**

1000 De La Gauchetière Street West  
Suite 900  
Montréal, QC, Canada  
H3B 5H4

T 514.954.2555  
F 514.879.9015

#### **Toronto**

Bay Adelaide Centre, East Tower  
22 Adelaide Street West  
Toronto, ON, Canada  
M5H 4E3

T 416.367.6000  
F 416.367.6749

The information contained herein is of a general nature and is not intended to constitute legal advice, a complete statement of the law, or an opinion on any subject. No one should act upon it or refrain from acting without a thorough examination of the law after the facts of a specific situation are considered. You are urged to consult your legal adviser in cases of specific questions or concerns. BLG does not warrant or guarantee the accuracy, currency or completeness of this publication. No part of this publication may be reproduced without prior written permission of Borden Ladner Gervais LLP. If this publication was sent to you by BLG and you do not wish to receive further publications from BLG, you may ask to remove your contact information from our mailing lists by emailing [unsubscribe@blg.com](mailto:unsubscribe@blg.com) or manage your subscription preferences at [blg.com/MyPreferences](http://blg.com/MyPreferences). If you feel you have received this message in error please contact [communications@blg.com](mailto:communications@blg.com). BLG's privacy policy for publications may be found at [blg.com/en/privacy](http://blg.com/en/privacy).

© 2025 Borden Ladner Gervais LLP. Borden Ladner Gervais LLP is an Ontario Limited Liability Partnership.