



SIPA has a mission:

- ?? to aid public awareness of how the investment industry operates;
- ?? to provide guidance to those who have a complaint about investments with a bank, broker, financial advisor, or other seller of financial products;
- ?? and to pursue improvement of industry regulation and enforcement.

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SIPA Sentinel

The SIPA Sentinel is issued bi-monthly. From time to time we include articles and reprints that offer opinions on subjects related to investing and regulation. These are meant to help increase investor awareness, and SIPA may not share these opinions.

Special Alert for Investors - Limitation Periods Reduced

Investors should take note that Limitations Acts have been introduced in many provinces, most recently in Saskatchewan on May 1st, and the Acts have reduced the general limitations period from six years to two years. SIPA recommends that at the first sign of a problem you check with a qualified securities lawyer before initiating any complaint action to determine how reduced limitation periods could apply to you.

Be aware that the time you spend complaining to the investment company or to the regulators will NOT stop the clock.

Be aware that British Columbia, Alberta, Saskatchewan, Ontario, Quebec and Newfoundland all have reduced limitation periods.

Be aware that complaints to the Investment Dealers Association (IDA) will not stop the clock on the limitation period.

Be aware that complaints to the Ombudsman for Banking Services & Investments (OBSI) will not stop the clock on the limitation period. OBSI is trying to develop a solution that will stop the clock running in all provinces, not just Ontario.

In the recent past the limitation period for taking civil action on issues not of a fiduciary nature was six years. There was no limit for fiduciary issues. That has changed.

The limitation period's significance is that victim's of wrongdoing generally have a limited period to take civil action. These limitation periods can vary for different issues from a matter of days to no limit. Many Acts incorporate limitation periods. Legislators decided to simplify limitation periods by introducing Limitation Acts to consolidate limitation periods in one Act in each province and these are being harmonized. The majority of provinces have already adopted the reduced limitation periods. There are still exceptions in the new Acts and these are noted in the Acts. It is probable that the remaining provinces will follow suit.

The problem SIPA sees is that while Securities Acts and other Acts that contain specific limitation periods may be exempted in most cases they generally do not specify a limitation period for civil action by investors. It would appear that generally investors will have a maximum of two years from the date of the event that caused the loss to submit a legal statement of claim. There are exceptions and there are conditions. Not all cases are the same.

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SIPA is attempting to clarify these issues and has protested this erosion of investor protection. SIPA has contacted regulators, governments, agencies and politicians across Canada with our concerns. SIPA will be issuing a Press Release Friday, June 17th. We will be issuing an Interim Report in June with our findings to date and if necessary a Final Report before the end of this year.

SIPA recommends that members with a complaint or dispute should check with a qualified securities lawyer immediately, if you have not already done so. You should discuss the implications of the limitation periods relative to your situation and how addressing your complaint could impact on your right to take civil action.

Be aware that if you fail to take action (file a statement of claim in a court of law) within the limitation period that applies in your case, you could be statute barred from proceeding with civil litigation to seek justice.

From the Toronto Star
May 19, 2005

Investors face 2-year limit for lawsuits

JAMES DAW

Ontario investors could be disadvantaged by the province's two-year limitation period for filing most lawsuits, warns a vocal investor advocate.

Stan Buell, president and founder of the 500-member Small Investor Protection Association in Markham, was surprised to learn recently that Ontario quietly changed its Limitations Act effective Jan. 1, 2004.

He suspects inexperienced investors who happen to suffer heavy losses because of negligent or dishonest actions of a financial adviser would not be prepared to file a suit within two years of discovering their loss.

"Most victims of industry wrongdoing that results in significant loss of their life savings take more than two years to come to grips with this life-altering event, and to determine what action they must take," he argues.

Months can pass while victims seek answers from advisers, their supervisors or an industry-sponsored ombudsman or self-regulatory body. Further time could be lost raising money to pay a lawyer.

A two-year period — one third of the former limitation period for actions over negligence — could slip by before the investor realized that there even is a limitation period, warns Buell.

It's impossible to test his suspicion because the first day anyone would be affected by the two-year limit is still more than seven months away. But six years was too soon for some people in the past.

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Like Buell, many others would not realize the Limitations Act has been changed. Lawyers have written columns for smaller newspapers and professional journals about the updated act, but this will be the first time the changes have been mentioned in the *Toronto Star*.

Several different limitation periods set out in the Securities Act, including a six-year limit for enforcement actions taken by the Ontario Securities Commission, were not affected by the Limitations Act changes.

But lawyers have told Buell that suits over breach of contract and negligence must now be filed within two years of finding you were harmed, or from when you should reasonably have discovered the harm.

The deadline can be extended for up to 15 years if a person is able to prove he or she was incapable of suing sooner because of a significant physical, mental or psychological problem.

It's also possible to stop the clock if both the plaintiff and defendant agree to submit their dispute to an independent mediation or arbitration process. But Buell was told it is debatable whether the industry-sponsored Ombudsman for Banking Services and Investments would be considered independent enough to stop the litigation clock.

Buell knows from personal experience how long it can take to consider a lawsuit after suffering heavy losses, as happened to him while he was working out of the country in the 1980s.

His lawyer at the time, Peter Jervis of Lerner LLP in Toronto, agrees with Buell that a two-year limitation period is "grossly unfair" for investors and for other victims of professional negligence. "It protects major corporate players and hurts the little people," said Jervis, adding that he is contacted regularly by individuals more than two years after they suffered losses.

Members of the Investment Dealers Association of Canada reported 499 civil claims last year, nine criminal charges and 1,276 customer complaints, including 776 complaints about unsuitable investments, 231 about unauthorized trading, 79 alleging misrepresentation and 38 alleging transfer of accounts.

Connie Craddock, vice-president of public affairs for the IDA, said data is not collected on the average time it takes small investors to file a statement of claim. "We weren't even consulted (about the changes in the Limitations Act)," she said, but she pointed out that memories fade and evidence may be lost if it takes too long to bring a civil suit to court.

Buell has urged Attorney-General Michael Bryant to restore the six-year limitation period eliminated by the former Tory government.

"The reduced limitation periods are inappropriate and unacceptable for those who have been victimized by the financial services industry," he wrote to Bryant, who has yet to respond.

In the meantime, Buell's group is urging visitors to its website to consult with a securities lawyer to seek clarification on the impact of the Limitations Act as soon as they suspect a problem.

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Ultimately, Buell would like to see the creation of an independent investor protection agency to register complaints and legal settlements reached with investment advisers, and to make restitution orders.

From the Canadian Press

Key lesson from the Portus mess: Ask your advisor about the commission involved

WAYNE CHEVELDAYOFF, Canadian Press - March 7, 2005

(Special) - Investors could have avoided the Portus hedge-fund mess if they had asked one important question to their advisors: "How much are you getting paid if I invest in these hedge-fund notes?"

The answer, if truthfully given, would have raised a warning flag up as high as a Rocky Mountain.

The hedge-fund notes being offered by Portus Alternative Asset Management weren't anything special. The potential returns were not demonstrably higher, nor the managers more experienced, than hedge-fund notes offered by competitors.

So, why were investment advisors so eager to recommend the Portus hedge-fund notes? Why was Portus able to appeal to advisors and thereby grow its assets to around \$700 million so quickly – easily outpacing the growth of its hedge-fund competitors?

The answer to both questions: It was all about the money.

Portus offered such rich commissions and other financial inducements that advisors succumbed to the temptation.

As a result, many investors have been burned. At the very least, their investments are tied up while regulators sort through Portus' books. At this point, nobody knows what the final result will be, although Portus management claims the invested funds are safe.

Hedge-fund notes with bank guarantees typically carry the same commission for advisors as equity mutual funds.

There usually are two options. If the investor pays an up-front commission of 0 to 5 per cent, the advisor gets that commission plus a trailer (service) fee of 1 per cent a year.

Most investors balk at paying a 5-per-cent up-front commission, so advisors usually steer them to the deferred sales charge (DSC) option, where the investor does not pay any commission up front but the advisor gets a 5-per-cent commission from the fund company plus a trailer fee of 0.5 per cent a year.

The drawback for the investor with the DSC option is that if the fund is sold within the first six years, the investor must pay the fund company a redemption charge, starting at 6 per cent in the first year and falling to zero after the sixth year.

Portus offered advisors much more than the usual commission, according to one advisor who researched things well, saw through the ploy and kept his clients away from the Portus notes.

The Portus DSC offer was 5-per-cent commission, plus a 1-per-cent annual trailer fee (double the usual amount), plus 20 per cent of any performance bonus fee that Portus collected (not offered elsewhere).

(The Portus performance bonus fee was itself quite aggressive, since it was 20 per cent of any return achieved by the underlying hedge funds – not the usual, more-limited 20 per cent of the return above a certain threshold return of 8 or 10 per cent).

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Not only was the commission juicy, but perhaps more importantly to some advisors, Portus was offering them very large amounts of so-called "soft money" to pay for the advisors' marketing expenses for such things as seminars or newspaper advertising.

This type of "soft-money" inducement – essentially a way of buying business from advisors – is relatively scarce since it is strictly controlled by rules set out by regulators. But Portus' largely unregulated status allowed it to ignore the rules.

Another flag would have been raised if investors asked their advisors another question: Does the offering memorandum for these notes confirm Portus' claim of a bank guarantee?

Many advisors obviously didn't read Portus' offering memorandum, which, in fact, did not name the bank that is supposed to be providing the guarantee.

Do you want to confirm all of this? You can't, unless you were one of the investors who actually received the offering memorandum.

It's a hole in our country's regulatory framework since it prevents wide scrutiny of some financial products. Unlike mutual fund and stock prospectuses, an offering memorandum for bank-guaranteed notes doesn't have to be filed at www.sedar.com and if Portus ever had these documents on its website, they're not there now.

Many people are uncomfortable asking their advisors how much commission they stand to earn. But think of it as part of your due-diligence research – something many advisors showed they cannot be trusted to do properly.

Or would you rather hold your tongue and risk being stuck in some Portus-like mud hole in the future?

Wayne Cheveldayoff is a former investment advisor and professional financial planner. He is currently specializing in financial communications and investor relations at Wertheim + Co. in Toronto. His columns are archived at www.smartinvesting.ca and he can be contacted at wcheveldayoff@yahoo.ca.

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Markham, Ontario – Saturday June 11, 2005

Stan Buell

Firstly, I apologize to members for the lateness of the Sentinel for the past two issues. The OSC Town Hall Event and the Limitation Periods have been top priority.

This Saturday morning as is my habit, I sat on our back patio overlooking our garden and enjoyed two cups of tea while reading the weekend papers and contemplating on the last seven years of my involvement with SIPA.

Several things were uppermost on my mind:

1. How can one man have so many widows? Over the last seven years it is quite incredible the number of widows I have spoken to and have met. A few as recently as this past week. They have been abused by our financial services industry. There can be no mistake of the wrongdoing. It is unconscionable for the press to publish articles or comments from investment advisors that suggest the victims of this widespread wrongdoing are themselves responsible and try to take advantage of the advisors.

2. How can those who claim to be responsible for investor protection have allowed this reduction of limitation periods to happen? With their budgets of tens of millions of dollars and expensive lawyers on staff how can the regulators tell us they didn't know about the impact on investors until SIPA brought it up in April this year? Do

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the regulators really believe we would believe them? If they do then they have just added insult to injury.

SIPA believes this limitation periods scandal is the most important issue investors face today because the periods will endure if the laws are not changed. There seems to be an unawareness of this important issue, or a deliberate failure to acknowledge the impact. James Daw wrote about the issue and a copy of his article is printed in this issue of the SIPA Sentinel. We will continue to give priority to this issue.

Victims of events prior to the introduction of the new limitation periods may not be affected, but the 50,000 Portus and Crocus victims may be affected if they do not act promptly.

3. Will the OSC Town Hall Event have any impact on convincing others that the problem of investors losing their life savings due to widespread industry wrongdoing is so great that a public inquiry must be held to investigate this national scandal? There can be no doubt in the mind of anyone who attended the Event that saw over 500 people crowd into the CBC Barbara Frum Atrium that it is not just a dozen people who are complaining as has been suggested by industry and regulators. The OSC estimated an attendance of 100 to 200 people so they ordered 200 seats. A week before the event they already had 300 pre-registrations so they ordered more seats. By the day of the event they had 400 pre-registrations. The Atrium was full. There were people standing at the back. The emotion could be felt. Frustration, concern, anger, grief. Some tragic stories. Some descriptions of complaints. Some exposure of regulatory failure. The event went overtime but when it closed people were still lined up with questions. Did the regulators get the message? They say they are now aware that restitution and limitation periods are issues that need to be dealt with as priorities.

4. How can there be so much wrongdoing in our financial services industry when many Canadians believe we have a just society? As I read today's papers it occurred to me that in one day one sees enough industry wrongdoing for a year. From Ponzi to Portus with notable exceptions. The following in random order are some of the items reported in only a couple of our papers this Saturday:

?? **Two sudden departures a new shock to Nortel (The Star)** – The Nortel story is not over. It is a constant reminder to the many small investors who lost money after CEO John Roth retired with \$125 million and later the share price plummeted from \$125 to pennies. Those who gambled and placed a bet at less than a dollar can today get over \$3 for their bet. When you win at gambling you can make a good return or lose everything. It seems “investing” these days is more like “gambling”. That may be the reason so many people are gambling away their money. At least they have the enjoyment of gambling and the chance of winning are higher than with some of the “investment products” being sold to the public.

?? **Rankin denies giving Duic inside information (The Star)** – Rankin, a former director in the mergers and acquisitions group at RBC Dominion Securities is being defended by well-known lawyer Brian Greenspan against Ontario Securities Commission charges of insider trading. *SIPA says Industry hires the best lawyers and often escapes justice. Government must get serious about white-collar crime.*

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- ?? **Gen RE executive pleads guilty (The Star)** – A second former top executive at Berkshire Hathaway Inc.'s General RE Insurance unit pleaded guilty yesterday to conspiring to file false financial reports as part of a phony transaction designed to burnish the books of American International Group Inc., his company's top customer. *SIPA says governance is one of the key issues.*
- ?? **Enron lawsuit settled for \$2 billion U.S. (The Star)** – Citigroup Inc., the largest U.S. financial services company will pay \$2 billion (U.S.) to settle a class-action lawsuit over its alleged role in helping Enron orchestrate a massive accounting fraud that led to the energy trader's collapse. In May 2004 Citigroup agreed to pay nearly \$2.6 billion (U.S.) under a record \$6.13 billion settlement by investment banks, auditors and former board members to settle class action claims stemming from the 2002 collapse of WorldCom Inc. In March 2005 Citigroup agreed to pay \$75 million to settle class-action litigation brought on behalf of purchasers of Global Crossing securities. The telecommunications company filed for bankruptcy in 2002.
- ?? **Ebbers asks for leniency (The Star)** – Ebbers faces life in jail for WorldCom fraud – Ebbers, 63, was convicted March 15 of directing an \$11 million (U.S.) accounting fraud at WorldCom, once the second largest long distance company, between 2000 and 2002. – *SIPA says jail him for life with no privileges – think of the thousands of investors and employees who are condemned for life.*
- ?? **ATI case may turn on word (The Star)** – ATI Technologies Inc. chairman K.Y. Ho donated 254,000 shares of the graphics chip maker to three Toronto charities in April 2000 and his wife Betty sold ATI stock at about the same time. Less than a month later, on May 24, ATI disclosed that it would fail to meet sales and profit projections for its March-May quarter, and its share price fell by 53 per cent in two days. *SIPA says corporate executives must be held accountable.*
- ?? **Not all bonuses equal (The Star)** – John Williams, Tory MP who chairs the House Public Accounts Committee disclosed that 91% of senior federal mandarins pocket some form of extra pay. He is indignant that 227 of 256 senior mandarins at Public Works overseer of the notorious sponsorship program collected a total of almost \$2 million in bonuses and other incentives. Williams says someday we may come to recognize, however, that routine well-compensated mis-management of the private economy is every bit as scandalous – and no less socially debilitating as lapses in public governance. – *SIPA says Williams sounds like a good candidate to chair the OSC.*
- ?? **"Stop the massacre at the ASC," Liberal says (The Post)** – Alberta's Liberal opposition leader Kevin Taft called on the provincial government to stop the "massacre at the ASC" by removing Mr. Valentine as interim chair. Another two alleged whistleblowers were terminated. Patricia Johnston director of legal services was interviewed by Valentine and asked if she was one of the 35 ASC staff members who anonymously delivered a letter to the finance minister in April. She refused to answer. The meeting ended. A security guard was waiting outside her office to escort her out of the building. *SIPA says TruthTeller protection is needed.*

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- ?? **Structured to rupture (The Post)** – Tristram Lett left RBC Dominion Securities, as director of hedge fund marketing to join Norshield Financial Group last October. Norshield already managed roughly \$700 million of institutional and retail assets. Shortly after Mr. Lett arrived he sensed something was wrong. In early May Norshield barred investors from withdrawing their money from its Olympus Uninvest fund of funds after a run on redemptions. Several pension funds wanted their money back. Norshield shut down the Olympus Uninvest fund and froze investors' money. The OSC has since suspended the registration of Norshield and Olympus. *SIPA says will the company be sold to operate under a new name? Will the OSC register the new company? Will investors get their money back?*
- ?? **Wal-Mart cancels former officer's benefits (The Star)** – Wal-Mart Stores Inc. has stripped former vice-chairman Thomas Coughlin of his retirement benefits after concluding he engaged in misconduct by using company funds for his own benefit. Wal-Mart said, "For a period of several years and continuing until at least December 2004, Mr. Coughlin had been involved in a scheme to misappropriate corporate funds and property for his own personal benefit."
- ?? **How Ponzi schemed (The Post)** – Drew Hasselback writes about Mitchell Zuckoff's book "Ponzi's Scheme: The True Story of a Financial Legend". Charles Ponzi made infamous the fraud scheme that bears his name. A Ponzi scheme is a financial house of cards. Ground floor investors are promised dividends or interest payments from the profits of what looks like a legitimate business; what they really get is cash taken from subsequent investors. The fraudster behind the operation eventually runs out of new victims to fund those payments and the scheme inevitably collapses. Hasselback says, "there's a surprising number of scamsters who seem to manage to fleece investors using what we now call the Ponzi scheme. *SIPA says fraud is here to stay. Investors need protection.*
- ?? **The reluctant billionaire (The Post)** – William Hanley writes "Jarislowsky is old enough and rich enough to say what he wants". Hanley quotes Jarislowsky saying "When I invest I always ask: How much can I lose? What's the downside? Can I live with that downside?" If he had a handful of stocks to own, he might pick Imperial Oil, one of the big banks, Manulife, Canadian Tire or Loblaw Cos. In retailing. Many investors have been put off stocks because they have read about executives looting companies. With interest rates so low, they don't want to leave their money in the bank, and they don't want to buy bonds. "All they want is real estate, because real estate never goes down". - *SIPA says Stephen Jarislowsky has written "The Investment Zoo". This is a book that provides candid comment on the industry and is well worth reading.*

It's all in the Saturday papers: accounting fraud, conspiring to file false financial papers, executives looting companies, insider trading, lack of governance, mismanagement, investment firms duping investors, whistleblowers persecuted, even the legendary Ponzi scheme. It seems there is no sense of honesty and integrity. Who protects investors?

There will be no July issue of the SIPA Sentinel. We wish you all a good summer.