# SIPA Sentinel

March 2006

**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 advocate improvement of industry regulation and enforcement.**

**Small Investor Protection Association - A voice for the small investor**

The **SIPA Sentinel** offers articles and re-prints with opinions SIPA may not share.

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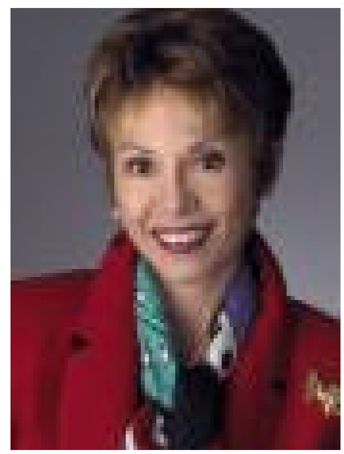
## SHERRY COOPER ROBBED AT HOME

"Top economist 'fearful' after nightmare robbery" is the National Post headline on March 19, 2006. Robbers invaded her home and the incident left her shaken and afraid.



The Post reports Cooper said, "We are Grateful to be alive, well, and just shaken up although I have to admit that, as the shock wears off, the trauma is becoming a real issue for me."

Cooper is chief economist with Toronto's BMO Nesbitt Burns and executive VP with BMO Financial Group.

Being robbed at home where one feels safe and secure must be upsetting and Cooper says, "to feel invaded in our most private sanctuary is unbelievable."

It is always unfortunate when people are victims of robbery. It seems even more unfortunate when the victims are robbed when they believe they are safe and secure.

Small investors who are robbed by industry wrongdoing are also devastated. Essentially they also are robbed at home. They feel safe and secure dealing with Investment Advisors that represent large Canadian investment firms like BMO Nesbitt Burns.

They place their trust in their I.A. Often they are reluctant to believe that the I.A. has done something wrong. It is difficult to accept that our society will harbour and defend those who have betrayed the trust placed in them. Victims feel violated by those they trust.

Cooper said that after the initial shock "the trauma is becoming a real issue for me." Can anyone imagine the trauma that follows the realization that the investment industry robbers have taken not your jewelry and loose cash in the house and a few other trinkets, but they have made off with your life savings! Everything that you have worked a lifetime to accumulate has been taken from you by people you trusted. Not unknown robbers, but people you know and trusted.

We feel sorry that Sherry Cooper had this traumatic experience but it may help the leaders of the investment industry to understand the devastating impact on victims of white-collar crime.

*The following article is reprinted from the Edmonton Journal. Ray Turchansky writes about the problems related to investing in income trusts. Dr. Al Rosen has been speaking out about accountability issues and the fact that there are no controls on how yields and distributable cash are calculated. Many investors have been misled into believing the payments they receive are like interest on an investment, and they are not aware that a component of this payment can be a return of their capital.*

# Alarm bells sound over income trusts

## Experts point to trouble with accounting methods being used

Ray Turchansky
Freelance
Saturday, February 04, 2006

A forum on income trust investing put on by Blackmont Capital this week was as bizarre as they come.

What figured to be a discussion on such issues as government handling of the loss of income tax revenue instead was dominated by concerns about how trust yields and distributable cash are calculated.

First Greg Guichon, managing director of Rockwater Asset Management, outlined the pros and cons of energy, real estate, infrastructure and business trusts.

Mike Lough, vice-president of TD Mutual Funds, extolled the virtues of a new income trust fund that will pay out in capital gains.

Barbara Gray, income trust analyst with Blackmont, talked about the perils of business trusts, particularly "fallen angels" that have reduced or suspended distributions.

And then came Al Rosen, who has nine designations behind his name, ranging from PhD to CFE (Certified Fraud Examiner).

Rosen, a forensic accountant with Toronto-based Rosen & Associations Limited, said many income trusts, including most business trusts, use accounting methods similar to those that caused the run-up and eventual freefall of share prices in Nortel Networks.

"My own prediction is many of the business trusts are another Nortel, about to wipe you out," Rosen told a crowd heavily populated with seniors.

"We're not as negative on oil and gas by any stretch, as we are on the business trusts and some of the REITs. Some of the REITs are greatly overpriced."

Gray was the first to raise eyebrows during the evening. She noted that the proliferation of income trusts to 243 in number and $180 billion in market capitalization was due in large part to declining Canadian interest rates during the past five years. She then predicted that "2006 will mark the end of investors' love affair with business trusts, but not income trusts in general."

During the past year, 27 of 128 business trusts cut or suspended distributions, while 60 per cent of them suffered a drop in their unit values.

Looking forward, she expects "half the business trusts will end up as fallen angels."

Rosen has warned about trusts for a few years, and took some comfort that three weeks ago Standard & Poor's also cautioned about obscure and inconsistent financial reports in the sector.

"Even the initial starting point to the distributable-cash calculation is plagued with distortion and information risks that, if left unattended, will undoubtedly result in misinformed investor decisions," said S&P analysts Kevin Hibbert and Ronald Charbon.

They said a sample of 40 income trusts on the Toronto Stock Exchange had 19 different methods of generating and making cash available for distribution to unitholders.

Rosen attacked trusts on two major fronts - their published yields and balance sheets.

Seniors in particular are attracted to income trusts as an income stream because of their high distribution yields, often unaware that an income trust yield usually includes a return of capital.

"If you give me 100 bucks, and I give you back $15, it's not a yield," said Rosen. "Not every trust is doing this, there are some good ones. But at least get clear in your head what is being earned by a company, as opposed to the cash that is coming back, of which a big chunk is your own (capital)."

Of 50 trusts he studied, 18 claimed to have cash yields of more than 10 per cent, but in fact only three had income yields greater than 10 per cent.

Rosen's next major attack on trusts concerned how they calculate distributable cash. He showed how one trust includes "recovery of income taxes" -- namely the supposed tax savings that unitholders get -- as part of "net earnings."

Such accounting is allowed, after the Supreme Court of Canada in 1997 upheld a Manitoba court decision and said that "financial statements are not to be used for investing decisions if they are annual audits."

"If you have good money managers who can clue in, that's fantastic," said Rosen. "But make sure you have good money managers."

He also discussed a trust that was spun off from a company that was under creditor protection.

"What would you think of a deal where you and your spouse separate, you keep the house and your spouse gets the mortgage?"

Rosen says the accounting methods used by trusts is a much more serious issue than tax leakage, and hopes the new federal government agrees.

Ray Turchansky is a freelance writer and income tax preparer. He may be contacted at turchan@telusplanet.net



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*"My parents, ages 81 and 76 … all of the money invested is lost. This was most of my parents' life savings … my father became depressed from losing all of his money. Coupled with the cancer that he had, this caused him to take his own life".*

*- Name withheld*

## INVESTMENT COMPANY CEO ASSAULTED IN MONTREAL

John Xanthoudakis, chief executive of embattled hedge fund manager Norshield Financial Group, was assaulted in Montreal. Norshield Asset Management (Canada) Inc. ("Norshield') is the manager and adviser of a variety of hedge funds and alternative investment products offered across Canada by Olympus. These products are sold as shares in the Olympus United Funds Corporation ("Olympus Funds"). Norshield ran afoul of the regulators last year and questions have been raised about where investors' funds are located. Approximately 2,000 shareholders of Olympus Funds are affected. For some time there has been speculation that the only language the industry will understand is power or violence. See the article below from CanWest News Service.

# Norshield CEO's assault

### Three men allegedly linked to organized crime to be charged

BY PAUL CHERRY, CanWest News Service, Friday, March 17, 2006

MONTREAL • Three men with alleged ties to organized crime will be charged in connection with an assault on John Xanthoudakis, chief executive of embattled hedge fund manager Norshield Financial Group.

The three men are expected to appear in Montreal court on March 22 where they face charges of assault and uttering death threats.

A police source told The Gazette the men are suspected of assaulting and threatening the CEO in an attempt to collect money lost in investments made with Norshield. The source said the men have links to an organized crime group based in Montreal.

The Montreal money-management firm once boasted assets of $1-billion, but has been in receivership since June. It is being investigated by securities regulators and Quebec police.

One receiver recently estimated investors stand to lose $482-million. Most of the money given to Norshield is believed to have been transferred to Barbados and the Bahamas, and little of the cash was ever actually invested.

Mr. Xanthoudakis was assaulted near Place Ville Marie on Nov. 25. An investigation by the Montreal police led to the three arrests on March 8. The men were released on a promise to appear in court on Wednesday.

One of the men arrested has a criminal record that dates back to 1986. The 42-year-old pleaded guilty to three counts related to the illegal possession of firearms in 1999 and was placed under probation for a year. He also pleaded guilty to illegally possessing a firearm in 1995.

The assault occurred days after it was revealed, in Ontario Superior Court, that millions of dollars invested in Norshield funds appeared to be unrecoverable.

## SIPA LETTER SENT TO MEMBERS OF PARLIAMENT IN OTTAWA

February 2006

Dear Member of Parliament,

It became clear during the election that Canadians are concerned about crime and corruption. Canadians are looking for accountability, not only in government but also in all aspects of community and business.

Our concern is with the investment industry. The scandals of bankruptcies, mutual fund market timing, misrepresentation and frauds, coupled with Canadian institutions paying billions of dollars to U.S. regulators causes Canadians to lose confidence in our investment industry and regulatory systems.

Last February 14th the Small Investor Protection Association made a submission to the Standing Senate Committee on Banking Trade and Commerce and appeared before the Committee with Canada's Association for the Fifty Plus on April 14th. SIPA's submission is now published on the Department of Finance website.

In 2005 SIPA collaborated with several organizations and made representations in Ottawa asking for change and for investor protection. We have asked Government to look into widespread investment industry wrongdoing and to take action to protect our seniors and widows from losing their life savings due to investment industry wrongdoing and fraud. This is becoming a critical issue.

This year we have collaborated with several organizations and engaged Dr. David Yudelman, author of the Scorpion and the Frog, to prepare a submission on behalf of our fledgling group, Concerned Canadian Seniors and Investors (CCSI). Judith Muzzi, president of the United Senior Citizens of Ontario, and I signed this report along with Dr. Yudelman and submitted it to the leaders of the political parties.

A copy of the CCSI submission and SIPA's submission to the Senate Committee are appended. Please be assured that the CCSI will expand and you will hear from us.

We are asking all Members of Parliament to work towards revising the regulatory system and establishing a national authority to provide investor protection for all Canadians. Please help to save our seniors.

Yours truly

Stan I. Buell
SIPA President & CCSI Participant

Encl. SIPA submission Standing Senate Committee on Banking Trade & Commerce
CCSI submission to Political Party Leaders

## Investment Advisors Warned to Beware Rogue Investors

By A. Nonymous – March 2006

Several days ago I read an article about Rogue Investors. This morning I saw an advertisement headlined "GRAND AUCTION – PROMINENT STOCK BROKER – V.P. PRIVATE CLIENT INVESTMENT ADVISOR". Now this ad went on to say, "Due to Financial restructuring of assets, real and personal" and that's the part, "real and personal" that caused me to ponder.

I read a lot of stuff in the newspaper and when I read about income trusts and corporate accounting it seems to me that a lot of the assets are not "real" or "personal" so it doesn't make much difference even if it is billions of dollars. These corporate guys can lose a few million or a few billion and it doesn't impact their lifestyles or affect their tan. But this unfortunate "PROMINENT STOCK BROKER – V.P. PRIVATE CLIENT INVESTMENT ADVISOR" is going to lose a lot of "real and personal" assets. This is not just some P.O.S., but real stuff worth real money.

This ad says that this public auction is "Commencing Liquidation of Inlaid Finest Furniture, Persian Rugs, Fine Art & Magnificent Jewellery". Now that is the stuff that all investment advisors need to show investors that the I.A. successful. Fortunately it doesn't mention shirts. I would not want to see this poor guy lose the shirt off his back. It's probably not just an ordinary shirt like a small investor would wear but this would be an expensive shirt … probably designed by a famous designer like Picasso or some other French guy and maybe even tailored to fit. It seems unfair that this poor guy has to unload all this stuff when he seems to have been so successful.

Just think. This poor guy has made his career taking investors' money so they would not have to worry about it. He has probably helped many investors, but just a Rogue Investor or two is enough to make this guy liquidate "real and personal" assets. Nothing unreal and impersonal.

Now you have to ask who would do this to this poor "PROMINENT STOCK BROKER – V.P. PRIVATE CLIENT INVESTMENT ADVISOR"?
A - It wouldn't be the company. After all he's a V.P. and must be important to the company.
B - It wouldn't be the SRO's because they are private clubs and private clubs would not embarrass their members.
C - It wouldn't be the regulators because they delegate this stuff to the SRO's, they don't deal with real money, and don't pay anything to Rogue Investors.
D - It wouldn't be Government because they abdicate responsibility and they can get their money from everybody by taxing everything.

I mean these are "real and personal" assets and not some airy-fairy accountant juiced numbers that are imaginary and used for other purposes. No, this is real stuff that can be sold for real money. After all, the auctioneer says they will take "Cash, VISA/MC, Amex, Certified cheques". This is real money. Not just some vague promise to pay at a future date or a piece of worthless paper like a non-certified cheque or a principal protected note, or some other worthless paper assets that Rogue Investors buy as investments. These assets are worth real money, not like many of the investment products that this poor guy was obliged to deal with. It must have been a Rogue Investor or two that caused this calamity.

So what can be done to prevent this from happening again?

One of the dangers that Investment Advisors face is that Rogue Investors can sue them, just because they were sold a P.O.S. or two. So, what the SROs and Regulators need to do is to convince the provincial governments that the Limitation Periods must be reduced further. All right, the reduction from six years was a good start and since no one seemed to notice or be upset, the time is right to reduce the limitation period again.

Since the first four-year reduction did not create a stir, the SROs and Regulators need to convince Government to reduce the Limitation period by another four years. This would then provide a minus two-year limitation period for Rogue Investors to take civil action against an Investment Advisor. That would mean they would have to take action two years before the causal event.

Now that my friends should put a stop to this nonsense of Rogue Investors suing Investment Advisors and causing them to liquidate their "Real and Personal" assets.

This may be a bit too late for the PROMINENT STOCK BROKER – V.P. PRIVATE CLIENT INVESTMENT ADVISOR but he can be proud when he reflects on the fact that his sacrifice has led to this improvement for the sake of all Investment Advisors.

Alfie

## INVESTOR ACTIVISTS PLAN TO DEMONSTRATE IN TORONTO

For several years the investment industry and the regulators claimed that only a small number of people were complaining about the investment industry and the regulatory system. Well, the OSC Investor Town Hall Event demonstrated that is not true. Recently SIPA received the following e-mail from an "Investor Activist":

> *A Small Investor demonstration on the grounds of Queen's Park has been approved by security. It will be held on Monday, March 27 2006 during the day.*
>
> *Everyone is welcome, there is plenty of space near the main entrance of the building where big signs can be held up. Here's an example, "Dalton McGuinty Doesn't Care About Small Investors." I've been informed it's okay to use some disparaging words like scam and fraud.*
>
> *At the demonstration a list of demands including the resignation of David Wilson chairman of the Ontario Securities Commission will be presented.*
>
> *For more information contact investoractivist@hotmail.com*

This is not a SIPA-sponsored event, but it does indicate that retail investors are angry and are not satisfied that the regulators and Government are providing an adequate level of investor protection. Joe Killoran has been fighting a lonely battle for many years. Now it appears that many investors are beginning to get it and are becoming involved.