SIPA Sentinel

July 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.

IN THIS ISSUE

EBBERS LOSES APPEAL OF 25 YEAR TERM – Associated Press

David B. Caruso of the Associated Press reports from New York that *"a U.S. appeals court upheld the conviction and 25-year prison sentence of former WorldCom chief executive Bernard Ebbers on charges related to a multi-billion dollar accounting fraud."*
Ebbers headed a major deception that ultimately cost thousands of employees their jobs and thousands of investors their savings.
Caruso reports that Judge Ralph Winter wrote *"The methods used were specifically intended to create a false picture of profitability even for professional analysts that, in Ebbers 'case was motivated by his personal financial circumstances."*
SIPA continues to be optimistic that Canada may eventually be forced to introduce changes to our regulatory regime to retain confidence of global investors. It ŝ time to punish the white-collar criminals.

CIBC GETS WHAT IT DESERVES – Montreal Gazette

PAUL DELEAN writes in the Montreal Gazette on June 19th, 2006; *"Canadian investors everywhere should thank Haroutioun and Alice Markarian. When the CIBC World Markets brokerage seized $1.4 million from the Montreal couple's investment accounts - to cover trading losses of people who were complete strangers to them - the Markarians fought back.*
And last week they were vindicated. Superior Court Judge Jean-Pierre Senecal ordered CIBC World Markets to pay the Markarians more than $3 million, including an unprecedented $1.5 million in punitive damages."
Delean continues *"The CIBC deserved every word of criticism Senecal heaped on it, just as it deserved to be hit with historically high punitive damages. The brokerage's behaviour was both reprehensible and irresponsible."*
This is a story of a big bank brokerage manipulating accounts and trying to hold small investors (a retired couple) responsible for the losses. Fortunately there are some wise judges who are not influenced by the power of the investment industry.
This is yet another indication of why aggrieved investors need to pursue civil action to obtain justice. Industry sponsored dispute resolution results in compromise and loss of your savings.

CLIENT COMPLAINTS OFFICERS - The regulators are now talking about requiring investment dealers to appoint clients complaints officers. There are many initiatives designed to improve the optics of the regulatory system and the investment industry while failing to make any headway with improving investor protection. Unfortunately for investors, the regulatory regime appears to be controlled by the investment industry.

Dealers may need complaints officer

Jul. 26, 2006. 07:21 AM
TARA PERKINS, BUSINESS REPORTER, TORONTO STAR

Regulators are considering asking all investment dealers to appoint a "client complaints officer," according to a report released yesterday.
The report outlines what actions regulators have taken to address complaints about regulators and dealers that were raised at an investor town hall organized by the Ontario Securities Commission in June 2005.
"We are considering a requirement for firms to identify a designated `client complaints officer' as the main contact to receive and to deal with investors' concerns and complaints," said the report, which was signed by the heads of the OSC, the Investment Dealers Association of Canada, the Mutual Fund Dealers Association of Canada and the Ombudsman for Banking Services and Investments.
"We've identified this as something we're going to think about and consider," OSC vice-chair Susan Wolberg Jenah said in an interview.
"Many investors are not aware of their rights or what recourse is available when they have a complaint," the report said. "In many cases, there is a lack of trust in the system. This attitude results from frustrations that many investors experience when they try to access the system."
The report said that "in addition to our own (regulators') processes, we are studying the complaint-handling process at the firm level, i.e. at the level of the financial services provider."
"We think firms need to communicate better about their processes, including advising clients about other options if they're not satisfied with the firm's response," the report added.
The report also said that the regulators are considering creating a portal where investors can easily do a background check on their dealer or adviser.
Wolberg Jenah said that there are a number of places you could search for some of that information today, including websites of different commissions across the country, the Investment Dealer Association's website and the OSC.
"You can't go to one single place" to find out if there's been disciplinary action against your dealer or adviser, she said.
Some shareholder advocates criticized the report as too little too late yesterday, including independent consultant Diane Urquhart.

LIMITATION PERIOD - We believe that the reduced limitation period is the most important issue facing small investors today. Until recently the limitation period, or the time within which a plaintiff had to file a Civil Action after the cause of the action, was six years. As the public became more aware of the extensive wrongdoing by the investment industry more civil actions, including class actions were being started. It seems the reduction in limitation period together with the investment industry's attempts to deny fiduciary responsibility is an attempt to escape justice. We continue to pursue this issue and on May 4th made a 74 page submission to the Ontario Standing Committee on Justice Policy. I urge each and every one to contact your member of Provincial Parliament and to send a letter to the Standing Committee on Justice Policy. Two years is not sufficient time for victims of devastating loss of life savings to recover from the trauma, to find their way through the current complaints handling process, and to finally initiate civil action as they seek justice.

May 4, 2006

Standing Committee on Justice Policy
Room 1405, Whitney Block, Queen's Park
Toronto, Ontario, M7A 1A2

Reference: Bill 14, An Act to promote access to justice by amending or repealing various Acts and by enacting the Legislation Act, 2005. Hon. Mr. Bryant. (Referred April 11, 2006).

Dear Sir,

We are pleased that the Standing Committee on Justice Policy is reviewing various acts to promote access to justice. Although we missed having the opportunity to make an oral presentation, we appreciate being able to make a written submission.

We are quite concerned that legislation was passed reducing the limitation period from six years to two years. It is improbable that any organization dealing with victims' issues was consulted prior to passing this legislation.

The Small Investor Protection Association is particularly concerned about the treatment of victims of investment industry wrongdoing, however victims of other life altering events must also receive consideration.

It is absolutely shameful that government is allowing seniors and widows to be victimized by the investment industry and is failing to take measures to afford consumer/investor protection. It is inconceivable that a just society as we claim to be, could allow regressive legislation to pass that erodes the rights of Ontarians and will result in many victims of life-altering events, such as devastating loss of life savings,

being victimized again when they are statute barred from seeking resolution of their dispute through civil action due to reduced limitation periods.

Last August the Small Investor Protection Association (SIPA) in association with the United Senior Citizens of Ontario (USCO) and Canada's Association for the Fifty Plus (CARP) met with the Attorney General's staff to express concern over the reduced limitation period from six years to two years, and subsequently a petition was presented to the legislature last fall by MPP Joe Tascona. The amendments proposed by the Attorney General do not adequately address the concerns raised.

In a previous report to Government, we had recommended the six-year limitation period be extended for victims of life altering events because some victims already had difficulty meeting the six year limitation period.

There is no authority with a mandate to protect the interests of small investors. That responsibility has been delegated to the industry responsible for the problems. Equally concerning is the fact that there is no government authority responsible for issues affecting seniors, elderly, widows or women, that is au courant with the issue of Ontarians losing their life savings due to widespread wrongdoing in the investment industry.

Many of the victims of investment industry wrongdoing are seniors, widows and other small investors who continue to trust the industry, to trust that the regulators are effective, to trust that Government will ensure that citizens are treated fairly, and trust they can turn to the courts to achieve justice.

The issue of seniors and widows being robbed of their life savings is much greater than most of us can imagine. Victims are often embarrassed that they have been deceived and have lost their savings. Those who do take action and complain, most often resolve their dispute with an out of court settlement agreement including a gag order that keeps the public unaware of the magnitude of this issue.

Access to justice will be curtailed if the limitation period is allowed to stand at two years. This is not sufficient time for victims of devastating loss of life savings to recover from the trauma, to find their way through the current complaints handling process, and to finally initiate civil action as they seek justice.

The limitation period must be amended to save our seniors.

Yours truly

Stan I. Buell, President
Small Investor Protection Association

ACCOUNTING STANDARDS – Al Rosen continues to speak out about the laxitu of accounting standards in Canada. Investors are being misled by Canadian accounting that can show companies in a much better light than in the United States. Dr. Rosen is responsible for the Accountability Research Corporation report on income trusts which alerts investors to the income trust issue of investors being misled by overstatement of earnings.

Rules of the game

Al Rosen | Between The Lines
Canadian Business - June 20 - July 17 Edition

Switching to international accounting standards could mean another decade of investor uncertainty. Our accounting and auditing rule setters are proposing that Canada move to adopt international accounting rules, instead of U.S. rules or proceeding with what we currently use. Given that specific accounting rules can have major impacts on a company's reported income, the decision will have wide-ranging investment impacts. Consider BCE Inc. (TSX: BCE), which during the 10 years up to and including 2004, reported cumulative income under Canadian rules of $21.6 billion, and income under U.S. rules of just $7 billion. In this regard, BCE is not an isolated case in terms of accounting domesticity having serious influence on perceived financial health.

A major concern is whether Canadian investors will be better off with the proposed change.

Another is what's motivating the change, given that the United States is our largest foreign investment partner and that many international rules are softer than corresponding U.S. accounting rules. A decade ago, the Canadian approach to accounting was to have unique rules for business combinations, oil and gas operations, and several other situations. Then came the decision to move many of our rules closer to U.S. rules, but to still leave considerable leeway and management wiggle room. During this time, Canada backed down or flip-flopped on several of its previous rules, including the expensing of goodwill, requiring greater certainty before fiddling with tax assets, and the treatment of convertible debt.

The waffling and changes essentially destroyed period-to-period financial comparisons in Canada for an extended period. The obvious result was many false conclusions being reached by investors and even researchers trying to measure changes in the Canadian economy, as evidenced by corporate income statements. Many of the changes weakened the definition of what constituted legitimate income, and thus played right into the hands of manipulative executives.

Our current mishmash of Canadian accounting is clearly baffling to both investors and accountants alike. In my experience, the court testimony from many accountants reflects considerable bewilderment as to the main principles of the profession. In this context, investors cannot take lightly the proposal to adopt international rules: even in the view of the auditors proposing the change, the consequence could be another decade of investor uncertainty and unreliable financial statements.

Undisclosed at this point is how much tinkering Canada's auditors will do with the international rules in an effort to water them down. Potential Canadian exceptions are the crux of what could disadvantage investors. For example, will we adopt the international rule on the valuation of noncurrent assets? International rules use a fair-market-value approach instead of the Canadian approach of using undiscounted cash flows to test for asset impairment. Our current rule essentially pretends that a dollar received in 10 years has the same value as a dollar in hand today, making it much more wide open to management manipulation.

If Canada does adopt this particular international rule, will the unavoidable asset writedowns be recognized in a way that does not destroy each individual company's profitability picture? Or will Canada's auditors allow the usual cop-out, claiming that the impacts are too complex to measure? The latter allows executives to bury large losses in a single charge to prior-period retained earnings, which usually gets ignored by investors. Also troubling is that the proposed shift doesn't call for any structural changes to the arcane way in which accounting rules are set in Canada. We are currently offside of our major trading partners, in that we still allow our auditors to set weak and self-serving accounting rules. Unless the laws governing accounting standardsetting in Canada are changed, we risk having more weak rules hidden under an umbrella that falsely proclaims we are "generally" following international rules.

Investors have no choice but to take keen interest in the proposed switchover to international accounting rules. If the change is made, many more years of unreliable financial reports lie ahead - an investors could find their savings slipping through the cracks.

CLIENT STATEMENTS ARE NOT ADEQUATE

Visit the website www.showmethereturn.com and sign the petition. From the website;

"You wouldn't risk your physical health without all the facts - you should want the same for your financial health. But, you don't have all the facts, because your monthly statements don't show your annual rate of return. Your investments could be doing poorly and you wouldn't even know it. You don't have access to this critical information and as a result, your investments could be at risk!

Although it was in the recommendations of an Ontario Securities Commission (OSC) committee, the OSC does not require brokerage firms and banks to provide you with basic yet important Performance Measurement Statistics on your investments; it is time to tell the OSC - ***Show Me the Return!***

We want the OSC to require brokerage firms and banks to provide investors with the important performance measurement statistics they deserve and which they need to make informed decisions. This is the recommendation of the above committees. It is the information necessary to ensure your investment performance is on track and that you are receiving fair value for the fees you pay.

The voice of industry is being heard - what about yours?"

NEW RULES FOR MUTUAL FUNDS – The regulators continue to fiddle with the rules while investors savings are being burned by an industry that fails to comply with rules, obtains exemption orders to avoid compliance and develops new products and strategies to circumvent the rules. Janet McFarland writes in the Globe and Mail:

New rules for funds target conflicts of interest

JANET MCFARLAND
Globe and Mail Update

Canada's provincial securities commissions have released new mutual fund governance rules covering conflicts of interest by fund managers, but a consumer advocate says they are too narrowly focused to provide good investor protection.

The Canadian Securities Administrators, the umbrella group for securities commissions, unveiled new rules that will require all mutual funds to set up a three-person independent review committee (IRC) to oversee conflicts of interest facing fund managers.

The rules differ from existing U.S. governance standards, which require mutual funds to have a full-fledged board of directors to oversee their operations.

The Canadian rules have been under development for more than a decade. They were republished for comment last year after regulators toughened up a 2004 draft that had been criticized for giving too much power to the mutual fund industry. The final version released Friday is essentially the same as the revised draft published last year.

Ontario Securities Commission chairman David Wilson said the rules strike a balance between investor protection and efficient operations, focusing on conflicts as the key oversight issue facing funds. Many in the mutual fund industry have argued that a board of directors is not useful for each fund, and would be cumbersome and expensive.

"We believe it's important to have an independent body in the room during the managers' decision making involving any transactions where there's a conflict — someone looking after the investor," Mr. Wilson said in an interview.

But Glorianne Stromberg, a former OSC commissioner who wrote a report in 1995 calling for independent boards of mutual funds, said the rules are a "Band-Aid solution" to improving governance.

Ms. Stromberg said funds need independent boards of trustees with a mandate to broadly review their operations, and not simply focus on conflicts of interest. She said key problems around market timing, late trading and proxy voting may not fall under the purview of IRCs.

"Setting off investor protection in favour of market efficiency or industry interests has no place where what is at stake is the ability of individual investors to provide for their financial well-being," she said.

The new rules differentiate between two categories of conflicts of interest, called structural conflicts and business conflicts. Structural conflicts involve transactions between a fund manager and related entities, such as trading shares between funds or purchasing shares of the fund's parent company. Business conflicts relate to the

operations of the fund by the manager, including such issues as fees paid to the fund manager.
The rules are expected to take effect Nov. 1, with firms getting a one year transition period to comply.

SIPA's comment to the editor: Ms, Stromberg is absolutely right when she says "Setting off investor protection in favour of market efficiency or industry interests has no place where what is at stake is the ability of individual investors to provide for their financial well-being." With a regulatory regime controlled by industry and industry participants it is improbable that the investing environment will improve for investors in the near future. As long as the regulators are more concerned with creating optics to convince investors all is well, rather than taking action that actually protects investors and provides an efficient means of restitution for victims of industry wrongdoing seniors and widows will continue to be at risk of losing all of their savings. It's about time that Government realizes that the current regulatory regime does not protect investors and takes action to introduce an Authority not controlled by the industry to represent the consumer/investors interests.

IDA DISCIPLINE – The IDA continues to discipline registrants for breaching rules but the penalties seem insufficient to discourage established practices. The following recent discipline illustrates the systemic problem of failure of the regulatory system. It's time the regulators started to order restitution to the victims who lose their savings due to this widespread industry wrongdoing. The following is excerpted from IDA Bulletin:

IDA imposes Discipline Penalties Imposed on Roger Racine *who was the Manager of the Laval Branch of Scotia Capital Inc., an IDA member firm.*

Under the terms of the Settlement Agreement, Mr. Racine has admitted committing the following violations between April 2002 and December 2003:

- *Failure to use due diligence in his supervision, to learn the essential facts relative to every client and every account accepted, when approving new options accounts for seven (7) clients, as well as changes in the investment objectives and risk tolerance listed for these clients, contrary to Policy No. 2;*
- *Failure to exercise adequate supervision of the transactions effected by a representative under his supervision in the options accounts of eight (8) clients, to ensure the appropriateness of these trades for each client and that the latter had authorized each of the subsequent modifications to the options strategies used in their accounts, contrary to Policy No. 2;*
- *Failure to ensure that options trades involving large numbers of contracts met the requirements in force at Scotia regarding prior authorizations that might be required, as applicable, contrary to By-law 29.27(b), and Policy No. 2.*

The penalties imposed on Mr. Racine are (1) Payment of a fine of $30,000: and (2)Suspension of his registration as Branch Manager for a period of six (6) months.