



SIPA has a mission:

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

Small Investor Protection Association - A voice for the small investor

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.

FINANCIAL CRISIS

The ABCP debacle has led to a financial crisis. It has demonstrated that the current regulatory system does not adequately protect investors and that even supposedly secure investments (according to industry) may be at risk. The creation of complex products (such as Asset Backed Commercial Paper, Principal Protected Notes or Business Income Trusts) resulted in many investors buying structured investment vehicles without understanding the risks involved. It may be that the sellers of these products may also not understand the risks.

The fact that institutional investors got caught up in this latest fiasco indicates that structured investment products should probably be avoided by small investors because the risks can be much greater than anticipated.

The Purdy Crawford solution will likely result in most of the small investors getting their money back, but some small investors may still be impacted indirectly due to losses expected for large institutions and pension funds.

The lack of certainty in the market has led to unprecedented volatility and emphasizes the need for small investors to be diversified and underlines the benefit of holding a substantial portion of Government bonds.

Although many investors believe mutual fund investments are secure, we continue to hear from small investors who have returns that are less than Government bonds, or they have actually lost money with their mutual funds. In cases where leverage has been used, the losses can be substantial.

Although most small investors may need to rely upon a financial advisor, it is still important that they monitor their investments and seek to understand the types of products to avoid incurring substantial losses due to unsuitable products or unsuitable strategy.

We continue to recommend that small investors compare the return on their investments to the return on Government bonds and the returns indicated by the stock Markey indices. There are ETFs that track the markets, and these are similar to mutual funds but without the high fees and charges. There are no redemption fees and they can be bought and sold in the same way as stocks. There is a commission payable on each transaction.

We also continue to recommend the Benjamin Graham approach to investing with exposure to investments split between bonds and equities. A balance of 50% bonds and 50% equities is middle of the road while some suggest the bond component should be your age. This results in older investors moving more of their investment into Government bonds for security but still retaining some equity exposure as these tend to perform better than bonds over the longer term.

The volatility in the markets this year underlines the benefits of holding a Government Bond component to provide some stability.

ABCP DEBACLE UPDATE

Diane Urquhart, an independent financial analyst, has been prominent in working with small investors who purchased ABCP believing it to be a safe and secure investment that was redeemable at full value anytime. ABCP (Asset Backed Commercial Paper) is a structured product created by the investment industry that bundled various types of debt including credit card debt and sub-prime mortgages. These types of loans are individually subject to risk of not being collected but the industry sold these products as being as safe as GICs and cashable any time.

However, with reduced interest rates and the development of no money down or cash back mortgages together with reduced payments of interest only or less, many people were able to purchase homes they could not afford with the hope that the home would appreciate in price and rescue them from a losing proposition. When the market leveled off it became evident that many of the mortgage holders would default and as a result the industry did not want to buy back the ABCP they sold to unsuspecting investors including large institutions and pension funds.

Last August, when investors could not redeem their supposedly secure investments there was a loss of confidence in the investment industry, and a crisis that led to the collapse of large financing institutions in the United States.

In Canada Government and industry took action to develop a solution to the crisis that resulted in the Montreal Proposal which proposed converting the short term debt to long term debt to avoid precipitating substantial loss for the holders of the debt, but this was not helpful to the investors who needed their money in the short term.

The Purdy Crawford proposal incorporated repaying most of the small retail investors and this has been approved by the courts. Diane Urquhart provides an excellent update on this situation.

Urquhart Statement on ABCP CCAA Restructuring Plan Decision of the Supreme Court

The Ad Hoc ABCP Retail Noteholders Committee recommended that the Supreme Court of Canada not hear the ABCP CCAA Restructuring Plan appeal, so it is relieved by the Supreme Court's decision on Friday, September 19, 2008. The Co-Counsel for this Committee, including Henry Juroviesky of Juroviesky and Ricci LLP, Arthur Jacques of Shibley Righton LLP and myself as financial advisor, recommended that the retail ABCP owners of less than \$1,000,000 accept their cash settlements at full par value, plus accrued interest and restructuring costs, from their securities dealers, Canaccord and Credential. The retail customers owning less than \$1,000,000 of Non Bank ABCP were paid a cash settlement that mitigated their damages for a flawed savings product that was sold to them as safe and liquid, when this was not the case. The retail victims are expected to get their lifesavings back in October and to return to their normal lives.

The retail owners worked hard to accomplish this settlement of just getting their own money back, with the assistance of the Co-Counsel appointed to represent them in the CCAA court-administered CCAA process. The Federal and Provincial governments were not helpful to this group of Canadians getting their money back. In fact, many retail ABCP owners were shocked to learn that our governments actually facilitated the sale of this flawed money market product into the unsophisticated retail marketplace through multiple law and regulation changes, blind enforcement and exemptive relief decisions that allowed the securities dealers and banks to side-step investor protection laws that Canadians fought years to achieve.

There is now urgent need for reform of our securities regulation and securities crime policing structures in Canada. Plus, we must proceed to make amendments in various securities and banking laws and regulations to prevent a similar crisis in the money market ever again. Given that the ABCP CCAA Restructuring Plan denied the rights of corporations, governments, pension funds and individuals to sue the securities dealers for negligence and civil fraud, we will have to amend the Companies Creditors Arrangement Act to explicitly restrict the right of judges to approve debt restructuring plans that deny the right of creditors to sue solvent third parties who exposed Canadians to harm.

I sincerely hope that the government regulators will now intervene on behalf of the individual victims owning more than \$1,000,000 of the Non Bank ABCP who have lost their democratic right to sue for the return of their lifesavings and who now bear a disproportionate share of over \$16 billion of marked-to-market harm, which solvent securities dealers have imposed on Canadian high net worth individuals, pension funds, corporations and governments.

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EXPERT PANEL ON SECURITIES REGULATION – LEGAL ADVISORY COMMITTEE

The Expert Panel issued a press release August 28th to announce the appointment of a legal advisory committee to support the Panel's efforts. The press release states:

“Specifically, the committee will provide expert legal advice with respect to the model common securities act currently being developed by the Panel. The Panel has a mandate to provide a final report to ministers -- federal, provincial and territorial -- by the end of 2008.

The members of the legal advisory committee are:

- Philip Anisman, Barrister and Solicitor, Toronto.
- Richard J. Balfour, Partner, Torys LLP Toronto.
- Patrick Finnerty, Partner, Blakes Cassels and Graydon LLP, Calgary.
- Mitchell Gropper, Partner, Farris, Vaughn, Wills and Murphy LLP, Vancouver
- Francis Legault, Partner, Ogilvy Renault LLP, Montreal.
- Glorianne Stromberg, securities lawyer, Toronto.”

Glorianne Stromberg is a former OSC Commissioner and is well known for her report a decade ago (October 1998) “Investment Funds in Canada and Consumer Protection”. Ms. Stromberg has been supportive of the need for improved investor protection and was our featured guest speaker at one of SIPA's public meetings many years ago.

THE CANADIAN FOUNDATION FOR THE ADVANCEMENT OF INVESTOR RIGHTS

The Foundation is a not-for-profit corporation that was incorporated under the Canada Corporations Act in February 2008. The aim of the Foundation is to be a national voice representing Canadian individual or retail investors in securities regulation with a particular focus on shareholder rights and the rights of individual investors. The Foundation will advance the interests of investors and the integrity and fairness of financial markets.

RS and IDA, which recently merged to form the Investment Industry Regulatory Organization of Canada ("IIROC"), have agreed to provide initial funding from restricted or discretionary funds. This funding is expected to be sufficient for the establishment of the Foundation and its operation for a three year period. The IDA and RS (now IIROC) are the founding financial sponsors of the Foundation.

The Foundation is governed by its own board of directors composed of the following persons:

- Stanley Beck Q.C. - President, Granville Arbitrations, former OSC Chair and Professor and Dean of Osgoode Hall Law School.
- Neil de Gelder – Executive Vice President of Stern Partners; a leading Vancouver corporate lawyer for almost 25 years and a former Executive Director of the BC Securities Commission.
- Stephen A. Jarislowsky – Chairman and CEO of Jarislowsky Fraser, one of the largest investment management firms in the country, and a co-founder of the Canadian Coalition for Good Corporate Governance ("CCGG").
- Claude Lamoureux – Recently retired head of the Ontario Teachers Pension Plan and co-founder of the CCGG.
- Ermanno Pascutto – Executive Director of the Foundation, Canadian and Hong Kong lawyer, former Executive Director, OSC and former Deputy Chairman Hong Kong Securities & Futures Commission.
- Whipple Steinkrauss – Retired. Formerly assistant deputy minister, Business Practices Division, Ontario Ministry of Consumer & Commercial Relations, Director of the Consumer Council of Canada and Member of the OSC Investor Advisory Committee.
- Ed Waitzer – Partner, Stikeman Elliott; currently Jarislowsky Dimma Mooney Chair in Corporate Governance at Osgoode Hall Law School and Schulich School of Business and former Chair of the OSC.

The Foundation will have a website at www.faircanada.ca

CANADIAN COALITION FOR GOOD GOVERNANCE (CCGG)

On September 18th, a delegation for the Common Front for Retirement Security met with executives of the Canadian Coalition for Good Governance to explore co-operation. The mission of the Canadian Coalition for Good Governance is to represent Canadian institutional shareholders in the promotion of corporate governance practices that best align the interests of boards and management with those of the shareholder.

The ABCP debacle has raised awareness that small investors and institutional investors face many of the same issues. The CCGG submission to the Expert Panel on Securities Regulation states:

“CCGG believes that a single common securities regulator (the “National Regulator”) is the ideal long term regulatory structure for the Canadian capital markets, which are a part of the increasingly borderless global capital markets. A National Regulator should improve and speed up decision and policy making, have a consistent interpretation and application of securities laws, coordinate regulatory enforcement more effectively, have more specialized enforcement and industry expertise located across Canada, help to improve the global reputation of the Canadian capital markets, and may operate at lower cost to those involved in the capital markets than the current structure.”

The CCGG is critical of the current regulatory system has properly identified the critical issue is lack of enforcement. We see U.S. regulators sending perpetrators of financial crime to jail for significant periods while Canadian regulators are slow to act and the perpetrators seem to escape with the loot. The CCGG submission states:

“Lack of Credible Enforcement is a Critical Issue

There is widespread belief that there is no credible deterrent effect in Canada’s capital markets – both administratively and criminally.

CCGG believes that the federal government should focus on quickly and significantly improving the enforcement of existing laws relating to the capital markets – both administrative and criminal – as a part of or in parallel with the National Regulator process.

There have been a number of situations where securities regulators have appeared to be “weak” and ineffective in enforcing existing securities regulations. Significant deterrence would result if securities regulators quickly responded to possible breaches of securities laws and rules – which, unlike criminal prosecutions, can be dealt with quickly and effectively using regulatory evidentiary standards which do not require proof beyond a reasonable doubt and permit the compelling of witnesses.

It is important that securities regulators be given the resources required - and the political direction - to significantly increase their focus on enforcement of securities laws.

A key challenge in Canada is that there are very few cases of the prosecution of criminal activity in the capital markets or, if charges are proceeded with, they take many years to get to trial. This weak criminal law deterrence is exacerbated in Canada by the existence of provincial quasi-criminal or "public welfare" securities law enforcement powers, which are often resorted to by securities regulators because of the absence of a robust federal criminal law presence. This is an inappropriate and inadequate "halfway house" and often leads to poor results for serious crimes that are prosecuted using these quasi-criminal provincial statutes."

The CCGG submission makes recommendations that we fully support including the consolidation of administrative and criminal enforcement and in their words:

"allow for the development of specialized investigative and prosecutorial capabilities in "centers of excellence" across Canada, streamline the investigation and prosecution of major securities and criminal law breaches, and create clear responsibility for criminal matters which are now scattered among a number of police agencies across Canada.

Enforcement powers would be given to a new agency or a division of the National Regulator with the combined powers and resources needed to investigate and prosecute securities law and Criminal Code offences in the capital markets."

MEMBER ROI SURVEY - 2008

1. I depend upon an Advisor - YES or NO
 - 50% of respondents said they depend on their advisor.
2. My advisor provides me with the annualized rate of return on my investments at least once a year. - YES or NO
 - 63% said their advisor provides them with the rate of return.
3. I know the rate of return on my investments. - YES or NO
 - 88% said they know the rate of return
4. My advisor compares the rate of return to a benchmark - YES or NO
 - No one said their advisor compared the rate of return to a benchmark.
5. I know how my rate of return compares to a benchmark - YES or NO
 - 63% said they know how their rate compares to a benchmark

MONITORING YOUR INVESTMENTS

The statistics below provide a benchmark for Canadian equities, or Canadian equity funds. The Toronto Stock Exchange index is a good starting point as a reference benchmark. An ETF that tracks the TSX is XIU on the Toronto exchange. It can be bought or sold the same way as a share and there are no redemption fees or trailer fees. It provides diversification similar to funds.

	Sep 30	2007	2006	2005	2004	2003
XIU-T	17.97	20.27	18.62	15.90	12.87	11.51
% Return	-11.3%	8.8%	17.2%	23.5%	11.8%	

Another essential benchmark for investors is the rate for GICs. Early this year banks were paying as high as 5% for GICs. These rates are negotiable so posted rates are generally lower than rates available to bank customers.

RETIREMENT SECURITY

As Canadians approach retirement they think more about their retirement security. Those who don't have a defined benefits pension plan must be concerned about the safety of their investments and the performance of those investments. Pension funds have managers responsible for investing to try to achieve adequate returns to ensure that pensions can be paid. Sometimes even pension funds encounter problems so it is important for all Canadians to learn about investing and to monitor their investments.

The tales of tragedy of those investors who concentrated their investments in particular investment products should alert Canadians to the fact that diversified investment with a good portion invested in secure investments will provide a sense of security and peace of mind. The volatility of the stock market this year should convince small investors that they should not risk all of their savings investing in equities or equity based funds.

Many small investors have sufficient savings and should not place them at risk when a moderate return is all that is needed to maintain their lifestyle. We see too many cases where seniors have had sufficient savings and did not need to place them at risk. Unfortunately they were encouraged to invest in products to achieve higher returns, which they didn't need, and ended up losing substantial portions of their savings.

Remember it is your savings so you must monitor your investments. Investigate before you invest. If you depend upon others for advice don't borrow to invest. Most victims of substantial loss lacked diversification and were leveraged.