



SIPA's mission: To aid public awareness of how the investment industry operates, to provide guidance to those with an investment complaint, and to pursue improved investment 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 articles and re-prints are included that offer opinions on subjects related to investment and regulation. These are meant to help increase investor awareness, and SIPA may not share these opinions.

THE 'LOST DECADE' THAT WAS TOO GOOD TO BE TRUE

From tech stocks to income trusts to exotic bonds, the bottom line was ignored, and investors got burned

By Al Rosen

So long 2000s, hello 2010s. Boy did that decade stink for investors. An investment return of -24% for the S&P 500, compared to 309% for the 1990s and 234% for the 1980s. Things are bound to get better, right?

Not so fast. What has really changed? Yes, the lousy returns of the aught decade were bookended by two disastrous market meltdowns, the tech wreck and the liquidity crunch. Unfortunate timing to say the least, which is unlikely to be duplicated on such an arbitrary basis. Nevertheless, we will certainly see more market crashes in the future, and some pretty lousy 10-year investment returns, because there were some stark similarities between the last two market meltdowns, and some major precipitating factors have not been fixed, or even given more than cursory consideration by lawmakers and regulators.

Nevertheless, we will certainly see more market crashes in the future, and some pretty lousy 10-year investment returns, because there were some stark similarities between the last two market meltdowns, and some major precipitating factors have not been fixed, or even given more than cursory consideration by lawmakers and regulators.

A clear parallel for the lousy investment returns of the past decade is Canada's flatline performance when it comes to improving investor protections. We opened the 2000s by worshipping Nortel as a national icon, based mostly on its unbelievable market performance. You could get lynched for suggesting that the stock price was too good to be true. If you pointed out what was in plain black and white (i.e., that the company did not make any money), you were simply shouted down by the mob.

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As we should all remember, the situation soon unravelled, and the stock collapsed by 98%, only to be revived again, only to collapse again, this time to nil under the shadow of alleged accounting frauds.

But even as Nortel was falling, income trusts were rising because of that all-important law of the market: underwriters abhor a vacuum. The phony performance metrics that gave rise to the likes of Nortel were dusted off and applied to many income trusts. Once again, the bottom line was ignored, and investors piled in.

Some claimed that income trusts were not like Nortel because they were "real businesses that made money." Sure, the vast majority turned a profit, but in many cases it was not enough to justify the high cash distributions they were spewing out to entice investors to bid the unit prices even higher. Investors were allocating their money based on short-term cash budgeting figures, instead of longterm profit-generating ability.

Too many people-underwriters, lawyers, accountants, and specialist portfolio managers were making money from the income trust boom.

Carrying on the theme of the decade, high returns were promised, profits were ignored, and investors took the bait. Once again, it was simply too good to be true. As the income trust bubble deflated, everyone ignored the faulty investment basics, and all the focus fell on the change in tax policy by the government. Our market regulators remained silent once more, and no justice ever came of the collapse.

Even the National Post summed up income trusts in a recent decade retrospective as "one of the best income-generating vehicles in history." It mirrors the selective memory of the market perfectly, because in reality, there was a whole lot less income than people realize.

As the decade progressed, we came to the liquidity crunch, which was kicked off in Canada by the non-bank ABCP crisis. Once again, investors were enticed into a fundamentally flawed investment that promised them higher returns, just like with

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Nortel and the business trusts. Many retail investors suffered major losses as their funds were tied up for years in the frozen investments.

After it was all said and done, the penalties for the brokerage firms involved were seen as a joke by many of those who were scarred by the scandal.

And remember, our lawmakers and regulators have been missing in action for the past decade, with no word on their current whereabouts. Nobody is watching your back for you-that's your job.

In sum, there has been no justice, and thus, no lessons learned or changes made. And so naturally, the theme continues to roll on with products like leveraged ETFs-long on advertised promises, and short on explanations of their inherent shortcomings. After these products lose steam, the theme will be recycled with the same conclusion, that the promise of higher returns was just too good to be true.

So, as we gear up for RRSP season, remember the blueprint of the so-called lost decade: a new investment promises higher returns, but the hidden risks are not explained. When it seems too good to be true, take a pass.

Al Rosen is a forensic accountant with Accountability Research Corp in Toronto

VOLUNTEER INTERVENORS ARE NEEDED

Many investors need help filing their complaints. The industry processes are complex and filled with pitfalls. A properly filed complaint can be the key to getting your money back. Even after the complaint is made most people find it helpful to talk to someone and help them communicate with the firm and OBSI.

We are asking if there any experienced person willing to volunteer their time to help others with their complaints. Those who resolved their dispute could do it.

They could act as intervenors with the right to receive documents and communicate with firms and/or OBSI but would have no decision powers. That would remain the exclusive right of the complainant. Send an email to sipa@sipa.ca if you are willing to help out fellow members. Write INTERVENOR in the subject line.

INVESTING IN ETFs – INVESTOR BEWARE

For some time SIPA has been recommending that members consider investing in ETFs instead of mutual funds however industry has developed many new ETF projects that are much like funds. The BCSC provides alerts for investors, the following is for ETFs:

[What do I need to know about Exchange-Traded Funds \(ETFs\) in general?](#)

The term Exchange-Traded Funds is used to describe a category of products, some very risky, some not so risky. Before making a decision to invest in an ETF, you need to find out what kind of ETF is being proposed.

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If you are considering a “leveraged” or “inverse” ETF, make sure you understand just how risky that might be. There are 15 leveraged ETFs and 19 inverse-ETFs trading in Canada today. Leveraged and inverse ETF products are better suited to professional investors than they are to retail investors. Professional traders use these short-term trading vehicles to speculate, or to hedge other positions they hold.

Leveraged ETFs promise the possibility of double or triple the returns of an index or a commodity on a daily basis. An index is simply a basket of investment products. Inverse products promise the reverse of the return of an index on a daily basis. Some inverse ETFs promise double or triple the reverse of the return of an index. If prices on the market go up and down over time, you will lose money on these products whether you buy a leveraged or inverse ETF, if you hold it for any length of time.

Conventional index ETFs are set up to replicate an index. Retail investors who wish to hold a diversified portfolio for a long time may choose to use these ETFs for longer term investing. Index ETFs may track a broad market index like the Standard and Poors 500 or narrower indices focused on various sectors, commodities or countries.

Until such time as Government puts adequate controls on the investment industry and creates a body to provide oversight on the industry/regulators, and an independent body responsible for Investor Protection with the power to investigate and restore victims of wrongdoing, investing in Canada will remain INVESTOR BEWARE.

INVESTOR ADVOCATE ACTIVITY – Larry Elford

Many Canadians are active investor advocates. Larry Elford of Lethbridge, Alberta is dedicated to trying to make a difference. has a website for his Breach of Trust film at www.breachoftrust.ca which has taken a lot of time and effort. Also he operates a blog at www.investoradvocates. Links are provided at www.sipa.ca. Larry formerly worked in the investment industry and so has inside knowledge of some of the systemic practices which harm investors. Larry is to be applauded for his efforts. The following is his recent letter to the editor, and is included here for our members.

While Chinese manufacturers were blending water and chalk together and selling it worldwide as “infant formula”, here in Canada financial institutions were blending sub prime mortgages into investment pools and selling them as “top rated”. They continued even after learning the investments were imploding. The big difference between countries seems to be in how the government helped the scam in Canada. Government regulators (Alberta Securities Commission) gave permission to violate our laws to sell toxic products. (They have actually granted thousands of legal exemptions) I see this as indicative of a corrupted securities regulatory system. Iris Evans, Alberta finance minister in charge of the Alberta Securities Commission refuses to talk. My request is for her to explain these matters or resign.

Unanswered by Minister Evans: (seventh request)

-What public interest is served by allowing laws to be violated by people who sell investments?

-Why are legal exemptions allowed without public input or public notice?

-Where is the open transparency on several thousand such legal tricks?

-Why is a public Minister suppressing this matter? Is protecting financial corporations more important than protecting the public?

The sellers of the failed investments obtained immunity from civil action. They also sought immunity from criminal action. This speaks volumes about our misplaced trust in bankers. It is also sad to see how our civil servants worked to hide and cover their own miss-steps in this dance.

Resignations are needed for public servants acting contrary to the public interest. An inquiry should be held. It is the largest investment failure in recent history, and it was caused by corruption. Class action (against regulators) and criminal investigation into negligence or breach of the public trust may be warranted. Iris Evans again, please come clean or resign. Every minister in charge of every securities commission in Canada should be asked the same question by the public.

Discussions in Lethbridge, Calgary, Edmonton and Ottawa have ensued to consider civil or legal means of holding public servants to account. If you wish to participate in a "public accountability action" project contact lelford@shaw.ca

Larry Elford, 103 - 7 A Ave South, Lethbridge AB

Larry Elford is a former member of the financial industry who is now speaking out and blowing the whistle on customer abusive practices by those who call themselves financial professionals. He earned the designations CFP, CIM, FCSI, Associate Portfolio Manager while working and maintains free investor protection sites outlining the tricks of the trade at: www.breachoftrust.ca and www.investoradvocates.ca

FROM THE SIPA MAILBAG

"I live in Calgary and a small investor and would like to know what is out there in terms of people that one should beware of."

The answer is to access the alphabetical list of disciplined persons on the CSA website at <http://www.securities-administrators.ca/disciplinedpersons.aspx?id=74>. Ten years ago SIPA's first website published an alphabetical list of disciplined persons in SIPA's Brokers Hall of Shame webpage. The list included only publicly available information, but SIPA was forced (by threatened lawsuits) to remove the list. Meanwhile the BCSC published their list. Now finally the CSA has published a comprehensive list. However only a few provinces show disciplines before 2004 and SROs are exempted. Check SIPA's website.

GOVERNMENT TO IMPLEMENT NATIONAL REGULATOR

In December CanWest News interviewed Finance Minister Jim Flaherty and reported "The federal government will introduce legislation early next year to implement a national securities regulator, and is willing to push ahead with the plan with or without Quebec and Alberta, says Finance Minister Jim Flaherty."

There has been opposition by both Alberta and Quebec and SIPA had predicted that a national regulator would not happen in the foreseeable future because we believe that the Quebec regulator FMA is much superior to the Canadian Securities Administrators in other jurisdictions. However, the CanWest interview with Minister Flaherty provides us with renewed hope that this can happen.

CanWest News Service had an exclusive year-end interview with Minister Flaherty and quotes him as saying "Our view is that the federal government has jurisdiction with respect to this issue. That's not to say that the provinces don't also have some jurisdiction."

Alberta and Quebec are seeking support through the courts to sustain the existing provincial jurisdiction for securities regulation. SIPA had proposed to the Federal Government that a National Investor Protection Agency should be initiated as Government is responsible for consumer protection. It was Glorianne Stromberg who coined the phrase consumer/investor in one of her reports in the nineties, and SIPA has used this expression in submissions to Government.

CanWest rightly states that "Canada is the only major developed country that doesn't have a national regulator that monitors financial markets." They also quote Minister Flaherty as stating "We think it's in the best interests of the country that we have a common securities regulator. It's the one gap we have in our financial system. And quite frankly, it's a source of embarrassment internationally."

The fact that Government has established the Canadian Securities Transition Office to implement the national regulator indicates serious intent to establish a national regulator and avoid embarrassment with the rest of the world.

It's also time that Canada takes steps to provide some serious investor protection. There are signs that legislation to get tough with white collar crime is part of an overall approach to improve the investment environment and address retirement security for Canadians. Let us hope that 2010 will see significant moves forward.

SIPA has already met with the CSTO on January 11th and also participated in a roundtable discussion on a proposed investor panel on January 22nd. Doug Hyndman, CSTO chair and former BCSC Chair, was present along with other CSTO staff and

another dozen or so individuals. Ermanno Pascutto of FAIR acted as moderator. The Common Front for Retirement Security (CFRS), of which SIPA is one of 21 participating organizations, was also one of the invitees. Dan Braniff, CFRS Founder, asked Stan Buell to also represent the CFRS at the roundtable as the missions of SIPA and the CFRS are well aligned.

The meeting was to be held in confidence to promote free and open discussion, but we anticipate a report will be issued to provide a summary of the discussions.

WHY HAVE WE SUFFERED LACK OF INVESTOR PROTECTION FOR SO LONG

It continues to amaze me that so many people know so much and yet so little is done. The financial meltdown has certainly increased awareness in a way investor advocates could not. I believe this situation has prevailed simply because there is no authority with a responsibility for consumer/investor protection, and the regulators have delegated consumer/investor protection to the self regulatory organizations. Hence the popular expression of "the fox guarding the henhouse". Unfortunately this is an apt expression and it is something that must change.

On January 10th, 2010, Ellen Roseman wrote an article entitled "[Financial consumers unprotected](#)". Ellen writes about the situation in the United States stating "There's a greater focus on investor protection in the wake of the latest financial crisis. U.S. President Barack Obama hopes to create a regulator that would look out for the interests of financial consumers." Ellen also writes "Harvard law professor Elizabeth Warren says consumers are at risk from unsafe financial products."

This is not news but there does seem to be more awareness that the financial industry precipitated this calamity and had to be bailed out by Government at the taxpayers expense. Now those who created the crisis want to maintain control and develop rules and regulations as we go forward. It is time to have some fresh thinking and to develop a regulatory process that focuses on protecting the consumer/investor and reinstating those unfortunate enough to lose their savings due to industry fraud and wrongdoing.

Ellen writes "[Canada has an even more fragmented system than does the United States – with a variety of federal and provincial financial regulators, self-regulatory organizations and ombudsman services. Canadian regulators recently reached a \\$150 million settlement with financial institutions that sold a dangerous product called asset-backed commercial paper \(ABCP\), amounting to about half a cent on each dollar of ABCP sold. While small investors were fortunate to regain their savings, they did not get compensation for their 18 months of work, personal turmoil, hardship or expenses, said Michael Miles, chair of the Retail ABCP Owners Committee. "Our experience provides direct evidence of how the Canadian system of dealing with white-collar fraud does not work to protect Canadian citizens," he said.](#)"

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FINANCE PROFESSOR THINKS A NATIONAL SECURITIES REGULATOR IS COMING – UNTIL THAT DAY IT REMAINS INVESTOR BEWARE

The London Free Press blames our inadequate securities system for a scandal that cost Ontario investors \$20 million when they were sold shares in Onco Petroleum that are now considered worthless. Chip Martin writes *"How could a convicted fraudster in Quebec move to London, set up a company, get it listed on a stock exchange and sell more than \$20 million in shares far and wide that are now worthless?"...*

"Our securities system is inadequate, says an expert in finance." "People know it's confusing and convoluted, so you can get away with things for longer before they will find out," says Colette Southam, assistant professor of finance at the Richard Ivey School of Business, University of Western Ontario."

The story comes as no surprise to investor advocates, the regulators, the investment industry or the media. The public is also much more aware now that the financial meltdown has exposed many of the frauds and systemic practices of wrongdoing that depended upon rising markets to conceal the frauds and scams.

The fund industry has been able to operate for many years skimming off the top and deceiving consumer-investors with client statements that concealed the true state of affairs and a sales staff that could sell refrigerators to Eskimos. .

The London Free Press reports "Under his birth name in Quebec, Carl Gagnon amassed a criminal record of 69 counts, including multiple charges of fraud, but also counts of bigamy and personation. The Free Press has learned his record, acquired from 1983 to 2000, produced sentences totaling more than five years. In 2000, Gagnon changed his name to Robert Vanier and moved to London, where he established Onco Petroleum and began selling shares and touting his dream of tapping old natural gas deposits with new technology amid higher energy prices.

It's estimated Vanier and his associates raised as much as \$20 million to \$30 million selling more than 160 million Onco shares in Ontario, Quebec and the U.S. until public trading of Onco shares was suspended in 2008, eight months after it went public. In the meantime share values plunged from \$5 apiece to 15 cents. And without trading, they have no value at all."

This is not the first case of a fraudster moving to another jurisdiction to resume his fraudulent practices. The main problem is that these regulatory deficiencies are generally covered up so that the public is not fully aware of how their savings are being depleted and their retirement security jeopardized by the failure of regulators to provide adequate protection and eliminate the many systemic practices of wrongdoing that go unpunished and erode consumer-investor savings.

The London Free press reports:

"She (Colette Southam) said the "hodgepodge" of different regulators means slow detection of bad practices. The finance professor thinks a national regulator for securities is coming and among those calling for it is federal Finance Minister Jim Flaherty.

Until that day, it remains investor beware."