



SIPA

SMALL INVESTOR PROTECTION ASSOCIATION

**A Voice for Small Investors
Seeking Truth and Justice**

August 27, 2015

Expert Committee to Consider Financial Advisory and Financial Planning Policy Alternatives
c/o Frost Building North, Room 458
4th Floor, 95 Grosvenor Street
Toronto, Ontario, M7A 1Z1

Re: Financial Planning/Advice Consultation

The opportunity of expressing our opinion is appreciated.

Firstly I would like to pass on a message recently received from a member. It sums up the situation investors face when they have an issue:

"During the MFDA Hearing I did get to meet three of his other victims. The elderly gentleman who testified before me came out in the hall and shook my hand and wished me luck before I went in. He was visibly shaken, and with tears in his eyes told me " I feel like I have been living in hell the last five years" Another elderly woman who came everyday to the Hearing and sat with me and sobbed every day. Her previously unencumbered home will likely never be paid off now in her lifetime. Another lady came only one day and told me she too was a victim but did not pursue a complaint or litigation because during that same time period she discovered her husband had cancer and she had to weigh where she wanted to spend her time and energy. These people made a deep impression on me that things must change."

Over the last few decades we have witnessed many initiatives which at first seemed to indicate that the situation could be changed so that small investors would be better treated. Alas, history shows that all these good initiatives failed to come to fruition. Even the Wise Persons Committee that produced their recommendation for a national regulator entitled "It's Time" failed to precipitate its implementation.

Granted the late Finance Minister Flaherty took action to implement a Canadians Securities Transition Office to guide the transition to a national regulator but the realization of this objective remains in doubt.

In the USA President Obama supports the Department of Labor proposal to introduce legislation to hold industry responsible with a fiduciary duty for those handling retirement savings. Of course industry has mounted a strong offensive to prevent this from happening.

Having considered the situation in Canada for the last several years we came to the conclusion that the fundamental issue that is the root cause of so many Canadians losing their retirement savings is that Canadians are being deceived by the investment industry and their captured regulators. It seems that ever more individuals are becoming aware of this with talk of illusion and deception.



The facts are:

- Most Canadians trust their financial advisor
- Most Canadians believe their financial advisor has a fiduciary duty
- The CSA says that “Financial Advisor” is an unregulated business title
- Financial Advisors are registered as “A dealing representative – A sales person.” They do not have a legal requirement to look after a client’s best interests.
- Most Canadians, including financial journalists, believe Adviser and Advisor are the same word. Dictionaries indicate this is so.
- The industry puts a spin on the meaning to deceive investors and gain their trust.

The result of this trickery or illusion is that Canadians place their complete trust and their life savings in the hands of a mutual fund sales person or an insurance sales person. These sales persons are motivated by commission and operate in a sales environment with a commission grid that encourages maximization of commission.

Additional facts are:

- The worst products pay the highest rates of commission
- Leverage provides additional cash to generate commission

As a result many investors end up highly leveraged with the riskiest products and end up with life-altering losses whenever there is a market correction.

Unfortunately people are not aware of these facts and feel no need to learn more because they have been led to believe they can place their trust in an industry and that the regulators do provide investor protection.

This illusion fed to the general public is unfair. It results in many personal tragedies when hard working people lose their lifetime savings quite often late in life when they do not have the time to recover. It creates desperate life-altering events that result in health issues, loss of hope and faith, disruption of families and sometimes victims taking their own life.

As reported by the CBC (<http://www.cbc.ca/news/canada/calgary/calgary-ponzi-scheme-trial-alleged-victims-hope-for-guilty-verdict-1.2954375>):

- *“Gloria Lozinski says her sister, 42-year-old Edna Coulic, killed herself after losing \$300,000. Her family says based on writings left behind by Coulic, it was the financial loss that led to the vibrant woman’s suicide.”*

As received in an e-mail:

- *“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”*



This is only a couple of the reported tragedies caused by the failure of industry and regulators to treat Canadians honestly, fairly, and in good faith.

SIPA has submitted comments and made presentations over the last fifteen years but feel the regulators are unwilling or unable to act to provide the investor protection they claim to provide.

In 2004 SIPA made a submission to the Ontario Standing Commission on Economic Affairs (http://www.sipa.ca/library/SIPAdocs/830_SIPA-SCFEA_20040811.pdf) stating:

Our leaders must take action to provide adequate investor protection. The provincial government should act immediately to legislate the power of restitution to the securities commission. The securities commission should establish an office of investor protection to monitor the complaints received by industry. This office should be empowered to investigate and to order forensic audits in situations where wrongdoing has permeated an organization.

Also in 2004 the CARP/SIPA report "Giving Small Investors A Fair Chance" was issued (http://www.sipa.ca/library/SIPAdocs/CARP-SIPA_Report_20040928.pdf) stating:

In order to ensure investor protection, a federal Investor Protection Act should be passed which includes the establishment of a single, national independent Investor Protection Agency (IPA) accountable to Industry Canada or the Attorney General of Canada. The IPA, in collaboration with provincial regulators, should be empowered to:

- oversee the regulatory bodies*
- establish a central registry of industry participants*
- create a central database of complaints*
- monitor dispute resolutions*
- order independent investigations or inquiries*
- order restitution in cases of industry wrongdoing.*

In 2006 we made a presentation to the Senate Standing Committee on Banking Trade and Commerce (http://www.sipa.ca/library/SIPAdocs/830_SenCom-SIPA_20050214.PDF) stating:

"It's a matter of Trust. Our society is based on trust. Canadians place their trust in our Government. The Government delegates regulation of the securities industry to the provinces. The provinces in turn delegate regulation to securities administrators. Finally, securities administrators delegate investor protection to self-regulatory organizations. It is the responsibility of Government, Regulators and Police to enable all Canadians to live and work in a society that does not foster wrongdoing."

"Government must take action to enable Canadians to trust. Canadians need: · One national Financial Services Regulator · A national Investor Protection Agency · A national register of representatives accessible to the public SIPA asks that the Senate call for an inquiry into this problem of investors losing their life savings due to investment industry widespread practices of wrongdoing."

Also in 2006 we made a submission to the Joint Forum of Financial Market Regulators (http://www.sipa.ca/library/SIPAdocs/600_JointForum_SIPASubmission_2005Jan17.pdf) stating:

"Our Government, the regulators, and the leaders of the investment industry have a social and moral responsibility to ensure that this essential industry is operated in a moral and ethical fashion, as well as a legal fashion. Canadians deserve a well-regulated industry upon which they can rely and be entitled to fair treatment. Industry representatives or companies with a culture of non-compliance should not be allowed to subject investors to financial predation and subsequent abuse. Regulators should not allow industry participants to flaunt the rules and regulations and then rely upon legal tactics to vigorously defend situations that are morally and ethically indefensible."



In 2008 SIPA jointly with the USCO and the NPSCF made a submission to the Expert Panel on Securities Regulation (<http://www.sipa.ca/library/SIPAdocs/ExpertPanel-CCSI-20080602.pdf>)

"In order to ensure investor protection, a federal Investor Protection Act should be passed which includes the establishment of a single, national independent Investor Protection Agency (IPA) accountable to Industry Canada or the Attorney General of Canada. The IPA, in collaboration with provincial regulators, should be empowered to: • oversee the regulatory bodies • establish a central registry of industry participants • create a central database of complaints • monitor dispute resolutions • order independent investigations or inquiries • order restitution in cases of industry wrongdoing."

In 2010 SIPA made a submission "Because They Can" to the Expert Panel on Securities Regulation (<http://www.sipa.ca/library/SIPASubmissions/ExpertPanel-BecauseTheyCan-20080530.pdf>) stating:

"It's a matter of Trust. Our society is based on trust. Canadians place their trust in our Government. The Government delegates regulation of the securities industry to the provinces. The provinces in turn delegate regulation to securities administrators. Finally, securities administrators delegate investor protection to self-regulatory organizations. It is the responsibility of Government, Regulators and Police to enable all Canadians to live and work in a society that does not foster wrongdoing."

Many investor voices are included in this report to hopefully raise Expert Panel members' awareness of the tragedy taking place in our society. When we hear the stories of victim's of financial crime and bear witness to the failure of our regulatory system to stem the flow of fraud and wrongdoing, and the failure of our justice system to provide a timely means for the victims to gain restitution, we ask ourselves why the investment industry behaves in such a way, we realize sadly that it's because they can.

As recently as April 13, 2015 SIPA had written to the CSA expressing our continued concerns (http://www.sipa.ca/library/SIPASubmissions/500_Ltr_to_CSA_20150413.pdf) stating:

If the regulators truly intend to protect investors, they must ensure that registered representatives are required to disclose whether they are in fact a sales representative, an advising representative, or a portfolio manager and to use their registration in all advertising. Truth is imperative.

The second fundamental issue is lack of fiduciary duty. Canadians believe their representative titled "Financial Advisor" is a fiduciary. A fiduciary duty needs to be required of all firms and representatives offering financial products or advice. It is unfortunate when regulators are persuaded by the industry to avoid imposing fiduciary duty on the basis of argument that appears to be unreasonable.

If the present deceptive practices coupled with the lack of fiduciary duty are allowed to continue, many Canadians will continue to lose their life savings every year. This is intolerable. The Canadian Securities Administrators must act to prevent this from happening.

We respect the individuals on the Expert Panel devoting their time to this study but many of the questions appear less significant relative to the financial carnage due to the industry deception that causes so many to lose their savings. Nevertheless we offer our responses as follows.

1. What activities are within the scope of financial planning? Is the provision of financial advice different from financial planning? If so, please explain the distinction.

Financial planning should be a plan for life's financial events in general terms. Financial advice should be specific to indicate action required to execute the overall plan.

2. Is the current regulatory scheme governing those who engage in financial planning and/or the giving of financial advice adequate?



We believe the current regulatory system is failing to provide adequate investor protection. We believe Canadians are being misled when regulators try to create the perception that the industry is well regulated and that they protect investors. It goes well beyond lack of disclosure, fraudulent KYCs, weak enforcement, failure to investigate systemic issues and a myriad of other faults.

We believe the fundamental issue is that Canadians are being deceived into believing their "Financial Advisor", who is really a commission driven sales person, will look after their best interests.

3. What legal standard(s) should govern conflicts of interest and potential conflicts of interest that may arise in financial planning and the giving of financial advice?

The industry has proven to be incapable of managing conflicts of interests to safeguard investors. There should be a legislated fiduciary responsibility for all firms and individuals handling Canadians life savings. It is particularly important for retirement savings with the transition from defined benefit to defined contribution pension plans. The majority of Canadians do need financial advice but it must be provided by a fiduciary. To allow the present practice to continue will result in many more Canadian losing their life savings and having their lives destroyed.

4. To what extent, if at all, should the activities of those who engage in financial planning and/or giving financial advice be further regulated? Please consider the following in your response:
 - a. Licensing and registration requirements;
 - b. Education, training and ethical responsibilities;
 - c. Titles and designations of individuals who engage in financial planning and/or the giving of financial advice;
 - d. Specific activities that should be included or excluded in a regulatory scheme;
 - e. Costs and other burdens of regulation;
 - f. Regulation of compensation; and
 - g. Complaints and discipline mechanisms.

Unless and until there is a legislated fiduciary requirement fiddling with rules and regulations will make little difference. As long as the industry and its representatives are not required to look after investors' best interests, the victimization of the Canadian people will continue.

5. What harm(s) and/or benefit(s) do consumers experience in the current environment?
Please provide specific evidence to support your views where available.

Consumers experience life-altering loss of their retirement savings when they place their trust in a commission driven sales person operating in a product sales environment rather than an advice environment. This situation will worsen with changing age demographics.

A review of investigations by the regulators will reveal the trickery employed by the industry. Media reports indicate the damage to individuals. The SIPA report in 2004 indicated hundreds of voices that should convey the impact on small investors.



Recently the CBC reported:

“Gloria Lozinski says her sister, 42-year-old Edna Coulic, killed herself after losing \$300,000. Her family says based on writings left behind by Coulic, it was the financial loss that led to the vibrant woman’s suicide.”

6. Should consumers have access to a central registry of information regarding individuals and entities that engage in financial planning and the giving of financial advice including their complaint or discipline history?

Absolutely. The problem now is that there is lack of disclosure and Canadians are being deceived. The regulators say investors must become educated and must carry out due diligence. They seem to put the onus on investors to be responsible for their investments but fail to disclose essential information and in fact mislead Canadians.

Closing Comment

We live in a trusting society. Canadians believe they can trust professionals that are regulated like doctors, lawyers and other professionals. Yes, they trust their “Financial Advisors” because they believe they are regulated professionals. They are not aware they are simply sales persons without responsibility to look after clients’ best interests; they do not feel a need to study medicine or a need to study finance and investments. They are busy with careers and family.

Doctors know their responsibilities and are dedicated to looking after their patients. Unfortunately they also expect the same from their financial advisor.

Did I tell you about the good doctor who bought into “Freedom 55” and worked 24/7 during his career dreaming of retirement at age 55. I met him in the OSC lobby when he was about 52 and had just learned that all of his savings were lost. He said there was no hope for retirement for him and he would have to work the rest of his life.

Is this fair?

Sincerely,

Stan I. Buell

Founder & President