



## 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 pursue improvement of industry regulation and enforcement.

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Small Investor Protection Association - A voice for the small investor

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## Welcome new members!

You should receive your membership card and your User Name and Password to enable you to access the Member's Pages of SIPA's website at [www.sipa.to](http://www.sipa.to).

## SIPA Sentinel

The SIPA Sentinel is a newsletter for members. It contains material we hope is of interest to you. Members are welcome to submit comments for including in a future issue.

From time to time SIPA will be including articles that offer opinions on subjects related to investing and the regulatory system. These are meant to help increase investor awareness, and SIPA may not share these opinions.

## 90-year-old defrauded

The Canadian Press reported on *June 28, 2004* that "a former broker with CIBC World Markets who cheated a 90-year-old customer out of \$350,000 in 2001, then moved to Moscow, has been banned from the Canadian investment industry for life."

CP reports that the broker "was also ordered to repay \$353,587, fined \$150,000 and ordered to pay \$17,000 in costs ... recovery of the funds is unlikely."

The broker has left the country so there is no hope of the IDA collecting their fines. It seems the IDA also has a problem collecting fines from former members. However, the reported good news is that "CIBC made full restitution to the customer in May 2002."

## 92-year-old wins in court

A recent Ontario Appeals Court decision awarded the Plaintiff restitution of her losses at Hampton Securities. The broker had leveraged her by about 300% and operated her account for his benefit. Although the lower court found in her favour, the decision was appealed. The Appeal Court upheld the decision of the trial court judge. So finally at 92 years of age Ms. Hayward gets her money back. This decision is available on the SIPA website.

## What's wrong with our regulators?

The two cases above clearly illustrate the problem with our regulatory system. Brokers are able to take advantage of seniors by doing things that are fundamentally wrong and the self regulatory system is failing to provide investor protection.

Seniors are trusting and It is only when a relative or a friend discovers that something is wrong that matters can be put right.

In the Hayward case above, complaints were made to the regulators and yet no action was taken to resolve the issue. The broker appears not to have been disciplined by the regulators.

It seems fundamentally wrong for any financial advisor to put at risk a client in their eighties.

Unfortunately these are not isolated cases. Very few reach the media and very few reach court. Investors losing their savings due to industry wrongdoing is a huge problem and requires Government action.

*The following article by John De Goey addresses the need for ethical conduct from brokers and planners offering financial advice. It is refreshing to see opinions such as this emanating from senior industry participants. Next we need to see our politicians take action to legislate consumer/investor protection in the investment industry. Self regulation has failed to provide investor protection.*



The Professional Financial Advisor

*Toronto-based Financial Advisor John De Goey offers thoughts about fee-based advice, holistic planning and capital markets.*

## **Harmonization Yes, But Ethics?**

By John De Goey | Friday, June 18, 2004

The problem is, neither Paul Martin nor Stephen Harper has actually accepted the challenge of entrenching trust, transparency and integrity as basic Canadian values regarding financial products, services and advice.

When it comes to the regulation of financial products and financial advice, almost everyone claims to be in favour of having one set of regulatory rules. Most financial services participants want to accomplish that by moving swiftly and purposefully toward harmonized securities regulation. In fact, a wide variety of stakeholders are now calling for a rationalization of securities regulation, which is long overdue.

In the half-year that has followed the release of Michael Phelps' "Wise Persons Committee" Report, many provincial governments have been keeping their powder dry on the issue, preferring to wait until the political deck in Ottawa has been re-shuffled. Unfortunately, the opportunity to make a clear linkage between big picture regulatory harmonization and retail level advisor ethics during the current federal election campaign is being squandered. Specifically, the rationale put forward for having a single national securities regulator revolves around issues like cost effectiveness, consistency, fairness and international competitiveness. The second part of this overdue reform is the related question of how to regulate front-line financial services providers. It revolves around issues like transparency of disclosure, the elimination of conflicts and consumer protection. Can anyone come up with another policy issue that could serve as a more complete microcosm of the current election campaign?

Stephen Harper has been urging Canadians to "demand better" when it comes to government, making this a campaign about government ethics and integrity. Paul Martin, in stark contrast, has been talking about "Canadian values", but has not managed to resonate with the general electorate. While on the hustings, people only want to know about what he might do if faced with a minority government situation. It seems both have an opportunity to seize the day. Voters aren't responding to Mr. Martin's message, but they are listening to what Mr. Harper has to say. In short, the

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Conservatives seem to be controlling the overall agenda and that agenda is one of trust in government and its institutions.

The problem is, neither Paul Martin nor Stephen Harper has actually accepted the challenge of entrenching trust, transparency and integrity as basic Canadian values regarding financial products, services and advice. Both have been silent on that issue. Given their respective track records and the conspicuous opportunity before them, that seems rather remarkable. Both have talked about the broad need to have a national securities regulator, but neither has come out in favour of having that regulator ultimately function in a way that actually protects ordinary investors from unscrupulous advisors.

This is not to suggest that either is skirting the issue, it's just that the linkage doesn't seem to have donned on them yet. Imagine- there are hundreds of billions of dollars invested in mutual funds by Canadian voters. Many of these voters see mutual funds as a "black box" and do not understand how they work or how advisors are paid. This asymmetry of information has led to considerable abuses in the past. A fix is desperately required.

Organizations like CARP (the Canadian Association of Retired Persons) and SIPA (the Small Investor Protection Association) have demanded this kind of action for years. Both have large and politically savvy members that are waiting anxiously to throw their support behind the first party that stands up against powerful financial institutions and in favour of ordinary consumers by legislating greater transparency.

If Mr. Harper were to take a firm stand in favour of transparency and ethics in financial advice, he could clearly demonstrate a positive commitment to real change as opposed to what many perceive as an opportunistic critique of a fortuitous (for him) external situation. It would show that he can solve problems rather than merely capitalize on them.

Mr. Martin, on the other hand, has an even better opportunity. Moving forcefully to support meaningful transparency and ethical conduct from brokers and planners across the country would create a conspicuous break with his party's immediate past and give voters tangible evidence that he really means it when he says he intends to do things differently. As perhaps Canada's most successful Minister of Finance, no one ever doubted Mr. Martin's word or resolve. As Prime Minister, that reputation- which took years of sacrifice to build- now hangs in the balance in the wake of the sponsorship scandal and the most recent Ontario budget- neither of which reflect directly on him.

Canadians aren't entirely sure which Paul Martin they should believe.

The commitments that are made or not made in entrenching a harmonized regulatory regime that features a conspicuously consumer-centric regulatory framework with real teeth in the next few weeks will play a role in helping Canadians come to a clear determination on a crucial issue. That, in turn, will go a long way toward determining who gets the keys to 24 Sussex Drive on June 29 th.

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*Jonathan Chevreau addresses the issue of covering up the extent of wrongdoing in the investment industry by disputes being resolved out of court with gag orders to prevent the public from learning of the many disputes and the details of these dispute and settlements. The industry has recently required firms to report complaints to the regulators, but the regulators will not make this information available to the public. For these reasons the huge problem of small investors losing their savings has been covered up for far too long.*

## Grievances never see the light of day

**Banks, brokerages use confidentiality pacts to great effect**

Jonathan Chevreau, Financial Post  
June 25, 2004

Quietly, behind the scenes, investors who lost money the last few years are receiving settlements from Canadian financial institutions.

But you won't hear about them in the press because one of the stipulations made is to adhere to the terms of so-called "gag orders."

In return for financial compensation, these investors are put in a position where they would violate legal contracts if they tell the world specifics of their arrangements.

Several large banks or their brokerage arms are involved, including several cases once prominent in the press.

Some got nowhere going to industry ombudspersons, associations or regulators. Legal action and the threat of airing their grievances publicly seems to have been what motivated institutions to settle.

As they pay their hush money, high-priced lawyers add disclaimers that such settlement agreements do not constitute admission of wrongdoing by the firms - though it's hard to draw any other conclusion.

"After five years, I'm beaten into submission," one such investor told me this week. "I'm not allowed to disparage the bank at all. We're living in fear of the might of the bank closing down on us and suing for everything we've got."

Even with the promise of anonymity, this source would not divulge the terms of the settlement. "We are not being made whole. It's just a cessation of hostilities."

But I was given a sample of the legalese in the gag order. He/she "will not disclose terms and conditions of the settlement offer to any third party except financial advisors or lawyers, except as required by law and excepting any communication with securities regulatory or other enforcement authorities and self regulatory organizations."



CREDIT: Yvonne Berg, CanWest News Service

Stan Buell, founded the Small Investor Protection Association after settling a dispute with a big bank several years ago: "The [financial] industry covers up this huge problem of investors losing due to industry wrongdoing."

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In other words, plenty of professional people know about these cases -- just not the press and the general public.

A confidentiality agreement for another case which reached the Ontario Supreme Court reads in part: "is not to be, and will not be disseminated or disclosed to anyone, whether individual, corporation or other entity, public or private ... the Undersigned covenant & agree that they will only state to any third party that they can not speak about the Action."

The only exceptions are for disclosures made to lawyers or accountants for tax purposes.

The agreement makes explicit reference to the payment made to the investor: "In consideration of the within settlement, this Release, and the payment of the said consideration, the Releasers shall not make a claim or take proceedings against any other person or corporation ...."

Investment Dealers Association vice-president of enforcement Alex Popovic says the latter agreement contravenes Member Regulation Notice 076, issued May 22, 2001.

That notice clearly states agreements "shall not contain language which would prevent the client from disclosing to securities regulatory authorities, self-regulatory organizations or other enforcement authorities the facts or terms of the settlement."

Popovic appends his personal view that "anything that chills a client from coming forward is not in keeping with the intent of this notice."

The Mutual Fund Dealers Association also prohibits confidentiality restrictions on settlements between IDA members and clients, says MFDA president Larry Waite. Any settlement above \$25,000, and in some cases \$15,000, must be reported, he says. However, he adds, these disclosure requirements do not extend to the press.

Investor advocate Joe Killoran ([www.investorism.com](http://www.investorism.com)) suggests settlements are being wrapped up in advance of the election because "the banks are hoping the Liberals get back in and allow amalgamation."

Another investor advocate who fought and won his own case before taking on others is Jim Roache. He says there was a "flurry" of settlements two months ago, when it looked like a re-elected Liberal majority was a slam dunk. Bay Street wanted to clear the decks for a new round of bank mergers and didn't want the dirty laundry of abused investor cases upsetting their cosy relationships with the ruling party.

Seldom do these investors recoup their losses, Roache says. Most are lucky to get 50 cents on the dollar five years after the fact. "Many get nothing. The vast majority decide to write it off to experience."

Settlements save both sides the costs of dragging litigation through the courts. The rule of thumb is it's not worth pursuing unless the amount involved is at least \$250,000 and you have another \$250,000 to chase it down, Roache says.

The "financial euthanasia" of Canadian retirees is as important an election issue as health care, Killoran says. Gag orders would never be tolerated in the health care system -- the public has a right

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to know about the spread of SARS or other diseases. Investors should receive similar warnings of financial industry practices that threaten investors' financial well-being, Killoran believes.

Stan Buell created the Small Investor Protection Association after settling a dispute with a big bank several years ago. Since then, a number of SIPA members have quietly settled out of court.

"The industry covers up this huge problem of investors losing due to industry wrongdoing."

Ironically, Buell suggests it may be better that these cases are covered up. "If everyone knew the truth there would be many fewer small investors."

He concludes regulators have failed to protect investors and it's "time for the government to step in." Buell has contacted leaders of all major federal parties and hopes investor protection legislation will be introduced after the election.

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### From the St. Petersburg Times

*Helen Huntley writes about the difficulty in collecting after the award. Many Canadians have experienced these difficulties after dealing with penny stock dealers and small time financial advisors. There are many cases where victims have been unable to collect because the money has been spent or spirited away. The strongest argument for dealing with the large institutions is that if there is wrongdoing these institutions will still be there to pay up if you are able to get a court decision in your favour.*

## Collecting from broker is hard part



By HELEN HUNTLEY, Times Personal Finance Editor  
Published May 23, 2004

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Winning an arbitration award was the easy part of a case Clearwater lawyer Jeffrey Coleman took on for a Palm Harbor investor who got burned on high-risk stock investments. Now comes the hard part: collecting.

A panel of arbitrators for the National Association of Securities Dealers ruled last month that New York stockbroker Michael McNulty mishandled client Berhardine Timmerscheidt's account. Coleman said McNulty traded the hairdresser's account aggressively and inappropriately and doctored statements to hide her losses. The panel ordered McNulty to pay \$158,571 plus interest, costs and attorney's fees. McNulty denied the charges but did not show up at the hearing and says he will not

pay.  
"I'm obligated to pay, but I don't have the money," he said. "If they're going to go ahead and pursue it, they will never see a dime."

It's not unusual for brokers accused of investment wrongdoing to plead poverty. That's why lawyers usually go after the broker's employer too. Things get sticky when the company isn't in any better financial shape than the broker.

Coleman filed a complaint against Weatherly Securities, where McNulty worked, but the company filed for bankruptcy, which brought all legal proceedings against it to a halt. A receiver is liquidating

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Weatherly's assets for the Securities Investor Protection Corp., which protects investors if assets are lost or stolen. However, SIPC doesn't reimburse investors for bad investments, even if a broker was found to be negligent or to have acted fraudulently.

Florida investors are a little better off than those in most states. If they have been awarded damages they cannot collect, they may qualify for up to \$10,000 from the Florida Securities Guaranty Fund. However, they have to wait two years after getting a court judgment (arbitration awards must be confirmed in court) and no more than \$100,000 can be paid out in total claims against one broker or brokerage. With so many restrictions, the fund paid only 14 claims each of the past two years.

McNulty says he couldn't defend himself against Timmerscheidt's allegations. Although he worked in Brooklyn, Weatherly's headquarters was in the World Trade Center and company records were destroyed in the terrorist attacks. McNulty said records he kept in his own office were seized by federal agents investigating Park South Securities, a company where he worked after leaving Weatherly. McNulty now works for another New York brokerage, though he could be suspended from the industry if he fails to pay the award.

Coleman says he hasn't given up yet on collecting from McNulty.

The case is one that should unsettle any investor who deals with a brokerage. Is the company not only reputable but financially stable enough to weather a few storms? And have you done all you can to prevent problems from occurring in your account? If you don't want to take much risk, tell your broker in writing to eliminate any possibility of a misunderstanding. Check your statements to make sure every transaction is one you authorized. If you see something amiss, call right away, and don't drop the matter until you get a satisfactory answer.

Q. For years I have been purchasing EE bonds as gifts for my grandchildren, who are in elementary school. Recently it was suggested that I purchase I bonds instead. Would this be a better investment? If so where can I purchase them and where can I get information about them? I cannot use the Internet.

Savings bond interest rates change every six months, but currently I bonds are a better deal, yielding 3.39 percent while EE bonds yield 2.84 percent. The I bond rate is partly tied to the rate of inflation. You can buy I bonds and get information about them at the same bank where you now get EE bonds. You might have to increase the size of your gifts since the smallest I bond costs \$50 (I bonds are sold at face value), while the smallest EE bond costs \$25.

Other places to get savings bond information are the Internet ([www.treasurydirect.gov](http://www.treasurydirect.gov)) and the Federal Reserve Bank of Richmond, which you can call toll-free at 1 (800) 322-1909. Eventually savings bonds will be sold only over the Internet, so you might want to learn how to use it.

*- Helen Huntley writes about investing and markets for the Times. If you have a question about investments or personal finance, send it to On Money. We'll try to answer those we think are of greatest reader interest. All questions must be submitted in writing, but readers' names will not be published. Send questions to [huntley@sptimes.com](mailto:huntley@sptimes.com) or Helen Huntley, Times, P.O. Box 1121, St. Petersburg, FL 33731.*

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## SIPA's First Alert System

Many members have joined SIPA because they have experienced problems with their financial advisor or investment company. Some of the problems are with large bank owned brokerages, insurance companies, mutual fund companies, and investment dealers. Others are with smaller investment firms or individual financial advisors.

Complaints are generally made when there is a discovery that money has been lost. The most common cause is discretionary trading without authority and unsuitable investments. These problems are magnified when leverage is involved. Some situations involve fraud.

Some of the problems are the result of deliberate breach of rules and some are the result of incompetence.

Products involved include shares, mutual funds, limited partnerships, guaranteed investments, and many other products. In many cases investors do not understand the products being sold to them and simply trust their advisor.

While many financial advisors are trying to look after their clients, some are not sufficiently well trained to do so, some are pushed by the industry to generate commissions without due regard to what is best for their clients, and some are simply motivated by making money by any means. The net result in every case is that small investors are losing their savings because self regulation has failed to provide adequate investor protection.

The dispute resolution systems are failing to provide appropriate means for seeking redress and civil litigation appears to be the only solution for small investors. Often this can be costly and time consuming resulting in many investors with a dispute compromising with an out of court settlement rather than seeking a final fair judgement from the court.

In many cases the small investor is on his own battling the industry. In a few cases investors have managed to band together to create a stronger case and share the expense burden. To facilitate this approach SIPA created out First Alert System. Several of our members have already benefited by being introduced to other members with disputes with the same firm and finally gaining restitution.

To date only 32% of SIPA members have advised that they have a complaint. Approximately 40 different firms have been named. Some of our members belong to groups who have banded together to seek redress, and some of these groups involve dozens of members.

We encourage all members to ensure that they have provided the names of their advisor and the firm so that our First Alert System will be more effective.

For the interest of members we provide the following statistics:

- Number of complaints registered by members 145
- Unnamed firms 23
- Nesbitt Burns 21
- CIBC Wood Gundy 16
- RBC Dominion Securities 12
- ScotiaMcLeod 8
- TD Securities 8

Keep in mind that most of these complaints are only alleged wrongdoing. Also, when cases are settled out of court there is no admission of wrongdoing.