



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.

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Small Investor Protection Association - A voice for the small investor

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## 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 investment and regulation. These are meant to help increase investor awareness, and SIPA may not share these opinions.

## YES WE CAN

YES WE CAN. These three words were made famous by President Barack Obama during his election campaign. Now he is the first black president of the U.S.A.

Well, YES WE CAN if we work together to help improve the investment environment for Canadians. For more than a decade SIPA has worked on your behalf to try to get improvements to investor protection and dispute resolution. Many have helped along the way. Our association with the United Senior Citizens of Ontario and the National Pensioners and Senior Citizens Federation and joint presentations and submissions helped. The support for the OSC Investor Town Hall Event when about 500 people turned out to give a message that the regulator was failing to protect investors helped. Individuals including Ken Kivenko, Dr. Pamela Reeve, Diane Urquhart, Larry Elford, Robert Kyle, Jim Roache and Joe Killoran amongst others helped. All those victims of investment fraud and wrongdoing who spoke out helped. Together we have conveyed a message ... Government must take action to protect small investors.

In January 13<sup>th</sup>, 2009, the Expert Panel on Securities Regulation issued their Final Report with recommendations for a National Regulator and other improvements to Canada's regulatory system.

Last year SIPA made an unsolicited submission with recommendations. We said:

"While the Expert Panel's task is to make recommendation regarding securities regulation in Canada, we believe the panel must understand the impact on Canadian retail investors of the current laissez faire attitude of the captive regulators. The current regulatory system does not protect investors, in part because investor protection is delegated to the SROs. The dispute resolution mechanisms are industry sponsored and investors are not getting a fair deal."

On January 12<sup>th</sup>, 2009, the Expert Panel on Securities Regulation released its Final Report which stated on page 6:

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“Although not a core mandate item, we felt compelled to address a number of investor issues in light of our findings. We focus on the complaint-handling and financial redress mechanisms in Canada as well as the lack of representation of investors in the securities regulatory policy development process.”

Subsequent to SIPA's submission we were invited to attend an informal luncheon with the members of the Expert Panel together with Dan Braniff, founder of the Common Front for Retirement Security and SIPA member. Later we were invited to attend a round table discussion with the panel and a dozen others. During these discussions we were able to expand on the issues affecting small investors.

SIPA's submission included the following top three recommendations regarding investor protection:

1. National Regulator for Financial Services
2. When industry is found to have committed fraud or wrongdoing, the authority would also be empowered to order restitution to the victims from an Investor Protection Fund.
3. Financial Services Investor Protection Fund

The Panel's Final Report included the following recommendations on page 94:

1. The establishment of the Canadian Securities Commission to administer a single securities act for Canada.
2. A securities regulator with the power to order compensation in the case of a violation of securities law so that the investor would not be required to resort to the courts
3. Establishment of an investor compensation fund funded by industry to allow the securities regulator to directly compensate investors for a violation of securities law

The Panel's Final Report and submissions by SIPA and the CCSI are published on SIPA's website at [www.sipa.ca](http://www.sipa.ca).

Now it is up to you to express your support to Members of Parliament for all parties and to let Government know you support these initiatives. A template letter is provided on the back page of this issue. Let us continue to work together until these recommendations become reality.

## ABCP SMALL INVESTORS TO GET THEIR MONEY BACK - FINALLY

An article in the Financial Post "ABCP holders get bonds for old paper" by John Goodwood on January 22, 2009, provides an excellent outline of the terms of the industry developed settlement. It has taken almost two years to arrive at a restructured solution after a marathon effort led by Purdy Crawford that included town hall meetings across Canada to hear from ABCP investors.

John deftly summarizes this ABCP fiasco when he writes "the story of the 20 issuing trusts that created the market and their exposure to the credit default swap market is now well-known." The story of the re-structuring process was followed closely by the media as the collapse of the ABCP market seemed to precipitate a much more widespread financial collapse and loss of trust in the financial industry and its regulators.

This fiasco is one of many that had as a common element exemption from rules and regulations. John writes "But some of the more curious questions surround the rapid rise of the group of bond insurers that, thanks to the fact they were not regulated and therefore unhindered by red tape, managed to provide guarantees on about \$200-billion of corporate debt through the use of credit default swaps with little collateral to back it up."

Canada's fractured regulatory system fails investors in part because with so many different regulators without one authority responsible for investment in Canada, the industry is able to create products that escape regulation. There is no investor protection for investors that have been sold unregulated products and victims must rely upon the civil courts to try to attain justice.

Although the OSC, OSFI and IIROC have announced investigations they have yet to announce any results. John writes "The likelihood of any serious penalties now is limited because the restructuring included a provision for legal immunity for all the players in the ABCP market. Not only are the firms that made and sold the paper exempt from lawsuits under the deal, they are also protected from being fined. "

It is this immunity of the law that should be of great concern for all Canadians. It is a dangerous precedent when white collar criminals can take advantage of investors, and then be immune from any prosecution. Fortunately, the small investors who had less than a million invested will get their money back, but this represents a minor portion of the total. Pension funds and other large investors will get bonds with a long maturity and will probably have to accept a substantial discount if they need cash before maturity.

The ABCP fiasco is yet more proof that Canada's regulators are failing investors and underlines the need for a national regulator as recommended by the Expert Panel on Securities Regulation. Most importantly the Panel recommends the regulator have power to order restitution and also that an Investor Protection Fund be established to pay compensation to victims without the need to go to court.

It should be noted that the Quebec Authority already has a regulator similar to that proposed by the Panel for Canada. Will the other provinces agree to the Panel's recommendations?

## PICKING BANANAS FROM AN APPLE TREE

This morning as I was driving to a meeting with SIPA's Advisory Committee, I heard the words of a song that said "picking bananas from an apple tree". Now that seemed strange to me but what it really meant was that some things seem impossible. It made me think of SIPA's mission and the decade we have spent trying to contribute to an improved investment environment where investors can trust the industry and depend upon the regulators to provide restitution when they have been victimized by investment fraud and wrongdoing. Was I trying to pick bananas from an apple tree?

It has not been an easy road and I find it distressing whenever I hear from another person who has lost their savings due to investment fraud or wrongdoing. I know that it is difficult to get justice and to recover lost savings. That is why we try to alert investors so they can avoid loss or at least mitigate the effect when things start to go wrong.

We continue to advise investors to monitor their investments on a regular basis and to take action when they believe there is an issue. You should not hesitate to seek a second opinion or to check with someone you trust. You should also discuss investment issues with family members. In particular you should help seniors as they are most prone to suffering loss due to their trusting nature.

There are so many different products created by the industry that few investors can understand all these products and often depend upon the advice of their "advisor". Often this "advisor" is really just an intermediary, or sales agent, selling a product that they may not fully understand. Investors should not invest in a product they do not fully understand. Investors need to know the risk of loss, the costs associated with the product, whether there are redemption fees, and what the net proceeds would be if they sold it today.

Many guaranteed products have caused unwary investors to lose significant portions of their savings. Guarantees that provide full value only at the maturity date some years in the future are simply no good for most investors. That is why Treasury Bills and Government Bonds may be the best investments, particularly for seniors.

But getting back to bananas and apples, the Final Report from the Expert Panel on Securities Regulation has made recommendations we have not seen before. In Quebec they already have a regulator that can and will provide restitution for aggrieved investors. The Expert Panel recommends a similar approach for a new national regulator. That is why it is so important for Canadians to contact their Member of Parliament and show their support for the Expert Panel recommendations.

Can you imagine bananas on our apple trees?

## COMPLAINTS AND DISPUTES

Not all members may be aware of the aids SIPA provides to members. While many new members indicate they have a complaint on their application form, they may not be aware of our FIRST ALERT SYSTEM (FAS). This is SIPA's database to record members' complaints and the firms. We try to put members into contact with other members who deal with the same company. We also initiated our FIRST AID CONSULTATION (FAC) system which provides a free consultation with a securities litigation lawyer. At present we need you to first complete the FAS forms and then apply for FAC. There are seven lawyers who are willing to provide pro bono service for an initial consultation which should indicate whether you have an actionable case.

## IN THE MEDIA - CBC RADIO – THE CURRENT - January 14, 2009

Anna Maria Clemonti interviewed Diane Francis on The Current January 14th regarding a national regulator. She is in favour of a national regulator and rightly said this has been recommended in the past. They also aired a clip of a recent interview of Stan Buell of SIPA, as well as comments from Bill Rice, Chair of the Alberta Securities Commission who is opposed to a national regulator. Unfortunately they missed the real news and that is the recommendation of a national regulator with power to order restitution and a fund to reimburse investors. We have suggested they do a follow up program to address this issue.

## IN THE MEDIA – HALIFAX HERALD ARTICLE BY CLARE MELLOR

### Investors group calls for securities regulator

By CLARE MELLOR Business Reporter  
Thu. Jan 29 - 7:14 AM

Armand Laflamme was 61 when he started a battle to recover his life savings that were lost because of wrongdoing by the investment industry. It was a decade later that a unanimous decision by the Supreme Court of Canada allowed the Quebec man to be compensated. Mr. Laflamme died a few years later.

A national securities regulator with the power to order compensation to victims when securities laws are broken is the most crucial recommendation of the Expert Panel on Securities Regulation, says a national group representing small investors. Right now, investors who are victims of crimes by the investment industry usually have to face long court battles to try to get their money back, says Stan Buell, president of the Small Investor Protection Association, a non-profit group based in Markham, Ont.

Canada is the only developed country without a national securities regulator. The provinces have jurisdiction over securities regulation.

"The lack of prosecutions and the minimal penalties handed out do little to discourage the perpetrators, and as a result there are widespread practices that are causing investors to lose their savings at a rate that we estimate to be in excess of \$20 billion a year," Mr. Buell said recently.

The panel, mandated by the federal government to examine securities regulation across the country, released its final report and recommendations earlier this month. The panel recommended the establishment of a national securities regulator with the power to order compensation to victims when securities laws are breached, causing losses. This would be done through "establishment of an investor compensation fund funded by the industry," says the expert panel's final report.

The panel, which also provided a blueprint for a federal securities act, recommends that it be mandatory for members of the investment industry to participate in government-regulated dispute resolutions.

"This is important for investors because currently the regulators, other than Quebec, do not prevent financial frauds and wrongdoing from happening and more importantly do not get the victims' money back when their savings are lost due to fraud or wrongdoing," Mr. Buell said by email.

The Small Investor Protection Association has recommended that the federal government closely follow the Quebec model as it moves toward setting up a national securities regulator.

Quebec has a single authority for regulating the financial services industry, combining the regulators for securities, banks, insurance companies and mutual funds, Mr. Buell said.

"Aggrieved investors know where to go," he said.

Because it is unlikely that such a regulator will be in place soon, the association asked federal Finance Minister Jim Flaherty earlier this month for immediate legislation to protect investors.

It has recommended legislation that gives an existing government body the power to order restitution to investors in cases of breach of securities law and to establish a compensation fund.

"While we believe that ultimately Canada will have a national regulator, our seniors can not wait," the association said in a letter to Mr. Flaherty.

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'There are widespread practices that are causing investors to lose their savings at a rate that we estimate to be in excess of \$20 billion a year.' Stan Buell, Small Investor Protection Association

## EXCESSIVE EXECUTIVE COMPENSATION

In mid 2007 SIPA joined with the U.S.C.O. AND THE N.P.S.C.F. to support a Private Member's Bill BY Michael Prue, M.P.P. in the Ontario Legislature ... "The Conrad Black Executive Compensation Abuse Act, 2007". Black now resides in the U.S.A. .... in jail.

A glaring past example is the excessive compensation paid to John Roth of Nortel just prior to the freefall in share prices that caused many investors and Nortel employees to lose most of their savings. Now there is talk of delayed bonuses until "the proof is in the pudding". This would be a wise move to remove the temptation to cook the books to show immediate bonus enhancing results without considering longer term results.

The Financial Post reports that Royal Bank CEO Gord Nixon "handed back a \$5 million bonus", Bank of Montreal CEO Bill Downe said "he was giving back a \$4.1 million bonus", and CIBC CEO Gerry McCaughey "would receive pay with a one year delay for 2007 of \$5.3 million after he waived a \$1.4 million bonus." The Canadian Coalition for Good Governance is reported as saying "After reports on pay from three of the country's top five banks, Bay Street appeared to be behind the curve in holding back bonuses from bankers until the risks of trades they made were apparent."

The excessive compensation of corporate executives while investors are losing their savings due to poor governance leading to corporate losses is a continuing concern. It seems obscene that corporate executives receive millions in pay and bonuses while Canadians are losing billions of savings due to governance failures and are now seeing their pensions at risk. Canadians must speak out.

## REPORTING ECONOMIC CRIME ONLINE

If you experience or suspect a scam or a fraud you can now report it on line at <https://www.recol.ca/login.aspx> Reporting Economic Crime Online (RECOL) is an initiative that involves an integrated partnership between International, Federal and Provincial Law Enforcement agencies, as well as, with regulators and private commercial organizations.

This service is administered by the National White Collar Crime Centre of Canada and is supported by the Royal Canadian Mounted Police and other participating agencies.

## Letter to Member of Parliament

For decades there have been discussions and reports about a national regulator. Most experts, including the Wise Persons Committee in 2003, agree that Canada should have a national regulator for many reasons. However, Canadians need more than a national regulator. We need better enforcement, investor protection and reimbursement for victims of investment fraud and wrongdoing

It is unfair that Canadians are losing their savings at a rate estimated to be in excess of \$20 billion per year while the perpetrators of the financial frauds and fiascos escape unscathed and regulators fail to act to protect investors.

Finally, the Expert Panel has issued a report in January that includes recommendations that will benefit all Canadians. While the recommendation for a national regulator is not new, for the first time there are recommendations that are beyond the terms of reference. The Small Investor Protection Association, a volunteer organization formed because there is no Government Authority affording investor protection for all Canadians, made a submission regarding investor protection which was not within the Panel's mandate, but fortunately the Panel included the following in their report:

"Although not a core mandate item, we felt compelled to address a number of investor issues in light of our findings. We focus on the complaint-handling and financial redress mechanisms in Canada as well as the lack of representation of investors in the securities regulatory policy development process."

This statement was followed by the Expert Panel's recommendations including:

1. The establishment of the Canadian Securities Commission to administer a single securities act for Canada.
2. A securities regulator with the power to order compensation in the case of a violation of securities law so that the investor would not be required to resort to the courts.
3. Establishment of an investor compensation fund funded by industry to allow the securities regulator to directly compensate investors for a violation of securities law.

Please support the implementation of the Expert Panel's recommendations, particularly those regarding enforcement, investor protection, timely resolution of disputes and establishing a fund to reimburse victims.

Yours truly