

From Investment Executive

Market-timing deals shameful

Penalties were designed to placate the masses

By [Glorianne Stromberg](#)

When securities regulators and SROs closed the book on their market-timing allegations, they opened a new book — one of shame for themselves and for many branches of the financial services industry.

The market-timing settlements demonstrate either a complete lack of regulatory understanding or a reckless disregard of what went on and why it was wrong.

The monetary penalties, although nominally large and earmarked for restitution payments, left plenty on the table for market participants. The penalties were designed to appeal to the masses and to calm them.

They did nothing to address the flawed behaviour of those who permitted market-timing to occur, or to prevent its reoccurrence once the spotlight moved away.

As well, the settlement agreements, media releases and regulatory announcements withheld information that would permit investors, advisors and other fund managers to identify the scope of the problems and take protective measures. This omission has added significance in that at least 20 other unnamed fund managers were involved in permitting abusive market-timing in an unidentified number of mutual funds.

The regulators have stated that they do not intend to take action against these fund managers. By implication, there will be no regulatory help for those who invested in these funds and who want to seek restitution, even if they are able to identify the funds involved.

What possible justification is there for the unequal treatment of investors who have been abused by the market-timing transactions carried out in these other funds? If the problem is systemic, as regulators and some industry participants have alleged, why has provision for industry-wide restitution and a systemic solution not been made?

These issues are all entries in the book of shame. Here are some more:

> Market-timing is not illegal. This statement is a myth. Those who make it are attempting to downplay the seriousness of the abusive conduct and justify the less than satisfactory actions taken to deal with it.

One cannot help asking if they are saying that market-timing is legal. Surely not.

Are they saying it is legal to permit or otherwise engage in market-timing that breaches one's fiduciary obligations? Surely not.

Are they saying market participants who breach their fiduciary obligations are fit for registration under securities legislation or to act as fund managers? Surely not.

> Market-timing and its effects were not well known or understood in the Canadian mutual fund industry. If you believe that, I have a bridge for sale.

> We haven't done anything legally wrong, although it may have been morally wrong.

The **Investment Dealers Association of Canada** and the investment dealers named in the IDA notices of market-timing hearings repeated this refrain to rationalize the settlement proceedings. Is this supposed to provide comfort? What does it say about their respective fitness for registration or regulation? Law and equity merged years ago.

> Investment advisors did nothing wrong. This is debatable. Were they advising clients to invest in the same mutual funds they were helping other clients market-time? Some of these advisors were gaming their own proprietary funds and wrap programs. All these dealers/advisors were acting as selling agents for the funds. Are they still employed?

> Securities regulation is too prescriptive. It should be principles-based. The market-timing proceedings highlight the fallacy of these statements.

> We're putting procedures in place to address market-timing. Duh! They've been in place for years. They just haven't been applied.

> The problem is systemic. This argument is used to justify not applying sanctions against fund managers and senior management of the firms involved and allowing them to continue to deal with the public. It ignores the fact that it is people who do things and who should be held to account. They should not be allowed to hide behind alleged systemic veils.

Indeed, the stains of the market-timing fiasco will not soon fade. IE