



Al Rosen
Between the Lines

Wicked curveballs

Want to recoup your business trust losses? There are three strikes against you from the start

Despite several warnings about business income trusts that have appeared in this space over the past two years, many investors have lost piles of money and are probably wondering if there is anything they can do to reclaim their losses. Heating Oil Partners, Advanced Fiber Technologies, FMF Capital Group, Specialty Foods Group, Associated Brands, Art In Motion, Boyd Group, SFK Pulp, Menu Foods, Clearwater Seafoods, Arriscraft International, Clean Power, Entertainment One, and General Donlee have all lost between 50% and 100% of their value since their IPO.

Am I digging up painful memories? Because it doesn't stop there. In fact, 15 other business trusts have dropped between 20% and 50% in value from their IPO price. The average age of these 29 bottom-feeders is less than two years. That's not exactly the performance one would have expected from an asset class that has been erroneously marketed as being safe and stable. All in, the odds of picking a winning business trust IPO since Jan. 1, 2001, have been roughly equal, with 62 losers and just 51 winners. We'll call it even, in light of the distributions that investors might have received.

OK, enough of the gloom. Is there any hope to recoup those losses? Maybe you feel you were misled about the safety and security of your business trust investments, and you're just mad enough to consider suing someone. You might want to take a strip off those founding shareholders who converted their business into a trust, which then quickly cut its distributions. Or, how about those investment bankers who pocketed more than \$1.4 billion in underwriting fees from selling business trusts over the past five years?

First, you have to consider what might have caused the price decline. Did false commentary or misleading financial statements exist in the IPO documents? In general, it is very difficult to challenge the contents of an offering prospectus if more than six months have passed since the IPO. Unfortunately, it's child's play in Canada to cover up exaggerations and questionable financial reporting for six months. That's Strike 1 against investors. As it stands, there are no enforceable rules to govern the distributable cash numbers and cash



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payout ratios in which business trust investors place so much faith. Thus, a successful prosecution for inflated figures is nearly impossible.

Assume you want to plow ahead with legal action anyway. You'll need a class-action lawyer who is willing to work on a contingency basis. Class-action suits are very expensive to launch and pursue. Defendants have several legal alternatives for dragging out cases. We have some cases in our forensic accounting practice that have been ongoing more than 10 years. Unless your class-action lawyer perceives either a quick settlement or a large eventual win, he won't touch the case. The so-called benefits to investors of class-action laws are often more illusory than real. Of course, you can always bankroll your own case. You'll need about \$2 million. That's Strike 2.

So, maybe it's not about the money, but rather the principle. How about taking satisfaction in putting behind bars those who wronged you? Here

comes Strike 3. Virtually no serious prosecutions for misleading financial reporting have been led by the provincial securities commissions in Canada. You're done; have a seat.

Some investment bankers (you know, the ones sitting on the \$1.4 billion pile of your money) are actually lobbying clients to harass their MPs into allowing the business trust fleecings to continue. Here's a better idea: use your time to write your MP and demand better investor protections in Canada, starting with a serious clampdown on the financial reporting abuses condoned by our conflicted auditors, and the marketing deceptions perpetrated by investment bankers. Then swing for the fences by asking for a shakeup of our securities regulators, so that some of the crooks can be put where they belong. □

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