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SMALL INVESTOR PROTECTION ASSOCIATION

November 10, 2003

Via courier

David Brown, Q.C. Chair
Ontario Securities Commission
20 Queen Street West, 19 Floor
Toronto, Ontario, M5H 3S8.

Dear Mr. Brown:

Our members and the Canadian public at large are increasingly alarmed at the continuing mutual fund trading scandals in the United States. For millions of Canadians, their mutual fund investments represent their entire savings and retirement nest egg. Eliot Spitzer recently referred to the U.S. mutual fund industry as " a cesspool" and Sen. Peter Fitzgerald, the Chair of the Senate subcommittee referred to the fund industry as inhabited by too many people leeching off investors.

Yet, the OSC has remained deafeningly silent on its investigations in Canada. This is not serving the public interest as Canadians reflect on our own Enron's such as Nortel, Bre-X, Corel, Cinar, YBM, Livent, Atlas Cold Storage… It was less than 3 years ago that the Transamerica fund scandal occurred. Every day we hear how seniors, retirees, financial illiterates and widows are being abused by the fund industry by recommending unsuitable investments and inappropriate leverage.

The 1995 and 1998 Stromberg Reports identified many areas for improved investor protection but little progress has been made. In fact, a number of exemption orders have watered-down investor protection despite our vigorous objections. Recently the CSA /OSC backed down from a proposed governance regime that would have better protected mutual fund investors.

In July, your own Compliance team of the Capital Markets Branch released its annual report detailing the results of its compliance reviews of investment counsel and portfolio managers (ICPMs).

The report related to activities from April 1, 2002 to March 31, 2003. It described various compliance initiatives and issues relating to ICPMs, and reported *common* deficiencies identified during field reviews.

The 10 most common deficiencies noted in the reviews of deal with:

1. policy for fairness in allocation of investment opportunities;
2. maintenance of books and records;
3. statement of policies;
4. policies and procedures manual;
5. capital calculations;
6. portfolio management;
7. marketing;
8. know your client and suitability information;
9. personal trading; and
10. registration issues.

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Among other things, OSC staff observed firms charging advisory fees to clients that were not consistent with the rate stated in the advisory agreement, and clients' portfolio holdings that were not in compliance with their investment restrictions.

The review also found that performance data of mutual funds was not disclosed for the required time periods, firms suggested their reporting was AIMR compliant when it wasn't, and that personal trading policies were in place but not enforced. The report also noted that:

"We issued a similar report covering our activities from April 1, 2001 to March 31, 2002 and note that seven of the deficiencies included in this year's report were also **included in last year's report."**

These items alone should be propelling the OSC into decisive action.

The Nov. 6 Questionnaire sent to fund companies barely scratches the surface of the probe required. Additionally, it provides the industry an opportunity to mask its prevailing practices.

On behalf of small investors, we insist that the Ontario Securities Commission promptly conduct a serious in-depth investigation of mutual fund industry practices including the distribution chain and progressively inform the concerned public of the findings and corrective actions.

Your earliest response to this urgent matter would be greatly appreciated.

Sincerely,

Ken Kivenko P.Eng.

Chairman, Advisory Committee

Cc Stan Buell ,President

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