SIPA Sentinel

July 2009

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.

Small Investor Protection Association - A voice for the small investor

SIPA SENTINEL

The SIPA Sentinel is issued bi-monthly. From time to time we include articles and re-prints 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.

MADOFF GETS 150 YEARS!

The recent market meltdown is exposing schemes and scams that were able to exist in good markets. The biggest Ponzi scheme operated by Madoff is only one of many schemes expose. Bernie Madoff took advantage of the trust that his friends and investors placed in him as do all fraudsters.

The Financial Post headline on June 29th states *"The biggest Madoff victim is trust".* The article by Jonathan Chevreau continues with a quote *"What Bernard L. Madoff did far transcends the loss of money; it involves his betrayal of the virtues people hold dearest - love, friendship, trust"*.

Some excerpts from his article follow.

But living the rest of his mortal life in prison, followed by a longer spell in the flames of hell, won't alleviate the financial pain his many victims are suffering. And by betraying trust, a commodity not easily restored, Madoff may also have inflicted a lasting wound on the entire financial services industry, particularly the managed money portion of it.

In my 1998 book, The Wealthy Boomer, I espoused the virtues of managed money relative to leaving stock-picking to an amateur - the average do-it-yourself investor. It exhorted readers to "Eat well and sleep well with Managed Money." Eating well was a reference to the long-term growth of stocks; sleeping well to the safety of bonds. In theory, a balanced portfolio of stocks and bonds allows both.

But that formula didn't reckon on the kind of fraud Madoff's victims encountered. In the post-Madoff investment world we now inhabit, it seems the only protection against such occurrences would be to diversify your money managers. Rather than hand over your *entire nest egg to a single person or organization, it appears a safer course would be to divide it three or four ways.*

Ask yourself if you could live with seeing 75%, 50% or 25% of your life's savings wiped out by fraud and you'll have some inkling how many ways you might want to split it. Many couples already use different advisors and that may be a good start. If each spouse splits their serious money two ways, only a quarter of their joint nest egg would be exposed to any particular single fraud.

Kevin Reardon, president of Brookfield-based Shakespeare Wealth Management Inc. … says Madoff stands as "an example of how the financial services industry has failed to protect the best interests of consumers. It highlights the increased need for consumers to proceed cautiously ... and the importance of asking pointed questions before hiring a professional."

Unfortunately for many honest and competent investment counselors, Madoff is one more reason to avoid Managed Money. This debacle will embolden more young, computer-literate do-it-yourself investors to use online discount brokers and make their own investment decisions.

Some victims' comments are not uncommon. The industry, regulators and Government need to pay more attention to the impact on Canadian lives and take action to provide meaningful investor protection.

1. Ilene Kent: "I'm thrilled. The judge sent a very clear message. I didn't think it would be 150 years."

2. Richard Friedman: "The SEC and SIPC failed to protect us. They will fail to protect you too."

3. Miriam Siegman: "The man (Madoff) in the courtroom robbed me. He discarded me like road kill."

4. Dominic Ambrosino: "The fallout from having your entire life savings robbed from under your nose is like nothing you can describe."

5. Sharon Lissauer: "(Madoff) shattered my dreams. He has made my life a living hell."

PETER KENT'S MOTHER VICTIMIZED BY CANADIAN PONZI

Another alleged Ponzi scheme appears to have cost Canadian investors $50 million or more. Earl Jones was able to operate for many years and escape detection by the regulators.

Peter Kent's mother had trusted Earl Jones and placed all of her savings with him, a total of $500,000. This is tragic, but she is only one of many victims. How do these things happen when Canada claims to have a well regulated investment industry?

It would seem rather simple to require anyone who sells investment products or provides financial advice to be registered with a national registry and provide legislation that makes it a criminal offence not to comply with mandatory jail sentences and a requirement to pay back the victims.

The industry regulating itself leaves Canadians vulnerable to schemes where products are created to circumvent the rules and regulations, and exemptions from the rules are regularly provided to members of the industry.

As Robert Golden wrote in 1999, his book entitled "INVESTOR BEWARE" still holds true.

All Canadian investors should deal only with individuals and firms that are registered with the regulators, and determine the limits of the registrations. They need to ask "what are they registered to sell?" While this provides no guarantee against being defrauded, it eliminates being defrauded by those who operate as unregistered fraudsters.

Secondly, investors should not have all their eggs in one basket. Forget the advice that putting all your money with one advisor enables more efficient management and better investment performance. If your money is with the wrong person all of your savings can disappear. Because investor protection is ineffective you need to take certain steps to minimize the risk of significant loss.

Thirdly, diversification is essential to minimize risk of loss. Most victims of substantial loss had all of their savings concentrated in one product or type of product and/or one advisor.

ARE YOU CONCERNED ABOUT PENSIONS?

With the financial market meltdown and the failure of many established companies, employees and pensioners are concerned about their pensions. During the last couple of years as pension fund investments deteriorated and the ABCP debacle focused attention on the issue of pensions being underfunded, the trend towards defined contribution (DC) pension plans accelerated.

Federal government pensions and many workplace pensions are defined benefit (DB) plans. That means the pensioners know how much they will receive when they retire, and often these benefits or payments will be adjusted for cost of living increases. These plans provide retirement security provided they are fully funded.

The Canada Pension Plan is a defined benefit plan so Canadians who have contributed can count on a certain amount of pension.

However, defined contribution (DC) plans provide for contributions to be paid in but the benefit for pensioners will depend upon how successful the investments have been. The risk of investment return is being transferred from the organizations providing the pensions to the employees, so their pensions will depend upon the success of the investments.

Over the last couple of years most of the pension plans have suffered a decline in value which casts doubt on whether the defined benefit plans will be able to pay pensioners the amount promised. When companies go bankrupt it is probable that the pensioners will see a reduction in their benefits.

You should take an interest in your retirement security and speak to your Member of Parliament if you have a concern. Make your views known to any association to which you belong, including SIPA, so they can properly represent your interests.

ACROSS CANADA MORE AND MORE CANADIANS ARE SPEAKING OUT

Numerous studies are revealing how Canadian investors are losing their savings due to investment industry greed and wrongdoing. More Canadians are now speaking out against this malpractice. One of them is Larry Elford in Lethbridge, Alberta. Larry has a website and a blog. SIPA provides links to each. Larry is a veteran of the industry now retired and is able to provide insider information. He has also researched the laws and regulations and has developed some interesting approaches. Recently Larry issued the following Press Release.

LOST MONEY IN THE MARKETS? FEELING MISLED, MISGUIDED? GET YOUR MONEY BACK!

Lethbridge, Alberta, May 25, 2009 - Ethical investment industry veterans collaborate across Canada to help customers recover money lost by abusive or predatory financial practices. Investoradvocates.ca provides a template letter of complaint, outlines infractions, carries instructions, and background on how to effectively fight the strongest financial institutions in Canada to recover what is rightfully yours. A public service provided by www.investoradvocates.ca and Visual Investigations.

www.investoradvocates.ca is a non profit public service organization dedicated to informing and protecting the investing public through "best professional practices".

It is founded by investment industry experts, presently or formerly employed within the Canadian financial and investment industry who feel that the financial services industry is over-weighted towards predatory practices instead of professional practices.

Investoradvocates.ca is aware of the "tricks of the trade" that cause the public to be financially abused, at a net cost of cutting the future investment returns of most investors by more than half. We have placed some of those tricks on our web site, and specifically, under the topic heading "GET YOUR MONEY BACK", have placed instructions that allow an abused investor to follow concrete steps in hopes of getting a return of their investment losses.

We believe that any industry that proclaims professional status should not be allowed to be self serving at the expense of trusting and vulnerable clients, and that such clients need to be made whole. It must be pointed out that the industry currently "polices and judges" itself, so investors must find unconventional ways and means to obtain fairness in a one sided system. Investoradvocates.ca hopes to change this imbalance and promote fairness and ethics in its place.

For steps on one method to obtain redress, go to the flogg topic "GET YOUR MONEY BACK" at investoradvocates.ca. Other topics titled "Solutions, Self Defense" also carry ways to obtain redress.

www.investoradvocates.ca web flogg against predatory financial practices

Web.me.com/lelford film journey of an investment industry insider

Larry Elford tel: 403 328-0391

FORGERY CONTINUES TO BE A PROBLEM

Many members have encountered forgery when they examined their investment documentation. The practice seems to be fairly widespread and is often revealed in the disciplines published by the regulators. However, it does not seem to be prosecuted as a crime and therefore the practice continues. The following article from Investment Executive provides detail of one case.

Edmonton rep fined for forging client signatures
Lamontagne handed six-month suspension by IIROC panel

By IE Staff
May 12, 2009

A hearing panel of the Investment Industry Regulatory Organization of Canada on

Tuesday imposed penalties on Dustin Rene Lamontagne for forging client signatures.

The violations occurred when he was a registered representative with the Edmonton branch of CIBC Investor Services Inc.

At a disciplinary hearing held on Dec. 11, 2008, in Calgary, the panel found that in August 2006 Lamontagne forged 13 client signatures to his client investment plans and financial advice disclosure documents.

The panel also found that on Oct. 23, 2006, Lamontagne misled CIBC by providing false information in respect of client signature irregularities, all involving his client investment plans and financial advice disclosure documents.

In imposing penalties, the panel suspended Lamontagne for six months from the date of the Hearing (which makes the end of the suspension until June 10) and ordered him to pay a fine $35,000. The panel also ordered Lamontagne to pay costs in the amount of $15,000.

The Investment Dealers Association of Canada formally initiated the investigation into Lamontagne's conduct on June 4, 2008.

Lamontagne is no longer a Registrant with the Investment Industry Regulatory Organization of Canada (IIROC).

The panel issued its decision and reasons on January 27. IE

Glossary of Canada's Criminal Code - Forgery and Offences Resembling Forgery 366. Forgery - <http://www.canlii.org/ca/sta/c-46/sec366.html>

TRUSTING YOUR FINANCIAL ADVISOR

Let’s face it, everyone trusts their financial advisor, but is that prudent? The regulators keep statistics on complaints and settlements reported by the industry. These statistics show that 12 per cent of registered representatives have “events’ registered against them. That suggests that your chances are 1 in 8 of having an issue with your advisor.

Jonathan Chevreau has been writing about the investment industry for many years and started the Wealthy Bloomer blog where he publishes articles and invites comment. His blog is well worth a visit. Recently he wrote an article below as a follow up to the CBC program entitled *“Can You Trust Your Advisor?”* Some excerpts from the article follow.

Today's subject title comes from a recent show on CBC News Sunday Evening. It aired on April 12th but a related segment on pensions and retirement ran Sunday evening, *May 10th. The latter segment used several familiar sources from the consumer advocate community -- like Robert Kyle, Stan Buell, Dianne Urquhart and others -- to make the case that when it comes to financial services, it's a buyer beware world out there. The "black hat" seen in the illustration is the industry's slang for financial advisors who are not acting in the best interests of clients. As we argue below, they're few and far between.*

The CBC also used pension consultant Keith Ambachtsheer to make their point that because investment costs are lower in traditional pension plans, retail mutual fund investors will do far worse saving for their own retirement than letting a low-cost pension fund do it on their behalf.

...

I saw little new in the way of revelation on Sunday's show. John Lawrence Reynolds covered all these points in The Naked Investor back in 2004 and more recently in a revised edition.

More than a decade ago, Mark Heinzl made the point that high-fee mutual funds seldom beat the indexes in his Stop Buying Mutual Funds. I made a similar point in 1998 with my own co-authored book, The Wealthy Boomer: Life After Mutual Funds, which -- via a long circuitous route -- led to the blog you are now reading.

NOTE: Although I do not often post comments to blogs, I do write to several journalists on a regular basis to make comment on their articles or to advise of developments at SIPA to keep them informed. I did write to Jonathan and he posted my e-mail on his website along with many other responses.

Posted by Jonathan_Chevreau May 12 2009, 10:22 AM From Stan Buell:

While I generally agree with what you say I do not agree with your current article.

Something is needed to provide balance to the industry. Regulators attempt to create the perception that Canadians can trust the industry and that it is well regulated.

I have just received an offer that goes to financial advisors on how to provide leverage up to 3 to 1. One of my brokers told me about 4 to 1, and there was a case not too long ago of a senior leveraged at 10 to 1.

Mutual fund companies regularly offer "leverage plans" to all investors. While the industry may say that investors make their own decisions, the reality is that most investors trust the industry.

How many victims have lost their savings and then found the firms they trusted will claim they have no responsibility and that the investor is responsible for approving the advisor's advice?

You have no doubt heard the IDA explain how a forgery is not always a forgery, to their explanation to victims who claim documents were forged that they are not handwriting experts and so close the file.

If the industry was 95% good as you suggest then they would stand behind their fiduciary responsibilities and would not be so eager to leverage seniors and other small investors ill equipped to assess the risk of leverage or evaluate the investment products offered.

You are talking about an industry that continues to develop products to circumvent the rules or that seeks exemptions to existing rules to sell toxic products to the public.

I agree there are many "white hats" in the industry, but even many of these are limited as to what they can do for their clients. You no doubt have talked to many of them as I have.

The fundamental problem is there are no industry protections for the victims of the "black hats". They must seek justice on their own.

Why has the Expert Panel on Securities Regulation finally recommended that regulators have the power to order restitution and the establishment of an Investor Protection Fund to pay compensation?

That is something we and others have been saying for years. I believe we mentioned it on Linda Leatherdale's show a decade ago when she was still in the business.

The industry/regulators try to create an illusion that is much different from reality. If they want investors to be responsible for all investment decisions and pay only for the trades then why not come out and say it? Why mislead investors with advertising that suggests retirement security can be provided by dealing with advisors?

Why the regulatory differentiation between ADVISERS and ADVISORS?

Why mislead the public with titles like "Financial Consultant", "Investment Advisor" etc. IF they are only SALESPEOPLE?

I suggest that the CBC and the rest of us concerned about the welfare of Canadians and their retirement security can become much more balanced when we see some honesty and integrity in the industry and the regulators. With some exceptions, that is sadly lacking.

At least that is my opinion.

MEMBERS ARE WELCOME TO SUBMIT COMMENTS FOR PUBLICATION, OR TO MAKE SUGGESTIONS ON WHAT THEY WOULD LIKE TO SEE IN THEIR NEWSLETTER. The size of the Sentinel is restricted to eight pages to facilitate mailing to members who do not have access to computers.