

WITHOUT PREJUDICE

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Expert Panel on Securities Regulation in Canada
Ottawa, Ontario
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Dear Sir,

Thank you for offering me the opportunity to submit my ideas and suggestions to the Expert Panel on Regulations in Canada. To meet submission time constraints, this letter is sent by email but a printed copy will follow in the regular postal courier. You may post my comments on the Expert Panel on Securities Regulation web site. The required contact coordinates are to be found on my letterhead.

My submission follows the format suggested on the panel web site but the content is presented in point form because of its very specific nature.

As an introductory remark, it should be noted that my response has been provoked by a most unfortunate event in my life. I, and a group of about 150 investors across Canada, was victim of a financial fraud that involved a trust company, a law firm, 2 major investment brokers and several financial planners, all authorized by the IDA, MDFA, OSC and the AMF. A class action and several investigations are currently under way regarding this fraud. Although my views on the investment industry are very specific and, inevitably tainted by my negative experience, please be assured that my logic is valid and it is based on facts and documentary evidence that I have on file.

Overview

I note that the Expert Panel on Securities Regulation in Canada was announced by the federal Minister of Finance on February 21, 2008 *to provide advice on the best way to improve securities regulation in Canada*. I find it very modest to limit the objective to “to improve”. Any unjust system needs “fixing”. But repairing a system is not possible if good will is not present. Recent and past contributions to the discussion of securities regulation in Canada have made clear recommendations regarding corrective actions needed to repair Canada’s securities regulatory system. Some of these may be repeated in this submission but now, they need to be implemented.

My overall evaluation, based on my unfortunate experience, is that the small investor is not treated fairly when he is grieved by fraud or gross misconduct. The negative consequences on the life of the victims and the well being of society are devastating. The most important consequence is the complete loss of confidence in people in general and in the system.

It may be argued that this evaluation, being the conclusion of only one investor based on only one case, is not adequately supported. However, 150 other investors got the same treatment from the same financial institutions and the same brokers and the same financial advisors. These trends indicate that something is wrong. Victims' rights cannot be violated without serious consequences in the future well being of our society. The Norbourg story indicates how low the system is willing to go before dealing effectively with white collar financial crime in Canada. Many more examples could be cited to emphasize this trend.

RRSP Transfers

The industry's objectives and appetite for growth and bigger profits drives them to lobby and change set laws that puts the small investors at risk. For example, locked-in funds like RRSP can now be transferred out and invested even in third ranking mortgages. There is abuse in this area.

Service delivery

As a general rule, the time needed to initiate, consult, review, approve and process a complex mortgage transaction correctly is measured in weeks and months but in my case a mortgage transaction was completed in a mere 1 ½ days. Needless to say, this mortgage transaction needed more attention than was given in this case. Non disclosure was used to dupe the client. The documentation is incomplete, full of errors and the investor was not given a copy of the documentation. There was no compliance to procedures and procedures did not exist.

Ombudsman Banking and Investment Services

The Ombudsman is not independent or, the perception is that he is not independent. This creates a lot of doubt, friction and lack of confidence in his services. Someone other than the banks should pay his salary. After 3 years of reviewing my case the Ombudsman has assigned three agents to my file.

Transparency and Disclosure

Lack of transparency is always at the source of a dispute. Communications with the client is paramount and it must not be left to chance. Can you imagine ? I had a Financial Advisor whom I had never met and never talked to. Yet, he was giving directions to the fiduciary trustee of my self directed RRSP plan. Unbelievably, he claims that he never collected fees for his services.

Response time

The regulatory bodies take an excessive amount of time to respond and solve a dispute. Clearly no one wants to lead the pack in a multi-jurisdictional battle. Therefore delays after delays amount to years and years of waiting and waiting. For the victim the agony is prolonged, some become ill from stress and others simply pass away to a more quiet life.

Cooperation and help

Usually, it is the Financial Advisors who dupe the small investors. The investment firms are left to defend their territory by protecting their rogue agent. My experience has been that the investment firms offer very little, if any, cooperation and help to sort things out with the small investor. The playing field is not level. The small investor is at a great disadvantage having no

resources to battle the giant Goliath. In fact, the investment firm will blame the victim and make the victim feel guilty. After all, they say: “ You signed the documentation. ” But no mention is made of the Financial Planners who utter the false documents and counterfeit the signatures.

Enforcement

Enforcement has become a sort of a joke in small investors’ circles. Fraudsters’ penalties are meaningless and never commensurate with the crime. The Ottawa Citizen, July 14, 2008, reported that : “ Judges routinely waive fines meant to help support victims ”. This is not helpful for victims of crime and it defeats the intent of the Criminal Code. The message that is sent to society is that, indeed CRIME PAYS. In the last few years, numerous examples which I don’t have to list, will corroborate this statement.

Bankruptcy laws need to be re-inforced

It is all too easy today for a firm to go bankrupt one day and start an identical business the next day. Suppliers have great difficulty with accepting a loss for nonpayment (bankruptcy) one day and extending credit to the same people the next day. For many businesses this seems to be the easy way out of a financial crisis.

Legal system and court backlogs

The backlogs in the court system are enormous. The BRE - X court actions were prolonged for over 10 years - so long that the key players were deceased and no one remembered what the litigation was about. Personally, I have attempted to use the Small Claims Court but after 3 years my case has not been scheduled yet and the offending Financial Advisor has disappeared. Before his disappearance he countered with a law suit of \$400,000 which was reduced to \$7,000 in order to be accepted at the Small Claims Court. In my opinion this Small Claims Court has no credibility.

Bureaucratic environment and jurisdictional overlaps

It appears easy for Financial Advisors to deliberately confuse clients by operating in different provinces, especially cities like Ottawa that borders the Ontario and Quebec provinces. I call it the “border game” and it seems that the only winner at this game is the dishonest Financial Planner. Undoubtedly, 13 provincial regulatory bodies are more bureaucratic and confusing than a single federal agency.

Independent Audits and Quality Control

My assessment of the review and evaluation of the data and the forms and documentation used in my ill fated transaction was “unacceptable”. The audited investment firms did not respond although their public documentation claim that the proper controls and audits are conducted. I also found that forms and documentation in a computerized environment are subject to security breaches. In fact, the Financial Advisor that engineered the scam said : “ It was like taking candy from a baby.” Not very reassuring for a small investor. It appears the scammer was able to circumvent all the systems controls and dupe every one.

“Know your Client” and “Open a new Account” forms require more attention when they are completed. They are not well explained to the client and they are not signed by the Financial Advisor.

Federal Program to aid Victims of Crime

Last year, the federal government established and funded with \$52 million a program to promote justice and aid victims of crime. All the Canadian Governments agree to basic principles that should guide the treatment of victims. Please note that those principles are intended to promote fair treatment of victims and should be reflected in federal/provincial/territorial laws, policies and procedures.

Getting Action

It seems that the only way for the small investor to get action is to publish in the media. Then the investment firms will move to protect their image. If there is honesty, transparency and full disclosure at the beginning there would be no need to “whistle blow” or disclose to the media. SIPA (Small Investors Protection Association) is an excellent forum where small investors can air their complaints and findings on Internet. Additional independent funding to this association should be beneficial to the industry in general.

AMF – Indemnity Fund

In cases of litigation, small investors usually do not have the resources to hire the services of a lawyer. The only way to recover funds is through the Ombudsman or the Indemnity Fund at the Autorité des marchés financiers (AMF). Unfortunately, this fund has been depleted by the Norbourg settlements (\$30 million). My claim for reimbursement of approximately \$200,000 was denied because no more funds were available. I am sure there are and will be many other claims that the AMF will not be able to pay.

Financial Advisors Qualifications

In view of the plethora of Financial Advisors and easy access to this seemingly lucrative career, It is debatable that they are all adequately qualified to perform as professionals. Surveys indicate that public confidence in financial planners is at an all time low due to the great number of financial scandals.

Is White Collar Crime Taken Seriously ?

Despite numerous studies indicating the devastating consequences of white collar crime in Canada, including the credible recent study by Innovative Research Group that declared that 1.2 million Canadians have been defrauded, very few offenders have been convicted and very few victims have been restituted their loss. AWESOME STATISTICS. To put some perspective on this serious problem, two Ottawa dailies reported on July 14, 2008 that the Ottawa Police arrested and charged a man who threw a cat down from a balcony. A fraudster would never be treated so inhumanly. He will never be charged until there is a public outcry as there was for Vincent Lacroix at Norbourg. In my case, the offenders have still not been charged. They continue to operate their business as if nothing happened. One offender even appeared on the public affairs TV program W-FIVE and publicly admitted his guilt. Alas ! Still no action.

Concluding Remarks

I agree that getting securities regulation right in Canada will support increases in investment, create more and better jobs, and, over time, enhance the prosperity of Canadians. I also agree that securities regulation must protect investors and promote market integrity, while achieving effective regulatory outcomes without imposing undue regulatory burden. The objective of making Canada's securities regulatory system the best in class is a noble objective that we should strive for. But in any system there will always be gross errors causing harm to innocent users. It is imperative that the administrators of the system correct the malfunctions so that clients are treated justly.

The above are my comments and recommendations from a small investor's perspective. I would be pleased to answer your questions, elaborate further or bring additional information to the Panel.

Yours truly,

Sylvio Gagnon and Monique Gagnon