SIPA
SMALL INVESTOR PROTECTION ASSOCIATION

A Voice for the Small Investor

October 15, 2007

Expert Commission on Pensions
PO Box 102
777 Bay Street
Toronto, Ontario
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Dear Sir,

Since 1998 SIPA has been advocating improved investor protection because of a perceived failure of the present regulatory system to protect investors and their savings. Over that period of time we have interviewed hundreds of seniors who have lost their savings when they placed their trust in the investment industry. Most of these victims do not have the benefit of workplace pensions and are left without sufficient means for retirement security.

The trend towards defined contributions pension plans means the risk of investment is being transferred from sponsor to member. If this trend continues more Ontarians will be exposed to risks with their investments that are above and beyond the normal investment risks faced by pension plan managers. These include fraud and wrongdoing by both registrants and non-registered fraudsters.

Recently the Canadians Securities Administrators released the results of the Innovative Research Group Study. The study indicates that more than one million Canadians have lost money to some kind of investment fraud but most victims didn't report it. This study supports our contention that the issue of seniors losing their savings is a huge hidden problem that results in many seniors, who have spent their lifetime working and saving for retirement, are unable to enjoy their retirement years. Instead many are left destitute if they have no workplace pension plan.

However it is not only fraud and apparent wrongdoing that steal savings from investors. There are widespread practices systemic in the investment industry that silently steal from investors.

Most Canadians who invest in Registered Retirement Savings Plans are invested in mutual funds or segregated funds. A recent study by Keith Ambachtsheer states *"The measured Canadian mutual fund average return* *shortfall (before sales charges) of 3.8% per annum relative to similar mandates executed by Canadian pension funds suggests the average Canadian mutual fund has not been producing fair value for its customers."* This translates into ordinary Canadian investors losing $25 billion a year investing in mutual funds when compared to returns for pension funds.

Also, some investment firms and mutual fund companies actively promote leveraged investment and many investors are losing their savings when this strategy is employed and unsuitable products are purchased. The losses due to these faulty strategies are not quantified, but we estimate Canadian investment losses due to fraud and wrongdoing are in the order of $20 billion per year. Recent revelations suggest this figure could be much higher.

The recent Asset-Backed Commercial Paper issue exemplifies the issues Canadian investors face with the failure of regulators to provide investor protection by lax enforcement and exemption practices.

The Institute for International Finance blames the industry and regulators for the ABCP crisis and noted that the Canadian market, in particular, was *"different because the back-up facilities that the securities had in the Canadian market were less complete"*.

One of the factors contributing to this market upset is that commercial paper is an exempt security with a different set of disclosure rules. The regulator, Office of the Superintendent of Financial Institutions, denies any responsibility and suggests investors are responsible for their own due diligence. Effectively the regulators are saying investing in Canada is *Caveat Emptor*.

Similarly, there are other exempt securities, also meant for sophisticated or accredited investors, that are being packaged and sold to ordinary investors that are eminently unsuitable because of the associated risks. The industry continues to develop structured products that are difficult for many to understand and some are designed to circumvent the current rules and regulations that tend to lag new product development.

Unfortunately the public is not sufficiently educated to do their own due diligence and efficiently manage their investments. They succumb to investment industry marketing to depend entirely upon their investment advisors. Many of the firms employ investment strategies that expose individual investors to inappropriate risk but maximize the fees and commissions for the investment industry.

Also, there are widespread practices that appear to be fraudulent, such as forging signatures, or revising Know Your Client forms to present small investors as accredited investors by overstating income and assets. These practices expose small investors to risks beyond ordinary market risk for conservative diversified investors.

Unlike the Montreal Proposal to bail out the large investors in commercial paper, individual investors who suffered significant losses due the recent Business Income Trust fiasco and the Principal Protected Note scam have no "Montreal Proposal" to assist them. They must resort to legal action to seek justice. It is improbable that this situation will change in the near future.

Therefore it would add to the existing tragedy of seniors losing their savings due to investment industry wrongdoing and fraud if Defined Benefit Pension Plans are converted to Defined Contribution Benefit Plans prior to revised legislation providing improved regulation and enforcement of the securities industry combined with adequate investor protection and means of timely and fair restitution for aggrieved investors.

Only a small portion of the population benefits from workplace pensions and many of them also suffer when companies fail or are unable to support the pension fund. The Canada Pension Plan does provide some benefit, but it is not sufficient to provide retirement security for those who have no other pension plan or source of income.

There is a need for a universal pension plan to which all workers could contribute to avoid the risks of losing their savings to fraudsters and unsuitable investments and/or investment strategies when they depend upon investment advisors. Such a plan would also avoid the risks faced by company pension plans and could provide for transferability of pension benefits for employees moving within the workplace.

As it will take time for a more beneficial pension plan to evolve for all Ontarians it is important during the transformation period that legislation is revised to effect a paradigm shift in the regulatory system for the investment industry to protect investors' savings and provide retirement security.

The current system of rules based self regulation is failing investors. Allowing the industry to resolve disputes through industry sponsored agencies is also failing investors. At the same time the justice system is being frustrated by the investment industry to the detriment of aggrieved investors, and Ontario has reduced the limitation period from six years to two years. The latter is insufficient for victims of a life-altering event to deal with the issue and initiate civil action.

As a result many Ontarians end up in retirement without sufficient income to look after their needs. To allow defined benefit plans to be phased out will exacerbate this already growing problem.

The Commission should interview some of the victims of the predatory investment industry to understand how important it is that defined benefit plans be retained and the move to defined contributions resisted until such time as Canada has a national securities regulator that also provides real investor protection with timely dispute resolution and fair compensation for those who have been financially abused, and the public is better educated about investing and our regulatory and judicial systems.

As the population ages there will be an increasing need for financial support for those who have unfairly lost their savings. By establishing a universal defined benefits program that can be paid, at least in part, by the individual the net cost to our Government should be reduced.

The Commission should be aware of the tragic tales of many of our seniors that rarely are told to the pubic. An article by Jane Sims of Sun Media on July 18, 2007 entitled *"Cheated investors tell tragic tales of losses"* gives some small indication of the scope of human tragedy that is being created by a wayward industry that is not effectively regulated, which enables them to prey upon an unsuspecting trusting senior population. The article quotes only a few of the 200 victim impact statements filed in the court:

"She was an elderly pensioner who had $120,000 in savings earmarked for retirement and her children's inheritance. Before she died, she put her trust in the ___________ investments, believing they would care for her money and pay out generous interest. Instead, she lost it all. "I thank God that shortly after this investment my mother developed Alzheimer's (which) did not allow her to know what became of her life savings," the woman's daughter wrote in one of 200 victim impact statements filed to the court."

"One man, who lost $400,000, including half the value of his home, had to return to work at age 72. Others spoke of sleepless nights, nervous breakdowns and illness since losing their savings."

"I believe my first reactions were shock, disbelief and denial, followed by rage, resentment, guilt and then depression," one woman wrote.

"I don't know if I'll ever be able to retire," said one man who lost $803,699. "I feel I have been living in hell for the last few years."

Another man described how long it took to save the money and how quickly it was gone. "To know these people used our hard-earned money -- they *even took money so far back as when I was 12 years old on a paper route." The pain and hurt and always thinking of what was done to you just doesn't go away," he wrote.*

One man said he and his wife were using the $2,000 interest paid out monthly on their ______ investment to make a special vaccine from his wife's blood to fight her leukemia. But soon the payments dried up and the investment was gone. "We tried for as long as our finances would allow . . . the treatment. It was impossible to keep up financially," he wrote. His wife has since died.

Others spoke of lost opportunities and dreams that will go unfulfilled.

Over the past several weeks there have been several revelations in publications that should be reviewed by the Commission:
September 24, 2007 - Canadian Business article *"A Good Country for Crooks"* – Retired IMET RCMP officers disclose how Canada's regulatory system fails. It quotes former IMET officer Bill Majcher *"Show me a person who has gotten any sort of satisfaction from going to the authorities after being victimized by white collar fraud … who got their money back in a timely fashion and didn't go through a lot of grief. I can't think of a single person like that."*
October 5, 2007 - Financial Post article *"Berkshire accused of piling on"* – Barry Critchley describes how industry defrauds elderly clients, how regulators are ineffective in protecting investors, how costly the legal process is, and how industry frustrates justice. He writes industry is making victims *"go through interminable delays, be it through the courts or through dealings with various regulatory bodies, to get satisfaction."*
October 7, 2007 – CBC News reports the Innovative Research Group study sponsored by the CSA confirms that fraud is widespread in Canada and that the regulatory system is not protecting investors. CBC states *"More than one million Canadians have lost money to some kind of investment fraud but most victims didn't report it, a survey done on behalf of the country's market regulators suggests."*
October 12, 2007 – Financial Post article *"Banks Asleep at Switch – Group blaming industry and watchdogs for ABCP crisis singles out Canada"* – Duncan Mavin quotes Philip Suttle of the Institute for International Finance as saying *"A lot of us were asleep at the switch, both regulators and market participants."*

There is ever more evidence that the regulatory system has failed investors and that seniors are losing their savings. Therefore it is paramount that Government take action to provide retirement security by providing a universal defined benefits pension plan for all workers.

Government should also revise legislation for regulating the investment industry to make it principles based with emphasis on investor protection and provide a non industry sponsored mechanism for dispute resolution that would provide timely resolution and restitution for victims of fraud and wrongdoing.

Without these significant changes a move to defined contributions will result in an ever increasing number of victims of financial crime and a failure to provide retirement security.

Yours truly

Stan I. Buell
President