



SIPA

SMALL INVESTOR PROTECTION ASSOCIATION

A Voice for Small Investors

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Subject: CSA Consultation Paper 33-403

Dear Sirs;

We are pleased to submit our comments on CSA Consultation Paper 33-403

There are many issues needing attention and regulators must deal with industry pushback on any proposed changes to improve investor protection. Suitability, KYCs, disclosure, regulations, etc. weave a complex fabric. The status quo would suit the industry. The current regulations and legislation do not provide sufficient investor protection. Investors' last resort is legal action but this is often not possible for victims for lack of resources in money, time and physical and mental endurance.

The primary reason for such abysmal treatment of small investors is the system's failure to hold the industry responsible and accountable. We recommend legislating fiduciary duty for the investment industry as this would tend to resolve many of the issues.

The Small Investor Protection Association (SIPA) was founded in 1998 and is registered in Ontario as a national non-profit organization. At the time there were no organizations interested solely in the welfare of investors. There were individuals trying to make a difference and SIPA filled a need for an organization to act as "A Voice for Small Investors."

In more recent years other organizations have taken up the cause of the investor including FAIR Canada (a national voice for investors), Kenmar Associates (The Voice of the Retail Investor), and CARP "A New Vision of Aging for Canada".



SIPA does not have resources available for research or comprehensive detailed responses to requests for comments, however we are pleased to offer our brief comments on this important issue based upon 14 years of interviewing investors who have suffered loss (in some cases extreme loss) due to the failures of the industry and regulators to afford adequate investor protection.

Since its founding SIPA has interviewed hundreds of small. Most of these investors mistakenly believe that the industry and its' representatives have a fiduciary duty to them.

Although it would seem natural that a fiduciary duty should exist in most cases, there appears to be no legal requirement to have a fiduciary duty or to place the client's interests first unless the account is a properly documented discretionary or managed account.

Only a limited number of representatives are registered as "advisers" qualified to manage a discretionary account. However, many investors believe their account is handled on a discretionary basis simply because their representative has told them he would do so. The requisite papers for opening a discretionary account are often not prepared because the representative is not qualified to manage a discretionary account, so this would mean the account would be transferred to a qualified manager. This is just one of the systemic practices that contribute to Canadians losing an estimated amount in excess of \$25 billion per year due to fraud and wrongdoing.

One of the fundamental reasons so many Canadians are losing their savings is that they place their trust in an industry that is misrepresenting the services that are offered. The regulators allow this misrepresentation knowing that dealers representatives call themselves "Financial Advisors" and often have additional titles such as "Vice President" that is often more recognition of sales ability than corporate management but tends to mislead investors who may not realize they are in reality dealing with a product salesperson.

In the Ontario real estate industry representatives must indicate on their business cards and all advertising their category, either Broker or Sales Representative. It is against the rules to claim being a Real Estate Advisor or Real Estate Consultant. It would seem appropriate that the investment industry could also restrict the titles used by representatives rather than use misleading titles, or as a minimum make representatives and firms responsible when they portray themselves as Advisors.

If commissions are to be used to offset the cost of "services", just what are those services? The minimum standard, NAAF/KYC suitability process, in itself, is insufficient to properly construct, plan and manage an individual's portfolio to meet their financial liabilities over time. It is only really sufficient to support product sales on a set of simple parameters, even though the implied service, the one the investor has been led to believe they are often paying for, is not one regulators are willing and able to enforce.

It would seem natural that an industry that deals with Canadians' life savings, and has the power to cause investors to lose all of their savings, should have a fiduciary responsibility. Many



lives have been ruined when unknowing investors have been leveraged and sold unsuitable products which have resulted in extreme loss, yet it seems the regulators have not recognized this particular issue and allow these practices to continue unabated.

It is misleading when the regulators allow the use of the term "Advisor" for representatives that are selling product and are not qualified or registered to provide advice. There is a registration category of "Adviser" for those qualified to give advice, but most investors are not aware of the significance of vowels in the regulatory system.

The mutual fund is the investment of choice for Canadians. Over 12 million Canadians own them with a total assets exceeding 800 billion dollars. While excessive fund fees can reduce Canadians savings by up to 50% over a lifetime as outlined in recent studies, other widespread practices in the investment industry can result in Canadians losing all of their savings as well as their homes leaving them destitute and without hope. Excessive leveraging and unsuitable investments are the primary reasons for extreme loss.

It is apparent that guidelines and best practices with self regulation are not sufficient in the absence of fiduciary duty to protect investors when they are misled by misrepresentation and failure of the regulatory system to correct these malpractices.

Although mutual funds are regulated by the securities regulators there are bank and insurance products that seem similar to securities but do not fall under the scrutiny of the securities regulators. It is unfortunate that Canada's pursuit of a national regulator has been derailed but at least in Quebec there is a single regulator responsible for investments so that investors have a single source to deal with. Ultimately Canada should have a national financial services regulator, but a national regulator for securities would be a giant step in the right direction.

It is not enough to say that current regulations provide sufficient protection for investors when suitability is considered key but is not well defined. In the words of one compliance officer of a major bank owned brokerage "All of the products on our shelves are suitable."

That approach coupled with the inadequacy of KYCs to define an investor's needs and the practice of the industry to leverage investors to maximize assets under management leads to many investors losing all of their savings.

To say the victim has the right to take action is meaningless when limitation periods have been reduced from six years to two years and the victim is trying to deal with the impact of the life-altering event of losing their life savings. The status quo is just not acceptable.

It is time to hold the investment industry accountable and responsible for their actions and that of their agents.

When an industry is dealing with the life and future of Canadians, they must not only be required to deal fairly and honestly with investors but must have a fiduciary responsibility so



that when rules are broken and things do go wrong the victims are protected without having to endure extended legal battles to prove their rights.

It is not right to claim that investors are protected by law when fiduciary duty can be proven in court. When investors place their trust in a firm or adviser they should be able to know that there is a legislated fiduciary responsibility.

At present many believe there is a fiduciary responsibility yet little is done to dispel that belief.

Investor education, point of sale disclosure, and other ruses are no replacement for fiduciary duty.

It is not acceptable to allow continual derailment of initiatives that were meant to improve the investment environment for investors.

How long has Canada talked about a national regulator? Quebec at least has taken action. The Fair Dealing Model didn't survive. Even Point of Sale Disclosure was dumped in favour of Fund Facts delivered AFTER THE FACT.

There are many issues with which the regulators must deal and decades can be wasted with little progress. However the fundamental issue is that the investment industry should have a fiduciary duty to investors unless there are specific exceptions.

Yours truly

SIPA

