



A Voice for the Small Investor

SIPA Inc

Five Year Review

~

the Small Investors' Perspective of

Investor Protection in Canada

February 27, 2004



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Letter from SIPA

Regulation of the securities industry is a provincial responsibility. Investor protection has been delegated to self-regulatory organizations. This approach to investor protection has failed Canadian small investors. Many small investors have lost their life savings due to industry wrongdoing. The magnitude of these losses is unknown. This huge investor problem has been covered up for far too long.

Countless studies and reports regarding regulation are evidence that problems exist that need correction. The most recent, the Wise Persons Committee Report published on December 13th, 2003 recommends that Canada establish a Canadian Securities Commission to provide uniform investment regulation across the country. It also recommends a new Canadian Securities Act to provide enabling legislation. However, the WPC has failed to adequately address the issue of investor protection.

The Auditor General Sheila Fraser is quoted by the press "Our findings on the government's sponsorship program from 1997 to 2001 are deeply disturbing. Rules were broken or ignored at every stage of the process for more than four years ... ," she said. "Even though the government has cancelled the sponsorship program, I am deeply disturbed that such practices were allowed to happen in the first place. There has not been an adequate explanation for the collapse of controls and oversight mechanisms."

The Auditor General's comments could very well apply to the investment industry. There are widespread practices of wrongdoing in the industry including blatant breaching of rules and betrayal of investor trust. Why are these allowed to happen?

Small investors are reluctant to come forward, with the result that the magnitude of the problem of loss experienced due to industry wrongdoing has remained hidden from the public eye. This SIPA Report on Investor Protection is intended to bring attention to this issue and provide better insight to those leaders with a sense of right and truth who may be interested in resolving this problem and making the world a better place in which to live.

The small investor needs and deserves better investor protection. It is time for our Government to take long overdue action to provide investor protection for Canadians.

Yours truly

Stan Buell, P. Eng.
President

Margaret's Story

"The main reason I considered investing in 1989 was because retirement was just seven years down the road. I had raised my children as a single parent and was reminded that I needed to have enough money to provide a reasonable lifestyle for my 'golden years'. I had worked for 40 years at that time.

I approached a large brokerage firm. Mutual funds were being promoted and at that time the banks were not involved in the investment industry.

My first investment was \$10,000.00.

Over the next seven years I invested further monies as funds became available. I saw my investments as an extension of my 'bank - savings account'; and that monies were safe and secure, and of course would grow. On the advice of my broker, I also transferred my RRIF account from my local bank to the brokerage firm.

During this time period I saw my investment advisor only three times. He would call me on the phone three or four times a year. I felt my money was in good hands and certainly under the roof of a reputable organization. I certainly had nothing to fear.

In 1995, I contacted the broker with the purpose of discussing the purchase of a condominium. I was renting accommodation and felt it would be advantageous to buy a property that would at least carry for what I was paying in rent. My rent had increased that year 7.6%. I told the broker that I had \$100,000.00 as a down payment. He dissuaded me from buying, and added that I had insufficient funds to carry the mortgage.

I took his advice, that 'I would do better by giving the money to him to invest and that it would grow and "we would make money"! Today, I would hear this response very differently. I decided to start saving earnestly. I was now working part-time, so I had to sacrifice certain projects, like traveling to England to see family, who sadly have since died.

In 1996, the year I retired, on the advice of an elderly friend, I approached a mutual fund advisor of another investment company. I was eligible to investment money in my RRIF account and decided that maybe it was time to create 'another basket' so to speak. The advisor asked me to bring in my current monthly statement so that she could see how to best invest my money. Whilst reviewing the document she asked permission to make a copy so she could review the contents with her manager. We made arrangements to meet later on that week.

The outcome of our meeting was shocking. The month and year I retired was the month and year that my account was at -104% leverage!!! In other words my account had been 'wiped out'! After a visit to my home and a brief audit by this new advisor, it was discovered that my investment had been set up as a 'leverage account'; and that during 1995-1999, 1.4 million dollars of investments had been turned over in my investment and RRIF accounts.

I had signed nothing. Even after I discovered what had happened and sent a letter to the broker stating that nothing was to be done in my accounts without my knowledge or signature, monies were still turned over to the tune of \$85,000.00! The broker had made at least \$60,000.00 in commission!

Who had supervised these transactions; but further more, who had provided the transitional signature for these investments and other leveraged investments - some 150 in total!

The branch manager was contacted and confessed that something was wrong with my account and said that 'things could be changed'!

I wrote to the Ontario Securities commission who forwarded my complaint and evidence on to the compliance department of the brokerage firm. That was 1999.

It is now 2004, and five years have passed. With legal fees and loss of interest, apart from what the monies invested would be worth today had they been suitably invested, my total losses amount to \$325,000.00. The compliance department has made an offer of 20% of the losses. It appears that they are unwilling to investigate the behaviour of the broker or supervisor.

In the meantime the broker has been disciplined - for the second time; and the IDA is investigating at least two other brokers, in the same branch. It appears that I am not 'being heard'.

On a personal level - tempus fugit - time is passing. My apartment is on the second floor of a small building and there is no elevator, my reason for purchasing alternate accommodation was legitimate, I drive a car that is 17 years old. Although it has served me well, it too is aging!

I am totally disgusted with the way I have been treated by the brokerage firm in question; and am sorry to say that as I have shared my story with others, I have been further shocked by to find that I am not alone.

I am now with my 'fourth lawyer'. The first one created a conflict of interest, the second one placed me on the 'backburner' for five months, and the third one failed to read my mail and did nothing for two and a half years!

So not only do I have to deal with the investment arena, but my experiences have caused me to question the behaviour of 'the legal beagles'!

My message to those 'out there'. I am not going away. I will see this 'project' through to the end and it will be resolved to my satisfaction. There are those in the industry that need to be exposed and made to put right what was done wrong. The alternative is that we will all pay a heavy price.

We are very much aware of what has happened to Enron and other large corporations. It just doesn't pay to lie and cheat. Didn't these guys learn anything in 'Sunday school'? Or maybe their parents did not insist that they return 'that candy bar' that they stole, as they were leaving the drug store. A philosophy eventually develops that if you don't get caught, it's O.K. or 'that is the way it is done'.

Sad to say, even as I am writing this, the broker in question is being allowed to do what he has been doing the last 18 years; and that is, abuse investors and use their money to make money for himself!"

Margaret – Jan 2004

Margaret is a nom de plume to protect the small investor's privacy.

Executive Summary

Until recently the public perception was that the investment industry is well regulated and the regulators provide investor protection that will protect the small investor from wrongdoing. More recently the public is becoming aware of widespread industry practices of wrongdoing that are creating a negative impact on all investors.

The small investor voices included in this report are excerpts from the many communications received since SIPA was founded in mid 1998. These voices are representative of the hundreds of voices that have been heard and come from all walks of life including doctors, lawyers, health care workers, teachers, widows, and seniors. From all these voices a composite small investor perception of the investment industry has evolved.

Regulators are challenged to balance the needs of investor protection with the need to promote market efficiency, but the Canadian public does not understand how the regulatory system works. There is great disparity across the country and amongst the dealers, mutual fund companies, insurance companies and banks. There is pervasive non-compliance with the rules. Regulators appear largely ineffective in dealing with those engaged in wrongdoing. Investors do not know where to turn. The Wise Persons Committee Report issued in December 2003 calls for a Canadian Securities Commission to provide consistent regulation for all Canadians and a united Canadian voice in the global marketplace.

The lack of investor awareness is acknowledged. Attempts at investor education will not resolve the underlying problem, of investor losses due to industry wrongdoing, faced by small investors. The small investor needs to become more aware of how the industry operates and is regulated. However, Canadians are busy with earning a living and participating in family life. The investor trusts his advisor and trusts our Government to provide industry regulation and control. Government has a responsibility to protect small investors as consumers and that responsibility can no longer be deferred.

The investment industry tends to follow widespread practices that are contrary to the rules and regulations and not in the best interests of small investors. Some of these practices are being exposed in the United States. Canadian investors are becoming aware that these same issues are prevalent in Canada. There is an appalling abuse of small investors who are financially uneducated. The leaders of the industry should have at least some knowledge of the cavalier attitude towards small investor life savings. It is irresponsible to ignore this situation or worse to condone it. Our Canadian society is based on trust and that trust is being betrayed by the investment industry.

The primary complaint of the small investor is that he is encouraged to place his trust in his advisor but his advisor often seems more motivated by commission generation than providing a capable professional service to the clients depending on him. Fiduciary duty is breached on an alarmingly regular basis and sometimes fraud is an issue. This results in the serious degradation of small investor savings with the resultant negative impact on lifestyle. The regulators receive large numbers of complaints but are reluctant to reveal information. The public has a right to know when this information could help them to ward off destruction of their life savings.

Investors have found it takes time to determine how complaints are dealt with, and it is difficult to get an appropriate response from industry participants. Industry sponsored dispute resolution mechanisms do not provide appropriate means for small investors to have their disputes resolved. Investors who make a

complaint are stalled and encounter delaying tactics. Ultimately, they find that civil litigation is the only viable alternative and often this is not an option possible for the small investor who has lost everything. Most seniors do not have the requisite resources of money, physical and mental stamina, and time to pursue lengthy legal battles.

Investor losses are estimated to amount to billions of dollars. The BCSC alone estimates \$100 million annually in 'reported losses' in British Columbia. Many small investors are not even aware when they have had a negative experience as a direct result of industry wrongdoing. Industry has failed to provide all investors with meaningful statements on a timely basis. Many that are aware of a problem are reluctant to proceed with a complaint. Often, they are misled when industry participants provide false or misleading information.

The impact on victims of investor losses due to wrongdoing can be devastating. It is not only the financial loss, it is the sense of betrayal the victim feels when his trusted advisor has caused the loss of life savings. The victims lose their money, their hope, and their future. Many suffer from Post Traumatic Stress Disorder. They experience depression, difficulty sleeping, stress on relationships, loss of trust in others, loss of hope, and too often thoughts of suicide.

Small investors need regulators to provide investor protection that is fair and available to all Canadians. History shows that self-regulation has failed to provide adequate investor protection. Industry sponsored agencies or agencies that employ mainly industry staff will not provide fair and objective investor protection. The Government must now act to afford consumer protection for the small investor. Government should heed the call for a Canadian Securities Commission and a Canada Securities Act; and enact legislation for a national authority to provide investor protection for all Canadians. As the Wise Persons Committee Report states and is so aptly named "It's Time".

1. Investor Protection – What does the small investor think?

The small investor believes the industry is well regulated and that the authorities provide investor protection through agencies governed by legislation. He does not know exactly who is responsible for regulation or what protection is provided, but he has faith that if there is a problem and he brings it to the attention of the appropriate authorities the problems will be resolved. With this belief he places his trust in the investment industry.

*"I truly believe that the vast majority of people just are not aware of how unprotected we are. They falsely believe that our laws will protect them against criminals."
A small investor - Feb 1999*

Initially the small investor is not aware that investor protection is largely delegated to industry self regulatory organizations (SROs) and that none of the regulators will get the investor's money back. The small investor generally does not learn how the regulatory system works until he encounters a problem. By then it is often too late to derive any benefit from this belated knowledge.

*"These 4 years have been a horrible nightmare, a lifetime of hard work and saving and dreaming is gone. What has happened to me seems incredible. Not only is my money gone, but also the broker continues to work and the wheels of justice just don't seem to be working at all."
A small investor - Nov 2003*

The Canadian Securities Administrators (CSA) are the provincial organizations responsible for enforcing securities legislation. The function of the Ontario Securities Commission (OSC) is typical of the provincial securities administrators.

The OSC administers and enforces securities legislation in the Province of Ontario. Their mandate is to:

- Protect investors from unfair improper and fraudulent practices
- Foster fair and efficient capital markets
- Maintain public and investor confidence in the integrity of those markets.

Most CSAs delegate supervision of the dealers and companies to Self Regulatory Organizations (SROs). The SROs serve as trade associations as well as regulators.

The Chair of the Canadian Securities Administrators is quoted on the OSC website:

"Securities regulators strive to protect investors through the administration and enforcement of securities laws in each jurisdiction across Canada" said Doug Hyndman, Chair of the Canadian Securities Administrators (CSA).

"But investors need to help protect themselves by doing their homework ..."

SIPA recommends that all investors check with the CSA responsible in their province to determine if their financial advisor is properly accredited and registered. However there are several problems that prevent investors from carrying out an effective due diligence:

- There is not one central registry so registered representatives can move from one jurisdiction to another leaving his history behind
- The CSA will not reveal whether there are any investigations or complaints but only disciplinary actions

- The time lapse from initial complaint to disciplinary action is generally several years and hundreds of victims later

A very conservative small investor made an inquiry to the OSC regarding one Patrick Kinlin. He was told that Kinlin was a registered representative but was not told there was an ongoing investigation. He gave Kinlin \$60,000 to purchase B.C. Government bonds. A short time later he read in the newspaper that Kinlin was jailed for fraud. Hundreds of investors lost their savings because of this registered representative's fraud.

The Investment Dealers Association (IDA) is one of Canada's SROs and bills itself as "Canada's national self-regulatory organization for the securities industry". The IDA claims to regulate the activities of investment dealers and states that investor protection is a top priority.

The IDA's stated mission is to protect investors and enhance the efficiency and competitiveness of the Canadian capital markets. However it also states "Under supervision of securities commissions, it aims at a balanced approach to regulation taking into account the often complementary, but occasionally conflicting, goals of investor protection, efficiency and competitiveness. And it achieves its objectives, in the public interest, at no cost to the investing public."

The SROs have an inherent conflict of interest because they represent the industry yet claim to afford investor protection. Talk of a balanced approach suggests that investor protection could be traded off when it conflicts with benefits for industry participants. Self-regulation has failed to provide adequate investor protection.

*"During this time when I was completely disabled a stockbroker from the firm [Brokerage] traded in my account without my authority and my knowledge at all times. When this wrongdoing was discovered by a family member and friend I was shocked to find out what a poor state of affairs my investment account was in. I was advised to inform the manager of this brokerage firm what had happened; and when I did he said he would settle things. To date this has not occurred. Then I was advised to contact the Ontario Securities Commission and all they did was forward my letter of complaint to the Investment Dealers Association. The initial investigator indicated to me that there were problems with my account. My file is now in the hands of another investigator and nothing is being done. As it stands now the brokerage firm and its agent denies all responsibility and admits to no wrongdoing saying the trading in my account while I was in and out of hospital and clinics was proper."
A small investor - Jun 2000*

The Wise Persons Committee Report⁸ states -

"Approximately 50% of respondents in AIMR's survey of its members said the fairness, consistency and strength of enforcement in Canada are poor or very poor. Ontario Teachers' Pension Plan is also critical of the enforcement process, noting in its submission that "enforcement activities with respect to significant matters are usually lengthy, drawn-out matters with little apparent progress in terms of reaching resolution". The most frequent

complaint we heard from small investors was that the current enforcement system is inadequate and fails to protect their interests.

The adequacy of Canada's enforcement has been seriously questioned for some time. The criticism intensified following the wave of corporate scandals in the United States involving companies such as Enron, WorldCom and Tyco. In Canada a number of high-profile corporate scandals have also occurred, including Bre-X and the massive fraud it represented. There is a perception both in Canada and abroad that serious misconduct in Canada too often goes unpunished."

The Wise Persons Committee Report⁸ also incorporates a statement submitted by Jarislowsky Fraser Limited of Montreal, Quebec:

"The greatest weakness of the regulatory system is that it does not protect investors.... There is ever more red tape and no real enforcement! The crooks rarely go to jail."

In terms of investor protection, the problem with the current regulatory system is that those involved speak of a balance between fostering capital markets and investor protection. This applies to finance ministries as well as to the CSAs and SROs. When self-regulation is delegated to the industry there is the risk that it will be self-serving. Feedback from small investors suggests that is so.

"In October 1998 I reported to the OSC that [Brokerage] had managed the portfolio neither prudently nor diligently and, consequently its value had been much reduced. Eight months later in June 1999, the IDA told me they were investigating my complaint against [RR] but not apparently against [Brokerage]. Subsequently my wife and I were interviewed by IDA. Since then, and a further two years later and despite letter after letter from me enquiring about progress in its enquiry, I have heard nothing from IDA, except once. About three months ago a man who identified himself as a former RCMP inspector called and said he was working as an investigator for IDA and that he would call me within a week to tell me how IDA intended to handle my complaint. I heard nothing."

A small investor - Jul 2001

With the SROs providing investor protection there is a fundamental conflict of interest. They may say that investor protection is important but the primary purpose is to act on behalf of industry participants. There are countless situations where seniors and others with limited income are being preyed upon by unscrupulous "financial advisors" who appear to have no sense of ethics or morals and seem motivated only by profit. Yet the regulators do not take effective action to stem these activities.

There are many situations where widows in their 70s, 80s and 90s have been taken advantage of by ruthless financial predators and these actions have been condoned by managers and compliance officers. The managers condone the actions because they share in the profits. The compliance officer's primary duty is to keep the company out of trouble and not to protect client investors.

An article in the New York Post January 26, 2004 has captured the situation in the United States and this applies equally to Canada. The following is an excerpt:

Spitzer's great concern, he said, is the fundamental effectiveness of how Wall Street polices itself for the benefit of investors.

"The major failure has been at the SRO (self-regulatory organization) level," Spitzer told The Post.

"Whether you are talking about research or mutual funds or specialists, there has been a failure to properly question behavior that they know about before anyone else. Everyone of those issues was understood by the industry and not responded to."

Spitzer, 43, a graduate of Princeton University and Harvard Law School, where he was editor of the Law review, sees the solution in leadership.

"I don't pretend to have any answers beyond the platitudinous observation that those who are in charge of the SROs have to be willing to rock the boat and have to be willing to play the role of prosecutor or the system will fail," he said.

The small investor does not know where to turn when he encounters a problem. There are numerous agencies, some of which claim to provide investor protection, but reality is there is no investor protection in Canada. Many small investors are being given the runaround after they have been victims of industry wrongdoing.

"In April of 2000 my wife and I made a US\$50,000 investment with our (Mutual fund Co.) representative. There were no guarantees of returns but the worse case scenario was the return of our principal. This assurance was key as the funds were earmarked for my eldest daughters education, a fact that our rep was aware of. ... Needless to say the money disappeared and I reported the scam to the York Regional Police, the OSC and the IDA in August 2001.

Let me recap:

- York Regional Fraud Squad - had my file for 6 months with no investigation, and passed it on to Toronto Police.*
- Toronto Fraud Squad - had my file for 23 months with no investigation, did not even interview me until a complaint to the Civilian Commission on Police Services, have returned my file to York Regional Police as of Jan16/04.*
- OSC - stated that (Mutual fund Co.) had done an internal investigation and found no wrongdoing so they had no further interest.*
- IDA - my rep is out of the business so their job is done.*
- MFDA - at the time contacted were not set up for complaints.*
- OBSI - are investigating but with a (Mutual fund Co.) director on the board can I expect a fair shake?*
- Civil Court - unfortunately I no longer have the funds to pursue this route*
- (Mutual fund Co.) - "Do you know any good hit men?" (Mutual fund Co.) regional manager*

I must add that I was not the only (Mutual fund Co.) client who was a victim of this scam as my rep "pooled" over \$1.2 million US of six clients. My reps regional manager was also aware of the deal and was subsequently fired.



I guess I was under the delusion that my investment would be backed up by (Mutual fund Co.). In reality a serious crime has been committed and it seems like the policing agencies don't care."

A small investor - Jan 2004

Adequate investor protection will not be provided by the industry or industry sponsored organizations as they have an inherent conflict of interest. Regulators or agencies that strive to achieve a balance between investor protection and fostering capital markets will also fail to provide adequate investor protection. To provide effective investor protection a regulator must have that as a primary function and be independent from industry. It is the Government's responsibility to ensure that Canadian investors are properly protected.

2. Small Investor Voices – What do the voices say?

The voices of the small investor say that their trust in the investment industry is being betrayed on a regular basis due to practices that are condoned or, even worse, demanded. These practices are widespread and include the inappropriate use of leverage, discretionary trading without authority, unsuitable investments, and failure to follow instructions or Know Your Client (KYC) criteria. Falsified KYC information such as total assets, annual salary, and risk tolerance is not uncommon. Even forged signatures are not unusual.

“His boss, who happened to be a Director of the Investment Dealers Association and chairman already of the Discipline Committee, promised a “forensic investigation” the product of which has stalled ever since. I accused my then broker of churning \$60,000 in commissions out of my account in 1996. I’m debating with myself whether to sue over that and a dozen items of damages. ... I am retired; I practiced law for some 45 years and am now contemplating litigation.”
A small investor - Nov 1998 (deceased)

There are widespread practices across the investment industry, including securities dealers, mutual fund companies, insurance companies and banks, that are leading directly to significant small investor losses. Canadian citizens from all walks of life are losing their savings because they have placed their trust in the investment industry. More emphasis has been placed on encouraging citizens to invest, primarily in RRSPs and mutual funds, than in raising investor awareness.

“We should be hearing any day now as to whether our case has been committed to trial. The Crown and Police and OPP have indicated they think it will – but it will be nice to get the final word. ... There is still so much dishonesty in the investment area and still so many victims.”
A small investor - Dec 2001

Banks seem only too willing to provide loans or mortgages to small investors at uncompetitive rates when requested by investment advisors even when the investments are inappropriate as long as the bank sees sufficient security for the loan. These arrangements often include the right of the investment advisors firm to sell out the small investor if the value of investments guaranteeing the loan deteriorates to a point where the bank could be at risk.

Many of the products sold to small investors are totally inappropriate given the circumstances of the investor. The selection of product often appears to be based upon commission generated rather than client needs.

“It is my understanding that [Brokerage] and my broker, [RR], have a fiduciary duty to their clients to ensure that their financial interests are fully safeguarded. [Brokerage] and [RR] both failed in that duty. In addition to the loss of inheritance, I have spent to date \$30,000 in legal fees.”
A small investor - Jan 2000

Hundreds of small investors have contacted SIPA by telephone, letter and e-mail. The telephone messages are not recorded but are similar in substance to written communication received. It is improbable that investors will ever gain sufficient investment knowledge to avoid the pitfalls of an investment system that fails to provide adequate investor protection. A sampling of the many comments received is included in Appendix I.

From these many stories SIPA has developed a composite profile of the small investor. These stories have come from doctors, lawyers, dentists, professors, teachers, professional managers, workers, trades people, bus drivers, widows, retired persons, new Canadians ... a good representation of Canadian society.

I started investing with [RR] in 1986 when he was with [Brokerage]. ... Each time that he changed brokerages he would send me new forms to fill out; I would always fill them out and send them back without question – He had my trust.

[RR] was in a respected position of trust; first as Vice President of the company and secondly as my financial advisor. He abused this relationship. You would think that as Vice President of a company and financial advisor that he would have carried out the terms of “the [Brokerage] Management Account”, which was to preserve my capital and income, in a more prudent manner. I am sure there are other investors that are having the same set of problems or did have the same problems. ... All the trades beginning in 1996 until he retired, are completely unsuitable and imprudent for my investment objectives; a severe breach of trust.

A small investor - Jul 1999

The one common element of all of these small investors is that they trusted their investment advisor. They may be professionals with professional obligation and expect no less I return. They may be simply too busy with their work and family to have the time to learn about investing. Or they may have little education and need to depend on others for help. In all cases they believe Canada is a society in which citizens can place their trust in our systems.

“We naively assumed we were dealing with people who were totally open, moral and ethical. We assumed that the accountants and lawyers involved would protect our interests and warn us of the pit-falls. After all, I was a busy preacher; my wife was a busy teacher. Our religion taught us to have faith and trust in people. I now know this is false teaching.”

A small investor - Jul 2000 (minister)

Canada is a country in which citizens are taught to live together in social harmony and to trust one another. It is indeed unfortunate if citizens are beginning to believe that trusting is no longer possible.

When I finally learned of my loss I felt devastated, especially after the death of my spouse. It was a terrible let down and breach of faith. I feel I cannot trust anyone in this industry anymore. It has had an adverse effect on my health since October 2001.”

A small investor - Dec 2003

Initially the small investor:

- believes the industry is well regulated
- believes the authorities provide investor protection
- trusts his investment advisor
- is not aware of the different types of risk
- is not familiar with the many products being sold
- does not understand account statements and depends on the I.A.
- believes that any problems can be easily resolved

Most Canadians have become small investors with the advent of mutual funds and RRSPs. Lacking any formal financial education, small investors trust their investment advisors and rely upon them to look after their investments. They believe their financial advisor, so when there is wrongdoing it generally takes a long time for them to understand that there is a problem.

"On August 29th 1990 I invested \$30,000 into a self directed "RRSP" plan with [Bank] as the trustee through (Investment Advisor). These funds were then transferred through the [Bank] to [Brokerage]. Since then I have continued to receive the Bank's quarterly statements and had no concerns with this arrangement until late 1998 when I received news that [Brokerage] was in financial problems and that the president had disappeared. On July 8th 1999 I finally was given an appointment to meet with (two Bank officials) of the [Bank] only to be told they were unable to give me any information nor could they assume any responsibility. I have since learned that the OSC and the Metro Police Fraud Dept are involved in a full investigation into this matter. To date I have continued to pay the annual \$125.00 administration fee and have received my quarterly statements from the [Bank]."
A small investor – Jan 2000

When a problem arises the small investor:

- approaches his Investment Advisor and the company for resolution
- is surprised by the reaction of those he trusted
- finds compliance officers support the firms and do not help the client
- often feels betrayed and humiliated
- does not know where to turn
- still believes the regulators will resolve his problem
- finds the regulators are slow to investigate if at all
- discovers the regulators will not get his money back
- finds the ombuds service little better than compliance officers
- discovers arbitration is not as good as advertised
- discovers criminal litigation will not get his money back and is not likely to happen
- discovers civil litigation is the best solution
- learns that civil litigation is a long and costly process

Although Canadians are reluctant to reveal details of their private lives and their financial situations, more and more small investors are beginning to speak out. In many cases they feel they will be unable to resolve their dispute but hope that by speaking out they may alert others and help them avoid catastrophe.

This FA needs to assume responsibility and accountability for his inappropriate actions. I would willingly let other people know so they don't fall victim to these ruthless predators."

A small investor - Jan 2000

The problems revealed by the voices of small investors across Canada suggest that investor loss due to industry wrongdoing is of great magnitude. This is impacting on the lives of many Canadians. Instead of small investors becoming financially independent and providing for a comfortable retirement, many are losing their savings and becoming more dependent upon social services. Many lose not only a lifestyle for which they have worked and saved for a lifetime, but many lose their health, their family and their hope. Some lose their lives.

3. Regulation – How does it help the small investor?

Many small investors do not understand how the regulatory system works or who is responsible. Although Investment Dealers, Mutual Fund Companies, Insurance Companies and Banks all seem to sell the same products, they fall under different regulators so the small investor has difficulty in determining who is responsible when they need help. Many do not realize that the regulators either do not have the authority to order restitution in cases of industry wrongdoing or, if they do have authority, are unwilling to use it.

"In the fall of 1994 we realized we were being taken. We tried to contact the OSC without success at that time. Next we tried going through our M.P.P. nothing. Again in 1996 we tried our second M.P.P. his reply was to give us the phone number of Consumer Affairs. They responded that it didn't fall under their responsibilities. We then tried the Investment Dealers Association. Their rude reply was that they don't deal with individual complaints from the public.

Next was the Investment Funds Institute and they helped as a third party going between ourselves and the fund companies in obtaining copies of our investment transactions.

Again we contacted the O.S.C. in February 1998 with a letter. The file was passed on to a couple of people. In December 1998 the O.S.C suggested if we want to recover any of our money we should seek legal assistance and that they would provide as much help to our lawyer as they could. We should also contact Big Broker's compliance Officer, which we did. He told us we should have complained while our advisor was still employed with them and they consider the file closed."

A small investor - Feb 1999 (bus driver)

The investment regulatory system is largely a provincial responsibility. Each province has a securities regulator, or provincial securities commission responsible for administering the provincial Securities Act. These acts vary from province to province. Some of the regulatory responsibilities are delegated to self-regulatory organizations such as the Investment Dealers Association and the Mutual Fund Dealers Association.

"The Ontario Securities Commission and the Investment Dealers Association could not help"

A small investor - Jun 2000

The regulators tend to be staffed by industry people who often migrate between the regulators and industry participants. While many argue that it is necessary to staff the regulators with individuals that have industry experience, the result is that the regulators often seem industry biased.

The public is led to believe that our regulators provide investor protection. Yet they are let down when they encounter a problem and try to find resolution.

"I have had a case pending with the IDA and have been in litigation for over one year. We have found out with our case there are at least three others with the same

complaint about the same broker. It was very difficult to find out what to do, where to go, and who didn't have a conflict of interest just to get the ball rolling. The brokers know this too!

One thing I have found so far is that everything is stacked against you exactly as Rob Carrick said in the article. I hope that in numbers we can right this unjust situation."
A small investor - Dec 1998

"THE REGULATORY BODIES DO NOT PROTECT THE INVESTOR."
A small investor - Nov 2003

There is currently much discussion regarding centralized (federal) regulation or regionalized (provincial) regulation. There are strong arguments put forward for both alternatives and the Canadian Securities Administrators are far from being unanimous in an opinion. The Stromberg Report² of 1998 recommended a federal regulator and this is supported by the OSC. SIPA has always supported this option. However both the BCSC and the CVMQ are strongly opposed.

The Wise Persons Committee (WPC) Report⁸ of December 2003 also supports a federal regulator with a Canadian Securities Act to provide equal treatment for all Canadians and a unified voice for Canada in a global market.

Whether the regulatory system is centralized as a federal system or whether it is regionalized with harmonization, as is being promoted by many in the industry, any system will not materially change the situation for the small investor if enforcement and investor protection are not improved. The WPC Report failed to address this important issue.

"Based on the rules that I am now familiar with I don't think I was treated fairly. Since IDA's investigation and disciplinary actions were focused on breach of rules I expected that this should be the basis for determining liability. In the end, it was not."
A small investor - Dec 2003

As long as the regulators fail to adequately audit industry participants accused of wrongdoing related to small investor losses, don't have a mandate to order restitution when wrongdoing is discovered, and delegate investor protection to industry sponsored agencies, small investors will continue to suffer.

Many Canadians hold the opinion that the United States Securities and Exchange Commission is a superior approach to industry regulation. While that may be so, the Office of New York State Attorney General Eliot Spitzer has recently shown that investor protection has been sadly lacking south of the border as well as in Canada. Spitzer has recently taken action against the investment industry because of its failure to provide adequate investor protection.

The Attorney General's Investment Protection Bureau is charged with enforcing the New York State Securities Law, commonly known as the Martin Act, which protects the public from fraud by regulating sales of investment securities in New York and by requiring brokers, dealers, salesmen and investment

advisors to register with the Attorney General's Office. Where appropriate, the Bureau's attorneys undertake investigations, criminal prosecutions and civil litigation on behalf of the investing public.

The activities of the Bureau have resulted in the levying of major fines across the industry and highlighting the widespread investor abuse. There is no doubt that the same situation prevails in Canada. We lack a Canadian Eliot Spitzer with appropriate enabling legislation to provide investor protection.

In his article "What makes Spitzer run?" in the Financial Post on December 30, 2003, Bill Hanley writes "Whether his actions are politically motivated or not, this crusader is getting results where other regulators have failed". Hanley quotes Spitzer as saying:

"When there is a void and you have an enormous issue that is going unaddressed and there is exposure for small investors, somebody has got to step in and do it," Mr. Spitzer told an interviewer recently. "The reality is that other people should have done it first and yet they didn't."

In Canada the regulatory system has failed to protect small investors. With the exposure of the widespread wrongdoing in the investment industry, it becomes obvious that Canadian investors need our government to take action to provide investor protection.

Our society is based on trust and that trust is being betrayed on a regular basis. Regulators and government are not taking corrective action. Studies and reports have failed to address fundamental issues that give rise to industry problems because industry lobbying and pressures influence the published results and resist implementation of change that is contrary to their interests.

*"I have a Financial Advisor who gave me totally inappropriate advice. It has cost me practically everything. The FA did not disclose the product he put me into, manipulated information to get the product, ignored my request to cancel the product four days later, changed the loan details twice, ignored my messages and cost me to date 50% of the small amount of savings I had.
A small investor - Jan 2000*

On June 15th 2002, the New York Times quoted Treasury Secretary Paul H. O'Neill from a speech on Thursday:

"I think people who abuse our trust, we ought to hang them from the very highest branch"

Canadians are beginning to realize the situation. They are concerned that the investment industry has taken advantage of our trusting society. More and more citizens are demanding that action is taken. They have seen many reports but nothing is happening. Investors are beginning to look at alternative ways to invest. This trend will continue and accelerate.

*"I consider any financial investment or advisory agency totally incompetent, dishonest and self-serving. I consider any regulatory agency all of the above plus ineffective and toothless parasites – a total waste of money. Their very existence constitutes a false sense of security to investors."
A small investor - Jun 1999*

In her remarks "Streetproofing for Investors"⁴ at a SIPA meeting in Markham, Ontario, on June 9th, 1999, some 60 small investors heard Glorianne Stromberg state;

"Our current regulatory system is failing. One reason for this is that the voice of the consumer/investor has not been heard. ... Regulators are not going to lead the way nor will government and industry. ... Your "outrage" will spur government and industry to respond. Your "outrage" or "consumer resistance" will be the catalyst that spurs industry to offer better value to investors. Your demand for governments to get their acts together to make our regulatory structures and our basic laws work better throughout Canada will be the impetus for governments to act. Right now governments are hearing from only one segment of the public - those who sell financial services products who think the status quo is just fine. And why wouldn't they. After all, it's a pretty profitable business for them."

We are outraged that government has failed to act, given that so many studies have indicated the need for reform. When an industry fails through self-regulation to ensure that participants operate in accordance with acceptable moral and ethical codes to establish best practices and provide adequate investor protection, there is no alternative except to provide legislation for a regulatory system that is independent from industry that has the power to provide investor protection for all Canadian citizens. The industry has acted in a shameful way to deny small investors adequate protection. If our government leaders continue to fail to act, then shame on them.

4. Investor Awareness – What does the small investor know?

Most small investors have a limited knowledge of investing or the risks associated with various investment products. Financial education has not been a part of the Canadian educational curriculum. Canadian citizens are not sufficiently financially educated to enable them to deal with the investment industry. They are not aware of how industry participants are regulated or who is responsible for regulation. They are not aware that the industry is commission motivated and that the industry is more interested in selling financial products than providing advice and service beneficial for small investors. The additional risks of leveraged investments are also not understood. Instead the small investor believes he can place his trust in his investment advisor, until he gets burned.

*“Small investors beware of anyone or anything claiming to be an ‘investment advisor’. There are plenty of alternatives out there for you to choose from when putting your hard earned money to work – investigate them all.”
A small investor - Feb 1999*

Most Canadians lead extremely busy lives. With job responsibilities and family responsibilities there is little time to learn about investing. Also, there are so many products being sold that is difficult for the average Canadian to spend the time to become familiar with what is available to be in a position to make appropriate decisions.

*“He suggested I consider giving him authority to operate my account on a discretionary basis, which I did. I understood he would watch all the stocks, etc. that he got me into and make the trades he felt were timely ...
The discretionary account went on for quite some time and he would send a transaction slip each time he made a trade. Operating this way I had no knowledge of the stocks he purchased for me, but I trusted him.”
A small investor - Aug 1999*

At the same time the small investor is bombarded with advertising that suggests he can trust in the investment firms and that the investment advisors are there to help him accumulate wealth for his future.

Canadian society is based on trust. The small investor believes he can trust his investment advisor. He depends upon his advisor for advice and guidance. If the advisor recommends he take a bank loan or mortgage loan to invest, using the argument that is how the wealthy have achieved their fortune, he believes this to be true and acquiesces even though he may have some reservations.

*“I was an excellent housewife and mother but totally ignorant in finance. Since 1998 I have been on my own and couldn't even read my statements. I had, after our home was sold, an investment account plus the RSP. Both of these accounts were managed for a fee by (Brokerage). I became aware of a problem late in 2000 and moved my RSP. I didn't know where to move the investment account, they lost \$180,000.
This is my retirement. I am now 60 yrs old. I was a financial ignorant. I can't take any more lawyers or their costs. I am so exhausted.”*

A small investor - Dec 2003

The investor's lack of awareness, and his trust in the industry are not only anecdotal. Proof may be found from many other sources.

Glorianne Stromberg stated in her address to the Small Investor Protection Association entitled "Streetproofing for Investors"⁴:

"studies indicate that there is no area of daily life for which most Canadians feel more ill-prepared than that of economic life - the decisions that they are called on to make on a daily basis, as workers, consumers, investors, savers, borrowers, voters, or entrepreneurs, and that will affect their ability to achieve lifetime self-sufficiency."

The Investor Education Fund provides the following:

Gaps in basic and financial literacy leave consumers vulnerable to any number of potential problems; for example: mismanagement of credit, churning within their investment portfolio, or even vulnerability to fraud.

Studies have found that Canadians, Americans and residents of the UK score poorly when surveyed for financial literacy.

- *Only twenty percent of Canadian investors claim to be "very knowledgeable" about financial, investment or money matters. This figure has remained more-or-less constant since 1994*
- *A 1997 poll found that sixty-seven percent of adult Canadians do not have a financial plan for retirement. The same survey found that eight-four percent of Canadians did not know the RSP allowance for foreign content*
- *A survey conducted for the Canadian Securities Administrators in 1999 found that fifty-five percent of Canadians incorrectly believed that mutual fund investments are insured by the Canadian Deposit Insurance Corporation*
- *An American Survey conducted two years ago found that over fifty percent of investors, there, lack the basic knowledge to make good investment decisions. This number has remained the same for six years*
- *Only one in five US investors passed an investment quiz sponsored by the Securities Investor Protection Corporation and the National Association of Investors*
- *In a controlled study conducted at Cornell University, less-well informed investors were revealed to be overconfident in comparison to the more well informed*
- *In the UK, forty percent report difficulty understanding financial information*
- *Thirty-eight percent had no idea how much they would need to save to maintain their expected lifestyle in retirement*

The RBC/Ipsos-Reid found that:

- *36 per cent of Canadian RRSP investors are not sure of the current value of their portfolio.*
- *21 per cent of investors also revealed that they do not know the current rate of return on their RRSP.*
- *51 per cent of Canadian RRSP investors have RRSP investments in mutual funds*
- *36 per cent have mutual funds as the greatest portion of their portfolio*

- 41 per cent of investors do not know what type of mutual funds they hold.

In the United States a recent NASD survey⁷ revealed that

- almost all (97%) said it was important to increase their investment knowledge, and nearly half (44%) called it "very important"
- almost half (45%) said they could have avoided a negative experience in the market had they known more about investing at the time
- only 35% of investors answered at least seven out of the ten of NASD's Basic Market Knowledge questions correctly
- only a fifth of investors (21%) correctly identified the definition of a "no load" mutual fund and over a third (37%) would not venture to guess

The NASD survey results suggest that almost half of the investors surveyed had a negative experience. It is probable a survey in Canada would produce similar results.

*"Since I started with this [RR] one year ago I have lost over 30% of my account. When I spoke to him initially I advised him that I was unable to work due to the fact that I was losing my vision, my husband was retired and the dollars in our RRSP accounts represented our total savings. I was reluctant to buy mutual funds and he recommended buying Insured Segregated Funds to alleviate my fears. This fund is down at least 26% and falling.
A small investor - Oct 2001*

Canadians tend to believe in honesty and truth. They tend to trust their fellow man. This trust is portrayed in society by the way we live. Canadians tend to believe in the spoken word and rely more upon what they are told by the individual they deal with rather than the written word that has been prepared by someone they have never met.

*In May 1997 I sold my condo and received \$45,000, which I decided to invest. At that time we emphasized that we did not want to risk this money. We desired an investment that was very low risk. We also wanted something short-term, for a 5-year horizon as we planned to purchase a house. We were sold the Polar Hedge Income Trust Fund. [RR] assured us it was low risk. I found out after the fact that it is actually a ten-year investment and Hedge Funds are indeed extremely risky. I lost approximately three quarters of my principal on an investment I feel was completely inappropriate given our explicit instructions.
A small investor - Mar 1999*

During the Ontario Securities Commission investigation into the penny stock dealers one of the registered representatives, Norm Frydrych, who had worked for Marchment and MacKay, gave testimony (included in Appendix II) in which he stated:

"I was able through the selling technique to load a client with securities based on the price increase of the stock from the time that it was initially purchased and by soliciting the

customer's trust. It was not necessary for me to say very much about the securities themselves. Many customers relied on my recommendation to buy more securities."

However as Canadians become increasingly aware of widespread wrongdoing in the investment industry the erosion of confidence will continue. They are learning that often they would be better off if they had avoided the investment industry. Many former investors in the investment industry have opted for that approach and are now "out of the market". This tendency was developing before the recent downturn and is likely to accelerate.

Glorianne Stromberg states in an article entitled "Listen up, Bay Street in the Toronto Star:

The reality is that many people would be better off in the long term (or at least no worse off) if they confined their investments to Government of Canada bonds and bank deposit certificates rather than expose themselves to the increased risks and expenses embedded in many of the products and services offered by financial services providers.

It is fair to say that investor awareness must be improved. Our educational system should prepare Canadians for handling personal finances. However, as long as we purport to have a society that is based on trust we must also have a regulatory system that provides protection for citizens against being cheated by those who would scoff at our laws and ignore accepted moral and ethical codes.

5. The Investment Industry – How does it treat the small investor?

The general perception of the small investor is that the industry is well regulated and that they can place their trust in their financial advisor. This perception is fostered by the industry. Canadians are bombarded with advertising on T.V., newspapers and magazines that promote the benefits of investing with inviting slogans:

Solutions built around you
Advisors to help make the most of your retirement
Advice as unique as you are

The advertising convinces the small investor that the investment industry will provide the means to have their savings safely invested for growth to provide security and a comfortable lifestyle for their retirement years.

*"I started investing with (RR) in 1986 when he was with (Brokerage). ...He had my trust. (RR) was in a respected position of trust; first as Vice President of the company and secondly as my financial advisor. He abused this relationship."
A small investor - 1999*

Many Canadians are still trusting of the investment industry but are not aware of the risks involved in borrowing to invest. Many small investors succumb to the siren call of the lending institutions to borrow for investment. In particular seniors are susceptible to this ploy and often are granted loans that are totally inappropriate when the investments for which they are utilized have a degree of risk that is inappropriate for seniors or others with insufficient earning capacity to repay the loan.

*"It is very hard to find honest and sincere people in these large money making institutions, who make their millions on our money."
A small investor – Jul 2003*

Until the small investor is burned he believes that the investment industry provides a service to help him grow his assets. Recently more and more investors are becoming increasingly dissatisfied as they realize the erosion of their savings is not so much due to market trends as it is due to widespread practices and wrongdoing in a commission motivated investment industry. Many are realizing that they are being intimidated and this is not acceptable.

*"The Vice President actually laughed at my shallow financial knowledge and convinced me that I am in desperate need of a good money manager like himself to handle my portfolio."
A small investor – Oct 2003*

With recent revelations of wrongdoing in both the United States and Canada, there are a growing number of small investors who no longer trust the industry or the regulators. Many have withdrawn their savings to invest in Canada Bonds, cash investments, or other forms of investment.

"I am not in the market at all. I have got into 90 day GICs a maximum 60 grand in each of four banks, and once a year I draw out all the interest, the trouble that banks and their brokerages are in I do not trust them"

A small investor - Feb 2004

Many younger people are reluctant to invest as they have already experienced loss and now question why they should invest their hard earned money to see it wasted away by so-called investment advisors.

"They (investors) should never allow themselves to be befriended by a broker or advisor but treat them simply as a sales person who has their own best interests in mind and in many cases, because the laws and regulators are essentially impotent, are not above lying and defrauding them using numerous, devious schemes, all carefully designed to separate them from their savings."

A small investor – Jan 2004

Glorianne Stromberg states in an article entitled "Listen up, Bay Street ":

"It is obvious that all of the gatekeeping mechanisms designed to protect investors and to ensure a fair and efficient marketplace have either failed or shown serious shortcomings. Auditors, boards of directors, individual directors, lawyers, investment bankers, rating agencies, standard setters, analysts, regulators and lawmakers have each in their own way failed the public. Their failures have produced what many are referring to as a crisis of faith in the entire market system.

The lack of trust in Wall Street (and by extension Bay Street) is said to be unparalleled since the 1930s. Polls indicate that a growing number of people believe the stock market is no longer a fair and open way to invest one's money and that the market is rigged by and for insiders. A recent New York Times article bluntly stated that the hidden hands of speculators profiting from bad-news rumormongering, good-news insidership, and no-news accounting has made markets unsafe for ordinary investors.

Arthur Levitt, the former chair of the U.S. Securities and Exchange Commission, refers to the failures that the corporate scandals have revealed as "societal." These failures, he says, reflect a deterioration of values and the recognition that many people have no standards or values, which is something we should all be gravely concerned about."

Many are becoming concerned about the apparent moral breakdown amongst the business leaders in our society. It has been said that some of our leaders are amoral and not concerned with moral and ethical distinctions; they have no sense of right or wrong.

"After gaining my trust, [RR] filled out the client documentation and asked that I sign it. He advised me on the various percentages of allocation and assured me that he would closely monitor the stocks. ... He explained that he personally knew the managers of these companies and that he made purchases of these stocks himself. He never mentioned that these stocks were very risky and that he was helping to raise capital for these companies."

A small investor - Mar 1999

David A. Brown, Q.C., Chair, Ontario Securities Commission, has also played a role in the Canadian Centre for Ethics & Corporate Policy as a member of the Board of Directors and later as Executive

Director. In his remarks "Beyond Product Sales: Considerations Other than the Bottom Line"³ to the Centre, in Toronto on April 1, 1999, he stated:

"The basis of any ethical system is values; including the way individually and corporately we treat one another on a micro and macro scale, the manner in which we support the larger community and the care with which we preserve or restore this fragile planet, our home."

Founded in 1988, the center is dedicated to promoting and maintaining an ethical orientation and culture in Canadian organizations with a mission to champion the application of ethical values in the decision-making process of business and other organizations.

*"We are both in our fifties and our dreams of early retirement have been lost along with our faith in the system, whatever the system may be. Who can one trust?
Our question to the O.S.C. is: Does [Brokerage] not have a responsibility to their clients to see that their representatives act in the best interest of their clients? What kind of ethics does [Brokerage] have?"
A small investor – Feb 1999*

On Saturday, May 22, 1999 Diane Francis wrote an article "Time for the brokers to step up to the plate" in the Financial Post. She opened her article with the comment;

"It may turn out that brokers will never be forced by a court of law to be responsible to the victims of the world's biggest gold swindle, the Bre-X Minerals Inc. fraud. That would be a travesty, in my opinion. Regardless, however, I believe stock brokers all have a moral obligation to reimburse investors who bought Bre-X or any other stock that turns out to be a fraud."

Ms Francis also wrote;

"consider how shabbily the country's brokerage firms, mostly owned by the big banks, have behaved compared to other businesses. If Eaton's sell me a VCR that doesn't work, it replaces it or gives me my money back. If Loblaws sells me tainted meat, I get good meat in return or else I get my money back. ... By contrast, this country's brokers, and the banks that own them are not as ethical. They not only refuse to take back bad goods that they were responsible for selling in the first place. They are not even offering to reimburse victims for the profits they made selling them this worthless stock. Even more obnoxious, these brokers and banks have invested these profits made from their victimized clients to hire legal big guns to further victimize their customers by fighting them tooth and nail in order to deny them any compensation."

Ms. Francis concludes her article saying;

"Canada also needs the investment banking industry to operate properly and morally."

In her 2004 New Year's message Governor General Adrienne Clarkson said:

"The public good is expressed in the way we live ... we can look confidently towards the future in whatever we do if we know that we have anchored ourselves today in what is good and what is right. Let's make 2004 a year in which we all reflect on what we've done in the past. And go forward as Canadians with our values, our acceptance and our dreams."

The findings of the Auditor General's investigation are disturbing. When there is flagrant violation of rules and regulations and suggestions of criminal wrongdoing by representatives of our national government one has to question whether the very foundations of our society are being eroded. We still hear leaders

speak of honesty and integrity and we are hopeful that there are some strong leaders who will stand for what is right. However there are problems in the investment industry that must be addressed.

"There is absolutely no doubt that the losses outlined in the attached schedule are as a direct result of the inactions and actions of both [Bank] and [RR]. You are in breach of the agreement between the parties. You are in breach of common decency and quite frankly, these damages are without equivocation resultant from the activities of your [RR] and yourselves.

I find it extremely distressing that the bank's customers have been so shabbily treated and so badly considered when they are both significant and have had such a long-term relationship with your institution."

Counsel for a small investor – Dec 2003

Some leaders of the investment industry have displayed a widespread practice of greed and dishonesty. Corporate fraud and breaches of securities laws appear rampant. There are fears that moral and ethical codes are breaking down in our society. It is time for Canada's leaders who have a sense of right and truth to take affirmative action to prevent further degeneration of Canadian society.

6. Investor Complaints – What are the small investor’s complaints?

The fundamental complaint of small investors is the breach of fiduciary duty. Some of the hardest hit are doctors, engineers, health care workers and others with a strong sense of social responsibility. Most Canadians with a sense of social responsibility conduct their lives within the law and following long established moral and ethical codes. Most religions encompass teachings that are fundamentally the same. Killing, stealing, and harming your neighbour are considered not right. Canadian citizens expect no less when they entrust their life savings to an investment advisor.

*“Amongst other things I believe (Brokerage) have breached their fiduciary duty. At age 67, and retired, capital preservation is important for future security.”
A small investor - Dec 1999*

Each year thousands of small investors submit complaints to the regulators. SIPA approached the major regulators with a request for statistics to qualify these complaints and received response from all those contacted. The following are the results.

	ASC	BCSC	CMVQ	OSC	IDA*
1999	-	845	221	739	900
2000	-	729	213	790	1150
2001	560	645	182	834	1050
2002	434	410	150	745	1000
2003	912	223	157	456	1550

* IDA number of complaints estimated from graphic presentation

The CSAs report that the top five complaints relate to:

1. Suitability
2. Customer service
3. Unauthorized trading
4. Disclosure
5. Scams and frauds

The IDA reports the most common complaints are:

- Unsuitable investment
- Unauthorized trading
- Inappropriate personal financial dealings

Canadians believe that their investment advisor is professional and therefore place trust in him. When fiduciary duty is breached and that trust is betrayed the small investor suffers a loss that is much greater than financial, and results in disillusionment. It often takes several years for a complaint to be formalized while the investor struggles with his new realization. Investors do not generally complain until they have lost significant amounts of money. By the time the money is gone it is too late to take preventative action, and recovery is never easy.

The common complaints are that the value of the account has suffered serious degradation. In most cases the investor has been concentrated in one product or one type of product, and often has been

leveraged with a bank loan, a mortgage loan, or a margin loan. In all cases the investor has trusted his investment advisor.

*"I have a Financial Advisor who gave me totally inappropriate advice. It has cost me practically everything. The FA did not disclose the product he put me into, manipulated information to get the product, ignored my request to cancel the product four days later, changed the loan details twice, ignored my messages and cost me to date 50% of the small amount of savings I had."
A small investor - Jan 2000*

The circumstances are common whether the product is mutual funds, securities, limited partnerships or other financial product.

Many investors complain that the Investment Advisor

- Did not explain the products fully
- Did not complete a Know Your Client (KYC) form and return a copy
- Did not explain the risks associated with the investment
- Did not provide a prospectus
- Failed to provide meaningful reports
- Did not revise the KYC form when there were major life changing events
- Overstated income and assets in the KYC form
- Made discretionary trades without authority
- Failed to act on instructions
- Encouraged investor to borrow for investing
- Traded excessively to generate commissions
- Purchased inappropriate securities

The complaints may vary but most are based upon breach of trust, unauthorized trading and inappropriate investments that have resulted in major loss. Many of the victims are seniors but victims come from all walks of life.

*"With my father's limited investment experience (until the above unfolded, he had never invested in mutual funds or the stock market) and limited education (grade 7), I tend to get called upon in times of financial or legal confusion, which is what my father did when he began to suspect that something wasn't quite right. I firmly believe that (Big Brokerage)'s actions were unprofessional, and very possibly illegal, but I'm frustrated at not knowing where to turn. I've thought about suing them, but neither my father nor I have the time or money to put into a court battle."
A small investor - Feb 1999*

"I would like to draw your attention to unethical trading practices, discretionary and unauthorized trades, and trades unsuited for my circumstances. (RR) was my consultant for over fifteen years. He moved to (Brokerage) about a year and a half ago.

They have a sales meeting every Monday morning, which pushes him into bizarre, inappropriate purchases. These were not only inappropriate, but also discretionary. "
A small investor - Mar 1999 (doctor)

* * *

"Amongst other things I believe (Brokerage) have breached their fiduciary duty. At age 67, and retired, capital preservation is important for future security. Several complaints have been submitted to the compliance officer of (Brokerage). The response did not provide a satisfactory resolution of my account. "
A small investor - Dec 1999

* * *

"Many times we stressed the importance of low to medium risk in the choice of investments. This can be verified by the "know your client form" which we completed each year. Contrary to these investment objectives we believe that extremely high-risk investments were chosen on our behalf. Within a short time most of the investment money was lost."
A small investor - Mar 1999

The same words keep appearing: we trusted him, he abused the relationship, breach of fiduciary duty, failed duty, inappropriate securities, discretionary trading, no authority, excessive trading, unethical, possibly illegal. In many cases there is fraud.

"The broker forged my name."
A small investor (QC) - Nov 2003

* * *

"Regarding all the forged initials on my Application/Agreement, they say the I.A. said I signed them."
A small investor (ON) - Nov 2003

Most investors are not aware of the rules and regulations that are meant to govern the industry and often believe their losses are due to market risks rather than wrongdoing. The industry participants have shown a willingness to mislead investors with a complaint by saying it is too late because too much time has passed or the registered representative no longer works there.

The facts are the Statute of Limitations is six years, fiduciary duty endures, and the company is responsible for the actions of their representatives while they were employed by the firm. It does not matter whether the RR has moved on or passed away. Small investors are unaware of their rights or the responsibilities of the industry. Unfortunately it is not uncommon for industry participants to take full

advantage of the lack of investment knowledge of the small investor. There seems to be a complete lack of integrity and little sense of morality or ethics.

"I am sure there are other investors that are having the same set of problems or did have the same problems. I am still wondering if [RR] actually retired or was forced out due to these looming problems, which seem to indicate mishandling or misappropriation of client funds. All the trades beginning in 1996 until he retired, are completely unsuitable and imprudent for my investment objectives; a severe breach of trust."

A small investor – Jul 1999

The investment industry has a history of cover-up, providing mis-information, and at times having counsel lie to the judge in court or to the mediator attempting to settle a dispute. When questioned about the propriety of counsel lying to the judge, one prominent securities litigator said:

"It is not right, but it happens."

To reduce the number of complaints it will be necessary to eliminate the major cause. Revising the regulatory system by providing for the effective prosecution of those who flagrantly breach the law would eliminate many complaints. It should not be profitable for anyone to breach the law as that simply encourages rather than discourages those who are prepared to ignore moral and ethical codes, as well as regulations and the law, in the quest for greater profit.

7. Dispute Resolution – What is the small investor's experience?

Small investors are often slow to make a complaint. They have placed their trust in an industry and find it hard to believe that something could be done that is wrong. As most small investors do not talk to others about their investments, they are not aware of the issues that many others face. When the idea that something could be wrong is finally precipitated either by a news article or a comment by others, they do not know where to start to have their dispute addressed.

*"We have found out with our case there are at least three others with the same complaint about the same broker. It was very difficult to find out what to do, where to go, and who didn't have a conflict of interest just to get the ball rolling."
A small investor - Dec 1998*

After the realization that something is wrong it often takes several months for the investor to take action. Many investors who have suffered loss have approached their investment advisor. Sometimes the advisor will attempt to resolve the problem, particularly if his wrongdoing has also cheated the company as that type of action is frowned upon.

If the dispute escalates to the manager or compliance officer the investor may hope for resolution and reasonable consideration. They most often find that there are extensive delays and any offer of settlement is miniscule.

*"I was advised to inform the manager of this brokerage firm what had happened; and when I did he said he would settle things. To date this has not occurred. Then I was advised to contact the Ontario Securities Commission and all they did was forward my letter of complaint to the Investment Dealers Association. The initial investigator indicated to me that there were problems with my account. My file is now in the hands of another investigator and nothing is being done."
A small investor - Jun 2000*

Based upon feedback from small investors, the initial response often seems sympathetic with an explanation of why nothing can be done about the investor's loss. Common reasons are:

- It's the market
- Nothing wrong was done
- You are the only one to complain
- You were aware of what was going on
- You waited too long to complain
- It's too late to take corrective action
- The investment advisor has a different story
- The investment advisor no longer works there

However, the response is often inconsiderate and callous.

"They told me to get lost and get a lawyer. And then made the crack that they doubted that any of the law firms would take them on because the law firms depended on them for business."

A small investor - Nov 1998

"I attempted to solve this problem by meeting with the firm. To say I was laughed out of the office would not be an over exaggeration."

A small investor - Nov 2003

If the investor insists that something must be done, the company may offer to refund some of the recent commissions or even make a small cash settlement to show how they value their clients. The amount will normally be less than 10% of the losses and this is done only in cases that appear to be a blatant disregard of the rules and regulations that can easily be proven by the incontrovertible evidence at hand.

Compliance officers tend to sound sympathetic but appear more intent on protecting the firm and not so interested in investor protection. They often bring up the same arguments, and then place the blame on the investor. The "could've - should've" argument is introduced. You should have been checking closely. You could have checked what your advisor was doing. Many investors actually begin to believe they are at least partly to blame.

One Compliance Manager writes to a small investor:

"Up until I received your phone call and then letter in October of 1998 we have no record of any complaints from you on file. If you had come to management back when you say these unauthorized trades started taking place, the problem would have been looked after."

It is not unusual for compliance officers to make false statements to dissuade clients from pursuing complaints. They are there to protect the company. It is apparent that they are not interested in resolving the dispute in an equitable fashion, but would like to dismiss the dispute by any means possible short of offering appropriate restitution.

"After repeated non-productive contacts with the Manager I telephoned the Compliance Department of (Big Brokerage) on October 12th and was advised by the Compliance Officer there was no record of the complaint on the computer. He agreed to accept a fax of my correspondence with the local manager and ensure I received a confirmation. On October 19th I telephoned the Compliance Officer who informed me that the file was in Ottawa with the Complex Issues Manager. She advised that she would get back to me within the week.

I do not feel I can afford arbitration but I definitely will file a grievance with the Securities Commission. I feel these large companies are aware that on smaller accounts the legal costs for arbitration are prohibitive."

A small investor - Oct 2001

At worst the small investor is treated with arrogance and is intimidated or humiliated. He may be told to try litigation that they will defend vigorously with resultant delays and costs. Many treated in this fashion will not proceed further with a complaint.

"Out of weeks of despair, work, stress, and worry and concerned that his (I.A.) latest promise was not kept in an attempt to discourage us, I telephoned you on April 16 to bring this matter to your attention. Needless to say I was astounded by your abrupt, bullying and belligerent tone"
A small investor - Apr 1999

Investors who do not buy into these arguments may then move on to the ombudsman if the firm has one. They may find this route a little more pleasant but inevitably will discover that there exists the problem of lack of written evidence and the investment advisor's recollection is often at variance with that of the investor. If restitution is offered it is generally pennies on the dollar. Small investor feedback indicates the ombudsman is similar to the compliance officer but a little kinder. The end result seems not greatly different.

"The Ombudsman's Office seems to have sided with the I.A. on all matters. Regarding all the forged initials on my Application/Agreement, they say the I.A. said I signed them. Although I know the Assistant Ombudsman really knows they are not my initials, he is still saying "Prove it!" ...
I just got off the phone. I am in shock that the Ombudsman/Bank will not listen to me or let me prove it to them. They are just concerned that the I.A. is working within the Rule Book of the IDA.
I now need a "hand writing expert". I am supposed to be going to the Toronto Police to get them to look at the documents."
A small investor - Nov 2003

The Ombudsman for Financial Services and Investments is the final step in this process. OBSI claims to be objective in resolving disputes and also claims to be quite successful. However feedback suggests that this industry sponsored service may still have some shortcomings. Small investors have reported lengthy delays in the investigations due to companies using delaying tactics by failing to submit requested documentation.

There is also the problem of Advisors recollection of events being at variance with that of clients and this often results in action not being taken. A bank ombudsman letter (not OBSI) to a small investor refers to this issue;

"Both (RRs) specifically deny that you instructed them not to sell any of your shares. They also deny that you requested a follow-up letter.
(RR) denies that you made the telephone calls that you say you made upon receipt of the various confirmation slips.
Clearly there are many critical points of disagreement between your version of events and that described by (Brokerage)."

The "could've - should've" argument is also used to suggest that the investor should have taken action to mitigate the loss when he learned that something was wrong. Many investors will accept this argument and accept a proposed settlement. They are unaware that a Supreme Court decision has held that the investment firm is responsible and can't lay the blame for losses on the investor while the account is still open.

Those who proceed to the regulators find that the regulators will only investigate to determine if the rules and regulations have been breached but will be unable to get the small investor's money back. They will suggest that the small investor consider seeking legal counsel.

Those who address their complaint to an SRO often find they are met with extended delays, a lack of transparency, and often a decision that seems biased towards the industry. The industry operates on verbal transactions and it is common for the Investment Advisor's recollection of events to be at variance with the investor's. In these situations the SRO refuses to make a decision based on probability (that the Investment Advisor is lying) and closes the file saying there is not sufficient evidence that the rules were breached.

"The entire process has been very frustrating. I realize investigations can be long and time consuming however I believe the IDA does not appreciate the impact having your money stolen has on a person. I'm sure if you ask anyone at the IDA individually they would say how traumatic or horrible it must be but they do nothing to help alleviate the anger and frustration."

A small investor - Dec 2003

The feedback received from small investors is that the IDA takes a long time to investigate a complaint and accepts its members delaying the submission of documentation required to complete an investigation. Members of SIPA have reported that some of these investigations take over a year.

"The IDA has finally granted me an interview, however, not until the week of January 14, 2002. I was hoping the IDA would be able to do this in less than 14 months after the initial complaint."

A small investor - Dec 2001

These investigations are not open and the parties are questioned separately. In some cases investors are not even questioned.

SIPA has received documentation from a senior who suffered significant loss when the broker purchased equities for his account. The average knowledgeable investor would have considered many of these equities to be inappropriate for a senior and the asset mix to also be inappropriate. A senior officer in the brokerage firm wrote a letter stating that each of the equities purchased for the senior was appropriate even though a significant loss was incurred. The letter exonerated the registered representative.

The subsequent IDA investigation that took over a year admitted in writing to the senior that some rules had been breached. The IDA assured the senior that action was being taken and that a "letter of reprimand" was being issued. The brokerage was a major bank owned brokerage. This action was meant to satisfy the senior but letters of reprimand are not made public. Not only was the senior's problem not resolved but also there was no deterrent to repetitive rule-breaching activity.

A private interview with an IDA inspector provided some insight into regulatory problems. This investigator had several years of police investigation experience and took the Canadian Securities course in preparation for a change in career to carry out investigations in the investment industry.

Having completed an investigation he returned to the IDA and prepared a written report outlining his findings in detail. He was surprised when his manager told him he would have to rewrite his report. He questioned why there was a need to re-write his report when he was only reporting fact as a good investigator is taught to do. He was told that it was unacceptable to submit a report like this about that particular firm.

The investigator found that he was not alone. Other investigators had the same experience and faced a choice of making compromises or seeking employment elsewhere. This investigator left his employment with the IDA and sought employment elsewhere.

Investors often find that their case gets stalled within the IDA.

*"I was advised to inform the manager of this brokerage firm what had happened; and when I did he said he would settle things. To date this has not occurred. Then I was advised to contact the Ontario Securities Commission and all they did was forward my letter of complaint to the Investment Dealers Association. The initial investigator indicated to me that there were problems with my account. My file is now in the hands of another investigator and nothing is being done."
A small investor - Oct 2001*

Even when the RR is disciplined there is no mechanism to provide restitution and the small investor is left with few options.

The best available solution is civil litigation. However, there are very few complaints that actually reach court and result in decisions that are made public. This helps to reinforce the public perception that the industry is well regulated and deserves public trust. The public is not aware of the numerous actions that are proceeding on a regular basis.

Investors often find out that it is difficult to get professional help because most of the large firms are committed to helping the big companies. This results in an uneven playing field and a reduction in the small investor's chances of gaining a just and fair resolution of the dispute.

*"I have been advised that [Brokerage] has a terrible history of just keeping things in court until the victim's can't afford it anymore."
A small investor - Mar 2001*

There are reasons so few cases reach court. The industry employs delaying tactics to run up the costs and frustrate the small investor. They defend "vigorously" cases that morally and ethically seem indefensible. They introduce motions that seem meaningless except to increase the costs and delay the process. The Plaintiff sees that action will take many years and incur large legal bills to achieve a court decision. Often a trade-off is made to accept a partial settlement for a quick resolution of the dispute. The result is that the small investor is once again victimized.

There have been several significant decisions in favour of small investors during the last few years. However, the case of Armand Laflamme illustrates how unsuitable this process is for seniors. The

Supreme Court issued a 7-0 decision that Prudential should pay Laflamme the total of his losses, some \$2 million. Laflamme started his action at 61 years of age. He was 71 years when he received the decision. He had spent at least 25% of the rest of his life, the best years, fighting a protracted legal battle. These should have been his golden years.

Other judgments highlight the actions of industry participants in creating delay in civil cases. There appears to be a lack of case management to speed up the process. There is no oversight by the regulators to determine whether or not civil litigation is a viable option for dispute resolution. The regulators freely recommend this option without consideration that for many it is just not possible.

An article by Derek DeCloet in the Financial Post March 12, 2002, entitled "Judge slams TD Evergreen compliance" quotes Justice Peter Hambly of the Ontario Superior Court of Justice.

"Justice Hambly found Mr. Hunt's story more credible than Mr. Schram's (their broker) and awarded a judgment of \$59,319, their estimated loss. DeCloet writes that the judge saved his harshest words for more senior officials at TD Evergreen and quotes Justice Hambly as writing: "Their investigation of the complaints of Melville Hunt and Marion Hunt that Mark Schram sold their BCE stock without authority was a sham," ... "The letters of Robert Strickland and Jacqueline Hatherly are patronizing, demeaning and insulting," wrote Justice Hambly. "In a word, the conduct of compliance is disgusting. In dealing with the complaints, Toronto-Dominion Evergreen did not comply with their fiduciary duty to the Hunts."

Note: Justice Hambly found in favour of the Plaintiff.

Justice Morneau's judgment on the Lizotte v. RBC Dominion Securities case in November 11, 1999 reads in part:

"Although certain commitments were made in 1994, ... , some of the documents had still not been sent at the time of the trial. The defendant claimed at the time that they did not exist. Their sudden appearance during the hearing and the fact that they were available to witnesses for the defence in the meantime point not only to the defendant's reluctance to submit to the judicial process, but to its resistance to doing so. ... This behaviour is shocking and inexcusable. The Court sees here a deliberate effort on the part of RBC to wear down, not to say exhaust, the plaintiff in order to evade its responsibilities. ... The defendant's attitude throughout the case, including its tardy tender, justifies the plaintiff's fears. Despite its initial reticence to consider the possibility of complying with this request, the Court believes that the circumstances justify ordering provisional execution of part of this judgment, notwithstanding appeal. The Court is convinced, in fact, that otherwise the plaintiff will sustain serious and irreparable injury through the repetition by his powerful adversary of the manoeuvres proven in the first instance." Note: Justice Morneau found in favour of the Plaintiff.

The Wise Persons Committee reported there is a need and an opportunity to make significant improvements to our current regulatory structure to correct its flaws:

"Enforcement must be significantly improved. Insufficient resources are directed towards enforcement. Wrongdoers too frequently go unpunished, and adjudication is unduly delayed. Coordination difficulties impede investigations and can lead to multiple proceedings that are inefficient and unfair. There are disparate priorities and a lack of uniform investor protection. All of this undermines confidence in Canada's capital markets."

The regulators investigate only to determine if rules have been breached and advise small investors that they cannot get their money back, but suggest civil litigation is a possible course of action. For many it is not an option because they do not have the financial, mental and physical, or time resources to mount an extended legal battle.

There is just too much evidence, anecdotal and fact, to believe other than that the registered representative will not tell the truth even in a court setting. In the case of Zraik vs Levesque, Justice Archibald said he did not believe the broker and did not believe the client but was finding in favour of the client because the broker breached the rules.

The regulatory system should not allow the resolution of these disputes to take such a long time. Many small investors feel the whole process is controlled by industry to introduce delay and make it difficult for small investors to resolve their disputes.

One couple that suffered significant loss at the hands of their investment advisor had to adjust from being a two-car family with a modest home and winters in Florida to having no car, no winter holiday, and struggle to keep their home, which had been mortgaged upon the advice of their investment advisor.

It is no secret in the industry that the investor is not protected. The regulators have failed the small investor.

The small investor's experience with dispute resolution is generally negative. His initial attempts to resolve the dispute are rejected. As he proceeds further he realizes he is not dealing with a level playing field. The industry-sponsored regulators are reluctant to act against the industry participants and fail to take appropriate action even in the face of overwhelming evidence of wrongdoing including fraud. The investor is left with civil litigation as the only possible solution.

Civil litigation is not an acceptable remedy for dispute resolution. Seniors do not have the resources required in physical and mental stamina, financial capacity, or time to pursue a legal battle that can take ten years to achieve justice. This is why most cases are settled out of court at substantial discounts from what would seem to be just.

"I wrote to the OSC who forwarded my complaint and evidence on to the compliance department of the brokerage firm. That was 1999.

It is now 2004, and five years have passed. With legal fees and loss of interest, apart from what the monies invested would be worth today had they been suitably invested, my total losses amount to \$325,000.00. ... It appears that they are unwilling to investigate the behaviour of the broker or supervisor.

In the meantime the broker has been disciplined - for the second time; and the IDA is investigating at least two other brokers, in the same branch. It appears that I am not 'being heard'."

A small investor - Dec 2003



Small investors across Canada are crying out for help. Their cries appear to fall on deaf ears. Many individuals have attempted to take action over the years. The investment industry has seemingly ignored them. Effective action is long overdue. Numerous report and studies, as well as the mood in our society suggest that it is time to take affirmative action.

The Canadian Government needs to act upon the recommendations of the Wise Persons Committee and establish a Canadian Securities Commission to administer a Canadian Securities Act to provide equal treatment for all Canadians. It also needs to establish better investor protection and better dispute resolution mechanisms that are not industry sponsored or controlled and are fair to small investors.

8. Investor Losses – How much have small investors lost?

The amount of small investor loss due to industry wrongdoing is greater than anyone realizes. The media has exposed many frauds by small fraudsters but there are also many cases of significant loss where the advisors represent large insurance companies, mutual fund companies, and bank owned brokerage firms. Investor losses due to breach of rules and regulations by these large firms are probably many times larger than the losses due to small time fraudsters.

In Toronto and elsewhere there are legitimate penny stock dealers that for many years carried on practices that are shocking. They sold worthless shares to unsuspecting small investors. In some cases the shares were fraudulent, but still they continued to operate. They undertook legal battles to frustrate the regulators and continue their predatory practices for years taking advantage of small investors while the regulators debated with counsel. Appendix II includes a statement by one of the Registered Representatives who arrived at a settlement agreement with the OSC. In his statement he says:

"In my experience with Marchment, of the thousands of customers that I dealt with all of them (except for clippers and others who insisted on selling the shares that they acquired contrary to our recommendation) lost virtually all of the money that they invested with the company."

It is not only the penny stock dealers that take advantage of the small investor. The average Canadian is led to believe that there is investor protection. Yet widespread practices and wrongdoing in the investment industry result in disastrous losses for many Canadians. These are not losses due to normal market risk, but due to unsavoury practices that are condoned in an industry that appears to be strictly profit motivated.

*"As a result of the activities of this broker, I not only lost my entire life savings, I lost the savings of my company and I found myself in debt to the tune \$1.8 million."
A small investor - Nov 1999*

*"On Friday, December 12, 1997, we reviewed (Broker)'s performance with (RR) and (Manager) ... As it turned out by December 31st our total accounts had fallen to \$250,137 from \$501,367 twelve months earlier."
A small investor – Oct 1998*

*"I have full and accurate documentation of all events, as well as statements showing the depletion of the account from approximately \$170,000 in early 1994 to almost zero."
A small investor - Nov 1998*

"I have, within a four year period, lost 40% of my initial investment capital of \$300,000."

A small investor - Dec 2003

"(Brokerage) and (RR) both failed in that duty. In addition to the loss of inheritance, I have spent to date \$30,000 in legal fees."

A small investor - Dec 2003

"I invested a large sum of money, \$125,000 with a broker at (Brokerage) and through mismanagement, inappropriate securities selections, not following directions, and various other infractions, he managed my portfolio in a matter of approximately 14 months down to a value of about \$60,000." A small investor - 1999

"My loss of \$40,000 may not substantiate making an individual claim, as I believe the court expenses could exceed that amount."

A small investor - Jun 1999

"I suffered a loss of over a million dollars through the same financial advisor in two different companies. (Mutual Fund Co) and (Big Bank Brokerage). An accountant's analysis later revealed a large amount of money was never transferred from (Mutual Fund Co) to (Big Bank Brokerage)."

A small investor - Dec 2003

"October 14, 1999, within a time frame of less than 8 months, the value of Ms. (small investor)'s assets in her account dropped from the original of \$50,000 to less than \$10,000."

Interpreter for a small investor - Nov 1999

"My husband and I have lost over \$250,000 after our broker advised us to enter high risk technology mutual funds and stocks. We lost about 45-50% of our portfolio and we are in our 50's, and had planned on retiring at 55. This goal was clearly stated to our broker."

A small investor - Feb 2004



*"Fourteen months after his taking over the account \$100,000 turned into \$45,000"
A small investor - Feb 1999*

*"My portfolio had decreased from an originating value of approximately \$150,000 to today's value of approximately \$25,000."
A small investor - Aug 1999*

*"I have depended upon (Brokerage) for investment advice and my account lost \$20,000 plus from December 16, 1996 to May 5, 1997."
A small investor - Dec 1999*

*"I lost hundreds of thousands of dollars. The firm lent me the money, I'm finding out now, fifteen years later, that they had a position in the stock."
A small investor - Oct 2001*

*"My cash account of approximately \$45,000 with (Brokerage) is worth less than \$10,000."
A small investor- Mar 1999*

*"We had one individual in the area lose \$300,000, his entire life savings."
A small investor - Feb 1999*

*"My wife and I have suffered a 37% loss over one year from mutual fund investments managed by (RR) of (Mutual Fund Dealer)."
A small investor - Jul 2000*

It is difficult to quantify the extent of small investor losses due to wrongdoing by the industry but preliminary estimates run to billions of dollars.

A survey of members carried out by SIPA a couple of years ago indicated the average loss was about \$80,000 and the average age of the investor who suffered significant loss was over 60 years. The data collected did not include known multi-million dollar losses within SIPA's membership, as litigation in those cases was ongoing.

Anecdotal evidence indicates that many seniors have lost over several hundred thousand dollars and yet they are reluctant to get involved with a lengthy dispute or civil litigation. Still others are reluctant to admit that they have suffered loss, as they do not want family and friends to know.

Industry participants are well aware of the financial predation that exists in the industry. A retired lady broker writes:

"I watched brokers trade with abandon on accounts and the women had absolutely no idea what was happening. I watched one single retiree account go from \$175,000 to \$15,000. Her concept of money still left her with the impression that there were lots of funds. This view was promoted by the broker. We are not talking fly by night companies. I am talking (Big Bank Brokerage) brokers that I worked with. Yes, the managers knew what was happening." – A retired broker

Part of the problem in quantifying the extent of this problem of loss is the industry attitude towards covering up the problem rather than dealing with it in a socially responsible way. When a situation is exposed, the industry promptly brands one of their own as a "rogue broker". He is forced to pay the price for getting caught. In this age of computerized control it is improbable that a registered representative can do very much that escapes the attention of compliance and management.

Evidence indicates that companies are aware of these malpractices but choose to cover-up because these practices generate excessive commissions. Because these practices are covered up it is difficult to obtain accurate figures of small investor losses due to wrongdoing. It is necessary to extrapolate from known data to arrive at estimates of these losses.

There are some records of complaints but there has not been a requirement for companies to disclose all complaints. The Ombudsman for Banking Services and Investments provides some statistics regarding the number of complaints to the ombudsman service but does not provide any quantification.

The IDA does report on the number of complaints but does not provide any quantification.

The British Columbia Securities Commission reports in an e-mail to SIPA dated November 13th 2003:

"The number of complaints received by the British Columbia Securities Commission that resulted in the opening of a case (investigation) for each of the last five fiscal years are:

- 845 (fiscal year 1999-2000)
- 729 (fiscal year 2000-2001)
- 645 (fiscal year 2001-2002)
- 410 (fiscal year 2002-2003)

With respect to the dollar value of the alleged losses, we have estimated that reported investor losses in British Columbia amount to approximately \$100 million each year. This statistic is an estimate only, based on data for the fiscal year 2001-2002, and may no longer be valid."

Other regulators have responded and provided the number of complaints but say they do not collect statistics relative to the amounts of loss. However, many of the surveys that have been recently carried out suggest that the magnitude of investor loss is quite significant. When Canadian citizens are delaying retirement or re-entering the work force it is often because they have lost significant amounts of their life savings.

Although the industry blames the recent market downturn, many of the losses reported by small investors occurred before the market downturn. It would appear to be imprudent for advisors to have seniors invested in securities that are at risk of deteriorating in value at a stage of life when they do not have earning power to replace losses due to normal market risk.

*"Throughout this whole ordeal at no time did I feel that the Bank was looking after the welfare of the client, nor was I getting proper independent or financial advice. ... My wife and I do not have the further amount of \$14,740 in our RIF account with your bank for our retirement as same was all taken by your bank to retire the RRSP loan. This loan repayment could have been done in an alternate manner without such punitive results to two elderly citizens who believed your firms' advertising that by borrowing to top up your RRSP one could retire more comfortably in the future."
A small investor – Jun 2001*

According to the 12th Annual RBC/Ipsos-Reid poll, reported in January 2003:

- *Seven out of 10 (67%) Canadians approaching retirement feel their retirement plans have been impacted by the market and, among this group, 60 per cent state their plans to retire have been set back by up to five years or more.*
- *59 per cent of those aged 45 and up, who are not yet retired, are feeling far or somewhat behind in meeting their retirement goals; and surprisingly, 56 per cent have not determined the amount they will need to save to ensure they have a comfortable retirement. Even among those with RRSPs, 39 per cent have less than \$50,000 saved in their RRSP.*
- *retirees are also feeling the pinch. Eighty-one per cent of this group has been adversely affected by the markets, to the extent that 74 per cent have made changes and cutbacks to their retirement lifestyle, with another 7 per cent having gone back to work.*

Although this report does not provide any quantification of losses it does indicate that the majority of small investors appeared to have experienced investment loss sufficiently significant to have an impact on their retirement plans. Many who had retired have been obliged to return to work.

There are widespread industry practices that are followed to generate commissions regardless of the negative impact on small investors. Institutions are able to avoid many of these practices as they have informed resources to manage their investments. The small investor however is uninformed and thus bears the brunt of these malpractices. It is time for the Government to put an end to the industry's cavalier attitude towards investor protection and stop the wanton depletion of seniors hard earned lifetime savings.

9. Impact on Victims – What is the impact on small investors?

*"Suicide seemed to be my only solution."
A small investor*

While the magnitude of investor losses in financial terms probably amounts to billions of dollars, the impact upon small investors is far greater in other terms. The negative effect is more than just a loss of money. Those who have never experienced significant loss of life savings have difficulty to understand the impact on victim's lives. The realization that the accumulated assets of your life's work have been blown away by someone in whom you placed your trust is extremely distressing. The victim realizes that he does not have another chance when his working career is at or near the end.

*"This loss was very distressing for me. I am in my 64th year and with little chance of recovering any major losses. The effect has been considerable stress, loss of sleep and strains on family relationships."
A small investor*

Many victims of major financial loss suffer from Post Traumatic Stress Disorder. When the loss of a small investor's savings is caused by wrongdoing of those in whom trust had been placed, a lawyer compared the impact similar to that on a victim of incest. The victim has placed their complete trust in others and that trust has been violated. The victim has trouble believing that the perpetrator has done wrong and therefore feels guilt for having "allowed" the transgression to happen. The victim feels somehow at fault and is often embarrassed to admit that the event has happened.

*"Unfortunately, people are very reluctant to admit they have been taken, myself included, and most also do not want to make public their private lives and financial situations."
A small investor- Feb 1999*

Most victims are encouraged to believe that they somehow have contributed to the event and therefore nothing can be done. Many victims go through life carrying this burden. Sometimes it becomes overwhelming.

*"I can tell you there was the day when I stood on the deck of my boat with a 50 pound weight tied around my waist because I had to put an end to ...(unintelligible) ... and it is only because of the intervention of my wife, a very timely intervention, and the subsequent support of my two children that I am here before you today."
A small investor*

"You frequently recall dark days in your life, we know and we have been there. I know the private Hell of trying to sleep, (my wife) and I have both been suicidal, everyone will try to distract you with irrelevant issues in little hurtful but personally invasive comments shattering your confidence in your task, you will in your mind retrace

everything you ever said or wrote, you will find yourself hurt, angry and down to the point you cannot think clearly and you will recall it as quite oppressive and next to Hell."

A small investor - Nov 2000 (now deceased)

"The pressure and the losses and uncertainty of the future were too much for us at the time. ... The irrational and probably illegal handling of my portfolio has cost myself and my wife great damage financially and psychologically. ... My wife and I have been through a terrible three years and have serious doubts about our future now."

A small investor - Nov 2003 "

(Broker) said he had 200 seniors in his file one as old as 99. I cannot help but wonder if any were as unfortunate as myself."

A small investor - Oct 1998

"I would willingly let other people know so they don't fall victim to these ruthless predators."

A small investor - an 2000

"The current financial and legal systems left us battered and bruised."

A small investor - Jul 2000

"We have not decided on any action, it is quite a decision as to whether or not to get involved in a lawsuit, or even mediation. The more we find out about the intricacies and dirty dealings, the less we want to become more entangled."

A small investor - Feb 2001

"I probably don't have any legal right to pursue him but it would be nice if others were warned."

A small investor - Feb 1999

"I became aware of a problem late in 2000 and moved my RSP. I didn't know where to move the investment account, they lost \$180,000. This is my retirement. I am now 60 yrs old. I was a financial ignorant. I can't take any more lawyers or their costs. I am so exhausted."
A small investor - Dec 2003

"I'm frustrated at not knowing where to turn."
A small investor - Feb 1999

"It appears the majority of the victims are well over 70 years old and one may be in his 90's!"
A small investor - Mar 2001

"It (the financial loss) has caused much stress because of the way it has forced us to live both from the enjoyment of retirement plus ability to pay our bills. There is the constant mistrust of people with whom we deal, most of whom are probably honest and hard working but ... I have always been cynical of government but my cynicism is now much more widespread and deep. We have developed a healthy total disrespect for lawyers and our legal/judicial system. I consider them leeches on society."
A small investor - Jan 1999

"It is small people like me who work and save and then are led to trust and believe that these pros will work to invest our savings for our best interests, not theirs. My wife and I have been through a terrible three years and have serious doubts about our future now."
A small investor - Nov 2003

It is time to recognize the victim impact of small investor losses due to industry wrongdoing and take action to deal with these issues in a meaningful way. Victims lose substantially more than money when their trust is betrayed. The courts should recognize damages as an integral part of court awarded restitution. But more than that our Government needs to take action to stem the flow of victims of investment industry wrongdoing.

At the same time our Government should establish an agency to deal with victims of white-collar crime. They need help to cope with their new situation. For many their new circumstance is completely foreign to them. After working for a lifetime and being self sufficient, they suddenly find themselves in a situation where they must make substantial compromises in order to survive. Often these victims are in as great a need of help as victims of violent crime. Too often these victims suffer in silence without hope or trust in our society. These newly impoverished citizens need help.

Investors do not give their life savings to the care of someone they do not trust. Investors trust the big banks, insurance companies, investment dealers, and investment advisors. They trust the registered representatives of these companies. They trust in our Canadian society.

When they experience significant loss of their life savings they feel their trust has been betrayed. For many the financial loss leads to family break-up, health problems due to the stress created, and negative impact on lifestyle due to lost savings and uncertainty for the future. The more damaging impact is that often the individual's sense of trust and hope is decimated. The impact of this loss can be overwhelming.

Lives are destroyed.

10. What is the Solution? – What do small investors need?

It's time for the Canadian Government to act to provide investor protection for small investors. The Wise Persons Committee Report⁸, aptly entitled "It's Time", released December 13, 2003 in its opening statement of the Executive Summary declares:

"It's time for Canada to have a single securities regulator".

The summary goes on to say:

"Canada suffers from inadequate enforcement and inconsistent investor protection. Policy development is characterized by compromise and delay. Canada cannot respond as effectively or innovate as quickly as it should in the fast-changing global marketplace. The system is too costly, duplicative and inefficient. The regulatory burden impedes capital formation. Canada's international competitiveness is undermined by regulatory complexity."

Unfortunately the WPC mandate was to examine the alternatives for securities regulation and did not include a requirement to look into investor protection. Chapter three of the report includes the comment:

"The most frequent complaint we heard from small investors was that the current enforcement system is inadequate and fails to protect their interests."

Investor protection has largely been left in the hands of industry. The regulatory bodies tend to be staffed by those with industry experience. This results in an approach to regulation that appears to be industry biased. Widespread industry practices in a commission driven environment result in a conflict of interest when investment advisors are coerced into generating commissions often at the expense of their investor clients.

"Investment firms such as (Brokerage) will fight the lonely investor even when this much evidence is stacked against them. One has to ask, "How can an investment firm let a broker get away with such conduct and then allow him to keep working?" This is much bigger than the Broker. The Branch Manager and the Compliance are implicated by letting this misconduct go on. This is more than just a case of discretionary trading and lack of suitability."

A small investor -

The Scorpion and the Frog report⁵, commissioned by the Consumers Council of Canada, was authored by David Yudelman. He states:

"The financial industry must always be true to its nature, 'which is to maximize returns to shareholders and to be well rewarded as employees and executives for doing so.'

The complexity of the financial services marketplace makes it unusually difficult for consumers to understand the self-serving nature of much of the information and advice they receive, and the fact that it is vendor-driven.

Actual or potential conflicts of interest are pervasive because the sellers are frequently the advisors as well, says Yudelman, who once worked in a major Canadian bank."

SROs are unable to offer adequate investor protection due to their inherent conflicts of interest. The regulators appear unable or unwilling to order restitution even when industry representatives are found guilty of wrongdoing, including breach of fiduciary duty and fraud. Indeed, in the case of fraud it is rare

that criminal proceedings are initiated. Penalties that are assessed are insufficient to discourage industry participants from continuing rule-breaching practices.

Small investors need investor protection that is not industry sponsored, and is not staffed solely by industry professionals. While some have suggested a federal regulator similar to the Securities and Exchange Commission in the United States would be appropriate, recent action by the New York State Attorney General Eliot Spitzer reveals even the S.E.C. has limitations.

Studies, reviews and reports have for many years examined the regulatory system, recognized the problems and recommended solutions. The investment industry has been unwilling to change and has co-opted efforts to provide improved investor protection. Some recent proposals appear to be contrary to investor best interests.

Glorianne Stromberg's 1998 report entitled "Investment Funds in Canada and Consumer Protection"² provides a good assessment. In part she writes:

"The unsatisfactory situation for the consumer/investors that results from continuing the fragmented regulatory structure reinforces the need for an integrated regulatory and supervisory structure"

Industry sponsored organizations will never provide objective investor protection due to the inherent conflict of interest. Investors need the support of consumer associations that regard investor protection as a priority and not as something that is only considered part of a balancing equation.

As Yudelman writes in the Scorpion and the Frog report⁵:

"Consumers need to be able to rely on consumer associations which are knowledgeable, independent and dedicated, and such associations are not likely to emerge without the support of government to help them attain the critical mass necessary for them to have a real impact on consumer education and protection."

The Purdy Crawford Report⁶ referred to a court decision in which the judge;

"noted with regret that the investors who were victims of the improper conduct in that case would have to pursue costly and complex litigation to recover their funds."

The Committee recommended that;

"the Act be amended to include a provision permitting the Ontario Court of Justice to make an order, where appropriate, that the defendant compensate or make restitution to persons who have suffered loss of property as a result of the commission of an offense by the defendant."

It is time that the Canadian government exercises its responsibility to Canadian citizens to establish a regulatory system that provides investor protection for all Canadians regardless of where they live or which institutions sell financial products to them. The regulators should have the power to order restitution when industry participants are found guilty of wrongdoing.

A Business Week editorial on February 2, 2004 states:

"The cockroach theory of financial scandals says that, for every one you see, hundreds more are hiding in the woodwork. ... Scandals break out in bunches because they have common causes. They occur when insiders take advantage of weak corporate governance, feeble government oversight, and a financial system that too often looks the other way."

The editorial suggests that the destruction of trust is a serious consequence:

"There is obvious harm to these companies' shareholders and creditors, such as Parmalat bondholder AFLAC Inc. Less visible but more serious is the destruction of trust, which makes it harder for honest companies to raise the money they need to grow. Overseas, as in the U.S., the solutions are clear: Transparency. Accountability. Tough audits. And criminal penalties for those who cheat. Halfway measures are an invitation to more cheating."

In the United States the much-vaunted SEC has been upstaged by New York Attorney General Eliot Spitzer pursuing the investment industry through consumer protection rather than industry regulation. Canada could take a lesson from this American initiative and focus on consumer protection.

In a February 4th, 2004 article in the Pittsburgh Post-Gazette by Len Boselovic entitled "Federated to repay \$7.6 million to investors harmed by trading" he writes:

" 'We are committed to punishing not just those who engaged in the trading but also those who facilitated it,' said Stephen Cutler, director of the SEC's enforcement division."

Although the WPC Report calls for a Canadian Securities Commission and a Canada Securities Act this is unlikely to happen in the foreseeable future. The provinces are not unanimous in their views and there has been much effort by regulators towards developing harmonization amongst provincial regulators.

Québec stand out as appearing to be the most socially responsible and has evolved a new Autorité des marchés financiers reporting to the Minister of Finance. The website of the Autorité states:

The Autorité des marchés financiers administers different laws and regulations applicable to Québec's entire financial sector. For each of four sectors of activity, the laws, regulations, guidelines, and all other legal texts concerning the organizations merged into the Autorité.

Securities Sector

Activities related to securities are subject to the provisions of a specific statute and regulation, plus various other regulations and legal texts. Prior to the establishment of the Autorité, the Commission des valeurs mobilières du Québec provided the regulatory framework for this sector.

Distribution of Financial Products and Services Sector

Formerly under the jurisdiction of the Bureau des services financiers, activities related to the distribution of financial products and services are governed by a specific statute, various regulations and directives.

Financial Institutions Sector

Activities pertaining to financial institutions specifically include the recognition, supervision and monitoring of financial institutions, and are governed by various laws and guidelines. Prior to the establishment of the Autorité, the Québec Inspector General of Financial Institutions provided the regulatory framework for this sector.

Compensation Sector

Formerly under the jurisdiction of the Fonds d'indemnisation des services financiers and the Régie de l'assurance-dépôts du Québec, compensation in circumstances of fraud or insolvency is governed by various laws and regulations.

It is time for the Government to take immediate action to provide investor protection for all Canadians. In Québec investors are not only able to make a complaint to the regulators, as they can elsewhere in Canada, but they can also make a claim for compensation as indicated on the Autorité website:

The role of the Fonds d'indemnisation des services financiers is to provide financial compensation to any person who is the victim of **fraudulent acts, deceptive practices, or embezzlement**.

FISF compensation is designed to cover these three categories of acts within the scope of the eight sectors regulated by the *Act respecting the distribution of financial products and services*: Insurance of persons (life, health, disability, etc.)

Group insurance of persons (insurance offered in the workplace)

Damage insurance (liability, auto, home insurance, etc.)

Claims adjustment

Financial planning

Group savings plan brokerage (mutual funds)

Investment contract brokerage

Scholarship plan brokerage.

It is improbable that industry behaviour will change of its own volition, and history has shown that it will not. The regulatory system has failed to adequately punish those who facilitate the activities of the wrongdoers or even the wrongdoers. The regulatory system has failed to provide a compensatory system for the victims of fraud and malpractice. The wrongdoers are allowed to declare bankruptcy and avoid paying restitution to their victims. Industry sponsored dispute resolution mechanisms are failing to provide suitable means for small investors to gain restitution because industry is subverting any attempts for justice. Even civil litigation is stacked against the small investor. The big firms employ tactics of delay and are not above covering up facts and outright lying.

As a first step to restore investor confidence the Canadian Government should immediately establish a Commission for Public Complaints about Investment Industry practices and wrongdoing. Such a Commission would generate all of the facts that would enable the leaders of our country to see that it is imperative that appropriate investor protection is provided. Failure to act would suggest our leadership is guilty of aiding and abetting the plundering of the wealth of our seniors and retirees.

The commission should be empowered to investigate the complaint handling by firms and their compliance officers, Canadian Securities Administrators, the Self Regulatory Associations, and industry sponsored dispute resolution mechanisms including the IDA Arbitration Program and the Ombudsman services. The commission should have a panel to hear complaints from small investors. These complaints would provide direction for further investigation. The commission should be composed of non industry representatives drawn from the judiciary and from consumer organizations.

Whistleblower legislation proposed subsequent to the Fraser Report must extend beyond the federal government and apply to provincial and municipal governments, corporations, the investment industry



and the regulators. By empowering Canadians to tell the truth without fear of reprisals and negative consequences our government can make the world a better place in which to live. This would assist regulators in carrying out their function.

At the same time the Government should establish a new agency or authority that is charged with consumer/investor protection that would work in conjunction with the regulatory agencies, whether they are provincial or federal. It should be independent from industry and industry regulators that are populated with industry participants. It should be controlled by individuals that are not from the investment industry and that have a consumer oriented background. It could be similar to the New York Attorney General's Office Bureau of Investment Protection or could be patterned after the new Authority in Quebec.

Failure of the Government to act to provide meaningful consumer/investor protection with processes to resolve disputes and satisfy claims from small investors who have been victimized by industry wrongdoing will result in the continued financial exploitation of many Canadians who work a lifetime to save for their retirement only to see their savings destroyed by those in whom they placed their trust.

The leaders of our Government and the investment industry have a social and moral responsibility to ensure that this essential industry is operated in a moral and ethical fashion, as well as a legal fashion. Industry leaders should not allow participants to flaunt the rules and regulations and then rely upon legal tactics to vigorously defend situations that are morally and ethically indefensible.

1. REGULATORY STRATEGIES FOR THE MID 90S - Recommendations for Regulating Investment Funds in Canada. Report prepared by Glorianne Stromberg for the Canadian Securities Administrators that was issued in January 1995.
 2. INVESTMENT FUNDS IN CANADA AND CONSUMER PROTECTION - Strategies for the Millennium. A review by Glorianne Stromberg prepared for the Office of Consumer Affairs, Industry Canada October 1998.
 3. BEYOND PRODUCT SALES: Considerations Other than the Bottom Line. Remarks made by David A. Brown, Q.C., Chair, Ontario Securities Commission, to the Canadian Centre for Ethics & Corporate Policy
In Toronto on April 1, 1999.
 4. STREETPROOFING FOR INVESTORS - Strategies for moving beyond hope, greed and fear. Remarks by Glorianne Stromberg at a Small Investor Protection Association Public Forum in the Canada Room at Markham Civic Centre, Markham, Ontario, June 6, 1999.
 5. THE SCORPION AND THE FROG – A consumer view of Canadian financial services and ways to transform them. A report prepared for the Consumers Council of Canada for presentation to the Office of Consumer Affairs Industry Canada by David Yudelman 2001
 6. FIVE YEAR REVIEW COMMITTEE FINAL REPORT – Reviewing the Securities Act (Ontario) A report for the Ministry of Finance representing the recommendations of an independent committee chaired by Mr. Purdy Crawford appointed in early 2000 to review the securities legislation in Ontario. March 21, 2003
 7. NASD INVESTOR LITERACY RESEARCH prepared by Allied Research & Consulting LLC 2003
 8. IT'S TIME – Wise Persons Committee to review the Structure of Securities regulation in Canada Report prepared by the WPC, chaired by Michael E. J. Phelps, for the Minister of Finance December 17, 2003
 9. Laflamme v. Prudential-Bache Commodities Canada Ltd.
Supreme Court of Canada May 3, 2000 - Present: L'Heureux-Dubé, Gonthier, McLachlin, Iacobucci, Bastarache, Binnie and Arbour JJ. On appeal from the Court of Appeal for Quebec.
 10. Zraik v. Levesque Securities [1999]
Ontario Superior Court of Justice - Archibald J.
 11. Settlement Agreement dated the 10th day of July, 1997, in the matter of the Securities Act R.O.O. 1990 c.S.5 as amended and in the matter of Norman Frydrych.
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SIPA Inc

Five Year Review

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the Small Investors' Perspective of
Investor Protection in Canada

Appendix I – Small Investor Voices

February 27, 2004

Appendix I - Small Investor Voices

Since SIPA's founding in 1998, small investors have submitted their stories by telephone, fax, mail and e-mail. These case studies are anecdotal but many are supported by documented evidence. These "voices" are provided in the hope that those individuals in positions of authority and responsibility may better understand the problems faced by small investors.

This appendix contains only a small number of comments from the many that SIPA receives. It is these hundreds of stories that have enabled SIPA to develop a unique perspective that is representative of the small investor, and to realize that there is a problem of major proportion – many small investors who placed their trust in the investment industry are losing their life savings due to widespread wrongdoing by industry participants.

In accordance with SIPA policy not to disclose member's names without prior approval, and in order to protect the privacy of individuals, names of investors, investment advisors and corporate identities have been removed.

*"I truly believe that the vast majority of people just are not aware of how unprotected we are. They falsely believe that our laws will protect them against criminals. On the other hand, people tend to be protective of their money. Their failing is their faith (in) people. They do not fall into traps because they are stupid. For example our group included university professors, an R.C.M.P. officer, businessmen and lawyers."
A small investor – Feb 1999*

*"My broker was fired in January 1997. His boss, who happened to be a Director of the Investment Dealers Association and chairman already of the Discipline Committee, promised a "forensic investigation" the product of which has stalled ever since. I accused my then broker of churning \$60,000 in commissions out of my account in 1996. I'm debating with myself whether to sue over that and a dozen items of damages. ... I am retired; I practiced law for some 45 years and am now contemplating litigation."
A small investor – Nov 1998*

*"I commend you on your perseverance and continuing to inform investors who believed in the faith of another person who regretfully suffers such a conflict of his interests in this life but who nonetheless betrays that belief and trust. You frequently recall dark days in your life, we know and we have been there. I know the private Hell of trying to sleep, (my wife) and I have both been suicidal, everyone will try to distract you with irrelevant issues in little hurtful but personally invasive comments shattering your confidence in your task, you will in your mind retrace everything you ever said or wrote, you will find yourself hurt, angry and down to the point you cannot think clearly and you will recall it as quite oppressive and next to Hell."
A small investor - Nov 2000*

*"I was also talked into some stupid (I won't call it investment) calls by [Brokerage] "advisor". ... Small investors beware of anyone or anything claiming to be an "investment advisor". There are plenty of alternatives out there for you to choose from when putting your hard earned money to work – investigate them all."
A small investor – Feb 1999*

*"We should be hearing any day now as to whether our case has been committed to trial. The Crown and Police and OPP have indicated they think it will – but it will be nice to get the final word. ... There is still so much dishonesty in the investment area and still so many victims."
A small investor – Dec 2001*

*"It is my understanding that [Brokerage] and my broker, [RR], have a fiduciary duty to their clients to ensure that their financial interests are fully safeguarded. [Brokerage] and [RR] both failed in that duty. In addition to the loss of inheritance, I have spent to date \$30,000 in legal fees."
A small investor – Jan 2000*

Letter to Broker

*"Out of weeks of despair, work, stress, and worry and concerned that his [RR] latest promise was not kept in an attempt to discourage us, I telephoned you on April 16 to bring this matter to your attention. Needless to say I was astounded by your abrupt, bullying and belligerent tone. After what we have been through – how dare you! Without ever having talked to me, nor letting me explain – let alone having the decency to ask for my side of the story, you start off by dictating that it's not your problem, but a 'problem between [Fund Company] and me', that your Company's only responsibility is to sell the shares ..."
A small investor - Apr 1999*

"I started investing with [RR] in 1986 when he was with [Brokerage]. He changed brokerages several times. Each time that he changed brokerages he would send me new forms to fill out; I would always fill them out and send them back without question – He had my trust.

[RR] was in a respected position of trust; first as Vice President of the company and secondly as my financial advisor. He abused this relationship. You would think that as Vice President of a company and financial advisor that he would have carried out the terms of "the [Brokerage] Management Account", which was to preserve my capital and income, in a more prudent manner. I am sure there are other investors that are having the same set of problems or did have the same problems. I am still wondering if [RR] actually retired or was forced out due to these looming problems, which seem to indicate mishandling or misappropriation of client funds. All the trades beginning in

1996 until he retired, are completely unsuitable and imprudent for my investment objectives; a severe breach of trust."

A small investor Jul 1999

"I suffered a loss of over a million dollars through the same financial advisor in two different companies. (Mutual Fund Co) and (Big Bank Brokerage). An accountant's analysis later revealed a large amount of money was never transferred from (Mutual Fund Co) to (Big Bank Brokerage). I do not know how to proceed to recover this loss from a previous company.

My advisory account held a mixture of stocks and mutual funds. My advisor failed to notify me of the use of a margin account to leverage high tech stocks mainly. He lied through omission most of the time. He failed to notify me of every transaction and misrepresented to me the extent of losses in 2000, 2001 whenever questioned. Tech stocks went down and he kept on buying more and more and every sale incurred a loss and he kept on using margin without my knowledge. Statements from . (Mutual Fund Co) and (Big Bank Brokerage) were extremely poor failing to give me a clue as to what I had in every statement. I questioned my advisor often but was given a cock and bull story. I was willing to go along with my advisor because I had no close friends or family to consult with. In 2000, I had surgery and relocated. I was preoccupied with running my apartment building and disposing of my property, but I had total trust in my advisor though I worried constantly.

When I finally learned of my loss I felt devastated, especially after the death of my spouse. It was a terrible let down and breach of faith. I feel I cannot trust anyone in this industry anymore. It has had an adverse effect on my health since October 2001."

- A small investor Dec 2003

"In 1995 a group in Port Elgin lost over \$1.8 million. The process that we followed has led us down many roads but they all ended up in the same place. In front of a lawyer looking for \$50,000 to even look at the case. I would like to help others to not fall for these unscrupulous scenarios where individuals lose their life savings to these people. We had one individual in the area lose \$300,000, his entire life savings."

A small investor – Feb 1999

"I would like to draw your attention to unethical trading practices, discretionary and unauthorized trades, and trades unsuited for my circumstances. [RR] was my consultant for over fifteen years. He moved to [Brokerage] about a year and a half ago. They have a sales meeting every Monday morning, which pushes him into bizarre, inappropriate purchases. These were not only inappropriate, but also discretionary. I sent a letter to his branch manager who concluded "The information before me regarding your account does not lead me to conclude that [Brokerage] can support your request for redress." Thus I assume this is the way [Brokerage] behaves with all

of their accounts, and their purpose is to make money for themselves and lose money for the client."

A small investor – Mar 1999

"I have spent 2 ½ years fighting this and I just seem to get stalled and put forward all the time. Thank God I did not hire a lawyer; I'm sure my legal fees would be astronomical. It is hard to fight on your own."

A small investor – May 2001

"I had my accounts transferred to an account under his jurisdiction. This arrangement went all right for a while until he found he couldn't contact me when he felt I should be making a trade because I was traveling most of the time. He then suggested I consider giving him authority to operate my account on a discretionary basis, which I did. I understood he would watch all the stocks, etc. that he got me into and make the trades he felt were timely, even taking a loss sometimes to get into something else.

The discretionary account went on for quite some time and he would send a transaction slip each time he made a trade. Operating this way I had no knowledge of the stocks he purchased for me, but I trusted him.

After a while I realized I wasn't getting any transaction slips so I decided to take time off to go to his office to talk with him, because my portfolio had decreased from an originating value of approximately \$150,000 to today's value of approximately \$25,000. I went into the office and asked for him and was told he was no longer an employee and that someone else would be looking after my account."

A small investor – Aug 1999

"I have depended upon [Brokerage] for investment advice and my account lost \$20,000 plus from December 16, 1996 to May 5, 1997. The loss becomes even more significant when calculated on a percentage basis, predicated on total account dollar values.

Amongst other things I believe [Brokerage] have breached their fiduciary duty. At age 67, and retired, capital preservation is important for future security.

Several complaints have been submitted to the compliance officer. The response did not provide a satisfactory resolution of my account."

A small investor – Dec 1999

"As one who has experienced first hand the severe, well crafted, fraudulent schemes and activities of a major Canadian brokerage firm, and who has put a great deal of effort educating myself about what is going on in the investment industry and among the regulators (both Canada and the US) I have reached, sadly, the realistic conclusion that greed and fraud shall always be with us.

Given that state of affairs, I feel it is important that investors, particularly new, first time investors, for example widows who suddenly have the responsibility of overseeing their husband's portfolio, etc. must simply recognize that this is a high risk, very corrupt industry throughout, and that it will never change. Therefore, it is in their personal best

interest to put forth a great deal of effort and commitment to educate themselves. Investors should never trust an advisor or broker to tell them what is best for them. They should never act on an advisors advice without first thoroughly investigating the situation and demanding full disclosure. They should never allow themselves to be befriended by a broker or advisor but treat them simply as a sales person who has their own best interests in mind and in many cases, because the laws and regulators are essentially impotent, are not above lying and defrauding them using numerous, devious schemes, all carefully designed to separate them from their savings."

A small investor – Jan 2004

"In 1995 we liquidated our many diversified mutual fund accounts and opened an account with [Brokerage] for their professional management skills. The initial "Wrap Fee" was 3.5% of gross market value. Their letter of January 20, 1995 welcomed us aboard, outlined how their "discretionary asset management" worked, and reiterated how they would trade within the recommended guidelines of our agreed investment strategy. Furthermore, we were promised periodic updates on strategic development, at all times initiated, as it turned out, by us.

What communication transpired between [Brokerage] and us was generally verbal over the telephone, rarely placed in writing nor related directly to the management of our accounts.

On Friday, December 12, 1997, we reviewed [Brokerage]'s performance with [RR] and [Manager], expressing our concern with the losses, despite a reduction of the management fee from 3.5% down to 2%. As it turned out by December 31st our total accounts had fallen to \$250,137 from \$501,367 twelve months earlier."

A small investor – Nov 1998

"I have been seriously swindled, frauded and beguiled by [Brokerage], Investment Counselor. Their wasting of the account is tantamount to a criminal act, in my regard. [Brokerage] Counselor lied, and cheated my account while I was living out-of-country. I was never notified of trades and my account was unscrupulously involved in discretionary trading without my notification, permission, or my signature. I have requested compensation and total reimbursement. They refuse. They have no faults.

I have full and accurate documentation of all events, as well as statements showing the depletion of the account from approximately \$170,000 in early 1994 to almost zero."

A small investor – Nov 1998

"He suggested that I sell three high interest yielding Canada Bonds held in my RRIF totaling \$99,000 and in my cash account he suggested I sell 1500 Royal Bank 1st Preferred Series G shares and buy Nortel. Worse advice was never given – not only of the unforgivable loss of interest that ensued – but there is no possible way that he did not know about the (sell) recommendation since he was part and parcel of its

preparation and he knows the status of every stock in the [Brokerage] list of companies and most certainly whenever any change in a buy or sell recommendation is made. [RR] said he had 200 seniors in his file one as old as 99. I cannot help but wonder if any were as unfortunate as myself."
A small investor – Oct 1998

"In April of 2000 my wife and I made a US\$50,000 investment with our (Mutual fund Co.) representative. There were no guarantees of returns but the worse case scenario was the return of our principal as our rep had the only signing authority. This assurance was key as the funds were earmarked for my eldest daughters education, a fact that our rep was aware of. We had bought into the (Mutual fund Co.) mission statement on investing and were convinced that we should trust the rep sitting in our living room. Why shouldn't we trust him? (Mutual fund Co.) had used our rep as the "face" of (Mutual fund Co.) reps everywhere that should be trusted in their national advertising campaign. In addition, numerous other (Mutual fund Co.) staff and clients were involved which bolstered credibility. Needless to say the money disappeared and I reported the scam to the York Regional Police, the OSC and the IDA in August 2001.

Let me recap:

York Regional Fraud Squad - had my file for 6 months with no investigation, passed it on to Toronto Police.

Toronto Fraud Squad - had my file for 23 months with no investigation, did not even interview me until a complaint to the Civilian Commission on Police Services, have returned my file to York Regional Police as of Jan16/04.

OSC - stated that (Mutual fund Co.) had done an internal investigation and found no wrongdoing so they had no further interest.

IDA - my rep is out of the business so their job is done.

MFDA - at the time contacted were not set up for complaints.

OBSI - are investigating but with a (Mutual fund Co.) director on the board can I expect a fair shake?

Civil Court - unfortunately I no longer have the funds to pursue this route

(Mutual fund Co.) - "Do you know any good hit men?" (Mutual fund Co.) regional manager

I must add that I was not the only (Mutual fund Co.) client who was a victim of this scam as my rep "pooled" over \$1.2 million US of six clients. Other reps were involved and at least one is still employed by them. My reps regional manager was also aware of the deal and was subsequently fired.

I guess I was under the delusion that my investment would be backed up by (Mutual fund Co.). In reality a serious crime has been committed and it seems like the policing agencies don't care. Should someone not be doing their fiduciary duty or is the crime not important enough to be investigated?"

A small investor - Jan 2004

"We would like to inform you about a deplorable financial situation that exists for over two hundred people in Ontario. Upwards of half, many retirees or seniors, reside in North Bay, Sudbury or Sault Ste. Marie districts. A total of approximately \$10,000,000 has been removed from the Ontario economy resulting from investments in partnerships.

These investments were recommended and sold by our financial advisors as a secure risk free financial plan that had 100% liquidity redeemable in a period of thirty to ninety days' written notice. This has proven to be untrue. Also, much of the assets have proved to be unrecoverable and a considerable amount used to pay fees to the principals and for lucrative commissions to the sales agents - financial advisor).

As a result of the above, many investors, particularly those on fixed incomes, are now facing a very grim financial situation having lost part or all of their life savings and denied future income from these sources. Further, investors who transferred funds from their RRSPs are now potentially in danger of having to pay income tax since the investment has been deemed to be non-RRSP eligible.

We, like other investors, believed our financial advisor had thoroughly investigated the security and creditability of these investments. We trusted our financial "advisor" and took his word that these investments were safe."

A small investor – Jul 1999

"The IDA has finally granted me an interview, however, not until the week of January 14, 2002. I was hoping the IDA would be able to do this in less than 14 months after the initial complaint.

Investment firms such as [Brokerage] will fight the lonely investor even when this much evidence is stacked against them. One has to ask, "How can an investment firm let a broker get away with such conduct and then allow him to keep working?" This is much bigger than the Broker. The Branch Manager and the Compliance are implicated by letting this misconduct go on. This is more than just a case of discretionary trading and lack of suitability ... we have evidence to prove that this guy traded for himself and then dumped the stock on clients like me when the stock price went in the other direction."

A small investor – Dec 2001

Letter to IDA

"[Brokerage] advertises through the mail, a young and inexperienced investment councilor as being an Investment Executive. This was misleading information to create business by [Brokerage]

I have received written statements reporting a gain of our investments for the period of May 1994 to February 1997 informing me that Senior Investment Executive, Associate Director has made between 19% and 20% gain in my wife's RRSP and my RRSP. I question this statement and the real gain was less than 11%.

I was informed by the office Manager that Senior Investment Executive made a minor calculating mistake.

... I am requesting an investigation of business ethics of [Brokerage] and [RR]'s personal portfolio."

A small investor – Jun 2000

Letter to Broker -

"I am writing this letter on behalf of Ms. (small investor) to express deep concern about the management of her investment account with your firm. As a member of the Federation of Chinese Students and Professionals in Canada, I have been involved in the investigation of this issue.

Ms. (small investor) opened an investment account with your firm on February 25, 1999. Up to October 14, 1999, within a time frame of less than 8 months, the value of Ms. (small investor)'s assets in her account dropped from the original of \$50,000 to less than \$10,000. Among the loss nearly \$26,000 were taken as commission for over 350 transactions.

Ms. (small investor) s Account Opening Agreement indicated her annual income was below \$20,000 and her total assets worth less than \$70,000. If protecting clients' interest was considered as part of responsibilities of your firm, wouldn't your staff take at least some efforts to double-check with Ms. (small investor), who fell into the category of people with very low income while with her life-time savings being put at very high risk, about her understanding of the nature of margin account?"

A small investor – Nov 1999

"I have had a case pending with the IDA and have been in litigation for over one year. We have found out with our case there are at least three others with the same complaint about the same broker. It was very difficult to find out what to do, where to go, and who didn't have a conflict of interest just to get the ball rolling. The brokers know this too!

One thing I have found so far is that everything is stacked against you exactly as Rob Carrick said in the article. I hope that in numbers we can right this unjust situation."

A small investor – Dec 1998

"Presently I am reviewing all reports and technical data concerning Bre-X I can put my hand on. If I found anyone's negligence I could pursue in Quebec courts, I'd look for other investors with similar complaints I have to share the legal expenses. Otherwise I'd have to give up and get on with my life. My loss of \$40,000 may not substantiate making an individual claim, as I believe the court expenses could exceed that amount."

A small investor – Jun 1999

"I have a Financial Advisor who gave me totally inappropriate advice. It has cost me practically everything. The FA did not disclose the product he put me into, manipulated information to get the product, ignored my request to cancel the product four days later, changed the loan details twice, ignored my messages and cost me to date 50% of the small amount of savings I had.

This FA needs to assume responsibility and accountability for his inappropriate actions. I would willingly let other people know so they don't fall victim to these ruthless predators."

A small investor – Jan 2000

"My wife and I were about to retire debt free when we got involved with bad advisors and bad investments. The current financial and legal systems left us battered and bruised. Nearly half our present income now goes to service the debt brought on us by these investments.

We naively assumed we were dealing with people who were totally open, moral and ethical. We assumed that the accountants and lawyers involved would protect our interests and warn us of the pit-falls. After all, I was a busy preacher; my wife was a busy teacher. Our religion taught us to have faith and trust in people. I now know this is false teaching. We failed to do what is called in the trade "due-diligence". At the time, we had not even heard of the term. There are other terms we have since learned: transparency, full-disclosure, reasonable profit, and others."

A small investor – Jul 2000

"I lost hundreds of thousands of dollars on two speculative mining stocks. The firm lent me the money, I'm finding out now, fifteen years later, that they had a position in the stock."

A small investor – Oct 2001

"The broker that we moved to turned out to be almost as bad as our original lazy sloth and we had lots of sorting out to do. We have not decided on any action, it is quite a decision as to whether or not to get involved in a lawsuit, or even mediation. The more we find out about the intricacies and dirty dealings, the less we want to become more entangled."

A small investor – Feb 2001

"Our problem with [Brokerage] and [Bank] has been ongoing since August 1997 and we have our complaint spread throughout [Brokerage], the bank ombudsman and the liaison officer who works on problems between [Bank] and [Brokerage]. Our complaint is also with the IDA who has yet to assign our file to one of their people."

A small investor – Oct 1998

Letter to Bank Ombudsman -

"I wish to make you aware of unethical and illegal trading activity by a [Brokerage] investment broker, one [RR] in 1990. I am seeking justice in the resolution of an unfortunate situation which was never resolved satisfactorily and was summarily dismissed by [Brokerage]'s lawyers because of the length of time that had elapsed and because [RR] was no longer in the employ of [Brokerage]."

A small investor – Jan 1999

"Interestingly, in Wednesday's edition of the local news rag, there was an article about another area couple caught in a mi[RR]or image scam to ours out of North Bay. We are not alone. The frauds are very widespread, much more so than we know.

Unfortunately, people are very reluctant to admit they have been taken, myself included, and most also do not want to make public their private lives and financial situations. However, as we progressed through our action, my attitude changed. I became aware that we are in very elite company ... our group includes doctors, lawyers, other financial advisors, etc., all of whom were duped. That revelation allowed us and others in our group to get together, open up and take action."

A small investor – Feb 1999

"I was an excellent housewife and mother but totally ignorant in finance. Since 1998 I have been on my own and couldn't even read my statements. I had, after our home was sold, an investment account plus the RSP. Both of these accounts were managed for a fee by (Brokerage). When we had started with them, they were highly recommended, but as time went by, only one person remained stable. At the time that the press was saying that techs were dangerous, they sold a bunch of stocks at the peak...gave me a huge tax bill (higher than my salary for the year)...and repurchased more tech stocks that promptly dropped. In Sept 2000 this account was at \$532,000.

By Sept 2001 this portfolio was worth \$352,700.

I became aware of a problem late in 2000 and moved my RSP. I didn't know where to move the investment account, they lost \$180,000.

This is my retirement. I am now 60 yrs old. I was a financial ignorant. I can't take any more lawyers or their costs. I am so exhausted."

A small investor Dec 2003

"Throughout this whole ordeal at no time did I feel that the Bank was looking after the welfare of the client, nor was I getting proper independent or financial advice. ... My wife and I do not have the further amount of \$14,740 in our RIF account with your bank for our retirement as same was all taken by your bank to retire the RRSP loan.

This loan repayment could have been done in an alternate manner without such punitive results to two elderly citizens who believed your firms' advertising that by borrowing to top up your RRSP one could retire more comfortably in the future."

A small investor – Jun 2001

"My wife and I decided about two years ago we should be a little more diversified in our investment goals and decided to have someone else handle some of our investments. We consulted with our local [Bank] and asked for a referral to someone good who could help. We were directed to [RR] at [Brokerage].

After talking to him we thought he would do a good job for us as he had been around a long time in the investment business. Our instructions to him were, we would go along with his recommendations and he would try to make us a good return as well as provide us with an income of \$500.00 a month from our total investment of \$100,000.

Fourteen months after his taking over the account \$100,000 turned into \$45,000 and no cash was available for the monthly payments. We only received four or five payments.

I'm really disappointed in [Brokerage], as you would think with the big commissions there would be some quality of service. I probably don't have any legal right to pursue him but it would be nice if others were warned."

A small investor – Feb 1999

"About 90 persons and two charitable organizations were defrauded of \$2 million by an Ontario Securities Commission registered dealer.

About \$400,000 was held in self-directed RRSPs with [Bank]. The accounts and transfers were set up by [Brokerage], an OSC authorized dealer. The [Brokerage] and the [Bank] had a selling arrangement whereby the "investments" in RRSPs were sold exclusively through the Bank. The investors did not provide anyone with an authorization for the broker nor had they instructed the Bank to purchase the "securities". The Bank will not provide the documentation showing on whose authority our funds were released for the purchase of the debentures."

A small investor – Jan 2002

"We suffered a loss of approximately \$15,000 as a result of our advisor failing to use due diligence in ensuring recommendations for our account were appropriate and in keeping with our investment objectives."

A small investor – Jul 2001

"I opened an account on May 1993 and transferred in all my stocks. The amount was \$42,555 worth of stocks. The broker told me my stocks were no good. He sold most of my stocks and bought some other ones. He got in touch with me for some trades but most I only found out when I got the monthly statements or the slips for bought and sold. I had to put more money into the account a few times, because he bought and sold within a few days for a loss.

By January 1997 my account balance was \$0.00. I talked to two or three people from [Brokerage] and I got nowhere with them."

A small investor – Oct 1998

"I've finally received the report from the IDA, the details of which are reported in Bulletin No. 2861. Paragraphs 4 and 5 refer to my accounts with [Brokerage]. As you can see [RR] was found in breach of Association Regulation 1300.1(c), which means that he recommended securities that were speculative and not in keeping with my stated risk factors."

A small investor – Sep 2001

Letter to Bank

"On August 29th 1990 I invested \$30,000 into a self directed "RRSP" plan with [Bank] as the trustee through (I.A.). These "M.I.C." funds were then transferred through the [Bank] to [Brokerage]. Since then I have continued to receive the Bank's quarterly statements and had no concerns with this arrangement until late 1998 when I received news that [Brokerage] was in financial problems and that the president had disappeared. On July 8th 1999 I finally was given an appointment to meet with (two Bank officials) of the [Bank] only to be told they were unable to give me any information nor could they assume any responsibility. I have since learned that the OSC and the Metro Police Fraud Dept are involved in a full investigation into this matter. To date I have continued to pay the annual \$125.00 administration fee and have received my quarterly statements from the [Bank]."

A small investor – Jan 2000

"I spoke to an investigator with the IDA handling the investigation of my complaint against [Brokerage] and [RR]. He informed me that [Brokerage] still had not produced the necessary documents. He also told me that [RR] had been charged with fraud by the police. He also informed me that the compliance officer had left the firm and returned as a consultant. He also informed me that there were two other complaints against ([RR])."

A small investor – Jul 2001

"One big concern about the IDA other than them taking so long to do anything is the way they treat the victims. Updates by telephone calls or letters would be appreciated. All of us have left messages for the investigator but he rarely ever gets back to us. This is a common criticism of the IDA from the group that I am involved in."

A small investor – Sep 2001

Letter to Brokerage

"I am writing to complain about the manner in which my investment account has been handled during my association with [Brokerage]. The nature of my complaint involves the misinformation or lack of information given to me as well as the complete inappropriateness of the investments recommended to me.

In May 1997 I sold my condo and received \$45,000, which I decided to invest. At that time we emphasized that we did not want to risk this money. We lost interest in the stock market and desired an investment that was very low risk. We also wanted something short-term, for a 5-year horizon as we planned to purchase a house in the near future. We were sold the Polar Hedge Income Trust Fund. [RR] assured us it was low risk. I found out after the fact that it is actually a ten-year investment and Hedge Funds are indeed extremely risky. I lost approximately three quarters of my principal on an investment I feel was completely inappropriate given our explicit instructions.

We have now found a firm and investment advisor who seem more concerned with the interests of their clients rather than recommending those investments that favour the

firm with commissions and fees. However, even our attempts to exit are being manipulated by your firm. My husband's account, quite sizeable has been stalled for almost two months."

A small investor – Mar 1999

"I went to the bank and had a cheque made out to [Fund Dealer] in trust for the sum of \$97,000. [RR] came to my house early that afternoon. He presented partly filled out forms with six funds written on it. He said they are good, solid financial companies. [RR] was talking about the global economy in general and assured me that he is an expert who is in business for fourteen years and makes between \$12,000 and \$14,000 a month. ... He wanted me to sign some more blank forms. He assured me these were just for his files, and that once he had drawn up the proper documentation, he would review them with me and explain them before proceeding. ...

He told me that the way mutual funds work is very complicated – that I don't have to understand it all. I just have to trust him. I said to him "that is the truth I don't understand it at all. Whatever you do, I don't want to lose a dime." He told me that he would design the funds in a way that I won't be at risk.

Please understand that I am a simple woman who never invested in mutual funds. I came to Canada in 1984. I live by myself since my husband passed away four years ago. I work evenings from 4pm to 11pm in the housekeeping department. I also worked for Mr. (Senior citizen) who was 79 years old from 8am to 3pm every day on a contract basis."

A small investor – Jun 1998

"Since I started with this [RR] one year ago I have lost over 30% of my account. When I spoke to him initially I advised him that I was unable to work due to the fact that I was losing my vision, my husband was retired and the dollars in our RRSP accounts represented our total savings. I was reluctant to buy mutual funds and he recommended buying Insured Segregated Funds to alleviate my fears. This fund is down at least 26% and falling.

My meeting with the manager and [RR] was the end of August. On that day the manager stated he was sending the complaint to their compliance department. He further advised me that he sent the complaint to the Vice President District Compliance. After repeated non-productive contacts with the Manager I telephoned the Compliance Department of [Brokerage] on October 12th and was advised by the Compliance Officer there was no record of the complaint on the computer. He agreed to accept a fax of my correspondence with the local manager and ensure I received a confirmation. On October 19th I telephoned the Compliance Officer who informed me that the file was in Ottawa with the Complex Issues Manager. She advised that she would get back to me within the week.

I do not feel I can afford arbitration but I definitely will file a grievance with the

Securities Commission. I feel these large companies are aware that on smaller accounts the legal costs for arbitration are prohibitive."

A small investor – Oct 2001

"In the fall of 1994 we realized we were being taken. We tried to contact the OSC without success at that time. Next we tried going through our M.P.P. nothing. Again in 1996 we tried our second M.P.P. his reply was to give us the phone number of Consumer Affairs. They responded that it didn't fall under their responsibilities. We then tried the Investment Dealers Association. Their rude reply was that they don't deal with individual complaints from the public.

Next was the Investment Funds Institute and they helped as a third party going between ourselves and the fund companies in obtaining copies of our investment transactions.

Again we contacted the O.S.C. in February 1998 with a letter. The file was passed on to a couple of people. In December 1998 the O.S.C suggested if we want to recover any of our money we should seek legal assistance and that they would provide as much help to our lawyer as they could. We should also contact [Brokerage]'s compliance Officer, which we did. He told us we should have complained while our advisor was still employed with them and they consider the file closed.

I am a city bus driver and earn about \$35,000 a year. My wife works at a store and earns about \$18,000 a year. We are both in our fifties and our dreams of early retirement have been lost along with our faith in the system, whatever the system may be. Who can one trust?

Our question to the O.S.C. is: Does [Brokerage] not have a responsibility to their clients to see that their representatives act in the best interest of their clients? What kind of ethics does [Brokerage] have?"

A small investor – Feb 1999

"I invested a large sum of money, \$125,000 with a broker at [Brokerage] and through mismanagement, inappropriate securities selections, not following directions, and various other infractions, he managed my portfolio in a matter of approximately 14 months down to a value of about \$60,000."

A small investor – Feb 1999

"After gaining my trust, [RR] filled out the client documentation and asked that I sign it. He advised me on the various percentages of allocation and assured me that he would closely monitor the stocks. He promised that if the stocks should fall by 10% he would sell but would hold if they go up. He explained that he personally knew the managers of these companies and that he made purchases of these stocks himself. He never mentioned that these stocks were very risky and that he was helping to raise capital for these companies. My cash account of approximately \$45,000 with ([Brokerage]) is worth less than \$10,000."

A small investor – Mar 1999

"With my father's limited investment experience (until the above unfolded, he had never invested in mutual funds or the stock market) and limited education (grade 7), I tend to get called upon in times of financial or legal confusion, which is what my father did when he began to suspect that something wasn't quite right. I firmly believe that [Brokerage]'s actions were unprofessional, and very possibly illegal, but I'm frustrated at not knowing where to turn. I've thought about suing them, but neither I nor my father has the time or money to put into a court battle."

A small investor – Feb 1999

Letter to Compliance Officer Mutual Fund Co. -

"This fund was purchased December 18, 1998 for \$150,000 and sold July 9, 1999 for \$99,978.20 ... a loss of more than \$50,000.

As a senior of 78 years I don't feel this was the right type of investment for me, as I cannot afford this type of loss."

A small investor – Nov 1999

"In 1993 I was placed on long term disability. During this time when I was completely disabled a stockbroker from the firm [Brokerage] traded in my account without my authority and my knowledge at all times. When this wrongdoing was discovered by a family member and friend I was shocked to find out what a poor state of affairs my investment account was in.

I was advised to inform the manager of this brokerage firm what had happened; and when I did he said he would settle things. To date this has not occurred. Then I was advised to contact the Ontario Securities Commission and all they did was forward my letter of complaint to the Investment Dealers Association. The initial investigator indicated to me that there were problems with my account. My file is now in the hands of another investigator and nothing is being done.

This has left me at my weakest, most vulnerable and depressing time of my life without proper funds. The Ontario Securities Commission and the Investment Dealers Association could not help which has further deepened my depression. When I tried to resolve this problem I was in pain, sick, low in funds and saw no way out. Suicide seemed to be my only solution. ...

As it stand now the brokerage firm and its agent denies all responsibility and admits to no wrongdoing saying the trading in my account while I was in and out of hospital and clinics was proper."

A small investor – Jun 2000

"My wife and I own a medium to small sized business and have contributed to our RRSP portfolio for many years as a means to look after our retirement needs. Since the beginning of the 90's we began to entrust a financial advisor to look after our portfolio.

Many times we stressed the importance of low to medium risk in the choice of investments. This can be verified by the "know your client form" which we completed each year.

Contrary to these investment objectives we believe that extremely high-risk investments were chosen on our behalf. Within a short time most of the investment money was lost."

A small investor – Mar 1999

"I have been advised that [Brokerage] has a terrible history of just keeping things in court until the victim's can't afford it anymore. I have been told that our complaint is almost exactly the same as the other victims. One of the main differences is that I am 41 and apparently a lot younger than the majority of [RR]'s targets. It appears the majority of the victims are well over 70 years old and one may be in his 90's! My mother's and my Know Your Client forms were jokes. He had wrong information on the forms; he changed our objectives from long term growth to high risk, my mother is a 71 year old widow living on a small pension, and increased both our net worth's by \$200,000 to \$300,000. My sister-in-law, who is also a complainant, had the wrong places of employment for her and her husband on two successive KYC forms and their assets over stated by about \$300,000."

A small investor – Mar 2001

"They told me to get lost and get a lawyer. And then made the crack that they doubted any of the law firms would take them on because the law firms depended on them for business. I went through their ombudsman – a joke. I went through the IDA. I have an exchange of correspondence that is comical; I end up reciting the IDA By-laws to their staff because they don't understand the significance. Then they admit there is a problem, but refuse to deal with it."

A small investor – Nov 1998

"It (the financial loss) has caused much stress because of the way it has forced us to live both from the enjoyment of retirement plus ability to pay our bills. There is the constant mistrust of people with whom we deal, most of whom are probably honest and hard working but ... I have always been cynical of government but my cynicism is now much more widespread and deep. We have developed a healthy total disrespect for lawyers and our legal/judicial system. I consider them leeches on society.

I consider any financial investment or advisory agency totally incompetent, dishonest and self-serving. I consider any regulatory agency all of the above plus ineffective and toothless parasites – a total waste of money. Their very existence constitutes a false sense of security to investors."

A small investor – Jun 1999

"My husband and I have lost over \$250,000 after our broker advised us to enter high risk technology mutual funds and stocks. We lost about 45-50% of our portfolio and

we are in our 50's, and had planned on retiring at 55. This goal was clearly stated to our broker.

Our KYC forms were not filled out in our presence and were filled out by a person who at the time we had no direct contact with, yet he filled in our risk and investment objectives without ever talking to us about them. The forms also contain errors (e.g. overstating our net worth by \$150,000, stating we had prior experience owning bonds, stating that the signed IA had personally met with us, etc.)

I have spoken to a lawyer and he thinks our case is a strong one and he would be willing to take on a contingency basis. I am very cautious after our experience with our investments and I could not endure yet another round of betrayal and potential loss. My trust in many institutions has been severely challenged because of our ordeal.”
A small investor – Feb 2004

A small investor Feb 2004 “My wife and I have suffered a 37% loss over one year from mutual fund investments managed by [RR] of [Mutual Fund Dealer]. The money invested represents a major portion of our assets. They were supposed to be conservatively chosen to accept moderate risk and provide capital gain. But 5 of the six funds are seriously under performing their group averages. My wife and I have seen him about it over the year and each time he maintains they will perform in the longer term. He has done nothing to avoid further loss.”
A small investor – Aug 2001

*“Small investor letter to Parliamentary Assistant to the Minister of Finance
In October 1998 I reported to the OSC that [Brokerage] had managed the portfolio neither prudently nor diligently and, consequently its value had been much reduced. Eight months later in June 1999, the IDA told me they were investigating my complaint against [RR] but not apparently against [Brokerage]. Subsequently my wife and I were interviewed by the IDA. Since then, and a further two years later and despite letter after letter from me enquiring about progress in its enquiry, I have heard nothing from IDA, except once. About three months ago a man who identified himself as a former RCMP inspector called and said he was working as an investigator for IDA and that he would call me within a week to tell me how IDA intended to handle my complaint. I heard nothing.”*
A small investor – Jul 2001

“As a result of the activities of this broker, I not only lost my entire life savings, I lost the savings of my company and I found myself in debt to the tune \$1.8 million. I can tell you there was the day when I stood on the deck of my boat with a 50 pound weight tied around my waist because I had to put an end to ...(unintelligible) ... and it is only because of the intervention of my wife, a very timely intervention, and the subsequent support of my two children that I am here before you today.”
A small investor – Nov 1999

"THE REGULATORY BODIES DO NOT PROTECT THE INVESTOR."

- A small investor - Nov 2003

"I am not in the market at all. I have got into 90 day GICs a maximum 60 grand in each of four banks, and once a year I draw out all the interest, the trouble that banks and their brokerages are in I do not trust them"

- A small investor Feb 2004

"I took action by reporting the broker to the Chambre de la Securite Financiere. There were 10 charges. The broker lost his license for two consecutive months. Was expected to return to 'school', complete and pass the test. Had to pay all cost, on a monthly basis, to La Chambre. He had four fines, \$800, \$2000, \$3000 and \$1000. He had four reprimands.

The broker forged my name - took my RRSP from one company had the cheque sent to his office, removed the documents and deposited the money with the bank where I was holding a leverage loan. I had received three notices from the bank re margin call. Upon my retirement I had a leverage loan at the bank on the recommendation of the broker - take out RRSP and the leverage loan would offset the withdrawal. As we all know the market dropped.

To cover himself, the broker moved all cash into high tech - fortunately I spotted this - moved my account to another firm. Lucky for me as within the next four months the bottom dropped out of the tech market - if I had not found this my house would have been sold to take care of the leverage loan.

I sent to all the companies and got the histories of my accounts, a nightmare. The accounts were churned to the point that an expert could not figure all of it out. In French they called it taking soft corners.

It really gets much more involved - the documentation I received from La Chambre is in French and I do not speak the language.

There is another case pending against this broker with La Chambre."

A small investor - Nov 2003

"The Ombudsman's Office seems to have sided with the I.A. on all matters. Regarding all the forged initials on my Application/Agreement, they say the I.A. said I signed them. Although I know the Assistant Ombudsman really knows they are not my initials, he is still saying "Prove it!" They seem to want me to go to a lawyer and they say it will be up to the I.A. to pay the damages if I win in court if the initials are proved to be forgeries.

I just got off the phone. I am in shock that the Ombudsman/Bank will not listen to me or let me prove it to them. They are just concerned that the I.A. is working within the Rule Book of the IDA.

I now need a "hand writing expert". I am supposed to be going to the Toronto Police to get them to look at the documents."

A small investor - Nov 2003

“(Small investor) is disabled and is 59 years old. She lives on \$1,000 a month in an apartment with her brother. She says she received about \$120,000 as a result of her accident and invested with an investment advisor with (bog Bank) who came to her home. She told him that this was all she had and needed it to be secure. When she saw her investments declining she expressed concern and eventually cashed out. She made a complaint and ended up at the IDA but was unable to resolve the problem. She says she does not recall signing anything and still has the application marked with X’s where she was to sign.”

Telephone call from small investor – Nov 2003

“The pressure and the losses and uncertainty of the future were too much for us at the time. ... The irrational and probably illegal handling of my portfolio has cost myself and my wife great damage financially and psychologically. I hope this can be taken into account somehow. ...

Unfortunately his irrational and illegal trading has pretty well ruined my life savings. I am now almost 46, basically unemployed with serious back problems. This is a very unfortunate circumstance that should never have happened. ...

I attempted to solve this problem by meeting with the firm. To say I was laughed out of the office would not be an over exaggeration. I realized at that time that I had been taken in and a large percentage of my life savings were gone for good. ...

The law is there to protect these people from doing this. It is small people like me who work and save and then are led to trust and believe that these pros will work to invest our savings for our best interests, not theirs. My wife and I have been through a terrible three years and have serious doubts about our future now.”

A small investor – Nov 2003

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Letter from Counsel to Bank President and Chairman of Brokerage -

“My clients met with [RR] in early 1998. Mr. (Bank Manager) stressed to [RR] that the (small investor) family were very conservative investors and they were not interested in being involved in any financial vehicles where there was any risk. In fact Mr. (small investor) had explained to [RR] that he had had a bad experience with another [Brokerage] a number of years before; did not want that to ever happen again; did not want to deal with brokerage houses in general and only wanted to do conservative investment. ...

What gets more interesting hereafter are incidences of breach of [Bank]’s own policy and the effect it had on such people as (small investor)’s minor children. ...

What I find interesting is that [RR]’s disregard for the future of these children, resulted in trusts which had been built for 15 years to be destroyed in a matter of months. ...

There is absolutely no doubt that the losses outlined in the attached schedule are as a direct result of the inactions and actions of both [Bank] and [RR]. You are in breach of the agreement between the parties. You are in breach of common decency and quite



frankly, these damages are without equivocation resultant from the activities of your [RR] and yourselves.

I find it extremely distressing that the bank's customers have been so shabbily treated and so badly considered when they are both significant and have had such a long-term relationship with your institution."

Counsel for a small investor – Dec 2003



A Voice for the Small Investor

SIPA Inc

Five Year Review

~

the Small Investors' Perspective of
Investor Protection in Canada

Appendix II – Brokers Say

February 27, 2004

Appendix II - Brokers Say

Although SIPA is recognized as having a primary interest in the welfare of small investors, inevitably we have received contact from some in the investment industry who see wrongdoing and would prefer the industry to change. SIPA has talked with brokers, ex-brokers, regulators and other industry participants. Their revelations indicate there is widespread wrongdoing in the investment industry and in many cases it is not only condoned but demanded.

Most of these individuals are not prepared to speak out because those that do suffer consequences that can end a career and make them unemployable. Many are afraid to speak out because of the lack of whistleblower protection in Canada.

At SIPA we are hearing from more and more industry participants. A few of the many comments received from brokers are included. They corroborate the stories heard from small investors.

In accordance with SIPA policy we do not disclose individual's names without prior approval, and in order to protect the privacy of individuals, names of investors, investment advisors and corporate identities have been removed.

Excerpts from a broker's e-mail to SIPA October 2003

In my regular investment column in the middle of a lengthy piece on guaranteed investment funds, I wrote this offending paragraph:

"If you shop around, you should not have to pay a front-end or back-end fee to buy them and your only expense will be the annual management fee that every mutual fund charges to operate."

A fairly innocuous statement and a piece of advice investors have a right to know. But not one, apparently, that the [Brokerage] wants widely circulated because it triggered, 10 days later, this reprimand:

"By having this article published without obtaining prior approval. . . you have contravened IDA regulations as well as (the) firm's policies. . . Should any re-occurrence be brought to our attention or other breach of conduct, it will be grounds for further disciplinary measures that may result in the termination of your employment."

It's been made clear to me I was chastised for mentioning clients can purchase funds without paying commissions.

When I got the first reprimand, I didn't believe in this day and age you could be chastised for trying to do your level best for clients. On the second occasion, I realized it was true. For them to go on record opposing what I had done is extremely shortsighted. It changed everything I believed in.

I took my concerns up the corporate ladder. At all levels I got the same answer: "what you're doing is great, but keep your mouth shut."

I had to decide whether to leave the firm or get someone in the company to listen to me. I went straight to the top and got harassment and intimidation for my efforts. My dad didn't teach me to go to work for people and take advantage of them. It's been a long two years, but if I have to hide the truth and toe the line and lie to Mr. and Mrs. Public when they've put their faith in me, I'd sooner go and pump gas. I was fairly new to the investment business when I began to question why members of my profession were given lavish rewards for selling particular mutual funds when, in fact, those funds may not have been the best buys for their clients. When Bud Jorgenson, a Globe and Mail business journalist began to openly question the practice I was encouraged; someone had stepped up to blow the whistle. We talked about it in the boardroom. I said I thought Jorgenson was right. My views were extremely frowned upon by management. It was the first instance I had run into of the keep-your-mouth-shut philosophy. I realized then there were other motivating factors beyond client benefit. I realized there was a code of silence – almost mafia-like, which, when broken, gets you fired. I was 27 years old.

...

Basically, clients are told when they plunk down their money they won't be hit with front-end loads (fees paid at the time of purchase). Instead, every penny will be invested and put to work for them immediately. They leave with a peaceful, easy feeling; safe in the belief their investment advisor has gone to bat for them to secure them the best deal available.

What they are often not told is they face the potential of heavy penalties should they pull out of the chosen fund before the term expires. Their money is invested for a set number of years, and should they decide to move their cash they will be charged a penalty based on every year they fall short of this time frame. Thus the elation they felt when diving into a fund can be tarnished should they climb out early.

...

Our business is one of earning client trust. We lead you to believe we are there for you. Instead, you won't know until years later – or not at all – if an agent was abusing that trust. It's one of the great mysteries of the business how we can represent ourselves as your servants, then sell you funds which give us the highest compensation.

...

Agents are financially rewarded every time a client has to pay a DSC. The more often they switch funds, the more an agent makes. Thus it is in the agent's – not the client's – best interest to convince the customer to switch as often as possible. Agents who are in a get-rich-quick mode can trigger a five-per-cent fee to the client for getting a client to move (the DSC) and earn another five per cent when they purchase a new fund, some do it over and over."

...

As I say, this is supposed to be a relationship of trust. My role is to earn yours so that you'll go through fire and brimstone with me. I have the ability to take that trust and either do what's in your best interest, or do what's best for me.

The client is considered to be an asset looking to get milked by some 'advisors.' That's a dangerous thing.

...

I recall an instance in 1999 in which an agent, with mutual funds of \$37 million, used double dipping to hit the client on both ends of a transaction. I took the matter to the compliance department hoping for an admonition and, perhaps, an eventual edict from management to cease and desist. They blew it off. Instead, I was chastised for speaking up. There is no clear rule against double dipping in Canada. You're basically on your own. Even the compliance department looked the other way.

...

We shouldn't be allowed to represent ourselves as our clients' faithful advisors and at the same time not be able to do what's in their best interests.

...

Ethics can be so tedious to some organizations. They spend mints of money developing high ethical standards and even more on advertising to publicly brag about their sense of honesty, yet when they are faced with their own set of rules, they chafe under the weight.

...

I have also taken my concerns to regulatory agencies that astoundingly have told me they can only deal with consumer complaints, not with those initiated within the industry.

...

I am fond of a quote by James Baldwin: "The price one pays for pursuing any profession is an intimate knowledge of its ugly side." How one reacts to the discovery that their chosen field has a darker element to it depends on whether their own moral code meshes with, condones or accepts it with quiet desperation. For me, acceptance was the very most I could stomach and even that, after a time, became impossible.

...

For me, the highest price by far was not watching as a few unethical advisors or managers ran up the bill to clients by double dipping or overcharging commissions. It came long after this started, when I finally realized I had stopped being a husband to my wife, or a father to my children, due to the stress of trying to survive and thrive in an environment where ethics were treated as nothing more than words on paper.

e-mail from a broker – October 2003

8 years ago I was truly your nemesis naysayer - I was in the retail brokerage industry from 1987 to September 1999 - started off at a small brokerage firm and developed a relationship with a senior member of the firm I was working for and we developed a business partnership and things couldn't be better. In 1995 we had settled into (Brokerage) and in a matter of a short period of time my life and my actions were slowly crawling on top of me - fear, panic, paranoia, confusion and severe bouts of high anxiety consumed my every waking moment.

The things that we had done as the trusted investment advisors that we were (I was) started to envelop my mind and life. When I realize how I was twisted and manipulated into doing unkosher actions to deceive many of our customers - the worst one was in 1991 for 125,000+ dollars, 1999 for 70,000 dollars etc. etc. etc....

For the last 4 years I have been under medical attention both in and out of hospitals. I live on a slew of pills every day to keep my brain from overloading. I am imprisoned by my own thoughts and feelings. I put my full 100% into our team at (Brokerage) only to be pushed to the ground through deception and manipulation - the denial of any partnership arrangement, the denial of wrong doing by the team and or the senior broker in our group, the alienation by co workers and management when I did fall to this dreaded scenario. Once I started to discuss what was going on and looked for support by those that knew what was going on i.e. Management - those that were in our group or near enough to acknowledge what incidences there were. Very few are standing up for what they know or believe to have happened.

In discoveries with my lawyer and (Brokerage) - broker - management have been a running chase - when we ask for records of clients or daily equity and commodity runs from our group they say they don't exist and therefore next to impossible for me to prove.

e-mail from a retired lady broker February 1999

As a broker I would see the woman investor only after she lost trust and faith in their usually male broker. Needless to say this was only after she saw her savings go down dramatically. However the women I saw were the strong independent thinkers. The worst ones accepted their losses as "I took a risk being in the market" thinking. They would usually go back to GIC's as something they could understand and trust. Although I said they were the worst, the very worst did not understand in any format what was happening. I watched brokers trade with abandon on accounts and the women had absolutely no idea what was happening. I watched one single retiree account go from \$175,000 to \$15,000. Her concept of money still left her with the impression that there were lots of funds. This view was promoted by the broker. We are not talking fly by night companies. I am talking ([Brokerage]) brokers that I worked with. Yes the managers knew what was happening.

A broker's statement to the Ontario Securities Commission

The following is an excerpt from the Settlement Agreement reached between the Ontario Securities Commission and Norm Frydrych of Marchmont and MacKay Ltd. Marchmont and MacKay were put out of business by the OSC in 1999 after a long legal battle. Of the \$17 million on their books for client accounts at the time they declared bankruptcy, only

\$7.5 million represented valid investments. The remainder represented securities that had little inherent value and would be essentially worthless when the Marchment and MacKay marketing program stopped.

SCHEDULE "A"

Statement of: Norman Frydrych

Date: 10 July 1997

Background

1. Until March 20, 1997, I was employed as a senior salesperson at Marchment & MacKay Limited. I first became an employee of Marchment as a junior salesperson entitled to retain my accounts on April 7, 1987. I became a senior salesperson in about 1989. Prior to April 7, 1987, I was employed as a junior salesperson at Gordon-Daly Grenadier Securities Limited. I joined Gordon-Daly on October 19, 1983.

2. Prior to 1983, I was employed by two chartered accounting firms where I was in the articling programme. I have a Bachelor of Arts degree from the University of Toronto. I graduated from the University of Toronto in 1979. I am married and have three minor children.

Trading Structure of Marchment & MacKay Limited

3. Throughout my employment at Marchment, it had the same basic structure for dealing with its clients. Marchment employed qualifiers, junior salespeople (known as openers) and senior salespeople (known as loaders). In addition there were intermediate salespeople who would act as openers and loaders for their own accounts.

4. At the time that I left Marchment, there were approximately 25 qualifiers. These qualifiers worked in a separate "bull pen" area at Marchment's premises. Qualifiers cold-called individuals listed in telephone or other directories, asked individuals if they wished to receive marketing information from Marchment. If the answer was positive, they wrote the name and address of the individual on a lead card. I believe that qualifiers are required to complete about 15-20 lead cards each day.

5. The lead cards are given to clerical staff who input the information contained on the cards into the computer system at Marchment. The information relating to the individuals is given to the junior salespeople who are allocated 75-100 leads each day.

6. It was the function of the junior salespeople to open accounts by making calls to the leads and getting them interested in opening an account with Marchment by acquiring 500-5000 shares of the securities that Marchment was promoting at the time. The

junior salespeople (like all Marchment employees) primarily sold the securities that Marchment promoted from its own inventory.

7. Although the junior salespeople were encouraged to sell mostly stock from Marchment's inventory increasingly, it was Marchment's strategy to augment the amount of "agency" trades that it transacted as opposed to "principal" trades. I believe that this was not done for profit but as "window dressing" so that it would appear to regulators that Marchment was not solely in the business of selling out its principal positions in over-the-counter stock which was its bread and butter.

8. To encourage agency trades, certain junior employees were paid seventy percent of the total commission charged to the client on agency trades.

9. In sales of principal stock (which is where Marchment made its money) the role of the junior salesperson was to close a sale of securities from Marchment's inventory at a price that they were advised of by Marchment and to complete a new client application form for the client. Clients were led to believe by this sales presentation that the junior salesperson would have a continuing relationship with the client.

10. Although the junior salespeople represented to clients that they intend to establish a long relationship with them, in reality they only held the accounts for about 2 to 4 month period.

Sales By Senior Salespeople

11. In my experience, in the two months after initial sale by the junior salesperson, the trading price of the securities that Marchment offers steadily increases. Then, the accounts of the junior salespeople are collected by management and distributed to senior sales people.

12. It was my experience that the price of the securities that Marchment offered from its inventory would always increase during the period described in paragraph 11. As salespeople we were advised by management as to the price of the shares that we promoted.

13. The client having perceived that he had made an unrealized gain on his initial purchase of securities was more receptive than he otherwise would have been to the sales presentation of the senior sales person. This made it easier for me as a senior salesperson to sell the customer more stock.

14. Although I was always provided with information regarding the securities that we sold to customers and more recently, like all salespeople, was required to sign a document stating that I had read the materials, in reality, I had no discretion as to the principal stock that I was permitted to sell to clients from time to time. I was able

through the selling technique to load a client with securities based on the price increase of the stock from the time that it was initially purchased and by soliciting the customer's trust. It was not necessary for me to say very much about the securities themselves. Many customers relied on my recommendation to buy more securities.

15. The trading price of every stock that I sold at Marchment (with one or two exceptions out of the approximately forty securities that I sold) declined in value to 20 cents or less within about a year of their initial sale by the senior salesperson. As a senior salesperson I did not have any faith in the recommendation that I was making because I knew that in the vast majority of cases, the client would lose money.

16. In fact, if a security that Marchment sold was revitalized by a reverse takeover transaction in the years that followed Marchment's selling campaign and an independent active market was established for the securities, it was our practice to contact the client, advise him of the value of the shares and then "lift" these securities from the customer. We achieved this by selling their shares into the market as their agent and then using the proceeds to sell them the Marchment principal stock that it was promoting at the time. The practice of "lifting" maximized the chances of clients losing money dealing with Marchment.

17. Between the time that the accounts were opened and passed to the senior salespeople, it was the practice of Marchment to send a questionnaire to the customers. Given the good performance of the securities up to the point that their accounts were passed to the senior salesperson, Marchment could in most cases count on positive responses to the questionnaires. Marchment started sending the questionnaires in response to the Ontario Securities Commission practice of sending questionnaires to clients. The purpose of the Marchment questionnaires was to establish a record for use in any hearing relating to the sale of securities to the customer.

Discouragement of Sales of Securities

18. As senior salespeople we were only able to keep our commission if the customer held on to the stock that he purchased for 90 days because Marchment would lose money if it were required to repurchase shares at the price that it sold the stock to its customers. As senior salespeople we never told clients that we would lose our commission if we executed a sell trade of the securities within this period.

19. We were also required as senior salespeople at Marchment to discourage customers from selling securities even beyond the 90 day period within which we lost our commission if a client sold the securities that they acquired. Our ability to prevent customers from "selling out" was reflected on our performance evaluation by

management. We were instructed to do everything that we could to encourage customers to hold on to their stock. This practice was called "holding the client in".

20. As part of our sales presentation to customers, we always told them that we would contact them if it was a good time to sell the stock. This was done to make the customer think that he would be looked after by the salesperson and that they could rely on us. In reality, we never contacted clients to sell stock unless we were lifting the stock. In fact, we knew that the stock would decline but never told the customers to sell (except where the stock was to be lifted as described above). If we did so, we stood to either lose our commission or displease our employer. We were warned that if we had a large number of "sell outs" we could receive fewer accounts to trade.

21. The only occasion on which we would make sell recommendations were cases in which the shares actually increased in value for the reasons described in paragraph 16 above. In such cases, we were encouraged to "lift" the stock from the customer and replace it with other securities from Marchment's inventory.

22. As a senior salesperson, I would continue to call a customer who purchased securities from me to acquire other securities that Marchment was promoting as soon as I received notification that the customer had paid for the previous stock. The strategy was to call the customer as soon as possible before the first stock declined in value. All the securities that I sold were in substance the same (principal stock from Marchment's inventory).

23. I continued to sell stock to the customer until either the customer became disenchanted or the sale was beyond his stated suitability or objectives on the new client application form.

The Dead Box

24. Periodically, management would ask me whether I had any clients that no longer wished to purchase securities. These customers were placed in what was known as the "dead box" Almost all clients would end up in the dead box except for "spot" clients who continually buy securities.

25. Clients in the "dead box" would either be passed to other senior salespeople for further loading. If the clients in the "dead box" had already been loaded with Marchment principal stock up to their suitability limits, the accounts might be passed to the three or four salespeople who sold agency stock and mutual funds. I believe that this was to create the appearance that the firm does not trade exclusively in principal stock with its customers.

Confirmation Slips

26. Marchment customers were given confirmation slips after each trade of securities. On the bottom of the slips, the remuneration received by the registered representative was indicated by a code explained on the reverse of the slip. I was responsible for at least 15,000 clients. Only a handful of these ever asked me about the codes on the slips. I believe that the great majority of Marchment customers pay no attention to the codes on the confirmation slips.

Principal Trading

27. As a matter of practice, we were instructed to advise customers verbally that were acting as "principal" on the trade. Of the thousands of customers that I was responsible for only a handful ever asked me about principal trading by Marchment.

Clippers

28. In my experience, the individuals who asked me about Marchment's average acquisition cost and whether it was selling or buying as principal were what was known at Marchment as "clippers". Clippers were individuals who understood the Marchment selling technique and sought to sell securities back to Marchment in the midst of a promotion for profit. Marchment lost money dealing with clippers but normally acquired their stock so that the promotion could be perpetuated. Buying back the stock of clippers was regarded as a cost of doing business by Marchment.

Losses By Clients

29. In my experience with Marchment, of the thousands of customers that I dealt with all of them (except for clippers and others who insisted on selling the shares that they acquired contrary to our recommendation) lost virtually all of the money that they invested with the company. This is primarily because the price for the stock almost always fell to less than 20 cents when Marchment's selling campaign was over. As I have said, even if a stock performed well or a market for the stock developed independent of Marchment, the stock was "lifted" from the customer. The customer was always left with more Marchment principal stock at the end of the day.

Speculative Trading

30. At Marchment, I was careful to ensure that I advised customers that the trades in principal stock that we did were speculative and as a matter of practice, I sold speculative stock within the boundaries of the objectives listed on the new client application form. In reality, however, customers only achieved gains in unusual

situations for the reasons described above. Therefore I now acknowledge that whether I advised them that the investments were speculative or not did not really matter.

Use of New Client Application Form at Marchment

31. I understand that the "know your client" obligations of a broker and the new client application form are meant to assist the broker in making appropriate recommendations to the client regarding the sale of securities. At Marchment, new client application forms were completed accurately but were used to load the client with as much principal stock as possible. While Marchment complied technically with "know your client" rules, the spirit of the concept to make appropriate recommendations to clients was ignored.

Why I Left Marchment

32. I have decided that I am no longer interested in selling securities to clients in circumstances where they have no chance of making money. I have therefore sought to become involved with a broker that engages primarily in "agency" trades in listed securities and in sales of mutual funds.

33. As a salesperson at Marchment, I thought that I complied with my obligations to my clients simply by not lying to them and not processing trades that did not conform with their new client application forms. I now realize that as a professional, I have a duty to ensure that I have faith in the investments that I recommend to clients and that I should act in their best interests. For that reason I have severed my ties with Marchment. I am certain that I will be able to act in the best interests of my clients in my new employment.

July 10, 1997

"Norman Frydrych"