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PROPOSED AMENDMENTS TO NATIONAL INSTRUMENT 81-101

***MUTUAL FUND PROSPECTUS DISCLOSURE*, FORMS 81-101F1 AND 81-101F2 AND COMPANION POLICY 81-101CP *MUTUAL FUND PROSPECTUS DISCLOSURE* & RELATED AMENDMENTS**

Canada's investment funds marketplaces are not only as immoral and unethical as the ideal of slavery, Canada's investment funds marketplaces, systems, processes, practices, lack of transparencies, policing, etc., are laced with provincial / territorial securities acts *and / or* Government of Canada (GOC) Criminal Codes breaching impropriety and illegality practices – including breaches of **Breach of trust by public officer – Section 122. of our Criminal Code** by our federally elected MP's, by our provincially elected MPP's and / or our civil servant securities commission employees.

NOTE: there is no statute of limitations on breaches of Canada's Criminal Codes

ATTN: CSA

WHEN The first deferred Sales Charge (DSC) mutual funds were introduced in 1987 by Mackenzie Financial, did our then OSC Chairman, Stanley Beck, and his OSC Executive Director, Ermanno Pascutto, breach our Ontario Securities Act which clearly says that:

> "material" information must be disclosed – is required by investors – prior to investors buying or selling securities
>
> – i.e. prior to DSC funds being $OLD to investors
>
> – DSC funds with early redemption penalties being $OLD to investors with no transparency prior to *and / or* @ the POS of either percentage penalty amount and / or duration number of years until the investment was free and clear of all early redemption penalties !!

Q. Did Stanley Beck *and / or* Ermanno Pascutto **Breach Section 122. of our Criminal Code?**

History Behind My 1994 Point-of-Sale Checklist

1. **1957 – I was identified to have extremely severe learning disabilities in reading, writing and comprehension. A wonderful retired teacher, Ms. Edna McCallum taught me unique learning / survival abilities.**

   In May 2006, an acquaintance – a top pediatrician – unofficially identified my 1957 childhood learning disabilities as being symptoms of asperger's disorder, a derivative of autism.

2. **1973 UWO B.A. in Economics**

3. 1979 Ivey MBA – in Sales, Marketing, Finance and Operations Management

4. March 1984 — Secret Service "Monkey Business" Protection on 16th Floor of NY-NY Roosevelt Hotel during my month long Merrill Lynch training as an Account Executive. I left the brokerage business by my choice on August 5, 1988 – I could not churn my clients for point-of-sale and / or on-going trailer fee commissions.

5. Aug. 12, 1994 — Adam Zimmerman was the first person who I showed my investment funds POS Checklist to.

6. Sept. / Oct. 1994 — I published my POS Checklist in my Frugal Bugle newsletter and my creativity was automatically copyrighted when I filed those issues of my Frugal Bugle @ Canada's National Library in Ottawa.

7. Oct. 16, 1996 — I officially submitted my POS thesis to OSC and within 48 hours Canada's most POWERful banker, Tony Fell, had me terminated from my 9.5 month extremely successful marketing / communications consulting project with / for an individual RBC DS full service stock broker.

8. March 1997, IFIC's President and CEO, Hon. Tom Hockin, wrote that I was "consumerism gone mad" for my suggesting that fund companies must disclose how they voted the shares in their funds on specially designated Shareholder Proposals, i.e. Michaud's 1997 Royal Bank proposal to limit the pay of the Bank's highest executives – Trimark controlled

3.7% of RB's common stock in its funds and RBC DS accounted for 10% of Trimark's funds sales – nod nod, wink wink – would Trimark vote to limit the pay of Tony Fell, etc.?

Hon. Tom Hockin's 2008 reward for his calling me "consumerism gone mad" in 1997

– Hon. Jim Flaherty appointed Hockin to Chair his Expert Panel on Securities Regulation !!

9. 1997, 1998, 1999, 2000 — My "Living and Leading by Example, Can Trimark" Shareholder Proposals - my end-around the OSC attempt to have my mother's demi+billionaire Order of Canada recipient first cousin, Arthur Labatt

– to "Live and Lead By Example"

10. March 1998 — Ivey Cases on my 1997 Trimark Proposals

11. May 14, 1998 – Senator Michael Kirby aborted my *investorism* presentation to his Senate Bank Finance Committee — WHY? I had too many real life names in my consumer / investorism case study educating examples AND Michael Kirby was not going to grant me Parliamentary Privilege so that I could tell the embarrassing and reputational damaging truths about his Canada's establishment — his friends !!

12. August 1998 – I offered to give my investorism POS Thesis and my three POS documents: my Checklist, Advisor PROFILE and Redemption / Switch Disclosure 1-page documents to my MBA alma mater Ivey School of Business so that a committee of Ivey finance, etc., professors could make timely update changes to them, post them on the web and using

Ivey's education cachet, require their usage @ POS with a 5 cents (5¢) per transaction royalty being paid to Ivey that would have self-funded ($3+ million in 1998) a "Stromberg Chair in *Investorism*" to represent and conduct on-going research on behalf of consumer / investor best interests.

Ivey, a taxpayer built and funded university school of business declined my offer. WHY? Ivey would have been shooting itself in the foot – from 1995 to 1999 approximately 70% of Ivey's HBA and MBA graduates got stock market related jobs !!

FACT:

13. **Oct. 1998 — Stromberg's Millennium Report for Industry Canada covered my POS theses Sec. 17.8 & 17.9 and R/S Sec. 21.1 & 21.2**

14. **Nov. 9, 2001 — I offered to my *investorism* POS thesis, web site and three revolutionary POS 1-page documents to Canada and my Province of Ontario. Neither Hon. Paul Martin (our then GOC Minister of Finance) *and / or* Hon. Jim Flaherty (our then ON Minister of Finance) would meet with me to accept my gifts to Canada and Ontario.**

QUESTION: Did Paul Martin *and / or* Jim Flaherty breach Section 122 of our Criminal Code -- Breach of trust by public officer when they refused to meet with me to accept my gift?

15. **Fall 2002 — I taught 4 Sections of BU383 Corporate Finance @ Wilfrid Laurier University – during the 1st**

week of my 6 month sabbatical coverage contract – there were two undermining phone calls from Bay St. to my Wilfrid Laurier guardian angel, Dr. George Athanassakos.

Their *argumentum ad hominem* attack against me – was George afraid of / worried about / aware that Killoran's mutual fund POS crusade might embarrass Laurier?

16. Feb. 13, 2003 — FSCO / OSC Rethinking POS Mutual Funds and Segregated Funds Concept Paper – no mention of my OSC submissions in either its Sources or Acknowledgement pages and FSCO Director Grant Swanson threatened to sue me – the FSCO an arm of the Province of Ontario – threatened to sue me for libel and slander when I shared with him Glorianne Stromberg's November 1997 comment to me that "other's were adopting and presenting my ideas as t heir own" – that in academia what the FSCO / OSC were doing with their Feb. 13, 2003, concept paper would be called plagiarism and in the real world of capitalism it would be called intellectual piracy and / or copyright infringement – especially when my POS Checklist 1-page document was automatically copyrighted by our National Library in Ottawa when I filed – as I was legally required to do so – the September and October 1994 issues of my Frugal Bugle monthly newsletter publication.

17. February 2003 — a guardian angel submitted my 1994 *investorism* POS thesis as the best antidote cure for "asymmetric information" and my investment funds trailer fee commission "Tied Advice / Tied Sale" thesis to the Nobel Foundation to be considered for

its annual Economics Award

18. July 17, 2009 – OSC Chairman David Wilson dropped in for only the last 3 minutes of my scheduled 30 minute meeting with him. David Wilson stated in front of two OSC employees that he believes in "evolution" Re: investment fund deserved / needed / required / securities act mandated point-of-sale transparencies *v.* my 15+ year old "revolutionary" POS Checklist thesis.

David Wilson's statement breached the application and extension of ON Premier Dalton McGuinty's Liberal Party Education Platform for students on behalf of consumer / investors – a mandate of the OSC !!

High Treason by our elected MP's and MPP's?

On August 19, 2004, I was allowed to give an *investorism* presentation to the Ontario 10 person all party MPP Economics and Finance Committee Ontario Securities Commission Five Year Review Hearing. By-design, my presentation was limited to 600 seconds – 10 minutes, during which I was able to briefly speak about my 1994 investment funds point-of-sale thesis plus how the OSC breached its mandate when it issued its April 13, 1999, Special DSC Commission Rebating Exemption Order to Assante – a Special OSC Exemption Order that actually facilitated and perpetuated Assante's Ontario Securities Act and GOC Criminal Code breaching escrowed shares business model – breaches that the OSC was knowingly colluding with its other 12 provincial / territorial securities commissions in a conspiracy to cover-up and bury. My own 24 page investorism hard copy presentation that day was supported by and validated with several inches of Kent Shirley's whistleblower evidence *v.* Assante, the OSC, et al.

On September 22, 2004, when I forwarded six (6) more inches of Kent Shirley's whistleblower evidence v. Assante to NY-AG Eliot Spitzer – Assante exported its fraudulent escrowed shares conglomerator's

business model to the U.S. when it acquired its four (4) U.S. securities dealers in the late 1990's early 2000 years – I Cc: my letter to Eliot Spitzer to:

i.) Hon. Jim Peterson, MP, our then GOC Minister of International Trade,

ii.) Debbie Matthews, ON MPP who was one of the 10 all party members of the ON Finance and Economics Committee that I presented to on August 19, 2004, at Queen's Park, and to

iii.) Glorianne Stromberg, Canada's Mother Teresa of Mutual Funds.

In mid-January 2005, approximately three (3) weeks after Kent Shirley's tragic death on December 24, 2004 – Kent was mercilessly bullied to his tragic death – ON MPP Debbie Matthews – who I have known for 40+ years and note – Debbie and my older sister are best friends – Debbie told me that the ten person all party ON MPP Finance and Economics Committee did not look at the Kent Shirley whistleblower evidence that implicated the OSC in Assante's Criminal Codes breaching escrowed shares business model because the Committee's mandate / terms of reference was to only review Purdy Crawford's Report on the OSC.

Debbie Matthews – who was recently appointed as ON's Minister of Health then asked me what she should do with Kent Shirley's six inches of whistleblower evidence that I Cc:'d to her on September 22, 2004. I was absolutely shocked when Debbie asked if she should destroy it or return it to me! WHY? Because two months previous, during November 2004, I had asked Debbie to forward those six (6) inches of documents to ON Minister of Supply Services, Gerry Phillips, whose mandate included oversight over the OSC and Debbie Matthews had knowingly declined to do what I asked her to do.

QUESTION: did these actions by ON MPP Debbie Matthews breach the Criminal Negligence *and / or* Breach of Trust By a Public Officer sections of our Criminal Code?

122. Breach of trust by a public officer

219. Criminal negligence

220. Causing death by criminal negligence

On February 13, 2007, Hon. Jim Peterson, MP, forwarded my request for a Kent Shirley / Assante / KPMG Forensics / Securities Regulators / RCMP IMET / et al National Judicial Inquiry to Hon. Rob Nicholson, our GOC Minister of Justice and Attorney General. In his letter of March 29, 2007, to Peterson, Minister Nicholson not only played Pontius Pilate when he denied my request for a National Judicial Inquiry, when Minister Nicholson wrote:

> While I understand the concerns raised by Mssrs. Kyle and Killoran,
>
> **I must advise you that the legislatures of the provinces have jurisdiction for securities matters within their respective borders. I note that the matter has been brought to the attention of the Attorney General of Saskatchewan and the Saskatchewan Financial Services Commission who are the appropriate authorities in this matter.**

Did Minister Nicholson himself commit a blatant Act of **High Treason** – did he himself breach **Section 46. of our Criminal Code** – when he off-loaded his GOC Ministerial jurisdiction over Assante's 1996 to November 14, 2003, extremely sophisticated and very fraudulent escrowed shares conglomerator's business model that breached both the:

Secret commissions – Section 426. of our Criminal Code as validated and verified by the Supreme Court of Canada's **R. v. Kelly**, [1992] 2 S.C.R. 170; (June 11, 1992) decision,

and the

Income Tax Evasion sections of our Canada Revenue Agency?

Breach of trust by a public officer – Section 122. Of our Criminal Code

On January 29, 2004, exactly eight (8) days before Kent Shirley voluntarily met with his Saskatchewan Financial Services

Commission on February 6, 2004, to deliver his whistleblower evidence that clearly and definitively identified Assante's 1996 to November 14, 2003, Criminal Codes breaching escrowed shares business model and how Assante's mutual fund "salespersons" across Canada were using the OSC's lead securities regulator granted April 15, 1999, Special Assante DSC Commission Rebating Exemption Order to help their clients to remove money from their RRSP's tax free – without any withholding taxes – without having to pay any taxes on the money affectively / effectively removed from their RRSP's !!

Julia Dublin's last position with the OSC was as its manager of the Fair Dealing Model Project. In 2004, Julia was voted "Lawyer of the Year" by readers of the Compliance Reporter for significant contribution to financial services compliance and regulation. Recently, Julia Dublin defended her not identifying the securities dealer [it was Assante] in the Compensation Case Study #1 on PDF pages 196-197 back in the January 29, 2004, OSC Fair Dealing Model paper that she spear headed. Julia also declined to recently identify that the company in Case Study # 1 was Assante.

QUESTION: Knowing that Canada / Canadians have a history of usually not addressing inappropriate systems, processes, practices, etc, proactively – that we historically wait until damages have been done – there has been a senseless loss of life, an autopsy and a coroner's inquest with recommendations for reactive changes to ward off future senseless tragedies from happening, we must now autopsy whether or not:

When Julia Dublin's January 29, 2004, Fair Dealing Model Concept Paper

http://www.osc.gov.on.ca/Regulation/Rulemaking/Current/Part3/cp_33-901_20040129_fdm.pdf

was published, did Julia Dublin immediately identify – did she ever identify – the securities dealer in her own forensic researched Compensation Case Study # 1 on pdf pages 196-197 to the following securities industry policing and adjudicating bodies:

to the Enforcement and Investigation Departments at Canada's 13 provincial and territorial Securities Commissions?

to the industry associations granted self-regulatory Organization (SRO) policing powers by the 13 securities commissions?

to RCMP IMET – the partner of the securities commissions and SRO's in the fight against securities crimes?

to Mike Lauber who was our first OBSI Ombudsman until June 30,

2005?

Did Julia Dublin breach any of our Criminal Codes when she failed to identify the securities dealer in her Compensation Case Study #1? Specifically, did Julia Dublin breach the following Criminal Codes:

122. Breach of trust by a public officer

219. Criminal negligence – in the eventual death of Kent Shirley

220. Causing death by criminal negligence

CONCLUSION / RECOMMENDATION # 1

IMMEDIATE Appointment of a National Judicial Securities Industry Inquiry

Right Honourable Prime Minister Stephen Harper must step-up and personally appoint a National Judicial Securities Industry Inquiry so that the premeditated complicity sins of omission and commission by his own GOC Minister of Justice, Hon. Rob Nicholson will be illuminated for every Canadian to see.

The only way Canada will ever create a better securities industry protecting mouse trap – a national securities commission or improve / enhance our existing 13 securities commissions is for every Canadian to become enlightened to the how rotten our securities industry really is – a process that can only happen through the appointment of a National Judicial Inquiry with the power to subpoena anybody and force them to "tell the embarrassing and / or reputational damaging truths" about what they have and have not done.

The CSA's 2-page June 19, 2009, Fund Facts document

It saddens me to say that the background + process to create this 2-page Fund Facts document and the information that is and is not on this document – blatant sins of omission and commission by our CSA civil servants – makes me ashamed to be a Canadian for the first and only time in my 58 years of life that I am totally ashamed to be a Canadian!!

WHY?

All of the FSCO / OSC / CSA / Joint Forum point-of-sale processes failed to embrace, adopt *and / or* adhere to Jack Welch's GE capitalism approved mantras of Boundaryless Behaviour, Speed, Stretch, Six-Sigma, etc., etc.

FACT: NOBODY has been allowed to represent consumer / investors in any of the FSCO / OSC / CSA / Joint Forum, etc., processes – and this is a flagrant abuse of Jack Welch's capitalism approved Boundaryless Behaviour.

FACT: In February 1994 – on the same day that Waitzer appointed Stromberg to do her first mutual fund report, I offered my services to Waitzer and the OSC to represent investors and to work with Stromberg.

Waitzer said no.

FACT: During the late Spring / early Summer of 1995 when Waitzer appointed his (magnificent) seven OSC Steering Group to head committees to address Stromberg's January 1995 OSC Mutual Fund Report, I offered to represent investors and sit on each of Waitzer's 7 Steering Group Committees. Waitzer said no.

In 1996, OSC Chairman Ed Waitzer told me that of all the qualified individuals – including myself – who could have represented investors during Stromberg's 1995 OSC Report writing and Waitzer's own follow-up OSC Seven (7) Steering Group Committees, etc., non of us were acceptable to the industry !!

Something more rotten than Hamlet's State of Denmark is happening in Canada when zero tenured finance educators from our world renowned university business schools have been asked to decide / draft / produce what information @ POS consumer / investors must be given and in what meaningful presentation manner so that they are empowered to make their better—best informed investment decisions.

Something more rotten than Hamlet's State of Denmark is happening in Canada when CSA securities commissions civil servants – who are predominantly professionals with a law degree from one of our taxpayer built and funded universities – are continuing to undermine

our financial well-being compared to our medical well-being practitioners we require to obtain university degree(s): physicians, nurses, pharmacists, radiologists, etc. Civil servant lawyers are being allowed to not only undermine and compromise the quality of our financial well-being practitioners, they have also failed to require a higher calling "Fiduciary" compares to "Hippocratic" Oath and a university required degree for our financial well-being practitioners.

These same CSA securities commissions civil servant lawyers recently – this past July 17, 2009 – undermined and compromised the full, true and plain disclosure verbiage for consumer / investors when they changed the legal licensing for market registrants from their previous "salesperson" to their brand new foggier and deceptive "dealer representative" title – which is a long way from a university professional required degree as a financial well-being practitioner professing to adhere to a "fiduciary oath" – to a higher calling financial well-being who is an "investor representative".

QUESTION: Do our highest calling physicians represent their patients or the hospitals where they have privileges to operate and admit their patients?

The CSA June 19, 2009, POS Fund Facts document is laced with omissions, commissions AND / OR "asymmetric information" facilitating and perpetuating verbiage.

For example: there is a gigantic difference between describing point-of-sale commissions as follows:

Up to 4%

versus

Fully negotiable from 0% to 4%.

The CSA's 2-page Fund Facts sins of omission and commission can be succinctly described by Jonathan Wellum's April 4, 1998, comment to me that was prominently displayed by me in my May 14, 1998, *investorism* presentation to our Senate Bank Finance Committee that

Senator Kirby aborted because it contained too many real life names – RBC, Trimark, Labatt's, CIBC, AIC, etc., in my irrefutable case study examples of consumer / investorism impropriety and illegality abuses.

"Why tell them (investors) more than we have to?"

—JONATHAN WELLUM, AIC, April 4, 1998

Simply stated – Page 1 of the CSA's Fund Facts contains significantly less material information than the 1st page of the RBC Fund Facts document that Mornigstar has produced for the Royal Bank's Funds.

The CSA can have a significantly enhanced better—best informed decision Fund Sales Document first page if it adopts the RBC – Morningstar first page – with several key facts additions to it.

Page two of any investment funds point-of-sale document must be a 100% consumer / investor document that the CSA has zero input into – it must be a 100% arm's length document from the CSA and our existing 13 securities commissions and possible eventual national securities commission, and it must address and contain the following information:

Our first OBSI Ombudsman, Mike Lauber, told me this past summer that the lion's share of the unresolved at the securities dealer / distributor investment fund complaints that were elevated to his OBSI office were "suitability" related complaints. With this in mind, the investorism focused Fund Facts 2nd page, must clearly include / cover:

Whose idea the investment is – was it proposed by the fund "salesperson" or by the consumer / investor?

Risk / Reward numerical metrics. The following 15 numerics are the only initial Risk / Reward + ongoing forensic validating and verifying numerics – as in our blood test good and bad cholesterol, blood sugar, white / red etc., numerics – that every consumer / investor must be given @ POS prior to them being SOLD / purchasing any fund.

The RiskMetrics on my 15+ year old "Prescriptive" POS Checklist

1. Alpha: _____ **9. Mean: _____**

ATTN: CSA

2. Beta: _____

3. Correlation Benchmark: _____

4. Downside Risk: _____

5. Downside Frequency: _____

6. Downside Magnitude: _____

7. Jensen's Measure: _____

8. Mornigstar Rating: _____

10. R-Squared: _____

11. Sharpe Ratio: _____

12. Skewness: _____

13. Sortino Ratio: _____

14. Standard Deviation:_____

15. Treynor's Measure: _____

WARNING: the CSA must not be allowed to continue their sin of omission – to say nothing about the above.

Full / True and Plain disclosure of the 12 different POS commission entry codes that a fund "salesperson" can use to sell the fund – to process the fund order – to earn what they – the fund salesperson decides / choose for themselves to earn – not what the consumer / investor knowingly decides – is informed to all of the different remuneration combinations and permutations that they deserve to / should earn **!!**

Load	Description
DO	Deferred based on Original amount
DM	Deferred based on Market value
FO	Either Front end or deferred on Original
FM	Either Front end or deferred on Market
FE	Front End Load
BE	Back End Load
FB	Either Front end or Back end Load
AC	Acquisition Charge
IS	Initial Sales Charge
LL	Low Load
NL	No Load
VS	Volume Sales Charge

Go to: http://www.cannex.com/canada/english/

FACT: If the province of Ontario decided to kill the extra billing by our highest calling minimum 7 years of required university education +

Hippocratic Oath promising / professing physicians, WHY does our Province of Ontario allow zero university degree required market registrants licensed as “salesperson” to decide what they deserve to earn selling funds without any promise of a “Fiduciary Oath” that puts the consumer / investor’s best interests above the salesperson’s own remuneration self-interests?

The actual fund order entry number for the fund – some funds have 30+ order processing entry numbers so that there can be zero future complaint discrepancy between the salesperson and the consumer / investor on the wrong fund and / or salesperson dollars and cents remuneration.

MFC907	yes	BE	CAD	Ivy Canadian Fund
MFC112	yes	BE	CAD	Ivy Canadian Fund
MFC133	yes	BE	CAD	Ivy Canadian Fund
MFC137	yes	BE	CAD	Ivy Canadian Fund
MFC118	yes	BE	CAD	Ivy Canadian Fund
MFC401	yes	BE	CAD	Ivy Canadian Fund
MFC441	yes	BE	CAD	Ivy Canadian Fund
MFC453	yes	BE	CAD	Ivy Canadian Fund
MFC462	yes	BE	CAD	Ivy Canadian Fund
MFC124	yes	BE	CAD	Ivy Canadian Fund
MFC121	yes	BE	CAD	Ivy Canadian Fund
MFC125	yes	BE	CAD	Ivy Canadian Fund
MFC126	yes	BE	CAD	Ivy Canadian Fund
MFC613	yes	BE	CAD	Ivy Canadian Fund
MFC472	yes	BE	CAD	Ivy Canadian Fund
MFC482	yes	BE	CAD	Ivy Canadian Fund
MFC935	yes	BE	CAD	Ivy Canadian Fund
MFC253	yes	FE	CAD	Ivy Canadian Fund
MFC201	yes	FE	CAD	Ivy Canadian Fund
MFC262	yes	FE	CAD	Ivy Canadian Fund
MFC272	yes	FE	CAD	Ivy Canadian Fund
MFC312	yes	FE	CAD	Ivy Canadian Fund
MFC324	yes	FE	CAD	Ivy Canadian Fund
MFC352	yes	FE	CAD	Ivy Canadian Fund
MFC083	yes	FE	CAD	Ivy Canadian Fund
MFC512	yes	FE	CAD	Ivy Canadian Fund
MFC241	yes	FE	CAD	Ivy Canadian Fund
MFC518	yes	FE	CAD	Ivy Canadian Fund
MFC521	yes	FE	CAD	Ivy Canadian Fund
MFC524	yes	FE	CAD	Ivy Canadian Fund
MFC526	yes	FE	CAD	Ivy Canadian Fund
MFC525	yes	FE	CAD	Ivy Canadian Fund
MFC533	yes	FE	CAD	Ivy Canadian Fund
MFC537	yes	FE	CAD	Ivy Canadian Fund
MFC3159	yes	LL	CAD	Ivy Canadian Fund

THE FRUGAL BUGLE, 19OCT09

The 33 different Ivey Canadian Fund numbers above clearly show that there are many different combinations and permutations of different fund "salesperson" FE and BE point-of-sale + many different on-going different "Tied Advice / Tied Sale" trailer fee commission levels behind each BE and FE Load Types !!

There must be transparency of the fund's Statement of Investment Policy investment ranges that the fund manager must follow / must adhere to per asset category within the fund.

If we have 35 different fund categories, we will have 35 different asset mixes per fund category. This is a key Risk / Reward identifier – for example, if the manager can only have 0-20% cash in the fund, this means that the manager must always be 80% invested – and that if the stock market falls 50% -- the fund should fall at least 40% depending upon the funds beta to the market and / or its benchmark idex.

IF 50% of the money invested in funds is taxable money – it is non-tax shielded money in RRSP's, etc. – transparency must be required on a monthly updated Page 2 fund document of the status year to date of a fund's annual distribution, including the fund's current as of (MM/DD/YY) date:

Market Value: $

Book Value: $

Dividend YTD as at (MM/DD/YY)

Interest: $

Dividend: $

Cap Gains: $_____

TOTAL $

The ***Portfolio Turnover*** ___ for its numeracy – it's an important numeracy number that indicates the extra undisclosed portfolio trading costs + potential annual distributions for taxable monies -- that are in addition to the annual Management Expense Ratio (MER), GST, etc.

Best regards,

Joe Killoran, Investor Advocate
1979 Ivey MBA

Addendums:

Our greatest "foe" today is our enemy from within Canada

The 17 Portfolio Risk Metric Numerics on my 15+ year old investorism POS Checklist

Other investment fund risks that consumer / investors should be made aware of.

"Take up our quarrel with the foe"

Our biggest foe today is actually now from within Canada – it is within our borders – it is our:

breached securities act rules, flawed — inappropriate practices / cultures / Exemption Orders / mandate malpractice failures, etc., that have become accepted / expected norms in our securities marketplaces.

White collar **Criminal Codes breaching securities practices**

Canada's National Heritage Poem

In Flanders Fields the poppies blow

Between the crosses row on row,

That mark our place; and in the sky

The larks, still bravely singing, fly

Scarce heard amid the guns below.

We are the Dead. Short days ago

We lived, felt dawn, saw sunset glow,

Loved and were loved, and now we lie

In Flanders Fields.

Take up our quarrel with the foe:

To you from failing hands we throw

The torch; be yours to hold it high.

If ye break faith with us who die

We shall not sleep, though poppies grow

In Flanders Fields.

— In Flanders Fields, by Lieut. Col. John McCrae, (1872-1918).

The 17 Portfolio Risk Metric Numerics on my 15+ year old *investorism* POS ✔ Checklist 1-pager

Alpha
Also know as the Jensen, Alpha represents a fund manager's ability to beat a benchmark. The excess return of the fund relative to the return of the benchmark index is a fund's alpha.

Calculated on a 3-year basis, the formula for Alpha is: (Return minus Risk Free Rate) minus[Beta * (Benchmark minus Risk Free)]. Higher is better.

Beta

Beta measures the volatility, or systematic risk, of a portfolio in comparison to the market as a whole – the portfolio's benchmark index against which the fund is measured. The greater the value of beta, the more risky the fund is compared to the index. A portfolio with a beta equal to 1.0 has the same risk as the index; betas less than 1.0 indicate less risk; betas greater than 1.0 have more risk.

Correlation

Correlation, which ranges from minus 1 to 1, measures the performance relationship between two funds. A high correlation between two funds would indicate that the inclusion of both funds within a single portfolio would result in redundancy, and provide very little diversification. You'd have more stuff, not more performance or risk management. On the other hand, two funds that exhibit weak correlation would add diversification and reduce risk in a portfolio.

Downside Risk (Downside Deviation)

The true measure of a fund's risk, downside risk measures what investors can expect to earn should the fund not achieve some specified target rate of return. For our discussion from here on, we'll assume that target to be 10%. Downside risk should be subtracted from the target return. If a fund has a downside risk of 8, then, when the fund doesn't achieve the target return of 10%, we would expect the fund to average 2% (10 minus 8) during a 12-month period.

Downside Frequency

This indicates how often the fund failed to achieve the target 10% rate of return measured on a rolling annual basis.

Downside Magnitude

Subtracted from the target 10%, this figure reflects a theoretical worst-case scenario to define the extent to which the fund could drop. A very high number indicates that the drop could potentially be substantial.

Jensen's Measure

A risk-adjusted performance measure that represents the average return on a portfolio over and above that predicted by the capital asset pricing model (CAPM), given the portfolio's beta and the average market return. This is the portfolio's alpha. In fact, the concept is sometimes referred to as "Jensen's alpha." A positive value for Jensen's alpha means a fund manager has "beat the market" with his or her stock picking skills.

Mean

The simple mathematical average of a set of two or more numbers. A fund's mean is its average monthly return.

Morningstar Rating

The Morningstar RatingTM was introduced in Canada in February 2000. Based on the original Morningstar Rating launched in 1985 in the U.S., this one– to five–star rating system allowed investors to easily evaluate a fund's past performance within investment fund categories. The introduction of the Morningstar Rating gave the average investor ready access to the concept of risk-adjusted return. In 2003, Morningstar changed the way that it assigned Morningstar Ratings to mutual and segregated funds. Segregated funds and mutual funds were no longer compared directly with each other for the purposes of assigning the Morningstar Rating. Morningstar did not want the ratings of funds to be affected by being compared to fundamentally different investment vehicles.

How Does it Work?

To determine a fund's rating, the fund and its peers are ranked by their Morningstar Risk-Adjusted Returns (MRARs) for each of three time periods: three, five, and 10 years. For each time period,

if a fund scores in the top 10% of its peer group, it receives five stars (high);
if it falls in the next 22.5%, it receives four stars (above average);
a place in the middle 35% earns a fund three stars average);
the lower 22.5% receives two stars (below average); and
the lowest 10% earn one star (low).

Morningstar calculates ratings only for categories with at least 20 funds that have a minimum of three years of performance history and report their returns net of fees. Ratings are not calculated for funds in the Retail Venture Capital, Specialty, and Hedge Fund categories due to the diverse nature of these funds.

R-Squared

R-squared values range from 0 to 100. An R-squared of 100 means that all movements of a security are completely explained by movements in the index. A high R-squared (between 85 and 100) indicates the fund's performance patterns have been in line with the index. A fund with a low R-squared (70 or less) doesn't act much like the index. An R-squared of 0.45 means that 45% of a fund's movements are explained by benchmark movements.

A higher R-squared value will indicate a more useful beta figure. For example, if a fund has an R-squared value of close to 100 but has a beta below 1, it is most likely offering higher risk-adjusted returns. A low R-squared means you should ignore the beta.

Sharpe Ratio

This measure tells us how much risk is assumed by the fund manager – whether a portfolio's returns are due to smart investment decisions or a result of excess risk. This measurement is very useful because although one portfolio or fund can reap higher returns than its peers, it is only a good investment if those higher returns do not come with too much additional risk. The greater a portfolio's Sharpe ratio, the better its risk-adjusted performance has been. A negative Sharpe ratio indicates that a risk-less asset would perform better than the security being analyzed.

The Sharpe Ratio also determines if the manager is achieving excessive returns over a risk-free rate of return like those provided by T-bills.

Skewness

Skewness is extremely important to finance and investing. Remember the bell curve? That's a regular, symmetrical bell shaped distribution of results. Skewness is a measure that indicates the degree of asymmetry of a fund's distribution around its mean. Most sets of data, including stock prices and asset returns, have either positive or negative skew rather than following the balanced normal distribution (which has a skewness of zero). By knowing which way data is skewed, one can better estimate whether a given (or future) data point will be more or less than the mean. Positive skewness indicates a distribution with a right tail extending toward positive values. Negative skewness indicates a distribution with a left tail extending toward negative values.

Most advanced economic analysis models study data for skewness and incorporate this into their calculations. Skewness risk is the risk that a model assumes a normal distribution of data when in fact data is skewed to the left or right of the mean.

Sortino Ratio

This ratio is the standard "Post-Modern Portfolio Theory" measure of risk-adjusted returns. It measures how many units of return in excess of 10% are provided per unit of downside deviation / downside risk. In other words, the Sortino ratio is similar to the Sharpe ratio, except it uses downside deviation for the denominator instead of standard deviation, the use of which doesn't discriminate between up and down volatility.

Standard Deviation

Standard deviation is a statistical measure of risk reflecting the extent to which rates of return for an asset or portfolio may vary from period to period. The larger the standard deviation is, the greater the range of possible returns and the more risky the asset or portfolio becomes. Standard deviation is a statistical measurement that sheds light on historical volatility. For example, a volatile stock will have a high standard deviation while the deviation of a stable blue chip stock will be lower. A large dispersion tells us how much the return on the fund is deviating from the expected normal returns.

Treynor's Measure

A risk-adjusted measure of return that divides a portfolio's return in excess of the riskless return by its beta. Because it adjusts return based on systematic risk, it is relevant for performance measurement when evaluating portfolios separately or in combination with other portfolios. Compare to Sharpe Ratio.

Consumer / Investors should also be made aware of these investment fund risks too:

III. General Risks of investing in funds, include:

A. Price fluctuation risk: may be more or less than when you purchased it

B. The investment is not guaranteed risk: it is not CDIC insured up to $100,000 like a GIC.

C. Redemptions may be suspended risk: under exceptional circumstances, an investor's right to redeem might be suspended

The specific risks of investing in funds, include:

1. **Concentration risk:** a fund that invests in a small number of securities

2. **Credit risk:** can have a negative impact on a debt security**, i.e.** bond, commercial paper, etc.

   - **Default risk:** the issuer of the debt may not be able to pay
   - **Credit spread risk:** between a corporate debt security and government security, junk and investment grade
   - **Downgrade risk:** when a credit rating agency reduces their rating on an issuer's security
   - **Collateral risk:** it will be difficult to sell the assets pledged as collateral for the debt

3. **Currency risk:** funds that hold foreign securities are marked to the market / converted to fund's currency on a daily basis. **ALSO**, from time to time, some foreign governments have / may restrict currency exchange.

4. **Derivative risks:** use of derivatives to limit gains or losses caused by exchange rates, stock prices or interest rates is called hedging and includes the following risks:
   - the hedging strategy may not be effective
   - there is no guarantee a market will exist when the fund wants to buy or sell (close out) the derivative contract
   - there is no guarantee that the fund will be able to find a counterparty willing to enter into a derivative contract
   - the counterparty to a derivative contract may not be able to meet its obligations
   - a large percentage of a fund's assets may be placed on deposit with one or more counterparties, which exposes the fund to the credit risk of those counterparties

- securities exchanges may set daily trading limits or halt trading
- the price of a derivative may not accurately reflect the value of the underlying asset.

5. **Equity risk:** the value of a fund is affected by changes in the prices of the stocks it holds. Risks and potential rewards are usually greater for small companies, start-ups, resource companies and companies in emerging markets. Convertible into equity debt securities may also be subject to interest rate risk.

6. **Foreign investment risk:** investment in securities of foreign corporations and / or governments.
   - Companies outside Canada maybe subject to different regulations, standards, reporting practices and disclosure requirements.
   - the legal systems of some foreign countries -- including Canada -- may not adequately protect investor rights
   - Political, social or economic instability may affect the value of foreign and Canadian securities
   - Governments may make significant changes to tax policies affecting the value of foreign and Canadian securities
   - Foreign governments may impose currency exchange controls

7. **Interest rate risk:** the value of fixed income securities will rise and fall as interest rates change.

8. **Large transaction risk**: when a large investor in a fund makes a transaction, a fund's cash flow may be affected.

9. **Liquidity risk:** when problems in an organized market affect the ability to convert an asset to cash. A company's security may become illiquid because:
   - a company is not well known
   - there are few outstanding shares
   - there are few potential buyers
   - they cannot be resold because of a promise or agreement

10. **Repayment risk:** many debt securities, including mortgage-backed securities and floating rate debt securities, can be repaid before maturity.

11. **Replication management risk**: non-actively managed funds may not necessarily sell a security because the circumstances of a security issuer have changed to one of financial difficulty.

12. **Repurchase and reverse repurchase transactions and securities lending risk:** the other party to these transactions may default under the agreement or go bankrupt.

Request for Public Inquiry In To Systemic Failures By Current Financial Regulatory Regimes
Case Study #1

I am of the opinion that there has been a concerted effort to undermine the judicial process by thwarting a proper investigation into allegations of breaches of securities laws, the *Criminal Code* and the *Income Tax Act*. The circumstances surrounding this matter bring into doubt the credibility of the thirteen provincial and territorial securities commissions, various police forces, and self-regulatory organizations. At risk is the confidence of investors in the Canadian capital markets.

I would like to relate to you the following series of events, which strongly support a request for Royal Commission or Provincial Inquiry.

Timeline

April 15, 1999 Assante Corporation was granted a legal exemption in order to allow Assante to pay mutual fund commission rebates, (which are illegal), to clients who switch from independent mutual funds to their house-brand private label funds. Eleven of the thirteen provincial and territorial securities commissions approved of and granted these exemptions to the securities act of their province or territory. Not one of these same securities commissions will now answer the question of "what public interest was served" in granting these exemptions. (this may be the first illegality, failure to act to protect the public interest by an agent of the crown) Breach of Trust

May 19, 1999 Assante Corporation, in its prospectus for sale of shares to the public, states that by converting clients from independent mutual funds to house-brand private label funds, "revenues to the owners of Assante are increased by nine to sixteen fold". There is a potentially dangerous disconnect at this point between the financial interests of the firm and the financial interests of the clients. (this may be the second illegality, failure to act in the best interests of the clients)

January 17, 2000 The Saskatchewan Financial Services Commission approves and grants the OSC's April 15, 1999, special legal exemption in order to allow Assante to pay early redemption deferred sales charge commission rebates and the SFSC backdates its effective date nine months and two days to April 15, 1999.

1996 to 2003 Assante allegedly uses internal share incentive schemes and secret bonus incentives to encourage advisors to convert client investments from independent mutual funds to house-brand funds which cost an additional 1% to

2% (or more) in fees to the clients, and earn “nine to sixteen times” greater profits to Assante than independent funds. (OSC studies say that the increase in profits to the firm is more like “twelve to twenty six times greater”) (industry “tricks of the trade” say that if you skim 2% “extra” fees from your clients for 35 years the client will own approximately half of what they could have if you had not ***done this harm to them***) Potential illegalities: Secret Commission. Fraud. Negligent Misrepresentation.

August 22nd, 2003 Assante announces that its marketing efforts have succeeded in it being acquired by CI Financial, a subsidiary of Sun Life for $846 million. Owners and advisors share in the spoils of this sale, subsidized by those additional fees paid by clients to own the house-brand mutual funds. Clients are not made aware of these alleged “secret deals”, nor the extent of the remunerations involved.

February 6th, 2004 Kent Shirley, a former registrant under the *Saskatchewan Securities Act,* fulfilled his obligation to report violations of securities laws and the *Criminal Code* to the commission responsible for administration of that *Act* – the SFSC. These allegations were against Assante Financial Management Ltd (“Assante”) and Brian Mallard, a mutual fund and insurance salesman for Assante and Kent Shirley’s former employer.

There is a 142 page transcript of this (Kent Shirley’s SFSC) voluntary SFSC interview in Calgary Court file 0401- 16581, but provincial securities regulators have not acted on it other than to refer it away to other provincial commissions. Remembering that 13 securities commissions were responsible for approving the Special DSC commission rebating exemption, without explanation to the public, might help explain their reluctance to act. (April 30, 1999) Kent tried to tell the truth and was left to fend for and protect himself by conflicted securities police.

March 4th, 2004 Kent Shirley filed a $50,000 Statement of Claim against Brian Mallard (a Saskatoon based mutual fund and life insurance salesman) and Assante for wrongful dismissal and questionable business practices. Mr. Shirley continued to contact and provide information to the OSC, SFSC, RCMP, and the self-regulatory organizations in order to support his allegations and to help investigators understand the complex transactions. He also showed how income tax evasion took place with his former employer. Another criminal offense. His efforts fell on deaf ears. An inquiry would ask why.

August 23rd, 2004 Mr. Shirley sent an email requesting a copy of a letter, which the SFSC had promised that they would be issuing to the Mutual Fund Dealers

Association ("MFDA") as part of their investigation. Mr. Shirley's concern was that he hadn't been contacted by the MFDA. Mr. Shirley received the following response from an investigator at the SFSC,

> **"How do you think I should respond to this cadet! Besides the obvious I mean."**

The investigator at the SFSC had accidentally hit the 'reply button' instead of the 'forward button'. This email was intended to go to someone else – presumably at the SFSC - but illustrates the contempt that the SFSC held for Kent Shirley and his allegations. Kent Shirley became more concerned that the regulatory bodies were not taking him seriously and that they were in fact collectively suppressing an investigation. Again one must recall that the securities commissions were involved in the initial granting of an exemption to the laws against commission rebating. Again, the criminal offense of Breach of Trust comes to mind.

October 27, 2004 An affidavit was sworn by a private investigator hired by Kent Shirley's former employer Brian Mallard. The investigator had posed as a neighbor complaining of an electrical problem in order to engage Mr. Shirley and have a look inside his Red Deer, Alberta residence. The following is an extract from that affidavit,

> **"I made some casual conversation with him as he knew that I had overheard a conversation on his cell phone when I (sic) arrived. He commented that he was involved in a whistle blowing regarding a fraud. He further advised that the RCMP had contacted him and were investigating. He was expecting a call from them.**
>
> **He further stated that there was surveillance on him and people were following him. At this time his cell phone rang, he looked at it and said it was the RCMP and motioned for me to leave."**

October 30, 2004 an Anton Pillar Order was applied for, in Calgary, *ex-parte*, (without Kent Shirley's knowledge or participation) by Brian Mallard which would prohibit Kent Shirley from communicating with the RCMP or any law enforcement body. (something he was already doing and which an officer of the court named

Richard Billington failed to inform the judge of) This one sided application thus gave lawyers for Brian Mallard and KPMG Forensics permission to enter Kent's residence, search and seize any and all evidence they felt necessary. It left Kent not only unable to further defend himself, but also court **barred from even talking further to police**. (The order was drafted and written by Mallard's lawyer, Richard Billington, and trustingly signed by the judge) Checkmate. There are various criminal code violations involved in misleading a court.

An Anton Pillar Order is a draconian style of private search and seizure warrant where there is deemed consent for private parties, (non police) to enter private premises to seek out information, documents and or property. An Anton Pillar Order is normally used to preserve the integrity of evidence that is proven to be at risk of being destroyed. One necessary element to the granting of such an order is strong evidence that the documents are at risk of being destroyed. Again, lawyers for Brian Mallard failed to inform the court that these documents were **evidence of financial wrongdoing for the police**, and instead convinced the judge to have them confiscated and sealed from sight. There they remained, of no use to investigators or police.

It would appear the Order was used to prevent and suppress the evidence from being forwarded, rather than prevent it being destroyed. Albeit, the evidence was removed from Mr. Shirley's home and held at KPMG Forensic in Calgary Alberta. This is contrary to the principle of full disclosure of evidence in order to obtain fairness and justice. This smacks of using the court system to select which evidence will be seen and which will not.

The fact that KPMG was also the professional practices auditor and business consulting planning partner for Assante is possibly a conflict in this matter as Brian Mallard admits in court documents being an employee and a long time business affiliate of Assante, both personally and through his corporation. Mr. Shirley was devastated, abandoned and silenced. Regulators now had a written reason to cease communication with Kent Shirley.

December 8th, 2004 Justice Mason, of Calgary Court of Queen's bench realizes that a mistake has been made by Billington, and issues a court order that the original Anton Piller (as drafted by counsel Billington) be amended to ***allow*** Kent Shirley to contact and speak with both the Mutual Fund Dealers Association as well as Assante investigators. The order still prevented him from speaking to Saskatchewan Financial Services Commission or the

RCMP. Imagine living in a country where lawyers can convince a judge to remove ones right to assist police with information.

Dec 20th, 2004, aware that some relief to his court ordered suppression might be in the works, Kent Shirley travels to the Calgary Court House to inquire if his right to speak to financial regulators and police, about his allegations is restored. Kent finds that Justice Mason's court order has ***not been filed*** by Billington, and his rights have not been restored.

All of his evidence of wrongdoing is thus taken from him, he is counter sued for $1 million by his former boss, who has managed to seize and seal all damaging information against the former boss. He is still prevented from speaking to police about his evidence and his allegations. He is left hopeless and helpless and unable to even contact authorities, and yet his allegations still have not been listened to, nor investigated by anyone in authority to do so. They have turned a blind eye. Why?

December 24th, 2004 Mr. Shirley's life ended, at age 30, in an apparent suicide in his parent's home. In an email, three days prior to his death, Kent Shirley wrote:

> **"…I'm very po'd and depressed...I wonder how many other cases are there that they sit on or sweep away...if the public knew how bad it was, I think it'd be devastating."**

Kent suffered abuse at the hands of a pedophile as a child, and as a result suffered from depression and previous problems with misuse of drugs, perhaps in reaction to the trauma. Interviews of police officers in Saskatchewan who have dealt with him in his capacity as an investment person (the Saskatoon police pension fund or members at one time had investments that were managed by Mallard's office) show them speaking very highly of his mannerism, and his professionalism when he was employed in finance. They say he came across as a well-spoken and articulate young man.

His troubled past and his problems dealing with severe stress were well known to Brian Mallard, and yet Mr. Mallard and Mr. Billington, chose the most severe and brutal forms of legal retribution they could possibly apply to Kent Shirley. They also succeeded in using a $50,000 civil trial to trump all criminal and financial investigations into Mallard's actions.

September 8th, 2005 (this date is not a misprint) Lawyers for Brian Mallard, finally file Justice Mason's Dec 8th, 2004 court order allowing Kent Shirley to now speak to MFDA.

(Approximately nine months *after* Kent took his own life)

(Also approximately nine months after Justice Mason orders the lawyer to remove the restrictions on Kent Shirley's freedoms to speak) Was this failure a mistake? Did it cost a young man his life? Is this contempt of Justice Mason's court?

January 4th, 2005 I contacted SFSC head Vic Pankratz and offered to provide him with additional evidence, which had been e-mailed by Mr. Shirley in the weeks and days prior to his death. Mr. Pankratz refused to accept the evidence, commenting that the SFSC already had enough evidence, and directed me to provide it to the OSC. He further agreed to contact the OSC and arrange for its collection.

February 7th, 2005 The OSC did not contact me and after writing to the Premiers of Saskatchewan and Ontario on January 17, 2005 notifying them of my concern, I received a letter from Minister Frank Quennell, Attorney General and Minister of Justice for Saskatchewan who was responsible for the SFSC. He responded at the direction of the Premier as follows,

> **The SFSC confirmed that they requested the Ontario Securities Commission to obtain evidence from you. The SFSC will follow up on the request.**

May 9th, 2005 the OSC closed their investigation without collecting the evidence stating that,

> **The review was focused and did not include matters that are within the jurisdiction of the Saskatchewan Financial Services Commission or the Mutual Fund Dealers Association of Canada.**

May 9th, 2005 another concerned Canadian, after unsuccessfully trying to get an investigation initiated by the RCMP into the regulators and the allegations, received the following response,

> **"Unless the matters you are concerned about are referred to the RCMP IMET through one of our participating agencies (OSC, IDA, MFDA, MRS) it will not be considered for investigation."**
>
> **- Superintendent Craig S. Hannaford, GTA Integrated Market Enforcement Team**

July 6th, 2005 After asking the OSC how they concluded an investigation without having weighed all the evidence known to them, the OSC responded with,

> **"There appears to be a miscommunication between the SFSC and the Attorney General."**

July 20th, 2005 the MFDA issued a letter to Brian Mallard stating,

> **"We have determined that we will not be taking any further action in respect of this matter and are closing this file at this time."**
>
> **(Coincidently, the senior investigator at the MFDA, Sean Devlin, was a senior compliance officer at Assante at the time of the share value increase and eventual sale. He thus would have had to be partially investigating himself)**

August 12th, 2005 after questioning Minister Quennell I received the following response,

“The SFSC did not direct the OSC to obtain those documents from you.”

June 2006, In separate interview with Saskatchewan Justice Minister Frank Quennell, his reply to the question, “what possible public interest was served in granting an exemption to the law against commission rebating”…….Frank’s Quennell’s response was,

“Manitoba did it first”.

November 2005, An Ontario investor advocate attends Calgary court in hopes of informing Justice Mason of the various shortcomings of justice he alleges in this case. He is determined to show how a civil trial is being used to suppress criminal matters and financial fraud. He is unsuccessful, unrepresented and jailed for ten days and fined $5000 for his efforts. None of his evidence is allowed filed in the court record. His cheque for $5000 was one of the only documents that the Calgary judge allowed to be entered into court. Courtroom observers witness a concentrated effort to play a legal game without regard to justice.

Feb 2006, A documentary film maker who monitored the November 2005 trial in Calgary Court, is compelled to write to the Institute of Chartered Accountants of Alberta (ICAA) to point out the apparent conflicts in appointing KPMG as custodian of evidence and allegations of Brian Mallard. He perceives a concentrated effort to suppress evidence from the court rather than use it to obtain fairness. Brian Mallard is on court record as saying that he was both, “affiliated with and agent of Assante”. Assante and KPMG have longstanding business ties. The potential for conflict is dangerous to fairness and transparency.

March 2006, Forensic Accountant and former director of the Canadian Justice Review Board, Al Rosen of Toronto also writes to the Alberta Institute of Chartered Accountants to point out his views of potential conflict in appointing KPMG as custodian.

June 2006, Acting as an officer of the court, Mr. Billington, wrongly informs the court that Mr. Elford and Mr. Rosen have passed court barred information to the Institute of Chartered Accountants of Alberta. This misleading statement is proven wrong upon viewing of the actual documents Elford and Rosen sent, but the same officer of the court fails to inform Justice Mason of his mistake. Based on this misrepresentation to the court, Mr. Elford and Mr. Rosen will be dragged into a court process which will keep them under suspicion and threat until 2009. Private citizens threatened and silenced by this lawyers ability to manipulate the justice system to his ends.

June 2006, both Mr. Elford and Mr. Rosen are served with court papers asking them to appear before Justice Mason to show reasons why they should not be charged with contempt of court, (based on the erroneous information given to the court by Mr. Billington).

November 9, 2006, Canadian Business Magazine publishes an article (The Defiant One by Matt McClearn) at the instigation of Brian Mallard. In it Mr. Mallard is quoted as saying he has spent $1 million to defend himself. The article fails to point out that although $1 million dollars may in fact have been spent, never has any defense been mounted. All activity has involved attacking public debate and public citizens in the matter and suppressing evidence. No independent investigation has occurred by any police or regulatory agency. All have stopped at the threats and legal chill of Brian Mallard. For example:

1. The original allegations (and 140 page testimony) of Kent Shirley were not investigated by SFSC, MFDA, OSC or RCMP as per written advice from these agencies.

2. An Ontario investment expert (unrelated to the action) has been jailed in Calgary for refusing to turn a blind eye to the proceedings in this case. Still no investigation into his expanded investigative financial allegations or into Kent Shirley's original allegations.

3. Two other investment experts, (Elford and Rosen) and unrelated parties to this action, have been threatened legally for writing of conflict of interest concerns to the Alberta Institute of Chartered Accountants, the proper regulatory body charged with overseeing this. This has held their lives in limbo since 2006 without resolution, without official charges, without decision. There have been no investigations into their allegations of potential conflict. It appears to be a game of legal cat and mouse, rather than a system seeking justice.

4. The MFDA was unable to complete its investigation due to the Anton Piller seizure of evidence and its alleged suppression from public view. No investigation. They are said by Canadian Business reporter Matt McClearn to have been threatened with legal action by Brian Mallard. (regardless that the senior MFDA investigator is a former and recently hired Assante employee, with connection, inside knowledge of, and conflicts of interests on the commission rebating issue)

5. All other agencies felt similar chill, some were threatened with lawsuits by Mr. Mallard if they pursued investigation. The Financial Planning Standards Council of Canada wrote that they had to drop their investigation of Kent Shirley's complaint due to the restrictions placed on the evidence by the court ordered sealing of Kent Shirley's evidence and allegations. Kent alleged, among other illegalities, that Mallard had switched up to 90% of his clients investments into Assante's in-house proprietary private brand (Optima and Artisan) labelled funds in order to receive extra Assante secret commissions escrowed shares. Kent's whistleblower evidence contains internal correspondence to support this allegation. Receipt of secret commissions by an agent is a criminal offense in Canada.

6. A former director of both the Consumers Council of Canada and the Small Investors Protection Association is sued for $5 million by Brian Mallard for posting public documents on this case on an industry web site.

7. National Post reporter Jonathon Chevreau is legally threatened for his investigative reporting into this case and his newspaper ceases to cover it further.

8. Former Assante clients who speak out in support of the allegations of wrongdoing are in receipt of threatening letters from Brian Mallard's lawyers. Their affidavits in support of Kent Shirley's allegations are not allowed into the record in Calgary court.

9. Former Assante employees who speak out in support of the allegations of wrongdoing are in receipt of threatening letters from Brian Mallard's lawyers. These affidavits in support of Kent Shirley's allegations are also not allowed into the record in Calgary court.

10. Virtually all of the evidence and information, affidavits, files, etc., submitted in Calgary court by an Ontario investment advocate are not allowed to be filed in Calgary court. With four boxes of evidence held in Calgary court, (file 0401-16581) and each box containing some 5000 to 10,000 pages of documents, ***virtually none*** of the advocate's documents are allowed to be filed. ***Virtually all*** of Brian Mallard's documents are accepted as entered. Approximately half of the boxes, or some 10,000 or more pages of evidence and research into this matter are refused by the court due to technicalities. One such example being that a cover page stated, "Motion", on it when it should have stated, "Notice of Motion" according to the senior court clerk.

11. Author of THE NAKED INVESTOR, John Lawrence Reynolds, is given a threatening letter from Mallard's lawyer after requesting an interview with Brian Mallard. The lawyer states correctly that an interview may be contemptuous of the court action pending, but fails to acknowledge that his client has pursued an interview with Canadian Business to present his own angle. His second edition of THE NAKED INVESTOR comes out with what he feels he can safely write of without litigation.

12. The Calgary judge stopped the Alberta Institute of Chartered Accountants from investigating concerns of conflict in the case, despite them being the proper professional self-regulatory body. The judge will later concedes that this may have been the wrong thing to do, and reverses this, but not until holding those who asked for it under threat of contempt for several years without resolution.

13. Mr. Mallard is quoted in testimony to the SFSC, by the now deceased former employee Kent Shirley as saying, **"*&#$% them, let them sue me**", at situations where clients or creditors felt they were owed money by Mr. Mallard. He appears five or six times as a defendant in lawsuits in Saskatoon Court, giving an impression that Mr. Mallard's standard operating method is to use his money and the courts to beat people.

14. According the Canadian Business Magazine article, (When The Whistle Stops, Nov 6, 2006), when Assante tried to fine Mr. Mallard $60,000 and suspend him for his behaviors, he refused to even accept the suspension, and sued the company for $10 million instead.

SFSC

Minister Quennell gave three reasons for the SFSC not investigating the allegations. The first was his own personal opinion on the ability of the OSC. The second was that it was the responsibility of the OSC, and lastly that he was also relying upon the MFDA to conduct an investigation.

> **"For these reasons the SFSC will not be conducting any *further* investigation into the allegations against Assante." (*emphasis* added)**

Minister Quennell was interviewed by a documentary filmmaker, and states that the SFSC completed a full investigation into the case, contrary to letters and previous statements from Quennell.

The SFSC also failed to make application to the Court of Queen's Bench Courthouse in Calgary, Alberta for permission to examine the evidence protected by under the Anton Pillar Order. Mr. Dave Wild, Chair of the SFSC, contacted me at home on two occasions with respect to this matter and confirmed that had the SFSC wished to access that evidence held under the Anton Pillar Order, that it would be well within their powers to do so. The SFSC never did.

MFDA

The MFDA entered into a contract with Assante on May 30, 2002. The contract is the means by which the MFDA regulates its members. The allegations of criminal activity and regulatory breaches alleged by Kent Shirley predated Assante's contract with the MFDA thereby preventing any jurisdiction.

The MFDA, upon application to the Court, was denied access to that information held under the Anton Pillar Order presumably because the MFDA is not a law enforcement body. A further conflict in this situation is the fact that the vice president of compliance at Assante, at the relevant time of Mr. Shirley's allegations, was now the Director of Enforcement at the MFDA.

OSC

The Ontario Securities Commission lacks jurisdiction to interpret alleged violations of another province's securities act. In addition, the OSC failed to make application to obtain that evidence held under the Anton Pillar Order.

The OSC also failed to contact two other Ontarians for the purposes of the investigation. The first was Stephen Gadsden, an ex-Branch Manager for Assante, whose name was brought to the attention of the OSC on the 21 April 2005. This same individual subsequently swore an affidavit to be filed with the Court of Queen's Bench in Calgary, Alberta substantiating most of the allegations made against Assante by Kent Shirley.

The second individual was a client of Assante in Manitoba at the relevant time as per the allegations. This individual had also previously contacted the OSC and subsequently filed an affidavit with the court - again substantiating the allegations made by Kent Shirley.

In Concert

The Attorney General of Saskatchewan, the SFSC, the OSC, and to a lesser degree, the MFDA, all lead the public to believe that a proper and thorough

investigation had been conducted. All of their actions appear counter-intuitive and undermine the purpose of their existence. The integrity of a regulatory regime cannot be saved by a suppression of facts

Assante's practices, as outlined in the allegations made against it, have harmed investors. The regulators have been negligent, possibly compromised and/or at best, incompetent in pursuing their mandate to:

1. provide protection to investors from unfair, improper and fraudulent practices, and to

2. foster fair and efficient capital markets and confidence in their integrity.

Not until September 6, 2005, almost 11 months later, were the terms of the December 8, 2004, Anton Pillar Order changed to permit Kent Shirley to speak to the certain authorities. By this time Kent Shirley had been dead for eight months and all purported investigations were concluded.

Canadian citizens deserve and demand much better when it comes to not only the protection of their investments, but also the law enforcement process with which government has entrusted various organizations to uphold. The capital markets of Canada are severely challenged under the current regulatory regime.

Canadians still cherish the words "presumed innocent until proven guilty", however, Canadians are very aware that these words are premised on a belief that a full, impartial and proper investigation is executed and that there is a lawful adjudication of the issue.

I strongly urge you to demand a Royal Commission or National Judicial Inquiry into this matter in order to ensure that Canadians have the protection they deserve and the justice that Kent Shirley is due.

August 30, 2007, Attorney General and Minister of Justice Rob Nicholson writes, after being asked about the case by NDP finance critic Judy Wasylycia-Leis, to tell her that he expects the provincial governments to act under the Public Inquiries Act if they so desire. Thus an alleged $800 million financial abuse of Canadians is pushed to the very top of the government without being allowed to be set right by the top officer in charge of Justice. (mandate: In support of the Attorney General, the Department is responsible for prosecuting federal offences across Canada, including drug offences, litigating civil cases by

or on behalf of the federal Crown, and for providing legal advice to federal law enforcement agencies and other government departments)

2007 The Mallard/Shirley suit/countersuit is settled with terms and conditions that raise more questions than answers.

> Questions such as why did a Saskatoon trial get moved to a Calgary court, despite the additional time, energy and costs to Mr. Mallard to do this, when the action was started in Saskatoon, where Mr. Mallard resides. Questions such as how a court found a "deceased" person guilty of theft, when he was not able to defend himself, unable to present his evidence, unable to speak to police or authorities, and apparently bullied to death using the legal system to assist this.

Update Nov 2007 from Saskatchewan Provincial Auditor,

> **"We also report that at March 31, 2007, the Saskatchewan Financial Services Commission (Commission) did not have adequate processes to investigate complaints by the investing public."**

The report seems to support SFSC correspondence suggesting that the SFSC did nothing with Kent Shirley's complaint, other than to send it to another province. (The other provincial commission wrote back to say they too, did nothing with the file.)

Update 2007. RCMP IMET, after being embarrassed and pressured directly from Ottawa to look into this case, put a new officer on it. The young officer selected was experienced in walking a normal police beat, and admitted to having no financial experience. During interview with this RCMP officer, it became apparent that the investigation was forced, and that they were looking into it more in an effort to show their superiors that they had not "dropped the ball". As far as finding the truth, I believe they failed badly. The $800 million is still out of the pockets of investors and in the pockets of owners and salespersons of the firm. The RCMP IMET felt that they found,

> **"no basis for any criminal charges", while also admitting to being unable and unwilling to look into securities act violations.**

Update 2008 It is learned that the RCMP IMET investigation is closed, but without meeting, interviewing, or collecting evidence from the major players involved. For some reason, the most involved persons, and those with the most information to share were completely ignored.

2008 Lawyer Richard Billington takes his show on the road, marketing his legal practice by publicly speaking to audiences about his accomplishments in prosecuting and jailing people to win his case with his unique and special talents at creative use of the Anton Piller and the legal system.

Update 2008. The Competition Bureau of Canada is notified and aware that nearly all (over 95%) of persons in Canada who are representing themselves to be “advisors” in financial services are in fact neither licensed nor registered in this official category, but instead are licensed and registered by provincial securities regulators in the category of “salesperson”. In a dramatic display of bureaucratic indifference, the Competition Bureau of Canada not only refuses to prosecute this breach of Canadian Competition laws but it also refuses to place any communication whatsoever on this matter in writing. (Breach of Trust)

Update 2009 The $5 million dollar lawsuit by Mallard against a former member of the Consumers Council of Canada, is left dangling and without action for more than two years now.

Update October 17, 2008 Justice Mason closes his file by declaring invalid any and all complaints against KPMG to the Alberta Institute of Chartered Accountants regarding possible conflict of interest. Legal proceedings against two individuals (Al Rosen of Toronto, forensic accountant, and Larry Elford of Lethbridge, Alberta) who wrote letters of concern are dismissed after almost two and a half years. All documents retained by KPMG pertaining to the case are returned to Brian Mallard without investigation of their contents as they relate to allegations of predatory financial practices or criminal code violation. Check Mate.

Update Nov 7, 2008 Mallard appeals Justice Masons closure of this file, and continues an apparent pursuit against Rosen and Elford to cause them to pay his document custodian bill at KPMG, which apparently has gone unpaid.

January 2009 RCMP IMET is pressured (a second time) into re-opening the file into criminal allegations in this case, after it is learned that the investigation did not interview key persons involved, nor collect key supporting documentation to support allegations of income tax evasion and other criminal code violations. (negligent misrepresentation, fraud, breach of trust, etc., etc)

Update Feb 2009, Mallards lawyer, Richard Billington fails to file material on his appeals that needed to be filed by a certain date and for that reason his appeals have been struck from the active appeal list.

As former RCMP IMET officer Bill Majcher is quoted as saying in a Canadian Business Magazine, September 24, 2007 article titled CANADA, A GOOD CONTRY FOR CROOKS*,*

> ***"Canadians have to understand that we have a two tiered justice system, where people with money can play the system."***

The sum total of all of the events listed above are indicative of how various components of our financial regulatory system as well as the RCMP, allow financial abuse of Canadians to go unchecked. I will not attempt to explain here how these things occur. I do hope, that this document will clearly outline the fact that financial abuses and predatory financial practices are in fact occurring with the aid and support of our current regulatory system. The current system of thirteen provincial and territorial securities commissions has failed us and is beyond repair. This broken system is further assisted in its predatory practices by the legal system.

For further information on how these systemic problems grow and breed in modern society, I recommend the book, **"THE LUCIFER EFFECT",** by Philip Zimbardo. It is subtitled **"How Good People Turn Evil".** I believe it does the best job I have seen of explaining how such poorly designed systems, when combined with the right situation (or the wrong one) allow such predatory behaviors to come into play.

To expect the RCMP IMET to prosecute the many crimes that have occurred against Canadians in this case, appears to be asking too much. It could be our laws in Canada, our prosecutorial system, legal system, or the RCMP itself. I believe it to be a combination of all of the players, and I believe that each and every one of them is responsible for demanding, no making positive change within the system that they work in. Anything less is to not be professional. Regardless of the shortcomings, the Canadian public is still out up to $800 million in investment returns, and the salesmen and owners of Assante are ahead by $800 million. This case is just one. It is the tip of the ice berg, and yet it is the most documented, easiest case to understand and to follow.

For the authorities to not be able to make their way through this case, with thousands of pages of evidence available to them, public records, and this timeline of events to follow, is perhaps a crime in itself.

The crimes include but may not be limited to the ones listed below:

1. Fraud – Section 380.

> **FRAUDULENT TRANSACTIONS RELATING TO CONTRACTS AND TRADE**
>
> **Fraud**
>
> 380. (1) Every one who, by deceit, falsehood or other fraudulent means ... defrauds the public or any person, whether ascertained or not, of any property, money or valuable security or any service,

2. Breach of trust by public officer – Section 122.

The Criminal Code says ...

The following is from Martin's Criminal Code, 2006: Section 122 (Breach of trust by public officer), plus an annotation.

Sect. 122 Every official who, in connection with the duties of his office, commits fraud or a breach of trust is guilty of a indictable offence and liable to imprisonment for a term not exceeding five years, whether or not the fraud or breach of trust would be an offence if it were committed in relation to a private person. R.S., c. C-34, s. 111.

Annotation This offence requires proof that the accused is an official, that the impugned acts were committed in the general context of the execution of his duties and that the acts constituted a fraud or a breach of trust. Where the allegation is that the acts constituted a breach of trust, while it is not necessary to prove corruption, it must be shown that the accused did an act or failed to do an act contrary to the duty imposed upon him by statute, regulation, his contract of employment or directive in connection with his office and that the act gave him some personal benefit either directly or indirectly. This benefit could be payment of money or merely the hope of a promotion or a desire to please a superior. The criminal law should not be used as a sanction to punish mere technical breaches of conduct or acts of administrative indiscipline or administrative fault. What the law prohibits is some act done in furtherance of personal ends, the use of one's office in a public service for the promotion of private ends or to obtain directly or indirectly some benefit: *R. v. Perreault* (1992), 75 C.C.C. (3d) 445, 48 Q.A.C. 303 (C.A.).

3. Criminal negligence – Section 219.

Section 219 of the Criminal Code states that, "Everyone is criminally negligent who (a) in doing anything, or (b) in omitting to do anything that it is his duty to do, shows wanton or reckless disregard for the lives or safety of other persons." The provisions of Section 219 broadly state that for the purposes of the criminal negligence section, Section 219 of the Criminal Code, "duty" means a duty imposed by law.

4. Secret Commissions – Section 426

Assante's extremely sophisticated conglomerator's escrowed shares business model – where Assante used its own common stock shares of Assante Corporation from 1996 to October 22, 2003, as extra undisclosed in its funds prospectus remuneration to reward its own Assante conglomerated registered salespersons when they sold an Assante in-house Optima or Artisan proprietary fund ***v.*** an arm's length third party fund (Trimark, Templeton, Fidelity, AGF, etc.).

5. Disobeying order of court – Section 127.

lawyer Richard Billington is ordered by Calgary court to lift the prohibition on Kent Shirley against speaking to police or authorities. He instead files it some 9 months AFTER Kent Shirley takes his own life.

> **127. (1)** Every one who, without lawful excuse, disobeys a lawful order made by a court of justice or by a person or body of persons authorized by any Act to make or give the order, other than an order for the payment of money, is, unless a punishment or other mode of proceeding is expressly provided by law, guilty of.....etc

6. Misconduct of officers executing process – 128.

Richard Billington misleads the Calgary judge on his Anton Piller application, and fails to follow proper procedures on its execution, and again in his zest to entrap others into the court process whereby he would ensure they were silenced against his client

> **128.** Every peace officer or coroner who, being entrusted with the execution of a process, wilfully
>
> **(*a*)** misconducts himself in the execution of the process, or
>
> **(*b*)** makes a false return to the process,

is guilty of an indictable offence and liable to imprisonment for a term not exceeding two years.

Misleading Justice

7. Perjury – Section 131.

> **131.** **(1)** Subject to subsection (3), every one commits perjury who, with intent to mislead, makes before a person who is authorized by law to permit it to be made before him a false statement under oath or solemn affirmation, by affidavit, solemn declaration or deposition or orally, knowing that the statement is false.

Lawyer Richard Billington makes knowingly false statements to Calgary Court and misleads the Calgary judge with information. The judge then acts on this incorrect information from an Officer of the Court.

8. Fabricating evidence – Section 137.

> **137.** Every one who, with intent to mislead, fabricates anything with intent that it shall be used as evidence in a judicial proceeding, existing or proposed, by any means other than perjury or incitement to perjury is guilty of an indictable offence and liable to imprisonment for a term not exceeding fourteen years. (this applies to lawyer Richard Billington's feeding false information to the Calgary court)

A Public Inquiry into this matter would perhaps clear up some of the issues that are currently damaging Canada's reputation. Without doing the proper repairs in this area, we run the risk of becoming an international embarrassment financially.

9. Obstructing justice – Section 139.

> **139.** **(1)** Every one who willfully attempts in any manner to obstruct, pervert or defeat the course of justice in a judicial proceeding..... (applies to lawyer Richard Billington's actions in this case)

10. Public mischief – Section 140.

> **140.** **(1)** Every one commits public mischief who, with intent to mislead, causes a peace officer to enter on or continue an investigation by

(a) making a false statement that accuses some other person of having committed an offence; (again, this applies to the actions and activities of Richard Billington and his specific tactics to win his case)

11. Fraudulent concealment –Section 341.

341. Every one who, for a fraudulent purpose, takes, obtains, removes or conceals anything is guilty of an indictable offence and liable to imprisonment for a term not exceeding two years. (applies to the financial scheme to take advantage of clients interests as well as the resulting legal manipulations)

12. False pretence – Section 361.

361. **(1)** A false pretence is a representation of a matter of fact either present or past, made by words or otherwise, that is known by the person who makes it to be false and that is made with a fraudulent intent to induce the person to whom it is made to act on it.

13. Forgery & Offences Resembling Forgery – 366.

366. **(1)** Every one commits forgery who makes a false document, knowing it to be false, with intent (a) that it should in any way be used or acted on as genuine, to the prejudice of any one whether within Canada or not; or (b) that a person should be induced, by the belief that it is genuine, to do or to refrain from doing anything, whether within Canada or not. (Mallard was found by internal investigation to have forged client signatures but this was not prosecuted by regulators, and not referred to police)

Document created by investment industry experts, researchers, advocates, and consultants.

Submitted to House of Commons Finance Committee by Larry Elford in support of testimony given to FINA on failures in the Asset Backed Commercial Paper crisis. May 10, 2008

Submitted to Alberta Legislature in support of a Provincial Inquiry into systemic failures by our security regulatory agencies November 2008.

Submitted to the Ontario Legislature December 2008 in support of the Ontario Government Agencies Committee, looking into the Ontario Securities Commission.

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IFIC THE INVESTMENT FUNDS INSTITUTE OF CANADA
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August 28, 2001

Cyril Fleming
2529 Frankfield Road
Mississauga, Ontario
L5K 2A5

Dear Mr. Fleming:

Re: Request for information on statements and fund managers

Thank you for your letter of August 8, 2001 requesting information on client statements and Canadian mutual fund managers.

Mutual fund dealers are not legally required to report information about fees in client statements. We are not aware of funds that may follow these types of reporting practices. Mutual fund rules require this information to be made available to investors in the fund's simplified prospectus.

IFICs membership base does not comprise an exhaustive list of all Canadian mutual fund managers. In other words, there are managers that are not members of IFIC. In addition, we do not keep track of those managers that are not our members. Our membership list is available on our web site (www.ific.ca), and I would welcome you to view it and compare any companies with those on our list, to determine their membership status. You might find it of interest that IFICs members currently manage assets representing almost 100% of all open-end mutual funds in the country.

Should you require further information, please direct your queries to Caroline Bretsen, Communications Officer at 416-363-2158.

Regards,

Hon. Thomas A. Hockin
IFIC President & CEO

CyriL Fleming

2529 Frankfield Road
Mississauga, **Ontario**
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(905) **855-** 9676

August 08, 2001

Tom Hockin,
President,
Investment Funds Institute of Canada,
151 Yonge Street, Fifth Floor,
Toronto, Ontario,
N5C 2W7

Good day Mr. Hockin

Will you please say if any of your member funds spell out in their client statements , in dollars and cents, the amounts of their fees/charges for the statement period. If there are will you please advise their names/addresses/telephone numbers.

Will you please say if there are any Canadian mutual funds which are not members of your organization.

An early reply would be appreciated.

Thank you,

C. W. Fleming

Cyril W. Fleming

effiemo@msn.cam