De : larry elford
Envoyé : 2013-01-21 08:25
Cc : Consultation-en-cours; jstevenson@osc.gov.on.ca
Objet : COMMENTS ON CSA Consultation Paper 33-403

Thanks Ken, for sending me the link to the CSA comments section on the OSC site.

I notice that my submission is not displayed in these comments. I hope there is a willingness to publish all submissions.

I will copy this to the two addresses which were given for requests and paste it again below:

Thanks

Larry

January 04, 2013

Me Anne-Marie Beaudoin
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COMMENTS ON CSA Consultation Paper 33-403

To whom it may concern:

I now have slightly over 30 years of experience with the Canadian investment industry. I feel privileged to have this dialogue about matters which are not typically allowed to be discussed in this industry. I will try and cut straight to the points that I feel are most important to the welfare of Canadian investors.

1. ***The investment industry is perversely incentivized to increase profits even at the expense of doing intentional harm to investors interests.*** The protective duty owed to the public interest by industry, and by regulatory and self regulatory agents, appears to have been lost, forgotten, or silenced. I have found this to be the case time after time. Despite all attempts to portray the industry as a professional body acting in positions of trust, this submission will attempt to show how far short the industry has come in living up to the promises.

2. The regulatory industry appears to have become a "business within a business", earning considerable salaries and job security by catering to the investment industry, while acting willfully blind to numerous public harms. Provincial regulator salaries of triple to quadruple those paid to provincial premiers, have ensured a loyalty and a protective bias towards the industry

Regulatory actions appear to be aimed only at the smallest and least important players, while ***large scale or systemic crimes against the public have an investigation or prosecution rate that is statistically zero***. It is an industry where it appears that "anything goes" as long as it is profitable to the strongest financial institutions in the world.

One result of the "sale" of the public protective interests by regulators, is that ***the average Canadian could be cheated, shortchanged or abused by persons in positions of trust, to an extent where half of their future retirement (or more) could be removed from them, and placed into the hands of those persons posing as trusted professionals.***

This commentary hopes to open a dialogue on the abusive nature of our system. How it relates to retail mutual funds is but one example of many.

The author, Larry Elford, worked inside the retail investment industry for two decades, and upon retirement, founded the web forum for ethical professionals at www.investoradvocates.ca . The forum is directed to industry best practices, and to highlighting abuses of the public which appear to run rampant.

This commentary will look at the issue of high investment costs from the standpoint of a former industry insider. It will look at some facts about the industry, some possible explanations why things are as they are, and two simple solutions.

Executive Summary:

1. Mutual fund costs in Canada are the highest in the world.

2. Coincidentally, the Canadian financial system is reputed to be the strongest in the world.

3. That strength now appears to have become an abuse of market dominance.

4. Highest-cost investments are typically sold to consumers by persons on commission, but who are allowed to deceive the public into the belief that they are licensed professional "advisors".

5. Most investment customers thus fail to receive investment advice, from so-called professionals who promise investment "advice".

6. ***Customers are thus being tricked*** into a relationship where ***the product or service they get is not what was promised to them***, nor what they are led to expect. It is the ***foundation for intentional deceit of the public***.

7. Regulators are incentivized toward protecting the interests of the industry that pays them, while having little interest in protecting consumers from systemic industry deception.

8. Other countries have the ability, and maturity, to discuss and address these issue, to the benefit of all. (UK, Australia etc) Canada stands alone in the practice of letting the strongest financial institutions in the world get away with abuse, misconduct and sales malpractice against the public.

Larry Elford _____

Lethbridge, Alberta

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CANADIAN SECURITIES ADMINISTRATORS DISCUSSION PAPER AND REQUEST FOR COMMENT 81-407 MUTUAL FUND FEES

January 13, 2013

Section 2

Are Mutual Fund Fees Abusive in Canada?

Are mutual fund fees too high in Canada? The answer is yes. Further to the high costs, is the abusive manner by which Canadians are tricked into the belief that their mutual fund seller is a trusted "advisor".

I refer to the Keith Ambaschteer (U of T Rotman School) study titled **The $25 Billion Dollar Pension Haircut** as a very credible analysis. His study suggests that Canadian retail investors are being gouged to the tune of $500 million dollars a week. ***Half a billion each week, transferred from the hands of trusting Canadian investors, into the hands of people claiming to be "trusted professionals".***

In my own experience, this is not simply a matter of charging customers a "fair, honest or good faith" amount for a service, as the industry requires. It is the result of an unfair, and un-level playing field, where ***misleading clients helps them to be cheated and shortchanged of their rightful returns. A predatory relationship is provided where a professional one is promised.*** Simple fraud is a rather impolite term for this but perhaps it is time to move beyond polite, for the sake of Canadian's financial health.

The $25 Billion dollar figure represents 2% to 3% of the total amount of mutual fund assets held by Canadians. It should be noted that a ***consumer "haircut" of 2% of annual investment returns will cut ones future portfolio in half, over a 35 year time frame.***

Thus, without even factoring in examples outside of the scope of Keith Ambaschteer's study, Canadians retirement lifestyles are being cut by half, or more by the current self regulating and self serving system. Also mentioned, or linked herein are additional methods, tricks of the trade, if you will, that in my opinion increase ***the "take" from Canadians to closer to one billion dollars per week*** from systemic abuses.

In recent work as an expert witness and investigator of financial misconduct and malpractice, I have seen ***investment products, or portfolios, consisting of fees, on top of fees,*** sometimes on top of other fees. ***Always on top of about 5% commissions to the salesperson (or "advisor").*** It seems apparent that the industry has found the perfect manner of capturing and then ***abusing their dominant position in the markets***.

I refer to these results as ***"systemic financial abuse of consumers, by persons in positions of trust".*** This appears to be "standard" industry practice, or at very least, the path that four out of five persons referring to themselves as "advisor's" are willing to take to earn greater commissions. Sadly, I can now also include management as well as regulators in this same category of practice, all too often.

This "request for comment 81-407" encouraged comments on the broader aspects of the industry, and not only on the mutual fund segment. I will dedicate the remainder of my comments to some of the underlying causes I found for abuses of Canadian investors.

Section 3

A former industry participant looks at a few reasons why.

The ability of this industry to "self" regulate, is one of the root causes that allows abuse of market dominance and abuse of Canadian retail investors.

Self regulation appears to be mastered by the financial industry to an extent where police, prosecutors, civil and criminal courts either "defer" action against this industry, or accept without question the actions and decisions of the industry. Notwithstanding that financially abusing investors of their rightful returns may be damaging Canadians to an amount greater than each and every other "traditional" crime in Canada, combined.

To think that one industry can, with the help of thousands of industry helpers and handmaidens, can ***serve themselves to nearly one billion dollars a week of money that rightfully belongs to Canadian investors*** is amazing. They do this by

ignoring the requirements of "fairness honesty in good faith". They get away with this through use of the high moral ground of "self" regulation and captured regulation. All of this is done by ignoring the requirements of "fairness, honesty and good faith" dealing with the public.

One foundational example of the "willful blindness" which self regulation allows is the standard industry practice of ***allowing persons licensed, trained and paid in the capacity of commission salespeople, to misrepresent themselves to an uninformed Canadian public as trusted "professional advisors"***.

An entire country is duped into a game of "professional advisor bait and switch", through massive advertising, and promotional efforts, with the public losing at nearly every turn, and the industry profiting immensely.

By way of background, on the following page I have reprinted a recent industry article written by myself about this ability to deliberately deceive the public.

The following article, published December, 2012 (www.sipa.ca), by Larry Elford, former industry participant, outlines some of the issues related to this industry bait and switch:

THE DELIBERATE DECEPTION OF CONSUMERS - by Larry Elford

One definition of fraud is "the deliberate deception of consumers". **In this column I would like to open a conversation into a dark world of deception within some of the most "trusted" financial institutions in North America. Sadly, during the twenty years I worked inside the investment industry, this conversation was never allowed.**

In the United States there are more than 11,000 registered investment advisors according to the SEC. These are generally people who are licensed, trained and paid to act in the capacity of a professional advisor. In this capacity they are required to act in the best interests of the customer and they give this to you in writing. It falls under the Investment Advisor Act of 1940.

There are also some 600,000 broker-dealers registered in the United States and they do not have to act in the best interests of clients. They are more likely the brokers and salespersons trying to earn a commission from selling a product such as a stock, bond, or mutual fund etc..

The problem for consumers begins when those 600,000 broker-sales-types identify themselves to customers by the title "advisor" even though they don't have the proper license or registration under the law. In my experience, this sleight of hand is done to allow salespersons to raise the level of trust in customers, while lowering their level of caution or suspicion. The comments about title misrepresentation by Quebec Superior Court Judge in Markarian V CIBC is along those lines as well. See "Misleading Titles" beginning at paragraph 262
here http://investorvoice.ca/Cases/Investor/Markarian/Markarian_v_CIBCWorldMarketsInc.htm

If you take this information to independent legal counsel you may also get comment on "phony titles and negligent misrepresentation".

Here in Canada there are approximately 150 firms who are members at www.portfoliomanagement.org.

These professional investment managers are legally registered as "adviser's" and they provide a written duty to place the interests of the customer first.

Then there are the 150,000 registrants, who were legally licensed as "salespersons", until September of 2009, when the word "salesperson" was deleted from the Securities acts of 13 provinces and territories, and replaced with the words "dealing representative". Nearly 100% of these sale-types usually refer to themselves as "advisor's" in an effort to increase the "trust" they hope to earn with customers.

Each one of those people may also be trying to represent that they are "advisors" and using the word advisor to imply that they will give advice that is in the best interest of the customer. This often forms a part of the deliberate deception that was spoken of at the outset of this article.

An interesting side benefit of dealing with a registered adviser is that usually the investment management fees start out in the neighborhood of one to 1 1/4% and there are no sales commission people who may be motivated to increase those fees in ways that can harm the customer.

So with a licensed and registered advisor, a customer gets a true professional with the fiduciary duty and an almost wholesale level of investment pricing if you are fortunate enough to deal with them.

With a salesperson or broker, representing him or herself as an "advisor", there is less qualification, no advisor license, no duty to place the interests of the client first, and fees will usually begin at about 2% and go as high as more than 5% on some products sold. In defense of the sales side of the industry, some do have professional membership which requires them to pledge allegiance to ethics and fair treatment of clients, however I have yet to see enforcement of those pledges within the industry.

In two most recent cases of financial misconduct I have found investments with multiple layers of fees, piled one on top of another, on top of another. Fees in excess of 5% annually are the kind of things that turns a broker-salesperson, into a "vice president" or a "million dollar producer". Unfortunately none of that serves the customer.

I spoke about one specific example at the launch of the THIEVES OF BAY STREET book and it's on my YouTube channel here http://youtu.be/diEjitz-4So along with a dozen video presentations on this and related topics.

So customers who end up dealing with a salesperson-broker in Canada or the United States, most often get a person who is (a) pretending that they are an investment advisor , who (b) is not a licensed and registered professional in the category claimed on their business cards, and (c) does not owe customers a duty of care to place customers interests ahead of the seller.

I believe that salesman-brokers who call who call themselves "advisers" are one of the greatest systemic bait and switch operations in the world. I encourage victims of this misconduct to seek legal opinion from far

outside of the financial industry in order to gain objective access to the law. If you ask a securities lawyer or regulator, you are very likely to get an answer as independent as the advice you get from a non-licensed "advisor". (see comments regarding this in the SEC petition in following paragraph)

During my research for this story I ran across this well informed agency in the United States, and a written petition they made to the SEC. It is among the most candid and enlightening articles I have seen, to honestly discuss a matter which is cheating and shortchanging North Americans of billions of dollars, and putting those billions into the pockets of industry members who are acting with misconduct. It is found here at the SEC: http://ftp.sec.gov/rules/petitions/2012/petn4-648.pdf

Section 4

Two simple solutions.

First Proposed Solution:

1. If persons selling investments refer to themselves as "salespersons" then there is no fiduciary responsibility.

2. If persons selling investments refer to themselves as "advisor" or any similar term, they must accept a fiduciary responsibility for those they claim to advise.

This simplicity meets the standard of fair, honest and good faith dealing which is promised by the industry.
It also meets the "true, plain and clear" standards often referred to.

Terms like 'registered representative' are industry insider "jargon" and should not be used to address the public. Jargon is currently allowed to confuse the public, and assist those who would mislead and misdirect them for commission or fee purposes. Any industry claiming to deal in trust and honesty, must demonstrate the maturity to move beyond such sleights of hand.

Simplicity like this is either in place or in discussion in other developed countries. Canada needs to professionally "grow up", if they are to reverse the destruction of the reputation of the financial industry.

Failure to act in a professional manner, is putting billions into the hands of current market participants, but like the CEO of Lehman in the US, it is not mature to destroy the reputation (or company, or industry) simply to earn a personal salary or bonus. Many of today's Canadian market participants appear willing to take the short term view, rather than the longer term approach, and this must be prevented even if it means a new regulatory system must be put into place.

Second Proposed Solution:

Establishment of true "Investor Protection", which does not pretend a false dual role of claiming to serve the interests of the public, while being paid by the industry. Reports have come out of Osgood Law to this effect, and the mission statement of one Alberta Investor Protection group is illustrative:

What is the mission of Alberta Investor Protection?

1. Albertans require investment regulation and protective rules which do not act against the public. The ***Alberta Securities Commission has acted contrary to the public interest and has allowed investment sellers to repeatedly breach securities laws that exist to protect Albertans.*** Victims of systemic regulatory misconduct deserve their money back through Alberta Finance and Enterprise, the legislated department responsible for the conduct of the Securities Commission, if recompense is not found in the investments themselves.

2. The public requires an investor protection agent which ***solely protects the interests of the public***. The Alberta Securities Commission does not. Albertans deserve public protection not designed to allow mandate dilution, or corruption through financial (or other considerations) connections to the industry, political appointments, or cronyism.

3. ***Albertans expect the Criminal Code of Canada to be the guiding principles*** by which regulators, prosecutors and police protect investment and financial markets. "Self Regulation" and self-policing of investment fraud and misconduct is not serving the public. It is allowing corruption and self serving behaviors to grow.

4. ***Albertans deserve a full public inquiry***, under the Provincial Inquiries Act, into systemic failures, connections, corruption and actions known to be contrary to the public interest, and the resulting damage to Albertan's from negligence, gross negligence, misfeasance, or conscious wrongdoing at the Securities Commission.

Section 5,

Codes, rules, promises, laws, etc., often violated by "trusted" investment professionals.

From the high-moral-ground of self regulation, along with some high-six-figure salaries paid to provincial government

regulators by the industry, anything, literally anything appears possible. Up to and including gaining exemptive relief to our very laws, often at tremendous harm (and semi-secrecy) to the investing public. ($35 billion was the cost (to Canada) of just the recent sub prime ABCP collapse)

When combined with the ability to self regulate, an industry of highly profit-driven people who misrepresent themselves as licensed and professional "advisors", the customer is bound to be hurt. In this industry the customer is nearly each and every Canadian with an objective of saving, investing, or living off their investments in retirement.

We are thus allowing the abuse of elderly Canadians, for the benefit of the investment industry.

The cost to the country is not being tracked officially, but well into hundreds of billions over time. The profits to the industry are obvious.

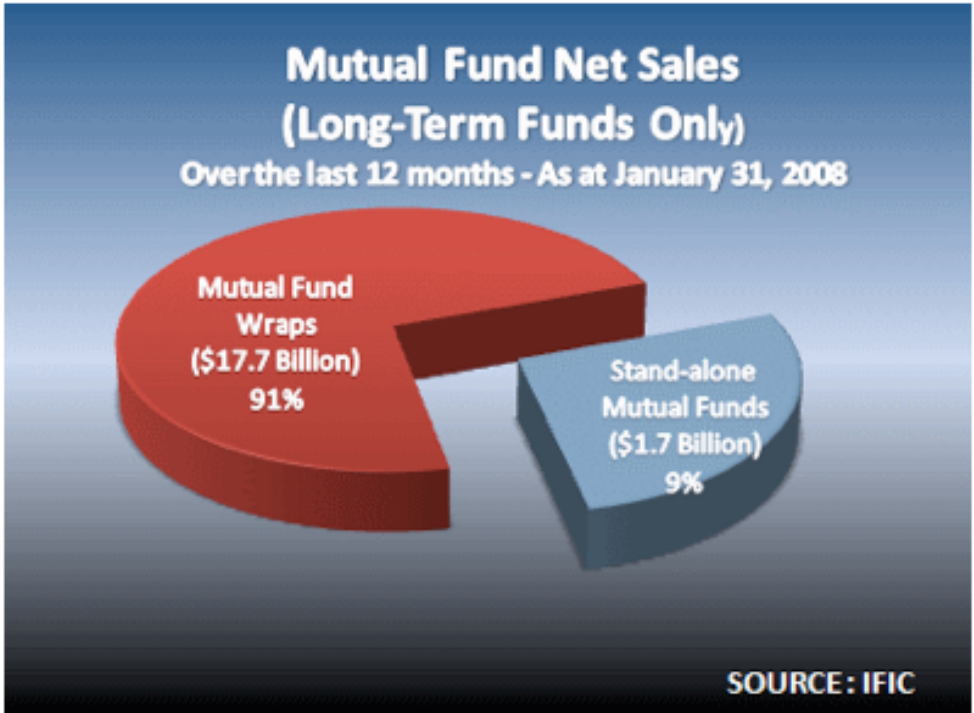
Some of those profits to the industry, which come at harm to the customer include the following types of public harms:

1. Double dipping, a form of extra billing (adding "advisory" fees on top of commissions already paid).

2. Fees layered on top of other fees. See presentation at http://youtu.be/diEjitz-4So to view nine or ten ways todays "advisor" can cut their customer's retirement by half or more in an attempt to increase their own revenues.

3. Selling the highest-compensating-choice of an investment product about 80% of the time (deferred sales charge funds for one example)

4. Selling the highest profit margin product (over 90% of mutual funds sold in 2007 were WRAP funds) (source Investment Funds Institute of Canada)


Mutual Fund Net Sales
(Long-Term Funds Only)
Over the last 12 months - As at January 31, 2008
Mutual Fund Wraps ($17.7 Billion) 91%
Stand-alone Mutual Funds ($1.7 Billion) 9%
SOURCE: IFIC