FAIR Canadian Foundation *for* Advancement *of* Investor Rights

May 2020

FAIR Focus:

Update on COVID-19 Investor Protection Initiatives

The implementation of lockdown due to the COVID-19 epidemic lead to an unprecedented increase in unemployment. We tried to identify investment areas where consumers might be negatively affected by unemployment and the loss of income where the financial industry should provide accommodations.

1) **Group RESPs** - We called on regulators to ensure that subscribers to group RESPs were not penalized if they were unable to make contributions to RESPs for their children's education and followed up with a press release.

We are pleased that Knowledge First Financial (a group RESP dealer) wrote to FAIR Canada to advise that they are waiving fees for subscribers of group RESPs. Knowledge First also noted that all the subscribers of group RESPs were being moved to individual RESPs. Hopefully, the other group RESP dealers will follow the Knowledge First example and waive fees and move subscribers to individual RESP plans.

2) **Fees to Access Savings**- FAIR Canada called on the financial industry to waive any fees for Canadians dealing with financial hardships who are accessing their savings, including savings held in deferred sales charge mutual funds. The CSA recently announced that investors should request investment firms to waive fees (including DSC Fees) on the basis of financial hardship. Canadians should contact their provincial regulator where firms are unwilling to waive fees for clients dealing with the loss of income.

3) **Leveraged Sale of Mutual Funds** - FAIR Canada has long taken a stance against the financial industry convincing clients to borrow money (and even facilitating taking out investment loans) to invest. Taking investment loans or borrowing on a HELOC to buy high fee mutual funds is not a smart investment strategy and completely unsuitable for any but the most

sophisticated investors with a high-risk tolerance. Of course, sophisticated investors would not engage in this strategy, since it is a defective strategy. So, who would recommend this strategy? A financial advisor looking to increase his or her income.

FAIR Canada followed up on leverage in a meeting with CSA Chairs in April. As there is little public information on the extent of investment loans to purchase high fee financial products, it is difficult to assess the extent on the problem. Hopefully, the CSA is making inquiries of the industry and will publish data on borrowing to invest.

If you have borrowed money from a financial institution to purchase high fee investment products, such as mutual funds, and sustained losses you should have a claim for compensation for your financial losses based on the failure of the advisor to comply with suitability obligations. You may want to check our complaint guide (see following article) or the CSA Guide.

The Ombudsman of Banking Services and Investments is available to consumers of financial products and services to resolve disputes, including explaining the advisors obligations,whether the advisor has complied with its obligation and calculating the correct amount of compensation.

4) **Leverage, Inverse and Commodity ETFs** -This is yet another extraordinarily complex financial product that is simply unsuitable for retail investors. Once again, the oil commodity ETFs imploded last month. Déjà vu all over again! See the story below where we have some simple easy to implement suggestions to improve investor protection and protect the industry from investor complaints.

The Dangers of Leverage, Inverse and Commodity ETFs Come Home to Roost

A decade ago, FAIR Canada called upon regulators to take action to protect retail investors from the hazards of investing in leveraged, inverse and commodity ETFs. The longer you hold a leveraged, inverse or commodity ETF, the greater the likelihood that you will lose money.

Many investors get confused about these products deceptively referred to as ETFs. Rather than selling stock short, your advisor suggests buying an inverse ETF. Instead of making money when the market falls, unless they have the most fortuitous timing, investors in these funds who hold their investments longer than short periods (in many cases one day), are subject to extensive price volatility and costs of compounding, leverage, and rebalancing.

The Investment Industry Organization of Canada (IIROC) recently issued a guidance notice to its dealer members regarding the risks posed by the growth in number and popularity of inverse and leveraged ETFs. These products are highly complex financial instruments that are typically designed to achieve their purpose only on a daily basis. **They are not suitable for retail investors and especially not suitable for retail investors who buy and hold these ETFs for longer periods, particularly in volatile markets.**

FAIR Canada has confirmed with IIROC that this guidance applies to discount brokers. Some questions for reflection:

1. **Why are leveraged, inverse and commodity products called ETFs? FAIR Canada long ago recommended a change so that they are not confused with ETFs that hold shares. Recently the largest ETF providers in the world published a joint letter recommending that the regulators limit the use of the ETF nomenclature to avoid their use by derivative based funds.**

2. **Why are these complex derivative products made available (without warning) to retail investors on discount broker platforms if they, "typically are not suitable for retail investors" (IIROC Guidance)?**

3. **Why isn't there a notice to clients, as is done in the case of other high risk securities, that they are not allowed to enter orders online unless they speak to a representative of the discount broker first and sign a risk acknowledgment form, as is done for futures and options. After all, the underlying products are futures contracts.**

4. **Why were the Horizons oil ETFs, (HOU and HOD) allowed to trade when they were trading at 650% of NAV and even Horizon warned not to purchase them?**

FAIR Canada has brought these concerns to the attention of the OSC and IIROC. It will be interesting to see if regulators and discount brokers take any action to protect retail investors from trading in products that they do not understand and that can have severe financial consequences.

For more information about these risky ETFs see our 2009 reports, Heads You Lose, Tails You Lose: The Strange Case of Leveraged ETFs

and

The Strange Case of Leveraged and Inverse ETFs, Part 2: A Few Steps Forward; Much Remains to be Done

How to Make a Complaint About Your Investments

Today's investors are suffering the results of an unprecedented, historic market crash on top of the upheaval of government restrictions on their lives and the threats to the health of their families, friends and themselves.

Many investors who are retired or approaching retirement are dealing with the prospect of seeing their retirement investment savings diminished by 30% or more in a few short weeks while simultaneously being the most vulnerable demographic to COVID-19. Many investors of all ages have either had their income earnings slashed or have lost their jobs or businesses entirely.

What is an investor supposed to do if he/she believes they have received unsuitable investment advice from their investment advisor that has resulted in significant losses? They have a couple of options open to them to seek compensation.

Investors can act for themselves or seek the services of a lawyer to consider a civil lawsuit, (but the cost will be prohibitive for most people), investors can complain to the management of their advisor's firm, (but you will need to know securities requirements such as suitability). Or they can complain to the regulators (while they may investigate, they are unlikely to help you with compensation). They can also ask OBSI, the Ombudsman for Banking Services and Investments, to review the matter and make a recommendation for payment of financial compensation. Unfortunately, OBSI recommendations are not binding. However, most reputable financial firms will comply with an OBSI recommendation. Don't accept a "low ball" offer! Insist that the financial firm compensate for the full amount recommended by OBSI.

FAIR Canada has on its website a **Consumer Investment Complaints Guide** to help guide investors through the process of making a complaint to the appropriate agency or regulatory body.

FAIR in the Media

Regulators Offer Little Relief for Investors

Investment Executive reported about FAIR Canada's advocacy on behalf of retail investors who are experiencing financial difficulties due to economic decline as a result of COVID 19

Group RESPs Contributors Need Protection

OurWindsor.ca published an article highlighting the work FAIR Canada has been doing to protect the rights of group plan RESPs investors.

Boomer&Echo also highlighted FAIR Canada's work on behalf of RESPs investors

FAIR Canada's recommendations regarding the protection of investors from certain DSC Funds sales were the subject of an Investment Executive piece.

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