

# End of a shameful episode

National Post

Today, Justice Campbell of Ontario's Superior Court of Justice is expected to approve the \$32-billion ABCP Restructuring Plan, a move that should, but not necessarily will, bring to an end one of the more shameful episodes in recent Canadian financial history.

How shameful? Here's what IIROC, an industry regulator said in a 100-plus page report last October: "This study and the compliance sweep found that the majority of dealer members that acted in the distribution of third-party ABCP to retail investors did not understand the underlying asset composition, liquidity risks and distinct rating methodology used for the structured financial assets underlying the ABCP." In short the dealers didn't do their due diligence or understand what they were selling.

Today's approval should bring a happy end to the sorry mess for a bunch of retail investors -- those who owned less than \$1-million of the paper. That group, which has about \$120-million invested, will receive 100 cents on the dollar. For a smaller group--a group of about three dozen families, which individually own more than \$1-million and which acting as a collective own at least \$200-million of the paper -- the approval won't bring any good news. They stand to receive a security in the form of long-term notes, that if the words of William Downe, chief executive of the Bank of Montreal, materialize, may not be worth much. According to Bloomberg, Downe said last week the market for asset-backed commercial paper will "essentially be gone" within two years as investor demand for the short-term debt dries up. "There really isn't strong investor demand for asset-backed commercial paper in Canada," he said. "Until an alternative to the existing structures comes into place, you're just going to see an eventual run-off of those businesses," Downe added.

All of which raises the question: Why are retail investors being treated differently? After all, they are all retail. The only difference is that some have invested more. And that leads to a second question: Why did the regulators, specifically the Ontario Securities Commission, not take a stand and ensure that all retail investors were given equal treatment?

For its part, the OSC said early on in the ABCP freeze--it started in August, 2007 -- that it didn't want to stand in the way of a solution that was being worked on by the Pan Canadian Investment Committee. Fair enough, but one would have thought that protecting the interests of all retail investors would have been its constant objective, especially as other adjustments were being made. "It [the OSC] starts with a view that they endorse a court process and then they don't take any steps to ensure that the court process is fair with respect to their constituency, which is the retail marketplace," said Diane Urquhart, an independent financial analyst. Urquhart added the OSC should have been more diligent, "especially given the findings of the IIROC study that showed there were breaches of know your client and suitability rules. They were highly remiss in not addressing the aberrations that were evolving in the so-called solution as it occurred. And now they are standing by and watching the [three dozen] left-out families be ultimately crammed down," she said.

Urquhart said the way the OSC "protected" the ABCP retail investor interests stands in complete contrast to how 12 U. S. states handled the US\$300-billion auction rate securities mess. Down there, the distributors and/or underwriters were made to buy them back. As well, fines were imposed.

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