Presentation to MPP Garfield Dunlop Seniors Education Day
October 19, 2012

Protecting Your Retirement Savings and Pensions

It used to be that retirement savings and pensions were a sacred trust to provide for the quality of your life in retirement.

The time has come for you to trust no-one.

It's no longer just the rogue con artist who's after your money.

"If it's too good to be true, it isn`t" is a useful warning for seniors. But do not let your guard down on savings, investments and insurance sold by financial institutions and corporations.

Your retirement savings and pensions have become pools of money for sophisticated financial players to take – to take in the form of hidden fees or to simply take by tricking you.

The financial industry has gone off the rails. It no longer protects your sacred trust. It sells you and your pension fund products with negligent design and selling practices. Often, there is fraud, where you would not have bought the product if you had been informed about its true attributes.

The securities regulators and white collar crime police are not going after the establishment executives and experts, who take your money in these complex products.

The excuses are disheartening:

Complex crimes take too much time and money to prosecute.

Cannot find evidence of intent to defraud victims because decisions are being made openly in business meetings and with the approval of external lawyers and auditors.

Difficult to discern honest mistakes and market corrections from crime.

The whole gate-keeping system has become corrupted by the billions of dollars of fees and illicit profits at stake.

Remember no one snowflake in an avalanche ever feels responsible. But the avalanche of complacency on white collar crime is devastating.

We read weekly about seniors who have lost all their savings from deceitful schemes. Most seniors, however, are unaware that their savings are being skimmed through dishonesty and the wilful blindness of the investment gate-keepers.

Let me tell you about what I have learned as a financial expert working to protect your retirement savings and pensions:

In 2007, if a bank offered you 4% on a savings product that was guaranteed by another major bank and rated AAA, would you have bought it? Let's apply the test of "If it's too good to be true, it isn`t." 4% passes this test with flying colours. Government guaranteed AAA Treasury Bills were paying 4.5% at the time. In fact, $35 billion of this savings product was sold. It was called Asset Backed Commercial Paper. Individual Canadians were sold $4 billion and pension funds were sold $16 billion of this ABCP. At the crux of the financial crisis, the ABCP individual and pension fund owners were down 65% on this supposedly safe savings product.

In the bankruptcy court, we learned that the ABCP was stock full of high risk derivatives that insured the bad loans of Deutsche Bank, Merrill Lynch, Citibank and other well-known international banks. It was these trusted banks that guaranteed the ABCP - a fact used to draw savers into the product. But the bank guarantee fine print had a loophole so big, you could drive a transport truck through it. All the banks walked from the product and left the individuals and pension funds holding the bag.

Luckily, as a financial expert, I was able to piece together the flaws in the design of this ABCP and how it was dumped into the public market by the Canadian investment dealers. It was still being sold by the banks at par value even though its value had already plummeted. The banks preferred to see their individual and pension fund customers lose money rather than themselves.

In the end, after a vigorous public fight, the retail owners got a full settlement of their damages, plus interest and legal costs. In addition, there were securities regulatory settlements with 8 investment dealers at $139 million. Shamefully, these dealer settlements are just 2% of the damages of over $7 billion on Non Bank ABCP today. Pension funds carry these damages on their books.

Let me turn to income trusts. I wrote a research report in 2006 called "Heads I Win, Tails You Lose." Income trusts were a $200 billion industry targeted towards seniors. Seniors were desperate to get out of stocks and to earn income, after the 2000 stock market crash and the drop in interest rates. The Canadian banks engineered a product to deliver to what seniors wanted. Unfortunately, the high cash yields were trickery.

The 135 business income trusts in our study had an average cash yield of 8% in October 2006.

One year GICs at the time were paying close to 3%. So the cash yield in the case of income trusts failed the test of: "If it's too good to be true, it isn`t."

The cash distributions were 60% higher than what the underlying businesses earned.

So the 8% cash yield was an earnings yield of only 5% and the balance of 3% was getting your own capital back.

Two thirds of the income trusts were Ponzi Schemes. They were sold to seniors way above what they were worth and the distributions paid out were partially funded from new capital raised. When the Federal Government stopped providing tax advantages and the income trust new issuance market closed, most of the income trusts distributions were slashed or eliminated. The prices collapsed and seniors were left holding the bag. Everyone involved made money except for the targeted seniors who collectively lost over $50 billion.

I agreed with Federal Finance Minister James Flaherty's decision in 2005 to tax income trusts. Both the United Senior Citizens of Ontario and the National Pensioners and Senior Citizens Federation helped to convince Minister Flaherty that income trusts were unsafe investments for seniors and should not be given tax advantages. No investment bank expert, auditor or securities lawyer was held to

account for the income trust fiasco. There was one successful class action against FMF Capital recovering just $0.15 on the $1.00 of original investment. The only securities regulatory sanction on income trusts was against the FMF Capital sponsors. This regulatory settlement was just $2 million or 1% of the money lost. There have no criminal investigations on the deceptive cash yield within income trusts.

Kevin O'Leary of CBC's Lang & O'Leary Exchange and the Dragon's Den has created an investment management company with funds being sold to the public with deceptive cash yields. For example his four closed end funds have cash distribution yields of 6% to 10%. In his interview by Bruce Livesey for the Globe and Mail Report on Business Kevin O'Leary admits that his firm has paid distributions out of investor's principal – on occasion. "Nobody wants grind, but it's something you have to do," he says.

Mutual funds expert Dan Hallet has noted that while the O'Leary Fund's website said investors are "paid by true portfolio yield," this promise was over the top given that 81% of the O'Leary Global Equity Income Fund's 2008 distributions were being paid from return of capital, which is giving investors their own money back.

Canada's bank and mutual fund management company oligopolies are charging excessive mutual fund fees. Research firm, Morningstar, has found that among the 22 countries in its survey, Canada has the highest annual expense ratios for equity funds, the third highest for bond funds, and tied for the highest for money-market funds. These costs cannot be explained away by pointing to unique features of the Canadian fund market. Canada's method for computing fund expenses is the global standard, and its distribution model of financial advisors selling and servicing no-load funds is widely share.

The consequence of excessive mutual fund management expense ratios in Canada is shocking. On average, if mutual fund expense ratios are not reduced going forward for the next 30 years, Canadians will be giving up 57% of their investment returns to the financial industry. This is calculated on the average Canadian mutual fund fee of 2.1% found in the Harvard and London School of Economics Study of Mutual Fund Fees Around the World in May 2006 and an expected

investment return of 6%. Looking at this another way, Canadians would have 30% more retirement savings after saving for 30 years if they were paying the world average mutual fund fee of 1.2% instead of the Canadian MER of 2.1%.

Investment returns for the foreseeable future are extremely low due to the low interest rate policies of central banks and the outlook for low global economic growth, because consumers and governments have to get their debt levels down through austerity. 90% of Canadian pension plans are in a solvency deficit. Half of these have a deficit in excess of 20%.

Today, risk free interest rates are under 1.8%. Corporate bonds are yielding 3.2% to 6.4%. Dividend paying stocks are in the same yield range as corporate bonds. The stock market is risky.

Canadians simply cannot afford to pay the excessive mutual fund fees and the hidden fees in structured credit products. Canadian cannot afford to lose any money in their personal retirement savings and pension funds due to financial industry negligence or fraud.

The Nortel bankruptcy has revealed that even the sanctity of trust accounts and legal obligations to vulnerable disabled employees are being violated today. The Nortel disabled former employees and other beneficiaries of the Nortel Health and Welfare Trust have recently filed a class action against Northern Trust and Royal Trust for fraudulent breach of trust and fraudulent misrepresentation in respect to their trust assets. These trust companies allowed Nortel executives to wrongfully use $32 million of trust assets to fund company expenses that were not the intended use for the trust assets. Also, the trustees allowed Nortel to pay its required employer contributions to fund incurred insurance claims with an IOU that became over 30% of the trust's assets. Despite Canada's rule of law, and its Charter of right to life, liberty, and security of the person, these 360 vulnerable disabled people and their 120 dependent children have had 65% of their disability income cut. They are being forced to live on CPP disability income alone until age 65 averaging under $10,000 per year.

The Ontario courts have not been kind to investors and trust beneficiaries. Many recent court decisions have benefitted the corporations, powerful bond owners, and the financial industry. Just this February, the Court of Appeal of Ontario made

a precedent decision on a three year limitation period applicable to misrepresentations made by executives and experts in the public markets. The decision referred to as the Timminco decision is resulting in 19 class action cases being dismissed. Included amongst these 19 class actions are three financial crisis misrepresentation cases against CIBC, Manulife and AIG. Two income trust misrepresentation cases could be thrown out on this new interpretaiton of the limitation period.

Up to six major organizations plan to intervene at the Court of Appeal of Ontario to support the CIBC US sub-prime mortgage related class action going ahead. J. Strathy dismissed the CIBC class action certification application for the reason of the new limitation period interpretation. He found that but for the limitation period he would have certified the class action on the merit of the evidence showing that the CIBC CEO, CFO and CIBC World Markets CEO had misrepresented the bank's $11.5 billion US sub-prime mortgage exposure and had delayed the $9 billion write-down of this high risk portfolio until after the year end when annual bonuses are determined. The organizations seeking intervenor status are expected to be the Foundation for Advancement of Investor Rights, the Small Investors Protection Association, the Shareholder Association for Research and Education, the Coalition for Good Governance, and the United Senior Citizens of Ontario. Let's hope common sense and public interest will prevail at the Court of Appeal of Ontario.

The financial industry's lack of integrity and disrespect for the rule of law at times becomes overwhelming. If the industry's wrongful practices continue, the consequences are so severe for seniors, we have no choice but to engage in the fight for justice and deterence of financial abuse at the highest levels.

Never be afraid to challenge financial institutions. Remember that a lone amateur built the Ark. A large group of professionals built the Titanic.

I leave you with these thoughts on what you need to do to personally to protect your own retirement savings and pension:

Stay away from investments that are new and complicated.

Trust no-one!

If it seems to be good to be true, dig deeper.

Ask to see how cash yields are calculated?

Ask to see the bank or government guarantee documentation.

Ask the financial industry salesperson the following questions:

Who are you?

Do not be my friend, just tell me how how you are being paid and by whom?

In respect to pensions, ask if your portfolio manager is being paid millions despite the pension fund losing money.

Is your pension fund manager taking responsibility on your behalf to become lead plaintiffs to recover his investment losses caused by gross negligence and fraud?

Ask your MPP to ensure that the Ontario courts are hearing the cases of alleged wrongdoings by the financial industry against seniors and the disabled.

Ask your local police, why they are not prosecuting financial industry people, who do not tell the truth about trusts and investments?

Until financial executives are held accountable for their negligence and dishonesty, you can trust no-one handling your retirement savings and pensions.

Any questions?

Diane A. Urquhart
Independent Financial Analyst
Mississauga, Ontario,
Tel: (905) 822-7618
Cell: (647) 980-7618