National Pensioners and Senior Citizens Federation

La Fédération National Des Retraiés et Citoyens Agés

Submission to the Expert Panel on Securities Regulation

July 10, 2008

The National Pensioners and Senior Citizens Federation (NPSCF) is a democratic, non-partisan, non-sectarian, and non-racial organization, formed in 1945. We are comprised of 450 seniors' chapters and clubs across Canada, who have a collective membership of 1,000,000 Canadian seniors. The Federation is dedicated to stimulating public interest in the welfare of older Canadians: helping seniors maintain a life of dignity and independence; and educating, counseling, and advising governments on what seniors think about issues in Canada.

POLICY DEVELOPMENT & OUTREACH

Each year local seniors' clubs and chapters submit briefs and resolutions on issues of concern to their members to the Provincial Branches for debate. If accepted, the Provincial resolutions are then forwarded to the Annual Convention of the National Pensioners and Senior Citizens Federation for further debate and a vote. The NPSCF Executives bring the resolutions brief to the attention of every member of the House of Commons and Senate. It holds meetings with Federal Cabinet Ministers and their Opposition Critics.

The National Pensioners & Senior Citizens Federation adopted the following resolution at its National Conference in Truro, Nova Scotia on September 19-23, 2006:

The National Pensioners and Senior Citizens Federation resolves that the Canadian Federal Government uses its constitutional jurisdiction to introduce new federal investor protection laws and enforcement governing securities, and the setting of accounting and auditing standards.

At an Ottawa media conference on October 18, 2006, our Federation asked the Federal Government to create two new bodies - a national investor protection agency and an independent accounting standards board. Every other industrialized country of the world has such bodies for the protection of the savings of its citizens and foreign investors. We have tried fragmented provincial securities regulation, where the setting and enforcement of investor protection and accounting standards are delegated to the investment and accounting industry self-regulatory organizations. The current investment protection and accounting regulatory systems are failing seniors, individual Canadians saving for their retirements and pension fund beneficiaries.

The new national investor protection agency and new independent accounting standards board must have proper civilian oversight, strong enforcement and restitution powers, otherwise Canadians cannot be confident that anything has changed from the status quo.

On October 18, 2006, the NPSCF held a media conference in Ottawa to ask the Federal Government to place a moratorium on new income trusts. On October 31, 2006, Federal Minister of Finance James Flaherty introduced a new income trust tax, which was supported by the NPSCF because it curtailed new income trusts, that were being sold to seniors at inflated prices based on artificially high cash yields. The high cash yields were not sustainable with or without the new income trust tax, and now 44% of all the income trusts have significantly cut or suspended distributions, with the average cut being 60%. If one bought all the units in business income trusts on the day of their latest public offerings, he would have a cumulative capital loss of -$1 billion as of July 3, 2008. The components of this cumulative loss is: +$14 billion capital gain from just four names, Aeroplan, Fording Coal, Labrador Iron and Pembina Pipe; +$5 billion capital gain from 58 business income trusts; and, -$20 billion capital loss from the balance of 112 business income trusts, or 60% of all business income trusts, in a capital loss position. The average capital loss % is -36% among the losing business income trusts (of which at most -10% can be attributed to the new income trust tax.)

Artist, Robert McInnis of Manitoba, has lost confidence in his securities dealer that placed all of his life savings in income trusts. Everyone of the income trusts he owned cut its distributions. Relying upon a registered financial advisor employed by a major bank-owned dealer, this senior lost almost one third of his life savings. Not able to afford civil litigation and worn out by the fight, Robert recently accepted a $0.30 on the $1.00 cash settlement with his securities dealer.

To get justice for millions of seniors like Robert McInnis, the NPSCF joined the United Senior Citizens of Ontario and the Small Investors Protection Association on March 30, 2006 in an official request for an RCMP Integrated Market Enforcement Team criminal investigation of the securities dealers' marketing of income trusts to seniors. We have been informed by letter that the RCMP IMET takes our income trust criminal complaints seriously, but there is no announcment of an income trusts criminal investigation, nor have any criminal charges been laid. On the income trust file, there has been only one Finance Canada official charged for his alleged use of confidential Government of Canada information about no tax on income trusts and reduced dividend taxation, which he used to buy securities in 2005 at a profit for himself. There were billions of dollars of trusts bought prior to the 2005 government announcements and numerous admissions from people receiving advanced information from various government officials, but no one in the investment industry was charged with illegal insider trading.

Evidence of investment industry misconduct affecting seniors and pension beneficiaries is overwhelming. CIBC signed settlement agreements with the U.S. Department of Justice and U.S. SEC for financing illegal securities schemes at Enron - Royal Bank and TD still have civil lawsuits pending for their involvement with Enron. A recent class action alleges that the BMO-owned securities dealer systematically conducts unauthorized foreign exchange transactions in RRSP and RRIF accounts. All securities dealers are believed to conduct the same illegal FX transactions in the registered accounts. The list of investment fund fiascos grows monthly, including the market timing of mutual funds by sophisticated market players and the collapse of the Crocus, Norbourg, Northshields, and Portus funds.

Recently 1,800 Canadian families, a high proportion of which were seniors, waged a very public battle against their securities dealers for full cash settlement and accrued interest for their frozen Non Bank ABCP sold to them as a top credit rated and safe savings product. The government, corporation and pension fund owners of Non Bank ABCP are being forced to make compromise settlements in the Non Bank ABCP CCAA Restructuring Plan administered in the court. Marked to market losses from Non Bank ABCP will likely be over -$16 billion, or -50%, when the new long term notes begin trading in the secondary market.

Donna and Bruce Boyd of Mill Bay, British Columbia sold their home and have $428,000 tied up in ABCP. Their new home bought for retirement is funded by a BMO loan costing them $2,700 each month. **"We are struggling to keep our home and retirement at this stage is only a dream."** The Canaccord Client Relief Plan of cash settlement for up to $1,000,000 of ABCP is returning the Boyds' life savings, but no one is paying for their out of pocket financial damages and one cannot replace their year of emotional distress leading into retirement.

Janet Carey's 89 year old mother lives in Kitchener, Ontario and she suffers from Alzeimers. The money from the sale of her home was placed in ABCP. Janet will have to fund her mother's nursing home expenses, if her Credential Securities cash settlement falls through.

John (not his real name) does not want his name published for fear that his 73 year old mother and 95 year old grandmother will find out that their life savings are frozen in ABCP. The grandmother's home was sold to pay for her nursing home expenses. Without the promised cash settlement from Credential Securities, "**my 95 year old grand mother is living with my Mother, following hip replacement surgery**. **How long my Mother will be able to look after my grandmother is uncertain. At present, without family support, or the sale of my Mother's house, there are no nursing home funds for my Grandmother."**

Gulmahomed Kapadin is 79 years old and because of his visual impairment he was unable to attend the Purdy Crawford Information Meeting on ABCP in Vancouver. **"When purchasing this investment I was assured that it had AAA rating but now I find that these top ratings are not reliable. It will be a great financial loss for me at this age and disability I have."**
Taras and Sharie Kuchers of Toronto, Ontario say, **"we are reaching retirement and our health is dictating a need to stop working shortly. All our funds and RRSP's were in this commercial paper, so we have nothing left."**

Jennifer and Bill (not their real name) of Alberta have their whole life savings tied up in ABCP after it was moved out of the stock market and strictly instructed to be in cash. **"I can only describe the stress as similar to our feelings when we lost a close family member."**

Dave and Alvina Nicholas say**, "As senior citizens we too have an expectation that the government will protect their citizens from fraudulent practices in the banking system. It has created hardship as I have been forced to return to work and am now suffering from high blood pressure and other symptoms of severe stress… It is hard to believe that these highly leveraged devices were ever allowed to be sold in Canada. Clearly we would like to see criminal action taken against those involved."**

Angela Speller writes**, "My husband and I retired five years ago and until last August we believed that we were reasonably well positioned financially for our retirement. Our goals have always been quite modest: a simple life style for ourselves and most important in our lives, assistance for our children to complete their education…At the moment we need $40,000 for our son to be able to continue his education in the USA and to pay for health insurance there; however we have no way of getting at our own savings."**

Gary Webber a pastor and an ABCP victim himself informs us that **"The effects on many people's lives have been devastating _ the fear that surrounds the possibility of losing the money has been even debilitating for some of them. As a pastor my concern is for the personal distress that results as people are placed in these situations that they are really powerless to effect."**

And, Yulan Wong says, **"I do not eat and cannot sleep. I have excruciating pain (physical and mental) constantly being anxious and still in shock. …When the account was opened with my niece's money (some belonging to her siblings) she strongly emphasized that she only cared about the capital being preserved as stated in your Account Information form. Her knowledge about investment is limited to cash in a savings account. She lost both her parents to cancer and I have reminded Mr. Evans constantly that I have to be most careful with the funds entrusted to me?**

In light of all the stories we heard from seniors owning ABCP, the **NPSCF was moved to write a letter to the National Bank of Canada on July 2, 2008 asking that it not use the Hardship Test from the Portus Alternative Asset Management Inc. receivership in any dispute resolution** and particularly not in the case of Marilyn Avrith, a Montreal Quebec senior widow, who has lost close to 80% of her life savings tied up in ABCP. The bank sold Marilyn ABCP as a safe and top rated savings product and now there are widespread allegations of negligence, and perhaps fraud, in the product's design and sales process. The "Portus Hardship Test," is the "Cat Food Test," by another name. Under this test, seniors get only enough cash back to pay for the necessities of life and where alternative sources of funds for the client are limited. **The seniors in our Federation cannot tolerate banks and securities dealers taking the**

savings of seniors by selling them defective income products said to be safe and top credit rated. It is insulting that the banks, securities dealers and their legal representatives have the audacity to apply the Portus Hardship Test for reimbursement of seniors' lost life savings caused by their negligence and possible fraud, while their own executives take out hundreds of millions in compensation and the banks make billions of dollars annually.

Sophisticated market players have co-opted the investment industry and accounting industry self-regulatory organizations and even the provincial securities commissions and the Office of the Superintendent of Financial Institutions, who are suppose to be government authorities with public interest mandates. There is both rogue fraud and systemic negligence and fraud going on in the investment industry, with unsophisticated seniors and other retail investors being the predominant victims. In addition to securities crimes not being investigated or prosecuted, the banking and investment industries routinely receive regulatory and legal protections, that promote industry profitability and are contrary to investors' interests.

For example, Canadian securities regulators effectively deny the sale of mutual funds to Canadian by foreign mutual fund companies and so Canada has the highest mutual fund management expense ratios in the world. The exorbitant mutual fund fees cause our seniors to have one third less personal savings for retirement than other retirees in the world saving the same amount of their incomes.

Another example of recent undue influence on government regulation, is that the international banks involved in the ABCP fiasco somehow managed to get a Federal Companies' Creditor Arrangement Act regulatory exemption on November 17, 2007 that took away the authority for a CCAA court judge to order a stay on international banks seizing collateral assets to pay for their debts owed by the Canadian trusts. The exemption was granted in the middle of the largest credit restructuring in Canadian history involving $32 billion of Canadians' savings placed in ABCP. The impact of this exemption was that Canadian ABCP creditors were stayed by the CCAA judge, while the international bank creditors were not, and so the judge was unable to impose a stricter fairness and reasonableness standard on the ABCP CCAA Restructuring Plan legal release without risking the international banks walking away from his court administered ABCP restructuring.

The National Pensioners & Senior Citizens Federation adopted the following resolutions at its National Conference in Saskatoon, Saskatchewan on October 24-26, 2006:

The Federal Government fix the civilian oversight at the Commission for Complaints against the Royal Canadian Mounted Police: so as to accord power to summon RCMP officer and witness evidence under oath and to compel the production of documents; and, to make Commission decisions binding on the RCMP's conduct.

The Royal Canadian Mounted Police Integrated Market Enforcement Teams be required to conduct white collar securities crime investigations with competence, integrity and collaboration only with international, municipal and provincial police; without direction or interference from federal politicians, the investment industry self regulatory organizations and provincial securities commissions, who are seeking to protect the reputation of political parties and the investment industry.

On April 26, 2007, the NPSCF conducted a media conference in Ottawa asking the Federal Government to address Canada's malfunctioning securities regulatory and securities crime policing system. Since then, two former senior investigators of the RCMP IMET, Bill Majcher and Craig Hannaford, have spoken out about the RCMP's white collar crime policing problems in an article written by Canadian Business, "A Good Country for Crooks, If you suspect Canada is soft on white-collar crime, these ex-Mounties have news for you: it's worse than you think," dated September 24, 2007.

In the RCMP Accountability Framework 2006, an EKOS Survey, Wave 3, 2005-2006 finds that over two thirds of seniors are concerned about becoming a victim of fraud. When asked about what type of crimes Canadians were personally more concerned about, those polled rated:

- Economic crime first at 68%
- Gang violence second at 59%
- Gun crime third at 51%
- Property crime forth at 48%
- Terrorism rated last at 30%

Seniors want the security of knowing that the RCMP is working well with provincial and municipal police forces, and that securities crime is being vigorously pursued and prosecuted in this country.

Art Field, President of NPSCF attended a meeting on March 11, 2008 in Ottawa with officials from the Federal Ministry of Public Safety and Emergency Preparedness and RCMP Integrated Market Enforcement Team (RCMP IMET). Diane and Hugh Urquhart, members of the NPSCF, attended this meeting with him. In attendance for the Ministry of Public Safety was Barry MacKillop, Director General Organized Crime and Border Services Strategies; and, Yves Leguerrier, Senior Policy Analyst and Matt Boldt, Policy Analyst of the Organized Crime Public Policy Division. In attendance for the RCMP Integrated Market Enforcement Team was Dean Buzza, the Acting Director of this securities crime unit; and, Joe Hull, RCMP sergeant and securities crime investigator. The outcome of this meeting was not successful, since there appeared to be a reluctance by the officials present to accept the need for stronger independent civilian oversight and the creation of a new independent securities criminal complaints intake and assessment system jointly administered by the RCMP IMET and the provincial and municipal police forces.

The government officials appeared to promote the RCMP IMET having greater integration with the provincial securities commissions and investment industry self-regulatory organizations, despite the clear evidence that these regulators and self-regulators are controlled by the investment industry and have an abysmal record of securities law enforcement. We learned that the RCMP IMET supports new proposed powers to force witness testimony in a securities criminal investigation without a court warrant and to use sworn testimony obtained without a court warrant by the provincial securities commissions in regulatory investigations. These new tools would violate the Charter of Rights and Freedoms and therefore would not serve either the securities crime victims or the accused perpetrators very well. We need to adopt reforms in a balanced justice system that has appropriate checks and balances and public accountability mechanisms.

While the many details of securities regulation and securities crime policing reform need to be worked out, the NPSCF supports the following:

- **A new Canadian Securities Commission that provides effective investor protection regulation and enforcement and provides a simple and inexpensive process for obtaining restitution of damages caused by securities violations.**

- **A new accounting standards agency that provides for consistent and honest financial reporting that is useful to investors and pension beneficiaries seeking retirement income security.**

- **A new securities criminal intake and assessment system jointly administered by the RCMP IMET and the fraud squads and anti-rackets units of the provincial and municipal police forces of Canada. This new system would eliminate the current reliance of securities crime police on the investment industry self-regulatory organizations and the provincial securities commissions for case referrals, information sharing and expertise.**

This is respectfully submitted by the executive on behalf of the one million plus members of the NATIONAL PENSIONERS AND SENIOR CITIZENS' FEDERATION.

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