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Friday August 24, 2007

Mr. Paul Bourque
Senior Vice President Member Regulation
Investment Dealers Association of Canada
Suite 1600, 121 King Street West
Toronto, Ontario M5H 3T9

Mr. Bourque: **Sent by Fax :(416) 364-4878**

RE: IDA Action on Quebec Superior Court Decision re Markarian v. CIBC

The purpose of this letter is to address the issue of the action or inaction of the IDA with respect to one of the subjects discussed at our meeting on Thursday July 26, 2007. I will be writing to you separately about the other matters we discussed. This meeting with you was arranged when Joseph Oliver delegated this responsibility to you as he did not make himself available to meet me in response to my letter to him. Attending with you at this meeting was the IDA Vice President of Enforcement, Alex Popovic. Also attending was Dr. Pamela Reeve.

You will recall that I asked you whether you were familiar with the legal case in Quebec of Markarian v. CIBC and the decision and comments of the Court. You stated that you were not familiar with the decision taken in this case. I then mentioned to you that I raised this matter in a meeting with Alex Popovic on 17jan07 and I was interested in what action the IDA was taking. I received no answer then and at our meeting I received no answer from you other than your confirmation that you were not aware of the decision.

On Friday July 27, Alex Popovic phoned me stating that he was calling at your request on another matter, COMSET, which was the subject of my 17aug07 letter to you. I mentioned to Mr. Popovic that I was really surprised that you were not familiar with the Markarian v. CIBC case and the decision, given its significance and given that the decision of Justice Senecal was published on 14jun06, more than a year ago. Mr. Popovic stated that there were many court cases and that, in Ontario law, it would be a precedent

but because the decision was in another province, in this case Quebec, it is useful only for information purposes.

I was somewhat taken aback by this statement from the IDA.

My understanding is that the IDA is structured as a not for profit national organization which various provincial securities commissions/administrators have entrusted with regulatory responsibilities. Furthermore these commissions rely upon the IDA to enforce its own bylaws, albeit by contract, upon its members and member representatives. As a national organization, structured as a SRO, does the IDA not have a duty to monitor all court cases and jurisprudence relevant to its mandate? Why was the IDA therefore not familiar with this case even though the IDA has already banned the broker involved who was a registrant of the IDA?

Why were you not familiar with this case?

As you are no doubt aware, you can obtain a copy of the decision on the following site:

Superior Court, Province of Quebec, District of Montreal
No. 500-05-069668-018
Date: June 14, 2006

<http://www.jugements.qc.ca/>

or specifically,

<http://www.jugements.qc.ca/php/decision.php?liste=24287685&doc=405F044756421C04>

I bring to your attention some of the statements of Judge Senecal in awarding the Markarians not only the immediate return of their \$1.5 million from CIBC but the payment of a \$1.5 million punitive damage award. Judge Senecal stated that CIBC's conduct was reprehensible and it cruelly failed in its duty to protect its investor clients, retirees Haroutioun and Alice Markarian.

(Para 328)

It is surprising, in the circumstances, that Tom Monahan, the president of Wood Gundy, testified in Court that the questions raised by the Compliance Department always received a reply. That is not true at all, which perhaps explains the shortcomings in the past.

(Para329)

On several occasion, the responses given were, on the contrary, incomplete and unsatisfactory, if not simply false. Other times the questions were not answered. Sometimes, the Compliance Department asked the question again (especially toward the end). Sometimes, it did so belatedly. In other instances, it did not follow up.

(Para 339)

In this case, Migirdic was able to unilaterally change the profiles of a large number of clients without consulting them and without CIBC exercising the least control over the changes...or even worrying about them.

(Para 400)

The Court concludes that CIBC committed faults, in performing its duties and assuming its responsibilities, that largely contributed to the fraud to which the plaintiffs fell victim and their loss. It deceived the plaintiffs by giving meaningless, but prestigious titles to Migirdic. It has only itself to blame if the plaintiffs were therefore less suspicious of him and gave him their full trust. In addition, it seriously failed to fulfill its duties to supervise and control Migirdic....

(Para 558)

The Markarians were profoundly affected by Migirdic's fraud, for which CIBC is responsible.

(Para 560)

The very way the Markarians were informed of the guarantees and their resulting liability, without also being informed that fraud was involved, added to the contempt and brutality with which CIBC's representatives treated them.

(Para 565)

CIBC thus in bad faith deprived the plaintiffs of the peaceful enjoyment and free disposition of their property. It especially made them go through a dreadful period that is not yet over.

(Para 592)

The refusal or failure to investigate the Markarians' complaints concerning the Intergold and AMCC shares are other demonstrations of

CIBC's lack of respect and its contempt for the Markarians and what they might be experiencing and feeling.

(Para 630)

CIBC even took money from one account to cover a debt that the account did not guarantee. That matter has since been settled but it illustrates the Bank's scandalous conduct.

(Para 646)

The bad faith of CIBC is also apparent in the way it conducted the proceedings and made them last inordinately, as we will see later on.

(Para 671)

The evidence also shows that the defendant's attitude toward the Markarians was not isolated but was repeated in regard to other victims. Given that, the reprehensible nature of CIBC's conduct can only gain in scale.

Surely, as a self-regulatory organization

“that is organized for the purpose of regulating the operations and the standards of practice and business conduct, in capital markets, of its members and their representatives with a view to promoting the protection of investors and the public interest,”

you had a duty to be not only informed but to act on the decision of the Court. Upon first learning about the issues in this matter, did you take this matter to the police to independently investigate and prosecute this fraud? If so, to which police force and on which date did the IDA take this action? If not, why not?

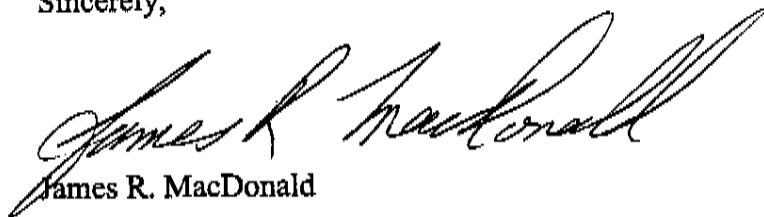
Why has the IDA, which claims to have the authority and the jurisdiction over its members to enforce securities laws, failed to fulfill its self-proclaimed mandate to protect Canadian investors, people like the Markarians who are in their 70s?

I look forward to your response outlining the action that the IDA, as the regulator, has taken or is planning on taking. I brought this matter formally to the attention of the IDA via my meeting with the Vice President of Enforcement, Alex Popovic, on 17Jan07. It would also seem, based on the composition of your Board of Directors, that you might have been aware of this issue much earlier.

The tactics described in this case are not unique to the one firm that is mentioned. I am sure you know that well. But you are not just a trade association; you are the professional,

independent, honest, transparent regulator acting to protect the investor and public interest are you not?

Sincerely,



James R. MacDonald

Enclosures

**CC: Susan Wolburgh Jenah, President and CEO, IDA
David Wilson, Commissioner, Ontario Securities Commission, (OSC)
Honourable Gerry Phillips, Minister Responsible for the OSC
Honourable James Flaherty, Federal Minister of Finance
M.P. Lui Temelkowski
M.P.P. Joseph Tascona, Critic to the Minister of Government Services
M.P.P. Michael Prue, Critic to the Minister of Government Services
M.P.P Frank Klees**