

21 March 2005

Mr. Charles-Henri Lafrance
Supervisor, Information Centre
Competition Bureau of Canada
50 Victoria Street
Gatineau, Québec
K1A 0C9
(819) 953-8662

Dear Mr. Lafrance,

Please consider this letter as a formal complaint against the Investment Dealers Association of Canada (“IDA”). I am of the opinion that their representations to the public are deceptive and in contravention of subsection 74.01(1) of the *Competition Act* R.S.C. 1985, c. C-34.¹

The following is an extract from an article which appeared in the Toronto Star dated February 17, 2005 entitled *Former CIBC trader fined, banned for life*;

An IDA panel ordered Mangin to pay a \$295,000 fine, plus \$207,173 in disgorgement of ill-gotten gains and \$10,000 in costs.

“This is certainly one of the highest fines that has been meted out for an individual,” said Jeff Kehoe, director of enforcement litigation for the IDA. “This was a form of misappropriation. When we get into that type of situation, we take a very hard line.”

...

In total, about \$790,000 was withdrawn from the account from February 2001 to September 2003, when he was fired from CIBC.²

The article suggests to the public the following:

1. The IDA panel found a trader guilty of committing fraud and that the IDA has flexed its muscles by levying a substantial fine in order to penalize that trader and illustrate to the public that this type of activity will not be tolerated;
2. The public should feel comforted in the knowledge that by ordering the disgorgement of ill gotten gains the trader will not benefit in any way by such activity.

¹ <http://cb-bc.gc.ca/epic/internet/incb-bc.nsf/en/ct02868e.html#partVII.1>

² <http://regulators.itgo.com/PI/1718.htm>

However, if that is your interpretation of what is stated in the Toronto Star article, you would be wrong.

The IDA is not capable of the enforcement of fines, penalties and disgorgements for breaches of the prevailing provincial *Securities Act(s)* or the *Criminal Code*. In fact, it could be argued that the IDA has no ability to enforce a fine or penalty for breaches of its own contract with its members. However, retail investors who have been defrauded or have suffered losses due to breaches of provincial securities legislation by a government licensed investment advisor have been duped into believing that self-regulatory organizations, such as the IDA, are capable of enforcing legislation.

On November 01, 2004 a letter from Paul Bourque, senior vice president of member regulation at the IDA was published in the National Post contained the following declaration:

First, let's get the facts straight. The only legislative power the provincial governments "delegate" to the IDA is registration of brokers -- and even that is only delegated in B.C., Alberta and Ontario. The provincial governments do not "delegate" securities industry compliance and enforcement.³

Since the IDA cannot enforce its decisions, the expectation that the trader will pay any fine or penalty or disgorge his "ill gotten gains" is extremely low – if not non-existent after leaving the industry, as this trader did two years prior to the IDA's penalty decision. It would also appear that the government agencies which are charged with the administration of the *Securities Act* appear to be complicit or at minimum supportive of this abrogation of their responsibility and the resulting sham.

For instance, when an aggrieved investor believes that s/he has been the victim of a breach of a provincial securities act, her/his first reaction is to contact the appropriate securities commission which, as stated on its web site, "...administers and enforces securities legislation..." and that its "mandate is to protect investors from unfair, improper and fraudulent practices...".⁴

³ <http://regulators.itgo.com/PI/1388.htm>

⁴ http://www.osc.gov.on.ca/About/WhatWeDo/wwd_index.jsp

However, when s/he contacts the securities commission, s/he will be directed to a section on the OSC's web site entitled Consumer Complaints which reads:

Where the registered firm is a member of a self-regulatory organization ("SRO"), either the Investment Dealers Association of Canada ("IDA") or the Mutual Fund Dealers Association of Canada ("MFDA"), you should direct your complaint to the Enforcement Division of the appropriate SRO.⁵

This is where the confusion begins and the investor is led astray. It would be logical to conclude that the IDA is an agent of the government and that it has been delegated the necessary authority through legislation to determine whether there was in fact a breach of securities legislation.

This was intentional. Indeed, on November 02, 1998 the federal government, as well as the public, were advised by the IDA when it presented evidence to the Standing Senate Committee on Banking, Trade and Commerce the following:

The IDA is Canada's only national entity with delegated responsibility for securities regulation and investor protection. – Joe Oliver, President, IDA⁶

This representation to the public is false and misleading. It is deceptive and lulls the investing public into believing that real enforcement exists and that they are protected.⁷

The IDA made the following statement in its' submission to the Ontario Standing Committee on Finance and Economic Affairs on August 18, 2004:

...our disciplinary process loses credibility when it imposes well-publicized and substantial monetary penalties but has no effective means to enforce the penalties."- Joe Oliver, President, IDA⁸

Canadians, as well as foreign investors, have every reason to be confused. They are being misled into believing that the IDA will or can protect them.

⁵ http://www.osc.gov.on.ca/Investor/Complaints/cpt_index.jsp

⁶ <http://regulators.itgo.com/Links/SBC.htm>

⁷ <http://regulators.itgo.com/PI/1508.htm>

⁸ http://www.ontla.on.ca/hansard/committee_debates/38_parl/session1/finance/F024.htm#P674_217428

The IDA is a private association registered as a lobbyist for its members under the federal *Lobbyist Registration Act*.⁹ Furthermore, the IDA enjoys a contract with its members whereas no such contract exists with the public.

Those investors with a legitimate grievance who are unable to financially access the court system are falsely served by private 'regulation'. Ultimately they will join the ranks of the undefended.

I trust you will look into this matter and take the appropriate action to remedy this situation. I am hopeful that, at a minimum, you will require the IDA to include a statement in future releases to the public¹⁰ which clearly states that the IDA cannot administer the Securities Act(s), cannot administer the *Criminal Code*, and cannot enforce fines, penalties, and/or disgorgement of ill-gotten gains from individuals who have left the industry. Full, true and plain disclosure would permit Canadian and foreign investors to more clearly understand what protections they have when investing in the Canadian securities industry.

I look forward to hearing from you and please contact me if I can be of assistance.

Respectfully yours,



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⁹http://strategis.ic.gc.ca/cgibin/sc_mrksv/lobbyist/bin/lrs.e/htaccess/search/view_search_reg_detail.phtml?lobby_num=0002672&rg_num=001&type=3

¹⁰ http://www.ida.ca/Enforcement/NoticeToPublic_en.asp

Feb. 17, 2005. 01:00 AM

Former CIBC trader fined, banned for life

MADHAVI ACHARYA-TOM YEW
BUSINESS REPORTER

A former trading desk supervisor at CIBC World Markets Inc. in Toronto has been ordered by regulators to pay penalties of more than \$500,000 for his part in a scheme that used the bank's money to make illicit trades.

Jules Mangin also received a lifetime ban from the securities industry, the Investment Dealers Association of Canada said yesterday.

An IDA panel ordered Mangin to pay a \$295,000 fine, plus \$207,173 in disgorgement of ill-gotten gains and \$10,000 in costs.

"This is certainly one of the highest fines that has been meted out for an individual," said Jeff Kehoe, director of enforcement litigation for the IDA. "This was a form of misappropriation. When we get into that type of situation, we take a very hard line."

Neither Mangin nor his lawyer could be reached yesterday.

Mangin admitted that in February 2001, he opened an account for an unidentified acquaintance into which he deposited a cheque for \$167,000 (U.S.) payable to CIBC World Markets.

The pair agreed to split profits from illicit trading in the account, an IDA panel was told during a hearing earlier this month.

From June 2001 to August 2003, Mangin conducted trades in the account even when there was not sufficient funds to do so, a practice known as free-riding. Mangin manipulated trade tickets in order to avoid detection, the IDA panel found.

He admitted that he often did not indicate the account number on trade tickets when transactions were conducted. He would wait until it was clear whether the trade had made money, then allocate it to either his associate's account or, if it was unprofitable, to the bank's inventory account where CIBC took the loss.

In total, about \$790,000 was withdrawn from the account from February 2001 to September 2003, when he was fired from CIBC.

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Penalties needed

Paul C. Bourque
Financial Post

November 1, 2004

Re: "[Investors Need Faith in SROs](#)," Oct. 15.

Diane Urquhart's article deserves a response. Investors should have confidence in the work of self-regulatory organizations, but that confidence must be based on transparent reporting and accountability. There is no securities regulatory organization in Canada that provides more information and is more accountable to provincial governments than the Investment Dealers Association of Canada.

First, let's get the facts straight. The only legislative power the provincial governments "delegate" to the IDA is registration of brokers -- and even that is only delegated in B.C., Alberta and Ontario. The provincial governments do not "delegate" securities industry compliance and enforcement.

Ms. Urquhart suggests that the IDA should not be given more effective tools to collect fines until private investors are provided similar powers. This suggestion confuses penalties for regulatory misconduct with investor compensation for investment losses.

In the past three years, the IDA has completed 165 discipline cases and imposed over \$12 million in fines. If investors are to have faith in SROs, there must be an effective way to collect penalties imposed for misconduct. The IDA already has the power to file its discipline decisions as orders of the court in Alberta. We need this power to more effectively collect fines in the rest of Canada. However, more effective fine collection for SROs will not assist investors in obtaining compensation.

Discipline fines are imposed for regulatory wrongdoing and misconduct. There may be no financial loss, but penalties may still be appropriate. Or the loss may have been made good by the firm before the matter is resolved by discipline. The fact a client may have been compensated, however, does not mean wrongdoing should not be punished.

By all means, let's improve the remedies available to investors to obtain compensation where appropriate, but it's just as important for investors that SROs have the powers they need to fulfill their public-interest mandate to protect investors.

Paul C. Bourque, senior vice-president, member regulation, Investment Dealers Association of Canada.



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Report Public Registry

In-House (Organization) Lobbyist Detail Report:

2005/03/18

Please note that the text appears in the official language in which it was submitted by the lobbyist.

Reg #: 001

Lobbyist #: 0002672

Doc #: 3-1997056-1

B: Sr. Officer and Employer Information:

Surname: OLIVER

Given Names: JOSEPH

Initials: J

Prefix: MR.

Title: PRESIDENT & CEO

Employer: INVESTMENT DEALERS ASSOCIATION OF CANADA

Business Address: 1600 - 121 KING STREET WEST

City: TORONTO

Province: ONTARIO

Postal Code: M5H 3T9

Country: CANADA

Phone #: (416) 364-6133

Ext: N/A

Fax #: (416) 364-0753

Internet: joliver@ida.ca

Effective Date: 1997/02/21

Termination Date: 1997/10/27

D: Organization Description:

OUR DUAL ROLES AS AN INDUSTRY REGULATOR & TRADE ASSOCIATION ARE COMPLEMENTARY. AS THE NATIONAL SELF-REGULATORY ORGANIZATION OF THE CDN SECURITIES INDUSTRY, THE IDA MONITORS MEMBER FIRMS FROM COAST TO COAST IN TERMS OF BOTH THEIR CAPITAL ADEQUACY & CONDUCT OF BUSINESS. THE QUALIFYING & REGISTERING PROCESS OF THESE FIRMS ALSO IS OUR RESPONSIBILITY. INVESTOR PROTECTION IS A TOP PRIORITY FOR US AS IT IS FOR THE MONTREAL, TORONTO, ALBERTA, & VANCOUVER STOCK EXCHANGES WHICH ALSO MONITOR SOME MEMBER FIRMS IN THEIR RESPECTIVE REGIONS. HOWEVER, AS THE COUNTRY'S ONLY NATIONAL SRO, THE IDA HAS AN ADDITIONAL RESPONSIBILITY TO LISTEN TO THE VIEWS OF PEOPLE IN ALL PARTS OF THE COUNTRY, & TO ENSURE THESE VARIOUS PERSPECTIVES ARE TAKEN INTO ACCOUNT WHEN FORMULATING NATIONAL POLICIES & RULES GOVERNING INDUSTRY PRACTICES & STANDARDS. THIS NATIONAL SELF-REGULATORY FUNCTION OBVIOUSLY CONTRIBUTES TO OUR EFFECTIVENESS AS A TRADE ASSOCIATION DURING ADVOCACY WORK ON BEHALF OF THE SECURITIES INDUSTRY. ...

D: Membership Description:

... FROM THE UNCOMMON VIEWPOINT OF REGULATORY RESPONSIBILITY & EXPERIENCE, WE ARE ABLE TO BRING FORWARD CONSTRUCTIVE RECOMMENDATIONS TO THE FEDERAL & PROVINCIAL GOVERNMENTS ON A WIDE RANGE OF POLICY ISSUES THAT IMPACT THE BROADER PUBLIC GOOD. ONLY ONE CLASS - FULLY PARTICIPATING (VOTING) MEMBER ALL MEMBERS ARE PROVINCIAALLY

REGISTERED AS "INVESTMENT DEALERS"

E: Subject-matter(s): Areas of Concern:

FINANCIAL INSTITUTIONS

TAXATION AND FINANCE

OTHER: CAPITAL MARKETS

F.1: Subject-matter: Retrospective :

SEPTEMBER - OCTOBER 1996: OSFI FUNDING RESTRICTIONS ON FOREIGN NEAR-BANKS (APPEARANCE BEFORE SENATE BANKING COMMITTEE & COMMONS FINANCE COMMITTEE).
DECEMBER 1996: PRE-BUDGET CONSULTATIONS & DISCUSSION ON PROPOSED CANADIAN SECURITIES COMMISSION WITH THE MINISTER OF FINANCE. SEMI-ANNUAL MEETINGS WITH BANK OF CANADA OFFICIALS TO DISCUSS MONETARY POLICY AND CAPITAL MARKET ACTIVITIES OF THE BANK & IDA MEMBERS.

F.2: Subject-matter: Prospective:

PRE-BUDGET CONSULTATIONS & DISCUSSION ON PROPOSED CANADIAN SECURITIES COMMISSION WITH THE MINISTER OF FINANCE. SEMI-ANNUAL MEETINGS WITH BANK OF CANADA OFFICIALS TO DISCUSS MONETARY POLICY AND CAPITAL MARKET ACTIVITIES OF THE BANK & IDA MEMBERS.

G: Government Institution(s):

FINANCE CAN.

OTHER: BANK OF CANADA

H: Government Funding:

J: Communication Technique(s):

MEETING(S)

TELEPHONE CALL(S)

WRITTEN COMM. PAPER/ELECTRONIC

K: Other Documents:

Organizational Lobbyists

Reg #: 001

Lobbyist #: 0002672

Doc #: 3-1997056-1

Name	Title	Lobbyist #	Terminate
DALZELL, THOMAS G	VICE-PRESIDENT, GOVT & MEMBER RELATIONS	0002674	N/A
RUSSELL, IAN C	SENIOR VICE-PRESIDENT, CAPITAL MARKETS	0002673	N/A