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In reviewing the issues raised by the investment industry and understanding the issues faced by unsophisticated investors, I find that the current methodology best represents the balance between prudent investor reaction and the unsuitable actions of an investment firm. In fact, the process has become significantly more skewed in favour of the investment firm over the past several years. Investment firms have coached/trained advisors on how to ensure the documentation will support the advisors position whether or not the investments were suitable. As such, we suspect that the role of the arbitrator becomes even more difficult and requires more latitude in determining any fault and/or losses.

The investment firms have the capacity to ensure the paperwork supports a higher risk strategy than the advisor conversations might support. The focus on having a properly structured paper trail to deflect investors from arbitration requests has positioned the investment firms to negate the verbal evidence and attempt to arbitrate exclusively on paper work which the firms haves assured will reflect higher risk investing. In effect, the investment firms would like to arbitrate paper trails. This type of arbitration allows the advisor to gloss over risks, poorly define risk definitions for investors, and always be assured the investment firm has the paper trail to support any investments sold. While the investment firms couch the paper trail approach in terms of training, they seem to have taken on a very defensive posture as the “aggrieved party” in the process. In dealings with investors I have found the investment firms to take on a defensive posture that reflects a belief that “if no criminal law was broken then we did nothing wrong”. This approach is also backed by an intimidating team of high priced solicitors as well as internal ombudsman type positions that seem to act as a buffer between investors and OBSI. In one notable example, a client showed us a note from the ombudsperson office of a major bank where the bank determined nothing was inappropriate and supported the position by quoting advice provided on security sales by an advisor not licensed to provide advice on securities other than mutual funds. Clearly the investment firms are not providing a reasonable or well investigated and articulated response to investor concerns.

I strongly support the current process used to determine suitability and to determine losses. I believe the bank lead assault on the current process is an attempt to reverse the process to a paper based argument; knowing they have improved the training on paper trails to the point where arbitration based on the bank/investment firm preferred approach will render settlements non-existent.

I also believe the lack of support for an independent arbitration process is further evidence that the large investment firms oppose all regulatory oversight which they cannot control in-house. Canada’s retail investors have meagre support as is, and will have virtually no support if the arbitration process is directly controlled by the large investment firms.

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