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INVESTOR PROTECTION

Support lacking for investor advocates

Governments and regulators aren't funding independent advocacy

Rudy Mezzetta

Investor advocacy in Canada is increasingly shifting in-house to the boards and advisory panels of the investment industry's regulators. But stable and reliable funding for independent investor advocacy is badly needed, experts say. Laura Tamblyn Watts, CEO of seniors' advocacy group CanAge Inc. and an independent director of the Investment Industry Regulatory Organization of Canada's (IIROC) board, says having consumer and investor advocates represented at the "highest level" of industry regulators helps promote "change from within" - but there's "very limited support for change from without."

In-house committees can help regulators identify issues that affect investors and provide guidance, says Neil Gross, president of Toronto-based Component Strategies Consulting and chair of the Ontario Securities Commission's (OSC) Investor Advisory Panel (IAP). However, independent advocates "act as a counterweight to industry groups" and "shine a public spotlight on investor protection issues," Gross says.

So far, governments and regulators have not stepped up to the plate to fund inde-

pendent investor advocacy.

Last year, the Canadian Foundation for Advancement of Investor Rights (a.k.a. FAIR Canada) had no choice but to return a \$2.4-million endowment to the Stephen Jarislowsky Foundation after failing to secure matching funding. In an open letter, Jarislowsky blasted governments, regulators and the industry for being "satisfied to see the retail investor advocacy space limited mostly to seniors like myself and to a few other unstaffed advocacy groups. Corporations prefer to keep retail investors dependent and underinformed."

After FAIR Canada returned the grant money, Ken Kivenko, president of investor advocacy organization Kenmar Associates in Toronto, was motivated to redouble his lobbying efforts. "By putting people in key policy positions, we feel we can partially compensate for the lack of independent investor advocates," he says. But Kivenko hopes that new leadership at FAIR Canada heralds a change in fortune for what remains the primary national organization for investor advocacy in Canada.

Jean-Paul Bureaud, a lawyer who previ-

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ously worked with the World Bank and the OSC, became FAIR Canada's new executive director in August. He replaces Ermanno Pascutto, who founded FAIR Canada in 2008 and had been serving as the group's head on an interim basis.

Bureaud says FAIR Canada has "had discussions with a number of potential funders who have been receptive to our requests and, at this time, we remain optimistic about being able to meet our longer-term funding needs." In the meantime, FAIR Canada's "current funding will enable us to deliver on our mission into next year," Bureaud says.

Gross, a former executive director of FAIR Canada, says it's time for policy-makers to step up: "If the goal of investor advocacy is to help policy-makers bring about better regulation that improves investor protection and raises investment industry professionalism, then that goal should be supported by funding from policy-makers."

Harold Geller, a lawyer with MBC Law Professional Corp. in Ottawa who rep-

resents investors and insured individuals, says that other than FAIR Canada, the investor advocacy landscape largely consists of industry veterans at the end of their careers who are able to volunteer their time and money. As a result, regulatory advocacy is "completely lopsided" in favour of the investment industry, Geller says.

Ontario's unexpected decision to continue to allow deferred sales charges on mutual funds - after investor advocates had worked for years to achieve a ban - is an example of how "lobbying by industry makes an impact time and time again," Geller says.

"If you speak to anyone who's been in [investor advocacy] for more than five years, they will talk to you about regulatory exhaustion," says Geller, who also is a member of Ombudsman for Banking Services and Investments' (OBSI) Consumer and Investor Advisory Council.

Elizabeth Mulholland, CEO of Prosper Canada, a Toronto-based charity dedicated to promoting economic empowerment among low- and modest-income Canadians, says that if regulators are serious about protecting vulnerable Canadians who contribute money to RESPs or RDSPs, support should be offered to the grassroots organizations that are helping those people.

"If you do that, I can guarantee there are lots of young people in my sector who are active and passionate advocates for the people they work with," Mulholland says.

While regulators may not be funding independent investor advocacy, they recently have shown willingness to provide resources for investor protection

initiatives in addition to bolstering their internal investor representation.

This year, IIROC announced plans to launch an Expert Investor Issues Panel; nominated three new independent directors with experience in consumer or retail investor issues; and provided a five-year grant to the Investor Protection Clinic (IPC) at York University's Osgoode Hall Law School in Toronto. (The IPC offers pro bono legal counsel to harmed investors.)

The Osgoode clinic, the first of its kind in Canada, also exposes law students to retail investor issues at an early stage of their careers, says Poonam Puri, professor at Osgoode Hall and co-founder and director of the IPC. "Regardless of where [the law students] end up, they take those retail investor perspectives with them," Puri says.

The University of Toronto's Faculty of Law also developed a similar legal aid clinic, and Puri hopes more will spring up across the country.

Tamblyn Watts, who helped write IIROC's grant to the IPC, says, "We need many, many more [legal aid] clinics" for harmed investors, but adds, "We shouldn't just be relying on [law] students" to look out for investors.

In Quebec, the Autorité des marchés financiers recently established an investor committee similar to the OSC's IAP. Kivenko says Kenmar Associates is lobbying other provincial securities commissions to launch their own investor advisory panels.

In addition, the Financial Services Regulatory Authority of Ontario recently launched a consumer advisory panel, and OBSI announced it is appointing a

consumer interest director to its board.

Investor advocates say a recently released consultation paper from Ontario's Capital Markets Modernization Taskforce offered several useful investor protection proposals (although several comment letters noted that other proposals could harm investor protections; see story on page 1). Notably, the task force recommended providing OBSI with binding decision-making authority.

Currently, when OBSI recommends that investment dealers compensate harmed clients, dealers are free to offer their clients lower settlement amounts - or nothing at all - if they don't agree with OBSI's recommendations. This arrangement "doesn't promote investor confidence," says Cindy Tripp, a task force member and founding partner, former managing director and co-head of institutional trading at GMP Securities LP.

Says Kivenko: "We see OBSI as another leg in investor protection if not really an advocate. [Binding decision-making authority] can really help prevent [investor] abuse."