

email from a reader *My adviser says I don't need to read the prospectus for a money market fund. He says the MER is low and besides I may not own it for long. What do you think? --Albert in Prince Albert*

Response: Money market funds are one of the most expensive fund categories out there. Fees vary greatly from about 0.4% to over 2%. Many hold about 10% of these funds as the cash equivalent in their portfolio design. Currently about \$70 billion is invested in this class of fund. We add that some m/m funds are sold on a DSC basis; some with such misleading names you can't be sure they are m/m funds, some with high minimum initial investments and some that actually held toxic non-bank Asset Backed Commercial Paper. Take the time, read the prospectus-it's your money.

Why pay more for Manulife-brand Mawer funds?

That's the good question raised by Morningstar's Rudy Luukko in a June 28 Toronto Star article. Calgary-based Mawer, a low-fee/no-load manager of top performing funds, has aligned itself with Manulife Financial to give "advisers" the more lucrative and more opaque commission structures most of them apparently crave. Starting sometime in July, the Manulife mutual funds family will add 5 new funds managed by Mawer. Offered under the "Manulife Mawer" brand name, they'll join two Manulife funds already managed by Mawer. The difference will be fees. For example the 1.46% MER Mawer World Investment Class fund will be magically transformed into the Manulife-Mawer World Investment Class with an MER of 2.75%. Luukko warns us to expect similar price differences with the new Manulife-sponsored funds.[what's even worse with the sales/marketing push of ManuLife, the size of the Mawer funds will likely increase and performance drop dramatically]

We quote Luukko "...The upcoming Manulife Mawer funds have been touted in Manulife's news release and in full-page ads in several major newspapers including the *Star*, as an "exclusive" arrangement. The distinct impression left was that if you deal with a financial adviser and want to buy into Mawer's expertise, you'll have to go through Manulife. This is not true. Both Mawer and Manulife acknowledge Mawer's no-load class A funds will remain available for sale through full-service advisers. Nor will Manulife monopolize Mawer's skills among load-fund firms. Mawer currently manages international equities for the Counsel Group of funds, and a Canadian small and midcap fund for the Guardian Group. The exclusivity agreement prevents Mawer from managing any new funds for Manulife's competitors and Mawer has agreed to halt sales of its class F funds for fee-based full-service accounts once the Manulife Mawer funds are launched..." What's happening here is the independents like privately owned Mawer are slowly capitulating—expect Canadian expense ratios to remain among the highest in the world. <http://www.thestar.com/article/450880>, <http://www.morningstar.ca/globalhome/Industry/News.asp?Articleid=ArticleID612200814321> and <http://www.newswire.ca/en/releases/archive/June2008/11/c2670.html> Also, keep your eye on PH&N, recently acquired by RBC Funds.

What does one eat at a lunch that cost \$2.11 million dollars US? Well, I hope some thing nice. (smile). Of course, it is not what you eat but who you have the lunch with, and [Warren Buffett](#) is certainly a man of wisdom that the winning bidder (a Chinese fund manager) this year was willing to [pay \\$2.11 million just to have a chance to dine with Warren](#).

Good read: *Managing taxes in iShares ETF's*

http://ca.ishares.com/publish/content/related_documents/downloads/brochure/080_CDN_ManagingTaxes_EN.pdf

Email from a reader: “ Can you explain to me why ETF's are more tax-efficient than mutual funds? -Jean in La Belle Province”

Response: The main reasons ETFs typically produce substantially lower capital gains distributions than open-end actively-managed mutual funds are:

1. When investors want to liquidate shares in an ETF, they sell them to other investors on a stock exchange, which has no impact on the net asset value (“NAV”) of the ETF or its existing shareholders. Conversely, redemptions of open-end mutual fund shares are made through the mutual fund itself and may force a sale of portfolio securities to cover the redemption. If gains are realized on the sale, the transaction creates a taxable event for all remaining mutual fund shareholders, generally resulting in capital gains to be distributed at year-end. ETFs employ an innovative subscription and redemption process, that allows them to avoid realizing capital gains on portfolio securities in most cases.

2. Portfolio turnover in ETFs is typically lower than in open-end mutual fund because ETFs don't generally need to sell securities to cover redemptions and since investing is passive, there is little portfolio turnover. With actively-managed funds the manager generally buys and sells holdings in an effort to generate favorable returns for shareholders. If there are gains realized because of this turnover, shareholders will receive capital gains distributions at year end which represent a taxable event. Securities within an ETF are typically only traded to reflect changes in the underlying index.

3. An ETF is structured so that it should pay little or no taxable gains. Rather, gains accrue to the net asset value of the ETF and the investor benefits from a potentially higher share price for the ETF.

4. Like stocks, capital gains and taxes on ETFs are generally recognized only upon the sale of the security and they apply only to the difference between the investor's personal cost basis and the amount realized from the sale of the security

Pape's response to reader illuminating-return vs. yield

“Q - We have been approached to buy Trimark Diversified Income Class T-8, Code AIM 311 which now trades around \$3.75 and has a monthly fixed income of 3c per unit. This fund, even with approximate 10 per cent annual return, only has a two star rating on the GlobeinvestorGold site. Also, in a recent column you referred to the Trimark downward spiral. Would AIM 311 be included in this? Any further information will really be appreciated. – Donald B.

A – To begin with, the fund does not have a 10 per cent annual return. It has a projected cash flow return of about 10 per cent, which is completely different. In fact, in calendar 2007 the fund's total return was -2.1 percent. In the first quarter of 2008, it lost an

additional 3.3 per cent. Over the past decade, the fund's performance has consistently been below the average for its category. That helps to explain the low rating on the GlobeinvestorGold site.

It's essential to understand the difference between total return and cash flow return. If a fund pays out more money than it earns, the net asset value of its units will steadily decline. Effectively, this means that investors are getting their own money back and paying a fee for the privilege. In the case of this particular fund, the NAV dropped from \$4.72 a unit on April 13, 2007 to \$3.64 a unit on April 15, 2008 – a decline of \$1.08. During that period, investors received cash distributions that totaled \$0.69 a unit. The net result was a loss of \$0.39 a unit. To add insult to injury, the distributions are taxable if they were received outside a registered plan. In this case, people would have been better off keeping the money under the mattress. To sum up, I do not recommend this fund. Moreover, you may want to have a long, hard talk with the person who advised you to buy it.” Source: <http://www.fundlibrary.com/features/columns/page.asp?id=12340> [Gordon Pape is a noted mutual fund analyst and commentator, fundlibrary.com is a leading website for mutual fund data, information and articles]

OBSI Case Study- on Mitigation and minimizing losses

“A Canadian couple living in the UK had RRSPs with a Canadian investment firm. While visiting Canada, they met their advisor to discuss their accounts. They were upset because the advisor had kept their money in cash for almost a year and were also upset because for two months the money had only earned .25% interest. The advisor explained that he was waiting for the right time to invest and that the money had not been invested in a higher interest account because of an administrative error. He discussed some potential stock picks. The couple was still dissatisfied and decided to transfer to another investment firm, but did not tell their advisor. That same day, their advisor purchased several stocks in the couple's RRSPs. The accounts were transferred to their new firm about two weeks later. When the couple returned to the U.K. and checked their mail they saw the stock purchases. They immediately contacted the firm to complain that they did not consent to the stock purchases and about the low interest rate on their savings.

The firm acknowledged the delay in investing into a higher interest account and offered \$1,500 in compensation. However, it said that their advisor had discussed the stocks and assumed that the couple wished to start building their investment portfolios. The firm also said the trades could not be reversed as the accounts had been already transferred out. The clients brought their complaint to OBSI. OBSI agreed that there was an unreasonable delay in investing into a high interest account and calculated lost interest of \$1,275. We also concluded that the trades were not authorized because the advisor had not discussed the specific date, timing and price of the stock purchases before buying them. The clients acted appropriately in immediately informing the firm of the unauthorized transactions, but there was no way for the firm to reverse the purchases. We then turned to the subject of whether the clients had experienced losses because of the stock purchases.

Our general view is that clients must act promptly to limit losses when they realize that there is a problem. In this case, we thought it was reasonable to give the couple a month to determine what to do with the stocks, and any loss or gain after that date was their responsibility. In fact, when the couple received their final response from the firm they could have sold the stocks for a \$17,000 profit. However, when OBSI received the complaint the stocks were worth less than the purchase price. Had they sold within a month their total loss, including commissions, would have been \$200. When \$200 is added to the lost interest we calculated they were owed, the result is close to the firm's original offer of \$1,500. The couple did not feel that it was fair to receive only \$200 in compensation for the stocks purchases when the advisor earned \$1,600 in commissions on the unauthorized trades. We explained that OBSI's role is to recommend compensation for losses, but we do not assess punitive damages. We discussed the situation with the firm and it agreed to pay the clients \$2,000 to resolve the matter." Source: June, 2008 Issue of OBSI's CONTACT Newsletter www.obsi.ca

Interesting Paper: *Portfolio manager ownership and fund performance*, Aug., 2006
Henri Servaes, L. Wedge and A. Khorana

This paper documents the level of portfolio manager ownership in the funds they manage and examines whether higher ownership is associated with improved future performance. Almost half of all managers have ownership stakes in their funds, though the absolute investment is modest. Future risk-adjusted performance is positively related to managerial ownership, with performance improving by about three basis points for each basis point of managerial ownership. These findings persist after controlling for various measures of fund board effectiveness. Fund manager ownership is higher in funds with better past performance, lower front-end loads, smaller size, funds affiliated with smaller families, and where the manager has been in charge for a longer period of time. It is also higher in funds with higher board member compensation and in equity funds relative to bond funds. Future performance is positively related to the component of ownership that can be predicted by other variables, as well as the unpredictable component. The findings support the notion that managerial ownership has desirable incentive alignment attributes for mutual fund investors, and indicate that the disclosure of this information is useful in making portfolio allocation decisions. Source: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=923537 [disclosure of fund ownership positions is not required by Canadian securities regulators]

Wanna see some B.C. rules that insurance salespersons there need to follow when selling you an insurance product like a Segregated fund?
<http://www.insurancecouncilofbc.com/Downloads/General/Code%20of%20Conduct.pdf>

Sign –up for e-Newsletter from InvestorEd.ca

Education is one way to protect yourself from commission- driven salespersons, fraudsters and lack of financial literacy. The OSC Investor Education Fund team publishes a quarterly e-Newsletter that may help close the information gap. It includes:

1. A summary of hot topics and links to pages site visitors are finding helpful.

2. A summary of recent and relevant personal finance topics.
3. Notification of new features, calculators, important notices and other goings on at the Investor Education Fund.

<http://www.investored.ca/Newsletter/Default.aspx> This site has an on-line mutual fund fee impact calculator, a glossary and a host of articles on a wide range of financial topics. Most are written in plain language.

"We didn't invent greed, us City boys, but we have certainly become its finest exponents," –Geraint Anderson (The City is a common nickname for London's financial district). He was ranked the top stock picker in the U.K. and Ireland for utilities by StarMine Corp. in 2005. Some clips from his recent book exposing City malpractices, *Cityboy: Beer and Loathing in the Square Mile*:

1. **Press the Flesh.** Take clients out for expensive meals, often. "My later success at this aspect of the job was aided by the fact that most of my competitors were deeply tedious individuals," Jones says.
2. **Publish or Perish.** Write research notes. "All you needed to do was spin a vaguely plausible yarn that was difficult to disprove, write it down, and the suckers would bite."
3. **Blow Your Own Trumpet.** Boast a lot. "It is a given in this business that if someone can steal your thunder and take credit for your achievement then they will do so."
4. **Cover Your Back.** Avoid taking a stand. "Bold statements like, 'These shares will go up because...!' make you a hostage to fortune. If you know what's good for you, bung in a few caveats."
5. **Ride on a Successful Analyst's Coattails.** And once everything has been learned from this person, "form your own team, stealing his clients and ideas."
6. **None of This Matters.** The job "is just the best legal means of making vast amounts of cash."

Needless to say, Mr. Anderson won't be working as an analyst anymore. Perhaps he'll become a mutual fund salesman, eh? You can purchase a copy for about **£8.99**
<http://www.amazon.co.uk/Cityboy-Beer-Loathing-Square-Mile/dp/0755346165>
 Alongside the main autobiographical story he muses and makes some very interesting points at times about the deterioration of society and the huge disparities that result from a relatively small number of people being paid vast sums of money to "push bits of paper around", as well as other musings. Bay Street anyone?

What's a money market mutual fund as defined by CIFSC?:

“Funds assigned to the Canadian Money Market Category must be designated as Money Market funds in accordance with National Instrument 81-102 and maintain a minimum weighting of 95% in Canadian dollar-denominated investments.”

http://www.cifsc.org/en/fund_list.php **NOTE:** The rules for money market segregated (insurance-based) funds, which are not governed by NI 81-102, are different, and allow for corporate debt instruments with a remaining term to maturity of 13 months and a remaining term to maturity of 25 months for government debt. Also, some money market segregated funds do not do distributions of income, so have NAVPU that fluctuate.

Joint Forum POS Framework proposals intact?

We hope that any changes to original proposals are not favourable to retail mutual fund and Seg fund investors. If industry lobbyists water down the proposals Canadians could be exposed to huge impairments to their earnings if suitable transparent disclosures are not made when they are being sold mutual funds. This opaqueness when coupled with a lack of after-tax return information and client statements that don't provide personal rates of return almost guarantees that unitholders will be kept in the dark. Retirement and savings nest eggs will suffer. No wonder our MER's are among the highest in the world. We hope the recommendations in our submission are accepted and regulators resist any attempt to water down the intent of the proposals. Stay tuned.

Email from a reader: My pet peeve? The use of misleading fund names, such as the National Bank Treasury Management Fund, a money market fund which many people (including myself) would misinterpret as a T-Bill Fund. -JL [This fund invests primarily in corporate debt securities and in debt securities issued by the Canadian federal, provincial and municipal governments.]

Back in time: “.. *Our holdings analysis identified a total of \$1.14 billion held in these ABCPs by money market funds managed by 13 firms. The biggest holders were subsidiaries of the country's No. 6 bank, National Bank of Canada, with \$873 million, followed by Legg Mason Canada Inc., whose institutional money market fund held \$100 million, and Fédération des Caisses Desjardins with \$70.3 million..*”. Source: <http://www.morningstar.ca/globalhome/Industry/News.asp?Articleid=ArticleID82420079371> August 24, 2007 [All the more reason for clear disclosure prior to purchase]

RBC Premium Money Market Fund and RBC Premium \$U.S. Money Market Fund – changes Re: accounts balances below fund minimums. The disclosure in the RBC Funds 2008 Simplified Prospectus has been amended to allow RBC Asset Management, without notice, to switch units of the RBC Premium Money Market Fund and the RBC Premium \$U.S. Money Market Fund to the same series of units of the RBC Canadian Money Market Fund and the RBC \$U.S. Money Market Fund respectively. Previously, when these account balances fell below the required minimum, units of these funds could only be redeemed, without notice, for cash. Source: http://canadianbusiness.com/markets/cnw/article.jsp?content=20080627_080503_5_cnw_cnw

From our files-Legg Mason bails out Canadian money market fund:

“Baltimore, Maryland – December 28, 2007 – Legg Mason, Inc. (NYSE:LM) announced that it has taken action to reduce the holdings of securities issued by certain asset backed commercial paper (“ABCP”) issuers held by 2 non-US stable net asset value liquidity

funds [i.e. money market funds] managed by a subsidiary. The company acted to enhance the liquidity of the 2 funds in light of current market conditions and the composition of their portfolios and to provide further support for one of the fund's portfolio ratings. Neither fund, nor their shareholders, incurred any loss in connection with the transactions... In the second non-US fund, Legg Mason has agreed to acquire for cash an aggregate of \$99 million in principal amount of conduit securities issued by Canadian ABCP issuers. These conduits are currently undergoing a restructuring process in Canada. Raymond A. "Chip" Mason the company's chairman, president and chief executive officer, commented, "This action is consistent with our ongoing efforts to reduce the ABCP exposure in our liquidity funds in light of current stresses in the credit markets..." http://www.leggmason.com/about/pdf/12_28_2007.pdf [so, it turns out that m/m funds aren't as safe as we all thought]

“Some investments do have higher expected returns than others. Which ones? Well, by and large they're the ones that will do the worst in bad times.”

-William F. Sharpe, Nobel Laureate in Economics, 1990, Stanford Professor of Economics, as quoted in Money Magazine's July, 2007 issue

Seniors the focus of proposed legislation in U.S.

Legislation that would increase penalties for people who commit securities violations against seniors was introduced in the Senate June 27, 2008. Many seniors are discovering that their life savings may not be enough to last them throughout their retirement. As they turn to investments to bridge the gap, seniors need to know that they can trust the people who handle their money. The bill, titled the *Senior Investor Protections Enhancement Act*, would increase penalties for those who take advantage of investors 62 and older. Additional fines of up to \$50,000 would be levied for violations, which could include selling unsuitable products to seniors or failing to disclose fees or lock-up periods for investments. Americans 65 and older hold about \$15 trillion in assets and seniors increasingly are offered complicated investments such as annuities and reverse mortgages. While these products can be very valuable to Americans generally and seniors specifically, they can also be abused by unscrupulous actors. Seniors account for more than half of all investor complaints received by securities regulators, according to U.S. statistics. <http://aging.senate.gov/record.cfm?id=299997>

Revised statement of OSC priorities

Some highlights:

- Publish final amendments to National Instrument 81-106 *Investment Fund Continuous Disclosure* to provide guidance on fair-value principles;
- Continue to articulate and promote a coherent statement of compliance and enforcement priorities;
- Play a leading role with the CSA to review issues and develop a response to the ABCP/credit issues falling within the jurisdiction of securities regulators.
- Expand our specialized multi-disciplinary unit dedicated to investigating fraudulent securities transactions such as illegal distributions and unregistered trading in securities in order to increase the effectiveness of the protection

- provided to investors against frauds and scams by increasing the number of investigations and early interventions. Give specific priority to illegal distributions and other scams which target seniors;
- Work with the Joint Forum of Financial Market Regulators to publish a final framework for point-of-sale disclosure that would require clear, concise and plain-language product and sales fee disclosure for investors in mutual funds and segregated funds;
 - Continue to work with the Joint Forum of Financial Market Regulators to enhance the effectiveness of the Financial Services OmbudsNetwork to improve resolution of customer complaints;
 - Monitor compliance issues with the new investment funds long form prospectus 41-101 *General Prospectus Requirements*, adjust prospectus review procedures, and compile issues for possible one-year amendments;
 - Establish a standing committee with the SROs and OBSI to discuss and coordinate work on investor initiatives and engage retail investors in the regulatory process;
 - Work with the CSA Investor Education Committee to produce brochures, web materials and other information for investors that are consistent, accurate and timely

NOTE the lack of **action** verbs, definitive milestones, clear deliverables and measurement metrics There was no specific action plan to protect seniors, retirees and pensioners. At the end of the day, we expect NIL results but deep down hope we're wrong.

http://www.osc.gov.on.ca/Regulation/Rulemaking/Current/Part1/sn_20080627_11-753_sop-20090331.jsp

“ The industry does not want people to know how they're doing. If they did, clients would probably object to the fees they're paying. Think of it this way. Suppose you were going to Weight Watchers but there were no scales and you were never weighed, so you would never know how you were doing. How long would you keep paying money for service like that?” - Warren MacKenzie, founder of Second Opinion Investor Services and author of *The Unbiased Advisor* (Harper Collins Canada). Source: G.Pape <http://www.fundlibrary.com/features/columns/page.asp?id=12342>, *Telling it like it is*, June 30,2008 [ah, if only our advisers would tell us our actual returns, think of the questions we might ask]

Yet another fund scandal- Triglobal Capital Management

Triglobal, an MFDA member, was regarded as a leading Quebec-based financial solutions provider. Triglobal provided its clients with access to a broad range of financial products, access to over 5000 mutual funds, and the top fund companies and money managers in the country. Now, it appears \$86 million is missing .The scandal broke in December, 2007 when a quasi-judicial tribunal froze Triglobal's assets and those of several associated companies at the request of the Autorité des marchés financiers, Quebec's securities regulator. The Bureau de décision et de révision en valeurs mobilières

also imposed a securities trading ban on the companies as well as asset freezes and trading bans on several individuals. The AMF alleges illegal investments may have been made in Focus Management (a hedge fund) and Ivest Funds (mutual funds) - companies with head offices in the Cayman Islands and the Bahamas, respectively. Jean Robillard, the government-appointed administrator who took over Triglobal in Dec. 2007, has been unable to interview Themis Papadopolous, Triglobal's president, or his business partner, Mario Bright. Robillard wants to question them about offshore investments in which clients stand to lose tens of millions of dollars. The pair are rumoured to have left the country. You can read the provisional Administrator's Information Document at http://www.raymondchabot.com/apps_faillite/DossiersApp/Fichiers/2008-05-21%20Document%20d'information%20-%20version%20anglaise.pdf -it's a difficult read with a myriad of companies involved to execute the scam. Quebec has their own fraud protection fund [not MFDA IPC}; we're not sure if any restitution claims have been made or are even eligible.

Guide to Socially responsible investing available at
http://www.investmentexecutive.com/upload/news/fichier/Making_the_right_choices554074.pdf

OSC gives market timers more time for restitution payouts

The Ontario Securities Commission has reported that \$190.7 million, or 93%, of the \$205.6 million in settlement monies has been distributed by fund managers to mutual fund unit holders who were impacted by frequent trading market timing activities that occurred during the period of Jan., 1999 to Sept., 2003. In December, 2004 and March, 2005, the OSC negotiated settlement agreements with AGF, AIC Limited, CI, I.G. Investment Management, Ltd., and Franklin Templeton Investment Corp. At the time, the fund managers agreed to repay \$205.6 million to investors whose funds were adversely affected by these activities. The OSC has determined that it is in the public interest to allow them an additional 12 months so that they can distribute the remaining \$14.9 million to investors affected by the abusive frequent trading /market timing activities. (Despite numerous requests, the OSC declined to identify the specific funds infected). Wonder why it takes more than 3 years. Any amounts that remain unclaimed after June 1, 2009 will be distributed to the mutual funds (presumably with interest) to the benefit of all investors in those funds.

http://www.osc.gov.on.ca/Media/NewsReleases/2008/nr_20080702_osc-fund-managers.jsp

Unintended consequence of registration reform project

Joanne De Laurentiis, CEO of fund industry lobbyist IFIC has pointed out an important deficiency in the registration reform project proposals. She believes the replacement of the Limited Market Dealers (LMD) by the Exempt Market Dealers (EMD) could legitimize EMD's as distributors of mutual funds in the eyes of both mutual fund companies and investors. The proposed regulation National Instrument 31-103 would not require exempt market dealers (EMD) to be members of a self-regulatory organization and thus be subject to its regulations. Currently, a retail investor buying a mutual fund through a member of the Investment Industry Regulatory Organization of Canada (formerly the IDA) or the MFDA receives, at least in principle, the benefit of SRO business conduct rules that apply to the dealer, is covered by a \$1M indemnity fund in the event of dealer insolvency and has access to the ombudsman services of OBSI.

Under the reform proposal, an EMD would be able to sell mutual funds and other securities to "accredited investors," a class of investors meeting certain high income or net-worth criteria. Joanne asserts that these investors would not receive the same protections as are available to them through an SRO dealer. Fewer rules of course means competitive cost advantages for these dealers. Thus, an unintended consequence of this policy change, according to De Laurentiis, might be rapid growth of the EMDs for the distribution of investment funds and other products, as these structures are chosen in preference to IIROC or MFDA platforms. This could result in reduced sales for SRO members, and as Joanne points out, an erosion of the SRO framework and the investor protections it hopefully provides. In reality, however, we expect that high net worth investors have their own financial planners and are not big investors in high-fee mutual funds anyway. That being said, they are still investors and deserve robust investor protection by provincial Securities Commissions or acceptable SRO's and independent complaint resolution services. Source:

[http://www.investmentexecutive.com/client/en/News/DetailNews.asp?](http://www.investmentexecutive.com/client/en/News/DetailNews.asp?Id=45178&cat=22&IdSection=22&PageMem=&nbNews=&IdPub=)

[Id=45178&cat=22&IdSection=22&PageMem=&nbNews=&IdPub=](http://www.investmentexecutive.com/client/en/News/DetailNews.asp?Id=45178&cat=22&IdSection=22&PageMem=&nbNews=&IdPub=) NOTE that high net worth persons could include unsophisticated investors, new immigrants, seniors and the infirm/handicapped.

SEC takes a position on some structured products

“The U.S. Securities and Exchange Commission is seeking to define certain equity-linked financial products as securities in order to protect investors. The SEC has published for public comment a proposed new rule that aims to protect investors from fraudulent and abusive practices in the sale of equity-indexed annuities. The commission voted unanimously to issue a proposed rule for public comment that would establish the standards for determining when these products may be considered securities, and therefore subject to the investor protections afforded by the securities laws. [SEC proposal available at <http://www.sec.gov/rules/proposed/2008/33-8933.pdf>]

The move stands in contrast to Canadian authorities handling of certain equity-linked products that have raised investor protection concerns north of the border - such as Principal-Protected Notes, which continue to be considered banking products. In Canada, securities regulators will not be wading into an area where they have expressed suitability concerns. Instead, on July 1, a new disclosure regime for PPNs took effect, under the oversight of federal banking regulator, the Financial Consumer Agency of Canada. The SEC notes that it has similar concerns with equity indexed annuities, namely that they are often sold to seniors, for whom they may be unsuitable investments due to charges that may lock up investors’ money for many years.” Source: J. Langton , *SEC moves to protect investors from abusive practices in sale of equity indexed annuities*, Investment Executive, July 2, 2008

<http://www.investmentexecutive.com/client/en/News/DetailNews.asp?Id=45153&cat=8&IdSection=8&PageMem=&nbNews=&IdPub=> and

<http://www.sec.gov/news/press/2008/2008-123.htm> [in our opinion the FCAC is not equipped, resourced or empowered by law to provide the requisite actions to adequately protect investors from unsuitable PPN investments]

This June 26, 2008 RCMP News Release <http://bc.rcmp.ca/ViewPage.action?contentId=5311&siteNodeId=38&languageId=1> is unfair to victims. The statement *“IMET began investigating Mr. THOW in the summer of 2005 based on a complaint received from Berkshire Investment Group (Berkshire).”* **Here’s why:** Abused clients raised red flags with Berkshire, the RCMP and the MFDA months before Berkshire even accepted there was a problem with their Victoria branch manager. According to media reports, they also refused to acknowledge that they were accountable for Thow even if there was a problem. Between November 1998 and June 2005, Thow was registered in British Columbia as a mutual fund salesperson, branch manager and officer with Berkshire. The man lived a lifestyle so lavish and public even the blind should have been alerted.

Berkshire was sanctioned by the MFDA on Dec. 13, 2007 .The Hearing Panel approved a Settlement Agreement entered into between the MFDA and Berkshire. Under the terms of the settlement, the Hearing Panel imposed a fine in the amount of \$500,000 on Berkshire and required Berkshire to pay \$50,000 in respect of the MFDA’s costs of its investigation and the hearing. [The Settlement Agreement concerned Berkshire’s failure to conduct reasonable supervisory investigations between September 16, 2004 and June 1, 2005](#) in response to reports it had received from two individuals concerning the activities of one of its mutual fund salespersons. Berkshire further acknowledged that, had it taken

those measures, it is more likely that Thow's activities would have been discovered and brought to an end. Instead, Thow was able to continue to persuade individuals to provide him with an additional \$6.3 million, almost \$4.5 million of which was received from clients of Berkshire. Ref http://www.mfda.ca/news/releases07/Release_SA-Berkshire.pdf Let's give the assertive victims credit for their diligence. Berkshire should get a black eye not an RCMP/IMET recognition. **NOTE THE TIMELINES!** We add parenthetically that the name Berkshire is no more; The new owner, Manulife, has given the firm a well-needed name change (Manulife Securities Investment Services Inc.) and likely a lot more.

Disturbing read: “ Ruined by 401(k) Predators ” This 6-page story in the July 14 edition of Business Week tells the sad tale of how retirees nest eggs can be attractive targets for unscrupulous advisers who take in hefty fees with promises of hefty returns. A number of suits have arisen alleging brokers targeted “unsophisticated” employees , often attracting prospects with “ free advice” sessions held on company premises. Sample quotes”

- An adviser trying to repair portfolios assaulted by abusive advisers says he can offer little solace now: "Once I looked at the devastation, I said 'I can't help you. But a resume writer can, because you're going back to work.'"
- “Employees who fall prey to rogue advisers at on-site seminars that appear to have the Company’s seal of approval –even if they don’t”
- When a Company announces a Buyout, “It’s like shooting off fireworks to brokers”

http://www.businessweek.com/magazine/content/08_28/b4092000132397.htm [The *401(k)* plan is a type of employer-sponsored [defined contribution retirement plan](#) under section 401(k) of the [Internal Revenue Code \(26 U.S.C. § 401\(k\)\)](#) in the U.S. and some other countries (similar plans exist in Canada , often replacing more reliable defined benefit plans where employees would receive a fixed monthly sum from a pension plan managed by professionals) . A 401(k) plan allows a worker to save for retirement while deferring income taxes on the saved money and earnings until withdrawal. The employee elects to have a portion of his or her wage paid directly, or "deferred," into his or her 401(k) account. In *participant-directed* plans (the most common option), the employee can select from a number of investment options, usually an assortment of [mutual funds](#) that emphasize stocks, bonds, money market investments, or some mix of the above.

Want to learn about ETF's? Read *The New Investment Frontier III: A Guide to Exchange Traded Funds for Canadians* Third Edition by [Howard J. Atkinson_CFA](#). Insomniac Press. Oct., 2005, 312 pgs. Exchange traded funds (ETFs) are low cost, tax-efficient funds that trade on a stock exchange that are designed to track a market index. Their popularity has exploded in recent years as investors realized the high cost of actively-managed mutual funds. Canada was home to the first successful ETF in the world. You can preview this well written easy to read book at http://books.google.ca/books?id=KyQ3DOdwR1IC&pg=PA10&lpg=PA10&dq=etfs+howard+atkinson&source=web&ots=4dh4wZQkLM&sig=4E2uctztH7rfc3331_JMHKZJgs8&hl=en&sa=X&oi=book_result&resnum=7&ct=result#PPP1,M1 NOTE: Brokerage charges apply when buying an ETF, very low if purchased through a discount broker.

Hey, how come IROC isn't posting all submissions on their complaint system proposals on their website? We can think of a few reasons, can you?

Correction: Last issue we reported that IROC had not posted public submissions to their website on complaint system proposals. This was an error-our researcher just couldn't find it. We apologize for the error.

Useful website: Along with a small group of other independent financial advisors, Warren MacKenzie sponsors a website at www.showmethere.com that promotes more transparency in financial reporting and encourages visitors to sign a petition that urges the Ontario Securities Commission to act on the issue. The site also contains a basic rate of return calculator that investors can use to get an idea of how their portfolios are doing. New controversial MFDA rule proposals would encapsulate the fund industry practice of not mandatorily providing investors with personal rates of return. In outlining the issues, the MFDA document states that some members of the MFDA do not provide clients with adequate reports and that it has noted inconsistencies and potentially misleading information in performance reports provided to clients.

“Wrap accounts free up advisors from having to concern themselves with asset allocation, oversight and monitoring the mix of client portfolios. What advisors do best is manage the client relationship and build their businesses.”-Brian Moore, Senior VP, Marketing, C.I. Mutual Funds

[Isn't that great? Isn't it wonderful to know that your mutual advisor's best talent is to build his/her business? As for building relationships, hey, I've got an uncle who has been building relationships down at the Legion Hall for years. 'Course, he earns free beers, not commissions from (usually) lousy-performing high-cost wrap accounts.] - contributed by John L. Reynolds, author of *The Naked Investor*

Conference on financial literacy

On Sept. 9 and 10, 2008 at Centre Mont-Royal in Montréal, the private, public and non-profit sectors will join together in a national conference to look at Canadian and international experiences in measuring, delivering and evaluating financial literacy

programs, products and services. Called *Reaching Higher: Canadian Conference on Financial Literacy*, the conference is hosted by the Financial Consumers Agency of Canada, the Joint Forum on Financial Market Regulators and Social and Enterprise Development Innovations, a leading non-profit agency. Presentations and panels feature well-known experts from across Canada and around the world, including Canada's Minister of Finance, the Hon. Jim Flaherty, Québec's Minister of Finance, the Hon. Monique Jérôme-Forget, and keynote speaker John Hope Bryant, Chairman, Operation HOPE and Vice Chairman, U.S. President's Advisory Council on Financial Literacy. This is a great opportunity to learn about, and advance the cause of, financial literacy in Canada – a priority that we all share. For more information on the conference, including registration details, [click here](#)

“.. The American system [of enforcement] is much different. As a matter of legal culture we don't put people in jail like they do. Our aim as a Commission is not to punish. We ensure they can't do it again by taking them out of the market.” –Sasha Angus, Director of Enforcement at BCSC. Source: T. Williams, *A slap on the wrist?*, IE Aug., 2006 pg 1 [This effectively says if a person involved in financial assault is caught, he/she is not held to account by BCSC. He's banished from an industry or position and that's supposed to be justice.]

SEC report finds conflict at credit rating agencies: it “Email No. 1: Analytical Staff to Analytical Staff (Apr. 5, 2007, 3:56 PM). In another email, an analytical manager in the same rating agency's CDO group wrote to a senior analytical manager that the rating agencies continue to create an “even bigger monster – the CDO market. Let's hope we are all wealthy and retired by the time this house of cards falters.;).” In another e-mail cited in the report, an analyst at one unnamed agency expressed concern that its model for determining ratings didn't capture "half" of a transaction's risk, but added that "it could be structured by cows and we would rate.". [According to the SEC, the three main credit-rating agencies failed to rein in conflicts- of- interest in giving high ratings to risky securities backed by subprime mortgages that later collapsed]. News Release <http://www.sec.gov/news/press/2008/2008-135.htm> Summary report at <http://www.sec.gov/news/studies/2008/craexamination070808.pdf> (39 pages) No doubt the CSA is working the Canadian non-bank ABCP fiasco (well, maybe).

“A stock market collapse is as inevitable as a January blizzard in Montreal”
-Ben Yevzeroff, private investor

Got an issue with a firm, the financial services industry, regulators or Government policy? Is the organization ignoring you? Start a petition at <http://www.ipetitions.com/> Online petitions are free and easy to set up:

- **Custom design petitions, customize your question list**
- **Filter duplicate signatures, access real-time data**
- **Flexible activism tools**
- **Easy to use**

The site even includes a Guide to successful petitions. Some ideas for petitions might include unduly high fund fees, non-availability of personalized rate of return information or inaccessibility to low-cost U.S. mutual funds. Online petitions can be very powerful tools -- far more powerful than a regular paper petition. An online petition allows average users to collect thousands of signatures for their petition. Petitions can be hosted by average people --some have collected more than 100,000 signatures. To make your petition a success, you don't need a huge budget. ***An online petition can really change the world.***

ICI release Fund proxy voting study

Since 2004, the Securities and Exchange Commission has required funds to disclose annually how they voted the proxy ballots for all companies in which they're invested. The idea behind this is simple: Funds represent their shareholders, so those owners should know how management votes. Mutual funds and other registered investment companies are supposed to follow clear policies designed to avoid conflicts of interest and to advance the interests of fund shareholders when casting their votes on proxy issues at companies in their portfolios. A new 24 page study by the Investment Company, [*Proxy Voting by Registered Investment Companies: Promoting the Interests of Fund Shareholders*](#), [<http://www.ici.org/pdf/per14-01.pdf>] examines more than 3.5 million proxy votes cast by funds in 160 of the largest fund families during the 12 months ending June 30, 2007. The study is the largest known examination of proxy votes cast by funds. Read also Chuck Jaffe's insightful commentary on the study <http://news.bostonherald.com/business/general/view.bg?articleid=1106743&format=&page=2&listingType=biz#articleFull>

IFIC seminar to explain how new telemarketing rules will affect advisor sales practices

On Wed., July 23, The Investment Funds Institute of Canada (IFIC) will hold a 2-hour "Do Not Call List" seminar to bring advisors up to date on the new Unsolicited Telecommunications Rules and the National *Do Not Call List*, coming into effect in the Fall .New CRTC telemarketing legislation is coming into force at the end of September that could seriously impact the way financial advisors hunt for new investors and flog new services to existing investors. Fines can be as high as \$15,000 per infraction. IFIC says the seminar will help "advisers" determine whether the type of telemarketing they do is exempt from the National *Do Not Call List* Rules. Non-IFIC members can register. https://portal.ific.ca/Desktop/English/Home/Quick_Links/Events/HomePage.asp?SFID=78 Retail investors deserve a seminar of their own on protecting themselves against unsolicited fund salesman phone calls/emails.

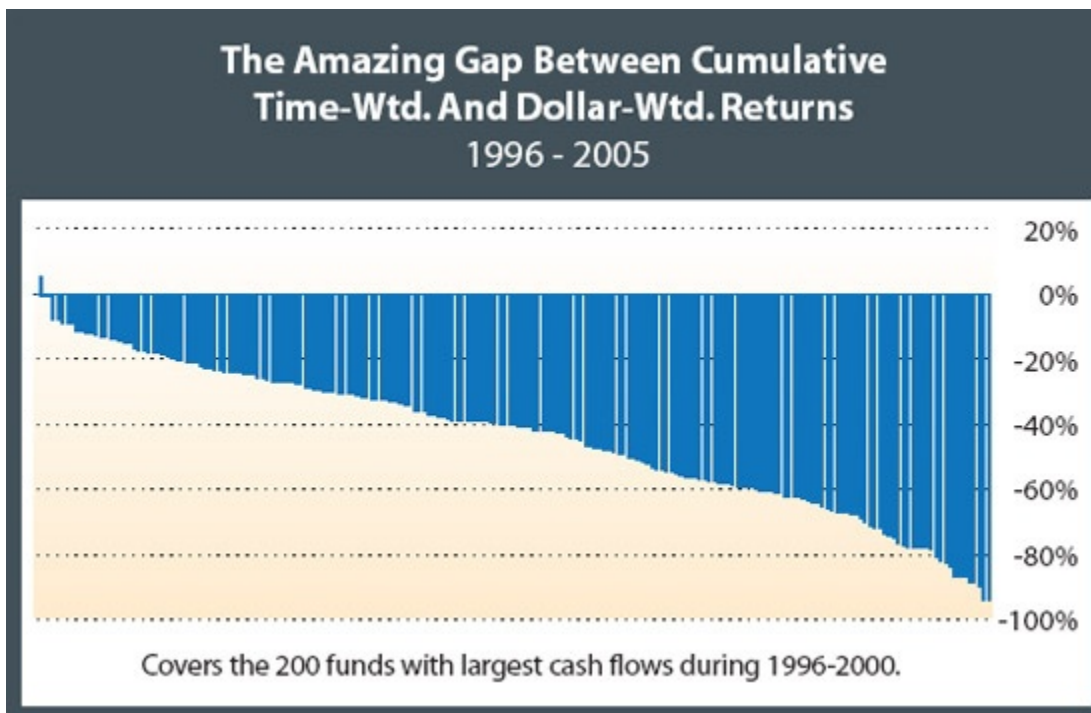
Will the real return please stand up?

We quote from a recent John Bogle article:

"..For example, the 200 funds [in the U.S.] with the largest cash inflows during the five-year period 1996–2000—essentially the duration of the late, great bull market—reported an

average return of 8.9 percent for the 10 years from 1996 to 2005. But the **dollar-weighted return** of those 200 funds—the return actually earned by their shareholders—was just 2.4 percent, *only 25 percent of the annual returns reported by the funds themselves.*

The consistency of this pattern is remarkable. Among those 200 funds, the shareholders of 198 funds actually earned less money than the funds reported. In only two cases did the shareholders do better. In the best case, by just 0.5 percent per year; in the other case, by a minuscule 0.05 percent per year. When we compound these shortfalls, the results are little short of astounding (Figure below). For fully 76 of the 200 funds, the cumulative shortfall ranged from minus 50 percent to minus 95 percent!...”



Source: May/June 2008 Bogle's Corner

[http://www.indexuniverse.com/component/content/article/4040.html?](http://www.indexuniverse.com/component/content/article/4040.html?magazineID=2&issue=131&Itemid=11)

[magazineID=2&issue=131&Itemid=11](http://www.indexuniverse.com/component/content/article/4040.html?magazineID=2&issue=131&Itemid=11) [that's why he argues that time-weighted returns should be mandated by regulators]

Investor protection takes another hit-what else is new?

On July 15th, an Ontario court ruled that the Investment Industry Regulatory Organization of Canada (formerly the IDA) overseeing the brokerage industry has no authority over former members, delivering yet another blow to the financial services industry self-regulator's ability to discipline brokers who have left their jobs. The offending passage in Ontario's Securities Act is a small, four-line paragraph known as Section 21.1 (3)-it recognizes the rights of self-regulating organizations such as IIROC to "regulate the operations and the standards of practice and business conduct of its members." This issue presumably also affects the MFDA, the SRO for the fund industry and may apply in other

provinces as well (Saskatchewan and Alberta eliminated the loophole for former brokers in recent years by amending their securities acts. In Alberta, the Act says "any former member" can be regulated by a self-regulatory organization. In Saskatchewan, regulators have up to 2 years to launch proceedings against former members). Other professions, like the engineers, have clear supporting legislation-the PEO can go after former members via the Engineers Act (Ontario).

"The irony of the majority's conclusion is that it frustrates the purpose of the legislation [Ontario Securities Act]. Allowing a member to resign and therefore escape sanction for improper acts committed ... can hardly be said to protect investors and foster confidence in capital markets." - Mr. Justice James Carnwath, in a dissenting opinion, disagreed with the other two members of the Ontario Divisional Court panel. No doubt the OSC will appeal. Investor advocates have known for years that the SRO has been unable to collect fines and other penalties from brokers leaving the industry. We're trying to find out what controls, if any, are in place to prevent such individuals from becoming fund salesmen/women or insurance reps.

Our investor communications review continues

Over the past year we've been examining disclosure documents from fund companies. As a general commentary we'd say they are opaque, important information is missing and use far too much jargon. Our latest review, the Management Report of Fund Performance for the Norrep Class II, a 3.51% MER small cap fund continued the undesirable trend. The fund suffered an 11.7% loss during the period (the benchmark index was down 16.2%). The Management Report on Fund Performance underwhelmed us with its explanation. We wrote the firm with some of our observations. We asked why the closing NAV was not identically equal to the opening NAV of the period immediately following. We asked why the turnover ratio for one series of the fund was twice that of another. We asked why return charts did not include benchmarks. and we sought an answer to the question "Why was \$2.7 million set up as a performance bonus since the fund is underwater? "

The Firm responded quickly, graciously and with conviction. They've committed to improve the discussion and analysis and provided a credible explanation as to why the fund didn't perform well. The firm explained that an accounting rule change led to the NAV anomaly. The turnover statistic was clearly an error. In response to the bonus question –it's apparent that incentives are not perfectly aligned with those of unitholders. According to the prospectus (pg12), they're entitled to a 20% performance fee as long as they beat the index subject to the condition that the Manager will not be paid the Performance Fee unless:

1. the cumulative return of the series is greater than zero since the last time the Performance Fee was paid to the Manager; and
2. the cumulative return for the series has outperformed the Applicable Market Index since the last time the Performance Fee was paid to the Manager.

Some may disagree with this type of compensation structure but it's clearly in the Prospectus. The fund's long-term record is respectable. Lesson learned: Read the

prospectus and query the MRFP. We add parenthetically that the OSC also has found investment fund disclosures deficient in general –see OSC Staff Notice 81-709
http://www.osc.gov.on.ca/Regulation/Rulemaking/Current/Part8/sn_20080530_81-709_rpt-cd-inv-funds.jsp

"I can resist everything except temptation"
- Small Cap Fund manager

Critic questions new Federal PPN Regulation

<http://canadagazette.gc.ca/partII/2008/20080611/html/sor180-e.html>

Ellen Bessner (a litigation partner at Gowling Lafleur Henderson LLP in Toronto) recently wrote an article in the National Post raising some very valuable points about the new PPN reg, which aims to improve point of sale disclosure. She points out that the reg applies to banks but that the really big movers of this product are advisors working at securities or mutual-fund dealers, which are not directly subject to these provisions. The disclosure list is extensive and as she notes “What a long list, and the worst of it is that this is to be provided to the client orally!”. She argues that the provisions are impractical since clients are usually not interested in a long list of facts associated with the product. She also questions how advisors, branch managers and firms are going to demonstrate that these rules were indeed adhered to. We raised other issues in our submission to the Feds, especially fee disclosure, but to no avail. Enforcement is left to the FCAC, an entity ill-equipped to deal with this complex and expensive product. [In March, 2007 IIROC (formerly the Investment Dealers Association of Canada) published a 74-page paper titled *Due Diligence Guidelines on PPNs* with a detailed explanation of the potential risks of PPNs and detailed suitability guidelines for selling to retail investors

[http://docs.iiroc.ca/DisplayDocument.aspx?](http://docs.iiroc.ca/DisplayDocument.aspx?DocumentID=C7E39CFDA3C842F5A2CA5B7AFC02995D&Language=en)

[DocumentID=C7E39CFDA3C842F5A2CA5B7AFC02995D&Language=en](http://docs.iiroc.ca/DisplayDocument.aspx?DocumentID=C7E39CFDA3C842F5A2CA5B7AFC02995D&Language=en).] Source: E.Bessner, *Bank Act tightens PPN rules*, National Post, July 15, 2008 (Ms. Bessner represents dealers and advisors in litigation and hence is understandably concerned about how a litigation defence would proceed, given the nature of the PPN provisions)

New Paper: The Worldwide Equity Premium: A Smaller Puzzle, [ELROY DIMSON](#)

London Business School, [PAUL MARSH](#), London Business School - Institute of Finance and Accounting and [MIKE STAUNTON](#) London Business School - Institute of Finance and Accounting

The equity risk premium is the difference between the return on risky stocks and the return on safe bonds or bills; it is central to corporate finance and investment, and it is often described as the most important number in finance. This excess return compensates investors for taking on the relatively higher risk of the equity market. Yet it is not clear how big the equity premium has been in the past or how large it is today. A recent paper presents new evidence on the historical risk premium for 17 countries (Canada included) over 103 years. The authors estimates are lower than frequently quoted historical averages such as the Ibbotson Associates Yearbook figures for the United States, and the earlier Barclays Capital and CSFB studies for the United Kingdom. In all 17 countries, dividend yields constitute most (90%, on average) of the equity returns and premiums.

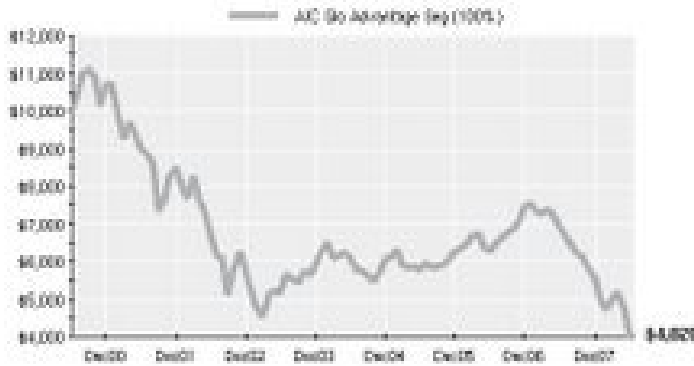
The differences arise from bias in previous index construction for the United Kingdom and, for both countries, from their use of a longer time frame (1900–2002) that incorporates the earlier part of the 20th century as well as the opening years of the new millennium. The global focus also results in rather lower risk premiums than hitherto assumed. Prior views have been heavily influenced by the experience of the United States, yet they find that the U.S. risk premium is somewhat higher than the average for the other 16 countries. This suggests that a plausible, forward-looking risk premium for the world’s major markets would be on the order of 3% on a geometric mean basis, while the corresponding arithmetic mean risk premium would be around 5%. These estimates are lower than the historical premiums quoted in most textbooks or cited in surveys of finance academics. They represent a best estimate of the equity risk premium for corporate capital budgeting and valuation applications. **Of course, the lower the risk premium, the greater the impact of mutfund MER’s on performance returns.** http://papers.ssrn.com/sol3/papers.cfm?abstract_id=891620 A great summary of the paper is at <http://www.cxoadvisory.com/blog/external/blog4-26-06/>

The 5.56% MER AIC Global Advantage Seg (100%) Fund

We’ll let the numbers and chart do the talking:

Returns as at June 30, 2008

	Fund	Group Avg	Index*
1 Month	-16.10%	-12.05%	-12.05%
3 Months	-19.51%	-11.80%	-11.84%
6 Months	-27.74%	-21.00%	-20.64%
1 Year	-42.27%	-31.38%	-31.48%
2 Year Avg	-20.21%	-11.77%	-11.35%
3 Year Avg	-11.54%	-3.41%	-3.05%
5 Year Avg	-5.01%	2.43%	2.79%
10 Year Avg	-	3.05%	-
15 Year Avg	-	-	-
20 Year Avg	-	-	-
Since Inception	-10.83%	-	-



Loss of \$10,000 Chart -how to turn \$10,000 into \$4,020 in less than 9 years . Seg fund owners will get their original investment back at maturity but will suffer a loss due to inflation over the period . NOTE: You may have paid taxes on any capital gains distributions in earlier years.

Assets of this 4th quartile load Seg fund are only about \$3.6 million The Seg version will probably need to continue until the maturity date if there's anyone still invested in it. The 2007 return of the underlying mutual fund was **-25.54%** or as AIC presents it (25.54%). For the first 6 mos. of calendar 2008, the 2.80 % MER mutfund has lost over a quarter of its value with a return of **-26.92%** [**the Seg did even worse because of the higher MER**]. Assets of the underlying mutfund have fallen from \$124 M in 2003 to \$74 M at the end of 2007. As at June 30, 2008 assets stood at just \$45.2M . At some point AIC may stop asking you to BUY.HOLD.PROSPER and shut it down.

"We are pleased -- we are free to regulate effectively in the public interest without concern that we are subject to legal action from individual investors"- Jeff Kehoe, IDA enforcement litigation director [on hearing a Supreme Court decision that dismissed the idea that the IDA owes any duty of care to individual investors] Source: <http://www.rgm.com/articles/idawins.html> Oct. 26, 2002 [What more can we say? his words speak for themselves]

InvestorEd puts out first Newsletter: Topics include a Guide for working with your adviser and a RESP calculator [check it out at <http://www.investored.ca/IefCalculators/Calculators/SavingforChildsEducation/default.aspx?aid=july2008newsletter>].

U.S. 401(k) Plan disclosure regime completed

On July 23rd the U.S. Department of Labor issued its final regulatory proposal governing 401(k) fee disclosures, a move that would affect 50 + million plan participants. Employees who participate in 401(k) plans assume responsibility for their retirement income by contributing part of their salary and, in many instances, by directing their own investments. Fees and expenses are one of the factors that affect investment returns and impact employee retirement income. Under the proposal (32 pages of text) <http://www.dol.gov/federalregister/PdfDisplay.aspx?DocId=20973>- the last of 3 made in the past two years to improve 401(k) disclosures - a participant's investments would be displayed on a chart showing total fees and expenses as well as benchmarks for how much typical investments cost. The information would be required for all types of investments used in 401(k) plans, whether they are mutual funds, bank or insurance products. The information would be sent to plan participants as part of their quarterly

plan statements. “What people want are simple, concise disclosures,” so they can make judgments about which investments to choose without having to wade through voluminous prospectuses, Bradford Campbell, assistant secretary for the Labor Department’s Employee Benefits Security Administration, said in a telephone press conference. Maybe those working on mutual fund POS disclosure could get some hints here.[Learn more about Bill HR 3185 at <http://edlabor.house.gov/issues/401kfees.shtml>]

"Sunshine is the greatest disinfectant"- U.S. Supreme Court Justice Louis Brandeis (Nov. 13 ,1865– Oct.5, 1941)

One more reason now not to own expensive Segregated funds

Effective July 7,2008 RRSPs, RRIFs and Deferred Profit Sharing Plans can no longer be seized by creditors in case of bankruptcy. This follows recent legislative amendments to the federal Bankruptcy and Insolvency Act (BIA) and the Companies' Creditors Arrangement Act (CCAA). These changes are facilitating the coming into force of the Wage Earner Protection Program Act (WEPPA). All types of registered investments are now subject to protection against the claims of creditors due to bankruptcy proceedings. Once the new legislation is in force, RRSPs will not form part of the bankrupt’s property that is available for payment to creditors, except for contributions made in the 12 months preceding bankruptcy. The “fraudulent conveyance” provisions in the federal Bankruptcy and Insolvency Act should deter people from squirrelling funds into their RRSPs before they declare bankruptcy. If there is provincial legislation that exempts RRSPs from execution, however, the provincial legislation will prevail.

Ensure your dealer has recorded your RRSP beneficiary designation and that your Will does the same.

A few provinces, Saskatchewan, PEI, NFLD and Manitoba already have laws in place to provide protection in their jurisdictions. In the past, financial advisors used to promote Segregated funds (an expensive insurance product) for retail investors, especially professionals, to provide creditor proofing. If creditor proofing was the primary reason for using Seg funds, your trusted advisor should be recommending a switch to lower fee alternatives. More information about the amendments to the Act is available on the Office of the Superintendent of Bankruptcy Canada website <http://strategis.ic.gc.ca/epic/site/bsf-osb.nsf/en/home> [According to Sunlife, the protection value issue seldom arises in cases involving RRSPs classed as insurance since the various provincial Insurance Acts clearly identify that the proceeds are payable directly to the beneficiary on the death of the insured free of any claims of the policyholder’s creditors. <http://www2.sunlife.ca/advisorsite/genericpage/0,14473,bGFuZy1lbmdsaXNoX3NpdGUtc2xmYWR2aXNvc19lbnYtbG12ZV9wem4tZ2VuZXJpY19zZWMTNTBfc3RhdC1fZWQtX25hdi03ODk4NTRVfbmF2LTc4OTg1NQ==,00.html>] For more info on WEPPA, visit <http://laws.justice.gc.ca/en/notice/index.html?redirect=%2Fen%2Fshowdoc%2Fcs%2FW-0.8%2F%2F20080704%2F>

What does “exclusive” mean to Manulife Mutual Funds?

According to the dictionary exclusive *ex-clu-sive* means : not admitting of something else: incompatible; mutually exclusive plans of action. shutting out all others from a part or share: an exclusive right to film the novel. or charging comparatively high prices; expensive: exclusive shops. Well, the glitzy full-page ads by Manulife Mutual Funds extolling their “exclusive” association with Mawer at least matches one definition. Seriously though, let’s be clear. Mawer will continue to sell their Class A units directly to investors and through both discount brokers and full-service brokers. Mawer will discontinue the sale of Class F units other than to existing Class F clients through their advisors. What about price differential? For example, the Manulife Mawer Canadian Bond fund will be weighed down with a 1.7% MER compared with the 0.93 % MER plain vanilla version direct from Mawer <http://www.mawer.com/>. This effectively eliminates the firm’s competitive advantage of low fees. With the higher MER you do get the “benefit” of an embedded- commission adviser. Manulife minimum investment thresholds are lower however. The “exclusivity” actually applies to their exclusive right to distribute via the commission-based advisor channel in Canada. Not too misleading if you read carefully, eh?

“We didn’t do it and we won’t do it again” -Mutual Fund Company CEO on the market timing scandal [we’ll keep this one anonymous but we heard it with our own ears]

“...In the past few years, the most popular type of fund has been balanced funds, which contain a mix of equities and fixed-income investments. Other than providing a reassuring feeling about having various bases covered, what have these funds done so far this year? Mostly, not much. Of Morningstar’s 11 indexes of balanced fund categories, all but two have had negative returns in the first half [of 2008]. The other two returned 0.5 per cent or less. Most balanced funds tend to stick fairly closely to their target asset mixes. So, when most equity and bond markets are struggling, don’t expect the typical balanced fund to do any better...” Source: R. Luukko , *Tracking a dismal mutual fund year*, Toronto Star , July 26 , 2008

IFRS: The International Financial Reporting Standards are coming to Canada whether we like them or not. They are principles-based and will depend more on management estimates than fixed rules. It’s expected that conversion will impact debt agreements, IT systems, executive compensation and overall financial statements .Public companies are required to disclose their transition plans in 2008 and the anticipated impact in 2009.By 2011 Canada will adopt IFRS. Investor advocates are concerned that these standards which are already in use in over 100 countries will confuse investors , especially those in REIT’s and resource stocks .Coupled with Canada’s abysmal enforcement record , we could be in for a toxic mix.

Is there a flaw in CIBC’s DNA?

There’s something wrong with this institution. On December 22, 2003, the SEC fined CIBC US\$ 80 million for its role in the manipulation of Enron financial statements. On

August 2, 2005 CIBC paid US\$ 2.4 billion to settle a class action lawsuit brought by a group of pension funds and investment managers, including the University of California, which claims that "systematic fraud by Enron and its officers led to the loss of billions and the collapse of the company. They made headlines in the U.S. mutual fund market timing scandal and were fined US \$125 million by the SEC for knowingly financing customers' late trading and market timing, as well as providing financing in amounts far greater than the law allows. On August 27, 2004 CIBC confirmed that it would settle a class-action lawsuit on behalf of CIBC VISA cardholders that alleged that the conversion of foreign-currency transactions resulted in an undisclosed or inadequately disclosed mark-up. On May 20, 2004 CIBC announced that it would refund \$24 million to some of its customers as a result of erroneous overdraft and mortgage charges which were discovered in the course of an internal review. We've advised them numerous times that their credit card statements are misleading, they shouldn't unilaterally increase card spending limits or share information derived from credit card operations with other affiliated units of the bank .

They sent FAX's containing confidential information about hundreds of its customers to a scrapyard operator in West Virginia for more than three years despite his valiant attempts to get them to stop. On April 18, 2005 the [Privacy Commissioner of Canada](#) expressed disappointment in the way CIBC dealt with incidents involving the bank misdirecting faxes containing customers' personal information. In June 2006, Global Crossing's trustee, filed a US \$ 2 billion lawsuit against the bank and dozens of related companies trying to recoup money for creditors who got burned when Global Crossing lurched into bankruptcy protection in 2002 - trustee alleges CIBC and others knew the fibre-optics company was in trouble when they sold billions of dollars worth of its stock. CIBC Talvest disclosed in Jan. 2007 that a computer hard drive being transported between Montreal and Toronto mysteriously went missing containing the client names, birthdates, addresses, bank account information, signatures and social insurance numbers of approximately 470,000 former and current customers of CIBC-managed Talvest Mutual Funds.

We're aware of a number of investor complaints that took an unnecessarily long time to resolve. In 2006, in a landmark case, Montreal Superior Court Judge Jean-Pierre Senècal awarded more than \$3 million, including \$1.5 million in punitive damages, to retirees Haroutioun and Alice Markarian, who had unwittingly guaranteed the trading losses of people they didn't know at the behest of their former CIBC Wood Gundy broker, Harry Migirdic. The brokerage invoked the guarantees to seize \$1.4 million from the Markarians in 2001, leaving \$2.54 in their accounts. Senècal called CIBC's conduct "reprehensible" and said it "cruelly failed" in its duty to protect its clients and supervise its employee. CIBC subsequently settled out of court with several other former clients of Migirdic, who was terminated in 2001. CIBC also gets dishonourable mentions in the 2007 OBSI Annual Report . In the 2003 annual report of the Ombudsman for Banking Services & Investments, the CIBC tied for first (with the Toronto-Dominion Bank) for the most customer complaints against deposit-taking organizations, and was second to TD in 2004. CIBC World Markets tied for first (with TD Waterhouse) in the number of

complaints against investment dealers in 2003, and was a close second to Merrill Lynch Canada in 2004.

The bank was sued because the CIBC Renaissance U.S. RSP Index fund because of the fund's failure to provide promised currency protection. In June 2007, CIBC was hit with a \$600 million class-action lawsuit regarding the lack of overtime pay to its customer service staff. In April, 2008 Barrick Gold Corp. alleged that CIBC's securities arm "expressly confirmed to Barrick that its money markets investments did not have exposure to subprime assets" leading Barrick to hold on to the paper and even buy more just prior to the market for the paper freezing in August, 2007 (a mre \$66 million involved here). Now we hear that the bank is facing a "multibillion-dollar" class-action lawsuit alleging misrepresentations about the bank's exposure to the American subprime mortgage market. And on July 26th, a column by the Toronto Star's Ellen Roseman revealed a nasty situation regarding CIBC's efforts to move selected VISA cardholders to a new high-end card with more benefits, including some who don't want a new card. Arrogance, stupidity, a mis-wired brain? Who knows? At this rate they'll soon need another injection of capital.

From our Files: A study by Globe and Mail Reporter Karen Howlett in 2004 revealed that 9 CIBC Talvest international mutual funds had churn rates varying from 101 % to 2037 % . A high churn rate is indicative of market timing. Market timing typically takes place in overseas funds where time zone differences often make prices of stocks in a fund out of date because of market events elsewhere. Despite this ,CIBC was never publicly identified by regulators as a market timer . Only five fundcos were fined but published reports indicated that 20 firms were involved to varying degrees. Source: K. Howlett, *Select few reap unfair gain*, Globe and Mail , June 21, 2004

TDW settles inappropriate sale of hedge funds allegation

A hearing will be held before a Hearing Panel of the Investment Industry Regulatory Organization of Canada ("IIROC")", on July 31, 2008 to consider accepting a Settlement Agreement entered into between Staff of IIROC and TD Waterhouse Canada Inc.(TDW) The subject matter of the proposed Settlement Agreement concerns allegations that:

- (a) From 2001 to early 2005, TDW facilitated purchases of Olympus funds in client accounts without ensuring that clients were in fact accredited investors
- (b) From 2001 to the fall of 2004, TDW failed to establish and maintain alternative investment review or approval procedures and from 2001 to 2005 failed to establish and maintain sufficient training and guidance to its approved persons, to ensure that the purchase of hedge funds were appropriate for its clients

Source: <http://www.newswire.ca/en/releases/archive/July2008/21/c6232.html>

RCMP in Manitoba won't lay any charges in the collapse of the Crocus Investment Fund.

Incredibly ,after a three-year investigation of this LSIF's fund's collapse, the Mounties say they have not found any evidence of fraudulent misconduct, deception or other criminal wrongdoing. This, despite poor fund governance, a weak-investment management process , lack of internal controls and deficient expense management and false asset valuation reports that overstated the fund's worth .A May 2005 Manitoba Auditor General's Report found that Crocus directors misled investors about the nature of a \$10-million loan the fund received in 2002 from a Quebec-based labour-sponsored investment fund. The loan was necessary for Crocus to keep the level of cash assets required by law, but it showed up in Crocus' books and in the prospectus as an asset, not a loan.. The fund went into receivership in 2005 after its value suddenly plummeted. Investors lost millions. The 34,000 shareholders may soon get some of their money back after settling a lawsuit against the fund's directors, underwriters and other groups involved. The collapse is still being investigated by the Manitoba Securities Commission, which is expected to hold hearings this fall. Ref: July 16, 2008 RCMP News Release <http://by109fd.bay109.hotmail.msn.com/cgi-bin/getmsg?msg=725C3613-BF68-41FB-BDF2-AAAC596ED172&start=0&len=1287660&imgsafe=y&curmbox=00000000%2d0000%2d0000%2d0000%2d000000000001&a=814a188863939ad034c600c425782346569fcb2f30ef03d75188d7f698152a2b>

CIBC Wood Gundy rated low by its own advisers

“..IE’s 2008 Brokerage Report Card, published in May, would support this. The random survey of [CIBC] Wood Gundy advisers saw ratings take a tumble. Although several other firms rated higher than a year ago as management took action on advisers’ past complaints, Wood Gundy advisers spoke of being embarrassed to work at the dealer, and complained of ineffectual leadership, unresponsiveness to complaints and a lack of vision. Wood Gundy advisers gave their firm a score of 5.3 out of a possible 10 in public image, down sharply by 2.4 points from 7.7 in the 2007 survey. The advisers surveyed also gave their dealer a 7.1 in stability, down 1.3 points from 8.4 in 2007. Scores for strategic focus and corporate culture were also down by more than 1.5 points from the previous year, and there were negative comments about the firm’s leadership...”. Source: IE August , 2008 pg 1.

lab Thow on the loose –surprise, surprise

The June 26 RCMP news release that it had laid 25 counts of fraud over \$5000 against former Victoria fund salesman Thow sounded impressive. BUT it made no mention of Thow’s whereabouts, whether he had been arrested, whether there was a warrant for his arrest, or whether the crack force even know where he was. Now we know why, he’s on the loose. Investor Advocates argue that the RCMP should have arrested him before he had a chance to leave B.C.. If the enforcement system does not have the capacity to restrain people in situations where there is a strong basis that serious crimes have been committed, and where there is a high risk of flight (the RCMP knew Thow had dual citizenship), then our enforcement system is even more flawed than we had thought. We reported a similar situation in the Portus case. Thow, who had been living in Seattle since

2005 left Victoria in the summer of 2005 amid claims from his former clients and creditors that he bilked them out of more than \$32 million by convincing them to invest in schemes ranging from shares in a Jamaican bank to loans for Vancouver developers. In Oct., 2007, the BCSC. stated." . "This case represents one of the most callous and audacious frauds this province has seen.. Thow preyed on his clients by offering them non-existent securities and instead using the funds to support his lavish lifestyle. He took their money and betrayed their trust. He has left a trail of financial devastation and heartbreak. Thow dealt unfairly, dishonestly, and in bad faith with his clients" . So naturally , he decided to make himself scarce. Proud to be Canadian!

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