

BUSINESS & CAREERS

Lawyers can help clients avoid investor traps

In a down economy even savvy investors may fall victim to fraud

DONALEE MOULTON · HALIFAX

When the economy takes a nosedive, normally smart investors are more likely to hear what they want to hear. That is to the detriment of their pocketbooks and the advantage of scammers, who often come out in full force.

Now more than ever, lawyers can help alert clients to popular investor traps while reaffirming the need for common sense and getting informed. "Professionals certainly can be alert to the common indices of a scam," said Scott Peacock, director of enforcement with the Nova Scotia Securities Commission.

"They can reinforce investor education—do your due diligence," he added.

It's a message that needs to get out there, and to a certain extent it already has. "[Investors] are more savvy. They are asking more questions," noted John Corcoran, mar-

ket conduct officer with the Financial Services Regulation Division of the Newfoundland and Labrador government in St. John's.

Yet there are still significant problems, according to a recent survey from the Canadian Securities Administrators that found while Canadians express confidence and believe they are knowledgeable and responsible about investing, their behaviour may indicate otherwise.

For example, the CSA (Canadian Securities Administrators) *Investor Index 2009* found that a majority of Canadians are not accessing information about investments even though they believe that they would know where to go for this information. Most Canadians also stated they recognize various "flags" that indicate potential fraudulent investments. However, Canadians are more likely than in 2006 to trust fraud artists.

Part of this may have to do with the changing nature of fraudulent attempts: fewer are received by e-mail. As a percentage of fraudulent attempts that have occurred other than by e-mail exclusively, approaches are more likely to be

personal, creating a stronger likelihood of trust.

"This research clearly shows that Canadians are not doing all they can to make informed investment decisions," said Jean St-Gelais, CSA chair.

Investors can turn to their lawyers, and their lawyers can turn to information recently released by the North American Securities Administrators Association and Canadian securities regulators identifying the top ten investor traps. Heading the list are investment schemes, leveraged exchange-traded funds, private placement offerings and natural resources investments and Ponzi schemes.

"If there is a common theme, it is high returns," said Peacock. "It has become even more problematic recently. People want to replace their nest egg. They are not satisfied with a return rate of four to five percent."

While cash-strapped investors are promised high returns, they are provided little, if any, disclosure of risks. Scammers will also offer high commissions to aggressive sales forces.

Ponzi schemes hit the front

pages this year with the sentencing of Bernie Madoff in the U.S. to 150 years in prison for operating a multibillion-dollar scheme and closer to home with the search for Montreal resident Bertram Earl Jones, who is alleged to have bilked Canadians of roughly \$50 million.

"While some Ponzi investors may have a slight chance of realizing a return on their investment, most investors have, from the outset, no hope of recovery. Ponzi schemes are the securities world's equivalent of a purse snatch," said Natalie MacLellan, investor education coordinator with the Nova Scotia Securities Commission.

Many frauds have a Ponzi-type process at their core, she added. "It's often operating under another scheme, for example under a real estate [scam]."

According to the North American Securities Administrators Association, these schemes are often disguised as offers to help homeowners caught up in the turbulent housing market "save" their homes or "fix" their mortgages, usually in exchange for a fee paid in advance. "Most of these advance-fee offers only generate a quick profit for the con art-

ist and provide no benefit to the consumer," said Fred Joseph, NASAA President and Colorado Securities Commissioner.

Some homeowners, particularly seniors, may be attracted to reverse mortgages, which are a legitimate lending option. However, the resulting lump sum home equity payment makes them an attractive target for unscrupulous salesmen, who may attempt to direct these funds toward worthless or unsuitable investment products.

Land-banking schemes are a variation of the real estate scheme. It's selling land to unsuspecting investors with the promise of future growth—fast. For example, noted Peacock, some scammers are currently offering up 200 acres of land near Heathrow airport in London, which is expanding over the next few years.

"Sometimes they actually do buy the land, especially in Arizona and New Mexico—a thousand acres of desert," he added. "There are various levels of duplicity."

Currently popular are leveraged exchange-traded funds (ETFs) a relatively new financial product that has been offered to individual

See **Fraud** Page 25

Lawyers can help clients weed out dubious investment opportunities

Fraud

Continued From Page 24

investors who may not be aware of the risks these funds carry. The funds, which trade throughout the day like a stock, use exotic financial instruments, including options and other derivatives, and promise the potential to provide greater-than-market returns as the value of the underlying assets rise or fall. Given their volatility, however, these funds typically are not suitable for most retail investors, the Nova Scotia Securities Commission cautioned.

Also popular, and equally unsuitable for most people, are entertainment investments and gold bullion and currency scams. The former are unregistered investments encompassing a variety of products including movies, infomercials, internet gambling, and pornography sites. They promise high returns while offering little disclosure of risk.

Sellers in the latter scheme offer to retain "pur-

chased" gold in a "secure vault" and promise to sell the gold for the investor as it gains in value. In many instances, the gold simply does not exist. A similar ploy comes in the form of a foreign exchange (forex) trading scheme. Promoters profit by charging high commissions or selling investment strategies assuming that trades are actually made. In many instances there are no trades; the money is actually stolen.

There will, of course, be no end to the variations of investor traps or those who perpetrate them. "There will always, always, always be somebody out there who is going to try something," said Corcoran.

The key, he stressed, "is before you invest make sure you know who your investment dealers are."

Lawyers can help divide the suspect from the trustworthy. It's not easy.

"The scammers are professionals," stressed MacLellan. "They are using the same techniques that a marketing professional would — and they're playing on emotions." ■