



## Early Bird Ending Soon

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### ABCP fines 'no deterrent'

Mark Noble | December 22, 2009



While the majority of retail asset backed commercial paper investors got 100% of their principal investment back, many believe the firms that sold ABCP have received little more than a slap on the wrist in their settlement with securities regulators.

Members of the ABCP Retail Owners Committee argue the \$138.8 million in penalties were far too small in comparison to the scope of the ABCP market, which was estimated at \$32 billion.

“The first thing that hit me is that they only have to pay \$138 million out of 32 billion dollars, which as a

settlement represents roughly .04 cents on the dollar,” says Layne Arthur, an Alberta-based investor who had the proceeds from the sale of his family farm locked up in what he thought was a safe investment. “Everybody involved in this settlement got immunity. They do not lose their right to practice at any of the banks or in the investment community at large.”

Arthur fought for 18 months to get his money back.

“Everybody is walking around with smiles pretending this is all behind them. I think this is still a case of fraud. I would like to see a criminal investigation as to who knew what,” Arthur says. “Luckily, I was one of the guys with less than a million dollars invested, so I got paid out. I just got my last cheque a month ago. I’ve wasted a whole year on this thing, and it was so frustrating. The lingering problem is this is going to happen again. People will be able to put together some fraudulent garbage and pass it off as a savings program.”

The ABCP Retail Owners Committee says it have been unable to get criminal action taken against firms.

“Our representative’s appeals for assistance from the RCMP’s Integrated Market Enforcement Team were referred to the self regulatory bodies. ‘Small folks’ like ourselves were simply left to ‘duke it out’ with some of the largest financial organizations in the country,” a release from the committee says.

Arthur expressed frustration at being passed around by enforcement agencies when the committee lodged its complaint.

“The system is broken. You cannot have the fox guarding the hen house. You need a totally independent police force that we can go to. I think there are 32 different arms of investigators at different levels, and all of them just referred us to the next outfit,” he says.

Independent financial analyst and well-known investor advocate, Diane Urquhart, worked closely with the group in getting their money back. She says this last chapter in the ABCP proceedings highlights serious deficiencies in Canada's capital markets and banking structure.

"I am pleased to see that the securities regulators have finally brought seven securities dealers into settlement agreements as penalty for their sale of toxic ABCP into the public markets," she says. "The public announcement of these securities regulatory settlements demonstrates to the world that the Canadian banks were significant players in the international structured credit crisis, albeit indirectly through their wholly owned investment banks."

Urquhart believes the restructuring process allowed banks to skirt their responsibilities since they were not required to buy the ABCP back from investors.

"No Canadian banks required a government bailout because they had sold the toxic asset backed commercial paper from their inventories to their customers and because they were not forced to buy this bad paper back like the other banks of the world were required to do," she says. "Also, unlike in other countries, the Canadian bankruptcy courts gave full immunity from lawsuits by the ABCP owners against the Canadian banks and investment bank distributors of this toxic product. So, it was not the Canadian banks that took massive writedowns, but the customers of the Canadian banks and investment banks."

She contends the penalties that were handed out do little to deter or reform the type of sales practices amongst Canada's investment dealers that led to the ABCP crisis.

"With banks making billions of dollars in profit each year, miniscule monetary penalties such as this one, will not have any deterrence on the sale of toxic investments like ABCP in the future," she says. "Deterrence only comes when the well-paid managers and experts in the banks lose their jobs, lose their right to move to another investment firm or receive jail sentences in the cases of intent to defraud the investing public."

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