

# FAIR

Canadian Foundation *for*  
Advancement *of* Investor R

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- INVESTMENT EXECUTIVE | OCTOBER 2008 (reprinted with permission)
- FAIR CANADA IS LOOKING FOR MEMBERS TO JOIN THE TEAM

## Looking out for the interests of small investors

*The new Canadian Foundation for the Advancement of Investor Rights (FAIR) will fight shabby treatment of retail investor*



**E**rmanno Pascutto has spent about 30 years as a regulator and securities lawyer, much of it Asian markets. But in the last few years, since coming back home, he has become more of an investor. That experience has opened his eyes to the plight of small investors in Canada, and he's now setting out to try to improve their lot.

Small investors in Canada have always been hamstrung by the lack of an effective advocate. Collectively, they play a significant role in financial markets, but they don't have much power individually. Compared with large industry participants, small retail investors don't have the expertise or the resources

to press their interests.

The cards are largely stacked against them: regulators are perceived as relatively ineffectual; there are few effective mechanisms for redress; the Canadian market isn't particularly friendly to minority shareholders; various studies have indicated a high degree of insider dealing; and shareholder rights are compromised by structures such as dual-class shares. The new Canadian Foundation for the Advancement of Investor Rights aims to redress the imbalance.

The often shabby treatment of small investors in Canada has hit home with Pascutto, Executive Director of **FAIR**, as he's become more of an investor himself. Back in the

1980s, he was executive director of the Ontario Securities Commission (which prevented him from being much of an investor himself). Then he worked in Hong Kong for 10 years (including a stint as vice chairman and Executive Director of the Securities & Futures Commission there), and since returning to live in Canada he has still worked largely abroad as a consultant advising regulators in Dubai.

As an investor, he says: "I was regularly confronted with inappropriate conduct. I saw insiders taking advantage of public shareholders. And I didn't see anyone stepping in to do anything about it."

Pascutto tried to bring some of these issues to the attention of the regulators and the stock exchange, and ultimately wound up becoming an independent board member for Market Regulation Services Inc., providing the perspective of the individual investor.

Through that experience at RS, Pascutto came up with the idea of using some of the money collected from fines paid through enforcement actions to start an organization to advocate for retail investors generally. To his delight, the RS board liked the idea. To his dismay, they invited him to get the thing off the ground. Now, Pascutto is on the verge of finally launching it.

As Investment Executive went to press, the new organization had yet to open formally for business, but a public announcement is imminent. **FAIR** has secured financing from the restricted funds of both RS and the Investment Dealers Association of Canada (now merged into the Investment Industry Regulatory Organization of Canada).

Pascutto has also recruited a powerhouse board comprising two former chairs of the OSC, Stanley Beck and Ed Waitzer; the former head of the Ontario Teachers' Pension Plan Board, Claude Lamoreaux; legendary investor Stephen Jarislowsky; Neil De Gelder, former executive director of the B.C. Securities Commission; and Whipple Steinkrauss from the Consumers Council of Canada.

**FAIR's** mission is to tackle some of the issues bedeviling small investors, from appearing at regulatory hearings to represent the interests of minority shareholders in a proposed related-party transaction to submitting comments on regulators' rule proposals and lobbying both the regulators and legislators on behalf of small investors.

One of the problems with current regulation, Pascutto says, is that it has moved away from operating in real time, stepping in and correcting problems immediately. Instead, it has become largely about developing policy responses to regulatory problems - a process that often takes years and results in rules that are no longer relevant when they are finally adopted.

Once **FAIR** is formally launched, it will be looking to hire a couple of professionals (one to focus on shareholder rights, one for retail client issues) and a couple of support staff. Pascutto stresses that **FAIR** is not beholden to IIROC in any way. FAIR has committed to use the money it gets (enough to fund it for about three years) to address issues regarding retail investors in securities markets, but it is not restricted in the positions it can take.

Says Pascutto: "I give [RS and IIROC] a lot of credit for not just saying, 'We're going to take the safe route and do some academic studies - we're going to give the money to an organization that's really going to go out there and lobby on behalf of investors. And, who

knows, it might even come back to bite us a bit."

The regulators' dilemma is that although retail investors are the primary audience for many of their efforts, they haven't found a way to incorporate them into the regulatory process. The result is that the feedback regulators do get from retail investors often isn't all that helpful, and the rules that are made are susceptible to industry influence.

Regulators have recognized this imbalance and have tried different things, with varying degrees of success: so far, town-hall meetings seem to have had the biggest impact. Following the meetings, held in the spring by a quartet of regulators - the OSC, IIROC, the Mutual Fund Dealers Association of Canada, and the Ombudsman for Banking Services and Investments - they established a joint standing committee to address retail investor issues. That committee, headed by OSC vice chairman Larry Ritchie, announced in early September that it is initiating consultations with investors on suitability issues. The deadline for investor feedback is Oct. 9.

**FAIR** plans to be part of that conversation. Pascutto argues that the industry has to take more responsibility for ensuring suitability, including better redress when clients' products are unsuitable.

He is skeptical of the notion that investor education can provide effective investor protection, and suggests that the whole "accredited investor" concept has to be rethought. "I don't know how some doctor, who doesn't know what the difference between a share and a bond is, is really going to become financially literate by reading a couple of Web sites. There's far too much to understand," he says.

Ideally, Pascutto would like to see financial education start much earlier, at the high-school level.

## **FAIR Canada is expanding its team**

**Deadline to apply is December 31, 2008**

*Deputy Executive Director and Associate Director positions available*

### **The Canadian Foundation for Advancement of Investor Rights (FAIR Canada)**

is a newly established independent national non-profit agency whose mission is to be a catalyst for change in the cause of improving the rights of shareholders and retail investors. The Investment Industry Regulatory Organization of Canada (IIROC) provided one time start-up funding which is anticipated to be sufficient for the first 3 years of operation. **FAIR Canada** will seek to advance the interests of investors and the integrity and fairness of Canadian capital markets, among other things, by:

- *making submissions to securities regulators, exchanges, government and other bodies on priorities, policy, legislative change and enforcement to advance the interests of investors; and*
- *proactively identifying emerging issues that affect investors and seeking reform to mitigate harm to investors.*
- *identifying actual conduct by issuers, registered persons and other market participants that is, or may be detrimental to, investors and, where appropriate, encouraging action to enhance investor rights and protections.*

**The Foundation seeks exceptional individuals with the skills, energy and commitment necessary to play a leading role in being an advocate on behalf of Canadian investors.**

### **1. Deputy Executive Director**

The Foundation has an immediate opening for a Deputy Executive Director of the Foundation. You are a lawyer, accountant or other investment/financial professional and have a minimum of 10 years experience in financial markets regulation and related experience. You have a strong understanding of securities and financial services legislation. Your keen interest in securities regulation, investor rights and your analytical skills are complemented by your strong communication (written and verbal) and presentation skills. Experience in the political and regulatory process by which securities law is developed is highly desirable as is work experience and knowledge of different regions of the country. French is a desirable asset but not a requirement. The Deputy Executive should be experienced and capable enough to be a candidate for Executive Director of FAIR CANADA within 6 months of joining the organization.

### **2. Associate Director**

The Foundation also has an immediate opening for a second full-time or two part-time professionals with a background in law, finance, economics or communications. Knowledge of financial markets and financial market regulation is essential as are strong written and verbal communication skills. Computer skills including the ability to maintain a blog would be an asset. This position is open to applicants interested in either full-time or part-time employment.

FAIR Canada has entered into an agreement with Osgoode Hall Law School and its premises will likely be located at York University which may be attractive to those wishing to avoid a daily commute to downtown Toronto.

**FAIR Canada will offer a competitive compensation package in the context of a non-profit investor advocacy organization.**

To apply for one of our positions, please email or send a cover letter and resume to the email address or office address shown below on or before December 31, 2008.

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**Watch your email for further details on the launch of FAIR  
Canada's upcoming website.**

**For further information, please email [info@faircanada.ca](mailto:info@faircanada.ca).**