FSCO Action Group

Summary of Events re: Tier 1 Advisory

Oct 4, 2018 - This summary of events is a very brief synopsis of the 500+ pages of factual documentation that has been gathered and verified over the last 18 to 24 months and given to the Group's lawyers.

October 2016

- The Superintendent of Financial Services issued a cease and desist order on Tier 1 Advisory Services Inc … shutting down the company and all affiliated development projects … without any forewarning at all to agents, advisors or investors … putting approx. $120,000,000 of investors' funds into immediate jeopardy.

  Tier 1 Advisory was the <u>only</u> company to date ordered by FSCO to cease and desist and placing a total freeze on all of its projects.

Going back to June 2014

- On June 25, 2014, the Superintendent of Financial Services issued a Notice of Proposal to Impose Administrative Monetary Penalties for 7 infractions … signed by Anatol Monid Executive Director Licensing and Market Conduct Division.

- First Commonwealth Mortgage Corporation was the brokerage arm for Tier 1 Advisory. The Superintendent had determined that First Commonwealth committed seven contraventions of the Act and its regulations.

- During this investigation, FSCO had full access to the Investor/Lender Disclosure Statements and the Borrower Disclosure Statements, clearly indicating a *"conflict of interest"* … which was one of the main reasons FSCO shut down the company in October 2016 … over 2 years later!

  FSCO also sited a *"failure to provide written disclosure".* Why did FSCO allow Tier 1 Advisory and First Commonwealth to continue for another 2 years without further close monitoring?

  In light of this 2014 investigation, why did FSCO wait over 2 years to shut down the company in Oct 2016, during which time a further $$80 to $90,000,000 was raised from investors?

- Agents and advisors were <u>not</u> made aware of this 2014 investigation by FSCO. If they were made aware, most would not have directed additional investment funds there any longer.

FSCO was made aware of initial warning signs as far back as 2005

Fortress was the by far the largest syndicated mortgage investment company in Ontario. At least 10x larger than Tier 1 Advisory. If Fortress was properly investigated, monitored and contained by FSCO many years prior to 2014, Tier 1 Advisory would never have even gotten off the ground and thus the $120,000,000 of Tier 1 Advisory investments would never have been raised.

- In July 2005, the Mutual Funds Dealers Association (MFDA) imposed a lifetime ban against one of the principals of Fortress.

- In 2011, the 2 main principals of Fortress settled accusations with the Ontario Securities Commission (OSC) to pay $3 million and were banned from selling securities for 15 years.

- With this history why did FSCO allow the affiliated brokerages of Fortress (FFM, FDS, and FDM) to become licensed and solicit hundreds of millions of dollars of investment funds for Fortress? Why did FSCO not provide adequate monitoring and adequate regulation of Fortress to protect the public's best interests?

- From 2011 to 2015, senior FSCO officials rejected or ignored their own compliance officers' multiple recommendations that FSCO should investigate or take action to rein in the marketing and sales of Fortress syndicated mortgages. Senior officials at FSCO ignored or downplayed clear warnings from within their own ranks.

- In June 2014, regulators were investigating syndicated mortgages linked to Fortress Real Developments. Compliance officers employed by FSCO had evidence that Fortress syndicated mortgages were being marketed and sold in ways that broke the law, putting the retirement savings of thousands of average Ontario investors in danger. The compliance officers sent their findings to FSCO's senior officials according to various sources and documents. Executive Director for Licensing and Market Conduct Anatol Monid, decided in May 2015 that FSCO's investigators should do nothing.

- In at least 10 different investigations, FSCO staff found possible breaches of Ontario law that they felt warranted action. The breaches included misleading marketing, and selling products unsuited to clients' risk tolerance, among other infractions. FSCO's investigators overruled or ignored the recommendations.

- FSCO and Anatol Monid were aware that Olympia Trust was operating in Ontario without a license. FSCO's own lawyers had rejected Olympia's requests, in 2011 and 2013, that it be exempted from meeting the eligibility requirements for doing business in Ontario, according to obtained documents. Why did FSCO allow Olympia Trust to operate in Ontario and to administer over $700M of registered (RRSPs, RRIFs, TFSAs, LIRAs) funds?

- FSCO *"could have removed this problem earlier,"* said Bill Vasiliou, a certified fraud examiner who was responsible for regulating Ontario's mortgage industry prior to FSCO's creation in 1997. "*There were complaints registered, and they buried them. They didn't do anything about it."*

May 2015

- FSCO Chief Executive Brian Mills met with senior staff following a request from Liberal Ontario Finance Minister Charles Sousa for information on syndicated mortgages. A briefing note from the meeting recommended that the oversight and investigations of syndicated mortgages be enhanced and that a cease-and-desist letter be sent to Olympia Trust, which was responsible for administering over $75M of registered funds for investors of Tier 1 Advisory projects without a licence in Ontario.

- FSCO's Executive Director for Licensing and Market Conduct, Anatol Monid decided that there was insufficient evidence to order Olympia to stop its operations in Ontario, despite the fact that Olympia Trust did not have a license to conduct business in Ontario.

- Olympia Trust President Craig Skauge confirmed that Olympia was twice denied permission to provide services to Ontario investors without a license. *"If mortgage brokers in Ontario were in fact promoting Olympia Trust, then FSCO should have done something about that,"* he said. Documents proved that FSCO knew Olympia's services were being promoted to syndicated mortgage investors.

- Agents and advisors only became aware that Olympia Trust was not licensed in Ontario by a vague communication released by FSCO in mid-2017.

October 2015

- In an October 2015 email, a FSCO compliance officer noted that "17 files of significance" had been opened since March 2011 and all had been closed without any direct action taken.

November 2015

- In the preliminary position paper from the Expert Advisory Panel to Review the Mandate of the Financial Service Commission of Ontario (FSCO), the Panel identified that "*there are those who feel the regulator has not applied adequate scrutiny".*

March 2016

- The Expert Advisory Panel to Review the Mandate of the Financial Services Commission of Ontario delivered its findings to the Ministry of Finance.

  The Panel that Finance Minister Charles Sousa appointed to make recommendations to him, in a report dated March 31, 2016, advised the Minister of Finance that FSCO was <u>not</u> adequately protecting the public.

October 2016

- The Superintendent of Financial Services issued a cease and desist order on Tier 1 Advisory. Tier 1 Advisory was the only company to have received a cease and desist letter. The court appointed Grant Thornton as Trustee for Tier 1 Advisory at FSCO's request!

  The court appointment of Grant Thornton as the Trustee *"to protect the interests of syndicate mortgage investors"* resulted in the annulment of all the contractual rights that investors had in the event of a project's default. Grant Thornton was granted full autonomy to do what they wanted without any decision or vote from the majority of investors.

Background Briefing

Tier 1 Advisory syndicated mortgages were marketed as secured investments with collateral against the land and property. Registered investments (RRSP, TFSA, RRIF, LIRA and LIF) could be used as eligible self-directed funds via Olympia Trust.

Investors felt comfortable investing in Tier 1 syndicated mortgage investments and agents/advisors felt comfortable recommending these investments … since they were being regulated by FSCO.

Most of the 1,500 people that invested in Tier 1 Advisory are average Ontario residents, worked hard throughout their lives and intended to use these investments to grow their retirement savings and provide inheritance to their families.

FSCO's own website states … *"FSCO's legislative mandate is to provide regulatory services that* ***protect the public interest*** *and* ***enhance public confidence*** *in the sectors it regulates."*

Because of FSCO's failure to act and its failure to adequately regulate the syndicated mortgage investment industry, the government has a duty to protect investors and has an obligation to remunerate these vulnerable Ontarians. The FSCO Action Group is asking the Government of Ontario to create a remuneration fund that will reimburse investors of Tier 1 Advisory (less their recovery, if any, from Grant Thornton).

Typical Investor Profiles

- *Woodbridge* – The loss of a $150,000 investment into Tier 1 syndicated mortgages affected an investor's entire family after the project failed to repay the investor and her family members.
- *Kitchener* – The investor has lived in Kitchener since 1984 and lost part of her retirement savings after investing $200,000 in Tier 1 syndicated mortgages.
- Brampton – A forty-year resident of the City of Brampton, the investor believed Tier 1 was a safe investment and invested $50,000 of her pension in the syndicated mortgage project.

- *Richmond Hill* – At 67 and married with two kids, the self-employed accountant invested in Tier 1 to help grow his RRSP but ended up losing his $75,000 investment.
- *Aurora* – After investing $175,000 into Tier 1, the investor who has lived in Aurora for 14 years cashed two cheques before losing the rest of her investment.

FSCO's chain of command

- At FSCO headquarters, a team of approx. 10 compliance officers review complaints about financial firms operating in Ontario. If they decide a complaint warrants further action, they "open a file" and pass it to FSCO's seven-man investigations unit, headed by Director of Investigations **Terry Weller**.
- Weller was an officer for 18 years with the Toronto Police Service, where he was assigned to several investigative offices, before he moved into financial regulation in 1990. His team is made up of former police with little prior experience in the financial services industry, according to former and current FSCO employees.
- Weller reports to **Anatol Monid**, the licensing and market conduct chief. He spent 15 years in Canada's armed forces and three years as an insurance company regulator before joining FSCO in 2005. He took up his current role in 2014. Staff were encouraged *not* to question Monid's decisions
- In May of 2015, FSCO Chief Executive **Brian Mills** called a meeting of senior staff, including Monid and Weller, after Ontario Finance Minister Charles Souza requested information on the products, according to staff familiar with FSCO investigations.

The FSCO Action Group

The FSCO Action Group was formed by two investment advisors, Peter Lantos and Larry Smith, in reaction to the significant lost investments of their clients in the Tier 1 Advisory syndicated mortgage projects. *"Our sole objective is to help all Tier 1 Advisory investors who have lost money in one or more of the 16 Tier 1 Advisory projects".*

The Group represents over 500 (and still growing) Tier 1 investors who lost more than $35,000,000 (and growing) of their principal (not including contractual interest and bonuses there were never received) as a result of the Tier 1 Advisory fiasco.

The FSCO Action Group is asking the PC Gov't *For The People* to do the right thing … and the just thing … to establish a remuneration fund to make each Tier 1 investor whole again.

Win-Win for the Government and Tier 1 Advisory investors

1) the clients are made whole; and

2) the PC Gov't *For the People* is seen as a hero.

500 investors + 500 spouses + 1,000 children + 1,000 grandchildren + 1,000's of friends, relatives, neighbours and business associates = **Tens of Thousands of voters**

Bonus for the Government :

80% of the syndicated mortgage investments are held in registered funds; RRSPs, RRIFs,LIFs and LIRAs.

When the government compensates these victims, the government will subsequently receive tens of millions of dollars in income taxes payable when the investors withdraw their funds from the registered accounts!