SIPA Sentinel

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Small Investor Protection Association - A voice for small investors

The SIPA Sentinel is issued bi-monthly. From time to time articles and re-prints are included that offer opinions on subjects related to investment and regulation. These are meant to help increase investor awareness, and SIPA may not share these opinions.

OBAMA SAYS BROKERS SHOULD FOLLOW FIDUCIARY STANDARD

This could be good news for American investors. Canadians also need a fiduciary standard for all those selling financial products or financial advice. The issue in Canada is simply that sales persons use the title “Financial Advisor” to gain public trust but have no legislated fiduciary duty or requirement to act in the best interests of their clients. The industry is of course opposed to any change that would benefit investors.

Obama seeks rule for broker advice on retirement

Monday, 23 Feb 2015
Kevin Lamarque | Reuters

President Barack Obama will direct the Department of Labor on Monday to proceed with new rules that would rein in conflicts of interest among Wall Street brokers who advise clients on retirement investments, administration officials said. The change would mandate that brokers follow a "fiduciary standard" to prioritize clients' interests over brokers' interests, they said. The proposal is opposed by many Republicans and financial firms, which are fearful that the plan will limit broker compensation.

The move would cut back on "hidden fees" that financial advisers can pocket when steering clients into more expensive products that may not be the best option for the investor, officials said. Such practices cost working- and middle-class families $17 billion a year, according to the White House.

"The president will call on the Department of Labor to establish updated rules of the road to make sure that responsible Americans who are saving for retirement are getting a fair share of returns on their savings," Jeff Zients, Obama's top economic adviser, said in a conference call with reporters on Sunday.

The push for tighter rules fits into Obama's message of championing the middle class, a theme that is likely to dominate the 2016 presidential campaign. Obama will unveil his proposal during remarks hosted by the Association of American Retired Persons (AARP), which, along with labor and consumer advocacy groups, has lobbied for the rule change.

Seniors are an important voting bloc for both parties.

Massachusetts Senator Elizabeth Warren, a consumer advocate who some Democrats hope will challenge former Secretary of State Hillary Clinton for the party's presidential nomination, is expected to attend.

The industry fears a rule change would curb compensation for brokers and would limit the types of investment products investors can get. Fierce lobbying by the industry forced the Labor Department to scrap its original proposal a few years ago.

"This re-proposal could make it harder to save for retirement by cutting access to affordable advice and limiting options for savers," said Ken Bentsen, president of the Securities Industry and Financial Markets Association, which represents banks and assets managers.

Daniel Gallagher, a Republican member of the Securities and Exchange Commission, chided the White House last week for circulating baseless "propaganda" to rally support for the change.

The Labor Department has been working for several years to overhaul its rules governing how advisers provide advice to clients in workplace retirement plans such as 401(k)s and individual retirement accounts.
The department wants to hold these advisers to the high "fiduciary" standard that would put clients' interests first. Currently, many advisers on Wall Street are only required to suggest products that are "suitable" to investors.
A first draft of the plan generated stiff opposition from Wall Street and prompted the U.S. House of Representatives to pass bills trying to delay or kill the rule-making.
The department was forced to scrap the draft and come up with a new one.
Secretary of Labor Tom Perez said the proposal would be published in the coming months and be open to a comment period. He said feedback from the previous failed attempt at reform had informed the process.
"We expect that the proposed rule will not ban commissions or any common compensation practices, and it will allow financial advisers to continue providing general education on retirement savings," he said, citing some of the differences with the previous proposal.

DO FINANCIAL ADVISORS LOOK AFTER CLIENTS' BEST INTERESTS?

Until I read the following article I felt there could be no surprises for me. After fifteen years of talking with many hundreds of investors I thought I had heard all the stories of the fraud and wrongdoing that was costing Canadians their life savings and sometimes even their lives when they committed suicide because they were unable to face the future. There is lots of wrongdoing but this is the worst.

Former advisor to do serious time for heinous crime

By Jordan Maxwell | 25 Feb 2015 - http://www.wealthprofessional.ca/

A former financial advisor at Assante Capital Management in Red Deer has been convicted of first-degree murder for building and delivering a pipe bomb that killed a young mother from Innisfil. The verdict means that Brian Malley, 57, will serve an automatic life sentence with no chance of parole for 25 years for the murder of Victoria Shachtay, a 23-year-old single mother, on November 25, 2011, according to reports.

"It was a circumstantial case and it was not easy to put all the pieces of it together. We were able to put the pieces together, the jury could see it was there, they could understand, they found there was no reasonable doubt and they did the right thing," Crown prosecutor Anders Quist said outside court. Shachtay hired Malley to manage approximately $575,000 insurance settlement she'd received following an auto accident that made her a quadriplegic. The prosecution alleged that Malley killed the victim to cut ties after losing all of her settlement and contributing $44,000 of his own money. The defence argued that the victim was a profligate spender and Malley was just trying to assist Shachtay to the jury, who was made up of eight women and four men made up the jury and after a five-week trial, Malley was found guilty.

Malley was arrested by the RCMP in May 2012 and charged with first degree murder. Shortly after he was accused, 54 clients came forward and complained about Malley's handling of their accounts, according to legal documents from Canlii.org, but the courts focused on just 12 in relation to the case. According to the documents, Malley failed to get to know his clients, many of whom were retired of approaching retirement and had very little investment knowledge.

"... He recommended that Clients hold highly concentrated positions in speculative securities such as junior issuers and commodity based leveraged ETFs," as quoted in the documents. "In many cases, he recommended that the Clients borrow on margin or against their home equity in order to purchase securities. "He also engaged in discretionary trading in the accounts of seven of the Clients, without first having the accounts approved and accepted as discretionary accounts."
Many clients suffered substantial losses as a result of his practices and Malley's wife, Christine, who was the branch manager and supervisor, was also a part of the plots to dupe investors. Both were subsequently fired on May 25 and 28 respectively, according to court documents.

OBSI STATISTICS RAISES EYEBROWS

Ken Kivenko for the Sentinel

On March 16 Stan Buell asked the Chair of the OBSI Board of Directors for more information regarding his comment in the 2014 Annual Report that there is a serious problem regarding low ball restitution offers by dealers, essentially disregarding the OBSI compensation recommendation. SIPA simply wanted to know the number of low ball cases and the degree of discounting.

On March 25 a response was received from Tyler Fleming, Director, Strategy and Stakeholder Relations. The letter was polite and respectful but didn't provide a quantitative answer. They stated that they have begun tracking the data they receive on case settlements for their regular reports to the regulators in accordance with their oversight of OBSI. They stated they didn't have the capability to do this before in their Case Management System. This is disturbing because the OBSI Case Management system is able to track complaints by type, dealer, and complainants by gender, by age, by province etc. but was unable to track perhaps the most important statistic of all – the number of rejections of recommendations.

It seems the issue that springs out is that in many people's minds it was always understood that a low ball offer to a victim/vulnerable client is in effect a rejection of an OBSI recommendation. The fact that a desperate or weary victim accepts a low ball offer does not make the dealer "clean" or justify not "Naming and Shaming". In fact, it degrades and undermines the OBSI process and non-disclosure to the public of the degree of this exploitation adds to the poor perception of OBSI.

The question that remains is how many low ball offers/client acceptances with no Name and Shame have there been, what the growth rate is and how many firms are now putting in low ball offers irrespective of OBSI's recommendations. Once the low ball ruse is passively tolerated by OBSI and clients start to accept, we start to impact the deterrent in the market place. If you can low ball then there is less incentive to stop bad practices. This is completely the opposite intention of OBSI in the first place, part of which if we look at global practices, is to provide deterrents to systemic abuses even though their powers re systemic issue investigations has been removed by regulators. NOTE: overseas Ombudsmen have systemic issue options.

We were advised that the Joint Regulators Committee (JRC) have been informed. On March 19, the JRC reported that it discussed compensation refusals published by OBSI - they said they will be "monitoring" the ongoing trend of firms refusing compensation recommendations from the OBSI, and that they expect firms to act in good faith when dealing with the OBSI. The JRC has pledged to monitor these refusals, and "consider patterns or issues raised by them." Investors don't need regulators to monitor, they need regulators to act!

There can be little doubt that those hapless investors who were refused compensation recommended by the OBSI don't give a damn about the monitoring of "trends"- they trusted an “advisor” and a dealer and were let down. Then they complained up the line and the OBSI agreed they should be compensated. Then nothing happens - what is there to monitor, consider?

The current unacceptable state has resulted in a situation where aggrieved investors can no longer hope for an objective evaluation from OBSI because the industry has made it clear they will not accept the recommendation, but instead continue with making their low ball offers as if OBSI did not exist.

If something is not done to rectify this situation it would seem it is time for the role of the OBSI to be replaced by a federal office similar to the Auditor General's Office with the power to order restitution and force payment by those who fail to comply.

Ken Kivenko
Chair SIPA Advisory Committee

INVESTOR VOICE

During the last 15 years I have had the opportunity to speak with hundreds and hundreds of investors as well as hundreds of Government, regulatory, and industry people. It has been an educational and informative experience. It is not easy to hear the stories of those who have their lives extremely altered by the unfair treatment they have received from both the investment industry and its regulators. One of the disappointments I face on a regular basis is when I encounter an individual who has been hurt by the industry and its captured regulators who needs help to resolve their dispute and have been adamant that they want to help but first must resolve their issue, but after they face the task of getting resolution and experience the callousness and lack of reason when they run the gauntlet, they go silent and are not heard from again. The consolation for me is the realization that they have resolved their dispute out of court and are getting on with their lives.

However, one of our newer members impressed me with her action and knowledge. Her experience is to some extent quite typical, but the difference is she has decided to lend her efforts to trying to help others and make them aware of what they are facing. She prepared a video to speak out about her experience. More and more people are becoming aware, but voices are needed to speak out and join together. In the words of Glorianne Stromberg more than a decade ago, it will only be when people join together in numbers and demand reform that progress will be made.

The industry and regulators are intent on creating an illusion to satisfy Canadians but little progress is made because the industry likes it the way it is. The public is misled into believing they can trust their “Advisor” to help them achieve a comfortable and secure retirement. The fact is the “Advisors” are commission motivated Dealers/Sales Persons who are not required to look after investors’ best interests. That is why so many Canadians have leveraged investments in unsuitable products to provide the maximum commissions and generate profits for the investment industry. Many lose a substantial portion of their savings.
If your investments are not doing well or you have experienced loss of your savings, you are not alone. At SIPA we have a small group that is trying to make a difference. I hope you will join us.

DM'S STORY – THE LIFE-ALTERING IMPACT OF LOST SAVINGS

A number of years have gone by since I first woke up and found myself in the middle of a nightmare. My first reaction was shock and disbelief. I could not believe it. I made up many excuses for my advisor's behaviour and held tightly to the belief that this would soon be all straightened out and surely was just a big misunderstanding. Gradually, the reality of the situation began to sink in and I experienced an emotion I was mostly unfamiliar with … fear. Crippling, gut wrenching, fear. I had no idea who I could trust. I was in unfamiliar territory and had to scramble to get my bearings, keep my wits about me and learn as much as I could as quickly as I could.

If you are or have been a victim of financial assault, you know this impacts you on many levels. The stress impacts you physically, emotionally and spiritually. I experienced a constant level of distraction as the situation consumed me. I experienced hurt, a sense of betrayal, anger, a desire for retaliation, embarrassment and shame. It impacted my family and my relationships. I lost confidence in myself and ability to assess situations and people.

As my journey continued and I spoke with many in the system, my hope that if I articulated the situation clearly, the checks and balances I believed to be in place in what I thought was a well regulated industry, would surely rectify, restore and make the situation right, faded. I discovered advisors do not have to act in their clients' best interests and regulators do not restore or fix errors clients experience. I also discovered I was not alone. This was happening from coast to coast. In fact some cases read like a script almost identical in the deceptive tactics used to: gain trust, access to funds and to ultimately deceive. I felt re-victimized by the very system I was led to believe was there to protect me. I found myself at a crossroad and had to make a choice, was I going to let this make me bitter or better?

A righteous anger led me to speak out, in comment letters to the regulators, to government officials, to the media. I invite you to join me and make your voices heard. Here is a video I did:
https://www.youtube.com/watch?v=TYu_td_bvs8
Please consider doing one too and adding your voice to mine and submitting it here. Get in touch with SIPA and ask how you can help. Maybe you are a creative person. Consider participating in SIPA's video contest.

I have come out of this journey a changed person. I am stronger, wiser and more compassionate. I am more assertive, ask more questions and am not afraid to take a stand.

If change is ever going to happen in this deeply entrenched system it will only come about if we stand together for it. Won't you join me?

Sincerely, DM

If you have a story to tell about your experience please contact SIPA at sipa.toronto@gmail.com.

TAX FREE SAVINGS ACCOUNTS

The Tax Free Savings Account (TFSA) is one of the better types of investment accounts. Although the money you invest is not tax deductible. All of your gains and earnings in the account accumulate and are tax free when you withdraw money from your account. This is a big advantage over other Registered Plans which are simply tax deferral.

Keep in mind that you may place the same type of investments in a TFSA as your would in an RRSP. Wise investors will likely place GICs, bonds, shares and ETFs in their investment accounts rather than mutual funds or segregated funds. Be aware that there are many financial products being offered to investors by commissioned sales persons and these products are created to generate commissions for the industry. You should also keep in mind that sales persons are able to use the titles of “Financial Advisor” and “Vice President” as these are not regulated and are considered by the industry simply as business titles.

We contacted the Canadian Securities Administrators (CSA) regarding this issue and their response follows:

> Financial Advisor, as you noted, is a common title which many persons use, whether they are registered under securities legislation or not. The use of this title is not generally prohibited, and may be used by anyone, including persons who are only licensed to deal in insurance products, mortgage brokers, deposit agents, or employees of financial institutions. Some jurisdictions regulate the use of some titles. For example, in Québec, no person may use the title Financial Planner without holding the appropriate certificate issued by the Autorité des marchés financiers. The title Financial Advisor may not be used by anyone as it is considered similar to the title Financial Planner. Having said that, most jurisdictions do not regulate the use of Financial Advisor, and as such it is widely used.
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> As with Financial Advisor, the title of Vice President is increasingly a common title used in the financial services industry. While an officer of a firm may be designated to be a vice president, the use of the title is not reserved to actual officers of a corporation. As such, it is not safe to assume a person described as a vice president is in fact an officer of that corporation.

We encourage all Canadians to consider opening a Tax Free Savings Account. At the same time we encourage all Canadians to check the credentials of their Financial Advisor with the CSA. The CSA has a National Registration Database (NRD) which contains all representatives registered across Canada. Also if you already have an investment account check your statement. If it shows your representative with the title “Financial Advisor” (spelled with an “O”) then he is acting as a sales person when he deals with you even though he may have higher qualifications.

This is but one of the nasty tricks used by the industry to deceive investors in their attempt to avoid any responsibility for looking after your best interests.

DECEPTION BY THE INVESTMENT INDUSTRY AND REGULATORS

For some time SIPA has been concerned about the small investor being deceived by the investment industry and its regulators. The fundamental deception is the long established practice of calling industry sales representatives “Financial Advisor” and “Vice President” to gain investors’ trust. Because investors trust their so-titled “Financial Advisor” they fail to do their due diligence in checking their representatives’ qualifications. Most “Financial Advisors” are in fact commission sales persons and are not responsible to look after their client’s best interests. The following article by Jack Waymire talks about deception.

“Financial Advisor Pitches are Deceptive Sales Practices!”

By Jack Waymire for InvestorEatchdog.com

> You have a choice! You can control the process you use to select a financial advisor or you can let advisors control the process. Because you may not have a process, advisors are more than happy to step-in and provide one that helps them sell financial products.

Advisors use a four step sales process to gain control of your assets. First, they want you to like them. Second, they know you trust people you like. Third, they use trust to convince you they are financial experts. Fourth, once you believe they are experts they know you will buy whatever they are selling. Virtually every advisor in America uses some variation of this sales process because it works.

When advisors control the process you only hear what they want you to hear. They can omit everything else because they do not have mandatory disclosure requirements. For example, they withhold any information that discloses their weaknesses. They may misrepresent information about their credentials and ethics. They may exaggerate the results they have produced for their current clients. They use misinformation to convince you they are trustworthy experts and to compete with higher quality advisors.

So how can investors take back control of the process to protect their own financial interests? It is actually easier than you might think. You don't have to develop your own process. You can use the free tools that reside on this website (www.InvestorWatchdog.com).

You should have three goals for your process. Goal number one is to gather the same data from all of the advisors who are included in your selection process. You want the same data so advisors are easy to compare to each other. It is next to impossible to compare advisors when all of their information is different.

Your second goal is to gather data that really matters. Advisors use sales pitches and claims to convince you to buy what they are selling. However, pitches and claims have nothing to do with the advisors' expertise and trustworthiness. You want information that describes their experience, education, certifications, compliance records, fiduciary status, and services. This is information that impacts the achievement or your financial goals. Your risk of selecting the wrong advisor skyrockets when they control what you hear.

Your third goal is documentation for the data that really matters. Lower quality advisors prefer verbal information because it increases the impact of their sales skills. And, in the absence of documentation, advisors are free to use aggressive sales tactics that have one purpose – convince you to buy what they are selling.

Advisors are less inclined to use omission, misrepresentation, and exaggeration when you require them to document this information. That's because you may turn their information over to an attorney, compliance officer, or regulatory agency. You have evidence if they used illegal sales tactics to gain control of your assets.

There is one more issue. Advisors have documentation that protects them. It is called a sales agreement. If you read the agreement you will find a lot of language that protects the advisor and his firm. Very little or none of the content protects you. The type of documentation I am recommending does help protect you from unscrupulous advisors who use deceptive sales tactics.

IS INVESTOR EDUCATION IMPORTANT?

The industry and its regulators continually try to perpetrate the perception that investors are protected and take initiatives that do little to improve the lot of investors. Investor Education is one of their distractions.

In January MoneyBox, which provides Commentary about Business and Finance, published the following article written by Helaine Olain. Helaine is the author of Pound Foolish: Exposing the Dark Side of the Personal Finance Industry and a contributing editor at Pacific Standard.

Helaine writes "We don't expect people to be their own doctors or lawyers; why would we expect them to be their own financial advisors?"

Stop Trying to Make Financial Literacy Happen

It's a noble distraction from actual consumer protection. That's why the financial services industry loves it. - By Helaine Olen, January29, 2015

This is the same Discover Financial Services whose subsidiary Discover Bank came to an agreement with the CFPB in 2012 to refund $200 million to customers and pay a $14 million fine for using what was described as "deceptive" techniques to sell customers on such things as credit score tracking and identify theft protection. How deceptive? Well, service reps implied the products were free and frequently forgot to mention that customers who were self-employed, unemployed, or suffering from various medical conditions were not eligible to use the products being pitched at them. There was also a trick in which Discover's customer service specialists talked really fast when giving out price information—so fast that the person on the other end of the line couldn't process it.

Another financial education specialist present on Wednesday? BB&T Bank, the parent of brokerage Scott & Stringfellow, which came to a $350,000 settlement with the Financial Industry Regulatory Authority in 2012 after it was accused of marketing nontraditional exchange-traded funds to customers without properly educating the representatives selling them. That result? Customers who were seeking "capital preservation" ended up being peddled riskier investments than they wanted.

As for the Financial Services Roundtable, the organization has taken a prominent role fighting the Department of Labor's attempts to require financial advisers giving advice on individual retirement savings to act in consumers' best interests, something known as the fiduciary standard. It's something that would almost certainly help their customers more than any financial education effort—since, after all, it would no longer be up to people seeking financial advice to figure out when the financial counsel they are offered isn't optimal.

That's not, however, how the Financial Services Roundtable sees it. They claim expanding the fiduciary standard to cover individual retirement accounts would cause "unnecessary confusion." They forgot to mention that consumers are already confused, with a 2010 study finding 3 out of 4 consumers are convinced that people giving financial advice need to act in their clients' best interests when, in fact, the chances are fairly good they do not.

The result of all that confusion? A recent White House memo estimated that brokers who don't need to act in their clients' best interests are costing Americans between $8 and $17 billion in lost retirement savings annually, thanks to such practices as collecting higher commissions for placing clients in less than ideal investments.

Even if all these shenanigans weren't taking place, it's hard to see how financial literacy would work. Financial experts disagree about the correct financial behavior in many situations. Then there are our greater economic circumstances. Medical bills—not shopping sprees—are one of the leading causes of bankruptcy. As a result of all this, even noted behavioral economist Richard Thaler claims that" financial

I get that the CFPB has to go along with this charade. After all, Congress mandated financial literacy be part of the agency's mission when it was legislated into existence as part of the Dodd-Frank Act. But the rest of us don't need to settle for faux financial empowerment. We can demand real protection instead. As Lauren Willis, a Loyola Law School professor and leading critic of the financial literacy movement, put it in a recent Los Angeles Times op-ed she wrote with Theresa Amato, executive director of Citizen Works, "We don't expect people to be their own doctors or lawyers; why would we expect them to be their own financial advisors?"

Helaine Olen is the author of Pound Foolish: Exposing the Dark Side of the Personal Finance Industry and a contributing editor at Pacific Standard.