SIPA Sentinel

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Small Investor Protection Association - A voice for small investors

TAX FREE SAVINGS ACCOUNTS (TFSA)

By now most investors know that the TFSA is a registered investment account that can hold the same investments as other registered plans. The advantage of these plans is that the money invested is after tax, all of the subsequent gains are tax free. Whereas with other registered plans, RRSPs and RRIFs, all withdrawals are taxable. Another advantage of the TFSA is that if you need money you are able to withdraw money from your TFSA and repay it later provided you repay after the year has passed.

Each year you are able to invest an additional $5,000 so over time the accumulation can be significant. The amount for 2013 is increased to $5,500.

FIDUCIARY STANDARD OR BEST INTEREST STANDARD

Many investors believe their titled "Financial Advisor" has a fiduciary duty towards them. Unless it is a discretionary account established with proper documentation that is not so. It is not uncommon for a titled "Financial Advisor" to look after a client's account on a discretionary basis but without completing the requisite documentation. That is because your representative may not be qualified to manage a discretionary account and would be required to turn your account over to a qualified account manage and lose commissions.

Unfortunately there is also no legal requirement for your representative to look after your best interests. Now that does not mean that all representatives take unfair advantage but it does happen, particularly if the client is not monitoring events closely and has little knowledge of investing. Currently the regulators are reviewing the standards for representatives providing advice. See Barbara Shecter's article from the Financial Post.

'Best-interest' criteria may be model

BY BARBARA SHECTER, FINANCIAL POST OCTOBER 29, 2012

Canadian securities regulators are weighing the pros and cons of imposing a stricter fiduciary or "best-interest" standard on financial advisers who provide advice to retail clients.

Investor rights advocates say advisers should be held to a higher standard of care, similar to the fiduciary duty of a company executive or lawyer - and note that other jurisdictions, including the United States, are moving in this direction.

But improvements to adviser responsibility and accountability in Canada have been slow to come, despite regulatory initiatives dating back to 2000.

"The application of such a standard has been the subject of much debate in Canada and internationally, and requires careful consideration to determine the right solution for the Canadian context," said Bill Rice, chair of the Canadian Securities Administrators and of the Alberta Securities Commission.

The CSA, the umbrella organization for Canada's 13 provincial and territorial securities regulators, published a "consultation" paper on the issue earlier in October and is seeking comment from the investors and other market players until Feb. 22, 2013.

"Today's consultation paper demonstrates Canadian securities regulators' commitment in examining opportunities to improve the relationship between clients and their advisers and dealers in order to ensure effective protection for Canadian investors," Rice said.

In 2000, a committee of the Ontario Securities Commission proposed a Fair Dealing Model, which aimed to create a single license for all financial service providers, and establish standards that would create understandable disclosure, meaningful communication of expectations, and effective management of conflicts of interest.

But, over the years, the Fair Dealing Model splintered off into separate efforts undertaken by the OSC, the Investment Industry Regulatory Organization of Canada (IIROC) and the Canadian Securities Administrators (CSA).

In March, IIROC began phasing in some reforms to disclosure requirements and enhancements to the standards advisers must meet when assessing the suitability of investments for their clients.

ARE CANADIANS DECEIVED WITH REGARD TO INVESTMENT AND REGULATION?

There are many ways that Canadians are being misled about investment and regulators. SIPA has carried articles about titles used by product sales persons such as "Financial Advisor". The regulators allow this practice to continue which helps to mislead investors into thinking their so-called "Financial Advisor" has a fiduciary duty towards them. That is not the case. These registered persons do not have a legal requirement of fiduciary responsibility or even to put the clients' interests first.

Larry Elford in Lethbridge continues to inform Canadians about the pitfalls they can face. Larry has many years experience working in the industry and knows about what he speaks. The following article on deception of consumers is from Larry. It is well worth referring to the links Larry provides in his article.

THE DELIBERATE DECEPTION OF CONSUMERS - by Larry Elford

One definition of fraud is “the deliberate deception of consumers”. In this column I would like to open a conversation into a dark world of deception within some of the most “trusted” financial institutions in North America. Sadly, during the twenty years I worked inside the investment industry, this conversation was never allowed.

In the United States there are more than 11,000 registered investment advisors according to the SEC. These are generally people who are licensed, trained and paid to act in the capacity of a professional advisor. In this capacity they are required to act in the best interests of the customer and they give this to you in writing. It falls under the Investment Advisor Act of 1940.

*There are also some 600,000 broker-dealers registered in the United States and they **do not have to act in the best interests of clients**. They are more likely the brokers and salespersons trying to earn a commission from selling a product such as a stock, bond, or mutual fund etc..*

The problem for consumers begins when those 600,000 broker-sales-types identify themselves to customers by the title "advisor" even though they don't have the proper license or registration under the law. In my experience, this sleight of hand is done to allow salespersons to raise the level of trust in customers, while lowering their level of caution or suspicion. The comments about title misrepresentation by Quebec Superior Court Judge in Markarian V CIBC is along those lines as well. See "Misleading Titles" beginning at paragraph 262 here http://investorvoice.ca/Cases/Investor/Markarian/Markarian_v_CIBCWorldMarketsInc.htm

If you take this information to independent legal counsel you may also get comment on "phony titles and negligent misrepresentation".

Here in Canada there are approximately 150 firms who are members at www.portfoliomanagement.org.

These professional investment managers are legally registered as "adviser's" and they provide a written duty to place the interests of the customer first.

Then there are the 150,000 registrants, who were legally licensed as "salespersons", until September of 2009, when the word "salesperson" was deleted from the Securities acts of 13 provinces and territories, and replaced with the words "dealing representative". Nearly 100% of these sale-types usually refer to themselves as "advisor's" in an effort to increase the "trust" they hope to earn with customers.

Each one of those people may also be trying to represent that they are "advisors" and using the word advisor to imply that they will give advice that is in the best interest of the customer. This often forms a part of the deliberate deception that was spoken of at the outset of this article.

An interesting side benefit of dealing with a registered adviser is that usually the investment management fees start out in the neighborhood of one to 1 1/4% and there are no sales commission people who may be motivated to increase those fees in ways that can harm the customer.

So with a licensed and registered advisor, a customer gets a true professional with the fiduciary duty and an almost wholesale level of investment pricing if you are fortunate enough to deal with them.

With a salesperson or broker, representing him or herself as an "advisor", there is less qualification, no advisor license, no duty to place the interests of the client first, and fees will usually begin at about 2% and go as high as more than 5% on some products sold. In defense of the sales side of the industry, some do have professional membership which requires them to pledge allegiance to ethics and fair treatment of clients, however I have yet to see enforcement of those pledges within the industry.

In two most recent cases of financial misconduct I have found investments with multiple layers of fees, piled one on top of another, on top of another. Fees in excess of 5% annually are the kind of things that turns a broker-salesperson, into a "vice president" or a "million dollar producer". Unfortunately none of that serves the customer.

I spoke about one specific example at the launch of the THIEVES OF BAY STREET book and it's on my YouTube channel here http://youtu.be/diEjitz-4So along with a dozen video presentations on this and related topics.

So customers who end up dealing with a salesperson-broker in Canada or the United States, most often get a person who is (a) ***pretending that they are an investment advisor*** *, who (b)* ***is not a licensed and registered professional in the category claimed on their business cards****, and (c)* ***does not owe customers a duty of care to place customers interests ahead of the seller****.*

I believe that salesman-brokers who call who call themselves "advisers" are one of the greatest systemic bait and switch operations in the world. I encourage victims of this misconduct to seek legal opinion from far outside of the financial industry in order to gain objective access to the law. If you ask a securities lawyer or regulator, you are very likely to get an answer as independent as the advice you get from a non-licensed "advisor". (see comments regarding this in the SEC petition in following paragraph)

During my research for this story I ran across this well informed agency in the United States, and a written petition they made to the SEC. It is among the most candid and enlightening articles I have seen, to honestly discuss a matter which is cheating and shortchanging North Americans of billions of dollars, and putting those billions into the pockets of industry members who are acting with misconduct. It is found here at the SEC: http://ftp.sec.gov/rules/petitions/2012/petn4-648.pdf

Larry Elford, former CFP, CIM, FCSI, Associate Portfolio Manager
http://www.speakersalberta.com/_Elford.html

HOW THE EQUITIES MARKETS PERFORM

Rudy Luuko wrote an interesting article in the Toronto Star about mutual fund performance in world markets. His conclusion is that Canadian markets have outperformed other markets. However when one invests in mutual funds in Canada the excessively high fees reduces the investor's return considerably. An alternative to mutual funds is to buy an ETF that closely tracks the market. For the Toronto stock market XIU on Toronto tracks the market closely and the fees are modest so the investor's return is close to the market return. It is helpful when people like Rudy provide a general overview to help investors understand what is happening in the markets. His article follows:

Let us hope that the Emerging markets reward investors with strong stomachs

By Rudy Luukko | Fri Nov 02 2012

If you think it has become harder to get a decent return from investing, you're right. Just as the Arctic ice-pack is shrinking, so are returns in the global stock-market environment.

This can be seen by looking at the historical performance of the MSCI World Index—a market-weighted benchmark for the world's developed markets in North America, Europe and Asia.

Since its inception at the end of 1969, this index has an annualized return in Canadian-dollar terms of 9.1 per cent. In more recent years, global returns have shrunk.

Over the past 10 years ended Sept. 30 — a period that includes the late 1987 market crash, and the market meltdowns that began in 2000 and 2007 — the MSCI World return has dwindled to 3.6 per cent.

During that disappointing decade, the MSCI Europe Index has returned 4.3 per cent while the MSCI Japan Index has languished at minus one per cent. The U.S. market, as measured by the Canadian-dollar return of the S&P 500 Index—returned three per cent.

Happily for Canadian investors, one of the best performing developed markets over the decades has been the home market. Thanks largely to our wealth of natural resources and our stable banking industry, The S&P/TSX Composite Index has returned an annualized 9.8 per cent over the past decade.

That's even better than its annualized 9.1 per cent return since inception in January 1956. The home bias of most investors in buying equity funds or stocks has provided a solid domestic foundation for portfolios.

Beyond our borders, the most impressive asset class for equity investors is emerging markets, a geographically diverse group of Asian, Latin American, eastern European and African countries.

Since its inception at the end of 1987, the MSCI Emerging Markets Index has returned an average 11.4 per cent annually, though this start date excludes the October 1987 crash.

Even without the benefit of this end-date bias, these markets as a group have outperformed major markets over the past decade. The 10-year return is 11.9 per cent.

Mutual funds investing in these fast growing markets are very well represented among the top-performing foreign equity funds over 10 years. Yes, they are more volatile, but not intolerably so for investors who take a long-term view and have at least a moderate degree of risk tolerance.

But curb your expectations. The growth slowdown in China, the largest single developing country, and the interconnectedness of the global economy will exert a moderating influence.

Overall, look for the lean times to continue. The 10-year outlook from one prominent forecaster, TD Economics, calls for seven per cent returns on average for the Canadian, U.S. and major overseas markets. For the typical mutual-fund investor, this forecast would leave projected returns after fees somewhere in the range of five to six per cent. (This assumes that the average return will be the market return minus fund fees and expenses.)

For the most popular types of fund purchases—balanced funds or portfolio funds that hold combinations of equities, bonds and cash—you can expect to earn even less. Along with equity-fund returns being lower than in the past, returns on high-quality bonds and cash instruments are skimpier still.

One consolation for investors in the riskier asset classes is that the current rate of inflation, 1.2 per cent at last report from Statistics Canada, is very low. It's roughly three to four percentage points lower than in the late 1980s.

So your returns don't need to be as high to produce real, after-inflation gains. Another reason why the case for risk-taking remains intact is that savers no longer have the opportunity to beat inflation by putting their savings in cash or equivalents.

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THE OSC INVESTOR ADVISORY PANEL

The Investor Advisory Panel operated for two years with Anita Anand as Chair. Recently the Ontario Securities Commission appointed new members to replace those who departed and appointed Paul Bates a current member as Chair. Also Ken Kivenko, Chair of SIPA's Advisory Committee has been appointed to the Panel so we look forward to working with Ken on the Panel. The OSC Press Release is reprinted.

OSC Announces New Members of Investor Advisory Panel

TORONTO *– The Ontario Securities Commission (OSC) has announced four new members of its Investor Advisory Panel and the Panel's new Chair. The Panel comments on OSC proposals, including rules, policies and the annual Statement of Priorities, brings forward policy issues for consideration and advises on the effectiveness of the OSC's investor protection initiatives.*
The new members joining the Panel will each serve a two-year term:

Connie Craddock	*Former Vice-President of Public Affairs at the Investment Industry Regulatory Organization of Canada (IIROC).*
Alan Goldhar	*Chief Investment Officer at the Office of the Public Guardian and Trustee in Ontario's Ministry of the Attorney General.*
Ken Kivenko	*Long-time investor advocate, President and Owner of Kenmar, which assists investors with dispute resolution.*
Cary List	*President and CEO of the Financial Planning Standards Council (FPSC). Former Academic Director at George Brown College.*

The Panel has been expanded to eight members from seven. The new members join continuing members Nancy Averill, Paul Bates, and Stan Buell. Mr. Bates has been appointed Chair of the Panel and will serve a one-year term.

"The Panel has become an important voice for investors in the regulatory process, and the new members have been selected to ensure that the Panel continues to represent a broad range of relevant experience, skills, knowledge and perspectives," said Mary Condon, Vice-Chair of the OSC. "I am pleased that Paul Bates has agreed to extend his term and serve as Chair of the Panel."

As an academic and former senior executive in the financial services industry, Mr. Bates has extensive knowledge of the capital markets and securities regulation. He is Special Advisor to the President and former Dean of Business at the DeGroote School of Business, McMaster University. He is a former Commissioner to the Ontario Securities Commission and is Chair of the Investor Education Fund, a non-profit organization established by the OSC.

Full biographical information on all Panel members, along with details on IAP meetings and other activity is available in the Investor Advisory Panel section of the OSC website.

VISIT MONEYMANAGEDPROPERLY.COM TO LEARN MORE ABOUT INVESTING

Andrew Teasdale has many years of experience with the investment industry and regulation. He came to Canada from England more than a decade ago, and after gaining experience with our Canadian systems he created one of the better websites for credible information about investing.
http://blog.moneymanagedproperly.com/.

All members are encouraged to visit *http://blog.moneymanagedproperly.com/*. A section on Investor Education provides an excellent explanation on mutual fund fees and should provide small investors with a better understanding of mutual funds and the fees charged directly and indirectly. It is worthwhile to spend some time on this website to better understand mutual funds. The website also makes some sound recommendations.

HALL OF SHAME FOR BROKERS

SIPA's Hall of Shame for Brokers was first introduced on the SIPA website early this century. The Hall of Shame provided an alphabetical list of brokers and their companies that had been disciplined or appeared in the public press. All of the information was publicly available, but the Hall of Shame displayed an alphabetical list of names, the disciplines and fines in one easy source. Soon the British Columbia Securities Commission (BCSC) had an alphabetical list on the BCSC website, so it was decided to remove the alphabetical list completely from SIPA's website. At the time it was felt that our mission had been accomplished and it was just a matter of time before all the regulators would follow with alphabetical lists. That has come to pass. Now the Canadian Securities Administrators (CSA) provides an alphabetical list of disciplined persons incorporating data from all the other regulators so it is available in one source. See below.

CANADIAN SECURITIES ADMISTRATORS LIST OF DISCIPLINED PERSONS

Small investors should visit the CSA website *http://www.securities-administrators.ca/* and check under *Enforcement* for *Disciplined Persons* to determine whether a representative is on the list. Investors should keep in mind that this list is not totally comprehensive and applies only to securities. As indicated on the CSA website it may be necessary to check with other regulators if you buy investment products from banks or insurance companies.

This is one of the reasons SIPA calls for a National Financial Services Regulator, modeled after the Quebec regulator, that covers all those selling financial products including banks and insurance companies. The latter sell products that appear similar to securities but are not classed as securities and therefore are not regulated by the Canadian Securities Regulators. The following is from the CSA website in November 2012.

Disciplined Persons

The disciplined persons list is intended to assist the public and the securities industry in conducting due diligence. This list reveals the names of all persons disciplined by the Alberta Securities Commission since 2005, the Autorité des marchés financiers since 2007, the British Columbia Securities Commission since 1987, the Bureau de décision et de révision since 2007, the Manitoba Securities Commission since 1999, the New Brunswick Securities Commission since 1991, the Nova Scotia Securities Commission since 2002, the Ontario Securities Commission since 1997, the Saskatchewan Financial Services Commission since 2005, the Quebec *provincial court since 2007, the Investment Industry Regulatory Organization of Canada (IIROC) since 2004, the Mutual Fund Dealers Association of Canada (MFDA) since 2004 and la Chambre de la sécurité financière since 2001.*

Administrative tribunal hearing decisions and settlement agreements are public records. As the government agencies responsible for protecting investors and the integrity of the securities markets, we consider it important to make this type of information readily available. This is why we identify the names of the person that have been subject to sanctions, no matter how serious and whether or not the sanctions have expired.

RSS Feeds
Browse Alphabetical List

A B C D E F G H I J K L M N O P Q R S T U V W X Y Z
Disciplined Persons Search

Name:

Ruling Body: Any/All

SEARCH »

Latest 10 Disciplined Persons

NAME	DATE OF ORDER
Whidden, David	March 06, 2013
Swaby, Paul	March 06, 2013
Lounds, Kent Emerson	March 06, 2013
Higgins, Gregory William	March 06, 2013
Mainse, Ronald	March 06, 2013
Sbaraglia, Peter	March 05, 2013
Chambers, Desmond	February 28, 2013
Davis, Jeremy Peter	February 25, 2013
Uhersky, Margaret Janet	February 25, 2013
Uhersky, Dennis Wayne	February 25, 2013

SIPA TO LAUNCH NEW WEBSITE IN 2013

SIPA's website is being re-designed and up dated. Work has been ongoing and it is expected that our new website will be launched early in 2013. Ted Myerscough has been engaged for the re-design and will also provide ongoing webmaster services to maintain the website. We expect it will have an improved site search mechanism and be easier to navigate.