SIPA Sentinel

May 2015

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.

RAISING INVESTOR AWARENESS

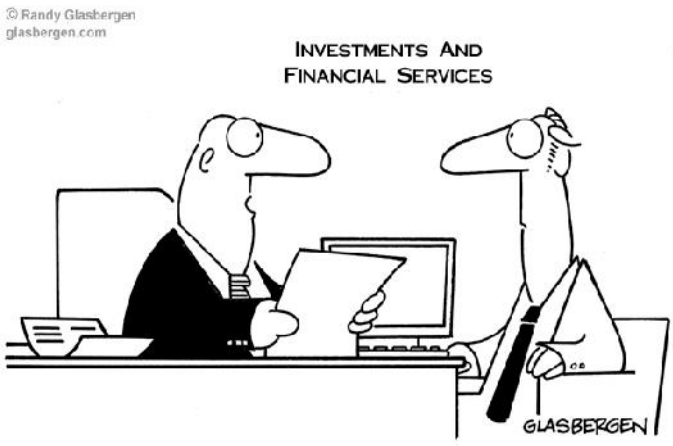
SIPA has been trying to raise investor awareness of how the industry operates for over fifteen years. Investors are still losing billions of dollars of their life savings each year so we have been trying a new approach for SIPA. We are turning to the social media and now have a Facebook page operated by Larry Elford in Alberta and we are using Twitter, Linked In and Facebook to publish messages.

One of our creative members suggested that SIPA sponsor a Video Contest with Prize money to solicit entries that will present a short message capable of gaining traction with investors. We need to convey a message that will reach young and old. Details are available on the SIPA website at:

http://www.sipa.ca/contest/contest.html

This contest is open to everyone including members excepting those involved in SIPA's operations.

The same member has also been researching various types of messaging that will help to inform the public and suggests that cartoons often convey a true message that can be absorbed quickly. An example is:



"The good news is, nobody will ever hate you for being rich."

TWO MOST IMPORTANT ISSUES – DECEPTION & FIDUCIARY DUTY

We believe the two most important issues for investors today are Deception and Fiduciary Duty.

There are many issues being studied and discussed with reports and surveys from many sources. The topic of disclosure has been ongoing since Joe Killoran talked about Point of Sale Disclosure (POS Disclosure) almost two decades ago. Many individuals, including Ken Kivenko, volunteered time and effort to produce the Fair Dealing Model (FDM). It included POS Disclosure. That initiative was eviscerated to become the Fund Facts document. This in itself is quite good but is not required to be provided until two days after the sale. So much for Point of Sale disclosure to provide facts before a decision is made.

However, we feel the single most important fundamental issue is the deception practiced by the industry. We know that Ponzi frauds are possible when fraudsters are able to gain the trust of people so they will give their money to the fraudster for various investments that may be only imaginary.

The industry is able to gain public trust in their commission driven sales people by giving them "Financial Advisor" titles. The regulators say this is an unregulated business title commonly used by the industry and investors should check the representative's registration and qualifications. They are placing the onus on investors to protect themselves from this most devious of deceptions.

Now there is never-ending discussion about Fiduciary Duty. The industry continues to object and strongly resist any move towards fiduciary duty because this would make them legally responsible for the advice they give investors. At present the industry can claim that investors are dealing with sales people (although they are titled Advisors - note the industry is careful to spell that with an "O" because an Adviser spelled with an "E" is defined in the Securities Act and must look after clients' best interests) and as sales people they are not required to look after a client's best interests.

The imposition of a fiduciary responsibility would eliminate many of the issues that investors face today. Steven Blum has recently published an article about Fiduciary duty which well defines the issue.

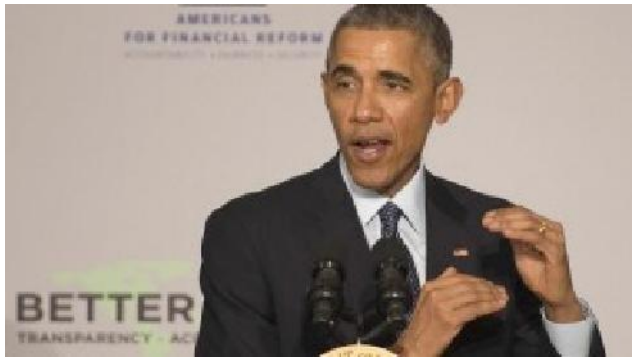
A Rather Modest Fiduciary Proposal Draws Fire

By Steven G. Blum on March 3, 2015

In a recent speech, President Obama announced support for a Department of Labor initiative to impose a fiduciary duty on those who give advice about tax deferred retirement investments such as IRA accounts. It is a modest proposal. Judging by the howls emanating from an industry fearing it could cut into profits, though, you might think he had suggested something huge and terrifying.

Fiduciaries have a high level of duty to their clients. The financial services industry has grown used to a much lower standard known as "suitability." Although they are oversimplifications, the former has come to be known as "putting the client's interests first" while the latter merely forbids selling a client something altogether unsuitable. An advisor observing the "suitability standard" may put a client into anything deemed appropriate even if it is wildly expensive or offers financial incentives to the seller.

For years the Department of Labor has urged that those who advise on tax qualified retirement accounts should owe their clients that higher level of competence, care, know-how, and loyalty. President Obama has now added his voice to those efforts. Indeed, from where I sit, the idea of imposing the same high duty on those handling people's retirement money as is expected of doctors, lawyers and other "true professionals" cannot possibly be controversial. All that is being proposed is that the money guys be held to the same higher standard that any professional must uphold to keep the public safe from exploitation.



In light of the sound and fury emanating from the industry, though, it appears to be deeply controversial. An NPR report quoted Kenneth Bentsen Jr., president and chief executive of the Securities Industry and Financial Markets Association, as saying, "This re-proposal could make it harder to save for retirement by cutting access to affordable advice and limiting options for savers." The argument seems to be that this industry cannot afford to serve retirement savers unless it is free to take them to the cleaners.

A New York Post article went further in trying to tie this proposal to the familiar straw men of governmental expansion and encroachment on freedom. Such an argument would seem ridiculous on its face; imposing a standard of care is hardly governmental overreach. In three decades as a lawyer, it never occurred to me that professional duties precluding taking advantage of clients are a limitation on my freedom. Quite the contrary, in licensing a profession or vocation the proper authorities have a responsibility to impose appropriate duties. Proscribing conflicts-of-interest, hidden overcharges, or otherwise taking financial advantage is surely part of a proper regulatory function.

Finally, there seems to be an argument that few financial advisors overcharge and that the fees currently accessed (both transparent and hidden) are fair and appropriate. This argument is best refuted by a little light research; talk to anyone familiar with this industry who does not have a financial stake in it. Financial services are, arguably, the most overpaid sector in the American economy. Practioners make enormous amounts of money by selling products and creating little or no value for their clients. Show me someone arguing that this industry is but fairly compensated and I will show you someone who is connected to this particular gravy train.

Steven G. Blum has been teaching in the Department of Legal Studies and Business Ethics at the Wharton School of Business of the University of Pennsylvania since 1994 and has been a visiting professor at the ALBA Graduate Business School in Athens, Greece since 1996. Mr. Blum has taught in Wharton Executive Education programs, lectured and consulted widely, and frequently leads seminars and educational forums. He has led training sessions for a number of Fortune 100 companies as well as organizations of lawyers, physicians, accountants, and other professionals.

WHY ARE INVESTORS LOSING BILLIONS OF THEIR SAVINGS EVERY YEAR

There are many issues that are causing investors to lose their savings. There is much talk about high fund fees, excessive trading, inappropriate leveraging, fraudulent Know Your Client forms, OBSI's failure to have recommendations accepted, creative products that cause investor loss, the lack of enforcement of existing rules, etc. The regulators tout investor education as they try to place responsibility on the investor.

At the same time we are moving from defined benefit pensions to defined contribution pensions which means that even more money will be in the hands of investors and provide ever more funds for the industry to harvest. The result is the billions of dollars of savings lost by Canadians each year will continue to increase. When we consider that so much is lost there must be something wrong with the system.

The fact is investors place their trust in sales people in large part because they are called "Financial Advisor" which means to most Canadians (since Adviser and Advisor are the same word in dictionaries) that an "Advisor" has a responsibility to look after the client's best interests. This is not true. The Securities Acts which govern the investment dealers, but not the banks and insurance companies, define "Adviser" but do not mention "Advisor". The industry claims the term "Financial Advisor" is only an unregulated business title and can be used by sales people. The regulators allow this to happen.

Therefore, the following letter was sent to the CSA Secretariat. If you support this letter I would appreciate hearing from you. Or better yet write directly to the CSA, your provincial regulator, your MLA and your MP.

April 13, 2015

CSA Chair Louis Morisset
CSA SECRETARIAT
Tour de la Bourse
800, Square Victoria, Suite 2510
Montreal, QC, H4Z 1J2

Dear Mr. Morisset;

We are concerned about two primary issues that are the root cause of so many Canadians losing their savings due to investment industry wrongdoing. They are deception and lack of fiduciary duty.

The deception issue is of fundamental importance as our society is based on trust. People trust Doctors, Dentists, and "Financial Advisors". They believe all are professional, regulated, and dedicated to looking after people. Most Canadians, including financial journalists and news editors, believe Adviser and Advisor are the same word. Dictionaries indicate this is true. However "Financial Advisor" is considered by the investment industry as an unregulated business title and the regulators allow industry to call sales people "Financial Advisor" to gain trust. The fact that media allows style to supersede truth when they fail to use the spelling "Advisor" when required for meaning reinforces the deception.

The "Advisor" deception practice along with deceptive advertising is misleading Canadians into placing their trust and their life savings with a commission driven (commission grid) sales person. Many Canadians later learned that they have been sold products paying the highest commissions and have

been leveraged which resulted in extreme life-altering loss. However, it is too late after their savings are decimated. Victims are devastated.

If the regulators truly intend to protect investors, they must ensure that registered representatives are required to disclose whether they are in fact a sales representative, an advising representative, or a portfolio manager and to use their registration in all advertising. Truth is imperative.

The second fundamental issue is lack of fiduciary duty. Canadians believe their representative titled "Financial Advisor" is a fiduciary. A fiduciary duty needs to be required of all firms and representatives offering financial products or advice. It is unfortunate when regulators are persuaded by the industry to avoid imposing fiduciary duty on the basis of argument that appears to be unreasonable.

If the present deceptive practices coupled with the lack of fiduciary duty are allowed to continue, many Canadians will continue to lose their life savings every year. This is intolerable. The Canadian Securities Administrators must act to prevent this from happening.

Yours truly

Stan Buell

Small Investor Protection Association
Seeking Truth and Justice
Website: www.sipa.ca - e-mail: sipa.toronto@gmail.com - tel: 416-614-9128

TRUTH IN JOURNALISM

Several members have spoken with journalists regarding the deception by the industry being aided by the media adopting the spelling "Adviser" as their writing "style". Recently Larry Elford addressed students at Lethbridge University, and supported by props and video his message was very clear. A journalist from the Lethbridge Herald was there and wrote an article. However, when the article was published the word "Advisor" was replaced by "Adviser" and so the true message was lost. This prompted an e-mail to the Canadian Press:

SIPA e-mail to Heather Boyd <heather.boyd@thecanadianpress.com>

Thank you for taking my call at a busy time. The matter is not urgent so we can talk another time. As promised I enclose an outline of the issue causing us concern, for your consideration prior to a telephone discussion.

We have been encountering journalists writing an article about an issue that we believe is of fundamental importance for Canadians.

- Each year Canadians are losing huge amounts of their savings when they have place their trust in a "Financial Advisor".

- The Securities Acts define Adviser and describe responsibility to look after investor best interests.

- Dictionaries define Adviser and indicate Advisor is an alternate spelling.

- Most Canadians believe the two words are synonymous and therefore trust a person using the "Financial Advisor" title.

- The investment industry however treats the two words differently. They consider "Financial Advisor" to be an unregulated business title so that it is not confused with the obligations for Adviser in the Securities Acts.

There are three main registration classifications for persons in the investment industry who deal directly with clients:

- Portfolio Manager – Can provide financial advice and manage accounts on a discretionary basis
- Advising Representative – Can provide financial advice
- Dealing Representative – a sales person. Can sell suitable products

The first two have a fiduciary responsibility but the latter has no legal responsibility to look after a client's best interest.

These sales persons are motivated by commission in accordance with a commission grid. As a result it is common practice to sell products that generate the highest commission and use leverage strategies to increase the assets on which commissions can be generated.

We feel it is unfair, if not illegal, to mislead the public by allowing sales person to use the "Financial Advisor" title. Most people are not aware of the spin on this word.

As a result Canadians have been placing complete trust as well as their life savings in the hands of commission driven sales persons. This is incredibly unfair.

Recently the Lethbridge Herald published an article that should have been informative but because the style of most publications is to always spell the word as Adviser. As a result the true message does not get published.

To illustrate the point, the following is quoted from the Herald article.

> "Most call themselves "advisers," he said. In law, that exempts them from any fiduciary responsibility to their clients – because for what it's worth, Canada's law applies only to "advisers." "

Does that make sense to you? The statement is wrong and does not convey the truth. But if the first word had been spelled "advisors" it makes absolute sense.

The response we received when we questioned the Herald was:

> "Hi, Stan,
>
> Thanks for your letter. Just to explain, we follow the Canadian Press style for spelling, which spells "adviser" with an "e" instead of an "o." According to the Oxford Dictionary, the word has the same definition whether spelled with an "e" or an "o."

Dave Sulz
Lethbridge Herald"

There have been other instances with national papers including the Globe and the Post, so we would like to get some explanation as to why this is allowed to happen. It misleads people.

Thank you for your interest.

I look forward to speaking with you at another time.

Stan Buell
Small Investor Protection Association
Seeking Truth and Justice

So How Do Advisors Think About Their Clients?

Jordan Maxwell wrote an article on April 1, 2015, entitled "Embedded-commission advisor angered by growth in fee-based compensation" in which he quoted Harley Lockhart, a financial advisor with Quail Ridge Financial Services as saying:

> "There's lot of talk coming the way of commission-based advisors and I don't see anything to say that the fee-based model should be the only option," said Lockhart. "It shouldn't be about what advisors get paid, but what benefit they provide to the client. I've been an advisor for 30 years and I've had maybe a dozen ask about how much I get paid. I don't think it's any of their business, but I do it anyway. If they're not happy, there's the door."

Since the client is ultimately paying the fee, it is indeed his right to know what the advisor is paid. It is not unusual for clients to encounter arrogance in the investment industry but it is a bit unusual to see these comments in publications. Good for you Jordan Maxwell.

Are Investors Still At Risk Dealing with the Investment Industry?

The harvesting of investors continues at an incredible rate. Due to the lack of fiduciary duty and the failure of firms to exercise strict oversight there are many investors continuing to lose their savings. Some of the situations are exposed by the regulators so there appears to be some advancement in investor protection but the regulators need to provide remedial protection and not leave it to the industry to reach settlement with the victims.

Inevitably the resolutions reached by industry or industry sponsored dispute resolution services provide less restitution than seems reasonable given the circumstances. Victims are accepting these low ball offers because they begin to see the complexity of the system and the reality that a legal battle is long and costly because the industry is prepared to oppose any actions rigorously.

The industry prefers to arrange a discounted settlement with a Gag Order so the public does not know the magnitude of the wrongdoing. An example of the wrongdoing and trickery that goes on is provided by the following MFDA Case Summary.

MFDA Case Summary - Hearing Panel imposes a Permanent Prohibition, $500,000 Fine and Costs of $10,000 on Mark Lindsay

Nature of Proceeding - A Hearing Panel of the Central Regional Council (the "Hearing Panel") of the Mutual Fund Dealers Association of Canada ("MFDA") has imposed disciplinary penalties on Mark Lindsay ("Lindsay"), a former Approved Person of Investors Group Financial Services Inc. ("IG"), a Member of the MFDA.

By-Laws, Rules, Policies - Violated Following a hearing on June 2, 2011, the Hearing Panel found that:

1. Between approximately October 2007 and December 2008, Lindsay failed to deal fairly, honestly and in good faith with clients KV, LL, M and ML, DG, AL, JJ, DD, PE and SE, TD and JW, FM and PH, HH and AC and SV by forging their signatures on documentation, misleading them about the source of money he gave to them and the use that he made of money received from them, and misappropriating more than $300,000 from them, which he has failed to repay or otherwise account for, contrary to MFDA Rule 2.1.1; and

2. Between January 2007 and December 2008, Lindsay engaged in unauthorized trading in the accounts of, and processed unauthorized loan applications for, clients KV, LL, M and ML, DD, DG, AL, FM and PH, TD and JW, P and SE, and JJ, without obtaining instructions, authorization or approval from the clients, contrary to MFDA Rules 2.1.1 and 2.3.1.

Summary of Facts

From September 5, 2003 to December 5, 2008, Lindsay was registered in Ontario as a mutual fund salesperson for IG. He was also registered as a branch manager from June 19, 2006 to December 5, 2008. Since December 5, 2008, Lindsay has not been registered in the securities industry in any capacity.

Between January 2007 and December 31, 2008, Lindsay engaged in conduct which detrimentally impacted 16 clients by processing 65 unauthorized transactions in their investment accounts at IG and by setting up 5 unauthorized loans for clients and misappropriating $494,408.40 from clients. A portion of the misappropriated money was recovered from Lindsay after his conduct was discovered and some of the unauthorized transactions that resulted in transfers of client money to bank accounts that Lindsay controlled were reversed. IG paid out $424,451.41 in compensation to clients. On October 18, 2010, Lindsay pleaded guilty to one count of fraud over $5,000. He was sentenced to two years probation and stand alone restitution.

In its reasons for decision, the Hearing Panel stated that "evidence collected by the MFDA and IG, coupled with the admissions of the Respondent, establish that he is a thief, forger, and liar who stole over $300,000 from his clients, many of whom were close to him by blood or marriage. He not only abused the trust of his clients but also that of his sponsor, IG, who had to pay out over $400,000 as compensation to his victims."

SIPA NEEDS YOUR HELP

We are searching for ways to become more effective and use new initiatives. We would like to hear from you regarding your needs or suggestions. We now have a webmaster to improve our website. Take a look and if you have suggestions let us know by e-mail. We have a small chat group discussing ways to improve.

If you would like to help, there are many ways you can do so. Let us know your skills and interests. We will send you an outline of how you might be able to help from home. Thanks for your support.