SIPA Sentinel

April 2016

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.

In this issue:

THE FIDUCIARY JOURNEY

By Mark Schoeff Jr. – Investment News

As the room filled to capacity on April 6 with celebratory lawmakers and advocates awaiting the Labor Department's final fiduciary rule, the champion of the measure, Phyllis Borzi, stands quietly at the back.

But minutes before **the agency unveils its controversial regulation raising investment advice standards for retirement accounts**, the scene surrounding the assistant Labor secretary turns into a kind of receiving line at a wedding reception. Ms. Borzi cannot stay inconspicuous among the people who know her central role in reaching this pinnacle hour.

"Enjoy the moment, Phyllis," says one well-wisher at the Center for American Progress in Washington that day.

Ms. Borzi says nothing. Instead, she smiles behind her thick, round eyeglasses, and leans in for hug.

Weeks later, 69-year-old Ms. Borzi choked up when recounting her team's efforts to reach that day — which unfolded over a long, slow and often arduous six-year journey. As the main architect of the so-called DOL fiduciary rule, which requires financial advisers to 401(k) and individual retirement accounts to act in their clients' best interests, she is credited with pushing through a nearly unprecedented wall of opposition. That as the Securities Industry and Financial Markets Association, the U.S. Chamber of Commerce and the Financial Services Institute.

But she never backed down.

Read all at - http://www.investmentnews.com/article/20160501/FEATURE/160429942/the-fiduciary-journey?utm_campaign=socialflow&utm_source=twitter&utm_medium=social

ARE YOU A SALESMAN ACTING FOR A DEALER OR ARE YOU AN ADVICE GIVER ACTING FOR ME?

This is the one question Larry Elford said was important when he addressed a near-full house at the Southern Alberta Council on Public Affair (SACPA). Larry is a member of the Speakers Bureau of Alberta and this is what they have to say about Larry:

> ***Larry Elford*** *will offer an articulate expert's glimpse behind the curtains, into the world of your investments as well as public money entrusted to governments, pension funds and institutions. In his presentation, White Collar Crime, audience members will hear how millions of dollars can be diverted from your pockets and your governments', into the hands of others and how self-regulation can lead to decriminalization. Larry states that* ***"My mission is to prevent financial abuse of some 30 million Canadians.*** *"Larry's passion is to work today writing, speaking and coaching Canadians and legislators on how to create safe and honest treatment for investors.*
>
> *The Minister of State for Finance said of Larry's speaking style: "Larry punches pretty hard". Larry calls it "full contact financial truth". Larry speaks about topics that are considered taboo, in some circles. Be warned. Larry speaks the truth about financial systems and investments. He cares more about suicides and investors' trauma than about banks and other financial institutions. He says:* ***"If you want the truth about it, you might want to hear me out."***

The Lethbridge Herald published an article written by Dylan Purcell regarding Larry's talk at the SACPA. The Herald has previously published articles that other mainstream media appear reluctant to publish without editing that masks the meaning. We are pleased that the Lethbridge Herald does publish Larry's comments. The complete article is re-produced below and is available at:

> http://lethbridgeherald.com/news/local-news/2016/04/16/investment-advocate-explains-role-of-financial-advisors-at-sacpa

Investment advocate explains role of financial advisors at SACPA

BY PURCELL, DYLAN ON APRIL 16, 2016.

Advocate and former financial professional Larry Elford answers questions on investment fraud during the weekly meeting of the Southern Alberta Council on Public Affairs. Herald photo by Ian Martens

THE LETHBRIDGE HERALD

dpurcell@lethbridgeherald.com

Almost every financial advisor is actually a salesperson working for big financial institutions and not their clients, investment reform advocate Larry Elford told a near-full house at the Southern Alberta Council on Public Affairs on Thursday.

Elford's talk was bleak but offered solutions to the untamed dystopia that is Canada's investment system.

"Canada has some of the strongest financial institutions and the weakest regulations," said Elford, outlining the reality of retirement investments, mutual funds and the immoral landscape of legally exempted finances like the one which cost the City of Lethbridge tens of millions when they purchased asset-backed papers.

These same financially dubious investments are available to people in Alberta investing in their retirements, and advisors are under no legal obligation to act in your best interests. Elford's presentation stressed that while most investment sales professionals call themselves advisors, that term has no legal designation or meaning and that a more accurate term would be salesperson.

"The investment industry plays a word game on the name advisor and they convince people that they're in the same game delivering advice that's in your best interest."

He said even those who boast accreditation are still hiding their ties to the institutions that make the real profit from Canadians' investments. From commissions to fees to kickbacks for promoting one investment over another, these "advisors" are only limited by their own integrity in a "systemic deception" that rewards working for the financial institutions, not the investor.

Elford researched the advisors listed by every major financial institution in the city – 60 in total – and didn't find a single one carried the Alberta Securities Commission legal designation "adviser." That term – note the spelling – is a legal definition. Advisor carries no legal meaning at all.

This semantic deception means those people carry no legal responsibility to look after people's investments, and are instead better off simply selling the investment itself.

"There's quite a diff between advice and selling.'" he said. "You wouldn't go to a doctor who was a salesman; you'd go to a doctor where you're expecting advice and advice in your best interest."

Elford also pointed out there are a number of ways advisors describe themselves, using the example of an Ontario securities "mystery shopper" sting to determine that out of 80 visits to financial investment businesses, there were 48 different titles used by the salespeople.

"When there is only one question that is important: 'Are you a salesman acting for a dealer or are you an advice-giver acting for me?'" he said.

Elford said the best solutions are that investors learn as much as they can or find advisors who receive fees based on your investment performance. Or find an adviser whose legal responsibility is to the investor. But the system is broken, he said, while proposing concerned investors take the fight to their political representative.

Elford said the problem is that the industry deceives people about its true motivations and takes hundreds of billions in the form of fees and paybacks and commissions. What does it give back?

"My brother sent me a photo of Hutterite colonies gleaning the fields around his land in Claresholm last year and I looked at it: Five combines in a row, beautiful sight, I love it, the dust coming up. And it just reminds me what the financial industry does. Extracting. They don't produce anything. They just extract from Canadians a part of your wealth. I'm going to say we've gone past the extracting part and we're now at fracking. We're fracking people's wealth."

IT'S FRAUD

SIPA has been calling it deception. The investment industry deceives investors by calling commission driven sales people "Financial Advisors" to gain people's trust.
The regulators enable this deception by simply saying "Financial Advisor" is an unregulated business title and stating that investors must do their own diligence and check their representative's qualifications. The regulators deceive investors by stating they protect investors but they do not. They say their investor protection is preventative in nature, but it is not restorative in most provinces.

The industry deceives investors in many ways by trickery which includes account statements that do not disclose essential facts like return on investment and cost of doing business. Undisclosed fees lead investors to believe it doesn't cost them to buy mutual funds. In reality the cost of fees for mutual funds is generally in the order of 3% to 5% per year. A decade ago Keith Ambachtsheer published a study indicating that investing in mutual funds will reduce retirement savings by 50% compared to investing in a properly managed investment fund. This alone costs Canadians $25 billion per year in lost savings. This may be a small percentage of total investment but for the victims of this deception it can be life-altering in many ways.

Now we see one of the presidential candidates in the United States declaring February 4, 2016 Thursday on MSNBC's Democratic presidential primary debate, candidate Sen. Bernie Sanders (I-VT) declared the business model of Wall Street is "fraud."

> *"Wall Street is an entity of unbelievable economic and political power. That's fact. I want to say something and it may sound harsh, not to you, but to the American people. In my view, the business model of Wall Street is fraud.* ***It's fraud.*** *I believe that corruption is rampant and the fact that major bank after major bank has reached multi-billion dollar settlements with the United States government, when we have a weak regulatory system tells me that not only did we have to bail them out once, if we don't start breaking them up, we'll have to bail them out again. I do not want to see that happen."*
> *http://www.breitbart.com/video/2016/02/04/sanders-the-business-model-of-wall-street-is-fraud/*

That is a candid remark and in Canada Bay Street operates in the same way as Wall Street. The regulators are essentially the industry as most of the senior personnel are from the industry. In fact a former Chair of the OSC, David Wilson was one of them. Lest there be any doubt we provide a quote from CBC News on June 22, 2005 announcing "David Wilson named to head OSC" and providing biographical information on his career:

> *"The Ontario government has nominated David Wilson, a career investment banker, to be the next chair of the Ontario Securities Commission.*
>
> *The 60-year-old Wilson is currently vice-chair of the Bank of Nova Scotia and chairman and chief executive officer of Scotia Capital. He is a past chairman of the Investment Dealers Association of Canada.*
>
> *He began his corporate finance career at McLeod Young Weir in 1971. Scotiabank later bought McLeod Young Weir and formed ScotiaMcLeod. Wilson became its president in 1993. The firm subsequently morphed into Scotia Capital Markets."*

It should not be a surprise to anyone that the provincial securities regulators do not protect investors' best interests and are dead set against introducing a fiduciary standard for registered persons. In the U.S.A. the industry and its regulators are also dead set against a fiduciary standard because that could hold them legally accountable.

Because U.S. regulators failed to act, the U.S. Department of Labor (DOL) introduced legislation to make fiduciary duty mandatory for those handling retirement savings only. This initiative was supported by President Obama and is well documented in his talk to the American Association of Retired Persons (AARP). This is available on You Tube at *https://www.youtube.com/watch?v=c2tbsRz14_c*.

In Canada the industry and its regulators are deceiving the public in many ways. They have created the perception that the industry can be trusted and that the regulators provide investor protection. However many small investors have lost their retirement savings when they placed their trust and their money with a "Financial Advisor".

The regulators claim that the protection they provide is preventative rather than remedial. This means they don't get your money back but they claim to deter future wrongdoing by disciplining the registered representatives who commit wrongdoing in many ways.

To convince the public that they are acting to protect investors they regularly release news that they have levied fines against industry representatives. Some of the fines are huge and headline grabbing. However the truth is these fines are never collected.

Instead of discouraging the wrongdoing this sends a message to registrants that they can get away with what they are doing. In fact they are doing what the firms want. They are transferring wealth from small investors to the industry.

SIPA's Debra McFadden spent many months collecting data on unpaid fines from the regulators across Canada. When she had collected as much data as possible, she compiled it to find the total of **regulatory fines not collected amount to almost One Billion Dollars**.

Debra's report is posted on the website and has already received media coverage by the Globe and Mail, and Wealth Professional:

From the Globe and Mail: http://www.theglobeandmail.com/globe-investor/nearly-1-billion-in-securities-fines-unpaid/article29764618/ - Clare O'Hara writes:

> *"Canadian investment firms have close to $1-billion dollars in outstanding regulatory fines, according to an industry association report.*
>
> *In a recent paper released by the Small Investor Protection Association, it was determined that there is more than $899,216,448.32 in fines owing to Canadian regulators.*
>
> *The paper, "Unpaid fines: a national disgrace" was released by SPIA this month to raise awareness of the issue of unpaid fines for breaches of financial services regulation levied by regulators against individuals or firms."*

From Wealth Professional: http://www.wealthprofessional.ca/news/sipa-reveals-staggering-unpaid-fine-figures-206348.aspx - Paul Lucas writes:

> *"They say you shouldn't judge a book by its cover – but you can certainly judge a report by its title. That's why plenty of jaws would have dropped when readers picked up the latest Small Investor Protection Association (SIPA) Report for Canada, simply entitled: "Unpaid fines: a national disgrace".*
>
> *The emotive language is there for all to see from the opening words of the report by Debra McFadden, which goes on to suggest that there is more than $899,216,448 owed to Canadian regulators. Where does the author get this figure from? Here are the statistics that the author claims to have uncovered, taken directly from the report:*
> *Mutual Fund Dealer Association (MFDA) = $56,793,709.71* (includes costs imposed)*
> *Investment Industry Regulatory Organization of Canada (IIROC)*= $27,941,793.00*
> *Ontario Securities Commission (OSC) = $307,148,437.00*
> *British Columbia Securities Commission (BCSC) = $340,000,000 (as of March 31, 2015)*
> *Alberta Securities Commission (ASC) = $105,000,000 (as of March 31, 2015)*
> *Nova Scotia Securities Commission (NSSC) = $1,655,940*
> *New Brunswick Financial and Consumer Services Commission Unpaid Fines = $5,134,950 (from 2005-2015)*
> *Quebec Autorité des marchés financiers total outstanding = $55,088,573.68*
> *Manitoba Securities Commission = $453,044.93*
> *Total thus far = $899,216,448.32"*

From the CBC Nova Scotia: http://www.cbc.ca/news/canada/nova-scotia/finances-investment-penalties-fines-1.3564677

> *The Investment Industry Regulatory Organization of Canada, the national self-regulatory group that oversees investment dealers, is also seeking those powers. It has almost $28 million in outstanding fines.*
>
> *"It is unacceptable that disciplined individuals can evade payment, abandon their registration and move to another area of financial services with the new regulator or potential clients not knowing what they've done," president and CEO Andrew Kriegler said in an email to CBC.*

The complete report, with detailed responses from the regulators included in the appendices, is posted on the SIPA website www.sipa.ca. See the Front Page:

> SIPA Report
>
> *Unpaid Fines: It's a National Disgrace*
> Almost $1 billion of regulatory fines remain uncollected. Is this a facet of the Strategic Insidious Deception?

Canadians are Losing Billions of Dollars of their Retirement Savings Each year due to Strategic Insidious Deception

Canadians are losing their retirement savings at an alarming rate.

With the transition from Defined Benefit pension plans to Defined Contribution pension plans more and more Canadians are at risk of losing their retirement savings due to fraud and wrongdoing by the regulated investment industry. Why is this so?

There is ample evidence and documentation that show Canadians are at risk when they deal with the regulated financial services industry. There are both federal and provincial regulators but they rely upon self-regulation. The investment industry is regulating itself.

The regulators claim that they provide investor protection but they fundamentally have a giant conflict of interest which they seem incapable of managing. It is more than that. It seems that the industry and its regulators are willfully deceiving the Canadian people with the end result that many Canadians are losing their retirement savings due to rampant fraud and wrongdoing.

One has only to examine the findings of the regulators when they investigate complaints and discipline representatives. There is clear evidence of systemic practices of fraud and wrongdoing.

A brief summary of the situation follows.

Given:

- Most Canadians need good financial advice so they seek a “Financial Advisor”.
- Canadians trust their Financial Advisor and believe he has a fiduciary duty.

- "Financial Advisors" are not qualified or registered to give financial advice. They are sales persons using a false title to gain trust.
- The Canadian Securities Administrators state that Financial Advisor is a non-regulated business title commonly used by financial sales persons.
- Financial Advisors are registered as "Dealing representative – A sales person".
- There is a registration category of "Advising Representative" that is qualified to provide financial advice and does have a fiduciary duty.
- Financial Advisors do not have a fiduciary duty and are not required to look after client best interests. They need only sell "suitable" products.
- Industry states all of their products are suitable.
- Financial Advisors are rewarded by commissions and these are not fully disclosed to clients.
- The riskiest products pay the highest commissions.
- Leverage enables Financial Advisors to generate even more commission.
- Although rules and regulations can lead you to believe the industry is well regulated the fact is there are ways to circumvent the regulations (exemption orders for example) and they are not well enforced.

Finally, the investment industry and its regulators lead Canadians to believe they can place their trust in the investment industry and their Financial Advisors and that the regulators will provide investor protection. In fact, the industry uses the simple tactic of using the spelling Advisor instead of the spelling Adviser as used by the Securities Acts. In this way the industry believes they have circumvented the law and Advisors do not have the obligations of an Adviser. To most Canadians including financial journalists this is confusing but it results in many people losing their savings when they trust their "Financial Advisor" who is in fact a sales person motivated by commission.

In fact Financial Advisors are sales persons registered as "Dealing Representative – A sales person". They do not have a fiduciary duty and are not required to look after a client's best interests. They need sell only suitable products. The industry considers all of their products suitable. The industry motivates the sales persons with a commission grid so they strive to increase their commissions by selling high commission products that have the most risk, excessive trading, and using leverage to create more assets on which to generate commissions.

So why is it called Strategic Insidious Deception

- Strategic - relating to the identification of long-term or overall aims and interests and the means of achieving them:
- Insidious - causing harm in a way that is gradual or not easily noticed
- Deception - the act of making someone believe something that is not true

The fact that the regulators allow the investment industry to call their sales people to be called "Financial Advisor" misleads the people into believing they are Advisers with a fiduciary duty. That is what the Securities Acts indicate but the Securities Acts spell Adviser with an "e".

Now most dictionaries show that Adviser and Advisor are simply two spelling variations of the word:

Adviser - A person who gives advice in a particular field:
Usage
The spellings adviser and advisor are both correct. Adviser is more common, but advisor is also widely used, especially in North America. Adviser may be seen as less formal, while advisor often suggests an official position.

So why does the industry put a spin on the spelling Advisor and say it refers to someone who gives product advice? Giving sales persons a title of Financial Advisor makes people believe he gives financial advice. It follows that the people are deceived by this simple trick of calling sales people "Financial Advisor". *(Deception - the act of making someone believe something that is not true)*

This deception has been practiced for a long time in a way that is largely not noticed. Most Canadians so not see a difference between the two words as well as most financial journalists. It is a simple trick that is costing Canadians the loss of billions of dollars of retirement savings every year. Therefore it is insidious. *(Insidious - causing harm in a way that is gradual or not easily noticed)*

So what is the purpose of this deception? By this simple trick the industry is able to gain peoples trust in their sales people so they can be sold products which maximize profit for the industry. Therefore it is strategic. *(Strategic - relating to the identification of long-term or overall aims and interests and the means of achieving them)*

The industry spin on the word Adviser/Advisor is the initial deception used to gain peoples' trust. This if followed by a myriad of trickery (as Dr. Al calls it) that facilitates the massive transfer of wealth from Canadian investors to the investment industry enabling them to pay the high six figure salaries to their owned regulators and the excessive remuneration of the industry bosses and sales persons. Imagine six figure salaries for cheating seniors out of their savings. It seems immoral.

Spotlight on SIPA's Second Place Prize Winning Video and its Creator: "Don't Gamble With Your Financial Advisor" by Andrew Guengerich

By Debra McFadden

In March 2015, during Fraud Prevention month, SIPA announced a nationwide Video Contest called Investor Be Aware. SIPA's desire and goal was for these videos and animations submitted by the public, to be a reflection of the people's voice opening eyes and ears across the country, about the hidden dangers faced by investors when dealing with the financial industry. Videos began coming in from both the United States and Canada highlighting a variety of different important issues.

It is hoped that these videos will not only raise awareness, but that they will generate much needed discussion on this very important topic.

Andrew Guengerich placed second for his creative video called "Don't Gamble with Your Financial Advisor".

Andrew is a 23 year old Music Video Director from Austin, Texas. He is a versatile artist interested in all forms of digital art, from Graphic Design, to colourful GIFs. While attending Westlake High School, a substitute teacher had everyone in the class view videos that showed a professional artist's day to day life on the job. This assignment is what initially sparked Andrew's interest in video production. There was one video in particular, that grabbed his attention about a Motion Graphics Designer. It was this video that both inspired and prompted him to start watching online tutorials.

He began his self-teaching journey to learn more about how to make videos and digital art, which has since become both a passion and a career path for him. After completing high school Andrew has successfully produced music videos for local hip hop artists including ZELES and RNA the Messenger. He has also enjoyed making corporate videos for clients including Austin Footwear Labs. His career dream would be to win a MTV VMA award for Best Music Video.

Andrew's very creative fable placed second in SIPA's Investor Be Aware Video Contest. His video deals with a basic fact that most people are not wealthy and are not "investment savvy". The industry, particularly when a dispute arises, often claims the investor is sophisticated. To deny responsibility they attempt to paint the picture that the investor has a high level of knowledge, skill and understanding of investments, when quite often that is not the case. In reality the investor was just following the advisors recommendations with very little understanding of the process.

In Andrew's video this erroneous viewpoint is given a short, sharp, reality shock, straight away. "The girls had no idea what to do with it!" – This is a key phrase. What we see here in this video, is a focus on the client's perspective of the process and how many people place their complete trust in their advisor and confidence in the system to provide the necessary oversight and regulation. Andrew's video is one that provides an important perspective on the client advisor relationship. Here the two girls represent the frequent reality of investors with limited knowledge of investment and more importantly the nature of the advisory relationship. Trust is a key theme running throughout the video which the well cued handshakes demonstrate.

Regulators are not doing enough to inform investors of the nature of the actual relationship, while also allowing advisors to market themselves as if they were operating on a set of best interest standards. The video shows that unknowingly for most, it is up to the investor at the moment to work out what is happening and to seek relationships that are up to the standards they realistically need. It is indeed Caveat Emptor!

Therefore, investors need to not only be aware but beware, regarding the difference between advisers and advisors. This is a subtle but full video!

Andrew shared with us that he found out about the Investor Be Aware Contest through onlinevideocontests.com. He felt the contest proved to be an interesting subject matter for him to learn more about. He also liked that it gave him an opportunity to help other people become more aware of the dangers they might face because of a self-regulated industry.

Andrew was surprised to find out how easy it is for advisors to invest others money to primarily benefit themselves. He aimed to show audiences an entertaining video that relayed real information about the differences between advisers and advisors. He was very excited to win 2nd place and plans to continue to spread helpful information to people unaware of financial dangers included in finding professional financial advice.

Click here to enjoy this video! https://youtu.be/JF77xj84PH0

Visit http://www.sipa.ca/ to watch more videos and learn more about investor issues.

SO HOW BAD IS IT? ROBBING THE DEAD!

Unfortunately regulation of the investment industry is a provincial responsibility and the provincial regulators delegate the regulation to Self-Regulatory Organizations (SROs). That is the industry policing itself. This gives rise to the pundits comparing it to "the fox guarding the chicken pen".
It is common practice that industry people will spend a few years working as a regulator and then migrate back to the industry.

The SROs make a show of disciplining their members by imposing headline grabbing fines that are never collected and sometimes suspending registered representatives, but usually in these cases the individuals have already moved on.

SIPA's Report "Unpaid Fines: A National Disgrace" referred to above provides the evidence that the **total amount of unpaid fines is almost One Billion Dollars!**

To understand how bad the situation is one has only to make a cursory review of the regulators disciplinary actions. The facts from a few 2016 discipline hearings by IIROC show that:

Mr. Gottfred

- Rep executed discretionary transactions in client accounts,
- Rep recommended that clients use margin when it was not suitable for them;
- Rep failed to cooperate with an IIROC investigation into his conduct,
- Rep is no longer a registrant with an IIROC-regulated firm.

Mr. Sammy

- placed himself in a conflict of interest with his clients when he recommended that his clients purchase securities in their accounts when, at the same time and without the knowledge of his clients, he was selling his own personal holdings of these securities.
- made investment recommendations to several clients that were unsuitable for these clients based on their risk tolerance.

Mr. Mendelman –

- without his firm's knowledge, Mr. Mendelman borrowed funds from a client and engaged in outside business activities by facilitating off-book investments by his clients.
- shared non-public, material information concerning a publicly-traded company with 11 of his clients.

Mr. Li

- made unauthorized transactions in one client's account,
- made discretionary transactions in a number of client accounts,
- misrepresented those discretionary transactions as being "unsolicited"
- refused to provide information required for an IIROC investigation into his conduct.

Ms. Giroux-Garneau –

- failed to inform her employer of the death of her client and to update the client's account form,
- **she carried out unauthorized transactions in that client's account four months after his death for the purpose of appropriating the amount of $15,972.88**.

Mr. Donnelly –

- as Branch Manager failed to adequately supervise the activities of a Registered Representative in relation to a client's accounts.
- The conduct occurred while he was employed as a Branch Manager with a Toronto Branch of Raymond James Ltd.,
- is still employed as a Registered Representative at the same branch of Raymond James Ltd

The above details are from the regulators themselves. It is not quite common for clients to experience wrongdoing that can cost them their savings. Some of the systemic practices are:

- discretionary transactions
- misrepresenting discretionary transactions as being "unsolicited"
- unauthorized transactions
- excessive trading (churning)
- recommending use of margin when it is not suitable
- investment recommendations unsuitable based on clent risk tolerance.
- borrowing funds from client
- engaging in outside business activities by facilitating off-book investments by his clients
- Branch Manager failing to adequately supervise representatives activities

Small investors need to realize that the industry and regulators co-operate to deceive the public in many ways. It truly is **Investor Beware**.