



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.

BEWARE WHEN YOU PLACE YOUR TRUST

Investor Beware when you place your trust in anyone to invest their savings. SIPA recommends that investors place their savings only with registered representatives after first checking their credentials with the regulators. While this does not guarantee you will not be defrauded, it will eliminate many of the common fraudsters that operate in our society.

Pastor accused of Ponzi scheme - By Janet McFarland, Globe and Mail

A Toronto pastor has been accused of defrauding investors after he allegedly issued false monthly statements and used new investor money to pay existing investors as losses mounted.

The Ontario Securities Commission has accused Marlon Hibbert, founder and pastor of Dominion World Outreach Ministries Dominion Worship Centre Inc., of raising \$8.5-million from investors without meeting registration requirements, and of defrauding investors by making false statements. The OSC said many were members of his congregation or of his Fight for Justice organization, which advocates on behalf of members of the African-Canadian community. The commission said he began soliciting investors in 2006 and promised returns up to 8.5 per cent monthly.

IIROC News Release April 15, 2011

IIROC recently issued a news release illustrating two common practices in the investment industry. The first is the practice of registered representatives directly paying clients to settle disputes without the firm's knowledge. The hearing panel will decide on any penalty after hearing from IIROC and the registered representative. Sounds like the speeder telling the judge what his fine should be. More interesting is the statement, *"the panel dismissed a second charge which alleged that Mr. Claggett had conducted discretionary trades in client accounts without the written authorization of the respective clients."* Discretionary trading without proper authority is one of the common elements in cases where investors suffered substantial loss due to industry fraud and wrongdoing. Why would the regulators dismiss such a charge?

IIROC announces decision for Bryan Dale Claggett

April 15, 2011 (Toronto, ON) – A Hearing Panel of the Investment Industry Regulatory Organization of Canada (IIROC) has found that Bryan Dale Claggett violated an IIROC rule when, without his firm's knowledge, he attempted to settle a client complaint by paying the client money.

In its decision dated April 4, 2011, the panel dismissed a second charge which alleged that Mr. Claggett had conducted discretionary trades in client accounts without the written authorization of the respective clients.



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The panel has ordered both IIROC and Mr. Claggett to provide written submissions on the appropriate penalty. Once the Hearing Panel determines the penalty, its decision will be made available at www.iiroc.ca.

Specifically, the panel found that Mr. Claggett engaged in conduct unbecoming and detrimental to the public interest, contrary to IIROC Rule 29.1, when he paid \$14,000 to a client to resolve that client's complaint, without the prior knowledge or consent of his firm.

The violation occurred on or about February 9, 2006, while Mr. Claggett was a Registered Representative at the Vancouver branch of BMO Nesbitt Burns, an IIROC-regulated firm. He is currently employed at the Vancouver office of Canaccord Genuity Corp., an IIROC-regulated firm.

FRAUD AND WRONGDOING ARE COMMONPLACE ACROSS CANADA

The multiple jurisdictions and lack of a single national regulator complicates the roles of the regulators and police but there has been an improvement in recent years. In previous times a perpetrator in one province would simply move to another province and carry on with his wayward schemes.

The Globe and Mail reports *"Traders sentenced for 'boiler room' tactics"*. Janet MacFarland writes *"Two Ontario men have been sentenced to 21 months in jail each after a court ruled they ran a 'boiler room' operation that sold \$5.5-million worth of shares to investors. Judge Geraldine Sparrow of the Ontario Court sentenced Abraham Herbert Grossman and Hanoch Ulfan each to 21 months in jail and two years of probation, which includes an order prohibiting them from trading securities for a two-year period. A company they operated, Maitland Capital Ltd., was fined \$1-million. Judge Sparrow found the men guilty on 10 counts related to selling shares of Maitland using high-pressure telephone sales tactics targeted at investors. The Ontario Securities Commission prosecuted the men in Ontario court where jail sentences can be imposed."* However, the Ontario Securities Commission fails to get the victims' money back.

QUEBEC INVESTORS PROTECTED - WHY NOT TROC?

The Ontario Securities Commission claims they protect investors. So do other provinces. Yet they fail to prevent fraud and wrongdoing that cause investor loss. Worse yet they do nothing about getting the victims' money back. Except in Quebec. Investor protection should be remedial and not only preventative. It is impossible to prevent all fraud and wrongdoing from happening.

An article by Paul Delean in the Montreal Gazette states *"Twenty-eight former clients of financial adviser Carole Morinville will receive \$1.6 million in compensation from the indemnity fund administered by the Autorité des marchés financiers (AMF)"*

The AMF not only investigates and penalizes the perpetrators but they also reimburses the victims and the recovers from the perpetrators. Paul writes *"The AMF said it will 'take the necessary steps' to recover from Morinville the amounts reimbursed to her former clients. In all, 42 claims were*



received and analyzed by the AMF. Morinville, 50, went before the courts earlier this year and was charged with seven counts of fraud, falsification of documents and obstruction of justice. She pleaded not guilty."

In 1999 SIPA proposed that the OSC obtain the power to order restitution. Since then a couple of other provinces have obtained the power to order restitution but Quebec is the only province that pays the restitution to victims and then recovers from the perpetrators.

So why not the rest of Canada (TROC)?

EXCHANGE TRADED FUNDS (ETFs)

Since ETFs appeared on the scene SIPA has recommended these as an alternative to mutual or segregated funds because of their low management fees and their performance closely following the market. For investors in Canadian equities the ETF trading as XIU on Toronto provides exposure to Canadian equities. Other ETFs are also available but the waters have been muddied by the industry developing new products labeled as ETFs. Now investors must beware of investing in ETFs. An article in the Financial Times of London, England by Pauline Skypala states *"Exchange traded funds are the new bogeymen on the block."*

In North America there has been a proliferation of new structured products labeled as ETFs. Inevitably some of these will create issues for unsuspecting investors. ETFs are not unlike mutual funds with some being good products for investors and others being toxic. Most often structured products are developed to increase profit for the industry, but often the risk for investors is increased. Pauline writes *"Various bodies lined up recently to cast doubt on the stability of ETFs ... Their main worry relates to the increasing complexity of the products on offer and the growth of synthetic ETFs, which use derivatives to track indices rather than holding the physical securities."*

Investors are cautioned about investing in ETFs until they fully understand how they are structured and the fees that will apply.

OMBUDSMAN FOR BANKING SERVICES AND INVESTMENTS (OBSI)

When OBSI was first created it seemed to be a good solution for aggrieved investors. Until the Limitation Periods were reduced SIPA recommended that investors with a complaint use the OBSI process. The advantage was that there was minimum cost and the possibility of gaining a quick settlement. The downside was the settlement would probably be less than fair and the investor had to proceed through the industry before OBSI would open a file and this process takes time. SIPA's recommendation was that investors should fast track the process and spend no more than 60 days going through the industry process and then submit to PBSI if no satisfactory result was achieved.

The main advantage for investors was to become familiar with the complaint process and be better prepared for pursuing civil litigation or mediation. However with the reduction of limitation periods,



and although OBSI claimed to stop the limitation clock the pre-requisite of going through the industry process and the uncertainty regarding what stopped the clock we recommended investors with a dispute start their mediation or litigation process as soon as possible to not become statute barred, that is being legally prevented from pursuing a claim due to elapsed time. Granted all of the issues are arguable by lawyers in court which is why it is essential to get good legal advice at the earliest opportunity.

Even though we feel OBSI has been sympathetic to the industry, and their recommendations seem to favour the industry, the industry is critical of OBSI as the article by Theresa Tedesco in the Financial Post indicates.

Brokers balk at bank arbiter; Rising Payouts

Theresa Tedesco, Financial Post

Troubled by the growing number of consumer complaints filed against them and the steadily increasing damages they are having to pay clients in restitution since the market meltdown in 2008, Canadian investment dealers are demanding changes to the way penalties are calculated. Sources say RBC Capital Markets Ltd., TD Securities and Manulife Financial Corp. filed an application with the Investment Industry Regulatory Organization of Canada (IIROC), the national self-regulator overseeing investment dealers and equity trading, for an exemption from the mandatory provision that requires them to resolve disputes through the Ombudsman for Banking Services and Investments (OBSI).

That application was denied last week by IIROC and now there is intense pressure on industry regulators to amend the method used by OBSI to calculate losses paid to the clients of banks and brokers.

...

"The reality is there is going to have to be an independent dispute-resolution process," explains the industry source. "If what they [investment dealers and banks] want is someone that they can control, that won't meet the requirements of government for an independent body."

ttedesco@nationalpost.com

IIROC Arbitration Program

As SIPA continues our dialogue with industry/regulators, IIROC has offered the following update on changes to the IIROC arbitration program. Dispute resolution is a continuing issue for small investors and SIPA has recommended a dispute tribunal that could deal with disputes in timely fashion. It is our opinion that the Autorité des marchés financiers (AMF) offers the best solution, and we remain hopeful that the transition to a national regulator will include a similar service to all Canadians. Investors with a dispute should investigate the options available before deciding which is most appropriate for them. However the article by Paul Lalonde does provide an excellent outline of the current IIROC arbitration program.

Changes to IIROC Arbitration Program - By Paul Lalonde

improve investor choices when resolving disputes with investment dealers -



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Investors who find themselves in a disagreement with their investment firm or advisor now have a more viable arbitration option for resolving their dispute, thanks to some changes that the Investment Industry Regulatory Organization of Canada (IIROC) has recently made to its program.

The Arbitration Program's award limit has been increased to \$500,000 from the previous limit of \$100,000, and investors now have the option of choosing to have each party pay its own legal costs, rather than having the arbitrator decide how those costs will be divided. These changes, announced in January, took effect immediately for all new cases that go to arbitration.

The second change to the program was also designed to make arbitration a more viable option. During recent public consultations, concerns were raised that investors might be deterred from using the service due to the potential for adverse rulings by the arbitrator on legal cost awards. It's now the investor's choice to either have both sides pay their own way or to leave the discretion to the arbitrator. (The exceptions are if one party acts in a manner that is "unfair, vexatious, improper or in bad faith" or that results in "unnecessarily and unreasonably prolonged proceedings." In either of those cases, the arbitrator can overrule the investor and award costs as part of his or her decision.)

IIROC's Arbitration Program is one of four options available to investors if they filed a complaint about their firm or advisor at an IIROC-regulated firm but were not satisfied with the outcome, particularly those who lost money and are seeking compensation.

The other options include:

- *the free Ombudsman for Banking Services and Investments (OBSI);*
- *the free voluntary mediation service offered to residents of Québec by the Autorité des marchés financiers (AMF); and*
- *legal action through the courts.*

Firms and individuals involved in the Arbitration Program are usually responsible to equally split arbitration fees, which include costs of the arbitrator's services and administrative costs. That practice remains unchanged.

Paul Lalonde is Senior Public Affairs Specialist at IIROC

The Canadian Cancer Society - by Kara Easton

The Canadian Cancer Society is a national, community-based organization of volunteers whose mission is the eradication of cancer and the enhancement of the quality of life of people living with cancer. The Canadian Cancer Society is leading the way in the fight against cancer thanks to our generous donors, dedicated volunteers and committed staff.

The donations given to the Canadian Cancer Society are used to fund research on all types of cancer, offer credible information on cancer, risk reduction and treatments. Donations are also used to provide support, information and programs to those coping with cancer and their families.

Coping with cancer or caring for a loved one with cancer can be stressful and emotional. The Canadian Cancer Society offers programs that can help to ease the pain and the burden of cancer. These include the Cancer Information Service which provides credible and reliable answers to cancer related questions, rides to



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treatment using our Volunteer Driver Program, assistance at cancer treatment clinics and lodges, and help with quitting smoking from our Smokers' Helpline.

Sometimes understanding and support from someone who has already experienced cancer can make all the difference in reassuring and informing those recently diagnosed. That is why the society has a peer support program in place. Based on the details of each situation individuals are matched with a trained volunteer who has had a similar cancer experience and is available for one to one support.

*An upcoming fundraising event for the Canadian Cancer Society in June 2011 is Relay for Life. This 12 hour team relay event is an opportunity to **celebrate** the lives of people who have battled cancer, **remember** loved ones lost to cancer and **fight back** in hopes of finding a cure for cancer. To find a Relay for Life near you, to join the survivors victory lap, or to enter a team go to www.relayforlife.ca.*

For more information about cancer, our services or to make a donation, please call 1-888-939-3333 or visit www.cancer.ca.

BROKERS' HALL OF SHAME

In 1999 SIPA introduced a Brokers' Hall of Shame on SIPA's website. Representatives who were disciplined by the regulators or featured in the media for fraud and wrongdoing were placed in an alphabetical list on SIPA's website. The list included the infraction and the discipline meted out. This list caught the attention of media. It listed only publicly available information but in an alphabetical list it was easy for investors to check on their representative or the firm.

It was not too long before SIPA was threatened with lawsuits by several of the perpetrators and we were obliged to eventually take down our alphabetical list, but not before the British Columbia Securities Commission initiated their own alphabetical list of disciplined persons. The remaining provinces were slow to act. It was not until recently that the rest of Canada began to make an alphabetical list available, and now the Canadian Securities Administrators (CSAs) have finally made a comprehensive alphabetical list available. All investors should access this list to check on their financial representative, and particularly if you are thinking of engaging a new representative. The following article by James Langton provides an update.

CSA, IIROC and MFDA launch expanded disciplined persons list

Disciplinary records dating back to 2004 now in one location online - *By James Langton, IE*

Canada's securities regulators are teaming up to launch a comprehensive list of people that have been disciplined by the regulators. The umbrella group of provincial securities commissions, the Canadian Securities Administrators, along with the self-regulatory organizations, the Investment Industry Regulatory Organization of Canada and the Mutual Fund Dealers Association of Canada, announced the launch of the expanded "disciplined persons list" Tuesday.

The CSA has maintained a list on its website since 2009, displaying historical records of disciplinary actions by provincial securities regulators. It has now been expanded to contain the names of persons disciplined by IIROC and the MFDA, each dating back to 2004. The sanctions imposed by securities regulators are already matters of public record, this updated list puts them in a central location online. The disciplined persons list is



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available on the CSA website, and the MFDA and IIROC will each offer direct links to the list from their own websites.

"The expanded disciplined persons list is intended to assist the public and the securities industry in conducting due diligence when presented with investing opportunities," says Bill Rice, chair of the CSA and chair and CEO of the Alberta Securities Commission. "Working with IIROC and the MFDA, we have proactively established a central, online location to make it easier to perform a comprehensive search of our disciplined persons."

"We have heard from investors that it was frustrating to have to search multiple disciplinary lists and databases," says Susan Wolburgh Jenah, president and CEO of IIROC. "This is an improvement for investor protection."

Panel slams OSC plan - by Theresa Tedesco And Barbara Shecter, Financial Post · Apr. 29, 2011

The Ontario Securities Commission's own investor advisory panel is criticizing the regulator for not doing enough to protect investors in its draft statement of priorities.

At the same time, the Investor Advisory Panel, an independent body of industry participants, recommends the creation of a formula to allow the Ontario regulator to award direct restitution to victims of fraud, which does not currently exist in the provincial Securities Act.

In an 11-page letter to the regulator, the Investor Advisory Panel, an independent body created by the watchdog to provide input on its policy initiatives, says the OSC's list of strategic priorities for 2011 through 2012 "does not provide a firm set of proposals to ensure that investors will indeed be protected."

The seven-member panel, including Bay Street securities lawyers and governance experts, found fault with the OSC's proposed policy priorities, calling them "overly broad" and lacking "specificity." The panel also noted they do not provide a mechanism for accountability.

"We are concerned that investors will not be able to determine if any of the priorities so stated have been achieved," declared the letter, adding the country's largest capital markets regulator must identify specific actions it will take in the upcoming year to protect investors.

In February, the OSC released a priority list naming five key areas of focus for the coming years. These included protecting investors in a world of complex products, intensifying compliance and enforcement efforts, demonstrating accountability for its performance as the country's leading regulator, supporting the development of a national securities regulator and continuing to work with the Canadian Securities Administrators on harmonizing and modernizing securities regulation in Canada.

The OSC sought comments on its priorities, and, among them, received a strongly worded response from the investor advisory panel created last year.



"We believe the commission should define more precisely what actions it intends to take to protect investors' interests. It is our view that the statement of priorities must include specific targets and goals to be achieved so that Ontario investors have an objective way to measure the Commission's effectiveness," the panel declared in its missive. "Without such specificity, the Commission's accountability is undermined."

The panel also supports amending the provincial Securities Act to include a remedy for direct restitution to victims of fraud. This would replace the current method of allocating proceeds collected through penalties and disgorgement of ill-gotten funds.

The investor advisory panel, whose members include Anita I. Anand, Nancy Averill, Paul Bates, Stan Buell, Lincoln Caylor, Steve Garmaise and Michael Wissell, delivered its comments Thursday, the last day submissions were being accepted.

What does Financial Advisor mean?

"Adviser" is defined in Funk & Wagnalls Standard Desk Dictionary as "One who advises" and is also spelled as "Advisor".

Why then does the CSA pamphlet "Working with a financial adviser" use one spelling (adviser) while IIROC issues a pamphlet "Why IIROC Matters to You, the Investor" state "We monitor and enforce rules regarding the proficiency, business and financial conduct of these firms and their advisors" uses another (advisor).

Does the answer lie in the explanation provided in the CSA pamphlet?

"Under securities law, there are two main categories of registration: dealers and advisers. The terms "dealer" and "adviser" are legal terms that describe a broad range of people who can deal in or give advice on securities. They may use a variety of titles, such as investment advisor, financial advisor, financial planner, investment consultant or investment specialist. These titles are not legally defined terms or official registration categories."

Why do the provincial regulators and the Self Regulatory Organizations use two different spellings for the same word? Do "advisers" and "advisors" not have the same meaning and the same responsibilities? Why don't the regulators clear up the uncertainties and simply hold all sellers of products or providers of advice to a fiduciary standard. No matter what the representatives are called or how the words are spelled they are advising clients and dealing with their life savings and retirement security. It is totally inappropriate and unacceptable that the industry/regulators concoct some nefarious reasoning that the registered representatives do not have full responsibility for their actions and continue this nonsense of using the two different spellings.

INVESTOR BEWARE - It is your money and you must monitor it to ensure your savings are not being eroded by a non-caring industry and regulators that fail to protect investors. It's your family's financial security at stake.