



SIPA

SMALL INVESTOR PROTECTION ASSOCIATION

**A Voice for Small Investors
Seeking Truth and Justice**

ABOVE THE LAW

CHECKING AN ADVISOR'S REGISTRATION

"I'm O.K. I Trust My Advisor" is Not Enough

SIPA Advisory Committee

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INTRODUCTION

Are they "Above the Law"?

Is the investment industry exempt from provincial Securities Acts which the provincial Securities Administrators are required to enforce?

Indeed, they fail to follow Rules and Regulations of the Self Regulatory Organizations (SRO) but that appears to be not against the law. However the provincial Securities Acts are the laws that govern securities and each province has an administrator commonly called a Securities Commission.

So if the industry fails to follow the Securities Acts are they not breaking the law?

Although the regulators claim that "Financial Advisor" is an unregulated business title that can be used by anybody, the use of a non-registered title is contrary to Securities Laws in most provinces. It seems that the Securities Administrators are unwilling or unable to enforce these laws, with the result that the industry is free to deceive investors with false titles.

The regulators are claiming that it is important for investors to check the registration of their Financial Advisor to ensure that he is registered with the regulators ... but is that enough?

During Financial Literacy Month the regulators and the CSA routinely overly hype and promote the importance of checking to see if your advice giver is registered by accessing their website at <http://aretheyregistered.ca/>. We believe this can be a disservice to investors, by giving them a false sense of security that if their person is listed they can then breathe a sigh of relief that all is well.

The CSA website is difficult to navigate to get any relevant information like their registration category. This is well hidden from investors' view. If by chance an investor does stumble across the registration category, unless they pursue it further they would have no idea what it actually means. It almost appears they have gone to great lengths to keep from investors that their advice giver is almost certainly a salesperson.

SIPA did a detailed search on the CSA website on November 11, 2016 and discovered there are 118,126 Dealing Representatives or Salespeople registered in Canada. Some may have little or no education, skill or proficiency beyond their dealer and product pusher training, to enable them to give any worthwhile advice.

Unless an investor is familiar with the securities industry, the chances are slim that the CSA website "Are They Registered", will provide them any meaningful information necessary to make informed decisions about who to hire. SIPA has no issue with getting people to check registration as one of the steps, but there also needs to be a warning about the limits of each registration category with respect to accountability and responsibility. The biggest issue in regulation is best interest standards and fiduciary responsibility.



As our contribution to financial literacy we believe it is important that Canadians be informed of the reality of how the investment industry operates and to provide awareness of the registration process and how to check registration to find the truth.

Canadians are led to believe that the investment industry is well regulated and that regulators protect investors but reality is much different. It is a matter of trust. Canada is a trusting society. Canadians trust their "Financial Advisor".

How many times do we hear someone say "I'm O.K. I trust my Advisor"?

All of the hundreds of victims of financial abuse that were interviewed by SIPA trusted their Advisor. But did they know their "Financial Advisor" was simply a "Dealer Representative" i.e. a sales person motivated by commission?

The investment industry routinely uses the title "Financial Advisor" for their sales persons, whether they are selling mutual funds, insurance products (e.g. segregated funds), bank products (e.g. Principal Protected Notes), or acting as brokers to trade in financial products (e.g. bonds, shares, structured products).

Does the industry, condoned by its regulators, use the title "Financial Advisor" to gain public trust in their sales persons?

There is great hoopla about measures being taken to educate investors and helping them by asking them to check to see that their advisor is registered. To be sure this is the basic step to avoid being defrauded by an unregulated fraudster, but it is no protection against having your savings destroyed by a registered sales person.

Sales persons (dealing representative) have no legal requirement to look after an investor's best interests. However, it is in the sales person's interest to maximize his commissions. This can be done by selling the products that pay the highest commissions and by the use of leverage to increase the amount of assets under management (AUM) on which he generates commissions. Both of these initiatives are contrary to an investor's best interests.

A commission grid is used by the industry to motivate sales persons to maximize their commissions. Bonuses and incentives are offered for those who do. This often results in deceitful activity and loss for investors.

The process for checking registration is more complex than it needs to be and is confusing. It may be relatively straight forward to determine if your representative is registered but the devil is in the detail. A detailed examination of the registration check follows that clearly indicates the difficulties that individuals encounter when attempting to use the system devised for investors by the Canadian Securities Administrators.



CHECKING AN ADVISOR'S REGISTRATION

If you go to <http://aretheyregistered.ca/> and enter the name of your representative it will show their name and the firm they work for.

For example the results show:

| | |
|-----------------------|--------------|
| LAST NAME, First Name | NAME OF FIRM |
|-----------------------|--------------|

There is nothing to indicate anything further could be provided or to encourage you to even look further.

If you do click on the person's name it will then show you what they call their Current Registration which turns out to be the name of the firm and the address where they are located.

Name: LAST NAME, First Name
+

CURRENT REGISTRATION

Firm: NAME OF FIRM
 Location of Employment: XX STREET NAME
 CITY, PROV, POSTAL CODE
 Phone: (XXX)XXX-XXXX

If you notice the plus sign beside the firm's name and decide to click it will now display the province.

Province with a + sign to the far right

If you click on that plus sign, it will show:

Categories ?
 Dealing Representative (Mutual Fund Dealer)

Terms & Conditions
 There are no terms or conditions for this registrant.

Now if you click on the little question mark (?) beside the word Categories a small screen will pop up on the left called "Understanding Registration". If you take the time to read through it you will finally find out this person who is called a Dealing Representative is in reality a salesperson. That's right, he is a commission driven sales person.



Understanding Registration is also available at this link: https://www.securities-administrators.ca/uploadedFiles/General/pdfs/UnderstandingRegistration_EN.pdf

This document provides information on the registration types and what they do. It starts with this disclaimer:

The category of registration tells you what products and services a firm or individual can offer. Being registered, however, doesn't mean that all firms and individuals have the same skills, provide the same services or charge the same fees. Make sure you understand their qualifications, and the products or services they are selling you.

The question is who would take the time to do this?

Who would know to take all those steps?

Why is this information buried?

Who does this serve?

Is it all part of a grand strategy of deception of the retail investor?

Is this dealing honestly fairly and good faith with investors?

CHECKING AN ADVISOR'S REGISTRATION - SIMPLIFIED

Most Canadian investors are dealing with either Investment Dealers or Mutual Fund Dealers the details shown for these two types of firms follows:

Investment Dealer

A business that sells a broad selection of investments including:

- shares
- bonds
- mutual funds
- limited partnerships

Some investment dealer businesses offer advice and a full range of services such as market analysis, securities research and portfolio management. Others act more like brokers, selling or buying securities based on your instructions

Mutual Fund Dealer

A business that sells only mutual funds.



Also most Canadian investors will have a Dealing Representative looking after their investments. Nevertheless details are reproduced here for the three registration types that all investors need to know:

Portfolio Manager

A business that gives advice to others and manages your portfolio according to the instructions or discretionary authority you have given.

Advising Representative

A person who provides advice on securities to clients. They can manage your investment portfolio according to your instructions. They can also make decisions and trade securities on your behalf.

Dealing Representative

A sales person – what they can sell depends on the firm they work for and their registration.

You will note that the first two types are qualified and registered to give or provide advice, but the third type, Dealing Representative, is in reality a “sales person” that relies upon sales commissions.

Therefore when you check your Advisor’s registration and see that they are indeed registered, the probability is very high that they are registered as dealing representative or in plain language a sales person.

Why is this sales person carrying the title “Financial Advisor”?

IS CALLING A SALES PERSON A FINANCIAL ADVISOR AGAINST THE LAW?

It is an established practice in the investment industry to use titles that gain trust. It is misleading at best but is it really against the law. The provincial Securities Acts are quite similar so we are showing excerpts from the Securities Acts of three of the larger provinces.

ONTARIO SECURITIES ACT: <https://www.ontario.ca/laws/statute/90s05#BK61>

Section 25 of the Ontario Securities Act, R.S.O. 1990, c. S.5 PART XI REGISTRATION states:

Same, advisers

(3) Unless a person or company is exempt under Ontario securities law from the requirement to comply with this subsection, the person or company shall not engage in the business of, or hold himself, herself or itself out as engaging in the business of, advising anyone with respect to investing in, buying or selling securities unless the person or company,



Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (3) is amended by striking out the portion before clause (a) and substituting the following:

Same, advisers

(3) Unless a person or company is exempt under Ontario securities law from the requirement to comply with this subsection, the person or company shall not engage in the business of, or hold himself, herself or itself out as engaging in the business of, advising anyone with respect to investing in securities or buying or selling securities or derivatives unless the person or company,

See: 2010, c. 26, Sched. 18, ss. 19 (3), 47 (2).

(a) is registered in accordance with Ontario securities law as an adviser;

(b) is a representative registered in accordance with Ontario securities law as an advising representative of a registered adviser and is acting on behalf of the registered adviser; or

(c) is a representative registered in accordance with Ontario securities law as an associate advising representative of a registered adviser and is acting on behalf of the registered adviser under the supervision of a registered advising representative of the registered adviser. 2009, c. 18, Sched. 26, s. 4.

Section 44 of the Ontario Securities Act, R.S.O. 1990, c. S.5 PART XI REGISTRATION states:

Representation of registration

44. (1) No person or company shall represent that he, she or it is registered under this Act unless the representation is true and, when making the representation, the person or company specifies his, her or its category of registration. 2009, c. 18, Sched. 26, s. 9.

ALBERTA SECURITIES ACT: <http://www.qp.alberta.ca/documents/Acts/s04.pdf>

Section 100 of the Alberta Securities ACT RSA 2000 Chapter S-4 states:

Representation or holding out of registration

100(1) A person or company shall not represent that the person or company is registered under this Act unless

1. (a) the representation is true, and
2. (b) in making the representation, the person or company specifies the person or company's category of registration under this Act and the regulations.

BRITISH COLUMBIA SECURITIES ACT:

http://www.bclaws.ca/civix/document/id/complete/statreg/96418_01

Section 34 of the BC SECURITIES ACT [RSBC 1996] CHAPTER 418 states:

Part 5 — Registration



Persons who must be registered

34 A person must not

- (a) trade in a security or exchange contract,
- (b) act as an adviser,
- (c) act as an investment fund manager, or

(d) act as an underwriter,

unless the person is registered in accordance with the regulations and in the category prescribed for the purpose of the activity.

Section 54 of the BC SECURITIES ACT [RSBC 1996] CHAPTER 418 states:

Representation or holding out of registration

54 (1) A person must not represent that the person is registered under this Act unless

- (a) the representation is true, and
- (b) in making the representation, the person specifies the person's category of registration under this Act.

(2) A person must not make a statement about something that a reasonable investor would consider important in deciding whether to enter or maintain a trading or advising relationship with the person if the statement is untrue or omits information necessary to prevent the statement from being false or misleading in the circumstances in which it is made.

The above extracts from several provincial Securities Acts clearly illustrate that the regulators that are supposedly protecting investors allow the industry to title their sales people as Financial Advisors even though it appears to be against the law.

In the same way the regulators claim that the title "Vice President" is also an unregulated business title that can be used by anyone.

The use of these false and misleading titles facilitates the industry gaining trust for their sales persons and selling inappropriate products to unsuspecting investors. This often leads to Canadians losing their savings and facing a destitute future.

So when you check the registration of your advisor it is not enough to know that he is registered. You must determine whether he is registered as a sales person or as someone qualified to provide financial advice.

SIPA did a detailed search on the CSA website on November 11, 2016 and discovered there were 118,126 records found for Dealing Representatives or salespeople in Canada. Refer to the following link for more detail in SIPA's Report "Advisor Title Trickery":



<http://sipa.ca/library/SIPAsubmissions/500%20SIPA%20REPORT%20-%20Advisor%20Title%20Trickery%20October%202016.pdf>

A shortcut to using the complex approach devised by the regulators for checking your advisors qualifications is to simply check your last statement to see what title your advisor uses. If the title is "Financial Advisor" he is acting for you as a "Sales Person". If the title is "Dealing Representative" he is acting as a "Sales Person".

If the title on your statement is anything other than "Portfolio Manager" or "Advising Representative" your representative is acting as a "Sales Person".

Sales persons are not required to act in your best interests.

CONCLUSION

Why does the industry allow "Sales Persons" to use the title "Financial Advisor"?

Do regulators not understand that most Canadians and most dictionaries believe that Advisor and Adviser are simply spelling variations of the same word?

Is this a deliberate attempt to mislead Canadian investors into placing their trust and their savings with a commission motivated sales person?

Many Canadians have already lost their savings when they placed their trust in a sales person titled "Financial Advisor".

If Canadians deal with a "Financial Advisor" they can be one of two types of individual:

- An outright con man or fraudster that is unregulated
- A regulated representative that is a commission motivated sales person

Checking an Advisor's Registration will determine if he is not registered and therefore an outright fraudster, or whether he is registered.

Although your Advisor is in all probability registered he has a 96% chance of being registered as a "Dealing Representative" i.e. a commission sales person.

Whether it is an outright fraudster like Earl Jones and Bernie Madoff, or a regulated sales person like so many in Canada that have caused Canadians to lose their savings, the life-altering result is the same.

Victims' lives are altered in many ways. Their trust has been breached. They lose more than money. It causes health issues. Family legacies are lost. It is a lasting impact.