

Vetting Financial Professionals And Options When Things Go Wrong



Vetting And Choosing Financial Professionals: Why Important

- ▶ Most mutual fund managers do not outperform the market
- ▶ As of March 19, 2019:

FUND CATEGORY	COMPARISON INDEX	1-YEAR (%)	3-YEAR (%)	5-YEAR (%)	10-YEAR (%)	15-YEAR (%)
All Domestic Funds	S&P Composite 1500	68.83	81.49	88.13	84.49	88.97
All Large-Cap Funds	S&P 500	64.49	78.98	82.14	85.14	91.62
All Mid-Cap Funds	S&P MidCap 400	45.64	74.29	79.88	88.03	92.71
All Small-Cap Funds	S&P SmallCap 600	68.45	84.35	89.40	85.67	96.73

- ▶ To Ensure Investments will comport with investment profile of Tribe:
 - Goals and objectives subject to particular timeframes
 - Risk tolerance both objective and subjective
- ▶ To Minimize Costs
- ▶ To Avoid Unexpected and or Catastrophic Losses

Financial Companies and Professionals

- ▶ **Broker Dealers**

- Financial Advisors (registered representatives)

- ▶ **Registered Investment Advisory Companies (RIAs)**

- Investment Advisor Representatives (IARs)

- ▶ **Financial Planners**

- ▶ **Chartered Financial Analysts / Chartered Financial Planners**

- ▶ **Introducing Brokers / Commodity Trading Advisors**

- ▶ **Hedge Funds**

How Are Financial Firms/Professionals Compensated

- ▶ **Broker Dealers**
 - Financial Advisors (registered representatives)
- ▶ **Registered Investment Advisory Companies (RIAs)**
 - Investment Advisor Representatives (IARs)
- ▶ **Financial Planners**
- ▶ **Chartered Financial Analysts / Chartered Financial Planners**
- ▶ **Introducing Brokers / Commodity Trading Advisors**
- ▶ **Hedge Funds**

Researching Financial Professionals

- ▶ FINRA Registered Persons: Registered Representatives:
 - BrokerCheck®
 - <https://brokercheck.finra.org/>

- ▶ Investment Advisor Representatives (Regulated by SEC):
 - Investment Advisor Public Disclosure website
 - <https://www.adviserinfo.sec.gov/IAPD/default.aspx>

FINRA's BrokerCheck

▶ BrokerCheck®



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 **FIRM**

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SEARCH

BrokerCheck is a free tool to research the background and experience of financial brokers, advisers and firms.

SEC's IAR Disclosure Website

▶ Investment Advisor Public Disclosure website

Investment Adviser Public Disclosure



Investment Adviser Search

Investment Adviser Data

Resources

Welcome to the Investment Adviser Public Disclosure website

Individual Firm at Search

For a complete compilation of Investment Adviser Firms currently registered with the SEC and states securities regulators, download the [Investment Adviser Data](#).

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You can call 240-386-4848 for technical assistance.

[Learn More About IAPD»](#)

RIA Form ADV

- ▶ Form ADV Provides Information Relating to RIA Firms:
 - Contact information: Address, Phone #, Hours of Operation
 - Assets Under Management
 - Types of Securities Under Management
 - Number of Clients
 - Criminal Disclosures
 - Disciplinary Events

“Red Flags” – Warning Signs

- ▶ **Claims of extraordinary past performance**
- ▶ **“Black box” investments**
- ▶ **Minimal time spent on understanding the Tribes’ investment profile**
- ▶ **Guarantees of any kind: “too good to be true”**
- ▶ **Overemphasis on a particular product or alternative investments**
- ▶ **Discretion before track record**

Investment Policy Statement

- ▶ **An Investment Policy Statement (IPS) is a meaningful document, generally between an investor and the assisting investment manager, recording the agreements the two parties come to with regards to issues relating to how the investors money is to be managed.**
 - Requires Accurate Investment Profile
 - Particular Objectives
 - Objective Risk
 - Subjective Risk
 - Time Horizon
 - Asset Allocation Profile: What percentages are allowed?
 - Monitoring Results / Reporting

Relevant Quotes

“All the time and effort that people devote to picking the right fund, the hot hand, the great manager, have in most cases led to no advantage. Unless you were fortunate enough to pick one of the few funds that consistently beat the averages, your research came to naught. There’s something to be said for the dart-board method of investing: buy the whole dart board.”

~Peter Lynch, Legendary Manager of Fidelity Magellan

“A number of smart people are involved in running hedge funds. But to a great extent their efforts are self-neutralizing, and their IQ will not overcome the costs they impose on investors. Investors, on average and over time, will do better with a low-cost index fund.”

~Warren Buffett, Chairman, Berkshire Hathaway

Options When Things Go Wrong

▶ Arbitration

- FINRA
- Contractual
- NFA

▶ Litigation in Court

- State
- Federal
- Tribal
 - Petitions to Compel Arbitration

Typical Claims

- ▶ **Professional Negligence**
 - Suitability
 - Churning
- ▶ **Misrepresentation (Fraud)**
- ▶ **Breach of Fiduciary Duty**
- ▶ **Negligent Due Diligence**
 - Alternative Investments
- ▶ **Breach of Contract**

Damages

- ▶ **Net Out of Pocket Losses**
- ▶ **Lost Opportunity**
- ▶ **Prejudgment Interest**
- ▶ **Attorney's Fees**
- ▶ **Exemplary (punitive) Damages**

The Process

▶ **Choosing a Law Firm**

- Fee Arrangement

▶ **Arbitration**

- Faster than court litigation
- Less discovery
- Panel of arbitrators instead of judge or jury
- No right to appeal

Class Action Litigation

- ▶ **Securities Fraud under State and Federal Law**
- ▶ **Class Representative vs. Class Member**
- ▶ **Pros and Cons**