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## Small Investor Protection Association - A voice for small investors

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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.

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### CBC PROGRAM RATTLES TD BANK & PUBLIC REACTS

The CBC published a program featuring whistleblowers disclosing how the bank was putting pressure on employees to upsell clients or risk losing their jobs. Public reaction was swift as many small investors dumped TD shares causing the share price to drop by 5.5% in one day while the other four major bank shares worst performance was a less than 1% drop. The stock markets were all up.

*TD Bank shares post worst day since 2009 after CBC story*

*Bank analyst notes TD's 'Wells Fargo moment' as reaction to CBC story reverberates*

*CBC News Posted: Mar 10, 2017 2:50 PM ET Last Updated: Mar 11, 2017 9:44 AM ET*

*"Shares in Toronto-Dominion Bank posted their biggest loss since 2009 on Friday after the publication of a second CBC News story uncovering how employees admit they have broken the law at their customers' expense in a desperate bid to meet sales targets and keep their jobs."*

*"TD stock closed at \$66, falling \$3.88 a share — more than 5.5 per cent — its worst day since the end of the financial crisis, and enough to wipe out all of its gains for 2017."*

*"In two stories on Monday and Friday, CBC's Go Public team outlined how **TD employees have come under pressure to sell products** that may not be appropriate for customers, and in at least one case increased a customer's overdraft and credit limits without their knowledge."*

- *'I will do anything I can to make my goal,' TD teller says*

*"Analyst John Aiken at Barclays, who covers TD, likened the story to a "Wells Fargo moment" — a reference to last year when the **U.S. lender was fined \$185 million by***



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*regulators after some of its employees were found to have made up bogus accounts to hit sales targets and get bonuses."*

*"TD shares finished at \$66 a share on Friday, but Aiken's 12-month target price for the stock is \$64 and he gives it an "underweight" rating. That means he thinks the stock could be worth less in a year than it is today, and he thinks it's an inferior investment prospect to other similar companies."*

*"Ultimately, we do not believe that there will be much of an impact on TD, as we would be surprised if the issues described were as systemic as occurred with Wells Fargo in the U.S.," Aiken wrote.*

*"That said, given the damage that the allegations did to Wells, investors will likely remain cautious about the tail risk and the impact on TD's valuation may not dissipate until after an official investigation is concluded."*

*In a written statement sent to CBC News Friday evening, the CEO of TD Bank Group, Bharat Masrani, said TD has "a long history of providing great customer service. We do that by listening and responding to our colleagues and our customers," Masrani wrote. "We'll continue to do so. We are in the trust business. Everything we do is about earning and sustaining the trust of those we serve."*

Read the complete report at <http://www.cbc.ca/news/business/td-bank-stock-pprice-1.4019822>

It will be interesting to review all of the facts when they do come out to see if they support Masrani's statement or show that this is just typical misleading rhetoric.

## WILL CMR2 REVEAL ALL COSTS?

By Debra McFaden, January 2017

On January 1<sup>st</sup> CBC aired a clip on the news dealing with the new rules that have come into effect this year with CRM2. If you missed it you can watch it here.

<https://drive.google.com/file/d/0B6tMwXeYgk2Gb202NU9tTW5TRXc/view>

There is an article posted on their website you can read as well here.

<http://www.cbc.ca/news/business/investment-fees-crm2-1.3908932>

The Canadian Securities Administrators (CSA) have introduced new requirements in an attempt to ensure investors receive information about, 1) the cost of their advice and 2) how their investments have performed over time. These requirements are also known as phase 2 of the Client Relationship Model, or CRM2. The new rules apply to all dealers and advisors registered to trade in securities or provide advice and have been phased-in over a three year transition period from July 2014 to January 2017.



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Wait a minute! Shouldn't investors already know the costs and how their investments have been performing? Wouldn't that information be pertinent to making an informed decision to start with to know the cost? Isn't it equally important for investors to be privy to the information regarding how their money has been performing? What part of not making that information plain can even be remotely construed as dealing honestly fairly and in good faith with a client as required by the Securities Acts? Aaron Saltzman from CBC states it correctly when he says "These fees are legion, arcane often buried deep within a prospectus sometimes even hidden within other fees." That is not fair, nor is it right that it has been allowed to go on for such a long time.

Norm Massie a recently retired RCMP officer and new SIPA member spoke out saying "Like everyone else I trusted my advisor." He discovered sadly, like so many, that his trust was misplaced. After discovering large unknown and undisclosed fees had been taken from his account by his advisor he began to do some research into "What else has this person done to me over the years?" We would all be wise to ask that question, not only of our advisor but our regulators as well.

How is this information actually going to be reported? The industry has certainly had plenty of time to prepare for it. We fear it will be not as straightforward as some would like to have us think. In principle it sounds good but as they say "the devil is in the details".

We urge you to look closely at your new statements. For many investors this will be the first time ever seeing fees that have been charged to them. Talk to other family members neighbours and seniors about the new report. Make sure you feel confident that you understand the new report. Don't be afraid to ask questions it is your money after all. Some of the other articles in this issue will point out that not all products or costs are covered by the new rules. Ask your advisor if there is more you should be made aware of. It is time to think long and hard about the value you are or are not receiving for the price you have been paying.

Stan Buell President of the Small Investor Protection Association summed things up when he asked on CBC "What is the industry supposed to be doing? Are they supposed to be providing financial advice or are they there strictly to sell financial products?" Are they advice givers or merely salespeople? Whoever heard of a salesperson not being obligated to disclose the price or total cost? Like Norm Massie stated "It flabbergasted me. How could this happen in Canada?"

Andrew Hebda a commenter responded with "How does this sound? The industry should be operating in an open and honest manner for the benefit of the clients. Let's start here and see what can be built and monitor and achieve that goal...obviously that is not the model in place at this time."

Investors are starting to speak out. Some of the comments on the CBC website indicate how investors feel:

Fred Drake ... regarding the comment made that You should not be buying things you don't understand. "When I buy a car, I don't know everything about how it operates. I must place my trust in my dealer and mechanic. They also have a responsibility to deal fairly, without my verifying every little component before making a purchase."



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Ruth Bird ... "Make the same rules for all who claim to be investment advisors, agents, etc. - all fees must be disclosed with no exceptions"

Tom Dugas ... "don't overlook the fact the fees are still taken even when they lose your money. so in a bad year, you can add the fees to your losses ... A financial advisor's first interest is in their fees, and it should be what is best for their client, regardless of the associated fees."

David Newman ... "A fiduciary obligation (the financial advisor must put the client's interests first) is the only way an investor can have any true trust in the advice of the advisor. CRM2 may be a step in the right direction, but it's not enough. Canada should have fiduciary rules for financial and investment advisors."

Timmy Barthow ... "Most of these money managers are sales people first and financial planners second. ... It is well documented that over half actively managed funds fail to beat index funds over time, so why would anyone buy an actively managed fund with MER fees and trailer fees?"

## FIDUCIARY DUTY DEFINED

Although many people know about fiduciary duty they may not be aware of the significance and fundamental importance of professionals being held to a fiduciary standard. A few minutes on the internet provides the following definitions.

### **[Fiduciary Duty | Wex Legal Dictionary / Encyclopedia | LII / Legal ...](https://www.law.cornell.edu/wex/fiduciary_duty)**

[https://www.law.cornell.edu/wex/fiduciary\\_duty](https://www.law.cornell.edu/wex/fiduciary_duty)

*A **fiduciary duty** is the highest standard of care. The person who has a **fiduciary duty** is called the **fiduciary**, and the person to whom he owes the **duty**, is typically referred to as the principal or the beneficiary. ... His or her beneficiaries are entitled to damages, even if they suffered no harm.*

### **[Fiduciary duty legal definition of fiduciary duty](http://www.thefreedictionary.com/fiduciary+duty)**

[legal-dictionary.thefreedictionary.com/fiduciary+duty](http://www.thefreedictionary.com/fiduciary+duty)

***Fiduciary.** An individual in whom another has placed the utmost trust and confidence to manage and protect property or money. The relationship wherein one person has an obligation to **act** for another's benefit.*

## LAW OF FIDUCIARY OBLIGATION

From <http://www.thecanadianencyclopedia.ca/en/article/law-of-fiduciary-obligation/>

### ***Fiduciary Obligation, Law of***

*The legal system recognizes a multitude of special relationships in which one party is required to look after the best interests of the other in an exemplary manner. These relationships,*



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*which include solicitor/client, physician/patient, priest/parishioner, parent/child, partner/partner, director/corporation and principle/agent, are called fiduciary relationships.*

*Fiduciary relationships entail trust and confidence and require that fiduciaries act honestly, in good faith, and strictly in the best interests of the beneficiaries of such relationships. The courts have developed a basic test for determining whether fiduciary obligations arise from a relationship: first, the fiduciary has the ability to exercise some discretion or power; second, the fiduciary can unilaterally exercise that power so as to affect the interests of the beneficiary; third, the beneficiary is in a position of vulnerability at the hands of the fiduciary.*

*Ordinarily, fiduciaries cannot for personal gain avail themselves of opportunities arising from the discharge of their duties. There are demanding rules that prohibit both profit making and any conflict of interest that goes beyond that which is intrinsic to the relationship. Strictly prohibited are secret benefits in the form of undisclosed kickbacks, commissions, profits and discounts, as well as conflicts of interest that involve business and other personal advantages which may enure to the fiduciary. An improper benefit is usually financial, but can include virtually any form of improper personal gain."*

### HOW YOUR PRODUCER ADVISOR GETS PAID

From <http://thereformedbroker.com/2016/12/16/how-your-producer-gets-paid/>

#### *How Your Producer Gets Paid*

*Posted December 16, 2016 by [Joshua M Brown](#)*

*Wells Fargo just announced sweeping changes to the way it will pay its ~~producers~~ financial advisors in 2017. None of this stuff would work in the context of a Fiduciary Standard. Monthly production hurdles – meaning how much in fees and commissions the producer can rack up – lead to higher payouts for the producer...*

*via AdvisorHub:*

*The core part of Wells brokers' compensation—a 22% payout on the first \$11,500 to \$13,250 they produce monthly and 50% on revenue above the hurdle.*

*Imagine you're a Wells Fargo advisor and there's only one day left in the December pay period. You know you need to get above \$13,250 in order for your payout percentage to leap from 22% to 50% on the revenue above that level. Is there any chance you're not going to find a commissionable trade to do or a loan to make or a product to sell?*

*Of course you will.*

*It's not even the advisor's fault. The incentives are perverse. And this thing with the grid is probably the most benign of all the inherent conflicts. There's so much worse out there, but this one is a constant and there are 12 opportunities a year – 12 monthly pay periods – for it to be a potential problem.*



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*I witnessed the problem with these commission grids firsthand in my past life as a broker and a co-branch manager. I've always said that all you need to do is look at the customary spike in trading activity for the last two days of a given pay period to see incontrovertible evidence that human nature will always win out over the best intentions. And if the intentions are bad or even blasé, forget about it.*

*Honestly, I don't understand how this is even a thing anymore.*

*Source: [UPDATE: Wells Excises Loans from Brokers' 2017 Incentive Plans \(AdvisorHub\)](#)*

## THE CALL FOR FIDUCIARY DUTY

Fiduciary duty is well established in law. In fact Securities Acts call for Portfolio Manager and Advising Representatives to have a fiduciary responsibility but not Dealing Representatives. They are strictly Sales Persons held to a "Suitable standard" and this is not well defined.

In spite of the investment industry's advertising and rules and regulations there are dirty tricks.

The industry uses optics to create a perception that they are well regulated and investors are protected by the regulators. SIPA is issuing a series of reports to dispel that false perception. These are available on the SIPA website.

- **[SIPA Report: Unpaid Fines: It's a National Disgrace](#)**  
An illusion of effectiveness – most aren't paid. More than \$899,216,448.32 in fines owing to Canadian regulators. April, 2016
- **[SIPA Report: The "Know Your Client" Process Needs an Overhaul](#)**  
The report outlines issues with the Know-Your-Client form which is meant to define the client profile and the strategy for investment, but is woefully inadequate for fairly representing the client's interests. July 2016.
- **[SIPA Report: Investor Protection and IIROC Governance](#)**  
This report examines The Investment Industry Regulatory Organization of Canada's (IIROC) governance and its impact on investor protection. It highlights serious IIROC operational issues that directly impair investor protection. It concludes with recommendations to make IIROC a better, more responsive regulator. October 2016.
- **[SIPA Report: Advisor Title Trickery](#)**  
Canadians are being deceived by the investment industry and their regulators when they call Sales Persons "Financial Advisors" to gain trust. This report illustrates the Bait and Switch tactic to gain public trust that leads to the wealth transfer from small investors to the industry. October 2016



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- **SIPA Report: Above the Law: Checking an Advisor's Registration**

This report asks the question "Are They Above the Law?" It examines the system and provides detailed scrutiny. December 2016

Fiduciary duty has been discussed at round tables, studied and reported on but still there is no concrete action to legislate fiduciary responsibility. Instead the industry and its regulators are proposing a best interests standard which is not the same as a fiduciary standard. The Fiduciary standard is well established in law and is based upon principles. Whereas the Best Interest Standard is being proposed as yet another rule which does not have the force of law. The Courts of Justice role is to provide judgement of whether the laws have been breached.

For many years caring people have been demanding that the investment industry be held to a fiduciary responsibility to protect all Canadian investors. Some comments made follow:

[http://www.sipa.ca/library/SIPASubmissions/500\\_Ltr\\_to\\_CSA\\_20150413.pdf](http://www.sipa.ca/library/SIPASubmissions/500_Ltr_to_CSA_20150413.pdf)

*"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."*

**Stan Buell - President Small Investor Protection Association** – Letter to the Chair CSA  
April 13, 2015

<http://www.sipa.ca/library/SIPASentinel/2013/160-SIPASentinel-November2013.pdf>

*"Yes, Investment Advisers Should be Fiduciaries - September 15, 2013"*

***"A default fiduciary standard for investment advisers is the best way to protect investors and needs to be explicitly enacted - now."***

**Anita Anand - former chair of the OSC Investor Advisory Panel**, September 15, 2013

<http://www.sipa.ca/library/SIPASentinel/2015/160-SIPASentinel-201505.pdf>

*A Rather Modest Fiduciary Proposal Draws Fire*

*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.*



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*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.*

**Stephen Blumn - Department of Legal Studies and Business Ethics at the Wharton School of Business of the University of Pennsylvania** – March 3, 2015

<http://www.sipa.ca/library/SIPASentinel/2015/160-SIPASentinel-201505.pdf>

*The imposition of a fiduciary responsibility would eliminate many of the issues that investors face today.*

**Stan Buell - President Small Investor Protection Association** – May, 2015

[http://www.finra.org/sites/default/files/FINRACommentLetter\\_DOL\\_07-17-15.pdf](http://www.finra.org/sites/default/files/FINRACommentLetter_DOL_07-17-15.pdf)

**"FINRA has publicly advocated for a fiduciary duty for years and agrees with the Department that all financial intermediaries, including broker-dealers, should be subject to a fiduciary "best interest" standard."** - Finra - Comment Letter to DOL – July 17, 2015

**"A fiduciary standard for all providers of professional financial advice is essential."**

**Ken Kivenko** – Chair SIPA Advisory Committee - August 12, 2016

<http://www.advisor.ca/news/industry-news/pmac-to-csa-focus-on-fiduciary-duty-not-best-interest-standard-212685>

**PMAC TO CSA: FOCUS ON FIDUCIARY DUTY, NOT BEST INTEREST STANDARD**

Staff / September 27, 2016

*"PMAC cautions CSA against imposing other duties, namely the proposed regulatory best interest standard. PMAC says that doing so would risk undermining what is already the highest standard of care in the industry. Says Walmsley, "The fiduciary duty is the gold-standard of care for investors."*

[http://www.osc.gov.on.ca/documents/en/Securities-Category3-Comments/com\\_20160930\\_33-404\\_teasdale.pdf](http://www.osc.gov.on.ca/documents/en/Securities-Category3-Comments/com_20160930_33-404_teasdale.pdf)

**"The provision of personalised investment advice should be accorded a fiduciary standard, irrespective of the nature and sophistication of the service."**

**- Andrew Teasdale - Submission to OSC - September 30, 2016**

**SIPA NEEDS YOUR HELP** – Your contact will remain confidential.

Investors are needed to speak out. This action will help your fellow Canadians in many ways. They will realize that they are not alone and a great number of us have also experienced loss due to fraud and wrongdoing by the regulated financial industry. **Individuals using the title Financial Advisor are acting as a commission sales person selling financial products.** Some may in fact believe they are providing financial advice and may be trying to help their clients ... but there is no legal requirement for them to do so. Advisors are registered as a Dealing Representative – a sales person required only to sell suitable products. If you will speak out contact SIPA in confidence. Thank you.