



# SMALL INVESTOR PROTECTION ASSOCIATION

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

## A Small Investor Protection Association Report



## Financial Advisor Fiduciary Illusion

May 8, 2015

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# SIPA

SMALL INVESTOR PROTECTION ASSOCIATION

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

### ***A Victim's Voice***

*"As a result of the activities of this broker, I not only lost my entire life savings, I lost the savings of my company and I found myself in debt to the tune \$1.8 million. I can tell you there was the day when I stood on the deck of my boat with a 50 pound weight tied around my waist because I had to put an end to it all and it is only because of the intervention of my wife, a very timely intervention, and the subsequent support of my two children that I am here before you today."*

The Small Investor Protection Association was founded in 1998 with a mission to raise investor awareness and provide guidance to investors with a complaint. In those early years the Self Regulatory Organizations (SRO) were not helpful to investors and would not reveal information regarding registered representatives.

Within a few years of SIPA's founding and incorporation as a national non-profit organization it became apparent to SIPA that investors were losing their life savings at a scale beyond imagination and the public was not aware of the magnitude or how widespread fraud and wrongdoing by the regulated investment industry was.

SIPA published a report [\*"the Small Investors' Perspective of Investor Protection in Canada" - February 27, 2004\*](#). The report was based in part upon interviews with several hundred small investors and was delivered to regulatory and Government leaders across Canada.

*"The leaders of our Government and the investment industry have a social and moral responsibility to ensure that this essential industry is operated in a moral and ethical fashion, as well as a legal fashion. Industry leaders should not allow participants to flaunt the rules and regulations and then rely upon legal tactics to vigorously defend situations that are morally and ethically indefensible."*

Since then there have been some positive changes. The Canadian Securities Administrators now provide a National Registration Database enabling representative qualifications to be checked and there are other advancements. However, the wealth transfer from small investors to the investment industry continues unabated because Canadians are not aware of the deception practiced by the industry and their Self Regulatory Organizations.

Investors place their trust and their savings in the hands of sales persons because they believe they are advisers with a fiduciary duty. As a result, commission driven sales people are selling products paying the highest commission and using leverage strategies for investors that are neither warranted nor appropriate. This leads to excessive investor losses.

Although there are studies, reports, roundtables and discussion, there is little forward movement on the issue of fiduciary duty. The SIPA Advisory Committee led by our Advisory Committee Chair, Ken Kivenko, has produced a report, following that published by the Public



Investors Arbitration Bar Association (PIABA) for the United States and it shows that the same factors prevail in Canada. The industry and its SROs are deceiving the Canadian public with advertising and misleading titles that mislead Canadians into believing they are dealing with a Financial Adviser who will look after their best interests.

The so titled "Financial Advisors" are in fact a "Dealing representative – A sales person". The commission grid commonly used in the investment industry drives sales persons to follow practices that are inappropriate and unacceptable for financial consumers.

SIPA's Advisory Committee has concluded:

*It is time to stop trying to fit a square peg into a round hole. Canadians believe they are dealing with a fiduciary. Industry advertising and titles reinforce that perception. Common sense and decency tell us that a person handling another person's savings needs to be held to the highest standard. They need to be fiduciaries.*

Government must act to protect Financial Consumers across Canada and ensure that those who are entrusted to safeguard Canadians life savings and pension funds are held strictly accountable to a fiduciary responsibility.

Yours truly,

Stan I. Buell  
Founder & President

*"Financial Advisor is a common title which many persons use, whether they are registered under securities legislation or not. The use of this title is not generally prohibited, and may be used by anyone, including persons who are only licensed to deal in insurance products, mortgage brokers, deposit agents, or employees of financial institutions. Some jurisdictions regulate the use of some titles. Most jurisdictions do not regulate the use of Financial Advisor, and as such it is widely used.*

*As with Financial Advisor, the title of Vice President is increasingly a common title used in the financial services industry. While an officer of a firm may be designated to be a vice president, the use of the title is not reserved to actual officers of a corporation. As such, it is not safe to assume a person described as a vice president is in fact an officer of that corporation."*

**Chris Besko**  
Chair CSA Registrant Regulation Committee

## INTRODUCTION

For over 15 years SIPA has been witness to the devastation of Canadians' life savings and their future financial security due to the failure of the regulatory system to effectively protect investors from industry wrongdoing. Hundreds of small investors have been interviewed and their stories are positive proof that the regulated financial service industry is causing hardship beyond imagination.

*"As a result of the activities of this broker, I not only lost my entire life savings, I lost the savings of my company and I found myself in debt to the tune \$1.8 million. I can tell you there was the day when I stood on the deck of my boat with a 50 pound weight tied around my waist because I had to put an end to it all and it is only because of the intervention of my wife, a very timely intervention, and the subsequent support of my two children that I am here before you today."*

In recent years there is evidence that more people are becoming aware of the wealth transfer from ordinary citizens saving for their retirement to the financial services industry. It is widespread and it is flagrant. The industry vigorously opposes any initiatives that could improve the situation for savers and investors.

In his address to the AARP President Barack Obama forcefully addressed the need for those who provided services for retirement savings must have a fiduciary responsibility.

The Public Investors Arbitration Bar Association (PIABA) is an international, not-for-profit, voluntary bar association of lawyers who represent investors in securities and commodities arbitration proceedings and securities litigation.

It was with great interest that the Small Investor Protection Association (SIPA) read the March 25<sup>th</sup>, 2015 PIABA Report released in the U.S. by Joseph C. Peiffer and Christine Lazaro titled *"Major Investor Losses Due to Conflicted Advice: Brokerage Industry Advertising Creates the Illusion of a Fiduciary Duty"* The report highlights how America's leading brokerage firms claim in advertisements to put the interests of investors ahead of their own, but then all deny any such duty, when it comes to arbitration cases filed by investors.

The PIABA report noted that brokerage firms "advertise that they are a fiduciary such as a doctor or lawyer. But, when a dispute arises with investors, they argue they have the duties of a used car salesman." Their Report also stated that "In the five years since the passage of the Dodd Frank Act, inaction by the Securities and Exchange Commission (SEC) on a fiduciary standard had cost American investors nearly \$80 billion, based on estimated losses of \$17 billion per year."

[http://piaba.org/system/files/pdfs/PIABA%20Conflicted%20Advice%20Report\\_0.pdf](http://piaba.org/system/files/pdfs/PIABA%20Conflicted%20Advice%20Report_0.pdf)

The question that arises is, "Could the same be said for Canada?"

## The Canadian Situation

Canadians believe that our investment industry is well regulated and that those who breach the law can and will be held accountable.

To put things in perspective, a little history is necessary. When the Small Investor Protection Association (SIPA) was founded as an informal community organization in 1998 with five members, it was to help make residents in the community more aware of some of the issues

they faced as investors. However, public meetings attracted an increasing number of people and as membership swelled it also became apparent that there was an issue that was national in scope. So SIPA was incorporated as a national non-profit organization with a mission to help the small investor.

Early on it became obvious that investors were not always getting the truth, but often were being deceived. Advertising and marketing extolled the virtues of saving and investing for retirement. The regulators assured the public and the Government that the industry was well regulated. They also declared that there were compliance officers in each firm to ensure the firms followed rules and regulations and there were mechanisms to deal with any complaints. There were managers and ombudsmen in the firms, and in case the firms could not satisfy the complaint there was also the self regulators arbitration process and the Ombudsman for Banking Services and Investments (OBSI). If all else failed there were civil courts as a final solution.

Why then were so many investors losing their savings due to wrongdoing and yet the public only heard of a few cases.

The same year that SIPA was formed, well known and now retired, securities lawyer Glorianne Stromberg released her scathing report called "Investment Funds in Canada and Consumer Protection". [http://www.sipa.ca/library/SIPAdocs/Stromber\\_InvFundsCan7pg\\_Oct1998.pdf](http://www.sipa.ca/library/SIPAdocs/Stromber_InvFundsCan7pg_Oct1998.pdf)

Many suggestions were made at that time but not put into action. Some time later in 2004, The Federal Wise Persons Committee Report and resulting Fair Dealing Model were written with many excellent suggestions to improve investor protection. Unfortunately, Theresa Tedesco of the Financial Post got it right, when she accurately coined it *Dead Before the Ink Dried*. (<http://investorvoice.ca/PI/512.htm>) Also in 2004, SIPA prepared a five year report entitled "The Small Investors' Perspective of Investor Protection in Canada." This report was delivered to 25 of the top regulators and government officials across Canada. Its purpose was to raise awareness and ensure that leaders were fully aware of how the regulatory regime was failing to protect financial consumer/investors. Yet more than a decade later, Canadian small investors are still losing billions of dollars every year due to widespread industry wrongdoing. Why is this happening?

In any given year, the Investment Industry Regulatory Organization of Canada (IIROC) receives over 1,000 complaints about possible violations of IIROC Marketplace and Dealer Rules. This list describes some of the most common infractions.

Manipulation, Conflict of Interest, Unauthorized or discretionary trading, Inappropriate personal financial dealings and outside business activities, Unsuitable Investments, Wash Trading, Frontrunning & Client Priority violation, Falsification / Forgery of Documentation, Misrepresentation, Theft, fraud, Inadequate Supervision, Failure to Deliver Best Execution, Churning or Excessive Trading.

<http://www.iiroc.ca/industry/enforcement/Pages/Guide-to-Common-Infractions.aspx>

Similarly the Mutual Fund Dealer Association (MFDA) also receives complaints about Registered Respondents and dealers as reported on their website:

<http://www.mfda.ca/enforcement/enfStats.html>

MFDA Cases Opened by Type (January 1, 2014 to December 31, 2014)

Type	Number of cases*	Percentage of total
Falsification / Misrepresentation	57	13.6%
Blank Signed Forms	45	10.8%
Suitability - Investments	40	9.6%
Suitability - Leveraging	34	8.1%
Complaint Procedure	29	6.9%
Commissions and Fees	24	5.7%
Policy & Procedures	23	5.5%
Unauthorized/Discretionary Trading	21	5.0%
Personal Financial Dealings	18	4.3%
Business Standards	17	4.1%
Outside Business Activities / Dual Occupation	16	3.8%
Forgery / Fraud / Theft / Misappropriation / Misapplication	13	3.1%
Confidentiality/Privacy	13	3.1%
Transfer of Accounts	12	2.9%
Sales Communication	7	1.7%
Stealth Advising	6	1.4%
Books/Records/Client Reporting	6	1.4%
Acting Outside Registration Status	4	1.0%
Conflict of Interest	4	1.0%
Referral Arrangements	4	1.0%
Excessive Trading/Churning	4	1.0%
Conduct Unbecoming	4	1.0%
Provincial Securities Legislation	3	0.7%
Reporting Violations	3	0.7%
KYC Documentation Deficiency	3	0.7%
Supervision	2	0.5%
Handling of Funds	2	0.5%
Failure to Cooperate	2	0.5%
Financial Requirements	1	0.2%
Disclosure	1	0.2%

The most common way people find an advisor in Canada is to have one assigned to them by a bank or financial institution. In a number of studies, investors indicated that they are content to trust this assigned advisor, because they trust their financial institution to do what is best for them.

One of the most common services that people expect from their advisor is what type of investments they should have, as well as help in developing a financial plan.

Source: <http://www.getsmarteraboutmoney.ca/en/research/Our-research/Documents/2012%20IEF%20Adviser%20relationships%20and%20investor%20decision-making%20study%20FINAL.pdf>

Although many institutions claim in advertising that they provide financial planning and holistic advice, few actually provide comprehensive planning with written financial plans.

This fact is best illustrated by Alan Goldhar, Professor of Financial Planning at York University and Manager for the Ontario Public Trustee. The Public Trustee takes over the finances for people that are mentally unable to make financial decisions. They have taken over more than \$500 million in investments for 10,000 clients, most of which had a financial planner, broker or bank advisor. They interview the client and the family and then send in a team to obtain all financial documents.

The shocking fact they discovered is that, of the 10,000 clients they took over, none had a financial plan! Not a single one!

Source; <http://www.milliondollarjourney.com/why-don%E2%80%99t-most-financial-planners-plan-finances.htm>

Seven out of ten investors mistakenly believe their advisor has a legal duty to put the client's best interests ahead of his or her own personal interests. Slightly more 'Strongly Agree' rather than 'Agree'. The belief in legal duty is unrelated to age and is stronger among those with \$100k or more invested. In short, those with the most to lose are most likely to believe there is a legal duty. It is also clear that most people believe the advisor will give the best advice they can, and in turn, they can rely on their advisor to decide which investments are best. For the most part, the reliance on the advisor and their advice peaks among investors with \$100-249k invested.

Source: <http://www.getsmarteraboutmoney.ca/en/research/Our-research/Documents/2012%20IEF%20Adviser%20relationships%20and%20investor%20decision-making%20study%20FINAL.pdf>

We need to ask ourselves two questions, "Why do so many investors believe their advisor has a fiduciary to put their interests first? And more importantly, "Why do those who are handling our savings not have a fiduciary responsibility?"

According to this July 2014 Report "*Sound Advice – Insights in Canada's Financial Advice Industry – PWC & Advocis*" <http://www.advocis.ca/sareport.pdf> there are close to 100,000 persons employed as financial advisors in Canada.

Investment Counselors are unique among Canada's financial advisory community as the only advisors held to a fiduciary standard as a function of their role as discretionary portfolio managers. With just over 1,100 investment counselors across the country – they represent only about 1% of all financial advisors in Canada.

Source: <http://dtp.r.lib.athabascau.ca/action/download.php?filename=mba-15/open/punkon-aprj-final.pdf>

If only 1% is actually held to a fiduciary standard then why are so many Canadians misled? Could the industry advertising be encouraging this illusion of a fiduciary duty? Let's look at a few ads.

## Misleading Advertising

Industry slogans, taglines, mantras, catchphrases, positioning statements, and rallying cries contribute to deception of the public.

*Securing your Future - FREEDOM 55 - First for you - Friends you can bank on -*

*We Never Forget It's Your Money - The Bank That Cares - We only do what's right for you. - People you trust. Advice that works. Five Star Service Guaranteed -*

*Where relationships mean more. - The Bank that begins with "U" -*

*Personalized Service From People You Trust Banking can be this comfortable -*

*All of Our Customers Trust Their Success To Us - We listen. You prosper. -*

*You're in Good Hands Putting people first. - We'll treat your money like it's your money. -*

*For what matters. Your money. Your trusted choice. - Life Well Planned - The helpful bank.*

*Your future. Our priority. - Paying a higher rate of attention -*

*Banking can be this comfortable. Invest with confidence. -*

*Reach your retirement goals with our investment options -*

*"The real business of money management is not managing money, it is getting money to manage." - Mark Hurley, Goldman Sachs*

## Specific Examples

Note that in some cases emphasis has been added.

## Equity Associates

*"Several Canadians find the task of financial planning daunting and are overwhelmed with all of the variables to consider. **Like contacting a doctor, dentist, or lawyer, the first step in dealing with financial matters is to contact a professional who can help you build a portfolio that will meet your financial and life goals.**"*

Source: <http://equityassociates.ca/investment-clients/financial-planning/>

Their advertising to employees states that one of the benefits of working for Equity Associates is their efficient compliance and operations. *"Advisors spending too much time satisfying unreasonable compliance demands, or are subjected to an operational system fraught with inefficiencies, are running unproductive businesses. Our job at Equity Associates in compliance is to help bulletproof our Partners business and provide a logical, efficient trading process. Our systems have been honed over the years to allow our Partners to operate profitable businesses no matter what the size."* Source: <http://equityassociates.ca/home/5-essentials/>

Is it a surprise that on 11/02/2014 the Ombudsman for Banking Services and Investments (OBSI) announced the refusal of Equity Associates Inc. ('Equity Associates') to compensate a retired couple in the amount of \$83,386?

*"Equity Associates is a mutual fund dealer based in Markham, Ontario. The complainants, Mr. and Mrs. H, are a retired couple with limited investment knowledge. They had sold their home and wanted their advisor to place the proceeds into low-risk investments while their new home was under construction, which was to be ready within a year.*

*While the clients were willing to take some risk with their long-term RRSP investments, they were risk adverse regarding the proceeds from the sale of their home. They trusted their advisor at Equity Associates to make appropriate investment decisions after explaining to him that they could not afford to lose the principal amount, which they need to complete the purchase of their new home. The advisor assured them not to worry and guaranteed no losses would occur.*

*OBSI finds that Equity Associates is responsible for the losses incurred by Mr. and Mrs. H as a result of the unsuitable medium and high-risk investments. Equity Associates allowed the advisor to open new accounts for the couple without collecting Know Your Client (KYC) information, as required by securities rules. As a result, Equity Associates could not assess the suitability of the investments as it was required to do. OBSI also found evidence that strongly suggests Mr. and Mrs. H did not sign the mutual fund purchase documents. It appeared that these documents were altered by photocopying signatures from other sources."*

Source: <http://www.obsi.ca/en/news-and-publications/refusal-to-compensate/equity-associates>

*"Recently on February 3rd, 2015 (Toronto, Ontario) – The Mutual Fund Dealers Association of Canada ("MFDA") commenced a disciplinary proceeding in respect of Equity Associates Inc. (the "Respondent") by Notice of Hearing (the "Notice of Hearing") dated December 18, 2014.*

*Apparently back as early as March 2008, MFDA Staff noted concerns about the nature and extent of the compliance deficiencies identified at Equity Associates. MFDA Compliance Staff referred some of the deficiencies identified to Enforcement Staff for possible disciplinary action."*

Source: <http://www.mfda.ca/enforcement/hearings12/NOH201251.pdf>

## **BMO Nesbitt Burns**

BMO Nesbitt Burns states in its Charter of Client Rights and Responsibilities ".*Work with an Investment Advisor (IA) who conducts him or herself with high standards of professionalism and integrity at all times. **Client interests always come first.** Professionalism and integrity mean that our IAs know you and your unique needs and that they follow regulations designed*

*to protect all of our clients. Moreover, our **commitment to putting clients first** is demonstrated by our client account management and monitoring technology and by our supervisory system..."*

Well, they didn't come first when currency had to be converted in an RRSP. Investors had to sue the firm to get their money back. In 2006, a class action was commenced on behalf of a proposed class of individuals with registered accounts administered by BMO Nesbitt Burns Inc., BMO Trust Company, BMO Bank of Montreal and BMO InvestorLine Inc. in respect of foreign exchange transactions in RRSP, RRIF and RESP accounts (the "MacDonald Action"). The claim alleges, in general, that the defendants are not authorized to carry on the practice of automatically converting foreign currency in registered accounts after June 2001 changes to the Income Tax Act. This action has been certified, and has entered the discovery stage. Counsel is currently preparing for trial.

Source: <http://www.paliareroland.com/practice-areas/details/class-actions/bank-of-montreal-rrsp>

This is an example where the interests of investors were subordinated to the interests of the bank... the BMO Nesbitt Burns marketing materials show inconsistency in their marketing vs. the reality investors face every day. Source: <http://www.canadiancapitalist.com/double-dipping-on-currency-conversions-in-us-dollar-rrsp-drips/>

## **Armstrong & Quaille**

*"RETIREMENT PLANNING YOU CAN TRUST Plan for Tomorrow... Live for Today*

*If you're just starting out in life, retirement can seem a long way off. As you move through life's stages, you find you need money for a place to live, to pay for children's education, for travel—all the opportunities and challenges that confront us.*

*At Armstrong & Quaille, we understand your concern about planning for tomorrow while living for today.*

*We have guided over 40,000 clients—newlyweds to retirees, students to professionals, employees to business owners, and employees of businesses large and small. We have helped balance their day-to-day needs with their dreams of the future by **providing the financial planning information they need.***

*The objective is to **build client wealth through excellent advice and good service.** Investment advice that is **sensitive to your specific objectives & risk tolerance.**"*

Source: <http://www.a-q.com/main.php>

*"Armstrong & Quaille is proud of the Associates that have joined our team. They are cream of the crop among Financial Planners." Source: <http://www.a-q.com/associates.php>*

Here we read something quite different, happening to people, who trusted Armstrong and Quaille. From the OBSI website:

*"In 2004, Mr. O, an investment advisor with Armstrong & Quaille Associates Inc., recommended that Mr. and Mrs. H borrow a total of \$200,000 to invest (\$100,000 each). At the time, Mr. and Mrs. H were both retired and in their mid-sixties. They lived on a fixed income comprised of Old Age Security and Canada Pension Plan payments. The Hs were not willing or able to take significant risk with their investments. If the strategy failed they would be forced to withdraw*

money from their limited retirement savings jeopardizing their financial situation. They also could not afford to make the interest payments on the loan from their limited income. Mr. O acknowledged during our investigation that he did not assess the affordability of the leverage strategy. He said that was the responsibility of the loan provider. We do not agree. It is the responsibility of advisors to ensure their recommendations are suitable for their clients. We recommended that Armstrong & Quaille compensate the Hs for their losses but Armstrong & Quaille has refused to compensate them any amount."

Source: <http://www.obsi.ca/download/blog/37>

## Richardson GMP

"We're proud of the distinction we've earned as Canada's largest, independent, wealth management firm. Richardson GMP will help you succeed. On your terms.

We are Canada's largest independent wealth management firm, entrusted with over \$28 billion in client assets. Our focus: to protect and enhance your wealth. Our difference: an independent partnership structure that ensures accountability to our clients and alignment with their interests.

Our Investment Advisors are some of the sharpest minds in the business, and they are backed by substantial in-house expertise to address the wealth management needs particular to affluent families and entrepreneurs: investment and risk management, tax and estate planning, insurance strategies, tax-efficient investing, philanthropic giving, and succession planning for businesses and family homes.

We are proudly Canadian. Fiercely independent. And **dedicated to earning and rewarding your trust as stewards of your wealth.** "

Source: <http://www.richardsongmp.com/>

The part about being "fiercely independent" is accurate. OBSI announced on April 16<sup>th</sup>, 2014 that Richardson GMP has refused to follow the Ombudsman's recommendation.

"The Ombudsman for Banking Services and Investments (OBSI) announced the refusal of Richardson GMP to compensate several investors in the amounts of \$232,500 and \$66,366. Richardson GMP is a Toronto-based investment dealer with offices across much of the country. In two separate cases investigated by OBSI, the complainants (who are all related) were approaching retirement and had accumulated significant assets that they had invested with Richardson GMP. Their advisor, Mr. S, placed part of their portfolios in investments that were unsuitable given the complainants' investment objectives and risk tolerance.

Richardson GMP is responsible for the financial harm incurred by the complainants as a result of the unsuitable investments recommended by the advisor. It has chosen not to fulfill its responsibilities to them by providing the compensation they are owed based on the facts of the case.

*Copies of our investigation summaries in these two cases are available on our website ([Complaint #1](#), [Complaint #2](#)). Where a complaint is found to have merit, OBSI makes a recommendation for compensation where it would be fair to do so, taking into account all of the facts and circumstances of the case. A refusal by a participating firm to follow a recommendation means that OBSI must publicize that refusal and the details of the complaint under Section 27 of our Terms of Reference."*

Source: <http://www.obsi.ca/en/news-and-publications/refusal-to-compensate/richardson-gmp>

## **Scotia Bank**

*"Right for you if: You want trusted advice and personalized solutions. Right for you if: you want advice and service designed to exceed your expectations. All your needs are assessed: Income and asset protection strategies, Tax planning, Will and estate planning, Small business and personal lending, Cash flow management, Retirement advice, Portfolio advice and execution. Your team of experts might include: Your advisor and their Investment Team, Investment Specialists from our Global Portfolio Advisory Group, Equity, Fixed Income and Mutual Fund Research Analysts, Portfolio Managers, Financial and Estate Planning Consultants, Insurance Consultants, Borrowing and Banking Specialists. In addition, we involve experts such as your lawyer and accountant. The development and implementation of your complete financial strategy is guided by our process. Regular review and refinement by your Scotia McLeod advisor ensures its ongoing success. **We help our clients achieve peace of mind by providing trusted advice** and personalized solutions to meet their financial goals."*

Source: <http://www.scotiabank.com/ca/en/0,,842,00.html>

However, their advertisement to hire 60 new Investment Specialists does not provide that same peace of mind.

Source: [http://jobs.scotiabank.com/ca/mississauga/investment-specialist/jobid6864125-investment-specialist-\(mississauga\)-jobs](http://jobs.scotiabank.com/ca/mississauga/investment-specialist/jobid6864125-investment-specialist-(mississauga)-jobs)

*"As an Investment Specialist, you will focus on developing new wealth management business relationships as well as cross selling and up-selling to existing clients in the assigned market area. You will be responsible for ensuring investment portfolio growth, revenue generation and meeting defined goals, through an exclusive focus on establishing business development opportunities with prospects and clients. You will also be responsible for driving investment sales and netting new client acquisition through a financial planning framework while developing relationships within the community."*

There seems to be some misleading information here when the bank advertising promotions tell customer/clients that they place the customer/client interests to the fore and then at the same time tell prospective employees that their continued employment will be dependent upon their sales performance. This is an illustration of the conflict of interest existing in the Canadian marketplace. Is there any wonder that the individual "Investment Specialist" person will turn to self-interest?

***"We [Trimark] believe mutual funds are sold, not purchased."***

Source: Arthur Labatt, President of Trimark, Sept. 1997, Investment Executive

## MISLEADING TITLES

The problem for investors isn't just misleading advertising but also misleading titles.

Apparently this "Investment Specialist" title is another title to add to the list of confusing titles commonly used by the industry. "Financial Advisor", "Investment Advisor", "Financial Planner" and "Wealth Manager" are legally Sales Persons. The "Investment Specialist" title carries a connotation that they can be trusted to deliver investment knowledge to those who are going to be putting up the money - ie. the uninformed but trusting investor.

A survey of business titles by the Investment Industry Regulatory Organization of Canada (IIROC) found that there is a wide array of business titles in use by licensed representatives both across firms and, in some cases, within the same firm. Some of the more commonly used business titles that were reported through the survey include: Advisor, Financial Advisor, Financial Assistant, Investment Advisor, Senior Investment Advisor, Financial Consultant, Personal Finance Consultant, Financial Planner, Certified Financial Planner, Wealth Advisor, Investment Associate, Private Client Principal, Private Client Associate, Retirement Specialist, Consultant to Seniors, Vice President, Senior Vice President, and Managing Director. IIROC concluded that many of these business titles do not, on their own, provide a meaningful description of the type of services and/or investment products that a licensed representative can offer to a client. Some of these business titles imply that the individual carries out an executive function within a firm, for example, Senior Vice President, where the individual is not, in fact, a corporate officer of the firm. IIROC also found that there is a wide array of financial designations that licensed representatives possess and may put forward, in addition to their business titles, in their dealings with clients. While some financial designations, including professional designations like the Chartered Accountant designation, require a specified number of years of work or hours of classroom study, passing an examination, and continuing education, the requirements for others are much less rigorous. In fact, some financial designations may be obtained after a weekend seminar or through online self-study, with a self-administered examination. These titles facilitate sales person gaining investors' trust and enabling the sales persons to sell products and implement strategies that are not in the investors' best interests.

Source: [http://www.iiroc.ca/Documents/2014/3254a1ea-88c7-4ebb-b00c-4167f2708b67\\_en.pdf](http://www.iiroc.ca/Documents/2014/3254a1ea-88c7-4ebb-b00c-4167f2708b67_en.pdf) dated March 24, 2014

### So what is the difference between an "adviser" and an "advisor"?

The Funk & Wagnalls Standard Desk Dictionary defines:

*"Adviser – n. 1. one who advises ... also advisor"*

Most Canadians as well as financial journalists and professors of finance believe the two are simply spelling variations of the same word. The media attributes it to style so the printed media tend to use Adviser. On the other hand the industry is careful to use the spelling Advisor in all their advertising as well as on Client statements.

Apparently even the dictionary is wrong when dealing with the financial industry! This is not a mere spelling variation there is a huge difference in that it changes the scope and nature of the job and the legal obligation to clients. Securities regulations indicate an adviser is a designated

person to give advice and has fiduciary obligations that results but they consider advisor as an unregulated business title given to a sales person:

*"Financial Advisor, as you noted, is a common title which many persons use, whether they are registered under securities legislation or not. The use of this title is not generally prohibited, and **may be used by anyone**, including persons who are only licensed to deal in insurance products, mortgage brokers, deposit agents, or employees of financial institutions."*

*Chris Besko Legal Counsel for the CSA Secretariat*

Source: <http://www.investoradvocates.ca/viewtopic.php?f=1&t=193&p=3829#p3829>

The new reality is that many Canadians can no longer depend on defined benefit pensions from their employers and must look after their own retirement security. With long established companies moving or declaring bankruptcy many Canadians are now wondering whether their pensions will in fact survive. Others realize the generous pensions they counted on for retirement may end up being substantially reduced. How could this happen? After all Canada is a democracy and we have social systems that may be the envy of the world. They are certainly sufficient to attract substantial immigration. Didn't former Prime Minister Pierre Trudeau call it a *"Just Society"*? Wouldn't that mean that if people worked hard, saved their money and invested wisely they could retire and live happily ever after?

Now that there is a shift from defined benefit pension plans to defined contribution pension plans, Canadians will no longer have the benefit of a pension plan managed by qualified and competent investment managers.

There can be no doubt that Canadians with a defined contribution plan will need to seek an adviser as few Canadians have sufficient investment knowledge to manage the investment of their savings and do not know that a person titled "Financial Advisor" is merely a commission motivated sales person who is not required to look after their best interests.

On February 23rd, 2015 the following remarks were made by President Obama at the American Association of Retired Persons (AARP) *"At the same time, we've got to make sure that Americans who are doing the responsible thing by preparing for retirement are getting a fair share of the returns on those savings. That's what I want to focus on today. If you are working hard, if you're putting away money, if you're sacrificing that new car or that vacation so that you can build a nest egg for later, you should have the peace of mind of knowing that the advice you're getting for investing those dollars is sound, that your investments are protected, that you're not being taken advantage of.*

*And the challenge we've got is right now, there are no uniform rules of the road that require retirement advisors to act in the best interests of their clients -- and that's hurting millions of working and middle-class families. There are a lot of very fine financial advisors out there, but there are also financial advisors who receive backdoor payments or hidden fees for steering people into bad retirement investments that have high fees and low returns. So what happens is these payments, these inducements incentivize the broker to make recommendations that generate the best returns for them, but not necessarily the best returns for you.*

*So think about what that means You've done the right thing. You've worked hard. You've saved what you could. You're responsibly trying to prepare for retirement, but because of bad advice, because of skewed incentives, because of lack of protection, you could end up in a situation*

*where you lose some of your hard-earned money simply because your advisor isn't required to put your interests first. And the truth is most people don't even realize that's happening.*

*So, today, I'm calling on the Department of Labor to update the rules and requirements that retirement advisors put the best interests of their clients above their own financial interests. It's a very simple principle: You want to give financial advice; you've got to put your client's interests first. You can't have a conflict of interest."*

Source: <https://www.whitehouse.gov/the-press-office/2015/02/23/remarks-president-aarp>

The same issues are at play here in Canada. Most Canadians already believe their advisor is a fiduciary and will act solely in their best interests at all times. Misleading industry advertising and misleading titles gives further credence to this belief. Common sense tells us, that those individuals who are handling other people's hard-earned savings and future financial well-being need to be held to a fiduciary obligation. We can't undo the past but let's learn from it as well as what we see happening daily to investors and change the future by acting decisively today.

Andrew Teasdale plainly points out the dilemma of just tightening the rules on a flawed structure. *"Too many organizations misrepresent the abilities of their portfolio construction, planning and management to meet financial needs over time while managing risk and return. This is clear a breach of a fiduciary type duty in that the investor assumes a certain level of care and attention and is in fact receiving a lower level of care and attention. Additionally too many organizations fail to be honest about the risks and costs of individual investments. If material risks regarding an investment are not disclosed, this is also a breach of a fiduciary type duty where clients depend upon the honesty and integrity of their advisors as well as their expertise to manage their assets... The conflicts of interest within a transaction led industry, where transaction returns dominate remuneration and hence security selection and wealth management solutions, creates its own paradox. Is it possible to be able to satisfy fiduciary duty within a transaction led industry structure? No, it is not because the structures needed to satisfy a fiduciary type duty are too involved and unnecessary for a transaction objective."*

Source:

<http://www.moneymanagedproperly.com/newsletters/Suitability,%20Minimum%20Standards%20&%20Fiduciary%20duty.pdf>

Remember the Hans Christian Andersen fairy tale, "*The Emperor's New Clothes*". A vain Emperor hires two swindlers who promise him the finest, best suit of clothes from a fabric invisible to anyone who is unfit for his position or "hopelessly stupid". The Emperor's ministers cannot see the clothing themselves, but pretend that they can for fear of appearing unfit for their positions and the Emperor of course does the same. Finally the swindlers report that the suit is finished, they mime dressing him and the Emperor marches in a procession before all his subjects. The townsfolk play along with the pretence, not wanting to appear unfit for their positions or stupid. Then a child in the crowd, too young to understand the desirability of keeping up the pretence, blurts out "*But he isn't wearing anything at all!*"

The true test of a fiduciary standard occurs when things go wrong and clients complain. When clients suffer financial losses due to conflicted advice, the firms say that they never claimed to be fiduciaries. We see far too many cases where investment dealers blame clients, shirk

responsibility, claim suitability was their only obligation, and place the obligation on the client to approve every action. They walk away from everything they proclaim when attracting new clients.

The marketing deception has proven very effective in seducing and misleading retail investors. Without a legislated fiduciary standard in place, investors must assume a Caveat Emptor stance in their relationship with investment dealers, a relationship that involves their life savings and retirement security. However lack of awareness of the need for Caveat Emptor due to the deceptive practices by the industry leaves financial consumers exposed to being victimized and losing their life savings.

It is time to end the pretence. The outdated transaction based model does not reflect client expectations or the wealth management industry's desire to be seen as a respected profession. It is an advice based industry.

### **Bottom line**

It is time to stop trying to fit a square peg into a round hole. Canadians believe they are dealing with a fiduciary. Industry advertising and titles reinforce that perception. Common sense and decency tell us that a person handling another person's savings needs to be held to the highest standard. They need to be fiduciaries.

**Note:** To learn more about the Fiduciary standard read:

*"Why A Fiduciary Standard For Investment Advisers Is Urgent And Crucial"*

<http://faircanada.ca/wp-content/uploads/2012/06/Why-A-Fiduciary-Standard - Kivenko.pdf?a07595>

And *"The future of advice: Part 2 | Your Advisor and You |"*

<http://cawidgets.morningstar.ca/ArticleTemplate/ArticleGL.aspx?id=636647&culture=en-CA>