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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.

### NOVEMBER IS FINANCIAL LITERACY MONTH

In Canada November is Financial Literacy Month. There are a number of initiatives for investor education. At SIPA we believe there is one fundamental factor that is causing so many Canadians to lose their retirement savings and that is the deception practiced by the investment industry and their Self Regulatory Organizations (SRO).

The public is being deceived in many ways including advertising, lack of disclosure, hidden fees, manipulation of Know Your Client forms, and many other forms of trickery. The most overt form of deception is simply calling commission driven sales people "Financial Advisors". The regulators freely admit that "Financial Advisor" is an unregulated business title, and "Vice President" is the same. Moreover they admit these titles may be used by anyone.

Canadians need to be aware that any person using the title "Financial Advisor" is either a fraudster or if registered they are acting as a commission sales person.

As a result when Canadians place their trust in anyone with the title "Financial Advisor" BEWARE.

Caution: You may be dealing with a representative who is qualified as an "Advising Representative" or even a "Portfolio Manager" but check your monthly statement. If it indicates your representative as a "Financial Advisor" he is dealing with you as a sales person without a legal responsibility to look after your best interests. This is just another of the dirty tricks used by the industry.

### SIPA's CONTRIBUTION TO FINANCIAL LITERACY MONTH

SIPA's contribution is two initiatives:

1. This year a Video Contest was initiated with cash prizes to develop messages to be placed on the internet to raise awareness. Details are available on the SIPA website at [www.sipa.ca](http://www.sipa.ca) and winners will be announced mid-November.
2. SIPA also initiated a petition to provide support for our efforts to have Government take action to protect investors since regulators appear to be unwilling or unable to do so.

### SIPA's VIDEO CONTEST

Entries have been received from across the USA and Canada. They are top quality and all convey an important message in different ways. A variety of videos and animation using different styles make it difficult for the judges in selecting the top 3 winners as advertised in the contest rules. Therefore we

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

have added three consolation prizes to recognize additional worthy entries. The winners will be announced by a Press Release on November 16<sup>th</sup> and will be posted on our website.

### SIPA'S PETITION

SIPA'S petition has been sent to members. The Sentinel is circulated more widely and posted on our website ([www.sipa.ca](http://www.sipa.ca)). We ask that all who are concerned about investor protection sign the petition which will be used in our efforts seeking Government action.

Please also circulate to your contacts and ask them to pass it on.

We've started the petition "Elected Officials: Canadians Deceived by Investment industry calling sales persons Financial Advisors" and need your help to get it off the ground.

Thank you to our first 50 supporters!

If you haven't already, will you take 30 seconds to sign it right now? Here's the link:

<http://www.change.org/p/elected-officials-canadians-deceived-by-investment-industry-calling-sales-persons-financial-advisors>

Here's why it's important:

Canadians are losing billions of dollars of their retirement savings when they place their trust and their savings with a regulated Financial Advisor. Canadians believe their "Financial Advisor" has a fiduciary responsibility to look after their best interests.

The problem is "Financial Advisor" is considered by the regulators as an unregulated business title that can be used by anyone. So is "Vice President".

The investment industry employs Registered Representatives (sales persons) to sell financial products to Canadians. These commission driven sales persons do not have a requirement to look after clients' best interests. Titles such as "Financial Advisor" and "Vice President" deceive Canadians into placing their savings with sales people. Then they wonder why their investments fare badly.

The extent of these losses is covered up by industry as it could have a negative effect on the industry if Canadians knew the truth.

The regulators are controlled by the industry and employ mostly people from the industry. So there is an industry culture which also permeates the regulators. The current system of self regulation is not protecting investors from losing their savings.

Government must act to establish an authority independent from the investment industry with a mandate to investigate investor complaints and order restitution when warranted. It is not good

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

enough to simply tell victims they can turn to civil litigation if they are unable to resolve their dispute with the industry.

The limitation period, which is the time from the incident within which civil litigation must start or it will be statute barred. The limitation period used to be six years but has been reduced to two years. Many Canadians are not aware of this.

Anyone who encounters an issue will take time to fully realize what has happened and to find out what to do. When they approach the industry and regulators they encounter considerable delay. Often enough the limitation period is exceeded before they are in a position to proceed with civil litigation. For many victims civil litigation is never an option.

If Government fails to act many Canadians will lose their retirement savings. This affects parents, children and whole families. It should not be so.

In the absence of provincial action to protect investors the Federal Government must act to protect Canadians and their retirement savings.

Thank all of you for your support.

Stan Buell

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## ARE YOU BEING DECEIVED BY THE INVESTMENT INDUSTRY & SROs?

At SIPA we believe investors are being deceived in many ways. Undisclosed fees, products created to mislead and generate commissions, advertising claims to look after investors, fabricating Know Your Client Forms that are inaccurate, forged signatures on documents, and most overtly calling sales people Financial Advisors, also SROs boasting disciplines with fines to impress the public, but never collected. Is it all a sham?

No doubt there are some sales people who nevertheless try to do their best for their clients. The problem is the industry itself and their leaders and regulators are compromised by their desire to generate commissions. This results in inferior financial products being foisted onto investors.

Some of these products have been revealed including Principle Protected Notes (PPN) that misled people into thinking their Principle was safe and the returns were high, Asset Backed Commercial Paper (ABCP) that bundled bad mortgages the banks did not want to hold, Business Income Trusts when companies in serious trouble could not raise money but investors were eager for Income Trusts, Proprietary Funds developed so firms could claim the fund management fees as well as the sales commissions and paid bonuses to sales persons to convert clients from regular funds to their

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

own funds, and lots of other trickery all aimed at generating profit without regard of what is best for the investor.

The practice of encouraging leveraging and assisting investors to take out mortgages or Home Equity Lines of Credit, to take out bank loans, or to use the firm's own margin loans all enable the firms to increase their Assets Under Management (AUM) and generate ever more commission. It is this leverage that often turns investor loss into life-altering disaster because there is always the cost of borrowing and unless the market goes up strongly that cost can be greater than the increase in value of the investment. Of course when the market goes down the value of the leveraged investment will plummet.

These deceptions practiced by the regulated industry are accepted, if not condoned, by the SROs and lead to many people losing all of their retirement savings and being left with debt instead.

## STRATEGIC INSIDIOUS DECEPTION

At SIPA we have witnessed the activities of the markets and the regulators for nearly two decades and the pattern has not changed. We continue to hear from investors who have placed their trust in a Financial Advisor yet have lost everything. The regulators appear not to care and seem powerless to protect investors or to provide means for victims to gain restitution. The Ombudsman for Financial Services and Investments (OBSI) has been touted as a good solution for investors to achieve restitution. Yet, OBSI has no power to pay restitution or to enforce a just solution. They are reduced to making a recommendation that is acceptable to the industry or the industry can simply refuse to pay. Common sense tells you that it is pointless to make a just recommendation if it brings no result, so it is inevitable that OBSI's recommendations seem less than fair. However, it seems that the new Ombudsman recognizes that the system will not function as it is and is seeking to address the issue.

Faced with seeing so many victims due to the industry fraud and wrongdoing we believed there had to be a fundamental reason why this was happening. There have been studies, reports and conferences for decades to define the separate issues and from time to time activity would seemingly focus on individual issues such as fund fees, access to justice, disclosure, lack of enforcement, need for a national regulator, and a litany of other issues. The regulators seemed to settle on investor education as the solution.

We do not agree. People have families and careers that absorb their time. They depend upon Doctors, Dentists, Lawyers, and other professionals or trades people to attend to their needs while they are engaged with making a living and providing for their families. For their savings they trust their Financial Advisor. After all it is claimed that Canada has a great regulatory system and all of the advertising suggests that the industry will look after investors to ensure they will have a happy retirement.

We came to the conclusion that investors are being deceived on a broad scale. We feel it is a Strategic Insidious Deception:

- Strategic - relating to the identification of long-term or overall aims and interests and the means of achieving them:
- Insidious - causing harm in a way that is gradual or not easily noticed
- Deception - the act of making someone believe something that is not true

We believe there are only two possible solutions:

- Either industry (including SROs) culture must change which is improbable, OR
- Government must step in and provide a Government Agency separate from industry with the power to protect Canadian Consumer Investors

## IMPACT ON VICTIMS OF LOSS DUE TO INDUSTRY FRAUD AND WRONGDOING

The impact on victims of loss is extreme. The loss of retirement savings is indeed life altering. It affects the whole family. It impacts lifestyle, health and relationships. It is devastating. We have seen impact statements that are heart rending. It is hard to believe that Government and those responsible for protecting investors can allow this to happen and fail to take action. The industry and their regulators cover up the extent of the damage so the public is unaware of the magnitude.

Many are reluctant to speak out for many reasons. In some cases they are prevented from speaking out due to confidentiality clauses when they receive some settlement. We encourage people to speak out and to advise their MLA when they have an issue. They should also advise their MP and demand that Government act to protect citizens because the provincial authorities responsible for securities regulation are failing to protect investors.

The following is an impact statement from a victim of industry fraud and wrongdoing. It details the treatment one faces when trying to resolve an issue and outlines clearly what is wrong with the provincial regulatory regime.

## ONE PERSON'S EXPERIENCE THAT IS TYPICAL OF MANY

- What was my experience with a financial advisor?
- I'm 62, The Mortgage on the house should be 60K, now 300K. Was told the Smith Maneuver was low risk so I didn't pay any principal for 4 years and I also had to buy out leveraged bank loans at a great loss and add them to mortgage line of credit.
- I've had great stress and uncertainty, I almost died 4 years ago and my recovery has been negatively affected by the advisor and the process.
- I have spent 1000s or hours with MFDA, CSA, IIROC, and OBSI investigations. I have obtained disciplinary letters for the guilty parties from MFDA, IIROC and an uncollectable fine from OBSI. The disciplinary letters are meaningless and are disregarded by the industry and are not available to the public. The regulators are very reluctant to start a full investigation due to limited (industry funded) resources.
- I am now medically retired, limited income and I cannot work in high income jobs. Litigation was too expensive, would take years and very destructive to family.

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

- What I leaned – Financial Advisors (with an o) have no fiduciary responsibility for your money. They are not accountable to you and your financial interest does not have to be considered.
- Sounds harsh but it is true - I learned hard way.
- It doesn't matter if they have university degrees, are from your religious group, or are certified or registered financial planner - all this is meaningless.
- It doesn't matter if they have fancy offices, wood paneling, years of experience, whether they have smooth tones and glossy brochures and convincing graphs or websites.
- Let me ask you - When you go to see a lawyer or a certified accountant, or a buyer's agent realtor you are certain that these people have a fiduciary duty to you - they are bound by law and their profession to protect your hard earned money.
- But while most financial services people go to great lengths to make a strong impression that they are similar to lawyers or accountants - why do they not want to enter into a fiduciary contract or act as an independent advisor to you?
- I'll pose a question – If you were to hire an accountant or a lawyer or a buyer's agent - what is the first thing (after qualification) you would want to know – the cost right?
- If a financial services person has a fiduciary contact or is a real adviser (with an e) they are bound just like the lawyer or the accountant, buyer's agent to give you a detailed list of all transactions and all your costs and they cannot take one penny from you as a secret commission or trailing commission for sending you business to a person or organization.
- The reason your FS person wants to be an Advisor (with o) as opposed to adviser (with e) is he wants to continues what he is doing all day now - finding as much commission he can while it's never reported to you. Gee – maybe if you knew that you would question his "professionalism"
- He Is finding clients where he can pitch leveraging (large blocks of commission rich trades)
- His commissions have fancy names - front loads, back loads. Their day is finding funds with the largest commissions or the biggest "special commission" or best trailing commission and guess what he doing? He's calling you and telling you " Our survey of the markets – make this a good call for you" ( really him)
- Don't be fooled – your advisor is a commissioned sales person for the mutual fund companies, he is chasing commission - and he has no accountability to you.
- Don't be deluded that the regulatory organizations or OBSI will help you resolve a complaint after the fact. This deck is stacked. Your only recourse will be civil litigation but be prepared to spend 160K and to face the best Bay Street lawyers who will drag the process on as expensively as possible.
- We should insist on a written/signed recommendation/proposal from the financial services company for all transactions with details on the benefits for the buy/sell and all costs associated.
- We have to insist on a full accounting of all transactions and commissions related to our account. Most investors have no idea of the amount of money that is changing hands behind the scenes on their transactions. This should be signed by the representative and the company and it has to be auditable. If they will not provide this - move to a company which will.
- Remember this is reasonable and everyone should be doing this. The mutual fund companies have trillions of dollars of the life savings of Canadians. They are not interested in calling their sales people by their real title "sales persons" not advisors (with an o). Sales person was their former title.

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

- The regulators of the financial services companies are allowing sales people to be called advisors but they are unwilling to change back to the rightful sales person name.
- I hope by sharing my personal experiences, I will help others to not experience the nightmare that I went through with an unsuccessful attempt to recover money from an advisor.

### IS FIDUCIARY IMPORTANT FOR INVESTORS?

You bet it is. It could be the difference between having a comfortable retirement and living in poverty until the end.

When a Financial Adviser has a fiduciary duty he is required by law to look after your best interests. This is legislated. However the industry calls their registered sales persons "Financial Advisors" and these sales persons do not have a legal responsibility to look after your best interests.

The problem for investors is that the industry operates on selling financial products to make money. To move the worst products they offer higher commission to the sales people. The sales people are pushed by a commission grid to increase their sales and generate more commission. This is why sales persons often recommend leverage.

You might be lucky and have a sales person (financial advisor) who does try to do his best for you but he relies upon his firm to tell him what products to sell. Often these are funds created by the firm to maximize profit, so unwittingly the sales person will sell you products that are really not appropriate for you.

The fault lies at the top of these organizations and not with the sales people generally.

### How to Draw the Bright Line Between RIA Fiduciaries and Product Pushing, Conflicted Competitors

By Kathleen M. McBride, AIFA®

As hundreds of RIAs gather in Boston for Schwab's IMPACT 2015, the news that some Congressional Democrats are joining Republicans in an effort to head off the administration's fiduciary rule on retirement accounts underscores a political reality: broker-dealers, banks, insurance companies and mutual fund companies still wield enormous influence in Washington.

The brokers, banks, insurers and mutual fund companies will spare no expense to win regulatory cover allowing them to assert claims – however unfounded – that they, too, act in their customers' best interest. They will continue to spend millions to destroy or dilute the impact of the DOL fiduciary rules and head off or cripple similar regulatory initiatives at the federal and state level. This fight will likely continue into the next Congress and administration, as well as in the courts.

As a result, efforts to strengthen fiduciary obligations of brokers and insurance reps will make progress but the regulatory outcome will fall far short of perfection. The distinction between the

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

fiduciary standard and suitability will get even fuzzier. Dual registration will continue to confuse and confound clients.

What does this mean for RIAs?

First, RIAs cannot count on the regulators to draw a bright line between RIAs' client-focused business model and that of their product-pushing, conflicted competitors. More than ever, RIAs will have to lean into differentiating and validating their firms' commitment to fiduciary excellence.

Second, some forward-thinking competitors – among brokers, banks, insurance companies and mutual fund companies, are already working to build a more fiduciary culture and appropriate product offerings and compensation models. Instead of a race to the lower standard, we may have an outbreak of higher standards among some key competitors.

The good news is that the national debate on this issue has shined a light on the value of working with a true fiduciary. We know the fiduciary model works – for both clients and firms. There's already evidence that prospective clients are asking about firms' standing as fiduciaries.

In this environment, RIAs have an opportunity to distinguish themselves and build their practices. If you'd like to talk about how to achieve that goal, please come by Booth 144 at IMPACT, where I can be found with my colleagues from the Centre for Fiduciary Excellence – CEFEX – and fi360.

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## OBSI HAS A NEW OMBUDSMAN – SARAH BRADLEY – CAN SHE SAVE US?

Alexandra Posadzki, has written an article "New financial services ombudsman wants greater enforcement powers" that appeared in the Canadian Press across Canada. ICYMI a few excerpts are included here:

TORONTO — Canada's new financial services ombudsman says she would welcome regulatory changes giving the organization more power to enforce its decisions — but notes that such changes would come at a cost.

"Nobody is really happy with naming and shaming," said Bradley, the former chairwoman and CEO of the Nova Scotia Securities Commission, in one of her first interviews since taking the helm of OBSI in September.

"Binding authority, or the ability to make enforceable recommendations against firms, would, I think, be beneficial to the vast majority of our stakeholders, but we do have to also keep in mind that it will come at a cost," said Bradley.