



SIPA

SMALL INVESTOR PROTECTION ASSOCIATION

A Voice for Small Investors  
Seeking Truth and Justice



## ADVISOR TITLE TRICKERY

YOUR FINANCIAL ADVISOR IS A COMMISSION SALES PERSON

by  
SIPA Advisory Committee

October 2016



*"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. ...*

*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**

*Acting General Counsel & Acting Director  
The Manitoba Securities Commission  
(In response to SIPA inquiry to the CSA Secretariat)*

## ADVISOR TITLE TRICKERY

- Securities Acts define an "Adviser" as having responsibility to look after investors' best interests.
- Regulators say "Financial Advisor" is an unregulated business title that can be used by anyone.
- Sales persons are not legally required to look after investors' best interests.
- Industry uses the title "Financial Advisor" for their sales persons to gain trust.

### Executive Summary:

Securities Regulators selectively ignore portions of Provincial Securities Acts, letting Investment Dealers deceive millions of Canadian investors in many ways. We will be issuing a series of reports intended to shine a light onto this harm being done to Canadians, by many of our most trusted institutions as well as government authorized regulatory bodies.

In this report, we examine how over 100,000 financial professionals in Canada take advantage and skirt laws against misrepresentation. This allows investment sellers a clear "get-away" from the laws against deception of the public.

In 2012 one of the biggest news stories in Canada was about a selective meat inspection process in Alberta, and the resulting harm to Canadians. It turns out that tainted meat products were being carefully inspected so as to not enter the export markets, but the tainted product was allowed to be sold to Canadians. This called into question both the quality of the product itself, and the government inspection process. This report looks at items which are hidden from investors view, and can similarly do harm to Canadians.

With the knowledge of 13 Provincial Securities Commissions who are responsible for protecting the public interest, these harms appear similarly negligent, to the failures of the meat inspection and regulation process. What if Canadians were consuming tainted investment advice, like some regulators allowed E-coli tainted meat into the system? This report demonstrates that the analogy is a valid one.



## The "Advisor" Bait and Switch

There are 121,932 total registrants in Canada as of Sept 16, 2016 in the investment industry. 4,076 persons or 3% of that total are legally registered in the category of Adviser or Advising Representative.

<http://aretheyregistered.ca>

Only four thousand and seventy six (4076) persons are registered in the category where a true fiduciary professional responsibility is legally required to be delivered to you as the investor.

*"A fiduciary is an individual in whom another has placed the utmost trust and confidence in to manage and protect property or money. This person has an obligation to act for another's benefit. The duties of a fiduciary include loyalty and reasonable care of the assets within custody. All of the fiduciary's actions are performed for the advantage of the beneficiary."*

<http://legal-dictionary.thefreedictionary.com/fiduciary>

Wait a minute, what about the other 117,856, you ask? They fall under the most common registration category and are called Dealing Representatives. What exactly does Dealing Representative mean? According to the Canadian Securities Administrators a "Dealing Representative is a **sales person** – what they can sell depends on the firm they work for and their registration."

In 1 minute 30 seconds this video shows how to search this for yourself at <http://unpublishedottawa.com/letter/88147/intentional-deception-investors>

That's right; the vast majority of investment registrants are just salespersons! These people are not legally required to place the interests of the investor ahead of those of their dealer. This is the bait and switch and the root cause of a great deal of harm being played out upon nearly every Canadian investor. The Dealing Representative legally acts as an agent of the dealer, and NOT firstly an agent of the investor. Client relationship rules currently allow this to be hidden from your view, and the investor is expected to be responsible for learning this information themselves. Many unfortunately learn the hard way.

On September 17<sup>th</sup> 2015 the Ontario Securities Commission released a report called "Mystery Shopping for Investment Advice" which uncovered a number of disturbing facts. One being that the shoppers encountered no fewer than 48 different business titles during the shops! Investors need better protection than a standard that permits registrants to choose their own business titles based on meeting minimal standards of accuracy and misrepresentation.

[http://www.osc.gov.on.ca/en/Investors\\_iap\\_20151103\\_response-mystery-shopping-report.htm](http://www.osc.gov.on.ca/en/Investors_iap_20151103_response-mystery-shopping-report.htm)

Dealing with a salesperson when you think you have a professional "adviser", is thus the epitome of a Buyer Beware relationship, despite new Client Relationship (CRM2) rules effected in 2016. Seven out of ten Canadians believe they are working with a financial expert with a legal obligation to look out for their best interests.



How could so many Canadians be so misled? Sadly because this deception and word trickery is not what the investment industry promises the investor. They proclaim nearly everything **but** the need for their customers to be warned they are entering into a "buyer beware" relationship. See our previous report on deceptive advertising and you will understand why.

[http://sipa.ca/library/SIPASubmissions/720\\_SIPA\\_Report\\_Deception\\_20150505.pdf](http://sipa.ca/library/SIPASubmissions/720_SIPA_Report_Deception_20150505.pdf)

It is estimated that hundreds of billions of dollars are lost by Canadians over the past few decades during which this salesperson/broker/advisor/adviser ruse has taken place. (1988 to 2016)

This 1 min 40 second tutorial walks you through the CSA web site to give you the specific license or registration category your so called advisor holds, not what they purport to be with non-regulated marketing titles. <https://youtu.be/zIjt0qRsJKg>

You should also be aware that it is not uncommon for industry representatives to have more than one designation. For example the representative may be registered as

- A "Portfolio Manager" with responsibility for managing accounts or operating a discretionary and has a fiduciary responsibility
- An "Advising Representative" qualified to give investment advice and has a fiduciary responsibility
- A "Dealing Representative" qualified to sell financial products but without fiduciary responsibility or responsibility to look after clients' best interests.

This multiple registration enables your representative to "change hats" and work with you as a sales person without responsibility to look after your best interests even though he may be qualified as a Portfolio Manager or an Advising Representative. This is just one of the "dirty tricks" played by the industry to deceive investors.

Practically all professional investors have a fiduciary adviser, while 99% of retail investors, ordinary Canadians like you and I, are "switched" to commission salespersons wearing a false title and disguise. It is a simple two-tier investing system with legal protections for the professionals, and "slim-to-none", for the majority of Canadians. A fiduciary "Adviser" is legally obligated to place his or her skills to work in managing your money as best as can be professionally done. A non-fiduciary "Dealing Representative" (salesperson) can sell you anything that they deem "suitable", even if it is second, third, or fifth down the list of quality or efficiency. The "suitability obligation" is the equivalent of a used car dealer's obligation. See this investor warning from the ASC on this topic. What's in a name? Does the title of your investment professional matter? <http://www.albertasecurities.com/investor/investor-resources/you-ascd-blog/Lists/Posts/Post.aspx?ID=63>

Here is a link to a short video where Ex TD Bank CEO Ed Clark states that the culture of greed in banks allows for a business model that in essence says "my clients are really counter-parties that I can make money off" <https://youtu.be/23xWWsGp6vU>



“Suitable” is like saying this water is “drinkable”, our food is “edible”. How many of you would patronize a restaurant whose written obligation to the public is that “our food is edible”, our steak is “chewable”, “suitable for consumption”, or “our wine is drinkable”?! That is unfortunately the benchmark standard required of the investment Dealing Representative. Most salespersons (Dealing Representatives) in Canada prefer to utilize the non-registered title of “advisor”, to deceive the public into belief that they are legally licensed in the professional category of “Adviser”, or Advising Representative. “Adviser”, as we shall soon show you, has no meaning in securities law, and thus no meaning to the securities regulators in Canada.

The following quote comes directly from Mr. Chris Besko, who is the lead counsel for the Canadian Securities Administrators. The CSA is the umbrella organization that oversees the 13 Provincial and Territorial Securities Commissions. He states:

*“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...” “We do not prescribe specific titles to be used by those persons who are either dealing or advising in securities...”*

This hiding behind a non-regulated title, with no meaning in law, means that Investment Dealers and salespersons are also hiding the fact that they can act as counter-party to your financial interests, just like any commission salesperson might do.

These ignored protections have the potential to do more harm to the retirement security of Canadians than the dollar-value-harm of all other crimes in Canada, even when combined together. This will be revealed in some detail in an upcoming report in this series.

They can hide best advice, and best products, from customers. They can profit from the greater rewards of selling you substandard or higher fee investments because they are salespersons, not professional advice givers with the agency duty and legal obligation to look out for your best interests.

This “ruse” does not meet the test of “fair, honest and good faith dealing”, as promised and required, by the Canadian investment industry. Imagine if non-licensed “doctors” or non-legal “lawyers” were found able to fake credentials, and hide a false duty of care to the public behind implied duties which did not exist? This deception has the ability to cut your retirement in half! A future report in this series will further explore how many methods/tricks can follow this root deception, and how these methods/tricks can easily cut the retirements of millions of Canadians by half or more, putting the other half (or more) into the pockets of clever investment dealers.

Call your provincial MLA or Federal Member of Parliament and ask them how securities regulators can allow over 30 million Canadians to be deceived regarding their financial security. Ask them to create sole-purpose, investor protection organizations, outside of the influence of the Securities Commissions, to protect Canadians. Millions of dollars are being spent by industry lawyers, regulators and lobbyists speaking to your government to protect these deceptions.



Provinces who wish to protect the public from unfair dealing, should establish Investor Protection Agencies, with government staffing, government funding, and police-like powers, including a mandate to involve the criminal code, which is now often ignored in favour of “self” regulation. These agencies could direct their energies to sole protection of consumers, rather than the “dual-master/dual-mandate” style of regulation that is failing us.

An Investor Protection body should not contain committees or boards who are filled with industry spokespersons, but should be over-weighted towards persons who can demonstrate and uphold a strong public interest protective mandate. Any board protecting the financial health of a nation, or its citizens must be designed to be robust enough to resist the pull of billion dollar corporations.

*"Where the fundamental nature of the relationship is one in which customer depends on the practitioner to craft solutions for the customer's financial problems, the ethical standard should be a fiduciary one that the advice is in the best interest of the customer. To do otherwise — to give biased advice with the aura of advice in the customer's best interest — is fraud."*

James J. Angel, Ph.D., CFA and Douglas McCabe Ph.D., McDonough School of Business, Georgetown University, “Ethical Standards for Stockbrokers: Fiduciary or Suitability?” Sept. 30, 2010

[http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1686756](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1686756)



## APPENDIX

### Categories of Registration and Their Meaning

#### **Did you know? Not all financial advisers and firms are the same.**

There are lots of different titles and designations that a financial professional may use. But it is their category of registration that lets you know the range, breadth and depth of advice and products they can offer, and their duty of care to you, the investor.

<http://aretheyregistered.ca/#>

**There are 121,932 registered persons in Canada (CSA detailed search page as of September 16, 2016)**

**There are 4,076 registered as Advising Representatives in Canada**

**17 are registered as "Adviser"**

**There is NO CATEGORY for the title of "Advisor" (spelled using "or" at the end), and yet up to 100,000 commission salespersons in Canada use this title to market themselves, contrary to Securities Act Laws against misrepresentation.**

**Source:** <http://www.securities-administrators.ca/nrs/nrsearchprep.aspx?mode=AS&type=I&indv=&firm=&juri=1&ctgy=Salesperson&history=1>

#### **What exactly do these categories mean?**

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

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

[http://www.securities-administrators.ca/docs/registration\\_categories\\_en.pdf](http://www.securities-administrators.ca/docs/registration_categories_en.pdf)





When you hand over your savings are you looking for a product pusher? A salesperson? Or are you expecting and looking for unbiased investment advice that is in your best interests? They might call themselves any number of different titles but what category are they actually registered in? If they are registered as a Dealing Representative then they are a salesperson.

If you look at the numbers across Canada the odds that your financial advisor is a Salesman are very high.

### **Alberta**

**There are 2,335 records found for Advising Representatives  
There are 27,057 records found for Salespersons (Dealing Representatives)**

### **British Columbia**

**There are 2,368 records found for Advising Representatives  
There are 32,416 records found for Salespersons (Dealing Representatives)**

### **Manitoba**

**There are 1,648 records found for Advising Representatives  
There are 11,288 records found for Salespersons (Dealing Representatives)**

### **New Brunswick**

**There are 1,268 records found for Advising Representatives  
There are 8,839 records found for Salespersons (Dealing Representatives)**

### **Newfoundland and Labrador**

**There are 1,057 records found for Advising Representatives  
There are 6,414 records found for Salespersons (Dealing Representatives)**

### **Northwest Territories**

**There are 518 records found for Advising Representatives  
There are 3,877 records found for Salespersons (Dealing Representatives)**

### **Nova Scotia**

**There are 1,444 records found for Advising Representatives  
There are 10,609 records found for Salespersons (Dealing Representatives)**

### **Nunavut**

**There are 450 records found for Advising Representatives  
There are 3,273 records found for Salespersons (Dealing Representatives)**





### **Ontario**

**There are 3,589 records found for Advising Representatives**

**There are 63,888 records found for Salespersons (Dealing Representatives)**

### **Prince Edward Island**

**There are 877 records found for Advising Representatives**

**There are 5,369 records found for Salespersons (Dealing Representatives)**

### **Quebec**

**There are 2,097 records found for Advising Representatives**

**There are 35,760 records found for Salespersons (Dealing Representatives)**

### **Saskatchewan**

**There are 1482 records found for Advising Representatives**

**There are 11,906 records found for Salespersons (Dealing Representatives)**

### **Yukon**

**There are 542 records found for Advising Representatives**

**There are 3,943 records found for Salespersons (Dealing Representatives)**

Registration information was last refreshed on 2016-10-03 18:26 PST.

<http://aretheyregistered.ca/>

We feel that this is a deception of the investing public. Can you trust your life's savings to institutions that are hiding the true license and duty from you?

It seems as if that would be like flying in an aircraft where the pilot did not hold a pilot's license.....