

7 Dirty Words for RIAs to Avoid



BY: [BOB VERES](#)

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Every month, I try to determine the most important issue to write about, yet most of the time I end up delving into the seemingly boring topic of regulation. Why? Because I think the massive lobbying effort by the brokerage world and the Financial Services Institute to make FINRA the chief regulator of the financial planning and RIA community poses an existential threat. I actually believe that FINRA regulation would snuff out the creativity and idealism of our profession - and put a lot of great advisory firms out of business, reducing a lot of pesky competition for FINRA's brokerage firm members.

Compared with this ongoing life-or-death struggle, other issues - investment strategy, managing your practice or helping clients reduce their estate tax bill - pale in comparison.

The obvious challenge is getting the SEC and Congress to listen to a small band of idealists when the opposition is handing over bags of money to fund re-election campaigns - and dangling the promise of future seven-figure salaries in front of regulatory officials who are willing to play ball during their time in office. Independent financial planners have to rely on a weak lobbying resource: the truth. (More specifically, they must argue that conflicted business models wouldn't exist unless they were more profitable and, therefore, more dangerous to consumers than the models that put the consumer's interests first.)

Until I watched a presentation by Skip Schweiss, managing director of advisor advocacy and industry affairs for TD Ameritrade Institutional, I didn't realize that fiduciary advisors were also getting totally routed in the battle over language. Today, even many trade magazines (and virtually all consumer publications) routinely refer to brokers as advisors. The term fee-based has moved into common usage. FINRA cleverly renamed itself, and FSI describes advisors who are signed up en masse by broker-dealers (sometimes against their will or without their knowledge) as members.

I'm going to propose that, starting today, independent advisors and planners recognize the importance of this linguistic battleground. Correct the record whenever you see misleading terms used in the media, in quotes by industry lobbyists or even in conversations with colleagues, clients and prospects. When a journalist uses words in the cynically opaque way that the wirehouses prefer, write a letter to the editor.

Here are some of the terms worth correcting.

Advisor: This term should refer to an SEC-registered investment advisor, duty-bound to live up to a fiduciary standard. If the person described as an advisor is working for a wirehouse organization that has successfully fought against having to register its sales agents with the SEC, then the proper term is "broker," "sales agent" or perhaps "sales representative." I don't care if these sales agents make all

of their money from asset management fees; their employment agreements stipulate that they will recommend only house products, fee-laden in-house investment programs, or funds and separate accounts that have revenue-sharing arrangements that everybody but the SEC recognizes as overt payment for shelf space.

Fee-based: I'm pretty sure it's not legal for me to banish a term from the English language, so I'll propose, instead, a redefinition. "Fee-based" means "charges fees but also sells investment and life insurance products for a commission." When someone carelessly uses the former term, suggest that he or she use the more descriptive (and consumer-friendly) latter term from now on.

Disclosure: This word, when used in a regulatory context, really means "an alternative to treating our clients as we would our mother." Instead of simply giving the best advice in the best interests of the client, you disclose the ways in which you will act in your own interest instead - and also put your company's interests (and quite possibly also those of the separate account that is openly paying for shelf space) before those of the consumer. Disclosure might be fine if all consumers fully understood what happens when a sales agent acts on the manifest conflicts being disclosed. They don't.

Harmonization (aka "leveling the playing field"): These are clever code phrases for "applying brokerage industry sales regulations to advisors who do not sell products to their clients." When a product manufacturer is paying people to recommend its investments, there should be appropriate checks to make sure that those people are selling responsibly. We have similar legislation to prevent dealerships from unloading lemon automobiles, mortgage companies from hiding fees, real estate agents from concealing defects in homes - there is a long list of important consumer protections. But for advisors who are not being paid to recommend products - and for whom there is, in other words, zero incentive to recommend lousy or unsuitable investments - there is no rationale for putting them under a sales regulatory regime. Anyone who talks approvingly about harmonization or leveling the playing field is drinking the brokerage industry Kool-Aid.

Self-regulatory organization: In the financial services world, this term refers to FINRA, much as FINRA would like to obscure this inconvenient fact. When you hear people tout the benefits of an SRO, correct their language and point out that they are really touting the idea that FINRA would be a better, more effective regulator than the SEC. If that's what they mean, why not just say it?

Top producer: Translation: top salesperson. Why are we constantly avoiding the term "sales" - unless we want to hide the real agenda of these members of the financial community?

Financial Industry Regulatory Authority: I admire the group's name. It conveys the idea that the self-regulatory body of brokerage (i.e., sales) organizations is actually the regulator of the entire financial industry. Clever, no? The organization's previous name, the National Association of Securities Dealers, was inconveniently accurate, which made it harder for securities dealers to argue that they should be regulating advisors who actually register with the SEC (especially those who don't sell product and refuse to take commissions in their dealings with their clients). Independent advisors are clearly not securities dealers, and it was hard to argue that a securities dealers' organization should be charged with crushing - I mean, regulating - them. But those SEC-registered advisors are part of the financial industry, so FINRA can blandly propose to sweep them under its regulatory authority and make the idea sound almost logical.

FALLING FOR IT

What astonishes me is that congressional representatives actually fall for this charade, bags of money or not. I'm thinking maybe the National Organization for the Reform of Marijuana Laws should take a page from the FINRA playbook, rebrand itself as the National Drug Regulatory Organization - and then lobby to take over, as an SRO, the duties of the FDA. Would it work? It depends on what our leaders in Congress happen to be smoking. It couldn't be any stronger than whatever they smoke when they hold hearings and make speeches about the grand job FINRA would do as regulator of the RIA space.

The huge disparity between these terms and their most accurate definitions tells me that the brokerage industry has done a terrific job of controlling the words that we use. The public has been well trained to use euphemisms that obscure the sales agenda, and oblique terminology that hides rather than reveals what is actually going on.

Can we win the language battle? Again, our only (rather puny) assets are truth and accuracy. But if we apply them persistently - in letters to the editor, in every conversation, in lobbying discussions with regulators and elected officials - then perhaps a little bit of accuracy might find its way into the consumer marketplace. Once you deconstruct the clever terminology, you begin to see some of the ideas the sales industry desperately wants to hide - and make its agenda obvious to the people whose financial well-being the sales model most endangers.

Bob Veres, a Financial Planning columnist in San Diego, is publisher of Inside Information, an information service for financial advisors. Visit financial-planning.com to post comments on his columns or email them to bob@bobveres.com.