Via email

February 18th, 2016

Request for Comment on the Independent Evaluation of the Ombudsman for Banking Services and Investments with respect to Investment-Related Complaints

To:Deborah Battell dbattell@gmail.com and Mark Wright mwright@obsi.ca

This submission is authorized for public posting by OBSI and its agents.

Thank you for requesting independent evaluation of the OBSI. The issues that relate to the governance of investment in Canada establish the parameters of investment-worthiness. When the problem of disregard of complaints become as systematic as it has become since the last review in 2012, and how the SRO tribunal system has become delegated as the governance, as perceived by the RCMP, then it is essential that a clear policy of corrective action become a top priority so that clients are able to replace the certainty that they will be lied to by investment dealers, with the certainty that there is a system that prevents dishonest practices. Where evidence of obstruction has been obtained, and in the complaints of Harold C. Blanes to OBSI and the regulatory SRO system, that evidence demonstrates there is a complete failure to provide an actual systemic process that deals with "making whole" the aggrieved client. If there existed a restorative policy, that addressed the need to censure repeats of dishonest practices by adopting real remedies for those who have had to endure egregious bad-faith business practices, such clients would see goals that are evident of an industry willingness to stand up to fraudulent dealing, and take concrete measures to ensure that it is severely discouraged.

A number of things have happened since my June 01, 2012 submission:

1. There has been – in Harold C. Blanes experience – and in recent communications with other defrauded investors and their advocates, a pattern of evidence being gathered, that indicates that when violations of the law are brought to the attention of the OBSI, the reflex is to either fail to reply, or to suggest that other, unidentified measures be taken, as in the advice given to Harold C. Blanes by OBSI "sell your portfolio and sue for lost opportunity". After the evidence had become available that the client had been truthful in his complaint, and the investment dealer had been falsely denying for years that the client had in fact contracted for GICs – when this fact was pointed out the OBSI, there was no response.
2. Recommendations that I had made in my 2012 submission, such as: Enable OBSI to be a source for getting answers to questions from the dealer, when the dealer is refusing to answer questions; ensuring that everyone in the industry and the SRO milieu and the OBSI itself understand the relevant Criminal Code, i.e., Sections 361-363 and 380 of the Criminal Code of

Canada. The idea that people in mediation and industry governance tribunals "are not allowed to look at the criminal code" is an odious, obnoxious and immaterial concept. It is the antithesis of what is needed in a society where rule of law is available to all people. It is in fact a welcome mat for impunity for unlawful practices. It is essential that this mythical and invalid custom be abolished forthwith. Judges rely on evidence that certain acts fall outside of what communities will tolerate, so that there is a basis to make rulings citing community standards. When the Ombuds services refuse to comment of demonstrated dishonesty resulting in the ruined retirement of an elderly senior – the case for replacing this policy with a responsible alternative – that is consistent with establishing lawful limits on deceptive dealing, would be preferable.

3. My research as indicated that there is insufficient clinical expertise available in Canada through organizations like CARP [Canadian Association of Retired Persons] and NICE [National Institute on Care of the Elderly] or any other resource – that can document just why harm exists and in what quantifiable levels, that necessitates preventing violence to the interests of investors through misrepresentation. One of the reason why governance and mediation services in Canada have been willing to indulge the abuse of vulnerable clients, is the fact that the objective assessment of harm has not been adequately studied here. Methods accepted in the sciences – that can enable organizations to at last have an objective measure of life damage that results from allowing elder abuse is essential. That is why it is necessary for all Canadians who are wanting to ensure that actual functional standards and practices, required by everyone who comes in contact with evidence of unlawful deceptive dealing. I reaffirm from my general point of my last submission, that there be a process in place that will engage with others who have been dealing with the pathological results of such business practices. Since 2012, I have found a number of such resources, as follows:

- FBI Scam Task Force
- FINRA Foundation
- Center for Longevity, Institute for the Study of Fraud – Stanford University.

I am in agreement with others who are making submissions to the OBSI review. I would strongly encourage OBSI to become able to convene a follow up process, as has been suggested by another participant in the Public Consultation.

From what I have gleaned from studying the overall problem of deceptive business practices that are devised and tolerated in the interests of maximization of short term profit, is that the problem is too big for one limited-size jurisdiction, such as Canada. It needs a North America-wide foundation that is able to organize all the necessary steps to ensure that investment is a respected and honest process, that is designed to

be the most legitimate place for savings. So long as the unlawful practices are accepted as something that is endemic in our investment system, we will be at a growing disadvantage. China has made rule of law its over-riding theme of the current Five Year Plan. The following interview is with Dr. Robert Lawrence Kuhn, who is a consultant to the government of China, and one of the world's most famous neurologists, and strategic analysts:
https://www.youtube.com/watch?v=hOdXEBj0fnE
If Canada continues to have Ombuds services and industry tribunals that continue to disregard evidence, and refuse to state when laws are being undermined, then savings for our economic future may be diverted to jurisdictions that have far less tolerance for hijacking the savings of the elderly in order to allow investment dealers to take the capital value of these savings for their own benefit, specifically through hidden DSC fees.
The new Director of Advocacy and VP of CARP, Wanda Morris, will be hosting CARP chapters in BC, when she is in Vancouver in March, 2016. I am going to be investigating what CARP's position on asserting rule of law in the protection of the savings and access to savings by clients, will be during her term.
It would be very helpful if OBSI and the other organizations that examine investment abuse for illegitimate short term gain, such as FAIR Canada, SIPA, The FUND OBSERVER, and the FB page Investment System Fraud, could develop a program of action that will correct the demonstrated shortfalls in the kinds of practices that are governing investment in Canada, and more accurately the lack of governance, when vulnerable, dis-connected clients are designated for dishonest business practices.
The following is a proposed outline for the creation of a North America-wide foundation that can address what is needed in order to standardize the requirements of investment dealers to be fully insured for public liability – including for errors and omissions that are not accidental. Deliberate predatory practices need to be brought into a comprehensive industry functional program – and rule of law that protects seniors and that actually takes measures that will discourage testing the limits of impunity – needs to be worked on as a continent-wide challenge. The following is a draft of what may be developed in the pursuit of achieving these objectives:

The following is an outline of the Foundation Project for Recovery of Losses of Clients of Investment Firms That Are Practicing Deceptive Dealing

Submitted to the

Seniors Advocate for BC, Isobel MacKenzie

This outline deals with the problem of the lack of enforcement of the law protecting honest representation of investment products, that creates extreme jeopardy for clients who have been misused by

brokerages that prey upon clients who are in diminished capacity circumstances. This is a list of reasons why a Foundation that can provide remedy to elderly victims of dishonest practices is required.

1. **This project outline is derived from the experience of a 95 year old Normandy Invasion veteran, living in Kelowna, who is a widower. The regulative organizations, such as Insurance Council of BC, Investment Industry Regulatory Organization of Canada [IIROC], the mediative agency, Ombudsman on Banking Securities and Investment [OBSI], the BC Securities Commission, and the Federal Ministers of Veterans Affairs, Justice, RCMP Complaints Commission, Finance, and local elected representatives, have been provided with the documented evidence that at least two firms have been taking funds that the client has asked to be placed in GICS. These firms have placed the client's savings in segregated funds that are volatile mutual funds, creating deprivation of access to savings, and losses, particularly promised interest.**
2. **These firms have violated the instructions of the client in order for the firm to take large commissions on the sale of these seg funds, without the knowledge or consent of the client.**
3. **The track record of systemic failing to respond to evidence of deceptive dealing, has demonstrated that an aggressive policy of enforcement of common law of contract provisions must be undertaken by agencies that are dedicated to the lawful conduct of the financial industry, and the protection of the elderly from predatory and injurious practices.**
4. **The client has spent over $60,000 in attempts to get the court system to deal with this problem, since he found the regulatory system was unable to do anything to act against this practice. On the first case, the client was able to get two judgements for breach of contract, but the approximately $50,000 that he had to spend on obtaining the judgements, and the awarded funds for breach of contract which gave the client about $23,000, leaving $27,000 short in the amount of the actual losses due to costs of removing the funds from the brokerage, and fees for conversion to another company's accounts, left the client with significant losses - even though he was able to prove the deceptive intent and actions of the first company.**

5. **The client was told by the first law firm, that he had to commence a Supreme Court of BC action against the second brokerage, in order to avoid time limitation for action. This suggestion was made by the law firm handling the first claim. This process has cost the client over $10,000 in lawyer bills from both firms, on the second action.**
6. **What the client has learned from the research of the second law firm is:**
    - **Aggravated damages for the emotional stress of not knowing if he would ever see his saving again for several years, is not awarded in a scale to the damage. Case law in BC shows damages of this kind to be between $3000 and $7500.**
    - **Supreme Court awards for legal costs including lawyer fees are approximately 40-60% of the clients' expenses.**
1. **The above facts discovered by the second law firm, shows that litigation is not designed to make the client whole after the client has been misused by deceptive practices. Therefore, the clients and their advocates need to come up with a more specific and effective remedy for the predatory abuse that is being given systemic cover in BC at this time.**

THE CREATION OF A FOUNDATION TO RESTORE THE CLIENTS OF FINANCIAL ABUSE TO WHOLENESS

With the current lack of remedies from regulators and the lack of adequate and cost-effective legal services, the need has arisen to join forces with organizations that have studied the fraudulent practices that are undermining clients' interests, and therefore the level of trustworthiness required to enable confident investing in the future of the economy. With the evidence that the system has not provided protection, there is a need to explore what is required in order to create a Foundation that can be accessed by regulators and clients when there is no demonstrated willingness by brokers to honour their obligations to act in good faith to their clients. When these brokerages have been given prima facie evidence that is corroborated by various sources - that shows bad faith practices, the client should not be left as a victim. The financial structure and the elder abuse prevention structure, need to come together to ensure that a Foundation is able

to compensate the clients for direct losses, lost interest, and aggravated damages for creating undue anxiety in the retirement years of the client.

This Foundation proposal will be contacting the Center for Longevity - Center for the Study of Fraud at Stanford University, for guidance on how this Foundation may be able to achieve its objectives of providing immediate remedy to elderly clients - and then the Foundation will hold the costs until Errors and Omissions insurance is able to reimburse the foundation over time.

METHOD

This Foundation would be best operated as a North America-wide service, that could involve agencies like FINRA, NICE [National Initiative on Care of the Elderly], the regulators, CARP, AARP, the advocacy groups for investment clients, and the financial services industry. The scope of the Foundation should be to protect all injured clients of investment, both of legitimate accredited companies that have perpetrated acts that do not conform to their presumed compliance standards, and rogue operators whose acts are purely motivated by misrepresentation. All clients who have had their trust abused need to be protected by the society in which these abuses have occurred, and the protection should not be divisible.

The Foundation should be funded by a 1/10 of 1% surcharge on securities sales transactions of every kind - including derivative options. The pools of deposit insurance coverage are not adequate to deal with derivative gambling liability - so an on-going fund needs to be established based on sales transactions, so that there is a recognition of the fact that liability must not be borne by innocent parties who have not acted to create injury to the system. The Foundation must be structured in such a way that it enables depositors to be insured in fact, rather than in an underfunded model that currently exists.

The Public Interest Research Group [PIRG] network located at about 120 universities across North America will be invited to participate in this project.

The Foundation Project seeks to maintain contact with the Seniors Advocate and the 30 Regional Representatives around BC - so that this

project receives input based on the experiences of everyone who may benefit from a system that is designed to solve this traumatic problem rather than allow it to ruin lives due to neglect.

Respectfully submitted,

Alan Blanes,

Member of CARP Chapter 30 Central Okanagan

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In conclusion, I would urge OBSI to consider maintaining an on-going record of input from previous consultations, and to engage in an active dialogue with those who are dealing with the shortcomings of investment governance in Canada. It needs to be borne in mind that a trustworthy investment system is in the interests for the long term of all Canadians, including investment dealers. The sidestepping customs only serve to undermine the fidelity of the industry to the public interest in Canada. Attached are my previous submission from 2012, and a report produced for the office of Senator Elizabeth Warren entitled "Rigged Justice – How Weak Enforcement Lets Corporate Offenders Off Easy".

A strategy to create rule of law in practice is something that I invite OBSI to actively participate in so headway is made during 2016.

Rigged_Justice.2016.pdf

From: Alan Blanes

To: governance@obsi.ca

Sent: Friday, June 01, 2012 12:06 AM

Subject: Feedback for "Public Consultation - Governance Reform"

To the Attention of Tyler Fleming:

I am sending the reactions of Harold C. Blanes, my father, and myself, to the May 14, 2012 paper: "Framework for Reforming the Board of Directors of the OBSI". The attributes required of candidates for the board are, from our experience, needed, but in the position paper, are not referred to directly or indirectly. In our view, the essential values that would make the OBSI a resource that would help to create genuine industry accountability are as follows:

1. The Ombudsman should be the source for getting questions answered when brokers have refused to answer basic questions. Clients need to be able to access the responses that OBSI investigators have obtained from industry personnel when they are conducting investigations. Not having access to fundamental information of this kind defeats the whole objective of transparency and accountability. Board members must put the common law traditions of open access to case information and public disclosure of decisions ahead of the concept of confidentiality and arbitrary settlement proposals. These settlement methods that are imposed currently are contrary to the common law tradition, and prevent the acculturation of actual verifiable standards. This whole area of settlement services needs to be be re-oriented to protect the strength of common law tradition.

2. Page 4 "Knowledge of or experience in" bullets, we would add "Criminal Code prohibitions against fraud and production of false records in the sale of securities" as a fundamental requirement of all members of the board. This area of knowledge is very concise and is readily available in a condensation of these subjects in the 2010 edition of Martin's Criminal Code, as attached. In order

for Canada to have a very straightforward standard of what is acceptable business practice in the sale of securities, it is essential that this be the primary regulative tool.

3. Page 5 part 4) The last bullet on this topic states "Remind stakeholder nominees that the duty of Board Directors is to OBSI and not to the nominating stakeholders." This should be secondary to the concept of "the duty should be primarily to the upholding of the law." The self regulating dogma that has been injected into the sale of securities since approximately 1990 has been a toxic force that has neutralized the willingness of industry councils, regulators and law enforcement to put the basic rule of law as the essential governing principle. Board members are needed who have allegiance to the cultural supports that provide for completely trustworthy contracts. Arbitrary and confidential settlement proposals are the negation of a trustworthy remediation model.

4. Page 5 part 5) All Board Directors shall exhibit the following attributes. They shall…" None of the ten bulleted points are characteristic of the essential attribute that is required of creating a genuinely trustworthy investment industry. The main characteristic should be to reject deceptive practice and a willingness to question those who use deception.

We would urge everyone who is involved with the protection of the integrity of the brokerage industry to understand and accept these clarifications. They are critically needed if we are to protect the trustworthiness of the services provided by the investment firms in Canada. Standards that affirm these traditional values are the best improvements that we could construct to protect the interests of vulnerable investors such as the frail elderly. This upgraded standard of authenticity will result in much greater willingness by Canadians to invest in our securities, which will be extremely useful to the health of our future economy.

Respectfully submitted,

Alan Blanes, for:

Harold C. Blanes