Via email

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Re: OSC NOTICE 11-774 - Statement of Priorities Draft for Comments 2016-2017

Respectfully Mr. Day,

My father (76) and I understand that polite, politically sensitive expression has its time and place. However, as victims of what still somehow passes, well into the 21st century, as an effective regulatory environment in Canada, we are finding it both challenging and exhausting to contain our very strong emotions. Neither do we think that we should, having already paid for them dearly. So in this letter we will be callings things plainly, what our experience has taught us that they are.

There is another word for white-collar crime – CRIME! In its impact it *is* assault, *is* violence, *is* grievous harm. Committing physical assault gets people caged, though the act is most often not premeditated, nor methodical or remorseless. Unlike of those who commit theirs wearing a suit.

All crime is essentially a crime of opportunity. Such as the low standard for advice to small investors in Ontario. What standards do exist, are rarely enforced. As clients treated unjustly, we discovered the burden of proof was impossible to meet (if ignoring our total losses, both of us first time dealing with a "Financial Advisor"). Compliance Officers (they came and went) were uncooperative, dealer leadership mute, IIROC and OBSI disingenuous, legal options out of reach. Based on all their long-awaited responses, the reality we were hit with, is that a **"Financial Advisor" (an egregiously misleading title)** is essentially free and clear to spin virtually any yarn they please. First to the investor, then to the Compliance Officer (in our case with), then to IIROC and OBSI. "It all comes down to the account application form", they all say. If it's filled out "properly" and signed by the unsuspecting victim, well then, that victim is just plain out of luck. And so we welcome this opportunity to add ours to the multitude of voices of small investors who are victims of a system so drowning in ills that it is, for all intents, powerless to protect us.

Harold Geller's letter from McBride Bond Christian LLP confirms everything we experienced and supports our extreme anger and frustration (http://www.osc.gov.on.ca/documents/en/Securities-Category1-Comments/com_20160425_11-774_mcbride-bond.pdf).

Mr. Geller's writes:

> *"Ontario's investors are not currently being served by a culture of integrity or a culture of fair, honest and good faith compliance."*
>
> *"The self-interest of industry players at the cost of Ontario's investors is better known now than it was in the opaque past. The public is better informed of the many breaches of*

standards, ethics, and blatant conflicts of interests of industry players and this despite the often lack of enforcement records held by SROs."

"At the stage of investor treatment, the system continues to fail Ontario victims in the majority of circumstances … Dealers responding to complaints directly to the dealer and then to their ombudspersons without upholding their duty to act honestly, fairly and in good faith. Most complaints are dealt with by blanket denials and litigation like tactics to dissuade investors."

"The duty of industry to act fairly, honestly and in good faith is all but absent when dealing with industry participant's wrongdoing … The investor is instead met with a conspiracy of silence by regulators, dealers, and advisers."

"The obligation to deal fairly, honestly and in good faith with Ontario investors must be enforced to have meaning …"

I have expended considerable effort with both IIROC and OBSI, yet still we cannot affect any accountability from and consequences for the broker and dealer involved in what an experienced investor would have recognized immediately as a series of suckers' pump and dump penny stock schemes. But we were dealing with someone we thought was legitimate, trustworthy and legally accountable - an experienced "Financial Advisor" who was going to "help (us) navigate vast financial seas" (from her profile) and her employer (now defunct), both identified by IIROC as legitimate.

Here then are our comments - as small investors and members of the financial industry's largest stakeholder group - to OSC's Statement of Priorities Draft 2016-2017:

1. Fiduciary Duty is not an "option"

"*The OSC is committed to achieving better alignment between the interests of investors and their advisors*." (Goal 1, par. 3) Why not *"the best"*? The woefully overdue Fiduciary/Best Interest Duty Standard should have been put in place as soon as wholly self-interested brokers and their dealers first came up with the brilliant marketing strategy of self-anointing themselves "Advisors".

Take the *"Canadian Securities Administrators Consultation Paper 33-403: The Standard of Conduct for Advisors and Dealers: Exploring the Appropriateness of Introducing a Statutory Best Interest Duty When Advice is Provided to Retail Clients"* (2012). "Appropriateness"? What is there to "explore"?! It's as if common sense and common decency, fairness and justice, are all new and complex concepts that require lengthy and rigorous academic analysis. What conclusions about whose interests *really* matter to regulators and government can the public possibly draw from this feet-dragging? **Financial Advisors** *must* be free of conflicts, fee-based, and if rewarded further, only for performance. It's elementary.

1.1 "Financial Advisor" - it's either a regulated profession, or - it's FRAUD

The foundation of trust in any commercial exchange is first and foremost based on the recipient's belief that the provider has certain legal obligations and so the recipient has legal protection and recourse, and that the playing field is fair. The title "Financial Advisor/er" (regardless of spelling) should only mean one thing - **"in the best interest of the client, full disclosure, conflicts of interest *very* bad!"** period!

As it continues still, there is no good reason for members of the unsuspecting public *not* to assume, as a default, that of course "Financial Advisors", taking clients' livelihoods and life savings into their hands, have their best interests in mind *and* legal obligations to that effect. My father and I certainly

made that assumption, it seemed so obvious (to suspect that in fact the opposite is true in a country like Canada, in our times, was inconceivable to us). But it was not at all obvious to the "Financial Advisor" and her dealer, to IIROC and to OBSI. The dealer's report was a joke (more on that later). IIROC still isn't addressing our claims of the more serious misconduct and the evidence we provided, making like they just plain don't hear us, don't see it. OBSI made every excuse in the book for the "Advisor" for consistently failing to conduct herself professionally and to apply both common sense and even the very basics of what she (supposedly) was taught at the Canadian Securities Institute (including numerous ethics courses). They refused to wait for results of hoped-for IIROC, OSC and/or RCMP investigation/s, and I quote (copy & paste) "… will not await the conclusion of an investigation by any of IIROC, the OSC, or the RCMP. In each case, we do not have any control over their processes or timing and, in any event, **their conclusions are not relevant to our mandate**." "Not relevant"?! So what, not even "aligned"? Finally, to add even more insult to our costly injury, they blamed *us* for our losses. Us, who were both first time dealing with a "Financial Advisor", my father's first time buying a stock. Yet 'obviously' *we* 'should' have known what to do, as if that job was ours and we were paying ourselves to do it. Maybe if we were making our own online $10 trades that would make sense, but not at $135 per, plus commission plus (as we understood only later) other, even more substantial "incentives" for the "Advisor", her colleagues and dealer. So *we* are guilty of bad judgement, but the "Advisor", her manager, and the dealer's leadership are all lily-white for their extremely lousy judgement *and* "conflict of interest" (behind the scenes scheming). Which of us *really* should have known better?!

1.2 Know-Your-Client (KYC) as basis of fiduciary duty

Our former "Financial Advisor", her dealer, IIROC and OBSI all find it perfectly acceptable that she didn't meet with me to interview me and to fill out my KYC/account application form. I originally thought that it was fine also, because both my father and I had known this person for over a decade and thought of her as a friend, because she knew how careful we both were with money, and because she treated the matter as just a formality and we didn't know any better. There was absolute trust (we kick ourselves still for having misjudged her competence and character so completely). Over the years she had been telling us about all the courses she was taking through the CSI and it was this rigorous education, we thought, that finally earned her the professional and *regulated* title "Financial Advisor". Certainly neither myself nor my father suspected that by acknowledging our understanding of the risks involved in *investing* (*not* in dealing with a cart full of bad apples), that we were agreeing that our "Financial Advisor" would be completely excused from performing even the very basic functions of her job, and further, officially absolved, with blessings, by the alleged authorities, of all wrong, improper, unprofessional, conflicted, incompetent, neglectful and negligent doing.

1.3 Fiduciary duty to start, and end, with the leadership

Our request to the "Financial Advisor's" Compliance Officers (there was a succession) for detailed information on her qualifications (education, certification, skills, work history) and job description/duties was denied. And nothing appears in her several LinkedIn profiles, same as for her colleague and her manager who also participated in the scheme (all three many years in "the business") - red flags I only thought to look for after and obviously leadership never bothered or cared about. The report the dealer provided to us (within days of the 90 day deadline), to summarize, was a joke. Mostly it was a joke of 'copy and paste' and creative, implausible expression. So it was also a very bad joke - a cliché written testimonial that these people, with the letters after their names and the titles and the impressive online profiles and the planted media write-ups lauding their professionalism and integrity, sitting in their tastefully-appointed offices on and off Bay Street, don't give a damn. The firm's leadership made no secret of it either, by simply ignoring our letters to them. All of us small investors are, to these people, nothing more than a necessary, insignificant, and only remotely potentially costly *nuisance*. Because they know perfectly well that they operate in an

environment in which they are above and beyond the law. The rank and file do all the dirty work, and also occasionally make convenient scapegoats and fodder for regulators - a win-win! To those missing a conscience (though not unfortunately brains), and when so generously being handed this high gains/minimal risk scenario, the only option that makes sense is, indeed, to play. And play and play and play and play …

2. Investor Awareness

The *average* Canadian, with a job, dependents, bills to pay, and a semblance of life to live (if any time is left), should not be expected to also have the time, energy or focus to educate themselves as if they intended to be their own Financial Advisor (or Doctor, or Lawyer, or Accountant). It took me considerable investigation of public records of the company, its stock price fluctuations, and trading activities of our "Financial Advisor" and other staff at her "boutique" firm (often a cover for straightforward pump and dump boiler rooms I've learned), and much general industry research, to finally understand that we had simply been the victims of bold and all too common securities fraud.

Public Warning Campaigns, we believe, are essential in reducing in any meaningful way the mass fraud and other industry abuses that, in no uncertain terms, constitute **a major public threat**. The seriously flawed fees structures and the overblown hyped marketing tactics of promoters of financial products are of pandemic proportions, to be sure. But the sheer volume and the variety of illegal (in reality almost exclusively in theory) machinations of the industry's bottom feeders are a Plague! Realistically, no organization or even government (if indeed sincere) can be expected to have the resources to effectively deal with the enormity of this category 5 unnatural disaster when it is already upon us. **Prevention is a must!** (as is isolating and stamping it out of course.) *Massive* public warning campaigns must be our first line of defence - everywhere, dramatic, in the public's face. Especially in the faces of small, inexperienced, unsophisticated, vulnerable (so most) investors. *Not* disclosing to the public the *exact* nature and the *scale* of this *huge* organized national *and* international crime spree, in the most direct and transparent manner possible, amounts to *failing to protect the public* from threats of potentially lethal proportions by committing a *huge lie of omission* and in that *aiding and abetting mass-scale fraud* against the population and perpetuating its economic and social ills. It's a preposterous assertion, I know. It's also what I believe.

3. Regulators' access to funds

What exactly is the point of these many expensive exercises, other than managing (poorly) public perception, if regulators don't have the will and the authority to collect the fines they impose? The current ridiculously high total of unpaid balances is a disgrace and an embarrassment of literally global proportions, a major barrier to deterrence, and further erodes what little may still remain of public confidence and trust - another *very* bad joke (http://www.theglobeandmail.com/globe-investor/**nearly-1-billion-in-securities-fines-unpaid**/article29764618/). The liberated funding can and should go to improving these entities' capabilities and increasing their capacities (including of course OSC and the other of the two big debtees BCSC); Whistleblower, Service Excellence and other Incentive Programs; subsidizing Arbitration Programs that are currently out of reach for most small investors (as are the courts); and a generous federal (since we're all in it together) **Victims Compensation Fund** of course. The *"Trusted, Impartial, Effective"* national OBSI - currently the only external ombudsman option for banks (well, the less than 50% by volume remaining) and for the entire pell-mell of investment firms, big and small, littering the marketplace - could certainly use a decent annual grant. The organization operated on a budget of less than $10 million last year, which I am guessing is significantly less than Canadian investors lose every single trading day to outright fraud alone. Their "mandate", too, could use some expanding.

4. Senior Investors

Much more so than for other investor groups, targeting seniors' retirement savings is **one of the most heinous and despicable crimes imaginable**. It diminishes the entire society, both present and future. From our loved ones' loss of dignity and peace at a most fragile - the end - stage of life, and anger, pain and depression shared by the family, to increased use of health services and reliance on public funds for income and caregiver support, to loss of educational, investment, and other invaluable life opportunities for their heirs. And so, not least of all, to undermining Canada's long-term competitiveness in the one remaining - the global - economy. There are no two ways about it - **Seniors' financial safety deserves its own Program**. How we treat them is the lesson younger generations will visit upon us.

5. Re-engineering a dead-end philosophy

The financial industry, in its current form, thrives on *negative* ethical standards and attracts, promotes and rewards sociopathy on a wholesale scale (subsidized heavily by us small investors, and all working stiffs everywhere). The end result of this ultimate, tired and tiring pyramid scheme is always the same - instability, non-sustainability, and eventually collapse. Each time a long road to recovery, littered with countless individual tragedies, whole nations buckling, social and *real* economic progress curtailed. To keep going like this, a psychiatrist will tell you, is either a sign of severe mental illness (unremitting delusion) or just plain stupidity (doing the same thing over and over again and expecting different results). That includes *all of us*. Until we stand up and say to our government and to the industry **"no more!"**

The proposed generous Whistleblower Program is a good start toward rehabilitation. But it is only a start. All consistent choices come down to conditioning, and so too with the Moral Imperative. It must be made clear and desirable - promoted, encouraged, exemplified, supported, valued and yes, heavily incentivized, in exact proportion to the **Titanic levels of moral relativism, collusion, confidence artistry, fearlessness, short-sightedness and Greed** that currently rule the industry. To keep tagging along with the status quo is worse than being on the wrong side of history; it's accelerating in reverse toward *doom*.

Conclusion

We support the OSC and all organizations, groups and individuals who strive, with active persistence and in collaboration, to remake the Canadian financial industry into a source of best practices, admiration and pride in the unfolding world community. This path can *only* begin with what most people already assume - a **Fiduciary/Best Interest Duty Standard**. The profession (on par with medicine and law) is capable of doing both much good and much harm - people's livelihoods and lives *are* at stake!
The client's interest must come first, must be paramount, and must be free of conflicts of interest!

We hope you find our perspective reasonable and of value, and grant permission for publication of this letter.

Sincerely,

Julia Lipovetsky and Mikhail Lipovetsky

"Always go too far, because that's where you'll find the truth."
- Albert Camus