

Lax enforcement blamed for Alberta Ponzi scheme

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CALGARY -- Critics are blaming a lack of regulatory oversight and poor enforcement for failing to prevent a Ponzi scheme that bilked thousands of investors out of more than \$100-million.

Specifically, observers are questioning why Milowe Allen Brost was allowed to continue selling bogus securities despite being singled out for possible fraud by the Alberta Securities Commission as far back as 2000.

RCMP announced on Monday laying charges of fraud and theft against Brost and Gary Allen Sorenson, accused of running the alleged Ponzi scheme between 1999 and 2008.

In 2007, Mr. Brost was handed a \$650,000 administrative fine -- the largest penalty levied against a single individual -- and barred from trading securities after what the Alberta Securities Commission described as "one of the most egregious cases" of deceit and serious misconduct it had ever encountered. The ASC in turn handed its findings to the RCMP for possible criminal conduct in 2005 -- yet the scam was allowed to continue more or less unimpeded until Mr. Brost was arrested following a three-year investigation, raising questions about the effectiveness of current securities legislation in Canada.

"The securities commission should have followed it up," said Stephen Jarislowski, president of Jarislowski Fraser Investment Management and a prominent advocate for investor protection.

The delay between the investigation and formal charges prove that regulatory oversight is "next to nil" in this country, he added.

"Ultimately, it's a matter of enforcement. Laws have to be tightened, regulation has to be tightened and enforcement has to exist."

Mr. Jarislowski said it's unlikely that bilked investors will ever see a cent of their lost money, which some sources said could be as high as \$400-million.

Long before police raided his Calgary home on the weekend, Brost and partner Allen Sorenson had been on the ASC's radar since at least 1998, resulting in half a dozen investigations and violation orders against various companies in which the men had interests. Another hearing into Arbour Energy, another Brost-controlled company, is scheduled for later this fall.

According to Tamera Van Brunt, a spokeswoman with the Alberta Securities Commission, the ASC is limited in how it can help the police investigate possible cases of fraud. The ASC enforces breaches of the Securities Act while criminal matters are forwarded directly to law enforcement.

"There's a very distinct line between what we can co-operate with," she said. "The police are dealing with violations of the Criminal Code, so there's a whole different burden of proof."

According to the Alberta government's Finance and Enterprise department, the ASC has a clear mandate to enforce provincial statutes while criminal code violations are the responsibility of federal officials like the RCMP.

"They (the ASC) did everything they could under the Securities Act," said department spokeswoman Kari-Ann Kuperis.

Speaking in Calgary on Tuesday, Canadian Chamber of Commerce president Perrin Beatty said the proliferation of Ponzi schemes "taints everybody in the system and it causes people to be suspicious of the whole free enterprise system.

"What I have found in private conversations with senior people in the business community is they're feeling in any instance where fraud is identified, the government should be far more vigorous in terms of pursuing it," said Mr. Beatty.

"I hear often from business people that it's striking that often you see charges being laid in the United States related to activity taking place in Canada as opposed to Canada. So the question is, are we sufficiently vigorous in putting the resources into investigating genuine cases of criminality?" That sentiment is backed up by Stephen Griggs, executive director Canadian Coalition for Good Governance, who said governments have to put more resources and expertise into tracking down white collar criminals, who use inside knowledge of the financial system to elude capture. He said Canadian authorities often "look rather timid and ineffective" compared to their American counterparts. "The U.S. in general has a much more aggressive approach," he said. "The issue of a lack of enforcement in capital markets is a big issue for us, we feel the federal government can do an awful lot more." The entire law enforcement system, from prosecutors, to police to judges, is ill-equipped to deal with securities fraud, he added. His group wants to see the establishment of a special agency designed specifically to deal with corporate crime, manned with experts in the field. "Generally, white collar crime is not a high priority for police versus gangs and guns," he added. "White collar crime is very complicated; it's not same as rape or murder which the police are very good at investigating. Most police don't have the skill sets of a forensic accountant. Even for highly skilled experts, it's a time-consuming process. People who perpetrate fraud are very clever, these cases take a lot of time."

In Ottawa, the federal government on Tuesday announced new measures to crack down on corporate crime in the wake of several high profile scams in Canada and the U.S. The proposed legislative amendments will include creating a mandatory jail sentence for those who commit serious fraud and additional aggravating factors to justify longer sentences. In addition, the legislation will address restitution for victims. "Canadians lose faith in the criminal justice system when they feel that the punishment does not fit the crime," Justice Minister Rob Nicholson, who is also Canada's attorney general, said in a statement. "The legislation we plan to introduce will send the message that committing fraud will have serious consequences."