



Ontario
Securities
Commission

Commission des
valeurs mobilières
de l'Ontario

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**IN THE MATTER OF
KENTON ROY RUSTULKA**

**STATEMENT OF ALLEGATIONS
(Subsections 127(1) and 127(10) of the *Securities Act*, RSO 1990 c S.5)**

A. OVERVIEW

1. An inter-jurisdictional enforcement order using the expedited procedure for inter-jurisdictional proceedings as set out in Rule 11(3) of the Capital Markets Tribunal's (the **Tribunal**) *Rules of Procedure* is sought based on a finding by the Alberta Securities Commission (**ASC**) that Kenton Roy Rustulka (**Rustulka** or the **Respondent**) failed to comply with certain registrant obligations, made material misrepresentations and misled his investor clients in order to sell \$6.5 million worth of exempt market securities.

B. FACTS

2. On February 5, 2021, the ASC issued its sanctions decision (the **Sanctions Decision**) and an order (the **ASC Order**) that imposed sanctions on Rustulka, including permanent prohibitions on trading or purchasing securities or derivatives, and removals of exemptions under Alberta securities laws. In addition, Rustulka was permanently prohibited from acting in various capacities, including advising in securities, engaging in investor relations activities and as a director or officer of any issuer or as a registrant. Rustulka was also ordered to pay an administrative penalty of \$100,000, disgorgement of \$99,242.37 and costs of \$55,000.
3. In its decision on the merits (the **Merits Decision**) dated June 17, 2020, a panel of the ASC (the **ASC Panel**) held that Rustulka breached sections 13.2 and 13.3 of NI 31-103

which governs registrant standards of conduct; and breached section 92(4.1) of the *Alberta Securities Act* by making misrepresentations to his investor clients that Rustulka knew or reasonably ought to have known were untrue and would reasonably be expected to significantly effect his clients' willingness to invest in exempt market securities.

4. The Merits Decision¹ followed a hearing on the merits (the **Merits Hearing**) of the allegations brought by the ASC. The Merits Decision includes the following findings:

- (a) Rustulka sold over \$6.5 million in exempt market securities to the public by recording inaccurate information on his clients' *Know Your Client (KYC)* forms and their Suitability Assessment Forms for the purpose of selling inherently risky exempt market securities, and misrepresented his clients' risk tolerance, investment time horizon and the level of risk involved in exempt market securities.
- (b) During their testimony at the Merits Hearing, the investor witnesses were consistent in their evidence that:
 - i. despite the risk warnings clearly displayed in the investment documentation, including the RAFs they signed, Rustulka variously described the investments they were making and the exempt market in general as "safe" and "secure", with either no risk or a "very, very low risk"² of losing any money;
 - ii. Rustulka assured them that the companies they were investing in were unlikely to "go under" because they were "stable" and "solid", had "longevity, great track records, accountability, and much more" – yet would pay high returns in short time frames;³
 - iii. Rustulka downplayed, glossed over, and dismissed the risk warnings on the investment documentation as a mere regulatory formality, or as "red

¹ *Re Rustulka*, 2020 ABASC 93 [*Merits Decision*].

² *Merits Decision*, *supra* at paras 66, 127 & 247; *Re Rustulka*, 2021 ABASC 15 [*Sanctions Decision*] at para 18.

³ *Sanctions Decision*, *supra* at para 18.

tape” they simply had to through to complete the transaction. He spent little time reviewing the warnings with them and did not explain the actual risks of the products or strategies he recommended; and⁴

iv. these assurances had a significant influence on their investment decisions and their willingness to follow Rustulka’s recommendations.⁵

(c) During the period of January 1, 2013, through June 3, 2016 (the **Material Time**) Rustulka earned approximately \$460,000 in commissions on sales of exempt market securities in part because his clients were induced to invest based on his misrepresentations and their belief that Rustulka could be trusted based on his previous employment as an Edmonton police officer and as a senior pastor.⁶

(d) Despite accumulating \$460,000 in commissions, the ASC Panel ordered disgorgement in the amount of \$99,242.37. This figure represented the commissions Rustulka received on the sales to the eight investor witnesses (and their spouses in some cases) who testified at the Merits Hearing.⁷

C. JURISDICTION

5. Pursuant to paragraph 4 of subsection 127(10) of the *Securities Act*, RSO 1990, c S.5 (the **Act**), the ASC Order, being an order made by a securities regulatory authority that imposes sanctions, conditions, restrictions or requirements on a person or company, may form the basis for an order in the public interest made under subsection 127(1) of the Act.

6. It is in the public interest to make an order against the Respondent.

D. ORDER SOUGHT

7. It is requested that the Tribunal make the following inter-jurisdictional enforcement order, pursuant to paragraph 4 of subsection 127(10) of the Act:

⁴ *Sanctions Decision, supra* at para 18.

⁵ *Sanctions Decision, supra* at para 18.

⁶ *Merits Decision, supra* at paras 54, 105, 114, 122, 227.

⁷ *Sanctions Decision, supra* at para 78.

(a) Against Rustulka that:

- i. pursuant to paragraphs 2 and 2.1 of subsection 127(1) of the Act, trading in or the acquisition of any securities or derivatives by Rustulka cease permanently;
- ii. pursuant to paragraph 3 of subsection 127(1) of the Act, any exemptions contained in Ontario securities law do not apply to Rustulka permanently;
- iii. pursuant to paragraphs 7, 8.1 and 8.3 of subsection 127(1) of the Act, Rustulka resign any positions he holds as a director or officer of an issuer, or registrant, including an investment fund manager;
- iv. pursuant to paragraphs 8, 8.2 and 8.4 of subsection 127(1) of the Act, Rustulka is prohibited permanently from becoming or acting as a director or officer of any issuer, or registrant, including an investment fund manager;
- v. pursuant to paragraph 8.5 of subsection 127(1), Rustulka is prohibited permanently from becoming or acting as a registrant, including as an investment fund manager or promoter; and

(b) such other order or orders as the Tribunal considers appropriate.

8. These allegations may be amended and further and other allegations may be added as the Tribunal may permit.

DATED at Toronto this 5th day of April, 2023.

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