Ontario Securities Commission
Commission des valeurs mobilières de l'Ontario
22nd Floor, 20 Queen Street West, Toronto ON M5H 3S8
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IN THE MATTER OF THE *SECURITIES ACT*,
RSO 1990, c S.5

- AND -

IN THE MATTER OF
RTG DIRECT TRADING GROUP LTD. and
RTG DIRECT TRADING LIMITED

REASONS AND DECISION
(Subsections 127(1) and 127(10) of the Act)

Hearing: In writing

Decision: December 21, 2016

Panel: Christopher Portner - Commissioner

Appearances: Malinda Alvaro - For Staff of the Commission

No submissions were received on behalf of the Respondents

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REASONS AND DECISION

I. INTRODUCTION

[1] This was an uncontested written hearing before the Ontario Securities Commission (the "**Commission**") pursuant to subsections 127(1) and 127(10) of the *Securities Act*, RSO 1990, c S.5 (the "**Act"**) to consider whether it is in the public interest to make an order imposing sanctions on RTG Direct Trading Group Ltd. ("**RTG Group**") and RTG Direct Trading Limited ("**RTG Limited**" and, together with RTG Group, the "**Respondents**").

[2] The Commission issued a Notice of Hearing on August 30, 2016 in connection with a Statement of Allegations issued by Staff of the Commission ("**Staff**") dated August 29, 2016.

[3] On September 27, 2016, the Commission held a hearing, at which Staff applied to convert this proceeding to a written hearing in accordance with Rule 11.5 of the Commission's *Rules of Procedure* (2014), 37 OSCB 4168, and subsection 5.1(1) of the *Statutory Powers Procedure Act*, RSO 1990, c S.22 (the "**SPPA**"). Although properly served, the Respondents were not present at the hearing. Staff's application was granted by Order dated September 27, 2016 and a schedule was set for the service and filing of Staff's and the Respondents' written materials.

[4] Staff served the Respondents with the Commission's Order and with copies of Staff's written materials. The Respondents did not file any responding materials and did not otherwise respond.

[5] Subsection 7(2) of the SPPA authorizes a tribunal to proceed in the absence of a party when such party has been given notice of a written hearing and does not participate in the hearing. I am satisfied that the Respondents were properly served with the Notice of Hearing, Statement of Allegations, Staff's disclosure, the Commission's Order and Staff's Written Submissions, Brief of Authorities and Hearing Brief, as evidenced by the affidavits of service filed in this proceeding. I am satisfied that the Respondents were properly served and have notice of the written hearing and that the matter may proceed in their absence.

II. THE FCAA DECISION AND ORDER

[6] On February 19, 2016, the Financial and Consumer Affairs Authority of Saskatchewan (the "**FCAA"**) issued its Decision in which it found that the Respondents had engaged in, or held themselves out as engaging in, the business of trading in securities without registration, contrary to subsection 27(2) of *The Securities Act, 1988*, SS 1988-89, c S-42.2 (the "**Saskatchewan Act**").

[7] Between April 2015 and August 2015, the Respondents offered Saskatchewan residents an opportunity to trade binary options through an online trading platform. The Respondents represented that the binary option trading was "risk free" and involved "0 risk trading." The Respondents have never been registered under the Saskatchewan Act.

[8] An investor resident in Saskatchewan opened a trading account in April 2015 and used approximately $75,000 of his personal funds to purchase and/or trade binary options

through the Respondents' online trading platform. The Respondents represented to the investor that there was an ownership interest in the binary options.

[9] Beginning in June 2015, the investor made several requests for the return of his funds. After one such request, the Respondents returned the requested amount to the investor but shortly thereafter made an unauthorized charge for the same amount on the investor's credit card. The Respondents refused to reimburse the investor, demanding copies of his personal identification documents and an additional $20,000, as well as proposing that he sign a liquidity agreement in order for him to obtain a return of any of his investment funds.

[10] On August 27, 2015, a purported representative of the United States Securities and Exchange Commission (the "**SEC**"), likely acting on behalf of the Respondents, sought additional funds from the investor. The purported representative falsely notified the investor that he was named as an alleged defendant in an SEC Administrative Proceeding involving the Respondents.

[11] The investor had not recovered his funds as of the date of the FCAA's findings.

[12] The FCAA Order dated April 28, 2016 imposed the following sanctions and orders relating to costs on the Respondents:

(a) Pursuant to subsection 134(1)(a) of the Saskatchewan Act, all of the exemptions in Saskatchewan securities laws do not apply to the Respondents, permanently;

(b) Pursuant to subsection 134(1)(d) of the Saskatchewan Act, the Respondents shall cease trading in any securities or exchange contracts in Saskatchewan, permanently;

(c) Pursuant to subsection 134(1)(d.1) of the Saskatchewan Act, the Respondents shall cease acquiring securities for and on behalf of residents of Saskatchewan, permanently;

(d) Pursuant to section 135.1 of the Saskatchewan Act, the Respondents shall pay an administrative penalty to the FCAA in the amount of $25,000;

(e) Pursuant to section 135.6 of the Saskatchewan Act, the Respondents shall pay financial compensation to each person or company found to have sustained financial loss as a result, in whole or in part, of the respondents' contraventions of the Saskatchewan Act, in an amount to be determined; and

(f) Pursuant to section 161 of the Saskatchewan Act, the Respondents shall pay costs of and related to the FCAA hearing in the amount of $2,195.88.

[13] Staff is seeking an inter-jurisdictional enforcement order to reciprocate the trading and market prohibitions in the FCAA Order pursuant to paragraph 4 of subsection 127(10) of the Act.

III. STATUTORY AUTHORITY TO MAKE PUBLIC INTEREST ORDERS

[14] Paragraph 4 of subsection 127(10) of the Act provides for inter-jurisdictional enforcement when a company is subject to an order made by a securities regulatory authority in any jurisdiction that imposes sanctions on the company. Once the threshold requirement is met, the Commission must determine whether to make a protective order under subsection 127(1) of the Act.

[15] Subsection 127(1) of the Act empowers the Commission to make orders when, in its opinion, it is in the public interest to do so. The purpose of an order under subsection 127(1) of the Act is protective and preventive and intended to "restrain future conduct that is likely to be prejudicial to the public interest in fair and efficient capital markets" (*Committee for the Equal Treatment of Asbestos Minority Shareholders v Ontario (Securities Commission)*, 2001 SCC 37 at para 43).

IV. APPROPRIATE SANCTIONS

[16] The FCAA Decision and Order establish that the Respondents are subject to an order made by a securities regulatory authority which imposes sanctions on them, thereby satisfying the threshold criterion set out in paragraph 4 of subsection 127(10) of the Act. Accordingly, I must now consider whether it is in the public interest to make an order under subsection 127(1) of the Act.

[17] In making a determination of what is in the public interest, the Commission must have regard to the purposes of the Act described in section 1.1, namely, to provide protection to investors from unfair, improper or fraudulent practices and to foster fair and efficient capital markets and confidence in capital markets.

[18] Further, the Commission must consider the importance of inter-jurisdictional cooperation. Paragraph 5 of section 2.1 of the Act provides that "[t]he integration of capital markets is supported and promoted by the sound and responsible harmonization and co-ordination of securities regulation regimes."

[19] There is no evidence to suggest that the Respondents solicited investors in Ontario. However, it is important that the Commission be aware of and responsive to an increasingly complex and interconnected cross-border securities industry. For comity to be effective and the public interest to be protected, the threshold for reciprocity must be low (*Re JV Raleigh Superior Holdings Inc.* (2013), 36 OSCB 4639 at paras 21-26). Indeed, the Commission has held that a nexus to Ontario is not required when imposing an inter-jurisdictional enforcement order (*Re Dowlati* (2016), 39 OSCB 5081 at para 25; *Re Rush* (2016), 39 OSCB 6653 at para 22).

[20] Staff is seeking a broader acquisition ban than that included in the FCAA Order. The FCAA Panel imposed permanent trading and exemption bans on the Respondents; however, the FCAA acquisition ban applied only to "securities for and on behalf of residents," not to "any securities." For consistency, the acquisition ban should mirror the trading ban and apply to "any" securities.

[21] In determining whether to impose sanctions on the Respondents, I consider the following facts and circumstances to be relevant:

(a) The conduct for which the Respondents were sanctioned in Saskatchewan would have constituted a contravention of the Act (subsection 25(1)) had it occurred in Ontario;

(b) The serious nature of the Respondents' misconduct, which the FCAA Panel characterized as "atrocious and fraudulent" (FCAA Decision, *supra* at para 30);

(c) The terms of Staff's proposed order align with the sanctions imposed in the FCAA Order to the extent possible under the Act;

(d) The sanctions sought by Staff are prospective in nature and would affect the Respondents only if they attempt to participate in Ontario's capital markets; and

(e) The Respondents did not provide the Commission with any information that would persuade me that Staff's requested order is not appropriate in the circumstances.

[22] I conclude that it is in the public interest to make an order under subsection 127(1) of the Act to prevent the Respondents from accessing the capital markets in Ontario.

V. ORDER

[23] For the reasons stated above, I find that it is in the public interest to issue the following order:

(a) Trading in any securities or derivatives by the Respondents shall cease permanently, pursuant to paragraph 2 of subsection 127(1) of the Act;

(b) Trading in any securities of the Respondents shall cease permanently, pursuant to paragraph 2 of subsection 127(1) of the Act;

(c) The acquisition of any securities by the Respondents is prohibited permanently, pursuant to paragraph 2.1 of subsection 127(1) of the Act; and

(d) Any exemptions contained in Ontario securities law do not apply to the Respondents permanently, pursuant to paragraph 3 of subsection 127(1) of the Act.

Dated at Toronto this 20th day of December 2016.

"Christopher Portner"

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Christopher Portner