



Ontario
Securities
Commission

Commission des
valeurs mobilières
de l'Ontario

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**IN THE MATTER OF THE *SECURITIES ACT*
R.S.O. 1990, c. S.5, AS AMENDED**

- and -

**IN THE MATTER OF 2196768 ONTARIO LTD
carrying on business as RARE INVESTMENTS,
RAMADHAR DOOKHIE, ADIL SUNDERJI
and EVGUENI TODOROV**

**SETTLEMENT AGREEMENT
BETWEEN STAFF AND ADIL SUNDERJI**

PART I - INTRODUCTION

1. By Notice of Hearing dated November 22, 2011, the Ontario Securities Commission (the "Commission") announced that it proposed to hold a hearing, pursuant to sections 127 and 127.1 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act"), to consider whether it is in the public interest to make orders, as specified therein, against 2196768 Ontario Ltd. ("2196768 Ltd.") carrying on business as RARE Investments ("RARE"), Ramadhar Dookhie ("Dookhie"), Adil Sunderji ("Sunderji") and Evgueni Todorov ("Todorov"). The Notice of Hearing was issued in connection with the allegations as set out in the Statement of Allegations of Staff of the Commission ("Staff") dated November 22, 2011.

2. The Commission will issue a Notice of Hearing to announce that it will hold a hearing to consider whether, pursuant to section 127 of the Act, it is in the public interest for the Commission to approve this Settlement Agreement and to make certain orders in respect of Sunderji.

PART II – JOINT SETTLEMENT RECOMMENDATION

3. Staff agree to recommend settlement of the proceeding initiated by the Notice of Hearing dated November 22, 2011 against Sunderji (the “Proceeding”) in accordance with the terms and conditions set out below. Sunderji consents to the making of an order in the form attached as Schedule “A”, based on the facts set out below.

PART III – AGREED FACTS

4. Sunderji agrees with the facts set out in this Part III. To the extent Sunderji does not have direct personal knowledge of certain facts as described below, Sunderji believes the facts to be true and accurate.

5. Staff and Sunderji agree that the facts and admissions set out in this Part III and in Part IV for the purpose of this settlement are without prejudice to Sunderji in any other proceedings of any kind including, but without limiting the generality of the foregoing, any other proceedings brought by the Commission under the Act (subject to paragraph 35 below) or any civil or other proceedings currently pending or which may be brought by any other person, corporation or agency (subject to paragraph 33 below).

Summary of Allegations

6. Staff allege that between January 2009 and March 2010 (the “Material Time”), RARE, Dookhie, Sunderji and Todorov, who were the directing minds of RARE (collectively the “Respondents”), raised approximately \$1.15 million from 14 investors (“RARE investors”) in Ontario for the purpose of trading in foreign currencies for profit (“forex trading”).

7. Staff allege that RARE investors advanced funds to the Respondents, who issued promissory notes for investor loans and subsequently lost the money in forex trading or used the funds to repay previous debts unrelated to RARE, thereby engaging in unauthorized trading, illegal distribution of a security, and fraudulent conduct in breach of the Act, and conduct contrary to the public interest.

The Respondents

8. 2196768 Ltd was a private Ontario corporation, incorporated on January 30, 2009, which carried on business as RARE. Neither 2196768 Ltd or RARE have been registered with the Commission in any capacity. Dookhie, Sunderji and Todorov are all equal shareholders of RARE, although only Dookhie and Sunderji are identified as directors and officers of the company. Dookhie, Sunderji and Todorov were friends for many years before creating RARE.

9. During the Material Time, Dookhie worked as an accountant providing accounting services to individuals and small companies, and operated among other things a tax preparation business known as Liberty Tax Services (“Liberty Tax”). Dookhie was registered as a scholarship plan dealer with the Commission for the sole purpose of selling registered education scholarship plan investments. Dookhie did not invest any of his own money in RARE.

10. During the Material Time, Sunderji worked full time in a family business called Grey Tech Computers which sold computer hardware. Sunderji has never been registered with the Commission. Sunderji did not invest any of his own money in RARE.

11. During the Material Time, Todorov engaged in trading foreign exchange, chiefly for RARE. Todorov has never been registered with the Commission. Todorov did not invest any of his own money in RARE.

Obtaining Investor Funds

12. RARE investors were either clients of Dookhie’s tax preparation business, Liberty Tax, introduced to RARE through other individuals who knew Dookhie or Todorov, or were investors who had previously invested money with Todorov, some through Dookhie. Sunderji did not introduce any investors to RARE though he was present at Dookhie’s meetings with certain of them.

The Operation of RARE

Dookhie's Role

13. Dookhie oversaw the day to day operations of RARE from his business office. Dookhie incorporated RARE, opened bank accounts in RARE's name, deposited investor funds into those accounts, opened forex trading accounts in RARE's name with an online brokerage called ODL Securities ("ODL trading accounts"), and transferred funds between the bank accounts and the ODL trading accounts. Dookhie received the monthly bank account statements. Dookhie wrote cheques on the accounts, paid investors and created written materials promoting RARE. Dookhie is a director and the president of RARE. Dookhie met with all of the RARE investors.

Sunderji's Role

14. Sunderji attended at RARE's offices when asked to do so by Dookhie and spoke by telephone to Dookhie and/or Todorov concerning RARE on a regular basis. Sunderji is a director and is listed in incorporation documents as the treasurer of RARE, though he did not act as such. He was not a signatory to the RARE bank accounts set up by Dookhie in RARE's name into which investor funds were deposited. Sunderji's responsibilities were limited to overseeing Dookhie, and ensuring that investors funds were deposited and monthly interest cheques were written. Sunderji fulfilled his responsibilities by asking Dookhie what he had done. Sunderji made no inquiries beyond accepting Dookhie's representations, and did not examine RARE's bank records or the ODL trading accounts to verify what he was being told. On occasion, Sunderji met with investors.

15. Sunderji occasionally did trading in the ODL trading account, on the direction of Todorov. Other than those occasions, Sunderji did not use the ODL trading accounts and did not review them to see what was happening to investors' monies, although he had a right to do so. Sunderji did not know how the forex trading platform created by Todorov worked, and could not determine by looking at the ODL trading account statements whether the account held a net positive value.

Todorov's Role

16. Todorov was RARE's forex trader and strategist, and created the forex trading program used to trade investors' funds. Although only Dookhie and Sunderji were authorized to trade using the ODL trading account, in actual fact Todorov did the majority of trading during the Material Time. Todorov worked primarily from his home in Scarborough. Todorov attended at RARE's offices when asked to do so by Dookhie, and spoke by telephone with Dookhie and/or Sunderji concerning RARE on a regular basis. On occasion Todorov met with investors.

Fraudulent Conduct

17. During the Material Time, representations were made to investors that the RARE forex trading program created by Todorov would generate profits sufficient to pay interest of between 1% to 2% per month or 12% to 24% per year. Dookhie and/or Todorov showed some potential RARE investors the results of a virtual online forex test account to reinforce the representations that were made regarding the likely return on investments. Sunderji was aware of the representations which were made. No preliminary prospectus or prospectus was filed with regard to investment in RARE, no receipt was obtained from the Director and no exemption to the prospectus requirement existed.

18. Of the 14 promissory notes with RARE given to investors in 2009 in exchange for their initial investment, Dookhie signed all of them, Sunderji signed 11 and Todorov signed four.¹ The promissory notes made Dookhie, Sunderji and Todorov jointly and severally liable for each investment.

19. During the Material Time and without the knowledge or authorization of RARE investors, Dookhie used RARE funds to pay interest to individuals owed money by Dookhie and Todorov; Dookhie made interest free loans using RARE funds; Dookhie paid an individual a referral fee in excess of \$8,000 using RARE funds; and Dookhie repaid an individual owed money by Todorov using RARE funds. Sunderji would have known of this misuse of investor funds if he had examined RARE's bank records.

¹ One investor loaned \$200,000 to Todorov, on the understanding that Todorov would deposit it into RARE's forex trading account, which was done. That investor was given a promissory note signed by Todorov only.

20. On April 2, 2009, \$16,000 was transferred from a RARE bank account to an account controlled by Sunderji. This represented payment to Sunderji of some of the profits of RARE.

21. On April 22, 2009 a trade was initiated by Todorov which, when subsequently closed, resulted in a loss of approximately \$800,000. As a result, Dookhie became more involved in trading in the ODL trading accounts from approximately April 2009 onward.

22. RARE investors were not informed by Dookhie, Sunderji or Todorov of the loss and were led to believe that their investment was still secure.

23. On May 13, 2009, all positions in the ODL trading account were closed because of insufficient funds in the account, and further trading ceased except for attempts by Dookhie to recover losses, using his own funds.

24. On May 22, 2009, \$10,000 was deposited by Sunderji back into the RARE account.

25. Beginning in February 2010 and continuing to June 2010, RARE investors with promissory notes were encouraged to 'rollover' their investment, at a lesser rate of interest. New promissory notes were issued, signed by Dookhie only. At the time they signed the new promissory notes, RARE investors were not made aware of the extent of the trading losses and that the ODL trading account had been closed.

26. Of the \$1.15 million in loans received from the RARE investors in Ontario, approximately \$228,000 was paid out to investors as interest payments or returned as partial or full payment of their investment, and \$688,000 was lost through trading in forex.

PART IV - RESPONDENT'S POSITION

27. Sunderji provided Staff with an affidavit outlining his personal circumstances which was filed with the Commission, and which established that as a direct result of his involvement in RARE, Sunderji has experienced severe financial repercussions which has and will affect his ability to earn income and meet his family obligations for the foreseeable future. Sunderji has

requested that the affidavit remain confidential as it contains information concerning his family. Staff supports that request.

28. In addition to his personal circumstances, Sunderji requests that the settlement hearing panel consider the following mitigating circumstances:

- (a) Sunderji played a limited role in the transactions which led to the loss of investor monies;
- (b) Sunderji takes responsibility for his actions and is remorseful; and
- (c) By accepting responsibility, cooperating with Staff and foregoing a hearing, Commission time and resources will be saved.

29. Given the mitigating facts outlined in paragraphs 27 and 28 above, Staff agrees to the terms of settlement set out in paragraph 32 below. But for Sunderji's personal circumstances, and his limited role in the transactions, Staff would be seeking significant monetary sanctions for the conduct set out herein.

**PART V - CONDUCT CONTRARY TO THE ACT AND CONTRARY TO THE
PUBLIC INTEREST**

30. Sunderji, by his conduct described above, traded in securities, namely investment contracts, without being registered to trade in such securities contrary to subsection 25(1) of the Act; distributed securities, namely investment contracts, contrary to subsection 53(1) of the Act; and engaged in acts, practices or courses of conduct which he knew or reasonably ought to have known perpetrated a fraud on persons contrary to section 126.1(b) of the Act.

31. Sunderji admits and acknowledges that he acted contrary to the public interest by contravening Ontario securities law as set out in paragraph 30 above.

PART VI – TERMS OF SETTLEMENT

32. Sunderji agrees to the terms of settlement below and to the Order attached hereto, made pursuant to subsection 127(1) and section 127.1 of the Act, to the effect that:

- a) the Settlement Agreement is approved;
- b) Sunderji will cooperate with Staff in its investigation including testifying as a witness for Staff in any proceedings commenced or continued by Staff or the Commission relating to the matters set out herein and meeting with Staff in advance of such proceedings and to prepare for such testimony;
- c) Sunderji will be reprimanded, pursuant to paragraph 6 of subsection 127(1) of the Act;
- d) trading in any securities by Sunderji shall cease for a period of seven (7) years from the date of the Order attached as Schedule “A”, pursuant to clause 2 of subsection 127(1) of the Act;
- e) acquisition of any securities by Sunderji is prohibited for a period of seven (7) years from the date of the Order attached as Schedule “A”, pursuant to clause 2.1 of subsection 127(1) of the Act;
- f) any exemptions contained in Ontario securities law do not apply to Sunderji for a period of seven (7) years from the date of Order attached as Schedule “A”, pursuant to clause 3 of subsection 127(1) of the Act;
- g) Sunderji shall resign all positions that he holds as a director or officer of any issuer, registrant or investment fund manager, pursuant to clauses 7, 8.1 and 8.3 of subsection 127(1) of the Act;
- h) Sunderji is prohibited for a period of seven (7) years from the date of the Order attached as Schedule “A” from becoming or acting as a director or officer of any

issuer, registrant, or investment fund manager, pursuant to clauses 8, 8.2 and 8.4 of subsection 127(1) of the Act;

- i) Sunderji is prohibited for a period of seven (7) years from the date of the Order attached as Schedule “A” from becoming or acting as a registrant, as an investment fund manager or as a promoter, pursuant to clause 8.5 of subsection 127(1) of the Act;
- j) Sunderji shall pay an administrative penalty in the amount of \$5,000 for his failure to comply with Ontario securities law, pursuant to clause 9 of subsection 127(1) of the Act, to be designated for allocation or use by the Commission pursuant to subsections 3.4(2)(b)(i) or (ii) of the Act;
- k) Sunderji shall disgorge to the Commission \$6,000 obtained as a result of his non-compliance with Ontario securities law, pursuant to clause 10 of subsection 127(1), to be designated for allocation or use by the Commission pursuant to subsections 3.4(2)(b)(i) or (ii) of the Act;
- l) Sunderji shall pay to the Commission costs of \$5,000, pursuant to section 127.1 of the Act, to be designated for allocation or use by the Commission pursuant to subsection 3.4(2)(b)(i) or (ii) of the Act ;
- m) after the payments set out in paragraphs (j), (k) and (l) above are made in full, as an exception to the provisions of paragraphs (d), (e) and (f), Sunderji will be permitted to trade in or acquire securities in his personal registered retirement savings plan (“RRSP”) accounts and/or tax-free savings accounts (“TFSA”) and/or for any registered education savings plan (“RESP”) accounts for which he is the or a sponsor;
- n) until the entire amount of the payments set out in paragraphs (j), (k) and (l) above are paid in full, the provisions of paragraphs (d), (e) and (f) above shall continue in force without any limitation as to time; and

- o) Sunderji agrees to make a payment on account of the payment ordered in paragraph (k) above of \$6,000 by certified cheque or bank draft within 30 days of the approval by the Commission of this Settlement Agreement.

33. Sunderji undertakes to consent to a regulatory Order made by any provincial or territorial securities regulatory authority in Canada containing any or all of the prohibitions set out in subparagraphs 25 (c) to (i) above. These prohibitions and orders may be modified to reflect the provisions of the relevant provincial or territorial securities law.

PART VII - STAFF COMMITMENT

34. If this Settlement Agreement is approved by the Commission, Staff will not initiate any other proceeding under the Act against Sunderji in relation to the facts set out in Part III herein, subject to the provisions of paragraph 35 below.

35. If this Settlement Agreement is approved by the Commission, and at any subsequent time Sunderji fails to comply with any of the terms of the Settlement Agreement, Staff may bring proceedings under Ontario securities law against Sunderji. These proceedings may be based on, but are not limited to, the facts set out in Part III of this Settlement Agreement as well as the breach of the Settlement Agreement. In addition, if this Settlement Agreement is approved by the Commission, and Sunderji fails to comply with the terms of the Settlement Agreement, the Commission is entitled to bring any proceedings necessary to recover the amounts set out in subparagraphs 25 (j), (k) and (l) above.

PART VIII - PROCEDURE FOR APPROVAL OF SETTLEMENT

36. Approval of this Settlement Agreement will be sought at a hearing of the Commission scheduled on a date to be determined by the Secretary to the Commission, or such other date as may be agreed to by Staff and Sunderji for the scheduling of the hearing to consider the Settlement Agreement.

37. Staff and Sunderji agree that this Settlement Agreement will constitute the entirety of the agreed facts to be submitted at the settlement hearing regarding Sunderji's conduct in this matter, unless the parties agree that further facts should be submitted at the settlement hearing.

38. If this Settlement Agreement is approved by the Commission, Sunderji agrees to waive all rights to a full hearing, judicial review or appeal of this matter under the Act.

39. If this Settlement Agreement is approved by the Commission, neither Staff nor Sunderji will make any public statement that is inconsistent with this Settlement Agreement or inconsistent with any additional agreed facts submitted at the settlement hearing.

40. Whether or not this Settlement Agreement is approved by the Commission, Sunderji agrees that he will not, in any proceeding, refer to or rely upon this Settlement Agreement or the settlement negotiations as the basis of any attack on the Commission's jurisdiction, alleged bias or appearance of bias, alleged unfairness or any other remedies or challenges that may otherwise be available.

PART IX – DISCLOSURE OF SETTLEMENT AGREEMENT

41. If, for any reason whatsoever, this Settlement Agreement is not approved by the Commission or the order attached as Schedule "A" is not made by the Commission:

- (a) this Settlement Agreement and its terms, including all settlement negotiations between Staff and Sunderji leading up to its presentation at the settlement hearing, shall be without prejudice to Staff and Sunderji; and
- (b) Staff and Sunderji shall be entitled to all available proceedings, remedies and challenges, including proceeding to a hearing on the merits of the allegations in the Notice of Hearing and Statement of Allegations of Staff, unaffected by the Settlement Agreement or the settlement discussions/negotiations.

42. The terms of this Settlement Agreement will be treated as confidential by all parties hereto until approved by the Commission. Any obligations of confidentiality shall terminate upon approval of this Settlement Agreement by the Commission. The terms of the Settlement Agreement will be treated as confidential forever if the Settlement Agreement is not approved for any reason whatsoever by the Commission, except with the written consent of Sunderji and Staff or as may be required by law.

PART X - EXECUTION OF SETTLEMENT AGREEMENT

43. This Settlement Agreement may be signed in one or more counterparts which together will constitute a binding agreement.

44. A facsimile copy or other electronic copy of any signature will be as effective as an original signature.

Dated this day of March, 2013.

Signed in the presence of:

“Witness”

“Adil Sunderji”

Witness:

Adil Sunderji

Dated this “13th” day of March, 2013

“Tom Atkinson”

STAFF OF THE ONTARIO SECURITIES COMMISSION
per Tom Atkinson
Director, Enforcement Branch

Dated this “13th” day of March, 2013



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P.O. Box 55, 19th Floor
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SCHEDULE "A"

**IN THE MATTER OF THE *SECURITIES ACT*
R.S.O. 1990, c. S.5, AS AMENDED**

- and -

**IN THE MATTER OF 2196768 ONTARIO LTD
carrying on business as RARE INVESTMENTS,
RAMADHAR DOOKHIE, ADIL SUNDERJI
and EVGUENI TODOROV**

**IN THE MATTER OF A SETTLEMENT AGREEMENT BETWEEN STAFF OF THE
ONTARIO SECURITIES COMMISSION AND ADIL SUNDERJI**

ORDER (Section 127(1))

WHEREAS by Notice of Hearing dated November 22, 2011, the Ontario Securities Commission (the "Commission") announced that it proposed to hold a hearing, pursuant to sections 127 and 127.1 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act"), to consider whether it is in the public interest to make orders, as specified therein, against 2196768 Ontario Ltd. ("2196768 Ltd.") carrying on business as RARE Investments ("RARE"), Ramadhar Dookhie ("Dookhie"), Adil Sunderji ("Sunderji") and Evgueni Todorov ("Todorov").

AND WHEREAS the Notice of Hearing was issued in connection with the allegations as set out in the Statement of Allegations of Staff of the Commission ("Staff") dated November 22, 2011.

AND WHEREAS Sunderji entered into a settlement agreement with Staff dated March 13, 2013 (the "Settlement Agreement") in which Sunderji agreed to a proposed settlement of the proceeding commenced by the Notice of Hearing dated November 22, 2011, subject to the approval of the Commission;

WHEREAS on March 13, 2013, the Commission issued a Notice of Hearing pursuant to section 127 of the Act to announce that it proposed to hold a hearing to consider whether it is in the public interest to approve a settlement agreement entered into between Staff and Sunderji;

AND UPON reviewing the Settlement Agreement, the Notice of Hearing, and the Statement of Allegations of Staff, and upon hearing submissions from counsel for Sunderji and from Staff;

AND WHEREAS the Commission is of the opinion that it is in the public interest to make this order;

IT IS HEREBY ORDERED THAT:

- a) the Settlement Agreement is approved;
- b) Sunderji will cooperate with Staff in its investigation including testifying as a witness for Staff in any proceedings commenced or continued by Staff or the Commission relating to the matters set out herein and meeting with Staff in advance of such proceedings and to prepare for such testimony;
- c) pursuant to paragraph 6 of subsection 127(1) of the Act, Sunderji will be reprimanded;
- d) pursuant to clause 2 of subsection 127(1) of the Act, trading in any securities by Sunderji shall cease for a period of seven (7) years from the date of the approval of the Settlement Agreement;
- e) pursuant to clause 2.1 of subsection 127(1) of the Act, acquisition of any securities by Sunderji is prohibited for a period of seven (7) years from the date of the approval of the Settlement Agreement;
- f) pursuant to clause 3 of subsection 127(1) of the Act, any exemptions contained in Ontario securities law do not apply to Sunderji for a period of seven (7) years from the date of the approval of the Settlement Agreement;

- g) pursuant to clauses 7, 8.1 and 8.3 of subsection 127(1) of the Act, Sunderji shall resign all positions that he holds as a director or officer of any issuer, registrant or investment fund manager;
- h) pursuant to clauses 8, 8.2 and 8.4 of subsection 127(1) of the Act, Sunderji is prohibited for a period of seven (7) years from the date of the approval of the Settlement Agreement from becoming or acting as a director or officer of any issuer, registrant, or investment fund manager;
- i) pursuant to clause 8.5 of subsection 127(1) of the Act, Sunderji is prohibited for a period of seven (7) years from the date of the approval of the Settlement Agreement from becoming or acting as a registrant, as an investment fund manager or as a promoter;
- j) pursuant to clause 9 of subsection 127(1) of the Act, Sunderji shall pay an administrative penalty in the amount of \$5,000 for his failure to comply with Ontario securities law, to be designated for allocation or use by the Commission pursuant to subsections 3.4(2)(b)(i) or (ii) of the Act;
- k) pursuant to clause 10 of subsection 127(1), Sunderji shall disgorge to the Commission \$6,000 obtained as a result of his non-compliance with Ontario securities law, to be designated for allocation or use by the Commission pursuant to subsections 3.4(2)(b)(i) or (ii) of the Act;
- l) pursuant to section 127.1 of the Act, Sunderji shall pay to the Commission costs of \$5,000, to be designated for allocation or use by the Commission pursuant to subsections 3.4(2)(b)(i) or (ii) of the Act;
- m) after the payments set out in paragraphs (j), (k) and (l) above are made in full, as an exception to the provisions of paragraphs (d), (e) and (f), Sunderji will be permitted to trade in or acquire securities in his personal registered retirement savings plan (“RRSP”) accounts and/or tax-free savings accounts (“TFSA”) and/or for any registered education savings plan (“RESP”) accounts for which he is the or a sponsor;

- n) until the entire amount of the payments set out in paragraphs (j), (k) and (l) above are paid in full, the provisions of paragraphs (d), (e) and (f) above shall continue in force without any limitation as to time; and
- o) Sunderji agrees to make a payment on account of the payment ordered in paragraph (k) above of \$6,000 by certified cheque or bank draft within 30 days of the approval by the Commission of this Settlement Agreement.

DATED at Toronto this day of March, 2013.
