



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
NEW FUTURES TRADING INTERNATIONAL CORPORATION and
FERNANDO HONORATE FAGUNDES also known as HENRY ROCHE**

**STATEMENT OF ALLEGATIONS
OF STAFF OF THE ONTARIO SECURITIES COMMISSION**

Staff of the Ontario Securities Commission (“Staff”) allege:

I. OVERVIEW

1. New Futures Trading International Corporation (“New Futures”) and Fernando Honorate Fagundes also known as Henry Roche (“Fagundes”) (together, the “Respondents”) have been convicted by the United States District Court, District of New Hampshire (the “New Hampshire District Court”) of offences under the laws of the jurisdiction respecting the buying or selling of securities further to the Complaint dated November 15, 2011 (the “Complaint”) filed with the New Hampshire District Court by the United States Securities and Exchange Commission (the “SEC”).
2. In the Complaint, the SEC alleged that, between December 1, 2010 and May 11, 2011, the Respondents raised at least \$1.3 million from the offer and sale of high-yielding promissory notes in the name of New Futures to at least fourteen investors in the United States and Canada.
3. The SEC further alleged that Fagundes represented to some investors that their funds would be invested in bonds, treasury notes and/or 10 year Treasury note futures contracts,

while representing to others that the funds would be invested directly in New Futures. Instead, Fagundes used approximately \$937,000 of investors' money to make "interest" payments to prior investors in the scheme. In addition, Fagundes misappropriated another \$359,000 to support his lifestyle and to operate a horse breeding ranch in Kendal, Ontario.

4. In a Final Judgment dated May 24, 2012 (the "Final Judgment"), the New Hampshire District Court accepted as true the factual allegations in the Complaint and found the Respondents guilty of engaging in fraud in the offer or sale of securities, and of engaging in the offer and sale of unregistered securities.
5. Staff are seeking an inter-jurisdictional enforcement order reciprocating the Final Judgment pursuant to paragraphs 1, 2, and/or 3 of subsection 127(10) of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act").

II. THE NEW HAMPSHIRE PROCEEDINGS

A. The Respondents

6. New Futures is a New Hampshire corporation formed in November 2010 with a principal place of business in Bedford, New Hampshire.
7. Fagundes was a resident of Kendal, Ontario at the time of the impugned conduct. Although not listed as an officer of New Futures, the New Hampshire District Court accepted as true that Fagundes controlled the business.
8. Staff allege that "Henry Roche" is an alias used by Fernando Honorate Fagundes, who has also used the aliases Shane Silver, Shane Silverman, Shane Silva, Fernando Silva and Fernando Fagender.

B. The Findings of the New Hampshire District Court

9. Since at least 2008, Fagundes operated an internet-based stock and futures day trading business. Between 2009 and 2011, Fagundes offered day-trading training modules over

the internet via websites, internet advertising, and by posting promotional video recordings of the training sessions on websites such as YouTube.

10. Fagundes operated the online training program using at least three different company names. Beginning in 2009, the program was offered through Masters Palace, Inc. (“Masters Palace”). Some time in 2010, Fagundes changed the name of the entity or otherwise created a successor entity called Third Realm, Inc. (“Third Realm”). Third Realm is also referred to online as the “Third Realm Institute.” In the fall of 2010, Fagundes created New Futures.
11. While Fagundes was not listed as an officer or director in New Futures’ incorporation documents, Fagundes directed that the corporation be formed and that his wife, Emilia Elnasin (also known as Emilia Elnasin Roche or Lian Roche) (“Elnasin”) be named as a shareholder and officer. Fagundes retained *de facto* control over the operation.

Illegal Distribution of Securities

12. Certain students who participated in Fagundes’ training seminars were subsequently contacted by Fagundes and solicited to make additional investments in either the online stock and futures day-trading business or were solicited by Fagundes to invest additional money with him.
13. In return for the investment, in many instances Fagundes had promissory notes drafted, executed and issued to the investors. For the time period of 2009 to August 2011, promissory notes were issued in the names of the following Fagundes-affiliated entities: Masters Palace, Third Realm and New Futures. In some limited instances, additional promissory notes were issued in the name of Majestic Horses International Inc. (“Majestic Horses”), a horse breeding venture that Fagundes owned and/or operated in Kendal, Ontario.
14. The promissory notes usually contained the purported signature of Elnasin, an officer of New Futures, although in at least three instances, Fagundes electronically signed the original promissory note.

15. Between December 1, 2010 and May 11, 2011, Fagundes and New Futures issued at least eighteen promissory notes to fourteen investors in the amount of \$1.3 million. The promissory notes were similar to one another and typically included an interest or return provision that would pay investors a return of between 5-10% per month. The promissory notes also included a provision whereby the investor could demand the principal and/or any accrued interest be returned within 45 days. In some but not all of the promissory notes, there was an additional provision whereby the investors could choose to leave the investment in place for a defined period of time (usually fourteen months) and the investor would then be awarded a 200% return in addition to the original investment amount.

Fraudulent Conduct

16. Much of New Futures' investors' money was used for two primary purposes: payments to persons who were likely investors in one of Fagundes' prior schemes (Masters Palace and/or Third Realm) or Fagundes' equestrian related expenses. In total, from November 2010 to June 2011, at least \$884,000 was paid out to individuals who were prior investors in Fagundes-related entities, while at least another \$350,000 was used to pay the costs of Majestic Horses.
17. New Futures earned no revenue other than what it obtained through new investors and "tuition" for the trading training program. Contrary to Fagundes' representations to investors, monies raised from investors were not used to grow the trading futures business or invest in bonds and treasury notes. Because tuition fees alone were insufficient, New Futures had no way of paying its promissory note holders' interest payments without seeking out additional investors.

C. The Order of the New Hampshire District Court

18. In the Final Judgment, the New Hampshire District Court convicted the Respondents of employing the means or instrumentalities of interstate commerce, the mails, or facilities of national securities exchanges to engage in the conduct alleged in the Complaint.

19. In the Final Judgment, the New Hampshire District Court ordered that the Respondents are permanently restrained and enjoined from:
- a. violating, directly or indirectly, Section 10(b) of the Securities Exchange Act of 1934 (the “Exchange Act”) [15 U.S.C. § 78j(b)] and Rule 10b-5 promulgated thereunder [17 C.F.R. § 240.10b-5], by using any means or instrumentality of interstate commerce, or of the mails, or of any facility of any national securities exchange, in connection with the purchase or sale of any security:
 - i. to employ any device, scheme or artifice to defraud;
 - ii. to make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; or
 - iii. to engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person; and
 - b. violating Section 17(a) of the Securities Act of 1933 (the “Securities Act”) [15 U.S.C. § 77q(a)] in the offer or sale of any security by the use of any means or instruments of transportation or communication in interstate commerce or by use of the mails, directly or indirectly:
 - i. to employ any device, scheme, or artifice to defraud;
 - ii. to obtain money or property by means of any untrue statement of a material fact or any omission of a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or
 - iii. to engage in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser; and
 - c. violating Section 5 of the Securities Act [15 U.S.C. § 77e] by, directly or indirectly, in the absence of any applicable exemption:

- i. unless a registration statement is in effect as to a security, making use of any means or instruments of transportation or communication in interstate commerce or of the mails to sell such security through the use or medium of any prospectus or otherwise;
 - ii. unless a registration statement is in effect as to a security, carrying or causing to be carried through the mails or in interstate commerce, by any means or instruments of transportation, any such security for the purpose of sale or for delivery after sale; or
 - iii. making use of any means or instruments of transportation or communication in interstate commerce or of the mails to offer to sell or offer to buy through the use or medium of any prospectus or otherwise any security, unless a registration statement has been filed with the SEC as to such security, or while the registration statement is the subject of a refusal order or stop order or (prior to the effective date of the registration statement) any public proceeding or examination under Section 8 of the Securities Act [15 U.S.C. § 77h].
20. The New Hampshire District Court further ordered that each of Fagundes and New Futures:
 - a. is liable for disgorgement of \$1,242,972;
 - b. prejudgment interest thereon in the amount of \$40,917.47; and
 - c. a civil penalty in the amount of \$150,000.

21. The Final Judgment also ordered that the asset freeze entered by the New Hampshire District Court on December 7, 2011 shall remain in full force and effect.

III. JURISDICTION OF THE ONTARIO SECURITIES COMMISSION

22. The Respondents have been convicted by the New Hampshire District Court of offences under the laws of the jurisdiction respecting the buying or selling of securities, which are

circumstances which permit an order to be made pursuant to paragraphs 1, 2, and/or 3 of subsection 127(10) of the Act.

23. By engaging in the conduct described above, the Respondents acted in a manner contrary to the public interest, and an order is warranted pursuant to subsection 127(1) of the Act.
24. Staff reserve the right to amend these allegations and to make such further and other allegations as Staff deem fit and the Commission may permit.

DATED at Toronto, this 18th day of March, 2013.