



Ontario  
Securities  
Commission

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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 PAUL YOANNOU**

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

**Decision:** November 27, 2014

**Panel:** James E. A. Turner - Vice-Chair of the Commission

**Counsel:** Keir Wilmut - For Staff of the Commission

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## REASONS FOR DECISION

### I. OVERVIEW

[1] This was a hearing (the “**Hearing**”) conducted in writing before the Ontario Securities Commission (the “**Commission**”) pursuant to subsections 127(1) and 127(10) 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 an order imposing market conduct restrictions against Paul Yoannou (“**Yoannou**” or the “**Respondent**”).

[2] A Notice of Hearing in this matter was issued by the Commission on July 3, 2014 and a Statement of Allegations was filed by Staff of the Commission (“**Staff**”) on the same day. Both the Notice of Hearing and the Statement of Allegations were duly served on the Respondent.

[3] On August 18, 2014, the Commission heard an application by Staff to convert this matter to a written hearing in accordance with Rule 11.5 of the Commission’s *Rules of Procedure* (2012), 35 OSCB 10071, and section 5.1(2) of the *Statutory Powers Procedure Act*, R.S.O. 1990, c. S. 22, as amended. The Respondent was duly served with that application but did not appear at the application hearing or make any submissions.

[4] The Commission granted Staff’s application to proceed by way of written hearing and set a schedule for submission of materials by the parties.

[5] Staff filed written submissions, a hearing brief and a brief of authorities. The Respondent did not appear and did not file any responding materials.

#### *Facts*

[6] Pursuant to an Information sworn June 28, 2012 (the “**Information**”), Yoannou was charged with 32 counts of fraud over \$5,000, contrary to section 380(1)(a) of the Criminal Code, R.S.C. 1985, c. C-46, as amended (the “**Criminal Code**”).

[7] On February 1, 2013, Yoannou pleaded guilty to 15 counts of fraud over \$5,000. The circumstances underlying the offences arose from a transaction, business or course of conduct related to securities as described in paragraph [14] below.

[8] The conduct for which Yoannou was convicted took place over the period from October 2004 to January 2006.

[9] A sentencing hearing was held on February 28, 2013 before Justice Boivin of the Ontario Court of Justice. Justice Boivin issued oral reasons for sentence and sentenced Yoannou to a term of imprisonment of 6 years (the “**Court Decision**”). Restitution orders were also made in favour of Investors Group and one of the victims totalling \$6.6 million.

[10] On August 31, 2012, the Mutual Fund Dealers Association of Canada (“**MFDA**”) issued a Notice of Hearing (“**MFDA Notice of Hearing**”) concerning Yoannou’s misconduct while employed with Investors Group (a member of the MFDA) during the relevant time.

[11] On April 25, 2013, the MFDA matter was heard at a disciplinary hearing before a panel of the MFDA (the “**MFDA Panel**”). In its Reasons for Decision dated May 8, 2013 (the “**MFDA Decision**”), the MFDA Panel acknowledged Yoannou's guilty pleas before the Ontario Court of Justice in relation to his misconduct.

[12] The MFDA Panel accepted as proven the allegations contained in the MFDA Notice of Hearing, and found that Yoannou misappropriated at least \$6,000,000 from clients and other individuals, contrary to MFDA Rule 2.1.1. The MFDA Panel further found that Yoannou failed to attend an interview to provide a statement and to produce documents and records as requested by the MFDA in the course of its investigation, contrary to section 22.1 of MFDA By-law No. 1.

[13] The MFDA Panel ordered a permanent prohibition against Yoannou conducting securities related business in any capacity over which the MFDA has jurisdiction, pursuant to s. 24.1.1(e) of MFDA By-law No. 1.

## **II. ADMITTED FACTS**

[14] Yoannou admitted the following facts in respect of his criminal fraud convictions (the “**Admitted Facts**”):

- (a) Yoannou was employed with Investors Group as a financial consultant for 14 years. He managed finances for clients and gave financial advice to these clients on how to invest their money. He was located at the Investors Group office at 2345 Yonge Street until his dismissal;
- (b) between October of 2004 and January of 2012, Yoannou approached 30 of his Investors Group clients with three new investment strategies that he described as being Investors Group certified; these were a short term credit card program, a mortgage investment through bridge financing, and an investment in a company called Ethoca. These were not legitimate Investors Group investments, nor were they supported by Investors Group;
- (c) Yoannou's clients trusted Yoannou's financial advice after many years of investing with him;
- (d) the complainants authorized transfers from their accounts and/or borrowed money to invest with Yoannou, believing that the three investments referred to in (b) above were authorized by Investors Group and were sound investments;
- (e) at Yoannou's request, cheques were made out to him personally and money was transferred into Yoannou's personal account. In some cases, cheques were made out to other investors who Yoannou represented were being bought out. In these cases, one investor would make out a cheque directly to another investor;
- (f) Yoannou encouraged the complainants to mortgage their homes, to use lines of credit, or to take out loans to invest more money with him;

(g) when one of the clients referred to in the Information asked Yoannou to return her investment, he came up with excuses and refused to return it, telling her it was more financially beneficial to leave the money with him;

(h) in exchange for their investments, investors were provided with promissory notes on Investors Group letterhead, detailing the investments, and Yoannou provided some complainants with Investors Group portfolio summaries that had been modified to include the amounts of the dummy investments so that it appeared as if the money was still under the umbrella of Investors Group;

(i) the total loss to Investors Group of making investors whole was over \$6 million; and

(j) the funds Yoannou obtained from investors were used for different purposes. Some of the funds were used to pay back other investors. It also appears that Yoannou was gambling heavily during the time that he was taking money from his clients.

### III. ANALYSIS

#### A. Subsection 127(10) of the Act

[15] Subsection 127(10) of the Act provides as follows:

**127 (10) Inter-jurisdictional enforcement** – Without limiting the generality of subsections (1) and (5), an order may be made under subsection (1) or (5) in respect of a person or company if any of the following circumstances exist:

...

2. The person or company has been convicted in any jurisdiction of an offence arising from a transaction, business or course of conduct related to securities or derivatives.

[16] Yoannou has been convicted in Ontario of 15 counts of fraud over \$5,000 contrary to the Criminal Code. Those convictions arose from transactions, a business or a course of conduct related to securities. Yoannou admitted to misappropriating approximately \$6,600,000 which he had solicited from investors pursuant to various fraudulent investment schemes.

[17] I find that I have the authority to make a public interest order against the Respondent under subsection 127(1) of the Act in reliance on subsection 127(10) of the Act, based on the Court Decision and the Admitted Facts. Staff did not rely on the MFDA Decision in connection with this matter.

[18] I must determine whether, based on the Court Decision, the market conduct restrictions requested by Staff would be in the public interest. An important consideration is that the Respondent's conduct would have constituted a breach of the Act and/or would have been considered to be contrary to the public interest if proceedings had been brought under the Act. (*JV Raleigh Superior Holdings Inc., Re* (2013), 36 OSCB 4639 at para. 16)

## **B. Submissions of Staff**

[19] In order to protect Ontario investors and capital markets, Staff submits that it is in the public interest for the Commission to impose the following market conduct restrictions on the Respondent:

- (a) pursuant to paragraph 2 of subsection 127(1) of the Act, trading in any securities by Yoannou cease permanently;
- (b) pursuant to paragraph 2.1 of subsection 127(1) of the Act, the acquisition of any securities by Yoannou be prohibited permanently;
- (c) pursuant to paragraph 3 of subsection 127(1) of the Act, any exemptions contained in Ontario securities law do not apply to Yoannou permanently;
- (d) pursuant to paragraphs 7, 8.1 and 8.3 of subsection 127(1) of the Act, Yoannou resign any positions that he holds as a director or officer of any issuer, registrant or investment fund manager;
- (e) pursuant to paragraphs 8, 8.2 and 8.4 of subsection 127(1) of the Act, Yoannou be prohibited permanently from becoming or acting as a director or officer of any issuer, registrant or investment fund manager; and
- (f) pursuant to paragraph 8.5 of subsection 127(1) of the Act, Yoannou be prohibited permanently from becoming or acting as a registrant, as an investment fund manager or as a promoter.

[20] Staff submits that I am entitled to issue an order imposing these market conduct restrictions based solely on the evidence before me, which consists of the Court Decision and the Admitted Facts.

## **D. Should an Order be Issued?**

[21] When determining to exercise the Commission's public interest jurisdiction under section 127 of the Act, I must consider the purposes of the Act. Those purposes are set out in subsection 1.1 of the Act and are:

- (a) to protect investors from unfair, improper or fraudulent practices; and
- (b) to foster fair and efficient capital markets and confidence in capital markets.

[22] In pursuing these purposes, I must have regard for the fundamental principles described in section 2.1 of the Act. That section provides that one of the primary means for achieving the purposes of the Act is restrictions on fraudulent and unfair market practices and procedures.

[23] The Divisional Court in *Erikson v. Ontario (Securities Commission)* acknowledged that "participation in the capital markets is a privilege and not a right" (*Erikson v. Ontario (Securities Commission)*, [2003] O.J. No. 593 (Div. Ct.) at para. 55).

[24] An order under section 127 of the Act is protective and preventative in nature. As stated in *Re Mithras Management Ltd.* (1990), 13 OSCB 1600 at 1610-1611:

... the role of this Commission is to protect the public interest by removing from the capital markets – wholly or partially, permanently or temporarily, as the circumstances may warrant – those whose conduct in the past leads us to conclude that their conduct in the future may well be detrimental to the integrity of those capital markets. We are not here to punish past conduct; that is the role of the courts, particularly under section 118 [now section 122] of the Act. We are here to restrain, as best we can, future conduct that is likely to be prejudicial to the public interest in having capital markets that are both fair and efficient. In doing so we must, of necessity, look to past conduct as a guide to what we believe a person’s future conduct might reasonably be expected to be; we are not prescient, after all.

[25] In imposing the market conduct restrictions in this matter, I am relying on the Court Decision and the Admitted Facts. It is not appropriate in doing so to revisit or second-guess the findings in the Court Decision.

[26] I find that it is necessary to protect Ontario investors and the integrity of Ontario’s capital markets to impose market conduct restrictions against the Respondent in the public interest.

#### **E. The Appropriate Restrictions**

[27] In determining the nature and duration of the appropriate market conduct restrictions, I am relying on the following considerations:

- (a) the seriousness of the Respondent’s conduct and breaches of the Criminal Code;
- (b) the harm to investors; and
- (c) the fact that the restrictions imposed will deter the Respondent from engaging in any further abuses of Ontario investors and Ontario capital markets.

(See, for instance, *Re Belteco Holdings Inc.* (1998), 21 OSCB 7743 (“*Belteco*”) at paras. 25 and 26.)

[28] The following facts and circumstances are particularly relevant in determining the sanctions that should be ordered against the Respondent:

- (a) Yoannou committed fraud and was sentenced to six years imprisonment;
- (b) Justice Boivin noted Yoannou's misconduct, “involved building a trust relationship with the victims, only to abuse it on an ongoing basis thereafter. It was orchestrated by Mr. Yoannou. And it involved, in my view, a high level of deceit”;
- (c) Justice Boivin also noted, “[t]he impact ... was quite significant. And as the Crown has pointed out, the impact was to elderly people, many who had

worked all their lives to prepare for retirement and to put money away for an inheritance for their children”; and

- (d) Justice Boivin noted as aggravating factors that Yoannou's misconduct was “a sophisticated scheme.... It took place over a significant period of time,” and that “there seems to have been no apparent effort to stop until, ultimately, the house of cards tumbled in this particular case.”

[29] As mitigating factors, Justice Boivin noted Yoannou's co-operation with police, early guilty plea, indications of remorse and absence of a previous criminal record.

[30] I have reviewed the following Commission decisions in coming to a conclusion as to the appropriate sanctions to be imposed in this matter: *Re Landen*, (2010) 33 OSCB 9489, *Re Lech*, (2010), 33 OSCB 4795 (“**Lech**”), *Re Portus Alternative Asset Management Inc.*, (2012) 35 OSCB 8128, and *Re Maitland Capital Ltd.* (2012), 35 OSCB 1729.

[31] I note that each case depends upon its particular facts and circumstances (*Re M.C.J.C. Holdings Inc.* (2002), 25 OSCB 1133 at paras. 9 and 10 and *Belteco, supra*, at para. 26).

[32] The Commission found in *Lech* that a respondent’s criminal conviction for fraud over \$5,000, contrary to subsection 380(1)(a) of the Criminal Code, could be relied upon by the Commission, in the circumstances contemplated by subsection 127(10), to make an order in the public interest under subsection 127(1) of the Act.

[33] Although Yoannou has been sentenced by the Ontario Court of Justice for a term of imprisonment for fraud, the Commission retains jurisdiction to make orders in the public interest under section 127 of the Act relating to the same acts.

[34] Staff submits that the market conduct restrictions requested by it are appropriate to the misconduct of the Respondent and will serve as both specific and general deterrence. Staff submits that it is in the public interest for the Commission to exercise its authority under subsection 127(1) of the Act to protect Ontario investors and Ontario's capital markets from further misconduct by Yoannou.

[35] It is clear based on the Court Decision and the Admitted Facts that the Respondent should not be permitted to participate in the future in Ontario capital markets.

[36] Based on the foregoing, I have concluded that it is in the public interest to make an order under subsection 127(1) of the Act imposing on the Respondent the following market conduct restrictions requested by Staff:

- (a) pursuant to paragraph 2 of subsection 127(1) of the Act, trading in any securities by Yoannou cease permanently;
- (b) pursuant to paragraph 2.1 of subsection 127(1) of the Act, the acquisition of any securities by Yoannou be prohibited permanently;



- (c) pursuant to paragraph 3 of subsection 127(1) of the Act, any exemptions contained in Ontario securities law do not apply to Yoannou permanently;
- (d) pursuant to paragraphs 7, 8.1 and 8.3 of subsection 127(1) of the Act, Yoannou resign any positions that he holds as a director or officer of any issuer, registrant or investment fund manager;
- (e) pursuant to paragraphs 8, 8.2 and 8.4 of subsection 127(1) of the Act, Yoannou be prohibited permanently from becoming or acting as a director or officer of any issuer, registrant or investment fund manager; and
- (f) pursuant to paragraph 8.5 of subsection 127(1) of the Act, Yoannou be prohibited permanently from becoming or acting as a registrant, as an investment fund manager or as a promoter.

#### **IV. CONCLUSION**

[37] Accordingly, I find that it is in the public interest to issue an order in the form attached as Schedule “A” to these reasons.

**DATED** at Toronto this 27<sup>th</sup> day of November, 2014.

*“James E. A. Turner”*

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James E. A. Turner

**Schedule “A”**



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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 PAUL YOANNOU**

**ORDER  
(Subsections 127(1) and 127(10))**

**WHEREAS** on July 3, 2014, the Ontario Securities Commission (the “Commission”) issued a Notice of Hearing in this matter pursuant to subsections 127(1) and 127(10) of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the “Act”) in respect of Paul Yoannou (“Yoannou” or the “Respondent”);

**AND WHEREAS** Staff of the Commission (“Staff”) filed a Statement of Allegations in this matter on the same date;

**AND WHEREAS** on February 1, 2013, Yoannou pleaded guilty in the Ontario Court of Justice to 15 counts of fraud over \$5,000;

**AND WHEREAS** on February 28, 2013, Yoannou was sentenced by the Ontario Court of Justice to a term of imprisonment of six years and was ordered to pay restitution of \$6.6 million;

**AND WHEREAS** on August 18, 2014, the Commission granted Staff’s application to convert this matter to a written hearing in accordance with Rule 11.5 of the Commission’s *Rules of Procedure* (2012), 35 OSCB 10071 and section 5.1(2) of the *Statutory Powers Procedure Act*, R.S.O. 1990, c. S.22, as amended;

**AND WHEREAS** Staff filed written submissions, a hearing brief and a brief of authorities;

**AND WHEREAS** the Respondent did not appear and did not file any materials;

**AND WHEREAS** I issued written reasons for issuing this Order on the date hereof;

**AND WHEREAS** I find that it is in the public interest to issue this Order pursuant to subsection 127(1) of the Act in reliance upon subsection 127(10) of the Act;

**IT IS HEREBY ORDERED THAT:**

- (a) pursuant to paragraph 2 of subsection 127(1) of the Act, trading in any securities by Yoannou cease permanently;
- (b) pursuant to paragraph 2.1 of subsection 127(1) of the Act, the acquisition of any securities by Yoannou be prohibited permanently;
- (c) pursuant to paragraph 3 of subsection 127(1) of the Act, any exemptions contained in Ontario securities law do not apply to Yoannou permanently;
- (d) pursuant to paragraphs 7, 8.1 and 8.3 of subsection 127(1) of the Act, Yoannou resign any positions that he holds as a director or officer of any issuer, registrant or investment fund manager;
- (e) pursuant to paragraphs 8, 8.2 and 8.4 of subsection 127(1) of the Act, Yoannou be prohibited permanently from becoming or acting as a director or officer of any issuer, registrant or investment fund manager; and
- (f) pursuant to paragraph 8.5 of subsection 127(1) of the Act, Yoannou be prohibited permanently from becoming or acting as a registrant, as an investment fund manager or as a promoter.

**DATED** at Toronto this 27<sup>th</sup> day of November, 2014.

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James E. A. Turner