



Ontario  
Securities  
Commission

Commission des  
valeurs mobilières  
de l'Ontario

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**IN THE MATTER OF  
WAYNE J. BERRY**

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

1. Staff of the Enforcement Branch (**Staff**) of the Ontario Securities Commission (the **Commission**) elect to proceed using the expedited procedure for inter-jurisdictional proceedings as set out in Rule 11(3) of the Commission's *Rules of Procedure*.

**A. ORDER SOUGHT**

2. Staff request that the Commission make the following inter-jurisdictional enforcement order, pursuant to paragraphs 4 and 5 of subsection 127(10) of the Ontario *Securities Act*, RSO 1990 c S.5 (the **Act**):
  - (a) against Wayne J. Berry (**Berry**) that:
    - i. pursuant to paragraph 2 of subsection 127(1) of the Act, trading in any securities by Berry cease until May 26, 2022, with the exception that Berry is permitted to trade through a registrant to whom Berry must provide a copy of the Order of the Nova Scotia Securities Commission dated May 26, 2017 (the **NSSC Order**), and a copy of this Order, if granted;
    - ii. pursuant to paragraph 3 of subsection 127(1) of the Act, any exemptions contained in Ontario securities law do not apply to Berry until May 26, 2022;

- iii. pursuant to paragraphs 7, 8.1 and 8.3 of subsection 127(1) of the Act, Berry resign any positions that he holds as a director or officer of any issuer, registrant or investment fund manager;
  - iv. pursuant to paragraphs 8, 8.2 and 8.4 of subsection 127(1) of the Act, Berry be prohibited from becoming or acting as a director or officer of any issuer, registrant or investment fund manager until May 26, 2020;
  - v. pursuant to paragraph 8.5 of subsection 127(1) of the Act, Berry be prohibited from becoming or acting as a registrant, investment fund manager or promoter until May 26, 2022;
  - vi. pursuant to subsection 127(2) of the Act, as a term and condition of this Order, if granted, should Berry become aware that EnChargeCanada Corp. is to be revived or has been revived between the date of this Order and May 26, 2027, Berry is to immediately advise Staff of the Commission that EnChargeCanada Corp. has been revived; and
  - vii. Staff of the Commission may provide a copy of this Order, if granted, and a copy of the NSSC Order imposing sanctions, conditions, restrictions and requirements upon Berry, EnCharge Inc. and EnChargeCanada Corp., to any Director appointed under section 260 of the *Canada Business Corporations Act*, RSC 1985, c C-44 (the **CBCA**);
- (b) the Commission respectfully requests the aid of any Director appointed under section 260 of the CBCA who issues a certificate of revival with respect to EnChargeCanada Corp. prior to May 26, 2027 by advising Staff of the Commission of the issuance; and
- (c) such other order or orders as the Commission considers appropriate.

**B. FACTS**

Staff make the following allegations of fact:

3. On May 11, 2017, Berry, EnCharge Inc. and EnChargeCanada Corp. (collectively, the **NS Respondents**) entered into a Settlement Agreement (the **Settlement Agreement**) with the Nova Scotia Securities Commission (**NSSC**).
4. Pursuant to the Settlement Agreement, the NS Respondents admitted to breaching registration and prospectus requirements under Nova Scotia securities legislation, and agreed to be made subject to sanctions, conditions, restrictions or requirements within the province of Nova Scotia.
5. The NS Respondents are subject to the NSSC Order, which imposes sanctions, conditions, restrictions or requirements upon them.

**(i) The NSSC Proceedings***Statement of Agreed Facts*

6. In the Settlement Agreement, the NS Respondents agreed with the following facts:
  - (a) EnCharge Inc. is a body corporate, incorporated in the State of Nevada on February 26, 2009, and in the State of Delaware on June 11, 2009. Berry was an officer and director of the two corporations, which merged on July 10, 2009 to become EnCharge Inc., a Delaware corporation.
  - (b) EnChargeCanada Corp. was incorporated by Berry under the CBCA on June 23, 2009.
  - (c) At all material times, Berry was an officer and/or director of EnCharge Inc., a Nevada corporation, EnCharge Inc., a Delaware Corporation, and EnChargeCanada Corp. (collectively **EnCharge**).

- (d) Beginning in or about 2008, the NS Respondents solicited and distributed securities of EnCharge from and to residents in Nova Scotia through word of mouth, personal invitation, and the internet.
- (e) As a result of the promotion and solicitation of investments, the NS Respondents received money from Nova Scotia residents for investments in EnCharge.
- (f) One investor received a private placement memorandum prior to investing in EnCharge. Other investors did not receive any share certificates or any other documentation evidencing their investments in EnCharge.
- (g) EnCharge is not and never has been a reporting issuer in Nova Scotia or any other Canadian jurisdiction.
- (h) The NS Respondents were not registered to trade or distribute securities at any time or in any capacity with the NSSC or any other Canadian jurisdiction.
- (i) No prospectus or preliminary prospectus was filed with the NSSC for EnCharge nor was any receipt for same issued by the NSSC.
- (j) The NS Respondents did not file any reports of trades with the NSSC relying on exemptions in Nova Scotia securities laws to distribute securities in Nova Scotia.
- (k) As a result of soliciting investments from and distributing securities to residents of Nova Scotia, without being registered to do so, the NS Respondents violated section 31(1)(a) of the Nova Scotia *Securities Act*, RSNS 1989, c 418, as rep. by RSNS 2008, c. 32, s. 6 (proclaimed in force 28 September 2009) (the **Nova Scotia Securities Act**) and 31(1) of the Nova Scotia *Securities Act*.

- (l) As a result of distributing securities of EnCharge to residents of Nova Scotia without having filed a prospectus or preliminary prospectus with the NSSC and without relying on any exemptions in Nova Scotia securities laws, the NS Respondents violated section 58(1) of the *Nova Scotia Securities Act*.
- (m) The NS Respondents' conduct was contrary to the public interest and undermined investor confidence in the fairness and efficiency of the capital markets.

**(ii) The NSSC Order**

7. The NSSC Order imposed the following sanctions, conditions, restrictions or requirements upon the NS Respondents:
- i. pursuant to section 134(1)(a) of the *Nova Scotia Securities Act*, the NS Respondents comply with and cease contravening Nova Scotia securities laws;
  - ii. pursuant to section 134(1)(b) of the *Nova Scotia Securities Act*, Berry shall cease trading in securities on his own behalf or on behalf of others for a period of five years from the date of the NSSC Order, except through a person or company duly registered with the NSSC;
  - iii. pursuant to section 134(1)(c) of the *Nova Scotia Securities Act*, all of the exemptions contained in Nova Scotia securities laws do not apply to EnCharge Inc. and EnChargeCanada Corp. for a period of ten years from the date of the NSSC Order;
  - iv. pursuant to section 134(1)(c) of the *Nova Scotia Securities Act*, all of the exemptions contained in Nova Scotia securities laws do not apply to Berry for a period of five years from the date of the NSSC Order;
  - v. pursuant to section 134(1)(d)(ii) of the *Nova Scotia Securities Act*, Berry shall be prohibited from becoming or acting as a director or officer of

any issuer, registrant or investment fund manager for a period of three years from the date of the NSSC Order;

- vi. pursuant to section 134(1)(g) of the Nova Scotia *Securities Act*, Berry shall be prohibited from becoming or acting as a registrant, investment fund manager or promoter for a period of five years from the date of the NSSC Order;
- vii. pursuant to section 134(1)(h) of the Nova Scotia *Securities Act*, the NS Respondents shall be reprimanded;
- viii. pursuant to sections 135(a) and (b) of the Nova Scotia *Securities Act*, the NS Respondents shall jointly and severally pay to the NSSC an administrative penalty in the amount of forty thousand dollars (\$40,000.00) forthwith; and
- ix. pursuant to section 135A of the Nova Scotia *Securities Act*, the NS Respondents shall jointly and severally pay to the NSSC costs in the amount of three thousand five hundred dollars (\$3,500.00) in connection with the investigation and conduct of the NSSC's proceeding forthwith.

**(iii) The Corporate NS Respondents**

- 8. EnCharge Inc. and EnChargeCanada Corp. appear to have both been dissolved.

**C. JURISDICTION OF THE ONTARIO SECURITIES COMMISSION**

- 9. Pursuant to the Settlement Agreement, Berry agreed to be made subject to sanctions, conditions, restrictions or requirements within the province of Nova Scotia.
- 10. Berry is subject to an order of the NSSC imposing sanctions, conditions, restrictions or requirements upon him.

11. Pursuant to paragraphs 4 and 5, respectively, of subsection 127(10) of the Act, an order made by a securities regulatory authority, derivatives regulatory authority or financial regulatory authority, in any jurisdiction, that imposes sanctions, conditions, restrictions or requirements on a person or company, or an agreement with a securities regulatory authority, derivatives regulatory authority or financial regulatory authority, in any jurisdiction, that a person or company is to be made subject to sanctions, conditions, restrictions or requirements may form the basis for an order in the public interest made under subsection 127(1) of the Act.
12. Staff allege that it is in the public interest to make an order against Berry.
13. 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 23<sup>rd</sup> day of April, 2018.

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