

DECISION OF A PANEL APPOINTED PURSUANT TO *THE FINANCIAL AND CONSUMERS AFFAIRS  
AUTHORITY OF SASKATCHEWAN ACT*

**IN THE MATTER OF**

*THE SECURITIES ACT, 1988, S.S. 1988, C.S-42.2*

and

**IN THE MATTER OF**

**Trade12**

**Global Fin Services Limited**

and

**Exo Capital Markets Limited**

**Hearing held:** February 15, 2019

**Panel:** Gordon D. Hamilton (Chairperson)  
Mary Ann McFadyen (Panel Member)

**Appearances:** Dallas Smith (Counsel for Staff of the Financial and Consumer Affairs Authority of Saskatchewan)

No one appeared on behalf of the Respondents, Trade12, Global Fin Services Limited and Exo Capital Markets Limited

**Date of the Decision:** September 3, 2019

**Introduction**

1. This matter involves three entities – Trade12, Global Fin Services Limited and Exo Capital Markets Limited (the “Respondents”). Trade12, according to its online profile, listed [REDACTED], Estonia as the location of its operations. The website indicated that Trade12 was owned and operated by Global Fin Services Limited. Exo Capital Markets Limited is a corporation with a registered office in [REDACTED], Marshall Islands. Global Fin Services Limited was identified as a subsidiary of Exo Capital Markets Limited. Global Fin Services Ltd. is a corporation registered in [REDACTED], United Kingdom.

2. Trade12 is the business name associated with an online trading platform website accessible by Saskatchewan residents. Although it was unavailable at one point during the course of the hearing, it was accessible by the end of the hearing and remains active as of the date of issuing this decision.
3. The Respondents are alleged to have acted in a manner contrary to specific registration provisions of *The Securities Act, 1988*, SS 1988-89, c S-42.2 (the "Act"), namely subsections 27(2)(a) and 27(2)(b). Those provisions are reproduced below for reference:

*27(2) No person or company shall:*

*(a) act as a dealer or underwriter unless the person or company:*

*(i) is registered as a dealer; or*

*(ii) is registered as a representative of a registered dealer and is acting on behalf of the dealer;*

*(b) act as an adviser unless the person or company:*

*(i) is registered as an adviser; or*

*(ii) is registered as a representative of a registered adviser and is acting on behalf of the adviser;*

4. The allegations are that the Respondents acted as dealers and advisers without being registered with the Saskatchewan Financial and Consumer Affairs Authority of Saskatchewan (the "Authority").
5. The Hearing Panel has been asked to confirm that the Respondents have in fact breached the registration requirements of subsections 27(2)(a) and 27(2)(b) and to issue the appropriate orders. The orders requested as being appropriate in the circumstances are:
  - a. The statutory exemptions from registration in Saskatchewan did not apply to the Respondents and that they will be forever prevented from relying upon the exemptions in the future;
  - b. The Respondents shall be permanently ordered to cease trading in any securities or derivatives in Saskatchewan;
  - c. The Respondents shall be permanently ordered to cease acquiring any securities or derivatives for and on behalf of residents of Saskatchewan;
  - d. The Respondents shall be permanently ordered to cease giving advice respecting any securities, trades or derivatives for and on behalf of residents of Saskatchewan;
  - e. The Respondents shall be ordered to pay a \$25,000 administrative penalty to the Authority; jointly and severally?
  - f. The Respondents shall be ordered to pay the costs of or relating to the hearing in this matter.

#### **Preliminary Matters**

6. There was some uncertainty as to whether Global Fin Services Ltd. and Global Fin Services Limited are one and the same entity. The address listed on the Trade12 website for Global Fin Services Limited is the precise same address as listed on the corporate registration for Global Fin Services

Ltd. The website provided a corporate registration number for Global Fin Services Limited, which is the same registration number listed on the corporate registry for Global Fin Services Ltd.

7. On that basis, it is reasonable to conclude that Global Fin Services Ltd. and Global Fin Services Limited are the same corporate entity and the website contained a typographical error by using "Limited" instead of "Ltd." in the name of Global Fin Services Ltd. Any orders that arise out of this decision will be issued in relation to Global Fin Services Ltd.
8. The Respondents did not appear at the hearing. The hearing proceeded in their absence.
9. The Respondents had been sent the Notice of the Hearing on January 8, 2019, with it being transmitted to the electronic mail address and to the mailing addresses which they were using for business purposes. No responses were received acknowledging either the emailed or mailed notification. The January 8, 2019 notification advised of an adjournment, to February 15, 2019, of the previously scheduled hearing set for January 16, 2019.
10. Unfortunately, the Respondents were unresponsive to communications at many times throughout the investigation and scheduling process. For example, the Respondents did not respond to the notification sent to them, on December 19, 2018, that the hearing would be held on January 16, 2019. That notification included the cautionary advice that if they failed to attend the hearing, it would be held in their absence. Previously, on September 6, 2018, the Respondents had requested an adjournment of the original date set for the First Appearance, which was granted by the Hearing Panel. However, the Respondents thereafter failed to attend the rescheduled First Appearance teleconference on September 27, 2018, when hearing dates were being set. There was no further communication or responses from the Respondents, after September 6, 2018, even though the materials on the file confirmed that all subsequent correspondence to the Respondents was sent to the same email and regular mail addresses.

### **Key Issues**

11. Two main issues have been identified for the Hearing Panel's consideration, namely:
  - a. Did the Respondents act as dealers and advisers while not registered to do so, contrary to subsections 27(2)(a) and 27(2)(b)?
  - b. If the Respondents contravened subsections 27(2)(a) and 27(2)(b) of the Act, what are the appropriate orders to be imposed?

### **The Facts**

12. The Hearing Panel was provided with evidence about the actions of the Respondents and the impact of those actions. The only witness who tendered evidence was [REDACTED], an investigator with the Authority. The findings of fact are based on the information obtained in the course of his investigation, which was not challenged or refuted given the absence of the Respondents.
13. The Respondents operate a website found at <http://www.trade12.com> under the business name of Trade12.



14. The Trade12 website provides “one click trading capability” of “currencies, energy, agricultural commodities, indices and futures”. In response to the posed question of “why trade with us?”, the Trade12 website indicates that it provides the “most exceptional trading conditions available in the forex market”, including access to “forex, gold, silver and oil” and “futures on shares and indices”. The Trade12 website advises that an investor can access trades 24 hours a day with a “24/5 help desk” and can “leverage up to 1:400”.
15. In early 2017, a Saskatchewan investor (the “Investor”) came across a website called “Millionaire Blueprint”, which referred her to the Trade12 website. Within a day of being advised about Trade12, she received a phone call from an account manager of the Respondents, who directed her to the Trade12 website. He assisted her with the opening of a trading account, advising her that in order to open an account, she would have to verify her identity by providing a copy of her driver’s licence, a copy of a utility bill (with her home address on it) and a copy of the credit card with which she would be making deposits into her trading account. She provided the requested personal information to the Respondents’ account manager.
16. On September 23, 2016, the Investor deposited \$674.91 CAD (\$500 USD) into a trading account with the Respondents, after making contact with the account manager. Her first trades involved currency trades and oil & gas trades, which generated positive returns to her trading account. At one point shortly after her first few trades, she was awarded a bonus based on her previous trades.
17. The Respondents’ account manager encouraged her to deposit more funds. On November 11, 2016, she deposited \$1,384.01 CAD (\$1,000 USD) into her trading account. On November 25, 2016, she deposited an additional \$2,073.40 CAD (\$1,500 USD) with the Respondents in order to continue trading. Her total investments by this time had exceeded \$3,000 CAD.
18. The Investor was investing and trading with other companies in addition to the Respondents. Because of the number of investment companies she was dealing with, all of whom had an account manager, she could only confirm that her trades with the Respondents were made based on their recommendations. She could not confirm that it was the Respondents’ account manager who was the specific account manager who had remotely taken over the controls of her computer and physically performed the trades on her behalf. In any event, she had received direct advice from the Respondents on which trades to make and the trades were conducted through the Respondents’ website.
19. When the Investor requested that the Respondents return some of her investment monies to her, she was informed that she was ineligible for a return of funds at that time because she had been given a bonus payment. By accepting the bonus, restrictive terms were placed on the funds in her trading account which prevented liquidating her account until certain preconditions had been met.
20. Shortly after making the request for a return of her investment funds, the Investor was unable to get any response from the Respondents. She attempted to dispute the payments through her credit card company but was unsuccessful. As of the date of the hearing, she has not received the return of any of her investment funds.

21. None of the Respondents are registered in either Saskatchewan or any other Canadian jurisdiction to trade in or advise investors on foreign exchange contracts, contracts for difference, or any other type of investment contract.

### **Analysis and Findings**

22. Subsections 27(2)(a) and 27(2)(b) require registration with the Authority of any person or company who acts as a dealer or adviser. The allegations against the Respondents include the assertion that the Respondents acted as a dealer and adviser in relation to the Investor.
23. Section 2(1)(a.1) of the Act defines an “adviser” as: “a person or company engaging in or holding himself, herself or itself out as engaging in the business of advising another as to the investing in or the buying or selling of securities or derivatives”.
24. Section 2(1)(n) of the Act defines a “dealer” as: “a person or company engaging in or holding himself, herself or itself out as engaging in the business of trading in securities or derivatives as principal or agent”.
25. Section 2(1)(vv) of the Act defines what constitutes a “trade” as including:
- (i) any transfer, sale or disposition of a security for valuable consideration, whether the terms of payment be on margin, instalment or otherwise, but does not include a purchase of a security or, except as provided in subclause (iv), a transfer, pledge, mortgage or encumbrance of securities for the purpose of giving collateral for a bona fide debt;
    - (i.1) entering into a derivative or amending, terminating or assigning a derivative;
    - (i.2) buying, selling or otherwise acquiring or disposing of a derivative;
    - (i.3) novating a derivative, other than a novation with a clearing agency;
  - (ii) participation as a trader in a transaction in a security made on or through the facilities of an exchange or reported through the facilities of a quotation and trade reporting system;
    - (ii.1) participation as a trader in a transaction in a derivative through the facilities of a derivatives trading facility;
  - (iii) any receipt by a registrant of an order to buy or sell a security or an order to buy, sell, enter into, amend, terminate, assign or novate a derivative; (iv) any transfer, pledge, mortgage or encumbrancing of a security from the holdings of a control person for the purpose of giving collateral for a bona fide debt; and (v) any act, advertisement, solicitation, conduct or negotiation directly or indirectly in furtherance of anything mentioned in subclauses (i) to (iv);
  - (iv) any transfer, pledge, mortgage or encumbrancing of a security from the holdings of a control person for the purpose of giving collateral for a bona fide debt; and
  - (v) any act, advertisement, solicitation, conduct or negotiation directly or indirectly in furtherance of anything mentioned in subclauses (i) to (iv);
26. The facts disclosed that the Respondents, through the representations on their website and through their account manager’s communications with the Investor, provided advice, engaged in and held themselves out to the Investor as a dealer engaging in the provision of advice regarding trading in foreign exchanges, futures, and metals.



27. The Respondents received more than \$3,000 CAD from the Investor in a trading account, none of which was returned to her. The funds were obtained from the Investor's credit card which she was required to provide to the Respondents upon opening her trading account.

28. *Companion Policy 31-103CP: Registration Requirements and Exemptions and Ongoing Registrant Obligations* provides guidance to determine whether someone is "engaging in the business" of trading in securities.

*(a) Engaging in activities similar to a registrant. We usually consider an individual or firm engaging in activities similar to those of a registrant to be trading or advising for a business purpose. Examples include promoting securities or stating in any way that the individual or firm will buy or sell securities. If an individual or firm sets up a business to carry out any of these activities, we may consider them to be trading or advising for a business purpose.*

*(b) Intermediating trades or acting as a market maker. In general, we consider intermediating a trade between a seller and a buyer of securities to be trading for a business purpose. This typically takes the form of the business commonly referred to as a broker. Making a market in securities is also generally considered to be trading for a business purpose.*

*(c) Directly or indirectly carrying on the activity with repetition, regularity or continuity. Frequent or regular transactions are a common indicator that an individual or firm may be engaged in trading or advising for a business purpose. The activity does not have to be their sole or even primary endeavour for them to be in the business. We consider regularly trading or advising in any way that produces, or is intended to produce, profits to be for a business purpose. We also consider any other sources of income and how much time an individual or firm spends on all activities associated with the trading or advising.*

*(d) Being, or expecting to be, remunerated or compensated. Receiving, or expecting to receive, any form of compensation for carrying on the activity, including whether the compensation is transaction or value based, indicates a business purpose. It does not matter if the individual or firm actually receives compensation or in what form. Having the capacity or the ability to carry on the activity to produce profit is also a relevant factor.*

*(e) Directly or indirectly soliciting. Contacting anyone to solicit securities transactions or to offer advice may reflect a business purpose. Solicitation includes contacting someone by any means, including advertising that proposes buying or selling securities or participating in a securities transaction, or that offers services or advice for these purposes.*

29. When the above factors are examined in light of the evidence presented to the Hearing Panel, it is obvious that the Respondents were engaging in the business of trading and advising in securities. For example, the account manager contacted the Investor by telephone and solicited her for investment funds. The Respondents' account manager acted as the intermediary to conduct trades on behalf of the Investor. The Respondents' account manager recommended trades to her, which recommendations she accepted, and she then carried out the trades through the Respondents' online trading platform.

30. The Trade12 website itself includes the following “General Risk Disclosure”:

*CFD and/or Forex trading carry a high risk of loss and is not suited for everyone. These Services are offered by the Company and in addition are indices, commodities and metals for trade. By using the Services of the Company, you confirm that you are trading at your own risk and that you are aware of all the associated liabilities and costs, and that you are capable of managing your transactions on a regular basis.*

31. It is necessary to evaluate whether the Respondents were able to evade the registration requirements by qualifying under any of the permitted exemptions from registration under the Act. The Hearing Panel has reviewed the available statutory exemptions from registration and has concluded that none of the statutory exemptions apply to the Respondents and their activities with the Investor.
32. Having concluded that the Respondents had breached the registration requirements of the Act, by acting as dealers and advisers while not registered to do so in a manner that was contrary to subsections 27(2)(a) and 27(2)(b), the Hearing Panel has an obligation to impose the appropriate sanctions. In considering possible sanctions, the Hearing Panel must consider its responsibilities in protecting the investing public and in supporting the integrity of the securities markets. In considering these responsibilities, it must evaluate whether the appropriate sanctions should reflect a need for general and/or specific deterrence to prevent comparable disregard for the provisions of the Act in the future by the Respondents or others.
33. Given the blatant disregard for the provisions of the Act, it is necessary that certain sanctions be imposed to prevent similar future actions by the Respondents. In a previous decision, *In the Matter of the Securities Act, 1988, ss 1988, c S-42.2 and In the Matter of Darcy Lee Bergen* (October 31, 2000), a list of factors to consider when imposing sanctions was recommended by a different hearing panel. While those factors are non-exhaustive and non-binding, they are persuasive and have direct application to the facts presented to this Hearing Panel. This Hearing Panel accepts those factors as having relevance to the actions of the Respondents in this matter, such as the lack of any mitigation efforts by the Respondents, the unjust enrichment of the Respondents, the need to demonstrate the consequences of the Respondents’ inappropriate conduct, the need to deter the Respondents and others who may choose to ignore the Act, and similar orders by other hearing panels in similar circumstances.
34. Subsection 134(1) provides a list of possible orders as sanctions for the Hearing Panel to consider, all of which include the orders and sanctions requested by Staff. In previous hearings, such as *In the Matter of EMO Resources et al.* (October 17, 2016), a different hearing panel imposed sanctions pursuant to Section 134(1). This Hearing Panel has determined that the following sanctions are appropriate:
- a. The Respondents shall be permanently banned from relying upon any statutory exemptions from registration in the future, as permitted by subsection 134(1)(a);
  - b. The Respondents shall be ordered to permanently cease trading in any securities or derivatives in Saskatchewan, as permitted by subsection 134(1)(b);



- c. The Respondents shall be ordered to permanently cease acquiring any securities or derivatives for and on behalf of residents of Saskatchewan, as permitted by subsection 134(1)(d.1);
  - d. The Respondents shall be ordered to permanently cease giving advice respecting any securities, trades or derivatives for and on behalf of residents of Saskatchewan, as permitted by subsection 134(1)(e).
35. The above sanctions shall serve both as specific deterrence and protection for Saskatchewan investors from the Respondents' unlawful conduct.
36. The necessity of a hearing arose because of the specific actions of the Respondents and their persistent lack of responsiveness to written communications sent to them in relation to the investigative and hearing process. It is troubling that the Respondents requested an adjournment of the First Appearance meeting, and then effectively ceased responding to all subsequent communications and notifications.
37. Subsection 135.1 permits the Hearing Panel to impose an administrative penalty in appropriate circumstances. It is appropriate to assess an administrative penalty given these circumstances. Having reviewed the range of administrative penalties assessed by previous hearing panels in comparable circumstances, such as found in *In the Matter of Landbankers International MX, SA De CV* (December 11, 2013) and *In the Matter of Zulutoys Limited and RBOptions* (January 22, 2016), this Hearing Panel has determined that an administrative penalty of \$25,000 is appropriate.
38. The Hearing Panel has considered the request that the Respondents be ordered to 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' contravention of the Act. Given the recent decision of the Saskatchewan Court of Appeal in *C2 Ventures Inc. v Saskatchewan (Financial and Consumer Affairs Authority)*, 2019 SKCA 53 (CanLII), the Hearing Panel will not be making a compensation order at this time.
39. Leave was requested and granted for an updated bill of costs to be submitted once the final hearing costs were known and calculable. An estimated bill of costs was submitted at the hearing indicating costs of \$476.43 up to the date of the hearing, which did not include the additional costs associated with and flowing from the hearing process. The Hearing Panel will determine the issue of costs separately.

## Conclusion

40. Having concluded that the Respondents had breached the registration provisions of the Act, the Hearing Panel will issue the following consequential orders in due course.

Whereas the statutory exemptions from registration in Saskatchewan did not apply to the Respondents:

- a. The Respondents are prevented from relying upon the statutory exemptions at any time in the future;
- b. The Respondents are ordered to permanently cease trading in any securities or derivatives in Saskatchewan;



- c. The Respondents are ordered to permanently cease acquiring any securities or derivatives for and on behalf of residents of Saskatchewan;
- d. The Respondents are ordered to permanently cease giving advice respecting any securities, trades or derivatives for and on behalf of residents of Saskatchewan;
- e. The Respondents are ordered to pay a \$25,000 administrative penalty to the Authority.
- f. The Respondents are ordered to pay such costs as are approved as being appropriate by the Hearing Panel.

41. This is the unanimous decision of the Panel.

Dated in the City of Regina, this 3<sup>rd</sup> day of September, 2019.



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Gordon D. Hamilton (Chairperson)



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Mary Ann McFadyen (Panel Member)