



Ontario
Securities
Commission

Commission des
valeurs mobilières
de l'Ontario

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**IN THE MATTER OF
VRK FOREX & INVESTMENTS INC. and RADHAKRISHNA NAMBURI**

STATEMENT OF ALLEGATIONS
(Subsection 127(1) and Section 127.1
of the *Securities Act*, RSO 1990, c S.5)

A. OVERVIEW

1. This proceeding involves a deliberate breach of a formal undertaking not to engage in Ontario's capital markets without registration.
2. Three years ago, VRK Forex & Investments Inc. and its operating mind, Radhakrishna Namburi gave a commitment to the Ontario Securities Commission through a formal undertaking ("**Undertaking**"). As part of their Undertaking, the respondents admitted that they had engaged in the business of trading in securities on behalf of investors that required registration with the Commission. They represented to the Commission that the unregistered trading had stopped. They also promised that in the future prior to entering Ontario's capital markets and prior to accepting new money from investors the respondents would obtain registration in accordance with Ontario securities law and/or retain the services of a registrant to assist in the operation of their business activities, ensuring they are in compliance with the requirements of the Ontario Securities Act.
3. In a deliberate disregard for their Undertaking, the respondents broke their promise, re-entered Ontario's capital markets, and continued trading on behalf of at least 19 investors without being registered to do so. In a flagrant attempt to circumvent the Undertaking, the respondents told investors to open accounts with online trading platforms, deposit money into those accounts and give the respondents full access to those accounts so the respondents could make discretionary trades on the investors' behalf. By breaking their Undertaking, the respondents caused trading losses for investors of at least \$1 million.

4. An undertaking given to the Commission must be complied with in form and spirit. The unregistered activity and flagrant disregard of the Undertaking is serious misconduct that cannot be tolerated.

B. FACTS

Staff of the Enforcement Branch of the Ontario Securities Commission (“Staff”) make the following allegations of fact:

The Undertaking to Refrain from Unregistered Activity

5. In 2016, Staff contacted the respondents regarding their unregistered trading activities. Investors gave the respondents money to invest on their behalf with an expectation to profit. The respondents used the money to trade, primarily in contracts for difference (“CFDs”),¹ in a VRK account, an online trading platform.
6. The respondents were required to be registered with the Commission in order to trade on behalf of investors. Neither VRK nor Namburi have ever been registered with the Commission in any capacity.
7. Staff’s contact with the respondents led to the Undertaking, which included the following:
 - a. an admission by the respondents that they engaged in unregistered trading activity;
 - b. a representation that the respondents had stopped the unregistered trading activity; and
 - c. a promise that prior to re-entering Ontario’s capital markets and prior to accepting money from investors, the respondents would either obtain registration in accordance with Ontario securities law and/or retain the services of a registrant to assist the respondents to operate and conduct their business activities in compliance with the requirements of the Act.
8. Paragraphs 9 to 18 below set out how the respondents’ conduct after giving the Undertaking breached the Undertaking and Ontario securities law.

The Respondents’ Solicitation of Investors After the Undertaking

9. From September 2016 onward, the respondents breached their Undertaking by engaging in promotional activities to find new investors by:

¹ A CFD is a derivative investment that allows an investor an opportunity to profit from price movement without owning the underlying asset.

- a. providing investors with business cards and displaying signage at VRK's office in Westwood Square Mall in Mississauga, which marketed VRK's trading services;
- b. informing investors that they could expect to realize daily trading profits of 1% to 5%;
- c. meeting with individuals at the Toronto Money Show, the VRK mall office, and the VRK office operated out of Namburi's basement to promote Namburi's education, work and trading experience; and
- d. paying and/or offering to pay referral fees to individuals for referring clients to VRK.

The VRK Agreements Attempt to Circumvent the Undertaking

10. The respondents entered into agreements with at least 19 investors, which were designed to circumvent the registration requirements under the Act. The agreements contained language purporting to create an employment relationship between investors and the respondents. The agreements stated that neither VRK nor Namburi are registered with the Commission, before falsely stating that neither VRK nor Namburi are engaging in the business of trading in securities.
11. Namburi created the agreements and executed them on behalf of VRK.
12. The key features of the agreements are summarized below:
 - a. Investor accounts were to be opened on online trading platforms;
 - b. VRK and Namburi were authorized by investors to login to their online trading accounts to trade on their behalf;
 - c. VRK and Namburi were authorized to trade in securities, including CFDs; and
 - d. VRK was to be paid 50% of the monthly net profits.

Unregistered Trading and Advising After Giving the Undertaking

13. Investors provided the respondents with details necessary to access their online trading accounts, including usernames and passwords. Investors deposited at least \$3 million in their accounts.
14. The respondents accessed and monitored investors' accounts and traded on their behalf. They used their trading discretion to, among other things, select which CFDs to trade in and when and at what price to open and close positions.

15. Each CFD traded by the respondents was an “investment contract” and therefore a security as defined in subsection 1(1) of the Act.
16. The respondents have never been registered with the Commission in any capacity. No exemptions from registration were available to them under the Act.

The Respondents Received Profit Sharing Payments for Their Unregistered Activities After the Undertaking

17. When the respondents made profitable trades within the investor trading accounts, the respondents sent investors a notice of profits and requested that investors send them 50% of the monthly profits generated (the “**Profit Sharing Payments**”). Since the respondents were unable to direct money in the client accounts to their own accounts, investors were instructed to make Profit Sharing Payments with new funds from outside their trading accounts. The respondents received approximately \$300,000 from investors through Profit Sharing Payments.
18. The respondents continued trading until investors (including investors that had previously made Profit Sharing Payments) sustained losses in their accounts or the respondents were no longer able to access the accounts. Investors suffered losses of at least \$1 million. The respondents used high-risk margin trading on behalf of investors, which amplified investors’ losses.

C. BREACHES OF ONTARIO SECURITIES LAW AND CONDUCT CONTRARY TO THE PUBLIC INTEREST

Enforcement Staff alleges the following breaches of Ontario securities law and/or conduct contrary to the public interest:

19. The respondents flagrantly disregarded their Undertaking to the Commission by engaging in discretionary high-risk margin trading on behalf of at least 19 investors. As a result of their serious misconduct, investors suffered losses of at least \$1 million.
20. By engaging in the conduct described above, the respondents breached their Undertaking, and without being registered, engaged in, or held themselves out as engaging in, the business of trading in securities; and engaged in, or held themselves out as engaging in, the business of advising members of the public with respect to investing in, buying or selling securities contrary to subsections 25(1) and (3) of the Act. There were no exemptions from registration available to the respondents under the Act.

21. VRK and Namburi's conduct was contrary to the public interest.
22. Enforcement Staff reserve the right to amend these allegations to make such further and other allegations as Enforcement Staff may advise and the Commission may permit.

D. ORDER SOUGHT

Enforcement Staff request that the Commission make the following orders:

23. As against Radhakrishna Namburi, an Ontario resident and VRK Forex & Investments Inc., an Ontario corporation:
 - a. that they cease trading in any securities or derivatives permanently or for such period as is specified by the Commission, pursuant to paragraph 2 of subsection 127(1) of the Act;
 - b. that they be prohibited from acquiring any securities permanently or for such period as is specified by the Commission, pursuant to paragraph 2.1 of subsection 127(1) of the Act;
 - c. that any exemption contained in Ontario securities law not apply to them permanently or for such period as is specified by the Commission, pursuant to paragraph 3 of subsection 127(1) of the Act;
 - d. that they be reprimanded, pursuant to paragraph 6 of subsection 127(1) of the Act;
 - e. that they be prohibited from becoming or acting as a registrant, or promoter permanently or for such period as is specified by the Commission, pursuant to paragraph 8.5 of subsection 127(1) of the Act;
 - f. that they each pay an administrative penalty of not more than \$1 million for each failure to comply with Ontario securities law, pursuant to paragraph 9 of subsection 127(1) of the Act;
 - g. that they disgorge to the Commission any amounts obtained as a result of non-compliance with Ontario securities law, pursuant to paragraph 10 of subsection 127(1) of the Act;
 - h. that they pay costs of the Commission investigation and the hearing, pursuant to section 127.1 of the Act; and
 - i. such other order as the Commission may consider appropriate in the public interest.
24. As against Radhakrishna Namburi, VRK's operating mind and sole director:
 - a. that he resign any positions he may hold as a director or officer of any issuer, pursuant to paragraph 7 of subsection 127(1) of the Act;

- b. that he be prohibited from becoming or acting as a director or officer of any issuer, or registrant permanently or for such period as is specified by the Commission, pursuant to paragraphs 8, 8.2 and 8.4 of subsection 127(1) of the Act;

DATED at Toronto this 22nd day of November, 2019.

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