

ALBERTA SECURITIES COMMISSION

Citation: Re The Cash Store Financial Services Inc., 2020 ABASC 49

Docket: ENF-009610

Date: 20200416

AMENDED NOTICE OF HEARING

- To:** 1511419 Ontario Inc., formerly known as The Cash Store Financial Services Inc. and Gordon John Reykdal (the **Respondents**)
- Notice:** The Alberta Securities Commission (the **Commission**) will convene at 2:30 p.m. on Wednesday, March 14, 2018 at Calgary, Alberta, to set a date for a hearing regarding the allegations in this Notice (**Set Date**). At the hearing, the Commission will consider whether it is in the public interest to make orders against you under sections 198, 199, and 202 of the *Securities Act*, RSA 2000, c S-4, as amended (*Act*).
- Location:** Alberta Securities Commission, 5th Floor, 250 – 5 Street SW, Calgary, Alberta.
- Procedure:**
1. You may obtain disclosure and particulars of the allegations in this Notice from Kelli McAllister, c/o Alberta Securities Commission, 600, 250 - 5 Street SW, Calgary, Alberta, T2P 0R4, telephone: 403.355.4181, email: kelli.mcallister@asc.ca.
 2. You may be represented by legal counsel and you or your counsel may make representations and introduce relevant evidence.
 3. If you or your counsel fail to attend on Wednesday, March 14, 2018 at 2:30 p.m., or as directed, the hearing may proceed in your absence and an order may be made against you without further notice.
- See attached sections 29, 198, 199, and 202 of the Act, and Commission Rule 15-501 – Rules of Practice and Procedure for Commission Proceedings.*
- Reciprocation:** Take notice that orders or settlements made by the Alberta Securities Commission may form the basis for parallel orders in other jurisdictions in Canada. The securities laws of some other Canadian jurisdictions may allow orders made in this matter to take effect in those other jurisdictions automatically, without further notice to you. If an order is made or a settlement agreement is reached in relation to this Notice, you should contact the securities regulator of any other jurisdiction in which you may intend to engage in any securities-related activities.

Allegations

Parties

1. 1511419 Ontario Inc., formerly known as The Cash Store Financial Services Inc. (**CSF**), is a corporation amalgamated pursuant to the laws of Ontario. It was incorporated on January 17, 2002 and extra-provincially registered in Alberta on January 30, 2002.
2. CSF shares traded on the Toronto Stock Exchange and on the New York Stock Exchange. Its head office was located in Edmonton, Alberta.
3. Gordon John Reykdal (**Reykdal**) is a resident of Alberta. Reykdal was the Chief Executive Officer (**CEO**) and a director of CSF. Reykdal had overall responsibility for the operations of CSF.

Circumstances

4. CSF was in the business of providing short-term loans or advances and other financial services in Canada.
5. CSF obtained funds from creditors and provided them to customers, who paid interest and fees on short-term loans. Wholly-owned CSF subsidiaries managed the operation of retail lending outlets in different regions.
6. In order to obtain funds, CSF signed a number of written agreements (**Broker Agreements**) in which it promised to act as a loan broker on behalf of creditors, which CSF described in its disclosure as independent third party lenders (**TPL(s)**).
7. CSF earned revenue on short-term loans it brokered by charging customers a broker fee.
8. CSF's continuous disclosure stated that the TPLs were not guaranteed a return but that CSF had decided to voluntarily make retention payments to TPLs that continued to be willing to fund advances to CSF's customers to lessen the impact of loan losses experienced by TPLs (the **Retention Payments**).

CSF Disclosure Regarding Its Business

9. As a reporting issuer, CSF was required to provide prescribed, continuous disclosure. CSF's disclosure filed with the Commission included the following:
 - 9.1 Annual 2011 Consolidated Financial Statements for the 12 and 15 months ended September 30, 2011 and September 30, 2010 (**YE 2011 Financial Statements**);
 - 9.2 Interim Consolidated Financial Statements for the three months ended December 31, 2011 (**Q1 2012 Financial Statements**); and

- 9.3 Interim Consolidated Financial Statements for the three and six months ended March 31, 2012 (**Q2 2012 Financial Statements**);
- (collectively, CSF's **Financial Disclosure**).
10. Pursuant to NI 52-109, Reykdal certified, among other things, that CSF's Financial Disclosure filed with the Commission fairly presented in all material respects the financial condition of CSF and did not contain any untrue statement of a material fact or omit to state a material fact required to be stated or that was necessary to make a statement not misleading.
11. CSF's Financial Disclosure described the Broker Agreements and the Retention Payments as the basis on which CSF dealt with TPLs.
12. According to the Broker Agreements, and among other terms:
- 12.1 CSF was obligated to arrange loans between customers and the TPLs, including by collecting the principal and interest received from customers;
- 12.2 CSF was obligated to pay the principal and interest received from customers to TPLs;
- 12.3 The annual interest rate payable by customers was 59 per cent;
- 12.4 TPLs bore the risk of losses due to default in payment; and
- 12.5 CSF bore the risk of losses due to default in payment, in the full amount of principal plus accrued interest (defined as the "loan loss"), if it failed to perform its duties under the Broker Agreement.
13. The Retention Payments were described in the Financial Disclosure as voluntary and discretionary payments made to lessen, deflect or otherwise reduce the impact of loan losses and as consideration to TPLs willing to continue lending.

CSF's Actual Arrangements Regarding Its Business

14. In reality, CSF operated its business in a manner fundamentally different from the description of its operations contained in its disclosure, including its Financial Disclosure.
15. CSF's Financial Disclosure did not disclose that CSF was not complying with the Broker Agreements, including that:
- 15.1 CSF did not forward the principal and interest received from customers to the TPLs but instead used collected funds for further lending; and
- 15.2 CSF paid TPLs 17.5 per cent annual interest calculated on the amount of TPL capital advanced, regardless of loan performance.

16. Reykdal was responsible for CSF's relationships with TPLs. Specifically:
 - 16.1 Reykdal negotiated the rate of interest paid to TPLs; and
 - 16.2 Reykdal told some of the TPLs that CSF would ensure that the TPLs suffered no loss of capital.
17. CSF's Financial Disclosure did not disclose that CSF had effectively assumed responsibility for loan losses. When CSF purchased the majority of the TPL loan portfolio on January 31, 2012, it paid the TPLs' face value for the loan portfolio. The TPLs suffered no loss of capital.

CSF Financial Disclosure Omissions and Certifications

18. CSF's Financial Disclosure omitted the actual arrangements between CSF and the TPLs and did not state the facts necessary to make the Financial Disclosure not misleading. In particular, the facts set out in paragraphs 15 to 17 were material to CSF's risk profile and financial condition, but were omitted from CSF's Financial Disclosure.
19. The effect of CSF's Financial Disclosure was that the actual arrangements between CSF and the TPLs and their financial implications were kept from the investing public.
20. As CEO, Reykdal falsely certified CSF's Financial Disclosure. Reykdal was aware of the actual arrangements with the TPLs. Reykdal knew, or ought to have known, that the Financial Statements contained misrepresentations and did not fairly present the financial condition of CSF.

Breaches

21. As a result of the above, Staff allege that:
 - 21.1 CSF contravened subsection 92(4.1) of the *Act* by making statements in its Financial Disclosure that CSF knew, or reasonably ought to have known, were misleading or untrue in a material respect, or which failed to state a fact necessary to make a statement not misleading and which would reasonably be expected to have a significant effect on the market price or value of CSF's securities.
 - 21.2 Reykdal authorized, permitted or acquiesced in the contraventions set out in subparagraph 21.1.

21.3 Reykdal contravened section 221.1 of the *Act* and Part 4 and Part 5 of NI 52-109 by falsely certifying the YE 2011, Q1 2012 and Q2 2012 Financial Statements.

Calgary, Alberta, April 16, 2020.

) ALBERTA SECURITIES COMMISSION

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) *“Original signed by”*

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David C. Linder, Q.C.

) Executive Director