

IN THE MATTER OF
THE *SECURITIES ACT*, R.S.N.S. 1989, CHAPTER 418, AS AMENDED ("Act")

-and-

IN THE MATTER OF WAYNE J. BERRY,
ENCHARGE INC. AND ENCHARGE CANADA CORP. ("Respondents")

SETTLEMENT AGREEMENT

PART I – INTRODUCTION

1. The parties to this Settlement Agreement ("Agreement") are the Respondents and the Director of Enforcement for the Nova Scotia Securities Commission, Enforcement Branch ("Director of Enforcement").
2. The parties agree that the Nova Scotia Securities Commission ("Commission") has jurisdiction over this matter.
3. The parties agree to recommend to the Commission approval of this Agreement in accordance with the terms and process set out herein.

PART II – PROCEDURE FOR APPROVAL OF THE AGREEMENT

4. The Director of Enforcement agrees to request that a Notice of Hearing be issued setting down a hearing ("Settlement Hearing") wherein the Commission will consider whether it is in the public interest to approve this Agreement and to issue an Order in the form attached as **Schedule "A"**.
5. The parties agree that this Agreement constitutes the entirety of evidence to be submitted to the Commission at the Settlement Hearing.
6. The Director of Enforcement agrees to recommend that the allegations acknowledged and admitted by the Respondents be resolved and disposed of in accordance with this Agreement.
7. The parties acknowledge that this Agreement will become a public document upon its approval by the Commission at the Settlement Hearing.

PART III – STATEMENT OF AGREED FACTS

8. The Director of Enforcement and the Respondents agree with the facts and conclusions set out in this Agreement.

9. 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. Wayne J. Berry ("Berry") was an officer and director of the two corporations, which merged on July 10, 2009 to become EnCharge Inc., a Delaware corporation.
10. EnChargeCanada Corp. was incorporated by Berry under the *Canada Business Corporations Act* on June 23, 2009.
11. 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").
12. Beginning in or about 2008, the Respondents solicited and distributed securities of EnCharge from and to residents in Nova Scotia through word of mouth, personal invitation, and the internet.
13. As a result of the promotion and solicitation of investments, the Respondents received money from Nova Scotia residents for investments in EnCharge.
14. 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.
15. EnCharge is not and never has been a reporting issuer in Nova Scotia or any other Canadian jurisdiction.
16. The Respondents were not registered to trade or distribute securities at any time or in any capacity with the Commission or any other Canadian jurisdiction.
17. No prospectus or preliminary prospectus was filed with the Commission for EnCharge nor was any receipt for same issued by the Commission.
18. The Respondents did not file any reports of trades with the Commission relying on exemptions in Nova Scotia securities laws to distribute securities in Nova Scotia.
19. As a result of soliciting investments from and distributing securities to residents of Nova Scotia, without being registered to do so, the Respondents violated section 31(1)(a) of the Act, as rep. by R.S.N.S. 2008, c. 32, s. 6 (proclaimed in force 28 September 2009) and section 31(1) of the Act.
20. As a result of distributing securities of EnCharge to residents of Nova Scotia without having filed a prospectus or preliminary prospectus with the Commission and without relying on any exemptions in Nova Scotia securities laws, the Respondents violated section 58(1) of the Act.

21. The Respondents conduct was contrary to the public interest and undermined investor confidence in the fairness and efficiency of the capital markets.

PART IV – STATEMENT OF ALLEGATIONS ACKNOWLEDGED AND ADMITTED BY THE RESPONDENT

22. The Respondents admit the facts set forth in Part III herein and acknowledge that they violated Nova Scotia securities laws.
23. The Respondents acknowledge and admit that they violated sections 31(1)(a) of the Act, as rep. by R.S.N.S. 2008, c. 32, s. 6 (proclaimed in force 28 September 2009), and sections 31(1) and 58(1) of the Act.
24. The Respondents acknowledge that their actions undermined investor confidence in the fairness and efficiency of capital markets and were contrary to the public interest.

PART V – MITIGATING FACTORS

25. The Respondents acknowledge and accept responsibility for their conduct which is the subject matter of this Agreement.
26. The Respondents sought and relied upon legal advice which led them to believe they were acting in accordance with Nova Scotia securities laws.
27. The Respondents believed they were acting in accordance with the law and that EnCharge was an exempt corporation under Nova Scotia securities laws.
28. Berry believed in EnCharge and that it was a sound investment.
29. The Respondents did not intend to violate Nova Scotia securities laws.

PART VI – TERMS OF SETTLEMENT

30. The terms of settlement are set forth in this Agreement and in the Order contained in **Schedule “A”** to this Agreement, which is expressly incorporated herein.
31. The Respondents consent to the Order contained in **Schedule “A”**.

PART VII – COMMITMENTS

32. If this Agreement is approved and the order as set out in **Schedule “A”** is granted, the parties agree to waive any right to a full hearing and judicial review and appeal of this matter.

33. If this Agreement is approved by the Commission, the parties will not in any way make any statement, public or otherwise, that is inconsistent with the terms of this Agreement.
34. If this Agreement is approved by the Commission, the Respondents agree to abide by all terms of this Agreement.
35. If, for any reason whatsoever, this Agreement is not approved, or the order set forth in **Schedule "A"** is not granted by the Commission:
 - a) The Director of Enforcement and the Respondents will be entitled to proceed to a hearing of the allegations which are the subject matter of this Agreement unaffected by the Agreement or the settlement negotiations;
 - b) The negotiations, the terms of the Agreement and the Agreement will not be raised in any other proceeding or disclosed to any person except with the written consent of the Director of Enforcement and the Respondents or as may otherwise be required by law; and
 - c) The Respondents agree that they will not raise in any proceeding the Agreement or the negotiations or process of approval thereof as a basis of any attack or challenge of the Commission's jurisdiction, alleged bias, appearance of bias, alleged unfairness or any other challenge that may otherwise be available.
36. The Respondents acknowledge that the Director of Enforcement has the discretion to withdraw from this Agreement if additional facts or issues are discovered that cause him to conclude that it would not be in the public interest to request approval of this Agreement. In the event of such withdrawal, notice will be provided to the Respondents in writing and the provisions of paragraph 35 of this Agreement will apply.

PART VIII – DISCLOSURE OF SETTLEMENT AGREEMENT

37. The Director of Enforcement or the Respondents may refer to any or all parts of this Agreement as required by the General Rules of Practice and Procedure and in the course of the Settlement Hearing. Otherwise, this Settlement Agreement and its terms will be treated as confidential by all parties to it until approved by the Commission, and forever if, for any reason whatsoever, this settlement is not approved by the Commission.

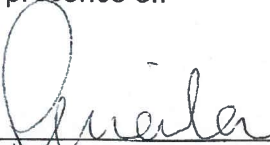
PART IX – EXECUTION OF SETTLEMENT AGREEMENT

38. This Agreement may be signed in one or more counterparts that together shall constitute a binding agreement and a facsimile copy of any signature shall be as effective as an original signature.

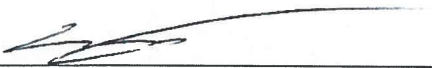
DATED at Toronto, Ontario, this 1 day of May, 2017.

SIGNED, SEALED AND DELIVERED

In the presence of:



Witness
TINA MUKUMBILA

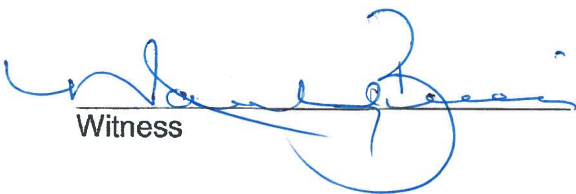


EnCharge Inc., EnCharge Canada Corp., and Wayne J. Berry
Per: Wayne J. Berry

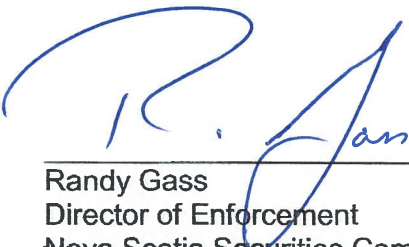
DATED at Halifax, Nova Scotia, this 11th day of May, 2017.

SIGNED, SEALED AND DELIVERED

In the presence of:



Witness



Randy Gass
Director of Enforcement
Nova Scotia Securities Commission
Enforcement Branch

SCHEDULE "A"

IN THE MATTER OF
THE *SECURITIES ACT*, R.S.N.S. 1989, CHAPTER 418, AS AMENDED ("ACT")

-and-

IN THE MATTER OF WAYNE J. BERRY
ENCHARGE INC. AND ENCHARGE CANADA CORP. ("Respondents")

ORDER

(Sections 134, 135 and 135A)

WHEREAS on December 10, 2012, the Nova Scotia Securities Commission ("Commission") issued a Notice of Hearing to Berry pursuant to sections 134, 135, 135A and 136A of the Act;

AND WHEREAS the Respondents entered into a Settlement Agreement with the Director of Enforcement for the Commission ("Director of Enforcement") whereby they agreed to a proposed settlement of the proceeding, subject to the approval of the Commission;

AND WHEREAS the Director of Enforcement and the Respondents recommend approval of the Settlement Agreement;

AND WHEREAS the Commission is of the opinion that the Respondents have contravened Nova Scotia securities laws and it is in the public interest to make this Order;

AND UPON reviewing the Settlement Agreement, and hearing the submissions of counsel for the Director of Enforcement and the Respondents;

IT IS HEREBY ORDERED that:

1. The Settlement Agreement dated _____, 2017, a copy of which is attached, is approved;
2. Pursuant to section 134(1)(a) of the Act, the Respondents comply with and cease contravening Nova Scotia securities laws;
3. Pursuant to section 134(1)(b) of the 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 this order, except through a person or company duly registered with the Commission;
4. Pursuant to section 134(1)(c) of the 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 this order;

5. Pursuant to section 134(1)(c) of the 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 this order;
6. Pursuant to section 134(1)(d)(ii) of the 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 this order;
7. Pursuant to section 134(1)(g) of the 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 this order;
8. Pursuant to section 134(1)(h) of the Act, the Respondents shall be reprimanded;
9. Pursuant to sections 135(a) and (b) of the Act, the Respondents shall jointly and severally pay an administrative penalty in the amount of forty thousand dollars (\$40,000.00) forthwith; and
10. Pursuant to section 135A of the Act, the Respondents shall jointly and severally pay costs in the amount of three thousand five hundred dollars (\$3,500.00) in connection with the investigation and conduct of this proceeding forthwith.

DATED at Halifax, Nova Scotia, this day of , 2017.

NOVA SCOTIA SECURITIES COMMISSION

(Chair)