

IN THE MATTER OF THE *SECURITIES ACT*,
S.N.B. 2004, c. S-5.5

AND IN THE MATTER OF

James A. MacCallum,
Andrew Mitchell Holdings, LLC and
Andrew J. Trites

(Respondents)

SETTLEMENT AGREEMENT

(with respect to the Respondents James A. MacCallum and
Andrew Mitchell Holdings, LLC)

Part I

1. STAFF TO RECOMMEND SETTLEMENT

Staff of the New Brunswick Securities Commission ("Staff") agree to recommend approval of settlement of this matter with respect to Respondents James A. MacCallum and Andrew Mitchell Holdings, LLC (the "Respondents") to a panel of the New Brunswick Securities Commission (the "Commission") pursuant to section 191(1)(a) of the *Securities Act*, 2004 S.N.B., c. s-5.5 (the "*Securities Act*") in accordance with the following terms and conditions:

- a. The Respondents agree to the Statement of Facts set out in Part II hereof, and consent to the making of an order, on the basis of those facts, substantially similar to that set out in Schedule "A" hereto (the "order contemplated by this Settlement Agreement"); and
- b. The terms of any settlement will become public information only if, and when, the settlement is approved by the Commission.

2. RESPONDENTS' OBLIGATIONS IF SETTLEMENT APPROVED

If the Settlement Agreement is approved, the Respondents undertake and/or agree as follows:

- a. The Respondents shall not make any statement, either directly or indirectly, which is inconsistent with the Agreed Statement of Facts herein. Any such statement shall constitute a breach of this Settlement Agreement;

- b. In accordance with the order contemplated by this Settlement Agreement, the Respondents agree that:
- i. Pursuant to section 184(1)(c)(ii) of the *Securities Act*, the Respondents shall cease trading in securities permanently, except that the Respondents may trade in and for their own accounts through a registered securities dealer;
 - ii. Pursuant to section 184(1)(d) of the *Securities Act*, the Respondents shall be denied all exemptions under New Brunswick securities law permanently, except that the Respondents may trade in and for their own accounts through a registered securities dealer;
 - iii. Pursuant to section 184(i) of the *Securities Act*, the Respondent James A. MacCallum shall be prohibited from becoming or acting as a director or officer of any issuer, registrant or mutual fund manager;
 - iv. Pursuant to section 184(1)(p) of the *Securities Act*, the Respondent shall disgorge to the New Brunswick Securities Commission, on a joint-and-several basis, the amount of one million, seven hundred and seventy five thousand dollars (\$1,775,000.00), such payment to be subordinate to any claim for the repayment of principal made directly or indirectly by any investor;
 - v. Pursuant to section 186(1) of the *Securities Act*, the Respondent shall pay to the New Brunswick Securities Commission, on a joint-and-several basis, an administrative penalty in the amount of fifty thousand dollars (\$50,000.00); and
 - vi. Pursuant to sections 185(1) and 185(2) of the *Securities Act*, the Respondent shall pay to the New Brunswick Securities Commission, on a joint-and-several basis, costs in the amount of ten thousand dollars (\$10,000.00).
- c. The Respondents consent to a regulatory Order made by any provincial or territorial securities regulatory authority in Canada containing any or all of the sanctions set out in paragraphs (b)(i), (b)(ii) and (b)(iii) above; and
- d. The Respondents consent to the registration in the State of New York of a New Brunswick Court of Queen's Bench Judgment to be issued in respect of the order contemplated by this Settlement Agreement, and each Respondent will, upon request of Staff, undertake all action required to affect such registration.

3. PROCEDURE FOR APPROVAL OF SETTLEMENT

- a. Upon execution of the Settlement Agreement by Staff and by the Respondents, Staff will apply to the Commission for an order approving the Settlement Agreement.

- b. If the Settlement Agreement is approved by the Commission, it will constitute the entirety of the evidence submitted respecting the Respondents in this matter.
- c. If the Settlement Agreement is approved by the Commission, the Respondents agree to waive any right to a hearing and/or appeal with respect to this matter.
- d. If, for any reason whatsoever, this settlement is not approved by the Commission and the order contemplated by this Settlement Agreement is not made by the Commission:
 - i. Staff and the Respondents will be entitled to all available proceedings, remedies and challenges, including proceeding to a hearing, unaffected by the Settlement Agreement or any of the settlement negotiations;
 - ii. The terms of this agreement will not be referred to in any subsequent proceeding or disclosed to any person, except with the written consent of both Staff and the Respondents, or as may be required by law; and
 - iii. The Respondents further agree that they will not raise, in any proceeding, the Settlement Agreement or the negotiation or process of approval thereof, as a basis for any attack on the jurisdiction of the Commission.

4. DISCLOSURE OF SETTLEMENT AGREEMENT

- a. The terms of the Settlement Agreement will be treated as confidential by the parties hereto until approved by the Commission and forever if, for any reason, the Settlement Agreement is not approved by the Commission; and
- b. Upon the approval of the Settlement Agreement by the Commission, any obligation as to confidentiality shall terminate and the Settlement Agreement will become public information.

5. BREACH OF SETTLEMENT AGREEMENT

The Respondents acknowledge and understand that in the event of a breach or failure to comply with this Settlement Agreement, Staff may commence proceedings under section 179(2) of the *Securities Act* against the Respondents and seek any remedy available under that section, including an Order for imprisonment and/or a fine.

6. STAFF COMMITMENT

If this settlement is approved by the Commission, Staff will not initiate any other proceeding under the *Securities Act* against the Respondent in relation to the facts set out in Part II of this Settlement Agreement.

7. EXECUTION OF SETTLEMENT AGREEMENT

The Settlement Agreement shall constitute a binding agreement and a facsimile copy of any signature shall be as effective as an original.

DATED at the City of Saint John this 21st day of February 2013.

"original signed by"

Jake van der Laan
Director, Enforcement, NBSC

DATED at the municipality of Jamestown in the State of New York this 21st day of February 2013.

"original signed by"

James A. MacCallum

Witness:
(print name)

DATED at the municipality of Jamestown in the State of New York this 21st day of February 2013.

Andrew Mitchell Holdings, LLC

"original signed by"

Per: James A. MacCallum
Sole Member

Witness:
(print name)

Part II

STATEMENT OF FACTS

1. James A. MacCallum ("MacCallum") is an individual resident in Jamestown, New York, where, until recently, he was employed as a lawyer. MacCallum is originally from the Moncton area of New Brunswick. MacCallum has issued promissory notes to investors in New Brunswick.
2. Andrew Mitchell Holdings, LLC ("AMH") is a New York corporation controlled by MacCallum. AMH has issued a promissory note to an investor in New Brunswick. AMH maintains its head office in Jamestown, New York.
3. Neither MacCallum nor AMH (together the "Respondents") have ever been registered pursuant to the *Securities Act* to trade in securities in New Brunswick.

Particulars of the Notes Issued

4. MacCallum has issued promissory notes to investors resident in New Brunswick as follows:
 - (a) A \$30,000 promissory note issued to "Mr. A" on or about 7 January 2009, bearing interest at a rate of 15% per year. This note was issued contrary to sections 71 and 45(a) of the *Securities Act*.
 - (b) A \$75,000 promissory note issued to "Ms. B" on or about 1 February 2009, bearing interest at a rate of 18% per year. This note was issued contrary to sections 71 and 45(a) of the *Securities Act*.
 - (c) A \$500,000 promissory note issued to "Prof. Corporation" on or about 6 February 2009, bearing interest at a rate of 15% per year. No Report of Exempt Distribution was filed in respect of this note, contrary to sections 71 and 45(a) of the *Securities Act* and section 6.1(1) of National Instrument 45-106.
 - (d) A \$500,000 promissory note to "Mr. C" effective 7 September 2009 and issued on or about 20 May 2010, bearing interest at a rate of 18% per year. No Report of Exempt Distribution was filed in respect of this note, contrary to sections 71 and 45(a) of the *Securities Act* and section 6.1(1) of National Instrument 45-106.
5. AMH issued a promissory note to Prof. Corporation on or about 27 October 2009. The note recorded principal of \$1,200,000, but only \$700,000 was advanced under the note. The note bears interest at a rate of 18% per year. A Report of Exempt Distribution was not filed in respect of this note until 22 December 2009, contrary to section 6.1(2) of National Instrument 45-106. This filing was completed at the urging of Staff of the New Brunswick Securities Commission.
6. MacCallum and AMH purportedly used the money raised via the issuing of the promissory notes to fund various investments, including investments in real estate, a life insurance policy, and a promissory note issued by a third party.

The Circumstances Surrounding the Issuing of the Note to “Ms. B”

7. In January of 2009, the principal of Prof. Corporation had a loan outstanding to MacCallum in the amount of approximately \$330,000. The principal wished to have this loan repaid, after which he was considering advancing a larger loan.
8. MacCallum was able to repay this \$330,000 loan, in part, by borrowing \$75,000 from Ms. B, which was secured by the promissory note described in paragraph 4(b), above. After being repaid the \$330,000, the principal of Prof. Corporation authorized the loan secured by the promissory note described in paragraph 4(c), above.
9. Were it not for this advance of funds from Ms. B, MacCallum would not have been able to repay the principal of Prof. Corporation. Further, MacCallum failed to disclose these circumstances to either Ms. B or the principal of Prof. Corporation, which amounts to conduct contrary to the public interest.
10. Prof. Corp. subsequently advanced a loan secured by the promissory note described in paragraph 4(c), above.

Performance of the Promissory Notes

11. MacCallum has defaulted in repayment of the promissory notes to Ms. B, Prof. Corporation and Mr. C. The note to Mr. A was paid-out by a third party due to a dispute with respect to the term of the note. The notes remain outstanding.
12. AMH has defaulted in the repayment of the promissory note to Prof. Corporation. The note remains outstanding.

Mitigating Factors

13. MacCallum is remorseful of his inability to repay the investments and the resulting losses to the investors. This has had an extremely detrimental effect on his family relations and his financial well-being. MacCallum is presently insolvent, and has been suspended from the practice of law in the State of New York as a result of his capital raising activities.
14. MacCallum admits that he did not conduct the required due diligence in respect of the business activities described in paragraph 6 above.
15. The Respondents have had no prior involvement with the Commission. This is the only instance where the Respondents have been subject to proceedings under the *Securities Act*.
16. MacCallum has accepted responsibility for his failure to comply with New Brunswick securities law.
17. The Respondents have cooperated with Staff in the resolution of this matter.

Schedule "A"

IN THE MATTER OF THE *SECURITIES ACT*,
S.N.B. 2004, c. S-5.5

AND IN THE MATTER OF

James A. MacCallum and
Andrew Mitchell Holdings, LLC

(Respondents)

ORDER

WHEREAS on 22 September 2011, Staff of the New Brunswick Securities Commission (the "Commission") issued an interim consent Order against the Respondents; and

WHEREAS the Respondents have entered into a Settlement Agreement dated ~ January 2013 (the "Agreement") in which they agreed to a proposed settlement of violations of New Brunswick securities law, subject to the approval of the Commission; and

WHEREAS upon reviewing the said Agreement and the Agreed Statement of Facts therein; and

WHEREAS the Commission is of the opinion that it is in the public interest to make this Order.

NOW THEREFORE IT IS HEREBY ORDERED that:

- i. Pursuant to section 191(1)(a) of the *Securities Act*, the Agreement dated ~ January 2013 with respect to the Respondents is hereby approved;
- ii. Pursuant to section 184(1)(c)(ii) of the *Securities Act*, the Respondents shall cease trading in securities permanently, except that the Respondents may trade in and for their own accounts through a registered securities dealer;
- iii. Pursuant to section 184(1)(d) of the *Securities Act*, the Respondents shall be denied all exemptions under New Brunswick securities law permanently, except that the Respondents may trade in and for their own accounts through a registered securities dealer;
- iv. Pursuant to section 184(1)(i) of the *Securities Act*, the Respondent James A. MacCallum shall be prohibited from becoming or acting as a director or officer

of any issuer, registrant or mutual fund manager;

- v. Pursuant to section 184(1)(p) of the *Securities Act*, the Respondent shall disgorge to the New Brunswick Securities Commission, on a joint-and-several basis, the amount of one million, seven hundred and seventy five thousand dollars (\$1,775,000.00), such payment to be subordinate to any claim for the repayment of principal made directly or indirectly by any investor;
- vi. Pursuant to section 186(1) of the *Securities Act*, the Respondent shall pay to the New Brunswick Securities Commission, on a joint-and-several basis, an administrative penalty in the amount of fifty thousand dollars (\$50,000.00); and
- vii. Pursuant to sections 185(1) and 185(2) of the *Securities Act*, the Respondent shall pay to the New Brunswick Securities Commission, on a joint-and-several basis, costs in the amount of ten thousand dollars (\$10,000.00).

DATED at the City of Saint John this _____ day of _____, 2013.

~, Panel Chair

~, Panel Member

~, Panel Member

New Brunswick Securities Commission
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Saint John, New Brunswick
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