

**IN THE MATTER OF THE *SECURITIES ACT*
S.N.B. 2004, c. S-5.5 ("the Act")**

AND

IN THE MATTER OF

ALAIN BRIEN

AMICABLE SETTLEMENT

1) INTRODUCTION

- a) Alain Brien ("Mr. Brien") is an individual who lives in Quebec. He was employed as a consultant by Investors Services Limited/Services Investors Limitée ("LSIL") for approximately seven years; however, Mr. Brien was dismissed in November 2005. Prior to January 1, 2006, Investors Group Inc. carried on its mutual fund dealer business through two dealers, namely LSIL in the province of Quebec, and Investors Group Financial Services Inc./Services financiers Groupe Investors inc. ("IGFS"). Effective January 1, 2006, IGFS and LSIL were amalgamated under the name Investors Group Financial Services Inc./Services financiers Groupe Investors inc. (IGFS).
- b) According to the National Registration Database ("NRD"), Mr. Brien is currently employed by AXA Financial Services Inc./AXA Services Financiers Inc. and he is registered with the Autorité des marchés financiers of Quebec ("AMF"). However, Mr. Brien was never registered in any capacity whatsoever with the New Brunswick Securities Commission ("Commission").

2) AGREED STATEMENT OF FACTS

Offence # 1

- a) In the course of an investigation, Commission staff learned that Mr. Brien had traded in securities on behalf of New Brunswick clients without being registered with the Commission. When he was employed by LSIL, he traded on behalf of 16 New Brunswick clients between November 2003 and March 2005.

Offence # 2

- b) In the course of the investigation, Mr. Brien sent statements to the Commission staff that, at the time, in respect to the circumstances in which they occurred, were misleading or untrue, or he did not state a fact that was required to be stated or that was necessary to make the statements not misleading. The aforesaid misleading statements were made in various documents submitted by Mr. Brien.

3) DETAILS ABOUT THE FACTS

- a) On April 13, 2005, the staff received a letter from Mr. Brien in which he explained that all his New Brunswick clients had gone to Quebec to sign the necessary documents so that he could provide them with investment advice.
- b) On April 18, 2005, the staff received copies of application forms to open accounts for 12 New Brunswick clients that Mr. Brien had named on April 13, 2005. The aforesaid application forms confirmed that the documents had been signed in Quebec, as Mr. Brien had already stated.
- c) The staff alleges that LSIL and Mr. Brien omitted a certain number of clients living in New Brunswick, and on May 17, 2005, a letter was received from Mr. Brien apologizing for inadvertently omitting six clients from the list he had sent to the staff on April 13, 2005.
- d) The staff once again questioned the veracity of the information Mr. Brien had provided to that point and asked to have the information resubmitted in an affidavit. The staff then received a letter from Mr. Brien dated May 25, 2005, accompanied by an affidavit executed by him on May 26, 2005. Mr. Brien admitted in his letter that he had misled the staff in his previous correspondence about his New Brunswick clientele and about where he had met his clients. He said he had made an error in judgment by lying at the beginning.

4) CONDUCT PREJUDICIAL TO THE PUBLIC INTEREST

- a) With respect to offence #1, the staff submits the following:
In trading on behalf of New Brunswick clients without being registered, Mr. Brien violated section 45 of the *Act* and acted in a manner prejudicial to the public interest. Section 45 of the *Act* states:

45 Unless exempted under this Act or the regulations, no person shall:

- a) trade in a security or act as an underwriter unless the person is registered as a dealer, or is registered as a salesperson, as a partner or as an officer of a registered dealer and is acting on behalf of the dealer.
- b) With respect to offence #2, the staff submits the following: Mr. Brien violated paragraph 179(2)(a) by making misleading statements to the staff.

179(2) A person who does any of the following commits an offence and is liable on conviction to a fine of not more than \$1,000,000 or to imprisonment for a term of not more than 5 years less a day, or to both:

- a) makes a statement in any information or material submitted, provided, produced, delivered or given to or filed with the Commission, the Executive Director, a compliance officer, an investigator or any person acting under the authority of the Commission or the Executive Director that is misleading or untrue or does not state a fact that is required to be stated or that is necessary to make the statement not misleading;

5) POSITION OF STAFF

- a) Since May 25, 2005, Alain Brien has cooperated with the staff during the investigation and during the negotiation of the current settlement.
- b) No clients have filed complaints against Mr. Brien, and the staff agrees that no one has suffered financially from dealing with him.

6) JOINT SETTLEMENT RECOMMENDATION

- a) The staff agrees to recommend a settlement in accordance with the terms and conditions set out below:
- b) Alain Brien agrees to the settlement based on the facts set out in sections 2 and 3 above and consents to the making of an order on the basis of those facts;
- c) This settlement agreement will be released to the public only if and when the settlement is approved by the Commission.

7) TERMS OF SETTLEMENT

- a) Alain Brien undertakes to pay the amount of \$10,000 toward a penalty.
- b) Alain Brien accepts the imposition of an order under paragraph 184(1)(c) of the *Act*, prohibiting him from trading in any securities for a period of ten years;
- c) Alain Brien accepts the imposition of an order under paragraph 184(1)(d) of the *Act* that any exemptions contained in New Brunswick securities law do not apply to him for a period of ten years;
- d) Once this settlement has been approved, ALAIN BRIEN will refrain from making any statement inconsistent with the agreed statement of facts.

8) PROCEDURE FOR APPROVAL OF SETTLEMENT

- a) Upon execution of the agreement by the staff and by Alain Brien, staff will apply to the Commission for an order in the form set out in Schedule "A" attached hereto approving the terms set out herein.
- b) If this settlement agreement is approved by the Commission it will constitute the entirety of the evidence to be submitted respecting Alain Brien in this matter and Alain Brien agrees to waive any right to a hearing and/or appeal with respect to this matter.
- c) If, for any reason whatsoever, this settlement is not approved by the Commission, or the order set forth in Schedule "A" is not made by the Commission:

