

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

AND IN THE MATTER OF

RICHARD A. SCOTT

(Respondent)

MOTION

1. **Staff of the New Brunswick Securities Commission (“Staff” and “NBSC”, respectively) alleges the following concerning the respondent Richard A. Scott (the “Respondent”):**

Allegation #1: As of 19 January 2012, the Respondent has distributed 17 notes evidencing indebtedness to 13 investors resident in New Brunswick. The notes bear interest at a rate of 20% per year, payable at maturity (one year). The total principal owed by the Respondent under the notes is approximately \$1,217,650.00 (i.e. exclusive of accrued interest).

It appears to Staff that the Respondent invested proceeds of the 17 notes in shares of two Canadian junior mining companies. The current value of the Respondent’s total investments in these companies is estimated at approximately \$590,000.00, based on prices quoted as of 16 February 2012. Under these circumstances, the issuing of new securities to new investors would constitute an act contrary to the public interest.

Allegation #2: The Respondent has filed no prospectus pursuant to section 71(1) of the *Securities Act*, S.N.B. 2004, c. S-5.5, as amended (the “*Securities Act*”), nor any Report of Exempt Distribution pursuant to section 6.1(1) of National Instrument 45-106 (“NI-45-106”), concerning the 17 outstanding notes issued by him, nor with respect to any previous, matured notes.

The Respondent bears the onus of establishing that: (1) all distributions were made pursuant to valid exemptions from the prospectus requirements; and (2) the exemptions relied on do not require the filing of a Report of Exempt Distribution pursuant to section 6.1(1) of NI 45-106. Absent this, Staff alleges that the Respondent has failed to comply with section 71 of the *Securities Act* and / or section 6.1(1) of NI 45-106.

Allegation #3: By virtue of the fact that the Respondent has invested significant sums in equity securities with the proceeds of debt securities issued to multiple New Brunswick residents, Staff alleges that the Respondent has engaged in the

business of trading in securities in New Brunswick without being registered to do so with the NBSC, contrary to section 45(a) of the *Securities Act*.

2. **The particulars of the Allegations are:**

The Respondent

- a) The Respondent Richard A. Scott ("Mr. Scott") is an individual resident at [REDACTED], Woodstock, New Brunswick. Mr. Scott has never been registered with the NBSC to trade in securities.
- b) Mr. Scott has never filed any prospectus or Report of Exempt Distribution with the NBSC.

The Notes

- c) Mr. Scott has outstanding 17 notes distributed to 13 investors resident in the area of Woodstock, New Brunswick. The total amount owing under the notes is \$1,217,650 in principal, plus accrued interest. The notes bear interest at a rate of 20% per year, and are each for a term of one year.
- d) In addition to the notes, Mr. Scott gave each investor a cheque, issued by him, for the principal and interest due under the note and post-dated to the maturity of the note.
- e) The 13 present investors include individuals who have previously made similar investments with Mr. Scott. Upon maturity of these previous notes, each investor was given the option to redeem their note in full, redeem the interest owing and leave the principal invested, or to roll-over the principal and some or all of the interest into a new note. To date, no investor has redeemed a note in full.
- f) Mr. Scott offered to pay interest of 20% because he found that investors were unwilling to lend at lesser rates of interest.
- g) Mr. Scott advised the investors as to the nature of the investment that would be made with the proceeds of the loan, although he did not advise as to the particular mining companies involved. It does not appear to Staff that Mr. Scott made any misrepresentations to the investors.

The Investments in the Mining Companies

- h) As of 19 January 2012, Mr. Scott owned 1,926,050 shares of a Canadian junior gold mining company listed on the TSX Venture Exchange, and 1,010,250 shares of a Canadian junior silver mining company quoted on the OTC Bulletin Board, an American inter-dealer quotation system. These shares were purchased, at least in part, with proceeds of the 17 notes issued by Mr. Scott to the 13 New Brunswick investors.

- i) The present value of the investments made by Mr. Scott in the two mining companies is approximately \$590,000.00, based on prices quoted as of the date of filing. These shares are thinly traded and liquidating large position would have the likely effect of driving down the price available to the seller.
- j) Nine of the 17 notes issued by Mr. Scott mature before the end of July, 2012. Mr. Scott will owe a total of \$813,180.00 in principal and interest under these notes at their respective maturities. This amount exceeds the present value of the securities purchased by Mr. Scott.
- k) It is contrary to the public interest to allow Mr. Scott to issue securities to new investors under these circumstances.

Scott's Refusal to Provide a Written Undertaking Regarding Further Notes

- l) Mr. Scott spoke with an NBSC investigator on 17 January 2012, at which time he provided a verbal undertaking not to borrow further funds through the issuing of securities.
- m) On 19 January 2012, Mr. Scott voluntarily provided the investigator with a written description of his activities relating to the 17 notes and the two mining companies.
- n) On 2 February 2012, the investigator wrote to Mr. Scott requesting written confirmation of the verbal undertaking given on 17 January 2012. Mr. Scott did not provide such written confirmation.
- o) On 9 February 2012, the investigator met with Mr. Scott and his legal counsel. At that time, Mr. Scott's legal counsel advised him not to provide any written confirmation of his undertaking to the NBSC concerning the issuing of new securities.

The Status of the Investigation

- p) Staff have sought an Investigation Order, pursuant to section 170(2) of the *Securities Act*, concerning Mr. Scott. The investigation is ongoing.

Conclusion

- q) The public interest, together with the conduct of the Respondent, warrants that the Respondent be prohibited from raising additional funds by issuing new securities, directly or indirectly, to investors. This relief is sought in the public interest pursuant to section 184(1) of the *Securities Act*.

Relief

- r) Take notice that at the hearing of this Motion, a hearing panel of the NBSC may make an *interim* Order pursuant to section 184(1) of the *Securities Act*, which may include the following relief:
- (i) a cease trade Order pursuant to section 184(1)(c)(i) or 184(1)(c)(ii);
 - (ii) a denial of exemptions under New Brunswick securities law pursuant to section 184(1)(d);
 - (iii) an order that the Respondent provide information to investors or the public pursuant to section 184(1)(f) or 184(1)(k);
 - (iv) an officer and director ban pursuant to section 184(1)(i);
 - (v) an order, pursuant to section 184(1)(m), that the Respondent cease contravening New Brunswick securities law; and
 - (vi) an order for disgorgement pursuant to section 184(1)(p).

3. **Evidence to be relied on:**

- a) The affidavit of Gordon Fortner, Senior Investigator, sworn the 16th day of February 2012; and
- b) Such further and other evidence as Staff may adduce and the Commission permit in support of this motion for an *interim* Order.

DATED at the City of Saint John this 16th day of February 2012.

"original signed by"

Mark McElman
Counsel to Staff of the NBSC

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