

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

AND IN THE MATTER OF

**WEALTH POOLS INTERNATIONAL, INC.,
ROBERT E. LANE, JAMES H. OAGLES,
RONALD J. FULTON, and JEANNIE TRACY**

(Respondents)

REASONS FOR THE DECISION:

Robert E. Lane

Date of Hearing: 26 March 2008

Date of Decision: 21 July 2008

Panel:

Hugh J. Flemming, Q.C., Panel Chair

Anne W. La Forest, Panel Member

Kenneth Savage, Panel Member

Representatives:

Neil Sandler

For the staff of the New Brunswick
Securities Commission

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REASONS FOR THE DECISION:

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1. INTRODUCTION AND BACKGROUND

[1] This matter involves allegations that the respondent Robert E. Lane (Lane) illegally distributed securities issued by Wealth Pools International Inc. (Wealth Pools) to New Brunswick residents. The New Brunswick Securities Commission (Commission) held a hearing on 26 March 2008 to determine if Lane breached subsections 45(a) and 71(1) of the New Brunswick *Securities Act (Act)* by trading in securities without being registered with the Commission and without having filed a prospectus.

[2] Staff of the Commission (Staff) filed a Statement of Allegations with the Commission on 20 December 2007, alleging:

- a. The Respondents have traded in securities in New Brunswick without being registered, in contravention of subsection 45(a) of the *Securities Act*.
- b. The Respondents effected a distribution of securities in New Brunswick without having filed a prospectus, in contravention of subsection 71(1) of the *Securities Act*.

[3] A Notice of Hearing for the 26 March 2008 hearing date was issued on 2 January 2008, regarding all five Respondents in this matter. Prior to the hearing date, Staff of the Commission (Staff) entered into Settlement Agreements with the Respondents Wealth Pools, James Oagles (Oagles), Ronald Fulton (Fulton) and Jeannie Tracy (Tracy). Oagles, Fulton and Tracy admitted to breaching sections 45

and 71 of the *Act* by illegally trading in securities in New Brunswick without being registered and without having filed a prospectus. The four Settlement Agreements with Wealth Pools, Oagles, Fulton and Tracy were approved by the Commission.

[4] The 26 March 2008 hearing involved the remaining respondent, Lane. Staff sought a permanent cease trade order, an administrative penalty and costs to be ordered against Lane due to his alleged contraventions of subsections 45(a) and 71(1) of the *Act*.

[5] Despite receiving proper notice of the hearing, as evidenced by an affidavit of service of Roger C. Handley dated 7 January 2008, which was filed by Staff as an exhibit in this proceeding, Lane did not appear and did not file any materials with the Commission.

[6] At the hearing Staff presented documentary, video and direct viva voce evidence. Commission staff member Mark McElman (Investigator) testified on behalf of the Commission, in his capacity as an investigator on this file. The Investigator testified to his involvement in the Wealth Pools investigation from its inception through to Staff's filing of their Statement of Allegations. His testimony, strongly supported by documentary and video exhibits, provided a detailed outline of both the Wealth Pools scheme and Lane's involvement. His testimony and exhibits were credible and uncontested.

[7] After the hearing, the Panel issued an order indicating that having reviewed the evidence presented by Staff, they were of the opinion that Lane contravened paragraph 45(a) and subsection 71(1) of the *Act* by trading in securities in New Brunswick without being registered and without having filed a prospectus. Based on the evidence, the Panel held that it was in the public interest that Lane permanently cease trading in all securities.

[8] The Panel reserved their decision on the imposition and quantum of administrative penalties and costs, and provided Staff an opportunity to make written

submissions on this issue. Staff filed their Post-Hearing Submission dated 11 April 2008, which was considered by the Panel in rendering their decision on the imposition and quantum of administrative penalties and costs.

[9] The following constitutes the Panel's reasons for its decision regarding Lane's contravention of paragraph 45(a) and subsection 71(1) of the *Act*; the Panel's reasons for the permanent cease trade order issued against Lane; and the Panel's reasons for the decision and resulting order on the imposition and quantum of administrative penalties and costs.

2. FACTS & FINDINGS

a. The Wealth Pools Scheme

[10] Wealth Pools was a commission-based investment scheme, commonly known as a pyramid scheme. Under the guise of the purported sale of DVDs instructing English speakers to learn Spanish, Wealth Pools offered potential investors the opportunity to purchase "associate" memberships in the pyramid. Once associates purchased their memberships in the scheme they became eligible to receive passive income from various pools.

[11] Associates paid US\$199.95 to purchase a Spanish language training DVD. This DVD offered limited instruction, and is only approximately 30 minutes in length. Based on the evidence provided by the Investigator, the Panel is satisfied that the DVDs were not what was being purchased; a Wealth Pools associate was in fact purchasing their place in the pool. Once a part of the scheme, the associate earned money in two ways: generational commission and pooled commission. Both ways encouraged the recruitment of new participants into the scheme, rather than the sale of DVDs to customers looking to learn Spanish.

[12] Associates could upgrade their participation in Wealth Pools by making additional payments, essentially buying their way into a commission pool higher up on the hierarchical scale. Associates also moved up the hierarchical ladder by recruiting more individuals into the scheme. Wealth Pools involved four hierarchical pools;

pooled commissions were distributed on a monthly *pro rata* basis to all members of each commission pool. The higher your “pool”, the more commissions received. The payments required to move up the hierarchical pools were substantial and the payments promised to each associate were promoted as lifetime payments.

[13] A feature of the Wealth Pools scheme was the Marketing Assistance Program, or “MAP”. With this program, associates of Wealth Pools could pay for the MAP, which essentially involved Wealth Pools “selling” DVDs on the associate’s behalf to allow the associate to move into the first commission pool. Investors’ involvement was therefore limited to the payment of money; they were not selling anything. The MAP program was discontinued shortly after investigations began in the United States into Wealth Pools.

[14] The marketing documentation provided by Wealth Pools and used by associates to recruit more members promoted Wealth Pools as offering a lifetime of passive income. The evidence shows that the sale of the DVDs is an afterthought; the main product sold by Wealth Pools is an investment required to join a pool. The passive income involved in investors’ involvement arises not from the worldwide sale of DVDs but from the worldwide recruitment of new investors into the scheme.

[15] Wealth Pools marketing materials, including marketing videos, were entered into evidence. These materials spent little time speaking about the DVDs; they marketed the opportunity to participate in Wealth Pools. They marketed the opportunity to invest money with the expectation that you would be paid a return on this investment for life.

[16] Participants in the scheme were provided with a document advising on the “Do’s & Don’t’s” when recruiting investors. Among the “don’t’s” is a note not to say “investment” or “return on your money”.

[17] On 6 December 2007, the United States Securities and Exchange Commission (SEC) received an emergency order from the United States District Court for the

Middle District of Florida freezing the assets of Wealth Pools and appointing a receiver. The Wealth Pools website became inactive soon after.

[18] Wealth Pools has never been registered with the Commission and has filed no materials with the Commission.

b. Lane's Involvement

[19] The respondent Lane, a Florida resident, is the principal of Wealth Pools. He is the founder, president, and full owner of Wealth Pools.

[20] Lane founded Wealth Pools in Florida, and initially began by targeting the Hispanic community in that State. By December of 2007, when the SEC became involved, there were over 70,000 individuals from over 60 countries involved in Wealth Pools.

[21] Wealth Pools was created to spread as far and as quickly as possible. Lane, as president, founder and owner of Wealth Pools, was in charge of Wealth Pools' marketing and its promotion. Investment in Wealth Pools was promoted through such means as a website, promotional videos, individual solicitations and meetings set up (with assistance from the Florida base) by associates. Word of mouth solicitations, for example through friends and family, were encouraged and were a key part of Wealth Pools' growth.

[22] Lane had experience with pyramid schemes. In 1998 Lane was involved with the State of Florida Office of the Attorney General in regards to this participation in another scheme, Winner's Circle Inc. Regarding this activity, Lane signed an undertaking with the Attorney General not to operate a distribution scheme paying commissions or any other type of compensation to any participant which is not based on the sale of The Winner's Circle products to verified consumers.

[23] Documents filed with the SEC regarding Lane and Wealth Pools state that Lane was enjoined in Pennsylvania for a fraudulent securities offering where he misappropriated funds for his own use.

[24] Lane has never been registered with the Commission and has filed no materials with the Commission.

c. Wealth Pools' Activities in New Brunswick

[25] In February of 2006 the respondent Oagles became the first New Brunswick resident involved in Wealth Pools. He was solicited via email, and he directly recruited approximately 20 New Brunswick residents to invest in Wealth Pools. His successful solicitations included the respondent Tracy; who in turn solicited the involvement of the respondent Fulton.

[26] As intended by Wealth Pools' marketing scheme, New Brunswick residents such as the respondents Oagles, Tracy and Fulton solicited investments from amongst friends, family and co-workers. To illustrate the similarities and the control that Wealth Pools had over their solicitations in New Brunswick, the Panel found it noteworthy that with assistance from Florida representatives of Wealth Pools, Oagles set up sales seminars in the Saint John area. Oagles also appeared in a Wealth Pools promotional video. The MAP program was also offered to potential New Brunswick investors.

[27] In less than two years approximately 109 New Brunswick residents invested in Wealth Pools. Their investments totalled approximately \$440,000, with only approximately \$278,000 commission payments made back to the investors. The funds lost by the 109 New Brunswick residents total over \$160,000.

[28] Of the 109 New Brunswick investors in Wealth Pools, the only New Brunswick residents to significantly profit from Wealth Pools were the respondents Oagles, Tracy and Fulton. Many individuals lost substantial sums of money; three New Brunswick families invested in excess of \$25,000.

[29] Cheques to New Brunswick investors began to bounce in April 2007, portending the eventual collapse of the Wealth Pools scheme. As advised by the Central Florida Better Business Bureau in their Reliability Report concerning Wealth Pools, this type of pyramid practice should be avoided, as it will inevitably collapse resulting in losses to investors.

3. REASONS FOR DECISION

a. Jurisdiction and Mandate of the Commission

[30] The Commission's mandate is to protect New Brunswick investors and to protect and promote the integrity of New Brunswick's capital markets. The primary aim of the *Act* is to protect the public. In particular, the Commission is to regulate the solicitation and sale of securities within the province.

[31] The Commission's public interest jurisdiction is protective and preventative, and is intended to be exercised to prevent likely futures harm to capital markets. The Commission's public interest jurisdiction can be linked to its mandate of protecting the investing public and promoting fair and efficient capital markets in the province.

[32] Staff submits that Lane promoted the trading in investment contracts in New Brunswick, and is therefore subject to the Commission's jurisdiction. In order to be within the jurisdiction of this Commission, the Wealth Pools scheme would have to fall into the definition of security. The definition of "security" in the *Act* is intentionally very broadly drafted; a number of types of securities are specifically set out but these particular forms of securities are not exhaustive. An "investment contract" is included in the definition of a security.

[33] Staff have cited numerous authorities from both Canada and the United States outlining what has been held to constitute an investment contract. This Commission, in its Reasons for Decision issued on 9 October 2007 in *Saxon Financial Services Ltd. et al.*, also discussed the interpretation of "investment contract".

[34] An investment contract has been held to mean a scheme whereby a person invests money in a common enterprise with the promoted expectation of profits to be made from the efforts of a promoter or third party. The potential investor's expectations are key to the definition of investment contract. Also key to the definition is the fact that the investor operates no practical or actual control over the managerial decisions of the company.

[35] After reviewing the authorities, and having regard to the facts in this matter, the Panel is satisfied that the Wealth Pools scheme is an investment contract, and therefore is a "security" as defined in the *Act*. The investor's involvement in Wealth Pools is limited to paying money into the common enterprise. A blatant example of this is the MAP program, promoted to investors around the world – including in New Brunswick – as a means to invest money to have the company "sell" DVDs on your behalf, guaranteeing you a return.

[36] The DVDs involved in Wealth Pools were nothing but a front for the investment into a "pool" in Wealth Pools. An investor is not buying DVDs but rather an opportunity to receive passive income through the marketing and promotion efforts of Wealth Pools and Lane to solicit new investors. There was no evidence that any of the New Brunswick respondents actually sold their DVDs. Staff presented evidence that the market value of the DVDs in relation to their competitors was minimal; similar programs could be obtained on the internet for free.

[37] The scheme was set up as a classic pyramid scheme; a scheme which is destined to collapse when no new recruits can be found.

b. Contravention of the *Act*: Illegal Distributions

[38] Staff allege that Lane contravened paragraph 45(a) and subsection 71(1) of the *Act* by trading in securities in New Brunswick without being registered and by distributing in securities in New Brunswick without having filed a prospectus. Based on the evidence presented at the 26 March 2008 hearing the Panel agreed with Staff,

and the Panel's finding is reflected in their Order dated 27 March 2008. The reasons for this finding are as follows.

[39] 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, or

(b) act as an adviser unless the person is registered as an adviser, or is registered as a representative, as a partner or as an officer of a registered adviser and is acting on behalf of the adviser.

[40] Section 71 of the *Act* states:

71(1) Unless exempted under this Act or the regulations, no person shall trade in a security on the person's own account or on behalf of any other person where the trade would be a distribution of the security unless

(a) a preliminary prospectus and a prospectus that are in the form prescribed by regulation have been filed with the Executive Director in relation to the security, and

(b) the Executive Director has issued receipts for the preliminary prospectus and prospectus.

71(2) A preliminary prospectus and a prospectus that are in the form prescribed by regulation may be filed with the Executive Director to enable the issuer to become a reporting issuer, notwithstanding the fact that no distribution is contemplated.

[41] A distribution is defined in the *Act* to include a trade in securities of an issuer that have not previously been issued. A trade in a security is defined in the *Act* to include:

(a) a sale or disposition of a security for valuable consideration or an attempt to sell or dispose of a security for valuable consideration, whether the terms of payment be on margin, instalment or otherwise, but does not include a purchase of a security or, except as provided in paragraph (d), a transfer, pledge or encumbrance of securities for the purpose of giving collateral for a debt made in good faith,

. . . .

(e) an act, advertisement, solicitation, conduct or negotiation directly or indirectly in furtherance of any of the activities specified in paragraphs (a) to (d).

[42] For reasons outlined above, the investments in Wealth Pools constitute a security as defined in the *Act*.

[43] Lane is the founder, president and full owner of Wealth Pools. He developed Wealth Pools, and as the directing mind was responsible for its marketing, promotion and ultimate spread to over 60 countries. He structured Wealth Pools to be as far-reaching as possible, intending the scheme to affect people in locales such as New Brunswick.

[44] The Panel finds that the selling activities of Wealth Pools and its associates in New Brunswick – guided and structured by Lane – were clearly trades and acts in furtherance of trades. Distributions of securities in Wealth Pools were made to 109 New Brunswick residents, raising approximately \$440,000. The Panel finds that these distributions were first trades in securities that were not previously issued, and are therefore distributions as defined in the *Act*. Some payments were made back to New Brunswick residents; but, as a pyramid scheme is destined to do, Wealth Pools collapsed and the checks dried up. The vast majority of the 109 New Brunswick victims of the scheme lost their money.

[45] The Panel finds that Lane deliberately structured Wealth Pools to affect as many people in as many locations as possible. He deliberately encouraged and promoted trading and solicitation in New Brunswick, as evidenced by not only the marketing and promotional materials provided to New Brunswick residents but also the assistance given to Oagles – including a trip to Florida – in his solicitation of New Brunswick residents. Oagles even appeared in Wealth Pools promotional materials.

[46] The marketing and promotional activities of Wealth Pools which targeted New Brunswick residents were clearly acts, advertisements and solicitations in furtherance of trades in securities. Through the marketing materials and the activities of his

salespeople, and through the guidance provided to Oagles, Lane's actions resulted in substantial losses to numerous New Brunswick residents.

[47] The Panel finds that Lane, as a directing mind of Wealth Pools and through the structure, marketing and promotion of Wealth Pools, contravened sections 45 and 71 of the *Act*.

c. Public Interest: Permanent Cease Trade Order

[48] The illegal activities of Wealth Pools within the province, the evidence of Lane's intimate involvement in Wealth Pools, the losses suffered by New Brunswick investors, Lane's history running pyramid schemes and the Panel's findings of contraventions of the *Act* are all reasons why the Panel ordered on 27 March 2008 that it is in the public interest to permanently cease trade Lane in the province of New Brunswick.

[49] The Panel finds that Lane's actions posed a detriment to New Brunswick investors and to the confidence in New Brunswick's capital markets. The losses suffered by investors in the province and the number of investors affected are extensive, and the harm was not only monetary. As intended by Lane and the Wealth Pools marketing and promotional structure, New Brunswick investors solicited investments from friends, family, co-workers, members of their church, and other acquaintances. These individuals suffered losses to relationships and reputations. Whole family and friend groups have been affected, resulting in broad harm to investor confidence in the province. Oagles, Tracy and Fulton are examples of this. Though guilty of *Act* contraventions themselves, they were also victims of Lane's scheme.

[50] The Panel is strongly of the opinion that all of the above aspects of Lane's conduct are contrary to the public interest.

d. Administrative Penalty

[51] Along with the cease trade order, Staff requested that an administrative penalty and costs be ordered against Lane. The Panel reserved their decision on the

imposition and quantum of administrative penalties and costs; what follows are the Panel's decision, reasons for this decision and resulting order regarding administrative penalties and costs.

[52] Section 186 of the *Act* grants the authority for the Commission to order administrative penalties:

186(1)The Commission, after a hearing, may order a person to pay an administrative penalty of not more than \$750,000 if the Commission

(a)determines that the person has contravened or failed to comply with New Brunswick securities law, and

(b)is of the opinion that it is in the public interest to make the order.

186(2)The Commission may make an order under this section notwithstanding the imposition of any other penalty on the person or the making of any other order by the Commission related to the same matter.

i. Contravention of New Brunswick Securities Law

[53] The first part of the test for the imposition of administrative penalties, set out in subsection 186(1), is to determine that Lane contravened New Brunswick securities law. The Panel has found, for the reasons outlined above, that Lane contravened paragraph 45(a) and subsection 71(1) of the *Act* by illegally trading in Wealth Pools' securities and distributing Wealth Pools securities in New Brunswick.

ii. Public Interest

[54] The second part of the 186(1) test is for the Panel to determine if it is in the public interest to make an order for an administrative penalty against Lane. This Commission discussed its jurisdiction to order administrative penalties in the Reasons for the Decision issued on 17 August 2007 in *Limelight Entertainment Inc. et al.*

[55] While stressing that each case is to be deciding on its own facts, and that the circumstances of each case will determine if it is in the public interest to order an administrative penalty, the Panel in *Limelight*, at paragraphs 139-141, set out a general list of potentially relevant factors to consider when determining the

appropriateness of an administrative penalty. This list was developed from criteria used by other securities commissions in Canada in their deliberations on administrative penalties, and the Panel used this list to assist in their decision in this matter. The factors are as follows:

- The seriousness of the respondent's conduct and whether the respondent recognizes the seriousness of the improper conduct;
- Any harm suffered by investors as a result of the conduct;
- The damage done to the integrity of the capital markets;
- The need to deter others who participate in the capital markets from engaging in similar conduct;
- The need to demonstrate the consequences of inappropriate conduct to others who participate in the capital markets;
- The respondent's experience, reputation and previous activity in the capital markets, including any sanctions;
- The extent to which the respondent was enriched;
- Previous decisions in similar circumstances; and
- Any mitigating factors.

[56] Lane is responsible for the illegal trades and distributions of Wealth Pools securities in New Brunswick. As the founder, president, owner and mastermind behind Wealth Pools, he created the scheme and is responsible for its spread into New Brunswick and the consequential harm suffered by New Brunswick residents. Lane's conduct was serious, and was done with the intent to defraud investors.

[57] The SEC is involved in Wealth Pools in the United States, and documents filed with the SEC describe Wealth Pools as a massive pyramid scheme with as many as 70,000 victims in 64 countries. Lane's actions in relation to New Brunswick residents are serious, and the negative effect of his detrimental conduct in regards to Wealth Pools' activities worldwide is immeasurable.

[58] The Panel has strong doubts as to whether Lane recognizes the seriousness of his actions. Lane was involved in a previous enterprise called Winner's Circle, which appeared to have been a pyramid scheme similar to Wealth Pools. Documents filed with the SEC state that a court in Pennsylvania enjoined Lane for a fraudulent securities offering where he misappropriated funds.

[59] The Panel is of the opinion that Lane knew what he was doing and the harm he was causing. The Panel finds that Lane structured Wealth Pools to be as far-reaching as possible and to take money from as many people in as many locations as possible. Lane's prior involvement with pyramid schemes and securities fraud illustrates knowledge of the consequences of his actions on investors, and illustrates an intention to defraud investors.

[60] Focusing on the harm to New Brunswick residents, the evidence presented shows that over \$160,000 was lost by over 100 New Brunswick investors. The amounts of money lost by individual investors varied, with some families investing (and losing) in excess of \$25,000. These are significant sums of money which have the potential to be devastating to the individuals involved.

[61] Further to the monetary harm, the Wealth Pools model worked in such a way that the New Brunswick investors involved in the scheme solicited friends and family to invest. These friends and family have suffered losses as a result, and the harm done to relationships and reputations cannot be quantified.

[62] Any time investors in the province are involved in an illegal scheme such as Wealth Pools the reputation of, and confidence in, capital markets in the province suffer.

[63] The Panel finds deterrence, both specific and general, to be an important factor in this case. As outlined above, Lane is a repeat offender in relation to securities violations and pyramid schemes. Despite receiving notice, he did not attend or even acknowledge these proceedings, illustrating a lack of consideration

for the seriousness of his actions and his negative effect on New Brunswick's investors and capital markets. The Panel finds that a strong message is required to specifically deter Lane from similar conduct in the future.

[64] Regarding general deterrence, the Panel is of the opinion that Lane's actions need to be highlighted as completely contrary to the Commission's mandate. Lane structured Wealth Pools to bring in as much money as possible as quickly as possible, to the detriment of countless numbers of people. The Panel, through this decision, wants to provide a clear message that such schemes will not be tolerated in New Brunswick.

[65] Based on the above factors, the Panel unequivocally finds that it is in the public interest that Lane pay a substantial administrative penalty.

4. ORDERS

a. Administrative Penalty

[66] Along with considering the specific factors of this case, to assist in their determination of an appropriate quantum of administrative penalty the Panel reviewed decisions from other commissions across Canada and specifically considered this Commission's decision in *Limelight*. The Panel wants to provide a strong deterrent message to both Lane and the general public in regards to pyramid schemes. The Panel also feels it important to tie Lane's penalty to the monetary harm caused to New Brunswick residents.

[67] It is hereby ordered for the reasons outlined above and pursuant to section 186 of the *Act* that the respondent Lane pay an administrative penalty in the amount of \$160,000.

b. Costs

[68] Staff have submitted a request for \$2,000 in hearing costs for the day spent in hearing this matter. The Panel grants this request and pursuant to section 185 of the

Act hereby orders that the respondent Lane pay \$2,000 towards the hearing costs of this matter.

Dated on this 21 day of July, 2008.

"original signed by"
Hugh J. Flemming, Q.C., Panel Chair

"original signed by"
Anne W. La Forest, Panel Member

"original signed by"
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