

IN THE MATTER OF THE SECURITIES ACT,
SNB 2004, c. S-5.5

AND

IN THE MATTER OF

ASSANTE FINANCIAL MANAGEMENT LTD.
(Respondent)

ORDER

WHEREAS Staff of the Commission and the Respondent Assante Financial Management Ltd. entered into a Settlement Agreement dated 15 April 2009 (Agreement) in which they agreed to a proposed settlement of certain violations of New Brunswick securities law, subject to the approval of the Commission;

AND 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:

1. Pursuant to section 184(1)(g) of the *Securities Act*, the Respondent shall be reprimanded;
2. Pursuant to section 186(1) of the *Securities Act*, the Respondent shall pay an administrative penalty in the amount of seven thousand five hundred dollars (\$7,500.00);
3. Pursuant to section 185 of the *Securities Act*, the Respondent shall pay costs of the investigation and hearing in the amount of one thousand dollars (\$1,000.00).

DATED at the City of Saint John this 20th day of May, 2009.

"original signed by"
Donne W. Smith, Panel Chair

"original signed by"
James Lockyer, Panel Member

New Brunswick Securities Commission
Suite 300, 85 Charlotte Street
Saint John, New Brunswick E2L 2J2
Tel: (506) 658-3060
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IN THE MATTER OF THE SECURITIES ACT,
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SETTLEMENT AGREEMENT

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 the respondent, Assante Financial Management Ltd. (Assante), to a panel of the New Brunswick Securities Commission pursuant to section 191(1)(a) of the *Securities Act*, in accordance with the following terms and conditions:

- a. The respondent agrees to the Statement of Facts set out in Part II hereof, and consents to the making of an order on the basis of those facts, as set out in Schedule "A"; and
- b. The terms of any settlement will become public information only if, and when, the settlement is approved by the Commission.

2. RESPONDENT'S OBLIGATIONS IF SETTLEMENT APPROVED

If the Settlement Agreement is approved, the respondent undertakes and agrees as follows:

- a. Not to 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. That, as set out in the Order attached hereto as Schedule "A":
 - i. Pursuant to section 184(1)(g) of the *Securities Act*, the respondent shall be reprimanded;
 - ii. Pursuant to section 186(1) of the *Securities Act*, the respondent shall pay

an administrative penalty in the amount of seven thousand five hundred dollars (\$7,500.00);

- iii. Pursuant to section 185 of the Securities Act, the respondent shall pay costs of the investigation and hearing in the amount of one thousand dollars (\$1,000.00).

3. PROCEDURE FOR APPROVAL OF SETTLEMENT

- a. Upon execution of the Settlement Agreement by Staff and by the respondent, Staff will apply to the Commission for an order approving the Settlement Agreement.
- b. Immediately after execution of the Settlement Agreement and in any event prior to the hearing to seek approval of the Settlement Agreement, the respondent shall provide the aggregate sum of eight thousand five hundred dollars (\$8,500.00) to the Commission in escrow. If the Settlement Agreement is approved, these funds will immediately become the property of, and be retained by the Commission. If the Settlement Agreement is not approved, these funds will be returned to the respondent.
- c. If the Settlement Agreement is approved by the Commission, it will constitute the entirety of the evidence submitted respecting the respondent in this matter.
- d. If the Settlement Agreement is approved by the Commission, the respondent agrees to waive any right to a hearing and/or appeal with respect to this matter.
- e. If, for any reason whatsoever, this settlement is not approved by the Commission and the order set forth in Schedule "A" is not made by the Commission:
 - i. Staff and the respondent 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 respondent further agrees that it 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. STAFF COMMITMENT

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

6. INDEPENDENT LEGAL ADVICE

The respondent acknowledges having received full and proper independent legal advice with respect to its entry into 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 15th day of April, 2009.

- signed -

Jake van der Laan
Director – Enforcement NBSC

DATED at the City of Toronto this 9th day of April, 2009.

ASSANTE FINANCIAL MANAGEMENT LTD.

Per:

- signed -

Authorized signing officer

Part II
STATEMENT OF FACTS

1. The respondent was, at all material times to this matter, a registrant under the *Securities Act* in the category of a Mutual Fund Dealer.
2. On 16 May 2007 the Commission granted IQON Financial Inc. (IQON), a predecessor to the respondent, an exemption from Local Rule 31-501, section 9.7(4), permitting IQON to supervise EW, a registered sales person in New Brunswick, from Ontario.
3. The order granting the exemption (Order 2007-161) imposed specific obligations on IQON, including:
 - a. EW would be supervised by MP, an IQON employee from its Ontario head office.
 - b. MP would review and approve all new client account opening documents.
 - c. MP would review each transaction on a daily basis, and prior to any transactions.
 - d. IQON would undertake quarterly file reviews of EW's files, and review at least 10 files during each quarter.
 - e. MP would visit EW at least twice a year.
4. On 1 June 2007, IQON and Assante Financial Management Ltd. (Assante) merged and continued operations under the name Assante. Assante assumed all rights and obligations of IQON.
5. Order 2007-161 expired on 30 May 2008 and Assante did not seek an extension or another exemption at that time.
6. During August 2008, Staff of the Commission conducted a compliance review of Assante.
7. The compliance review revealed that:
 - a. While Order 2007-161 was in force, MP had not reviewed and approved certain "Know Your Client" information forms, as required by the said Order. All of these forms had, however, been reviewed and approved by other qualified Assante personnel while MP was on vacation;
 - b. No file reviews were conducted after October 2007, as Assante had made changes to its internal policy, removing the requirement for Branch Managers to perform monthly reviews of client files;
 - c. While Order 2007-161 was in force, instead of conducting two sub-branch visits within the one-year period, as required by the said Order, MP conducted one sub-branch visit;
 - d. After 30 May 2008, Assante still required the exemption granted in Order 2007-161 as the requirements of Local Rule 31-501, section 9.7(4) were not being met.

8. After being advised by Staff of the Commission that the compliance review had determined that all elements of the Order had not been followed, Assante approached Staff of the Commission to address the fact that Order 2007-161 had lapsed. After two months of cooperative dialogue, Assante applied for a new exemption order in early October 2008.
9. On 1 December 2008, the Executive Director refused to grant the requested exemption order because of non-compliance with Order 2007-161 as well as the respondent's failure to seek renewal or extension of that order on or before 30 May 2008.
10. Assante has since decided to surrender its registration status as a Mutual Fund Dealer in New Brunswick.

Agreement that acts constitute violations of New Brunswick securities law

11. The respondent agrees that it has failed to comply with certain of the terms of Order 2007-161.
12. The respondent agrees that it has failed to comply with Local Rule 31-501 by failing to seek an exemption or otherwise complying with the said Rule, after 30 May 2008.

Mitigating factors

13. There is no evidence that Assante intentionally failed to renew the exemption granted in Order 2007-161.
14. Assante acted diligently in seeking to remedy its failure to renew Order 2007-161 by cooperating with Staff of the Commission during the compliance review and by fully cooperating with the resulting investigation.
15. There is no evidence that any investor was harmed as a result of the respondent's violations of New Brunswick securities law.

Schedule "A"

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AND

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DATED at the City of Saint John this ____ day of April, 2009.

~, Panel Chair

~, Panel Member

~, Panel Member

New Brunswick Securities Commission

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