

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

- and -

IN THE MATTER OF
**NEW CENTURY INTERNATIONAL and
RAY REYNOLDS
(RESPONDENTS)**

REASONS FOR DECISION

Date of Hearing:	25 July 2011
Date of Order:	25 July 2011
Date of Reasons for Decision:	29 November 2011

Panel:

Tracey DeWare, Panel Chair
David G. Barry, Q.C., Panel Member
Sheldon Lee, Panel Member

Appearances:

Marc Wagg	For Staff of the New Brunswick Securities Commission
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No appearances for Respondents

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REASONS FOR DECISION

1. BACKGROUND

[1] On 7 June 2011 staff ("Staff") of the New Brunswick Securities Commission ("Commission") filed a Statement of Allegations against the Respondents New Century International ("NCI") and Ray Reynolds ("Reynolds"). The Statement of Allegations was amended on 12 July 2011. Staff alleged that Reynolds and NCI breached section 45 of the New Brunswick *Securities Act* ("Act") and Local Rule 91-501 *Derivatives* ("LR 91-501"). Staff sought an order under paragraphs 184(1)(c) and (d) of the *Securities Act*, permanently cease trading the Respondents and denying them exemptions available under New Brunswick securities law.

[2] A Notice of Hearing was issued on 22 June 2011 scheduling a hearing in this matter for 1:30 p.m. on 25 July 2011. At the hearing on 25 July Staff filed an Affidavit of Service sworn by counsel for the Commission, Marc Wagg, on 15 July 2011 ("Affidavit of Service") detailing service of the Statement of Allegations, the Amended Statement of Allegations and the Notice of Hearing on the Respondents.

[3] The Affidavit of Service detailed Staff's attempts to reach the Respondents via telephone and email, and Staff's service of the Statement of Allegations, Amended Statement of Allegations and Notice of Hearing on the Respondents via email and facsimile. Staff did not attempt personal service as the corporate offices for NCI were listed in Panama City, Panama. Further, Staff were able to connect by telephone with a representative from NCI who verbally confirmed the Respondents' email address, and email "Read" receipts were received.

[4] Based on the Affidavit of Service the Commission is satisfied that the Respondents received adequate notice of the 25 July 2011 hearing, and that they were properly served with the Notice of Hearing on 23 June 2011, the Statement of Allegations on 23 June 2011 and the Amended Statement of Allegations on 12 July 2011, along with the following documentation filed by Staff to support their allegations:

- Affidavit of Commission Senior Investigator Gordon Fortner ("Investigator") sworn 6 June 2011 ("Investigator's Affidavit") and served on 23 June 2011;
- Affidavit of a New Brunswick resident ("NBR1"), sworn 6 June 2011 ("NBR1Affidavit") and served on 23 June 2011; and
- Affidavit of another New Brunswick resident ("NBR2"), sworn 12 July 2011 ("NBR2 Affidavit") and served on 13 July 2011.

Staff also properly served the Respondents with their Pre-Hearing Submission and the witness statement of the Investigator.

[5] Despite receiving notice the Respondents did not appear at the 25 July 2011 hearing and filed no evidence or other materials with the Commission. The Commission issued the order sought by Staff on 25 July 2011 and these are the Reasons for Decision.

2. FACTS

[6] During the course of the 25 July 2011 hearing Staff relied upon the oral testimony of the Investigator, the Investigator's Affidavit, the NBR1 Affidavit and the NBR2 Affidavit, along with the Affidavit of Service.

[7] NCI is a corporation with a corporate office listed in Panama City, Panama. It is not registered to trade securities in New Brunswick. Reynolds claimed to be a salesperson for NCI; Reynolds is also not registered to trade securities in New Brunswick.

[9] The Investigator testified that he started investigating NCI after receiving a request from NBR1 as to the registration status of NCI. NBR1 contacted the Commission after having been cold-called by Reynolds on behalf of NCI. The Investigator was

assigned to the NCI file, and began his investigation by contacting NBR1 and by completing internet research on NCI. NCI's website, www.newcenturyinternational.net, described NCI as "a commodity broker and commodity trading firm based in Panama City, Panama". NCI was not registered to trade securities in New Brunswick, and the Investigator also discovered that NCI was on two "investor caution" lists, one with the Ontario Securities Commission and one with the British Columbia Securities Commission. The Investigator testified that investor caution lists are lists of entities or subjects that securities commissions have seen fit to identify as problematic for various reasons. In this instance, NCI was listed as a non-registered entity operating in Ontario and British Columbia.

[10] NBR1 in his affidavit, described his contact with Reynolds. Between 7 and 11 March 2011, NBR1 had been cold-called by Reynolds, who claimed to work for NCI. Reynolds contacted NBR1 four or five times during this same period, attempting to convince NBR1 to invest in gas futures. NBR1 described high-pressure sales tactics used by Reynolds and advised the Investigator that Reynolds' solicitation was aggressive and persistent. The initial solicitation sought by Reynolds was \$25,000, but dropped to \$5,000 after NBR1 requested time to research NCI. Reynolds continued to call even after NBR1 advised that he was not interested, only stopping after four or five calls. However, in May 2011 NBR1 received another call from NCI, from a representative who did not identify himself by name. NBR1 has no idea how Reynolds or NCI obtained his number.

[11] During one of the calls Reynolds offered to provide NBR1 with information about NCI. NBR1 agreed and received a facsimile from NCI dated 14 March 2011. The documents included an account application and client agreement; an options risk and fee disclosure statement; an account information form; and two charts indicating the performance of gasoline futures.

[12] The documentation provided by NCI indicates that they are in the business of investments in the area of futures and FOREX. The "Account Application & Client Agreement" describes an agreement wherein the client purchases "derivative options or futures contracts", and NCI receives a commission per option contract. The

Investigator sent an information demand letter dated 19 May 2011 to NCI requesting further information from them in reference to their activities in New Brunswick. The Investigator did not receive a response from NCI.

[13] The Investigator also testified about NBR2 who contacted the Commission to advise that he had been solicited by a representative of NCI. NBR2 was cold-called on 17 June 2011 by a man who identified himself as [REDACTED] A.A. and claimed to work for NCI. A.A. solicited NBR2 to invest in NCI. He used high-pressure sales tactics similar to those used by Reynolds when he contacted NBR1. A.A. asked for an initial investment of \$25,000 and then stated that if that was too much NBR2 could “get in” for as low as \$5,000. A.A. told NBR2 that he would turn that \$5,000 into \$15,000 “to gain my trust” and that time was of the essence. In a later call, A.A. again predicted 25% returns in a short time. A.A. emailed NBR2 documents from NCI; the documents were the same ones provided to NBR1 by Reynolds. NBR2 detailed this contact with NCI in the NBR2 Affidavit.

[14] Neither NBR1 nor NBR2 invested any money in NCI. The Investigator is aware of no connection between NBR1 and NBR2.

3. ANALYSIS

[15] The Commission has been asked to determine if it is in the public interest to order market bans pursuant to subsection 184(1) of the *Act* to prevent the Respondents from trading in securities in New Brunswick. It is the Commission’s mandate to protect New Brunswick investors, to foster fair and efficient capital markets and to foster confidence in New Brunswick’s capital markets. The Commission is charged with protecting the public with respect to the solicitation and trading of securities taking place in the province.

[16] The Commission has considered and described its public interest jurisdiction in several decisions, most recently in the *Tycoon Energy Inc. et al.* Decision released on 8 April 2011. As stated in *Tycoon*, along with protecting investors from “unfair, improper or fraudulent practices”, “the Commission’s public interest jurisdiction is protective and

preventative, and is intended to be exercised to prevent likely future harm to capital markets”¹.

[17] In order to have jurisdiction over the Respondents the promoted product must be a “security” as defined in the *Act*. The products promoted by NCI and Reynolds are described in the NCI promotional materials as “derivative options or futures contracts”. Reynolds called NBR1 to solicit investment in “gas futures” on behalf of NCI.

[18] The definition of “security” in subsection 1(1) of the *Act* includes, in paragraph (q), “any item or thing not referred to in paragraphs (a) to (p) that is a futures contract or an option but is not an exchange contract”. The “gas futures” promoted by NCI are not traded on any type of derivatives exchange (i.e. exchange contracts), and are therefore over-the-counter derivative products which are securities as defined in the *Act*. Derivatives in New Brunswick are regulated by LR 91-501 wherein a “derivative” is defined as including “an option, swap, futures contract or any other contract or instrument that is not an exchange contract and whose market price, value, or delivery or payment obligations are derived from, referenced to or based on an underlying interest”.

[19] A second step is to determine if NCI’s activities constituted trading in securities, as defined in the *Act*. The definition of “trade” in subsection 1(1) of the *Act* includes “a sale or disposition of a security for valuable consideration or an attempt to sell or dispose of a security for valuable consideration” in paragraph (a), and “an act, advertisement, solicitation, conduct or negotiation directly or indirectly in furtherance of any of the activities specified in paragraphs (a) to (d)” in paragraph (e). The Respondents’ solicitations of New Brunswick residents to invest in gas futures clearly fall within the definition of “trade”.

[20] Having established jurisdiction over the current matter, the Commission now turns to the consideration of whether or not to grant a public interest order under section 184. Staff submitted two main grounds for imposing a section 184 order in the public interest:

¹ *Tycoon Energy Inc. et al.*, released 8 April 2011, at paragraph 19

the Respondents' breach of the registration requirement set out in section 45 of the *Act* and National Instrument 31-103 *Registration Requirements and Exemptions* ("NI 31-103"); and the Respondents' breach of the requirements for the filing of a Risk Information Document found in LR 91-501.

[21] Section 45 of the *Act* reads:

45 Except where exempted under the regulations, a person shall not

- (a) trade in a security or an exchange contract,
- (b) act as an adviser,
- (c) act as an investment fund manager, or
- (d) act as an underwriter,

unless the person is registered, in accordance with the regulations, in the category that the regulations prescribe for the activity.

Exemptions to the registration requirement are set out in NI 31-103, which at section 8.4 provides that in New Brunswick, "a person or company is exempt from the dealer registration requirement if the person or company (a) is not engaged in the business of trading in securities or exchange contracts as a principal or agent, and (b) does not hold himself, herself or itself out as engaging in the business of trading."

[22] In order to trade in derivatives in New Brunswick a person must be registered under NI 31-103 unless, as set out in subsection 3(3) of LR 91-501, a person "is not engaged in the business of trading derivatives as a principal or agent", and "does not hold himself, herself or itself out as engaging in the business of trading in derivatives as a principal or agent".

[23] The Companion Policy to NI 31-103 provides guidance on which activities constitute "engaged in the business of trading in securities" and therefore requiring a person to be registered in New Brunswick. These include: engaging in activities similar to a registrant such as promoting the sale of securities; receiving or expecting to receive any form of compensation for carrying on the activity; and contacting anyone to solicit securities transactions or to offer advice. NI 31-103 requires issuers to register as

a dealer if they “employ or otherwise contract individuals to perform activities on their behalf that are similar to those performed by a registrant”, or “solicit investors actively”.

[24] The Commission is satisfied that the Respondents were engaged in the business of trading in securities in New Brunswick. The uncontested evidence shows that Reynolds, on behalf of NCI, actively solicited both NBR1 and NBR2 – through cold calls – to invest in gas futures; that the Respondents disseminated promotional materials; that NCI’s salespersons used aggressive sales tactics; and that the promotional materials provided by NCI describe NCI’s commission of “\$120.00 per option contract”. Accordingly, having engaged in the business of trading without proper registration, the Commission finds that the Respondents are in breach of section 45 of the *Act*.

[25] Along with breaching the registration requirements, Staff also allege that the Respondents breached section 5 of LR 91-501, which mandates the provision of Form 91-501F1 *Risk Information Document* to each prospective client prior to opening an account to trade in or advise on derivatives. The Commission agrees, as the uncontested evidence shows, that Form 91-501F1 was not included in the documentation sent to either NBR1 or NBR2.

4. DECISION

[26] The Commission agrees with Staff’s submission that the registration requirement is one of the cornerstones of the regulatory framework of the *Act*. The Commission has, on several occasions, addressed the importance of the registration requirements in the *Act*. If market participants do not comply with registration requirements, the Commission is deprived of a key means of protecting investors and the integrity of the capital markets.² As stated by Staff in their submission, it is through the registration process that the Commission attempts to ensure that those who engage in trading activities meet the necessary proficiency requirements, are of good character and satisfy the appropriate ethical standards. Further, requirements such as the provision of the Risk Management Document (Form 91-501F1) exist to protect investors and the integrity of the capital markets in the province.

² *Wealth Pools International, Inc. et al.*, released on 21 July 2008; *Strategic Energy Partners et al.* released on 20 May 2009.

[27] The Respondents' activities, which were clear violations of section 45 and the requirements of LR 91-501, pose a significant risk both to investors and investor confidence in New Brunswick. Therefore, the Commission finds that, based on the evidence provided by Staff, it is in the public interest to grant the market bans requested by Staff under paragraphs 184(1)(c) and (d) of the *Act*.

[28] The above constitute the Commission's Reasons for Decision and resulting Order in this matter issued on 25 July 2011.

Dated this 29th day of November 2011.

"original signed by"
Tracey K. DeWare, Panel Chair

"original signed by"
David G. Barry, Q.C., Panel Member

"original signed by"
Sheldon Lee, Panel Member

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