

IN THE MATTER OF

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

-and-

IN THE MATTER OF

**GLOBAL ENERGY GROUP, LTD. and
NEW GOLD LIMITED PARTNERSHIPS
(RESPONDENTS)**

REASONS FOR DECISION

Date of Order: 27 August 2008

Date of Reasons for Decision: 20 October 2008

Panel:

Donne W. Smith, Panel Chair

Kenneth Savage, Panel Member

Counsel:

Mark McElman

For Staff of the New Brunswick
Securities Commission

IN THE MATTER OF

**GLOBAL ENERGY GROUP, LTD. and
NEW GOLD LIMITED PARTNERSHIPS
(RESPONDENTS)**

REASONS FOR DECISION

1. BACKGROUND

[1] This matter involves an application by Staff (Staff) of the New Brunswick Securities Commission (Commission) for a reciprocal order under paragraph 184(1.1)(c) of the *Securities Act* (*Act*) against the Respondents Global Energy Group, Ltd. (Global Energy) and New Gold Limited Partnerships (New Gold Partnerships). Paragraph 184(1.1)(c) of the *Act* states:

184(1.1)In addition to the power to make orders under subsection [184] (1), the Commission may, after providing an opportunity to be heard, make one or more of the orders referred to in paragraphs (1)(a) to (d) and (1)(g) to (i) against a person if the person

...
(c)is subject to an order made by a securities regulatory authority in Canada or elsewhere imposing sanctions, conditions, restrictions or requirements on the person

[2] On 1 August 2008 Staff filed an application (Application) and supporting affidavits of Investigator Gordon Fortner and Legal Counsel Mark McElman (Supporting Affidavits) seeking the following relief against the Respondents, pursuant to subparagraphs 184(1)(c)(i) and (ii) and paragraph 184(1)(d) of the *Act*:

- (a) All trading in securities of Global Energy Group, Ltd. and the New Gold Limited Partnerships shall cease (including, without limitation, the solicitation of trades, or any acts constituting attempts or acts in furtherance of trading, in such securities);
- (b) The Respondents shall cease trading in all securities (including, without limitation, the solicitation of trades in securities or any acts constituting attempts or acts in furtherance or trading in securities); and
- (c) Any exemptions in New Brunswick securities law do not apply to the Respondents;

For such period as is specified by the Commission.

[3] Staff based their Application on the grounds that the Respondents are subject to an order made by the Ontario Securities Commission (OSC) imposing sanctions, conditions, restrictions or requirements on the Respondents, and that it is in the public interest for an order to be issued in New Brunswick. The OSC issued its temporary order imposing sanctions on the Respondents on 10 July 2008 (OSC Order); on 23 July 2008 and 5 August 2008 the OSC Order was extended, and remains in effect until 4 December 2008 (unless further extended or made permanent).

[4] In response to the Application, the Commission issued a Notice of Application on 1 August 2008. It provided notice to the Respondents of the Application and the relief sought, and advised the Respondents of their right to be heard with respect to Staff's Application. The Notice of Application advised the Respondents to request a hearing by 18 August 2008. The Notice of Application also advised the Respondents that if they failed to notify the Commission, an order contrary to their interest might be issued with no further notice.

[5] Staff filed an affidavit on 20 August 2008 (Affidavit of Service), outlining their service of the Notice of Application, Application and Investigator's Affidavit, on the Respondents. The Respondents were successfully served via e-mail and facsimile on 5 August 2008, and via courier a few days later. Despite notice, the Respondents did not request an opportunity to be heard.

2. FACTS

[6] Global Energy purports to be a corporation registered in the Bahamas, but according to the OSC appears to be operating out of a number of offices in Ontario. The New Gold Partnerships purport to be a series of limited liability partnerships situated in the state of Kentucky and the Bahamas. Units of the New

Gold Partnerships are being sold to investors in Canada through agents of Global Energy and/or New Gold. Global Energy is the managing partner of the New Gold Partnerships.

[7] The OSC Order was issued because it appeared that persons related to Global Energy and the New Gold Partnerships had been engaged in the business of trading securities in Ontario without being registered pursuant to the Ontario *Securities Act*; that no prospectus receipt had been issued for the securities of the New Gold Partnerships in accordance with the Ontario *Act*; that no exemptions from the registration and prospectus requirements under the Ontario *Act* applied to the trading in securities of the New Gold Partnerships; and that the OSC's investigation revealed false or misleading information in materials related to the sale of securities of the New Gold Partnerships.

[8] Along with the OSC Order, Staff also presented evidence through the Supporting Affidavits that a New Brunswick resident, D.E., had been solicited by Global Energy to purchase securities in the New Gold Partnerships. D.E. was solicited by Global Energy via telephone and e-mail, and was provided with promotional materials.

[9] None of the Respondents is registered to trade securities in New Brunswick, and they have not filed any materials with the Commission which would allow them to trade securities in New Brunswick.

3. ANALYSIS AND DECISION

[10] Prior to issuing an order under paragraph 184(1.1)(c) of the *Act*, the Panel must be satisfied that the Respondents were provided with an opportunity to be heard, and that they are subject to an order made by a securities regulatory authority in Canada or elsewhere imposing sanctions, restrictions or requirements on the Respondents. The Panel is satisfied, for the reasons above, that these two conditions have been met.

[11] What remains is for the panel to consider if it is in the public interest to issue the order requested by Staff, which is set out at paragraph [2], above. Several decisions of this Commission (*Al-tar Energy Corp. et al.*, issued on 17 December 2007; *Adcapital Industries Inc. et al.*, issued 19 August 2008; *Malsbury Investment Corporation et al.*, issued 2 September 2008; and *Global Petroleum Strategies, LLC et al.*, issued 8 September 2008) have addressed what constitutes the public interest in the context of issuing reciprocal orders. In these decisions, the Commission held that it is appropriate to grant an order under the reciprocal order provision when there is compelling evidence that such an order would serve a protective purpose for New Brunswick investors and capital markets.

[12] Several decisions (*Global Petroleum Strategies, LLC et al.* and *Adcapital Industries Inc. et al.*) have also stated that the issuance of an order by another recognized securities regulator is a *prima facie* basis for reciprocation. In this matter, the Respondents are subject to a temporary order and ongoing investigation in Ontario. Accordingly, the Panel finds that it is in the public interest to issue a reciprocating order in New Brunswick, so that investors in New Brunswick will have at a minimum the same protections afforded to investors in Ontario.

[13] As for the terms of this reciprocating order, the order requested by Staff is broader than the OSC Order. The OSC Order prohibits Global Energy and the New Gold Partnerships from trading in securities of New Gold Partnerships. Staff requested that the Commission order the Respondents to cease trading in all securities and that all exemptions in New Brunswick securities law do not apply to the Respondents.

[14] The Panel is satisfied that the order requested by Staff is in the public interest and will serve a protective purpose in the province. The Respondents' solicitation of a New Brunswick resident shows that the Respondents are actively pursuing investors in this province, without registration or filing any materials which would allow such solicitations. Panels of this Commission have issued

cease trade orders and prohibitions on use of exemptions in other matters with similar facts (see, for example, the Commission's decisions in *Adcapital Industries Inc. et al.* and in *Al-tar Energy Corp. et al.*, noted above).

[15] The Respondents' New Brunswick activities, coupled with the OSC Order and ongoing investigation, satisfy the Panel that the breadth of the order as requested by Staff is appropriate in the circumstances. Previous decisions of this Commission have confirmed that there is no requirement in subsection 184(1.1) that the reciprocating order granted by the Commission be identical to the originating order.

[16] For the reasons set out above, the Panel issued its order on 27 August 2008 pursuant to paragraph 184(1.1)(c) of the *Act*. This order is to remain in effect for the same duration as the OSC Order, as it is from time to time extended or made permanent.

Dated at the City of Saint John this 20 day of October, 2008.

"original signed by"

Donne W. Smith, Panel Chair

"original signed by"

Kenneth Savage, Panel Member

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