IN THE MATTER OF

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

- and -

IN THE MATTER OF

CRAINSHAW INTERNATIONAL LTD.,
OSBOURNE WORLDWIDE LIMITED

(RESPONDENTS)

REASONS FOR DECISION

Date of Hearing:	18 December 2012
Date of Order:	20 December 2012
Date of Reasons for Decision:	12 February 2013

Panel:

Anne W. La Forest, Panel Chair

Denise A. LeBlanc, Q.C., Panel Member

Sheldon Lee, Panel Member

Counsel:

Mark McElman	For Staff of the New Brunswick Securities Commission

IN THE MATTER OF

CRAINSHAW INTERNATIONAL LTD.,
OSBOURNE WORLDWIDE LIMITED

(RESPONDENTS)

REASONS FOR DECISION

1. BACKGROUND

[1] On 21 November 2012, Staff of the New Brunswick Securities Commission ("Staff" and the "Commission") filed a Statement of Allegations seeking an Order pursuant to subsection 184(1) of the *Securities Act ("Act")* against the Respondents. Staff alleged that the Respondents acted in furtherance of trading in securities and/or exchange contracts in New Brunswick without being registered with the Commission. Staff requested that a permanent cease trade order and a permanent exemption ban be issued against the Respondents. A Notice of Hearing was issued on 26 November 2012 scheduling this matter for a hearing on 18 December 2012.

[2] Staff filed an Affidavit of Service dated 17 December 2012 ("Affidavit of Service") within which they detailed service of the Notice of Hearing and Statement of Allegations on the Respondents. Staff served the Respondents via email, regular mail and facsimile transmission.

[3] Staff received a read receipt from the Crainshaw International Ltd. ("Crainshaw") email account on 26 November 2012, and on 27 November 2012, a representative from Osbourne Worldwide Limited ("Osbourne") sent an email to Staff via the same email address that had been used for service. The subject line of the email was: "Osbourne Worldwide is not doing business in New Brunswick", and the text of the email indicated that they had received a copy of the Statement of Allegations from Crainshaw. Staff re-sent their service email to the Osbourne address. The Panel finds that the email service was effected on 26 November 2012.

[4] The hearing into Staff's allegations was held on 18 December 2012. Despite being properly served, no one appeared on behalf of the Respondents. Neither of the Respondents

filed a response to Staff's allegations. The Notice of Hearing clearly states that if a respondent does not attend the hearing, the hearing can proceed in their absence and a decision or order contrary to their interest may be issued.

[5] Along with the filed Affidavit of Service, Staff's evidence consisted of the testimony of two witnesses: Commission Senior Investigator Gordon Fortner ("Mr. Fortner") and a New Brunswick resident whom Staff alleged had invested with the Respondents ("NBR1"). Several exhibits were introduced by both witnesses.

2. FACTS

[6] Staff presented evidence that both Crainshaw and Osbourne are corporations purporting to have offices in Belize City, Belize. Crainshaw held itself out as a commodities broker specializing in options trading, while Osbourne purported to hold NBR1's account as a clearing and banking agent for Crainshaw. Neither Crainshaw nor Osbourne is or was, at any time, registered to trade in securities in New Brunswick.

[7] NBR1, a retired professional from the Fredericton area of New Brunswick, testified about his contact with both Crainshaw and Osbourne. NBR1 received a cold-call on 18 July 2012 from an individual identifying himself as A.A., an investment counsellor and advisor with Crainshaw. A.A. solicited NBR1 to invest in Crainshaw, which was presented to NBR1 as a large, very successful company. NBR1 does not know how Crainshaw obtained his telephone number.

[8] NBR1 testified that A.A. was soliciting NBR1 to invest in gold options. Several emails and attachments were sent to NBR1 from A.A. on behalf of Crainshaw. These emails, presented as exhibits, contained an Osbourne account opening agreement and information on gold options. NBR1 testified that A.A. advised that a minimum investment of $5,000 was required. NBR1 also testified to the high-pressure sales tactics used by A.A., including his receipt of 18 phone calls starting on 18 July 2012 and continuing into August 2012. NBR1's testimony is that he was advised by A.A. that Crainshaw could not make money unless NBR1 derived profits from the proposed investments. NBR1 also testified that A.A. sent more information on gold options to NBR1 via email, to show NBR1 what he was "losing by not yet investing", according to A.A..

[9] A.A. successfully solicited NBR1 to invest, and though NBR1 had been advised that a minimum of $5,000 investment was required, agreed to accept an investment of $3,000. The money was provided via electronic wire transfer to Osbourne on 21 August 2012. Osbourne was described as a holding firm for the invested money and NBR1 was provided account statements from Osbourne. The statements indicated that broker fees were paid to Osbourne. Commissions were also to be paid to Crainshaw; NBR1 was told that 10% commission was to be paid to Crainshaw on any money earned by NBR1.

[10] After NBR1's initial investment of $3,000, NBR1 was again solicited by a representative of Crainshaw, an individual identifying himself as B.B., who claimed to be a 20 year specialist at Crainshaw. B.B. requested that NBR1 invest more money, and the calls from Crainshaw continued. Though NBR1 never authorized a further purchase, B.B. advised NBR1 that on 29 August 2012 he had purchased more options and established approximately $9,700 worth of debt on NBR1's behalf. NBR1 testified that he felt that he was talked into investing a further $9,700 to settle the debt. An Osbourne "Client Account Card" confirms that the options were purchased and the debt established in NBR1's account on 29 August 2012, pre-dating NBR1's 12 September 2012 wiring of funds to Osbourne.

[11] NBR1 testified that the frequent calls by Crainshaw ceased after his second investment in September 2012. However, on 19 October 2012, he was contacted by yet another Crainshaw representative, C.C., who told NBR1 that he had "bad news", and said that A.A. and B.B. had mismanaged his account, and that NBR1 was losing money daily. NBR1 testified that he was later contacted by a D.D., who indicated that he had been given NBR1's account from Crainshaw to "turn it around". D.D. approached NBR1 with a plan to turn his account around, as he advised NBR1 that his account was a "total loss". D.D.'s plan, as NBR1 testified, was for NBR1 to provide a further $7,000, which would be put in the foreign exchange market and would gradually provide total recovery.

[12] Upon being asked for the third investment, NBR1 made a complaint to the Commission. After speaking to Mr. Fortner on 29 October 2012, NBR1 provided a detailed letter to the Commission which outlined his complaint and his interaction with Crainshaw and Osbourne.

[13] Mr. Fortner testified that the information provided by NBR1 regarding his interaction with Crainshaw and Osbourne led Mr. Fortner to be concerned that Crainshaw and Osbourne were operating a boiler room. Mr. Fortner testified that many hallmarks of a boiler room operation were present in NBR1's complaint. These included cold-calls from an offshore location soliciting investments; persistent phone and/or email contact; urgency and pressure to invest; secondary calls to invest more after a successful initial solicitation; using guilt for second investment; and a final crisis and demise in the investor's account.

[14] Mr. Fortner also testified about the Osbourne account statement, and provided evidence that the actual values of the options supposedly purchased on NBR1's behalf were worthless.

[15] A certificate of the Executive Director of the Commission was entered into evidence, noting that neither Crainshaw nor Osbourne have ever been registered with the Commission pursuant to section 45 of the *Act.*

[16] As no response was received from the Respondents, Staff's evidence is uncontested.

3. ANALYSIS AND DECISION

[17] As noted in the Commission's 8 August 2012 decision in *MI Capital Corp. et al.* ("MI Capital decision"), which was relied upon by Staff in their submissions, the Commission's mandate is to protect New Brunswick investors, to foster fair and efficient capital markets and to foster confidence in New Brunswick's capital markets (See C*ommittee for Equal Treatment of Asbestos Minority Shareholders v. Ontario (Securities Commission)*, 2001 SC 37; *Pezim v. British Columbia (Superintendent of Brokers)*, [1994] 2 S.C.R. 557 (S.C.C.)).

[18] Staff have alleged that the Respondents breached paragraph 45(a) of the *Act*:

> ***45*** *Except where exempted under the regulations, a person shall not*
>
> ***(a)*** *trade in a security or an exchange contract,*
>
> *[. . .]*
>
> *unless the person is registered, in accordance with the regulations, in the category that the regulations prescribe for the activity.*

[19] As outlined in the MI Capital decision, the registration requirement is imposed upon a person trading in a security or exchange contract if there are two conditions satisfied: a trade in a security, and no available exemption to registration.

[20] The prohibition in section 45 refers to trading in both securities and exchange contracts. The definition of "security" in the *Act* is very broad, and includes options. The options traded by the Respondents were identified on the Osbourne account statements as "COMEX" gold options, which would fall under the definition of "exchange contracts" in the *Act*. Staff submitted that the evidence suggests that there were no actual COMEX options traded by the Respondents. However, even if that were the case, the COMEX options in this specific instance would fall under the more general definition of a "security".

[21] "Trade" also has a broad definition in the *Act.* Trading includes a sale or an attempt to sell a security, along with any act or solicitation in furtherance of a sale. Based on the evidence presented by Staff, the activities of the Respondents clearly fit the definition of a trade. Crainshaw representatives successfully solicited NBR1 to invest, and NBR1 sent money to Osbourne to purchase the options. Crainshaw advised that they received payment through commissions, while Osbourne noted a "broker fee" on its statements.

[22] There was no evidence presented of any exemptions being available to the Respondents which would allow them to trade without registration. The Panel finds that Staff clearly demonstrated that the Respondents were trading in securities in New Brunswick without being registered, thereby breaching section 45 of the *Act.*

[23] Staff requested that the Commission issue orders against the Respondents under subparagraph 184(1)(c)(ii) and paragraph 184(1)(d) of the *Act*:

> ***184(1)*** *The Commission may, if in its opinion it is in the public interest to do so, make one or more of the following orders:*
>
> ***(c)*** *an order that:*
>
> *[. . .]*

(ii) *a person specified in the order cease trading in or purchasing securities or exchange contracts, specified securities or exchange contracts or a class of securities or class of exchange contracts;*

(d) *an order that any exemptions contained in New Brunswick securities law do not apply to a person permanently or for such period as is specified in the order;*

[24] The Commission may make an order under section 184 if the Commission finds that it is in the public interest to do so. As noted in the MI Capital decision and stressed by Staff in their submissions, the Commission's powers under section 184 are neither remedial nor punitive, but rather protective and preventative, and are intended to be exercised to prevent likely future harm to capital markets (see *Re Mithras Management Ltd.* (1990), 13 O.S.C.B. 1600 (Ont. Securities Comm.), cited with approval in *Asbestos*, *supra.*)

[25] As noted above, the Panel finds that the Respondents breached section 45 of the *Act* by trading in securities without being registered with the Commission. This is clearly contrary to the public interest, as noted by the Commission in several decisions, including the MI Capital decision (at paragraph 24):

> That the registration requirement constitutes one of the cornerstones of the regulatory framework of the *Act* has been iterated many times by this Commission. The registration requirement is the process through which the Commission can best ensure that the individuals who engage in trading activities meet the necessary proficiency requirements, are of good character and satisfy the appropriate ethical standards.

[26] Along with the registration concerns, Staff presented very convincing evidence that the Respondents were, in fact, operating a boiler room. The evidence included cold calls from an offshore operation, frequent and persistent telephone and email communication, pressure and guilt sales tactics, and detailed schemes to try to entice already victimized investors to provide more funds. The Panel has serious concerns about such operations targeting New Brunswick residents.

[27] The Commission's mandate includes protecting New Brunswick investors, and to foster confidence in New Brunswick's capital markets. Based on the evidence presented by Staff,

the Panel is of the opinion that New Brunswick investors and capital markets require protection from the Respondents, who were targeting New Brunswickers with their boiler room operation.

[28] Making the Respondents' violations even more damaging is the fact that NBR1 lost approximately $12,000 through his dealings with the Respondents. However, through NBR1's reporting the Respondents' activities to the Commission and working with Staff to present allegations against the Respondents, NBR1 may have helped protect other New Brunswick residents from similar losses.

d. Decision

[29] Based on the evidence presented by Staff regarding violations of section 45 of the *Act* by the Respondents, the Commission held that it was in the public interest to issue their 20 December 2012 order.

[30] The above constitute the Commission's Reasons for their Decision and resulting order in this matter.

Dated this 12 day of February 2013.

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

"original signed by"
Denise A. LeBlanc, Q.C., Panel Member

"original signed by"
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