

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

- and -

IN THE MATTER OF
**FIRST ALLIANCE MANAGEMENT INC. and
TED FREEDMAN
(RESPONDENTS)**

REASONS FOR DECISION

Date of Hearing: 3 November 2008
Date of Orders: 24 October 2008 and 3 November 2008
Date of Reasons for Decision: 11 December 2008

Panel:

Donne W. Smith, Panel Chair
Robert M. Shannon, Panel Member

Counsel:

Mark McElman

For Staff of the New Brunswick
Securities Commission

IN THE MATTER OF

**FIRST ALLIANCE MANAGEMENT INC. and
TED FREEDMAN
(RESPONDENTS)**

REASONS FOR DECISION

1. BACKGROUND

[1] On 21 October 2008, Staff (Staff) of the New Brunswick Securities Commission (Commission) filed materials seeking an *ex parte* temporary cease trade order against the Respondents. Staff alleged that the Respondents, without being registered with the Commission, solicited a New Brunswick resident by telephone and via email to purchase securities. Staff submitted that it was in the public interest to remove the Respondents from the capital markets in New Brunswick.

[2] The Panel issued the requested *ex parte* temporary cease trade order (TCTO) on 24 October 2008, pursuant to subsection 184(5) of the *Act*. The TCTO was issued based on evidence presented by Staff through an affidavit sworn by Commission Investigator Ed LeBlanc (Investigator) on 20 October 2008 (Affidavit). The Panel held that it was in the public interest to issue the TCTO, and that the TCTO could be issued on an *ex parte* basis as the length of time required to hold a hearing could be prejudicial to the public interest. The TCTO was to remain in effect for 15 days from the date it was issued.

[3] A Notice of Hearing was issued on 24 October 2008 scheduling a hearing in this matter for 3 November 2008. Staff advised in the Notice of Hearing and attached Statement of Allegations that they would be seeking a permanent order that the Respondents cease all trading in securities, and that any exemptions in New Brunswick securities law do not apply to the Respondents.

[4] Staff filed an affidavit of Staff Counsel, Mark McElman, sworn 3 November 2008 (Affidavit of Service), detailing service of the following materials (Documents) on the respondents:

- (a) Statement of Allegations filed 21 October 2008;
- (b) Affidavit of Ed LeBlanc sworn 20 October 2008;
- (c) Notice of Hearing issued 24 October 2008;
- (d) *Ex Parte* Temporary Cease Trade Order issued on 24 October 2008; and
- (e) Staff's written submission on the motion for a temporary *ex parte* order, filed on 23 October 2008.

[5] Staff served the Documents on the Respondents via email on 24 and 28 October 2008. The Documents were sent to five separate email addresses: on 24 October 2008 to the email address used by the Respondents in their email solicitation of a New Brunswick resident; and on 28 October 2008 to four separate email addresses listed on the First Alliance Management Inc. (FAM) website. Confirmations were received that the emails were successfully delivered to these five accounts.

[6] The Panel is satisfied with the method of service outlined in the Affidavit of Service, and is satisfied that the Respondents received adequate notice of the hearing. Despite receiving notice, the Respondents did not appear at the 3 November 2008 hearing.

[7] The Affidavit and Affidavit of Service were the only evidence presented by Staff at the 3 November 2008 hearing. There was no oral evidence presented, and the Respondents filed no materials. The Affidavit contains evidence that the Investigator obtained through his investigation of the Respondents, including information obtained from speaking directly with a New Brunswick resident (P.S.) who had been solicited by Ted Freedman (Freedman) on behalf of FAM. The Affidavit also provides evidence obtained from FAM's website and other internet resources, and information about Secure One Investment Group, an entity Staff allege is related to the Respondents.

2. THE FACTS

[8] FAM is a corporation incorporated under the laws of Panama and purports to have a head office in Panama City, Panama. Freedman represented himself as a Senior Advisor with FAM.

[9] FAM's website and email communication with P.S. identified FAM as a brokerage firm known for its excellence, dedicated to serving both individuals and corporations, and offering a wide range of investment opportunities that can show fast returns to long term investments.

[10] On 8 October 2008, the Investigator received a series of email communications originally forwarded by P.S., a New Brunswick resident who had been solicited by telephone by Freedman on behalf of FAM. Freedman solicited P.S. to trade in gold options.

[11] The Investigator began investigating FAM on the internet. FAM's website was no longer active when the Investigator attempted to gain access on 10 October 2008; however, he was able to review the cached contacts and homepage of the FAM website on that date. The Investigator's search also revealed that the FAM website was registered by an entity called "secureonegroup".

[12] The name "secureonegroup" is similar to that of Secure One Investment Group (SOIG), which had been cease traded by the Saskatchewan Financial Services Commission (SFSC) in early 2008. SOIG was cease traded as a result of illegal solicitation of Saskatchewan residents to engage in the trading of options in gold and precious metals. The Investigator completed an online search of SOIG, and noted several similarities between the SOIG website and the information provided by FAM. Most striking, both SOIG and FAM provide the same facsimile numbers, and provide matching introductory descriptions. The address listed for "secureonegroup" in registering FAM's website is the same address provided by SOIG.

[13] The Investigator spoke with P.S. on 16 October 2008. P.S. advised that he had received an unsolicited telephone call, or “cold-call”, from Freedman on behalf of FAM, and that P.S. spoke with Freedman on two occasions. The first conversation was on 6 October 2008. Freedman solicited the purchase of gold options, and told P.S. that:

- (a) FAM made a lot of money for a lot of people;
- (b) The minimum investment was \$20,000, lowered to \$10,000 during Freedman’s second call to P.S.;
- (c) P.S. needed to invest as soon as possible, as gold could reasonably go to \$2,000 and ounce or even \$3,000; and
- (d) P.S. had to decide right away with respect to the \$10,000 minimum investment described in Freedman’s second call.

[14] Along with these calls, on 6 October 2008 P.S. received an email from Freedman on behalf of FAM. This was the email forwarded to the Investigator. Freedman attached links to the FAM website, and sent some attachments including recent news and graphs about gold options. He also provided FAM’s New Account Documents and Bank Wire Instructions.

[15] Neither FAM nor Freedman are or ever have been registered with the Commission to trade securities in the province.

3. ANALYSIS AND DECISION

a. Jurisdiction and mandate of the Commission

[16] 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.

[17] In order for the Commission to have jurisdiction, the investment solicited must be a “security”, as defined in the *Act*. The Respondents were soliciting trades in gold options, with the lure of large returns. This Commission, in its decisions in *Saxon Financial Services Ltd. et al.* issued 9 October 2007 and *Meisner Inc. S.A. et al.* issued 22 October 2007, confirmed that commodity options fall within the definition of security

in the *Act*. This Panel finds that the gold options solicited by the Respondents are securities.

b. Public Interest

[18] Staff are seeking an order pursuant to section 184 of the *Act* that the Respondents cease trading in all securities, and that any exemptions in New Brunswick securities law do not apply to the Respondents. The Panel may make an order under section 184 only if the Panel finds it in the public interest to do so.

[19] The Commission discussed its public interest jurisdiction in the *Meisner Inc. et al.* decision:

[22] The Commission's public interest jurisdiction under section 184 of the *Act* is animated by the purposes of the *Act*, namely to provide protection to investors from unfair, improper or fraudulent practices and to foster fair and efficient capital markets and confidence in capital markets.

[23] As stated in *Re Mithras Management Ltd.* (1990), 13 O.S.C.B. 1600 (Ont. Securities Comm.), the Commission's public interest jurisdiction is protective and preventative and is intended to be exercised to prevent likely future harm to capital markets.

[20] The Panel accepts Staff's uncontested evidence of the Respondents' solicitation of trades of securities in New Brunswick, despite the Respondents' not being registered to trade securities in the province. The Investigator presented evidence of both email and telephone solicitations of a New Brunswick resident, P.S., to invest large amounts of money in gold options. P.S. was pressured to make these investments quickly.

[21] Further, Staff's evidence shows a connection between FAM and SOIG, an entity cease traded by the SFSC earlier this year. The Panel is satisfied that these two entities are closely connected and have both been involved in illegal solicitations to investors in at least two provinces.

[22] The Panel is satisfied that Staff's evidence shows that it is clearly in the public interest to issue the requested cease trade order and denial of exemptions against the

Respondents. The Panel finds that the Respondents' activities pose a significant risk of harm to New Brunswick investors and to investor confidence in New Brunswick's capital markets.

[23] The above constitute the Panel's Reasons for their Decision and resulting Order in this matter, issued on 3 November 2008.

Dated this 11th day of December, 2008.

"original signed by"

Donne W. Smith, Panel Chair

"original signed by"

Robert M. Shannon, Panel Member

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