

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

AND IN THE MATTER OF

**James A. MacCallum,**  
**Andrew Mitchell Holdings, LLC** and  
**Andrew J. Trites**

(Respondents)

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## **SETTLEMENT AGREEMENT**

(with respect to the Respondent Andrew J. Trites)

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### **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 Andrew J. Trites (the "Respondent") to a panel of the New Brunswick Securities Commission (the "Commission") pursuant to section 191(1)(a) of the *Securities Act*, 2004 S.N.B., c. s-5.5 (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, substantially similar to that 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/or agrees as follows:

- a. The Respondent shall not 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. At Staff's request, the Respondent shall co-operate fully with any enforcement action or legal proceeding concerning the transactions described in the Agreed Statement of Facts, and shall give truthful testimony if called to testify in any such proceeding;
- c. In accordance with an order substantially similar to that set out in Schedule "A", that:

- i. Pursuant to section 184(1)(d) of the *Securities Act*, the Respondent shall be denied all exemptions under New Brunswick securities law for a period of five (5) years, except that the Respondent may trade in and for his own account through a registered securities dealer;
  - ii. Pursuant to section 184(1)(p) of the *Securities Act*, the Respondent shall disgorge to the New Brunswick Securities Commission the amount of twelve thousand dollars (\$12,000.00);
  - iii. Pursuant to section 186(1) of the *Securities Act*, the Respondent shall pay to the New Brunswick Securities Commission an administrative penalty in the amount of ten thousand dollars (\$10,000.00); and
  - iv. Pursuant to sections 185(1) and 185(2) of the *Securities Act*, the Respondent shall pay to the New Brunswick Securities Commission costs in the amount of two thousand dollars (\$2,000.00).
- d. The Respondent consents to a regulatory Order made by any provincial or territorial securities regulatory authority in Canada containing any or all of the sanctions set out in paragraph (c)(i) above.

### 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. Prior to the granting of any order, the Respondent shall deposit \$24,000.00 in trust with his legal counsel, and shall instruct such counsel to: (1) advise Staff of such deposit; and (2) deliver such funds to Staff upon an order approving the Settlement Agreement.
- 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 Respondent or as may be required by law; and
  - iii. The Respondent further agrees that he 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. BREACH OF SETTLEMENT AGREEMENT

The Respondent acknowledges and understands that in the event of a breach or failure to comply with this Settlement Agreement, Staff may commence proceedings under section 179(2) of the *Securities Act* against the Respondent and seek any remedy available under that section, including an Order for imprisonment and/or a fine.

6. STAFF COMMITMENT

If this settlement is approved by the Commission, Staff will not initiate any other proceeding under the *Securities Act* against the Respondent in relation to the facts set out in Part II of 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 13<sup>th</sup> day of June 2012.

"original signed by"  
Jake van der Laan  
Director, Enforcement, NBSC

DATED at the municipality of Moncton this 12<sup>th</sup> day of June 2012.

"original signed by"  
Andrew J. Trites

"original signed by"  
Witness: Rick Nesbitt

## Part II

### STATEMENT OF FACTS

1. Andrew J. Trites ("Trites") is an individual resident in Irishtown, New Brunswick. Trites has never been registered with the Commission to trade in securities in New Brunswick.
2. Trites has acted in furtherance of trades involving promissory notes issued by James A. MacCallum ("MacCallum") and Andrew Mitchell Holdings, LLC. ("AMH"). MacCallum is Trites' brother-in-law. MacCallum is the principal and directing mind of AMH.
3. In January of 2009, Mr. A, an acquaintance of Trites, had approximately \$330,000.00 USD in loans outstanding to MacCallum. Trites had assisted in arranging these loans.
4. Mr. A wanted the loans repaid at the end of January 2009, after which he was considering investing further amounts by way of an increased loan.
5. Trites knew that MacCallum did not possess funds to repay the full \$330,000.00 USD owed to Mr. A, and that MacCallum was unable even to borrow money to repay the loan. Despite this knowledge, Trites assisted MacCallum in raising \$75,000.00 from a New Brunswick investor, Ms. C, as further described below.
6. The relationship between Trites and Ms. C is such that Staff accepts that Trites honestly believed that the amounts loaned by her to MacCallum would be repaid. However, the conduct of Trites in assisting MacCallum to repay Mr. A by raising additional funds from a new investor is contrary to the public interest.

#### Trites' Involvement in the Promissory Note Issued to Mr. B

7. On or about 7 January 2009, Mr. B. invested \$30,000.00 with MacCallum by way of a loan secured by a promissory note issued on 7 January 2009. The promissory note was for a term of 18 months and bore interest at a rate of 15% per year, paid quarterly.
8. Trites acted in furtherance of this trade in a security without registration as a dealer contrary to section 45 of the *Securities Act* and without providing Mr. B. with a prospectus, contrary to section 71 of the *Securities Act*.
9. There eventually arose a dispute with respect to the intended term of the promissory note issued to Mr. B. Due to the relationship between Trites and Mr. B, and to avoid the dispute, Trites paid to Mr. B \$31,125.00, being equal to the principal and interest owing under the note. Trites has not been repaid anything in this regard from Mr. MacCallum.

#### Trites' Involvement in the Promissory Note Issued to Ms. C

10. On or about 1 February 2009, Ms. C invested \$75,000.00 with MacCallum by way of a loan secured by a promissory note issued 1 February 2009. The promissory note was for a term of 18 months and bore interest at a rate of 18% per year, paid quarterly.
11. Trites acted in furtherance of this trade in a security without registration as a dealer,

contrary to section 45 of the *Securities Act*, and without providing Ms. C with a prospectus, contrary to section 71 of the *Securities Act*.

12. MacCallum eventually defaulted in making interest payments due under the promissory note issued to Ms. C. Trites voluntarily made payments to Ms. C in amounts equivalent to the interest payments, in the total amount of \$4,500.00.
13. MacCallum defaulted in repaying the principal of the promissory note on maturity. Given the relationship between Trites and Ms. C, Staff accepts that Trites honestly believed that Mr. C would be paid the principal and interest owing under the promissory note.

#### Trites' Involvement in the Promissory Note Issued to Mr. A

14. Once Mr. A was repaid his loans of approximately \$330,000.00 USD, he invested \$500,000.00 with MacCallum via a professional corporation held by Mr. A. The investment was secured by a promissory note issued by MacCallum on or about 6 February 2009. The promissory note was for a term of 18 months and bore interest at a rate of 15% per year, paid quarterly.
15. Trites acted in furtherance of this trade and was paid a commission of \$2,000.00. The trade was exempt from the registration and prospectus requirements under New Brunswick securities law by virtue of the "Minimum Amount" exemption under section 2.10 of National Instrument 45-106.
16. MacCallum has defaulted in repaying the note. Given the relationship between Trites and Mr. A, Staff accepts that Trites honestly believed that Mr. A would be paid the principal and interest owing under the promissory note.

#### Trites' Involvement in the Promissory Note Issued to Mr. D

17. On or about 7 September 2009, Trites acted in furtherance of a trade in a promissory note issued by MacCallum to Mr. D. Mr. D advanced \$500,000.00 to MacCallum at this time, but the promissory note was not issued by MacCallum until 10 May 2010.
18. Trites was paid a commission of \$5,000.00 in respect of his involvement in this trade.
19. The trade was exempt from the registration and prospectus requirements under New Brunswick securities law by virtue of the "Minimum Amount" exemption under section 2.10 of National Instrument 45-106.
20. MacCallum defaulted in repaying the \$500,000.00 advanced under this note. Given the relationship between Trites and Mr. D, Staff accepts that Trites honestly believed that Mr. D would be paid the principal and interest owing under the promissory note.

#### Trites' Involvement in a Second Promissory Note Issued to Mr. A

21. On or about 26 October 2009, Trites acted in furtherance of a trade in a second

promissory note issued to the professional corporation controlled by Mr. A, this note being issued by AMH.

22. The note was in the amount of \$1,200,000.00, which was to be advanced to AMH over time in three separate payments. Mr. A advanced \$700,000.00 to AMH under this note.
23. Trites was paid a commission of \$5,000.00 in respect of his involvement in this trade.
24. The trade was exempt from the registration and prospectus requirements under New Brunswick securities law by virtue of the "Minimum Amount" exemption under section 2.10 of National Instrument 45-106.
25. MacCallum has defaulted in repaying the \$700,000.00 advanced under this note. Given the relationship between Trites and Mr. A, Staff accepts that Trites honestly believed that Mr. A would be paid the principal and interest owing under the promissory note.

#### Mitigating Factors

26. Trites is deeply remorseful of his part in these investments and the resulting losses to the investors. This has had an extremely detrimental effect on his family relations and his financial wellbeing.
27. Trites has had no prior involvement with the Commission. This is the only instance where Trites has been subject to proceedings under the *Securities Act*.
28. Staff accepts that Trites did not realize that his involvement in connection with the events described above was in contravention of New Brunswick securities laws.
29. Trites has accepted responsibility for his failure to comply with New Brunswick securities law.
30. Trites has cooperated with Staff in the resolution of this matter.

## Schedule "A"

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

AND IN THE MATTER OF

**Andrew J. Trites**

(Respondent)

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### ORDER

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**WHEREAS** on 22 September 2011, Staff of the New Brunswick Securities Commission (the "Commission") issued an interim consent Order against the Respondent Andrew J. Trites; and

**WHEREAS** the Respondent Andrew J. Trites entered into a Settlement Agreement dated ~ June 2012 (the "Agreement") in which he agreed to a proposed settlement of violations of New Brunswick securities law, subject to the approval of the Commission; and

**WHEREAS** 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:

- i. Pursuant to section 191(1)(a) of the *Securities Act*, the Agreement dated ~ June 2012 with respect to Andrew J. Trites is hereby approved;
- ii. Pursuant to section 184(1)(d) of the *Securities Act*, the Respondent shall be denied all exemptions under New Brunswick securities law for a period of five (5) years, except that the Respondent may trade in and for his own account through a registered securities dealer;
- iii. Pursuant to section 184(1)(p) of the *Securities Act*, the Respondent shall disgorge to the New Brunswick Securities Commission the amount of twelve thousand dollars (\$12,000.00);
- iv. Pursuant to section 186(1) of the *Securities Act*, the Respondent shall pay to the New Brunswick Securities Commission an administrative penalty in the amount of ten thousand dollars (\$10,000.00); and

- v. Pursuant to sections 185(1) and 185(2) of the *Securities Act*, the Respondent shall pay costs in the amount of two thousand dollars (\$2,000.00).

DATED at the City of Saint John this \_\_\_\_\_ day of \_\_\_\_\_, 2012.

\_\_\_\_\_  
~, Panel Chair

\_\_\_\_\_  
~, Panel Member

\_\_\_\_\_  
~, Panel Member

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