

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

AND IN THE MATTER OF

CENTRE DE TRAITEMENT D'INFORMATION DE CREDIT (C.T.I.C.) INC.,
doing business as **GROUPE FINANCIER CTIC,**
CITCAP GROUPE FINANCIER INC.,
and **PATRICK GAUTHIER**

(Respondents)

MOTION

1. **The following relief is being sought by staff:**

An order pursuant to section 184(1)(d) of the *Securities Act*, S.N.B. 2004, c. S-5.5, as amended, that any exemptions under New Brunswick securities law do not apply to the Respondents until otherwise ordered by the Commission;

An order pursuant to section 184(1)(i) of the *Securities Act*, that Patrick Gauthier be prohibited from becoming or acting as an officer or director of any issuer, registrant or mutual fund manager; and

An order pursuant to section 184(1)(f) of the *Securities Act*, that the Offering Memorandum filed by CITCAP Group Financier Inc. on 23 January 2009 be amended to include audited financial statements for Centre de traitement d'information de crédit (C.T.I.C.) Inc., or that such audited financial statements be otherwise provided to Staff of the New Brunswick Securities Commission.

2. **The factual and legal grounds for this motion are:**

The Respondents

1. Centre de traitement d'information de crédit (C.T.I.C.) Inc. ("CTIC") is incorporated pursuant to the laws of Québec, with a head office in Québec City. CTIC carries on business under the name "Groupe Financier CTIC". CTIC was incorporated in 1996.

2. CITCAP Groupe Financier Inc. ("CITCAP") was incorporated pursuant to the laws of Canada on 18 September 2008, with a head office in Québec City.
3. Patrick Gauthier ("Gauthier") is an individual resident in Québec City. Gauthier is an officer, director and shareholder of CTIC and CITCAP.
4. None of CTIC, CITCAP or Gauthier (together the "Respondents") are registered to trade in securities in New Brunswick. As such, they each require a valid exemption to trade, or to act in furtherance of a trade in securities.

The CTIC Distribution in New Brunswick

5. CTIC conducted a distribution of its securities in New Brunswick between March of 2006 and March of 2008, as described below. The distribution appears to involve approximately 109 trades by 63 New Brunswick investors, and amounts invested totaling approximately \$5,746,000 (the "CTIC distribution").
6. There was no exemption available to CTIC in respect of the CTIC distribution and, as such, the Respondents violated the prospectus and registration requirements under New Brunswick securities law. CTIC has not filed any Report of Exempt Distribution pursuant to National Instrument 45-106 ("NI 45-106") in respect of the CTIC distribution.
7. The securities distributed in New Brunswick by CTIC consist of written agreements evidencing debt between CTIC and its investors. Investors loaned money to CTIC in exchange for interest, paid monthly.
8. Gauthier acted in furtherance of these distributions to New Brunswick investors by executing loan agreements on behalf of CTIC.
9. CTIC engaged Pierre Emond ("Emond"), Arnel Drapeau ("Drapeau"), Jules Bossé ("Bossé") and Robert St. Onge ("St. Onge") (together the "salespersons") to solicit investors and sell its securities in New Brunswick.
10. Drapeau is a registered mutual funds salesperson at Investia Financial Services Inc. Emond, Bossé and St. Onge are not registered to trade in securities in New Brunswick.
11. The terms of the engagement of the salespersons was that income of 24% per annum would be available for all money raised, payable monthly. The salespersons had some discretion to determine the proportion in which 24% per annum from CTIC would be payable to investors as interest.

on the loan, or to themselves as commissions for the sale of the security.

12. Most investments paid the investors interest of 12% or 14% per annum, and the salespersons commissions of 12% to 10%.
13. The securities sold by Emond and St. Onge were evidenced by a standard form, single page loan agreement drafted by CTIC.
14. The securities sold by Bossé were evidenced by an eight-page loan agreement.
15. Drapeau redrafted the single-page, standard form agreement provided by CTIC into a new single-page loan agreement on similar terms.
16. Drapeau further added a verbal term to the note; that it was automatically renewed unless the investor provided 60 days notice that the loan was to be redeemed at the end of the term. The note itself states that it represents the entire agreement and that there are no oral terms applicable to the agreement.
17. The CTIC agreements stated that the funds received from the investors were to be used for the sole purpose of factoring. Factoring is a form of commerce where a business will purchase the accounts receivable of another business.
18. CTIC did not use the investors' funds for the sole purpose of factoring. Factoring represents only a portion of CTIC's business. Most of CTIC's business appears to be loans where the borrower is lent money in exchange for post-dated cheques representing the re-payment of the loan.
19. The misrepresentation regarding the use of the funds for factoring is significant, because Drapeau and Emond also told investors that the factoring business was insured.
20. The written representation that the investment was to be used for the sole purpose of factoring, and the verbal representation that the factoring business was insured, combine to mislead investors into believing that the entire business is insured. Most of the business done by CTIC is not insured.

Undertaking by CTIC and Gauthier

21. On 18 February 2008, Gauthier gave a written undertaking to staff of the New Brunswick Securities Commission ("Staff" and "NBSC" respectively) that both he and CTIC would not trade in securities in New Brunswick.

22. CTIC distributed further securities in New Brunswick after the written undertaking given by Gauthier. CTIC accepted a new investment from a New Brunswick investor in March of 2008.

The Financial Affairs of CTIC

23. CTIC has provided Staff with various financial statements. These statements reflect that CTIC had the following cash on deposit on the following dates:

(i)	31 October 2005	\$1,268,608.00
(ii)	31 October 2006	\$3,217,155.00
(iii)	31 October 2007	\$6,155,860.00
(iv)	31 March 2008	\$8,048,155.00
(v)	11 June 2008	\$7,181,693.37

24. CTIC was raising capital in New Brunswick throughout 2006 and 2007, and into March of 2008. The cost of financing these funds was 24% per annum, paid monthly. It is not apparent why CTIC would incur this cost during times when it appears to have had surplus money on hand.

CITCAP Distribution

25. On 14 January 2009, CITCAP distributed securities to a New Brunswick investor (the "CITCAP distribution"). The amount invested was \$200,000.00.
26. Gauthier acted in furtherance of this trade by endorsing the loan document evidencing the debt, in breach of his written undertaking to the NBSC dated 18 February 2008.
27. On 23 January 2009, CITCAP filed a Report of Exempt Distribution ("ROED") in respect of the CITCAP distribution.
28. CITCAP relied on the Offering Memorandum exemption under section 2.9 of NI 45-106 ("Offering Memorandum exemption") for the purposes of the CITCAP distribution.
29. The ROED reflects that Drapeau was paid, or was to be paid, a commission of \$10,000.00 in respect of the CITCAP distribution. This violates subsection 2.9(6) of NI 45-106, which provides that a commission may only be paid to a registered dealer.

The CITCAP Business Model

30. CITCAP is a contrivance designed to isolate CTIC from its regulatory failings and its written undertaking not to trade in securities in New Brunswick.
31. CITCAP operates as a conduit for CTIC to engineer a re-investment by its current New Brunswick investors under the Offering Memorandum exemption, and to raise additional investment.

The CITCAP Offering Memorandum

32. The Offering Memorandum used by CITCAP in respect of the CITCAP distribution (the "CITCAP OM") states that CTIC is an "accredited partner" of Desjardins, Bank of Montreal, and the Canadian Imperial Bank of Commerce. There is no description or context provided as to what an "accredited partner" means.
33. The absence of any description of the "accredited partner" relationship creates a risk that investors may assume that their investment is subject to provincial or federal deposit insurance programs applicable to chartered banks and credit unions.
34. Sections 2.3, 2.4 and 2.5 of the CITCAP OM purport to describe the development activities and objectives of CITCAP. These are each expressed in terms so vague as to be applicable to virtually any issuer. They provide no guidance as to the business model and risks to which the investment will be subject.
35. The CITCAP OM provides audited financial statements for CITCAP, and includes un-audited financial statements for CTIC.
36. Pursuant to section 6.4 of NI 45-106 and the Instructions for Completing Form 45-106F2, audited financial statements of CTIC would be required for CTIC to raise money directly. Given that CITCAP is merely a shell corporation raising money for CTIC, it is in the public interest that audited financial statements for CTIC be provided.

The CITCAP Risk Acknowledgement Form

37. CITCAP filed with the NBSC a Risk Acknowledgement form in conjunction with the CITCAP distribution. This form states that the salesperson, Drapeau, is not registered with a securities regulatory agency and has no

duty to determine the suitability of the investment. This is a misrepresentation.

38. Drapeau was registered with the NBSC as a mutual fund salesperson and has a duty under section subsection 54(e) of the *Securities Act*, S.N.B. 2004, c. S-5.5 ("*Securities Act*") to determine suitability of an investment.

The Revised CITCAP Offering Memorandum

39. Staff wrote to the solicitors for CITCAP and advised that since the sole purpose of CITCAP was to raise money for CTIC (and to effect a re-investment by current New Brunswick investors), the CITCAP Offering Memorandum required full and plain disclosure of the affairs of CTIC.
40. CTIC responded to this position by providing a revised Offering Memorandum that contemplates CITCAP investing in companies other than CTIC. This is a further contrivance and demonstrates that the purpose of CITCAP is simply to skirt New Brunswick securities law.

The Status of the Investigation

41. The NBSC issued an Investigation Order, pursuant to section 170(2) of the *Securities Act*, against the Respondents on 10 February 2009. The investigation is ongoing.


Conclusion

42. The conduct of the Respondents warrants that they be removed from the capital markets in New Brunswick until such time as the investigation is complete and any Statement of Allegations filed is determined, or until otherwise ordered by the NBSC. This relief is sought in the public interest pursuant to section 184(1) of the *Securities Act*.

3. **Evidence being relied on:**

1. The affidavit of Ed LeBlanc, Investigator, sworn the 5th day of March, 2009, and
2. Such further and other evidence as Staff may adduce and the Commission permit, in support of this motion for an interim Order.

DATED at the City of Saint John this 5th day of March, 2009.



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