

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

-and-

IN THE MATTER OF
**ADIS GOLIC (also known as Ady Golic),
ADCAPITAL INDUSTRIES INC. and AD CAPITAL U.S. INC.
(RESPONDENTS)**

REASONS FOR DECISION

Date of Order: 14 July 2008

Date of Reasons for Decision: 19 August 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

**ADIS GOLIC (also known as Ady Golic),
ADCAPITAL INDUSTRIES INC. and AD CAPITAL U.S. INC.
(RESPONDENTS)**

REASONS FOR DECISION

1. BACKGROUND

[1] This matter involves an application by Staff (Staff) of the New Brunswick Securities Commission (Commission) for an order under subsection 184(1.1) of the *Securities Act* (*Act*) against the Respondents Adis Golic (Golic), Adcapital Industries Inc. (Adcapital) and AD Capital U.S. Inc. (AD Capital US).

[2] Subsection 184(1.1) of the *Act* gives the Commission the power to make certain orders referred to in subsection 184(1) against a person, after providing an opportunity to be heard, if it is in the public interest to do so and if the person:

- (a) has been convicted in Canada or elsewhere of an offence
 - i. arising from a transaction, business or course of action related to securities, or
 - ii. under the laws of the jurisdictions respecting trading in securities,
- (b) has been found by a court or tribunal of competent jurisdiction in Canada or elsewhere to have contravened or to have failed to comply with the laws of the jurisdiction respecting trading in securities,
- (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, or
- (d) has agreed with a securities regulatory authority in Canada or elsewhere to be subject to sanctions, conditions,

restrictions or requirements.

Orders granted under subsection 184(1.1) are commonly referred to as reciprocal orders.

[3] On 11 June 2008, Staff filed with the Commission their Application (Application) for a reciprocal order against the Respondents, along with a supporting affidavit of Commission Investigator Ed LeBlanc (Investigator) sworn 9 June 2008 (Investigator's Affidavit).

[4] Staff sought a reciprocal order under paragraph 184(1.1)(c) on the following grounds:

- (a) The Respondents are subject to orders made by a securities regulatory authority in British Columbia, imposing sanctions, conditions, restrictions or requirements on the Respondents; and
- (b) It is in the public interest that an Order be issued.

[5] The Investigator's Affidavit contained copies of a 20 May 2008 temporary order of the British Columbia Securities Commission (BCSC) concerning the Respondents, and a 4 June 2008 order of the BCSC extending the 20 May 2008 order. The Affidavit also contains information the Investigator received through Staff's investigation into the actions of the Respondents in New Brunswick.

[6] In response to the Application, the Commission issued a Notice of Application on 11 June 2008. It provided notice to the Respondents that an Application had been made to the Commission for an order pursuant to paragraph 184(1.1)(c), and that the Respondents have a right to be heard with respect to Staff's Application. The Notice of Application advised the Respondents to request a hearing by 26 June 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.

[7] Staff filed an affidavit of service (Affidavit of Service) on 4 July 2008, outlining their service of the Notice of Application, Application and supporting Investigator's Affidavit (Documents) on the Respondents.

[8] Staff received addresses for the Respondents from staff in the Enforcement Division of the BCSC. Staff served the Documents on Golic and AD Capital US at the residential address for Golic, via Canada Post Priority Courier. The Documents were delivered on 12 June 2008. Staff attempted service of the Documents on Adcapital at the Vancouver mailing address provided by the BCSC, however the documents were returned. Adcapital was successfully served on 13 June 2008 via email at the email address provided on the Adcapital website.

[9] The Panel is satisfied that Golic and AD Capital US were served on 12 June 2008 through Canada Post courier. As Golic is president of Adcapital, the Panel is also satisfied that Adcapital was served with the documents through service on Golic, and through email service on 13 June 2008. All Respondents, therefore, received sufficient notice of these proceedings by 13 June 2008, well in advance of the 26 June 2008 deadline provided to exercise their opportunity to be heard.

[10] Neither Golic nor Adcapital contacted the Commission to seek to exercise their right to be heard. AD Capital US, through its solicitor Mr. John Frank of Vancouver, contacted Staff and consented to an order reflecting the sanctions imposed by the BCSC.

2. FACTS

[11] The Panel considered the Notice of Application, the Application, the Investigator's Affidavit and the Affidavit of Service in reaching its decision. The Panel also received and reviewed written submissions filed by Staff on 4 July 2008.

a. The BCSC order

[12] On 20 May 2008 the BCSC issued a temporary order in this matter (BCSC Order), which ordered that:

- (a) the Respondents cease trading and purchasing any securities;
- (b) Golic is prohibited from becoming or acting as a director or officer of any issuer or as a registrant or a promoter;
- (c) Golic is prohibited from acting in a management or consultative capacity in connection with activities in the securities market; and
- (d) the Respondents are prohibited from engaging in investor relations activities.

The BCSC Order was extended on 4 June 2008 until a further hearing is held in British Columbia and a decision is rendered. The hearing in the BCSC matter is adjourned until January 2009.

[13] The BCSC granted and extended the BCSC Order as they considered "it necessary and in the public interest".

b. The Respondents

[14] The BCSC Order details the following facts:

- (a) Adcapital is a British Columbia corporation with a registered office in Vancouver.
- (b) AD Capital US is a Nevada corporation with a registered business address in Burnaby, British Columbia. Shares of AD Capital US are traded on the Pink Sheets, an unregulated over the counter market in the United

States.

(c) Golic is a resident of Burnaby, British Columbia. He is the president of Adcapital and his residence in Burnaby is the registered business address of AD Capital US.

(d) During the period of November 2007 to May 7, 2008, Adcapital, AD Capital US and Golic operated a phone room (Phone Room) in Burnaby, British Columbia that promoted AD Capital US securities to potential investors by telephone.

(e) Individuals employed in the Phone Room made and received telephone calls to and from potential investors. They solicited potential investors to purchase securities of AD Capital US, and told potential investors that Adcapital and/or AD Capital US were:

- (i) seeking to use a muffler technology that would reduce automobile emissions by 97%;
- (ii) doing so well they had to turn down money;
- (iii) preparing to step into a "shell" and trade on the Toronto Stock Exchange; and
- (iv) accepting investors who did not qualify as accredited investors.

(f) BCSC Staff executed simultaneous search warrants at the Phone Room and at Golic's residence on 7 May 2008.

(g) BCSC Staff observed ten phoners in the Phone Room, sitting at individual workstations that contained telephones, call scripts and call sheets with names and phone numbers. Golic was the manager of the Phone Room.

(h) BCSC Staff seized call scripts and other business records for AD Capital US from Golic's residence.

c. New Brunswick activities

[15] The Investigator's Affidavit also contained information the Investigator obtained through his investigation of the Respondent's activities in New Brunswick.

[16] On 7 May 2008, the Investigator was contacted by a New Brunswick resident, K.H., who advised that he had been solicited via telephone to purchase shares in Adcapital. He was contacted by numerous salespeople over a period of time, and the salespeople:

- (a) referred him to Adcapital's website, www.adcapitalindustries.com;
- (b) solicited him to invest \$5,000.00 for 2,500 shares;
- (c) told him the trade would be "pre-IPO"; and
- (d) encouraged him not to miss this great opportunity.

[17] The Adcapital salespeople did not inquire about K.H.'s circumstances in terms of income or assets.

[18] As a result of his contact with K.H. and his subsequent review of Adcapital's website, which provided a British Columbia address for Adcapital, the Investigator contacted the BCSC on 8 May 2008. The BCSC advised that they had an active investigation underway and were executing several search warrants.

[19] None of the Respondents were or are registered to trade securities in New Brunswick. The Respondents have filed no prospectuses or other materials with

the Commission, as is required under the *Act* prior to trading in securities.

3. ANALYSIS AND DECISION

a. Originating order and proceeding

[20] The evidence presented by Staff consisted of the BCSC Order and extending order, and affidavit evidence concerning the Respondents' activities in New Brunswick. Staff did not present the evidence led in the original BCSC proceeding.

[21] The purpose of subsection 184(1.1) of the *Act* is to promote the protection of relevant capital markets as effectively and efficiently as possible. Staff submitted that inquiring into the evidence behind the order in the originating jurisdiction would be counter-productive to this purpose. Staff submitted that a more appropriate approach would be for the Panel to take the issuance of an order by a recognized securities regulator as a *prima facie* basis for reciprocation under paragraph 184(1.1)(c).

[22] The Panel agrees with Staff's submission. Inquiring into the evidence led in the original proceeding could easily lead to a re-hearing of the same evidence, necessitating investigators and other affiants from the originating jurisdiction submitting the same evidence and/or being made available for cross-examination. The purpose of subsection 184(1.1) is to avoid such duplication of resources and costs.

[24] The Respondents were provided the opportunity to be heard before a reciprocating order was issued by the Panel in this matter. Presumably, if there was any serious legal issue as to the legitimacy of the order in the originating jurisdiction, the Respondents would be able to argue such issues before this Panel. However, the Panel stresses that the appropriate place to delve into issues with the originating order is in the originating jurisdiction.

b. Test for Reciprocal Orders

[25] Staff's application was made under paragraph 184(1.1)(c) of the *Act*.

Staff requested that the Commission issue the following order:

- (a) Pursuant to subsection 184(1)(c)(i) of the *Act*, all trading in securities of Adcapital Industries Inc. and AD Capital U.S. Inc. shall cease (including, without limitation, the solicitation of trades, or any acts constituting attempts or acts in furtherance of trading, in such securities);
- (b) Pursuant to subsection 184(1)(c)(ii) of the *Act*, 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 of trading in securities);
- (c) Pursuant to subsection 184(1)(d) of the *Act*, any exemptions in New Brunswick securities law do not apply to the Respondents;
- (d) Pursuant to subsection 184(1)(h) of the *Act*, Adis Golic must resign any position he holds as a director or officer of any issuer; and
- (e) Pursuant to subsection 184(1)(i) of the *Act*, Adis Golic is prohibited from becoming or acting as a director or officer of any issuer, registrant or mutual fund manager;

[26] As outlined in the decision in *Al-tar Energy Corp. et al.*, issued on 17 December 2007, a Panel of this Commission indicated that several conditions must be satisfied prior to an order being granted pursuant to paragraph 184(1.1)(c) of the *Act*. First, a Panel must be satisfied that the Respondents were provided an opportunity to be heard. Second, each Respondent must be a person who is subject to an order made by a securities regulatory authority in Canada or elsewhere imposing sanctions, conditions, restrictions or requirements on the person. Once these two pre-conditions have been met, a Panel must then determine if it is in the public interest to make the order.

i. Opportunity to be heard

[27] As detailed above at paragraphs 7 through 10, this Panel is satisfied that the respondents Golic and Adcapital each received adequate notice of the proceedings and of the consequences of not contacting the Commission to

exercise their opportunity to be heard. Despite receiving this notice, none of these Respondents contacted the Commission; they filed no written submissions; and they did not request a hearing.

[28] Mr. John Frank, the solicitor representing AD Capital US, did contact the Commission in response to the Notice of Application. Mr. Frank, on behalf of AD Capital US, consented to the terms of a draft order prepared by Staff, which provided the relief requested by Staff as set out at paragraph 25, above.

ii. 184(1.1)(c) – Order of another securities regulator

[29] Paragraph 184(1.1)(c) provides for the issuance of an order based on the Respondents being subject to an order of another securities regulatory authority which imposes sanctions, conditions, restrictions or requirements on the Respondents. The BCSC Order currently in place against the Respondents satisfies this requirement.

iii. Public Interest

[30] As set out in the Commission's reasons for decision in *Al-tar*, subsection 184(1.1) gives the Commission the power to make certain orders enumerated in subsection 184(1). However, as set out in subsection 184(1), the Commission may issue these orders only if it is determined to be in the public interest to do so. The definition of what is in the public interest in the context of reciprocal orders was discussed in *Al-tar*. The Panel in *Al-tar*, at paragraph 30, discussed and accepted the Alberta Securities' Commission's (ASC) interpretation of the public interest requirement for reciprocal orders, as set out in *Re Oslund*, 2006 ABASC 1295:

The ASC found that it was not necessary to demonstrate a nexus, in the sense of evidence of actual conduct or actual harm in their province, as a prerequisite to their application of the reciprocal order power. What the legislation requires is "a compelling reason to invoke this provision".

In *Re Oslund*, at paragraphs 20 and 21, the ASC held that it was appropriate to

rely on the reciprocal order provision when it would serve a protective purpose.

[31] Though a nexus is not required, there was evidence in this matter of activities within New Brunswick. This, along with the BCSC Order and the information contained therein about the Respondents' activities in BC, is sufficient to satisfy the "compelling reason" test, and to satisfy the Panel that New Brunswick residents require protection from the activities of the Respondents. That the BCSC issued sanctions against the Respondents is itself, in the opinion of the Panel, compelling evidence of it being in the public interest to issue the order requested by Staff. The further evidence of the Respondents' activities within New Brunswick highlights the need for such an order to protect New Brunswick investors.

c. Scope of New Brunswick Order

[32] Staff's application is for an order which differs in its terms from the BCSC Order. Most significantly, Staff have requested that the Panel order that any exemptions in New Brunswick securities law do not apply to the Respondents, relief which was not part of the BCSC Order.

[33] As set out in this Commission's reasons for decision in *Al-tar*, at paragraphs 34 through 40, the Panel is satisfied that there is no requirement in subsection 184(1.1) that the order granted by the Commission be identical to that ordered in another jurisdiction. Instead, the *Act* requires that the requested sanctions be appropriate and conducive to the efficient administration and enforcement of securities laws.

[35] The Panel finds that, based upon the existence of the BCSC Order and evidence of the Respondents' activities in New Brunswick, the relief requested by Staff is in the public interest and appropriate to protect New Brunswick investors.

[36] The BCSC Order is a temporary order, which has been extended until a hearing is held and the BCSC renders its decision in this matter. The Panel finds it

in the public interest to make an order which will remain in effect for the same duration as the BCSC Order, as it may be from time to time extended or made permanent. If the BCSC Order expires or for any reason is revoked, the reciprocated order will follow suit unless a further order against the Respondents is sought by Staff.

[37] The above constitutes the Panel's reasons for decision for its Order issued on 14 July 2008 pursuant to paragraph 184(1.1)(c) of the *Act*.

Dated at the City of Saint John this 19 day of August, 2008.

"original signed by"

Donne W. Smith, Panel Chair

"original signed by"

Kenneth Savage, Panel Member

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