NEW BRUNSWICK
SECURITIES COMMISSION

COMMISSION DES
VALEURS MOBILIÈRES
DU NOUVEAU-BRUNSWICK

IN THE MATTER OF

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

AND

IN THE MATTER OF

INVESTORS GROUP FINANCIAL SERVICES INC./

SERVICES FINANCIERS GROUPE INVESTORS INC.

REASONS FOR DECISION

HEARING DATE: 19 January 2006
DECISION DATE: 19 January 2006

PANEL:

Donne W. Smith	Panel Chair
David T. Hashey, Q.C.	Member of the Commission
William D. Aust	Member of the Commission

COUNSEL:

Lucie Mathurin-Ring	for Staff of the New Brunswick Securities Commission
Thomas B. Drummie, Q.C.	for Investors Group Financial Services Inc./
Terrance W. Hutchinson, Q.C.	Services Financiers Groupe Investors inc.

IN THE MATTER OF
The *Securities Act*, S.N.B. 2004, c.S-5.5

- and -

IN THE MATTER OF
Investors Group Financial Services Inc./
Services Financiers Groupe Investors inc. (the "Respondent")

DECISION

I. INTRODUCTION

The New Brunswick Securities Commission (the "Commission") was empanelled on 19 January 2006 pursuant to a Notice of Hearing dated 9 January 2006 to consider whether, in the opinion of the Commission, it was in the public interest to make certain orders under the *Securities Act* (the "Act"), more particularly, whether:

a. pursuant to ss.185(1) of the Act, the Respondent pay the Commission's cost of the investigation;
b. pursuant to ss.185(2) of the Act, the Respondent pay the Commission's cost of the hearing;
c. pursuant to ss.186(1) of the Act, the Respondent pay an administrative penalty; and
d. such other orders as it deems appropriate in the circumstances,

By reason of certain allegations set out in a Statement of Allegations made by Staff of the Commission ("Staff") on 6 January 2006. The Notice of Hearing was issued pursuant to section 184 of the Act which outlines the public interest jurisdiction and powers of the Commission.

Along with the Statement of Allegations, Staff Counsel submitted a Settlement Agreement dated 12 January 2006 to be considered by the Commission.

At the hearing, Staff Counsel made arguments with regard to both facts and law which counsel felt were pertinent to this matter. Following due consideration, the Panel accepted the Settlement Agreement and the penalties as proposed by the parties. An

Order was issued effective the date of the hearing with written reasons to follow as is required by the Act. This Decision now reflects the Panel's reasons for accepting the Settlement Agreement as submitted.

II. FACTS

This matter involves unregistered trading in New Brunswick contrary to section 45 of the Act. The Settlement Agreement sets out the material facts, none of which are in dispute and which the Panel accepted in reaching its decision.

The Respondent is a diversified financial services firm that carries on business across Canada as, amongst other things, a manufacturer, manager and distributor of mutual funds. Prior to 1 January 2006 the Respondent carried out its mutual fund distributions through two dealers, one in Québec and one in the rest of Canada. The Québec dealer, Les Services Investisseurs Ltée. ("LSIL"), was a registrant under securities legislation in Québec but was not registered in any other Canadian jurisdiction. On 1 January 2006 the two mutual fund distributors were amalgamated and continued in business under the name of the Respondent.

In the course of an investigation, Staff of the Commission discovered that LSIL and certain non-resident individuals called "consultants" ("consultants") were carrying on registerable activities in New Brunswick without being registered to do so, contrary to section 45 of the Act. Staff discovered, and the Respondent acknowledges, that 17 non-resident individuals or "consultants", who were not registered with the Commission, traded on behalf of a combined total of 54 New Brunswick clients over a period ranging from one to nine years.

During all material times the Respondent and its two predecessor entities had policies in place requiring that their respective consultants not engage in trades or acts in furtherance of a trade for individuals resident in a province or territory in Canada in which the consultants were not registered. Such non-resident policies, though in place, were not followed or enforced in New Brunswick by LSIL or the Respondent.

Over the nine year period of this activity, in contravention of the Act and its predecessor statute, the Respondent and its consultants avoided paying registration fees that would otherwise have been payable, yet continued to receive compensation from New Brunswick clients for the execution of trades and the provision of advice, contrary to the Act.

Staff of the Commission and the Respondent agree that the total registration fees that should have been paid over the nine year period and the compensation paid by New Brunswick clients over the same period in connection with non-registered trading were as follows:

a) dealer registration fees:	$ 7,200
b) consultant registration fees:	$17,200
c) compensation paid to consultants:	$18,310
Total:	$42,710

The Respondent acknowledges that LSIL breached New Brunswick's securities laws. Staff confirm that all non-resident consultants who provided securities advice to resident New Brunswick clients and who desired to continue to do so are now registered under the Act. The Respondent confirms that its non-resident policies are now being applied and enforced. No evidence was submitted of specific harm or injury to New Brunswick investors by the Respondent or its non-registered consultants. Finally, Staff advise that the Respondent has been fully cooperative throughout the investigation of this matter.

III. DECISION

This Panel is asked to accept an agreement reached by Staff and the Respondent which sets out the terms upon which administrative action and penalties will apply. Staff Counsel presented for the Panel's guidance a Submission along with a Table of Authorities. Counsel cited case law to help guide the Panel in determining its obligations in accepting settlement agreements and the appropriateness of any penalty, and such case law and precedent are considerable.

The purpose of securities regulation is clearly set out in section 2 of the *Securities Act*. It is to protect investors from unfair, improper and fraudulent securities activities and to foster fair and efficient capital markets and confidence in those markets. The oft-cited decision of the Ontario Securities Commission in *re Mithras Management Ltd.* (1990), 13 O.S.C.B. 1600 at pages 1610--1611 clearly describes the public interest objectives which a securities regulator must follow in meeting its public interest jurisdiction:

> the role of the Commission is to protect the public interest by removing from the capital markets - wholly or partially, permanently or temporarily, as the circumstances may warrant - those whose conduct in the past leads us to conclude that their conduct in the future may well be detrimental to the integrity to those capital markets. We are here to restrain, as best we can, future conduct that is likely to be prejudicial to the public interest in having capital markets that are both fair and efficient. In so doing we must, of necessity, look to past conduct as a guide to what we believe a person's future conduct might reasonable be expected to be; we are not prescient, after all.

The parties agree and this Panel concurs that a violation of New Brunswick's securities law occurred and it is, therefore, appropriate for this Panel to consider whether the sanctions agreed to by the parties are also appropriate.

The Settlement Agreement proposes that the Respondent pay to the Commission an amount totalling $63,220. This monetary penalty includes the registration fees and compensation paid, noted above, of $42,710. Additionally, the parties agree that interest in the amount of $6,560 should be paid on the registration fees that were not paid by the dealer and consultants, along with an amount of $13,950 as an additional deterrent penalty. In addition to the total penalty of $63,220, the Respondent also agrees to contribute $5,000 towards the cost of the investigation into this matter and this hearing.

In determining what is an appropriate penalty for violations of securities legislation, Counsel referred the Panel to the leading decision of the Alberta Securities Commission, *Lamoureux (Re*) [2002] A.S.C.D. No. 125, which enumerates some important considerations including:

a) the seriousness of allegations proved or acknowledged;
b) a respondent's past conduct;
c) the harm suffered by investors as a result of the respondent's activities;
d) previous decisions made in similar circumstances; and
e) damage caused to the integrity of capital markets and the need to deter others from engaging in similar improper activities.

A panel of this Commission joined other Commissions recently in reaffirming that a public interest test must be applied in determining whether to accept any settlement agreement. The decision in *optionsXpress Inc. (Re)* [2005] 28 O.S.C.B. 7957 reiterated that it is the Panel's primary responsibility to determine appropriate sanctions given facts pertinent only to the specific matter before it. Looking at absolute values such as dollar amounts imposed in other settlements or administrative processes for example, should not alone be determinative of the appropriateness of sanctions.

Of significance in determining the matter before this Panel is the Commission's earlier decision in the matter of *Manulife Securities International Limited* [2005, N.B.S.C.], also a case of unregistered trading in New Brunswick. That decision clearly stated that each matter must be decided on its own facts.

In the matter before us, the Panel raised two issues for clarification which counsel were able to satisfactorily address. The first related to the amount paid by the Respondent and LSIL to the consultants of $17,200. The Respondent indicated that this amount was paid not only to individuals but also to LSIL, that is the dealer, and constitutes the totality of the amount of compensation paid by the New Brunswick clients during the period in question.

The second issue surrounded the extent to which the Respondent's liability for the actions of consultants, currently the subject of investigation and not before the Panel, was intended to be relieved by an acceptance of the Settlement Agreement. Counsel for Staff and the Respondent argued that it was not the intention of the parties, and the Settlement Agreement should not be so read, as absolving the

Respondent from wrong-doing with regard to fact situations other than those specific to the matter before the Panel.

For greater certainty, the Panel wishes to reiterate once again that this Decision should not be read as absolving any market participant from any future action by the Commission for violations of the *Securities Act* with regard to the activities of individual consultants who are or may in the future be under investigation by Staff of the Commission.

In conclusion, this Panel finds that the Respondent and its consultants breached New Brunswick's securities regulations over a nine year period, such that harm was caused to the integrity of our capital market and our regulatory system. The Panel acknowledges, however, that there is no demonstrable harm to individual investors; that the Respondent was cooperative throughout the investigation of this matter; and that the Respondent has now taken steps to ensure compliance with New Brunswick legislation including obtaining registration for those non-resident consultants who wish to continue to provide advice to New Brunswick residents.

Given these circumstances, the Panel finds that the Settlement Agreement meets the appropriate public interest test and, pursuant to section 186 of the Act, accepts it and its Terms as submitted. For these Reasons the Panel agreed to execute an Order on 19 January 2006 reflecting this conclusion.

Original signed by: Donne W. Smith
Donne W. Smith (Panel Chair)

Original signed by: David T. Hashey
David T. Hashey (Member of the Commission)

Original signed by: William D. Aust
William D. Aust (Member of the Commission)