

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

AND IN THE MATTER OF

**BERRIE WHITE CAPITAL CORPORATION and  
MATTHEW WHITE**  
(Respondents)

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**STATEMENT OF ALLEGATIONS**  
(of Staff of the New Brunswick Securities Commission)

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1. Berrie White Capital Corporation ("BWCC") is a registered limited market dealer in Ontario, with a head office at 178 Sorauren Avenue, Toronto, Ontario.
2. Matthew White ("White") is an individual resident at 164A Indian Road Crescent, Toronto, Ontario. White is an officer, director, shareholder and chief compliance officer of BWCC.
3. On or about 5 August 2008, White, on behalf of BWCC, wrote to two (2) New Brunswick registered mutual fund dealers and proposed to each dealer an arrangement to pay illegal commissions to Wayne Mallett ("Mallett").
4. Mallett is not registered with the New Brunswick Securities Commission to trade in securities pursuant to New Brunswick securities law.
5. The illegal commissions were proposed by White to be paid on the sales of certain exempt securities in New Brunswick under section 2.9 of National Instrument 45-106 ("NI 45-106"). Such commissions would contravene section 2.9(6)(b) of NI 45-106.
6. White was aware of the illegality of the proposed commissions at the time the proposals were made, and his actions constitute a wilful attempt to breach New Brunswick securities law. Given the attempt to contravene section 2.9(6)(b) of NI 45-106, it is in the public interest that BWCC and White be denied all exemptions under New Brunswick securities law. It is further in the public interest that White be prohibited from becoming a director or officer of a registrant or issuer in New Brunswick.
7. Enforcement staff of the New Brunswick Securities Commission ("Staff" and "Commission") commenced an investigation into this matter on 15 August 2008. An investigator wrote to White on 15 August 2008 and demanded production of relevant documents pursuant to section 172(3) of the *Securities Act*, S.N.B. 2004, c.

S-5.5, as amended (the "*Securities Act*").

8. On 19 August 2008 at 11:25 a.m. and 11:28 a.m., White wrote to the two (2) New Brunswick mutual funds dealers by email and revoked his proposal of 5 August 2008 regarding the illegal commissions to Mallett.
9. Later that same day, 19 August 2008, at 5:40 p.m., White wrote to the investigator and provided certain of the documents requested. White failed to produce the two (2) emails dated 5 August 2008 containing the illegal proposals, or the two (2) emails, sent approximately six (6) hours earlier, revoking such proposals.
10. On 21 August 2008, White provided to the investigator copies of the four (4) emails described in paragraph 9 above. White stated that these were found as a result of a more thorough review of his records.
11. Staff alleges that White wilfully failed to include the copies of the four (4) emails in his initial production of documents on 19 August 2008, contrary to section 172(5) of the *Securities Act*. This failure was mitigated to some extent by his subsequently providing the documents.

#### Relief Sought

11. Staff seeks an order pursuant to section 184(1)(d) of the *Securities Act*, S.N.B. 2004, c. S-5.5, as amended (the "*Securities Act*"), that any exemptions under New Brunswick securities law do not apply to Berrie White Capital Corporation or Matthew White permanently, or for such period as the Commission may determine.
12. Staff seeks an order pursuant to section 184(1)(i) of the *Securities Act*, that Matthew White be prohibited from becoming or acting as a director or officer of any issuer, registrant or mutual fund company permanently, or for such period as the Commission may determine.
13. Staff seeks an order pursuant to section 186(1) of the *Securities Act*, that Matthew White pay an administrative penalty in respect of his contravention of section 172(5) of the *Securities Act* described in paragraph 11 above.
14. Staff seeks an order pursuant to sections 185(1) and 185(2) of the *Securities Act*, that White pay investigation and hearing costs.

DATED at the City of Saint John this 15<sup>th</sup> day of October 2008.

<<original signed by>>

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