

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)

SETTLEMENT AGREEMENT

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 Berrie White Capital Corporation ("BWCC") and Matthew White ("White") (together the "Respondents") to a panel of the New Brunswick Securities Commission pursuant to section 191(1)(a) of the *Securities Act*, S.N.B. 2004, c. S-5.5. (the "*Securities Act*") in accordance with the following terms and conditions:

- a. The Respondents agree to the Statement of Facts set out in Part II hereof, and consent to the making of an order on the basis of those facts, as set out in Schedule "A", with such revisions of a stylistic nature as may be preferred by the Commission; and
- b. The terms of any settlement will become public information only if, and when, the settlement is approved by the Commission.

2. THE RESPONDENTS' OBLIGATIONS IF SETTLEMENT APPROVED

If the Settlement Agreement is approved, the Respondents undertake as follows:

- a. The Respondents will not make any statement that is inconsistent with the Statement of Facts attached hereto;
- b. The Respondents will comply with the Order as set out in Schedule "A";
- c. Pursuant to the Order as set out in Schedule "A", White will pay an administrative penalty in the amount of \$8,000 in respect of the allegations described in the Statement of Allegations filed by Staff on 8 October 2008; and
- d. Pursuant to the Order as set out in Schedule "A", White will pay costs of the investigation in the amount of \$1,000.

3. PROCEDURE FOR APPROVAL OF SETTLEMENT

- a. Upon execution of the Settlement Agreement by Staff and the Respondents, Staff will apply to the Commission for an order approving the Settlement Agreement.
- b. Prior to the hearing to seek approval of the Settlement Agreement, White will provide all amounts due under the settlement by certified cheques to the Commission, to be held in escrow. If the Settlement Agreement is approved, the cheques will be deposited by the Commission. If the Settlement Agreement is not approved, the cheques will be returned to White.
- c. If the Settlement Agreement is approved by the Commission, it will constitute the entirety of the evidence to be submitted respecting the Respondents in this matter, and the Respondents agree to waive any right to a hearing and/or appeal with respect to this matter.
- d. If, for any reason whatsoever, this settlement is not approved by the Commission, or the order set forth in Schedule "A" is not made by the Commission:
 - i. Staff and the Respondents will be entitled to all available proceedings, remedies and challenges, including proceeding to a hearing, unaffected by the Settlement Agreement or 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 Respondents or as may be required by law; and
 - iii. The Respondents further agree that they 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 thereto 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. STAFF COMMITMENT

If this settlement is approved by the Commission, Staff will not initiate any other proceeding under the Act against the Respondents in relation to the facts set out in Part II of this Settlement Agreement.

6. 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 signature.

DATED at the City of Saint John this 6th day of January, 2009.

original signed by
Jake van der Laan
Director – Enforcement NBSC

DATED at the municipality of Toronto this 8th day of January, 2009.

Berrie White Capital Corporation

original signed by
Per: Colin Berrie
Title: CEO

original signed by
Witness:

original signed by
Matthew White

original signed by
Witness:

Part II

STATEMENT OF FACTS

1. On 16 July 2008, the Respondent Matthew White ("White"), on behalf of the Respondent Berrie White Capital Corporation ("BWCC"), contacted Staff of the New Brunswick Securities Commission ("Staff") to determine means by which BWCC could market exempt securities in New Brunswick under section 2.9 of National Instrument 45-106 ("NI 45-106") and pay a commission to an unregistered salesperson.
2. In particular, White, on behalf of BWCC, discussed the potential for seeking an exemption from section 2.9(6)(b) of NI 45-106, which prohibits the payment of any commission under section 2.9 of NI 45-106, except to registered dealers.
3. Staff advised Mallett that they would not be prepared to recommend the proposed exemption, and BWCC did not proceed with any application for exemption.
4. On 5 August 2008, White, on behalf of BWCC, contacted two New Brunswick securities dealers by email and proposed an arrangement that would have resulted in the payment of a commission to an unregistered salesperson in violation of section 2.9(6)(b) of NI 45-106 (the "proposal emails"). Staff was aware of the contact between White and the dealers, but was not aware of the proposals regarding the illegal commissions.
5. No trades were conducted pursuant to the proposals made by White, and no breaches of the *Securities Act*, S.N.B. 2004, c. S-5.5. (the "*Securities Act*") occurred as a result of the proposals.
6. On 15 August 2008, a New Brunswick Securities Commission investigator (the "Investigator") contacted White and demanded production of all relevant documents relating to BWCC's marketing of exempt securities in New Brunswick. The Investigator placed a deadline of 22 August 2008 for the required production.
7. On 19 August 2008, White, on behalf of BWCC, sent two emails revoking the proposals made on 5 August 2008 to the two New Brunswick securities dealers (the "revocation emails").
8. White, on behalf of BWCC, responded to the Investigator's demand for production of relevant documents, but failed to include copies of the two proposal emails or the two revocation emails. White subsequently provided these documents to the investigator on 21 August 2008, after further discussion with the Investigator. The temporary failure to produce relevant documents pursuant to the Investigator's demand constitutes a violation of section 172(5) of the *Securities Act*. This violation was mitigated by the subsequent production of the documents in question.
9. White and BWCC have fully cooperated in the resolution of the enforcement proceeding brought by Staff of the Commission.
10. Neither White nor BWCC has been the subject of any previous regulatory action by the Commission or its predecessor securities regulatory authority.
11. White is remorseful of his conduct.

Schedule "A"

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**
(Respondent)

ORDER

WHEREAS on 15 October 2008, Staff of the New Brunswick Securities Commission ("Staff") issued a Statement of Allegations in respect of the Respondents, Berrie White Capital Corporation and Matthew White;

AND WHEREAS the Respondents entered into a Settlement Agreement dated 6 January 2009 (the "Agreement") in which they agreed to a proposed settlement of this proceeding, subject to the approval of the Commission;

AND UPON REVIEWING the Agreement and the Agreed Statement of Facts filed in this matter;

AND WHEREAS the Commission finds that Matthew White failed to comply with New Brunswick securities law;

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:

1. Pursuant to section 191(1)(a) of the Securities Act, S.N.B. 2004, c. S-5.5 (the "Act"), the Settlement Agreement entered into on 6 January 2009 with respect to the Respondents, is hereby approved.
2. Pursuant to section 184(1)(d) of the Act, any exemptions under New Brunswick securities law do not apply to Berrie White Capital Corporation for a period of 2 years;
3. Pursuant to section 184(1)(d) of the Act, any exemptions under New Brunswick securities law do not apply to Matthew White for a period of 4 years;
4. Pursuant to section 184(1)(j) of the Act, Matthew White is prohibited from becoming or acting as a director or officer of any issuer, registrant, or mutual fund company for a period of 4 years;

5. Pursuant to section 186(1) of the Act, Matthew White shall pay an administrative penalty for failing to comply with New Brunswick securities law in the amount of \$8,000.00 (eight thousand dollars); and
6. Pursuant to section 185(1) of the Act, Matthew White shall pay investigation costs in the amount of \$1,000.00 (one thousand dollars).

DATED at the City of Saint John this ____ day of January, 2009.

, Panel Chair

, Panel Member

, Panel Member

New Brunswick Securities Commission
Suite 300, 85 Charlotte Street
Saint John, New Brunswick
E2L 2J2

Tel: (506) 658-3060
Fax: (506) 658-3059