

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

- and -

IN THE MATTER OF

**NNR N. NATURAL RESOURCES INC., INT. TELEWORLD INC., FLASH FUNDING INTERNATIONAL
CORP., FNT FOREVER NEW TECHNOLOGIES, INC., GLOBAL CAPITAL & FINANCIAL CORP.,
PRUDENTIAL GLOBAL REAL ESTATE CORP., GLOBAL BONDS FUND INC., LUMINARY MINERALS
LTD., and RAK MARINE INTERNATIONAL INC.**

(The Respondents)

REASONS FOR DECISION ON PRELIMINARY MOTION

Date of Hearing of Motion: 18 July 2012
Date of Reasons for Decision: 14 August 2012

Panel:

Anne La Forest, Panel Chair
Denise A. LeBlanc, Q.C., Panel Member
Ken Savage, Panel Member

Counsel:

Mark McElman

For Staff of the New Brunswick
Securities Commission

Robyrt R. Regan

For respondents NNR N. Natural
Resources Inc., Int. Teleworld Inc., FNT
Forever New Technologies, Inc., Global
Capital & Financial Corp., Prudential
Global Real Estate Corp., Global Bonds
Fund Inc., and RAK Marine International
Inc.

IN THE MATTER OF

NNR N. NATURAL RESOURCES INC., INT. TELEWORLD INC., FLASH FUNDING INTERNATIONAL CORP., FNT FOREVER NEW TECHNOLOGIES, INC., GLOBAL CAPITAL & FINANCIAL CORP., PRUDENTIAL GLOBAL REAL ESTATE CORP., GLOBAL BONDS FUND INC., LUMINARY MINERALS LTD., and RAK MARINE INTERNATIONAL INC.

(The Respondents)

REASONS FOR DECISION ON PRELIMINARY MOTION

1. BACKGROUND

[1] On 2 May 2012, Staff (Staff) of the New Brunswick Securities Commission (the "Commission") filed a motion (the "Preliminary Motion") seeking that interim orders issue against the Respondents. The interim orders requested were cease trade orders pursuant to sub-paragraphs 184(1)(c)(i) and 184(1)(c)(ii) of the *Securities Act (Act)* and denial of exemptions under New Brunswick securities law pursuant to paragraph 184(1)(d) of the *Act*. Staff requested that the interim relief be granted while Staff complete their investigation into the Respondents' operations.

[2] In the materials in support of the Preliminary Motion, Staff make several allegations against each respondent company. Staff allege that the information they received from the Respondents – along with information publicly available – led Staff to question their legitimacy.

[3] On 9 May 2012, a Notice of Hearing on the Preliminary Motion was issued on 9 May 2012 scheduling the matter for 28 May 2012. On May 23 2012 a request for an adjournment was received from counsel for FNT Forever New Technologies, Inc. to allow

sufficient time to review materials. Staff did not oppose the request for adjournment and the hearing was rescheduled. On 24 May 2012, an Amended and Consolidated Notice of Hearing of Motion was issued, rescheduling the hearing for 18 July 2012.

[4] On 11 July 2012, counsel for the Respondents NNR N. Natural Resources Inc., Int. Teleworld Inc., FNT Forever New Technologies, Inc., Global Capital & Financial Corp., Prudential Global Real Estate Corp., Global Bonds Fund Inc., and RAK Marine International Inc. (the "Represented Respondents") filed a Notice of Motion (the "Adjournment Motion"), seeking an adjournment of the matter and seeking an order that Staff produce Jake van der Laan and Gordon Fortner, the affiants of the affidavits filed by Staff in support of their Preliminary Motion, for cross examination prior to the hearing of the motion.

[5] On 10 July 2012, Staff filed an Amended Motion.

[6] The Panel considered the written submissions of the Represented Respondents and the written response of Staff in regards to the Adjournment Motion, and on 13 July 2012 issued their decision denying the Represented Respondents' request for an adjournment. Written reasons for their denial of the Adjournment Motion were issued on 16 July 2012.

2. SECTION 206 APPLICATION

[7] On 18 July 2012 and prior to the commencement of the hearing of the Preliminary Motion, counsel for the Represented Respondents filed an Application under section 206 of the Act (the "Section 206 Application"), seeking the following relief:

The applicant seeks an order varying the decision of the Committee to deny the motion for adjournment that was made on July 13, 2012, together with an order granting an adjournment of the hearing scheduled for July 18, 2012 together with the following further and other relief:

1. *An Order that Jake Van der Laan be produced for cross examination on his affidavits sworn April 26, 2012 and July 10, 2012;*
2. *An Order that Gordon Fortner be produced for cross examination on his affidavits sworn July 9, 2012;*
3. *An Order that the Commission produce for inspection the originals of all documents and file materials used in the making of the affidavits referred to in paragraphs 1 and 2.*

[8] Prior to the commencement of the hearing of the Preliminary Motion, the Panel requested oral submissions from the parties on the Section 206 Application.

[9] Counsel for the Represented Respondents made very serious claims in the Application, including claims of denial of procedural fairness; bias on the part of the Panel; and a claim that the Panel improperly applied the appropriate law. However, counsel for the Represented Respondents provided no evidence to support such claims and provided no additional evidence to that which had already been considered by the Panel during the course of the Adjournment Motion. Further, counsel for the Represented Respondents indicated in his Application that the Panel had provided no reasons for its 13 July 2012 decision to deny the Adjournment Motion; however, an Affidavit of Service of Lise Noël, Senior Administrative Support Officer of the Commission, sworn 18 July 2012 confirmed that counsel for the Represented Respondents had been served with the decision on the Adjournment Motion via email on 16 July 2012.

[10] The Panel considered the oral and written submissions of the parties, and provided oral reasons on 18 July 2012 for their denial of the Section 206 Application. The Panel referred to section 206, which reads as follows:

Revocation or variation of decision

206(1)The Commission may make an order revoking or varying a decision of the Commission, on the application of the Executive Director or a person affected

by the decision, if in the Commission's opinion the order would not be prejudicial to the public interest.

206(2) The Commission may impose such terms and conditions as the Commission considers appropriate on an order under this section.

[11] The Panel also referenced subsection 18(1) of Local Rule 15-501 *Procedures for Hearings Before a Panel of the Commission* (LR 15-501):

18(1) Application – An Applicant for a further decision pursuant to subsection 195(7) of the *Act* or for an order revoking or varying a decision of the Commission pursuant to section 206 of the *Act* must serve on every other Party to the original Proceeding, and must file with the Secretary, an application:

- (a) identifying the decision in respect of which the request is being made;
- (b) stating the interest in the decision of the Party filing the request;
- (c) stating the factual and legal grounds for the request and the evidence in support of any factual grounds (new material or significant change in circumstances) to be relied upon not already before the Panel;
and
- (d) stating the relief sought. [*emphasis added*]

[12] Noting that the Application did not contain any new material or significant change in circumstances to warrant the Panel varying or revoking their decision on the Adjournment Motion, the Panel denied the Application and proceeded to hear the Preliminary Motion.

3. EVIDENCE IN PRELIMINARY MOTION

[13] The evidence filed by Staff in support of the Preliminary Motion consisted of four affidavits:

1. Two (2) affidavits of Jake van der Laan (van der Laan Affidavits) - filed 2 May 2012 and 10 July 2012

2. Affidavit of Gordon Fortner (Fortner Affidavit) - filed 9 July 2012
3. Affidavit of Service of Mark McElman (Affidavit of Service)- filed 18 July 2012

[14] The Represented Respondents filed four responding affidavits:

1. Affidavit of Hollie Phipps re respondent FNT Forever New Technologies Inc. (FNT) - filed 12 July 2012
2. Affidavit of Hollie Phipps re respondents NNR N. Natural Resources Inc. (NNR) and INT. Teleworld Inc. (INT) – filed 16 July 2012
3. Affidavit of Hollie Phipps re respondents Global Capital & Financial Corp. (Global Capital), Global Bonds Fund Inc. (Global Bonds), and Prudential Global Real Estate Corp. (Prudential) (all three together the “Global Respondents”) – filed 17 July 2012
4. Affidavit of Hollie Phipps re respondent RAK Marine International Inc. (RAK Marine) – filed 17 July 2012
(together the “Phipps Affidavits”)

[15] Despite receiving adequate notice of the Preliminary Motion, as detailed in the Affidavit of Service, the respondents Flash Funding International Corp. (Flash Funding) and Luminary Minerals Ltd. (Luminary) did not appear at the hearing of the Preliminary Motion and did not file any materials.

[16] It is significant at the outset for the Panel to note that both affiants of the van der Laan Affidavits and the Fortner Affidavit were present for the hearing of the Preliminary Motion. Despite this, and despite the Adjournment Motion and the Section 206 Application wherein the Respondents' alleged right to cross-examine both of these affiants prior to the hearing of the Preliminary Motion was vigorously argued, counsel for the Represented Respondents did not request to cross-examine the affiants at any time during the hearing of the Preliminary Motion.

[17] The evidence presented by Staff details the ongoing investigation into the affairs of several corporations that were incorporated under the *New Brunswick Business*

Corporations Act with a registered office at the same address: 334 Main Street, in Shediac, New Brunswick, E4P 2E5 (Shediac Address), a small business services outlet. Staff began their investigation in late 2011. The evidence presented by Staff indicates that Staff became concerned about the legitimacy of some of the corporations at the Shediac Address – namely the Respondents. In this Preliminary Motion, Staff are seeking an interim cease trade order against the Respondents to be put in place while Staff complete their investigation.

[18] The van der Laan Affidavits contain information obtained primarily through internet and registry searches completed by Mr. van der Laan as part of Staff's ongoing investigation. The van der Laan affidavit filed on 2 May 2012 contains a significant amount of information about the Respondents, grouped by company. The Fortner Affidavit details Mr. Fortner's information request made to the Represented Respondents, and an investor complaint received regarding the respondent NNR. The van der Laan affidavit filed on 10 July 2012 corrects some information originally presented in the 2 May 2012 affidavit, and contains more information on two individuals, Alan Morag and Dorian Reed, who are listed directors of some of the Represented Respondents.

[19] The responding affidavits were all sworn by Hollie Phipps, identified as a law clerk employed by counsel for the Represented Respondents', Mr. Regan. Ms. Phipps also identifies herself as "*a nominee director for INT Teleworld Inc; however in this capacity I am not involved in any of the day to day business operations of INT Teleworld*". No affidavits were filed by any principals of any of the Respondents.

4. LEGAL PRINCIPLES

a. Jurisdiction and mandate of the Commission

[20] The Commission's dual mandate is to protect New Brunswick investors from unfair, improper or fraudulent practices, and to foster fair and efficient capital markets and confidence in capital markets. This mandate is outlined in section 2 of the *Act*:

Purposes of Act

2 The purposes of this Act are

- (a) to provide protection to investors from unfair, improper or fraudulent practices, and
- (b) to foster fair and efficient capital markets and confidence in capital markets.

b. Interim orders under section 184

[21] Staff are seeking, in their Preliminary Motion, an interim order under section 184 of the *Act*. The specific orders requested are interim cease trade orders and exemption bans under paragraphs 184(1)(c) and 184(1)(d) of the *Act*. The Commission can issue an order under section 184 if it finds that it is in the public interest to do so. Paragraphs 184(1)(c) and (d) read as follows:

184(1) The Commission may, if in its opinion it is in the public interest to do so, make one or more of the following orders:

- (c) an order that:
 - (i) trading in or purchasing cease in respect of any securities or exchange contracts specified in the order, or
 - (ii) a person specified in the order cease trading in or purchasing securities or exchange contracts, specified securities, or exchange contracts or a class of securities or class of exchange contracts;
- (d) an order that any exemptions contained in New Brunswick securities law do not apply to a person permanently or for such period as as specified in the order *[emphasis added]*

[22] This Commission has discussed its public interest jurisdiction in several decisions, notably in the ***Tycoon Energy Inc. et al.*** decision dated 12 April 2011; the ***Ronin Group L.L.C. et al.*** decision dated 14 October 2011; and the ***New Century International et al.*** decision dated 29 November 2011. This Commission has held that its public interest

jurisdiction under section 184 of the Act is protective and preventative, and is intended to be exercised to prevent likely future harm to capital markets. And, when deciding whether or not to exercise their public interest jurisdiction, the Commission must always be cognizant of its mandate and purpose: to protect investors from unfair, improper or fraudulent practices and to foster fair and efficient capital markets and confidence in those markets.

c. Acting in the public interest

[23] As indicated above, the Commission must be satisfied that it is in the public interest prior to issuing an order under section 184. Staff have submitted several grounds upon which they wish to have the orders issued in the public interest. Their reason for requesting the interim orders can be summed up by the following question, posed by Staff in their pre-hearing submission:

Based on the evidence submitted on the Motion, is there sufficient reason to question the legitimacy of the Respondent companies, so as to warrant that they be subjected to market bans in the public interest pending the completion of Staff's investigation?

[24] Staff requested this interim relief in their Preliminary Motion as a preventative measure, to prevent potential harm to investors and to the capital markets pending the completion of their investigation and their filing of a Statement of Allegations against the Respondents. Staff have requested that the interim cease trade orders – if issued – remain in place pending further order of the Commission.

[25] The decisions cited above, namely **Tycoon**, **Ronin** and **New Century**, are examples of permanent cease trade orders being issued in the public interest. While the same public interest test is at play in this Preliminary Motion, there is a difference in that Staff here are requesting interim relief. Such interim relief has been requested by Staff – and granted by the Commission – on *ex parte* motions prior to the completion of Staff's investigation. In this matter, Staff chose to proceed via a preliminary motion with notice under subsection 184(1) of the Act, rather than an *ex parte* motion under

subsection 184(5). While changing the test somewhat in that Staff does not have to prove (as in an ex parte motion) that the length of time required to hold a hearing could be prejudicial to the public interest, urgency remains a factor in this Preliminary Motion. The Panel is cognizant that Staff's investigation is not complete, and that the responses of the Represented Respondents are also not complete. However, the Panel is also cognizant of their preventative role, and take that role very seriously.

5. ANALYSIS

a. Protective and Preventative role

[26] The Panel shares the concerns expressed by Staff about the legitimacy of the Respondent companies, and about the quality of the information presented by the Represented Respondents both to the Panel and to the public on the various websites and public documents of each company. The Panel acknowledges counsel for the Represented Respondents' submissions seeking to explain the delays in providing information to Staff and to respond to this motion. However, the Panel finds that the evidence presented by Staff is clearly indicative of problems and inaccuracies with the Respondents' disclosure, and with the responsiveness of the Respondents to Staff's concerns. These problems, and the potential for harm to both investors and to the integrity and reputation of New Brunswick's capital markets, is of considerable concern to the Panel and the Panel finds it necessary to exercise their protective and preventative public interest jurisdiction.

[27] Staff quoted the OSC decision in **Re: Biovail**, 2010 CarswellOnt 7449, in their submissions. The Panel finds the following statement, made by the OSC in *Biovail* at paragraphs 382 and 383, supportive of the Panel's decision to exercise its public interest jurisdiction in this current matter:

We should not interpret or constrain our public interest jurisdiction in a manner that condones inaccurate, misleading or untrue public disclosure regardless of whether that disclosure contravenes Ontario securities law. The issues raised by this matter directly engage the fundamental principle recognized in the Act for timely, accurate and efficient disclosure.

There should be no doubt in the minds of market participants that the Commission is entitled to exercise its public interest jurisdiction where any inaccurate, misleading or untrue public statement is made, whether or not that statement contravenes Ontario securities law. It is, of course, a separate question whether the Commission should exercise its public interest jurisdiction under section 127 of the Act in any particular circumstance.

[28] As previously noted, this is a Preliminary Motion for interim relief. The relief requested by Staff is temporary; to remain in place until further order of the Commission. If the Respondents are able to address the concerns of Staff, then the Panel could entertain a further motion (by either Staff or any of the Respondents) to revisit any interim order in advance of a Statement of Allegations being filed by Staff.

b. Evidence necessitating the Commission`s public interest jurisdiction

[29] Voluminous affidavits were filed by both Staff and counsel for the Represented Respondents in advance of this Preliminary Motion. The Panel reviewed all material in detail, and heard submissions from counsel for Staff and counsel for the Represented Respondents. The Panel does not intend, in this decision, to review in detail all the evidence presented and the competing claims made by the parties. Rather, the Panel intends to outline the evidence accepted by the Panel as being sufficient to engage the Commission`s public interest jurisdiction. The Panel focuses on the documentation attached to the van der Laan affidavits, and on the information request detailed in the Fortner Affidavit.

[30] The Represented Respondents filed evidence in response to the Preliminary Motion. As previously noted, the documents filed in this matter by the Represented Respondents consisted of four affidavits of Ms. Phipps, a law clerk employed by counsel for the Represented Respondents. The Phipps Affidavits consist mainly of Ms. Phipps recounting conversations she had with Mr. Regan, counsel for the Represented Respondents, addressing the claims made by Staff. None of the principals of the Represented Respondents swore any affidavits in this matter, nor did any of the companies respond to Mr. Fortner's information request (the only response was that contained in the Phipps Affidavits).

[31] The Respondents are nine (9) of 74 companies incorporated at the Shediac Address. Each Respondent company was incorporated by a Toronto company called Touchtone International Business Services (Touchstone). Staff indicated that they began to question the legitimacy of the Respondents after reviewing publicly available information, and after receiving some information, upon request, from either the Respondents or Touchstone.

[32] Staff claim, in the Preliminary Motion, that the documents provided by the Respondents or publicly available on their websites are “*in many respects inconsistent, carelessly prepared, or nonsensical.*” The Panel, in many instances, which are set out below, agrees. There are numerous misrepresentations or questionable representations made by the Respondents in their offering documentation and publicly available documentation which have not been sufficiently addressed or explained by the Respondents. This, coupled with the majority of the Respondents' failure to respond to Staff's information request (as detailed in the Fortner Affidavit), is sufficient for the Panel to exercise their public interest jurisdiction – on an interim basis – to prevent harm to and protect confidence in the capital markets in the province.

[33] The Panel's specific concerns related to each respondent are outlined below:

i. NNR

[34] NNR is a New Brunswick company that was incorporated in June 2011 with its registered office at the Shediac Address, and appears to have begun trading on the Frankfurt Stock Exchange (FSE) in December 2011. Staff provided evidence from the website of NNR, which indicates that the company “*is a wood processing company, located in New Brunswick, Canada where wood pellets production is planned to be organized. We have access to 5.9 million hectares of forest in which several sawmills operations will provide the feedstock*”. However, there is no evidence presented that NNR has any presence in NB.

[35] Further, Staff presented evidence of false information on the website for NNR. For example, photos of three purported board members are actually photos of

individuals with other names, taken from other websites. This was not denied in the Phipps Affidavits, but was blamed on a third party web developer.

[36] Along with these concerns – which are substantial misleading statements on public sites – Staff presented evidence that trading in NNR on the FSE was halted in February 2012. As well, a complaint was received from a German investor regarding his having invested 20,000 euros in NNR prior to it being delisted, and now being unable to contact the agency through which he made the investment. This is an example of exactly the situation that the Panel, through its protective and preventative exercise of its public interest jurisdiction, is seeking to avoid occurring in New Brunswick with their decision on this Preliminary Motion.

ii. INT

[37] INT is a New Brunswick Company that was incorporated in June 2011 with its registered office at the Shediac Address, and has been trading on the FSE since September 2011. Staff received information on INT, including an Offering Memorandum and financial statements, from Touchstone. Staff indicate that many of their concerns raised with respect to INT's documents mirror those expressed regarding NNR, as the form and content of the financial documents of the two companies are similar.

[38] A main concern highlighted by Staff is that a section of the text of the Offering Memorandum appears to be copied from a sample business plan for a fictitious telecommunications company, which is available on a website offering sample business plans. As well, Staff indicate that the website for INT indicates that INT is involved in gold and silver speculation, along with operating a Canadian telecommunications business. The offering memorandum does not reference gold and silver speculation and there has been no evidence presented to support the fact that INT operates any type of telecommunications business. Like NNR, there is no indication of any physical location where the commercial activities of INT actually take place.

[39] As an added concern, counsel for the Respondents acknowledged that business operations of INT have been halted as a result of civil litigation proceedings between

INT and its underwriting bank. No further specifics have been provided on this matter, other than an indication in the Phipps Affidavits that INT is "aggressively defending" the proceedings.

[40] Staff also highlight several deficiencies with the Offering Memorandum and financial documents of INT and NNR, which were provided to Staff by Touchstone. The Panel does not feel it necessary to address these documents, as the misleading statements and potential investor harm outlined above are sufficient to warrant acting in the public interest in granting the requested order against INT and NNR.

iii. Flash Funding

[41] Flash Funding is not one of the Represented Respondents, and has not responded to these proceedings. Flash Funding is a New Brunswick company that was incorporated in October 2011 with its registered office at the Shediac Address, and has been trading on the FSE since January 2012. Flash Funding purports to be an investment and advisory firm specializing in funding precious metals, oil and gas, alternative energy and technology companies.

[42] Staff made information requests to Flash Funding on 27 January 2012, regarding their trading activities. A copy of the letter was forwarded to the lawyer for Flash Funding that was identified on their website. This lawyer contacted Staff and advised that he was not Flash Funding's counsel, and that he had not authorized his name to be used on his website. Flash Funding did reply by email to Staff advising that they would be answering the information demand. However, as of the date of the hearing of the motion, Staff advised that no response had been received.

[43] As well, Staff noted in their submissions that Flash Funding has been dissolved as of 5 June 2012, and as such Flash Funding currently has no corporate existence.

iv. FNT

[44] FNT is a New Brunswick company which was incorporated in September of 2011 with its registered office at the Shediac Address, and has been trading on the Berlin

Borse since February of 2012. FNT purports to have several lines of business, including life insurance settlements, vacation timeshare sales, solar energy, identification theft services and ink and toner sales.

[45] As with other companies involved in this matter, Staff received an offering memorandum and financial documents from Touchstone. Along with detailing several concerns with these documents and with the financial (namely capitalization) claims of the company, Staff focuses on the involvement of a Mr. Dorian Reed (Mr. Reed) who is listed as a director of FNT and who corresponded with Staff on behalf of FNT. Mr. Reed appears to have been convicted of fraud in California, and served time in prison for these offences. This information was not disclosed in FNT's offering, financial or public documents.

[46] The Fortner Affidavit evidences the information request made to FNT (through their counsel) dated 30 May 2012. Staff indicate that no response was received to the information request by the deadline provided by Mr. Fortner in the information request, or by the date of the Fortner Affidavit (9 July 2012). The only information filed on behalf of FNT is contained in one of the Phipps Affidavits. Ms. Phipps is not a principal of FNT and the information in her affidavit is mainly information received from Mr. Regan (counsel for FNT) and from her review of the FNT website. While her evidence is intended to respond specifically to Staff's allegations in the Preliminary Motion, staff submit that this is an insufficient response to the information demand issued by Staff. The Panel agrees. Further, the responding materials do not address Mr. Reed's history of fraud, and do not adequately address the financial concerns highlighted by Staff. Together, there are enough concerns with the disclosure and responsiveness of FNT, to warrant the Panel's exercise of its public interest jurisdiction.

v. Global Respondents

[47] We have grouped the Global Respondents together, as there is substantial overlap in Staff's concerns regarding these three companies. All are New Brunswick companies with registered offices at the Shediac Address: Global Capital was incorporated in March 2011, and appears to have been trading on the FSE since

August 2011; Prudential was incorporated in September 2011 and appears to have been trading on the FSE since December 2011; and Global Bonds was incorporated in October 2011 and appears to have attempted to become listed on the Berlin Borse, the FSE and the Vienna Stock Exchange.

[48] The evidence provided by staff for the Global Respondents included information from their websites, and offering memoranda and financial information received from Touchstone.

[49] Along with questionable financial claims, Staff outlined concerns regarding the Global Capital website, and provided compelling evidence that the content on this site was copied "almost word for word" from the website of an investment firm named "Global Capital Finance GmbH & Co Europe KG.

[50] Staff also details many other inaccuracies and deficiencies with the websites and disclosure documents of the Global Respondents. There are concerns about the identity of the directors, one of whom appears to be a 17 year old girl (Zoe Arbel), and another of whom appears to go by several names (Alan Morag; Ilan Morgan; Ilan Arbel). Two of the names apparently used by this director are associated with alleged securities misconduct in Israel and the United States. As of 10 July 2012, both Mr. Morag and Ms. Arbel continued to be listed as directors of all three Global Respondents on the New Brunswick Corporate Registry.

[51] The Panel has many concerns regarding the accuracy of the public, corporate and offering documentation of the Global Respondents. There is an attempt in the Phipps Affidavits to explain many of these discrepancies. However, the Panel's concerns remain. The explanations, as they are set out in the Phipps Affidavits, lay blame for errors on Touchstone and a third party web designer. However, the responsibility remains with the companies to ensure the accuracy of the information they are disclosing to the public.

[52] In addition, the Global Respondents were the subject of an information request made by Mr. Fortner, as detailed in the Fortner Affidavit. No response has been received directly from any of the principals of this company in response to the information request. The only information received to date in response to the request was one of the Phipps Affidavits, again, which the Panel finds insufficient.

vi. Luminary

[53] Luminary is not one of the Represented Respondents, and has not responded to these proceedings. Luminary is a New Brunswick company and was incorporated in June 2011, with its registered office at the Shediac Address. Luminary sought to become listed on the FSE. Staff allege that many of the claims on Luminary's website are misleading or false.

[54] Staff's evidence against Luminary is uncontested, and raises sufficient concerns as to their legitimacy.

vii. RAK Marine

[55] RAK Marine is a New Brunswick company incorporated in June 2011 with its registered office at the Shediac Address, and appears to have been trading on the FSE since October 2011.

[56] Staff's main concerns with RAK Marine are the claims on their website of their operations and locations in New Brunswick. The website claims that RAK Marine has its corporate headquarters at the Shediac Address, and that they have existing locations "*in both the Pacific and Eastern Canada*". Staff claims that these are substantial misrepresentations as to the business of RAK Marine designed to mislead investors, as there has been no evidence presented of any actual physical location for RAK Marine in New Brunswick or Canada.

[57] Evidence was presented in the Phipps Affidavits that RAK Marine is an active business. While that may be the case, the Panel is concerned that the scope and nature of the business are not accurately disclosed to potential investors. The Phipps

Affidavit in support of RAK Marine indicates that the company does not actually have the locations and operations claimed in Canada, but that they are "*in the preliminary stages of establishing a shipbuilding operation in New Brunswick*". The misleading statements in public documents are a significant risk to investors and confidence in the capital markets.

[58] RAK Marine was also the subject of the information request detailed in the Fortner Affidavit. As with the other Represented Respondents, the only material filed by RAK Marine was one of the Phipps Affidavits, which contains information provided to Ms. Phipps from Mr. Regan in response to Staff's claims, not in response to the information request.

6. DECISION AND ORDER

[59] In summary, the Panel shares Staff's concerns regarding the legitimacy of each of the Respondents and the potential for their operations to harm both investors and investor confidence in New Brunswick's capital markets, contrary to the public interest. The Panel finds the evidence presented by Staff at the Preliminary Motion – the most salient portions of which are detailed above – provides sufficient basis for the Panel to exercise its public interest jurisdiction and issue temporary market bans on the Respondents pending further order of the Commission.

[60] The Panel is aware that the evidence is not complete. However, there is ample evidence to show that at the time of the Preliminary Motion there is substantial misleading and inaccurate information being provided to the public by the Respondents, and that the Respondents have been generally unresponsive to Staff's information demands. The majority of the allegations of Staff have not been adequately addressed – if addressed at all – by the Respondents. For these reasons, the Panel finds that a temporary ban is necessary at this time to provide preventative protection to the public and to the capital markets while Staff complete their investigation into the activities of the Respondents.

[61] The Panel hereby orders that:

(a) pursuant to sub-paragraphs 184(1)(c)(i) and 184(1)(c)(ii) the Respondents shall cease trading in all securities and all trading in any securities offered by the Respondents shall cease immediately; and

(b) pursuant to paragraph 184(1)(i)(d), any exemptions contained in New Brunswick securities law do not apply to the Respondents,

until otherwise ordered by the Commission.

[62] The above constitute the Panel's Order and Reasons for their Decision on the Preliminary Motion heard 18 July 2012.

Dated this 14 day of August, 2012.

“original signed by”

Anne La Forest, Panel Chair

“original signed by”

Denise A. LeBlanc, Q.C., Panel Member

“original signed by”

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