

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

AND

IN THE MATTER OF  
MANULIFE SECURITIES INTERNATIONAL LTD.  
PLACEMENTS MANUVIE INTERNATIONAL LIMITEE ("MANULIFE")

Hearing: 15 February 2005

Panel:	Anne La Forest	(Chair of the Panel)
	Hugh J. Fleming, Esq., Q.C.	Commissioner
	William D. Aust	Commissioner

Counsel:	Christina C. Taylor	For the Staff of the New Brunswick Securities Commission
----------	---------------------	---

REASONS FOR DECISION

EXCERPT FROM THE SETTLEMENT HEARING  
CONTAINING THE ORAL REASONS FOR DECISION

The following statement has been prepared for purposes of publication on the New Brunswick Securities Commission website and is based on the transcript of the hearing, including oral reasons delivered at the hearing, in the matter of Manulife. The transcript has been edited, supplemented and approved by the panel for the purpose of providing a public record of the panel's decision in the matter. This decision should be read together with the settlement agreement and order attached.

**Background**

Manulife is registered in New Brunswick as a broker restricted to the distribution of mutual funds.

In the course of a compliance review, Staff of the New Brunswick Securities Commission discovered that Manulife employed 32 non-resident salespersons who were not registered in New Brunswick but who had traded on behalf of 33 residents of New Brunswick.

The unregistered trading occurred in spite of the fact that the then Administrator of Securities under the former *Security Frauds Prevention Act* had issued Notice No. 7 entitled *Trading by Unregistered Salespersons*, warning against the practice, in August of 2001 and the MFDA issued a Member Regulation Notice MR-0022 *Out of Province Registration* on the same topic in October of 2003.

Manulife co-operated with the regulator throughout the investigation. The breach was inadvertent as opposed to concerted. No complaints were received from clients and there was no evidence of harm to investors.

Staff and Manulife entered into a Settlement Agreement under which Manulife agreed to ensure that no salesperson traded on behalf of New Brunswick clients without being registered, to pay an administrative penalty of \$64,000 and hearing costs of \$2,000.

Staff Counsel indicated the figure had been arrived at by calculating the fees saved by not registering multiplying it by the average period of time the off-side trading had occurred (\$32,000) and then adding an equivalent amount as a penalty.

**Cases Referred to by Staff Counsel**

*In the Matter of the Alberta Securities Commission and Fundex Investments;*  
*In the Matter of the Administrator of Securities of New Brunswick and IPC Investment Corporation;*  
*In the Matter of the Administrator of Securities of New Brunswick and Aegon Dealer Services Inc.*

## Reasons for Decision

CHAIR:

We are ready to provide our decision but I want to make some preliminary comments. All of us agree that by virtue of Section 184 of the New Brunswick *Securities Act* the registration of salespersons to trade in the province is critical to the Act's mandate to protect the investing public.

We also all agree that, as the Settlement Agreement points out, by permitting non-resident, non-registered salespersons to trade on behalf of New Brunswick clients Manulife has acted contrary to the public interest.

By permitting unregistered trading, the Respondent has saved registration fees and may have further benefited from the commissions that were earned on trades executed for its New Brunswick clientele by the unregistered representatives.

In circumstances where we find a breach of subsection 184(1) of the Act, we believe that a penalty is required and that the penalty should not simply be to pay what is owed, or what would have been owed if the respondent had acted correctly in the circumstances, but that there must be a penal aspect to it.

We appreciate Counsel providing us with a line of decisions, some of which, in the Province of New Brunswick were under the old legislation, prior to the *Securities Act*. As a general matter, it is important to state that we do not accept, at this time, that the rationale provided by Counsel in relation to how Staff calculated the amount of the penalty will be appropriate in future cases. Given our new legislation, the matter of penalties is one that we believe the Commission should look at closely in the longer term.

For the purposes of this specific case, however, we do note that many of the actions in question occurred while the previous Act was in force, that the Respondent was co-operative and that there was an element of inadvertence in the breach.

In such circumstances, Commissioner Flemming and I are prepared to sign the order as presented. We do have a dissent and we will invite Commissioner Aust to address that.

COMMISSIONER AUST:

Thank you, Madame Chair. While I acknowledge the mitigating factors in the information that has been presented, I believe the punitive nature of the settlement is not adequate. I am not satisfied with the amount of the penalty as I

believe it to be too low. I disagree with the rationale used to calculate the amount of the settlement. For those reasons I dissent and will not sign the order.

CHAIR:

We will sign the Order. Since two is a quorum for the Commission, the order becomes an order of the Commission. We thank Counsel for her very able presentation and that brings the Matter of Manulife Securities International Ltd. To a close.