

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

- and -

IN THE MATTER OF

**SAXON FINANCIAL SERVICES LTD., SAXON CONSULTANTS, LTD., SEAN WILSON, JUSTIN
PRAAMSMA, CONRAD PRAAMSMA, TODD YOUNG and MERCHANT CAPITAL MARKETS
S.A. carrying on business as "MERCHANT CAPITAL MARKETS" and as
"MERCHANTMARX"**

REASONS FOR DECISION

Dates of Hearing: 13 July 2007 and 27 July 2007
Dates of Orders: 13 July 2007 and 27 July 2007
Date of Reasons for Decision: 9 October 2007

Panel:

David T. Hashey, Q.C., Panel Chair
Hugh J. Flemming, Q.C., Panel Member
Donne W. Smith, Panel Member

Counsel:

Jake van der Laan, For the staff of the New Brunswick
Mark McElman Securities Commission

IN THE MATTER OF

SAXON FINANCIAL SERVICES LTD., SAXON CONSULTANTS, LTD., SEAN WILSON, JUSTIN PRAAMSMA, CONRAD PRAAMSMA, TODD YOUNG and MERCHANT CAPITAL MARKETS S.A. carrying on business as "MERCHANT CAPITAL MARKETS" and as "MERCHANTMARX"

REASONS FOR DECISION

1. BACKGROUND

a. Overview of proceedings

[1] This matter involves allegations of soliciting trades in gasoline futures and other acts in furtherance of a trade in contravention of section 45 of the New Brunswick *Securities Act* ("Act") contrary to the public interest.

[2] A Notice of Motion seeking an *ex parte* Temporary Order was filed on 10 July 2007.

b. Temporary Order

[3] On 13 July 2007 the New Brunswick Securities Commission (the "Commission") heard the *ex parte* application with evidence introduced through a series of Affidavits. A Pre-hearing Submission was also provided.

[4] After considering the information in the Affidavits, the Commission issued a Temporary Order against Saxon Financial Services Ltd., Saxon Consultants, Ltd., Sean Wilson, Justin Praamsma, Conrad Praamsma, Todd Young, and Merchant Capital Markets S.A. carrying on business as "Merchant Capital Markets" and as "MerchantMarx" (the "Respondents").

[5] The Order required that, for a period of fifteen days, all trading in securities, including the solicitation of trades or any acts in furtherance of trading, cease and further provided that any exemptions in New Brunswick securities law did not apply

to the Respondents. The Order further provided that service of the Order could be effected by email, fax or courier and set a Hearing in the matter for 27 July 2007 at 10:00 a.m. at the offices of the Commission.

[6] A Notice of Hearing with Statement of Allegations was issued by the Commission on 13 July 2007 indicating that Staff of the Commission would seek a permanent Order against the Respondents to cease trading, cease attempts to solicit trades, remove any exemptions from applying to the Respondents, and pay the costs of the investigation and Hearing.

[7] The Notice of Motion for *ex parte* Temporary Order, Temporary Order, the Notice of Hearing with Statement of Allegations and the Affidavits relied upon were served upon the Respondents.

2. THE HEARING

a. No Respondents appeared at the Hearing

[8] The Hearing was held 27 July 2007 at the offices of the Commission.

[9] None of the Respondents appeared in person or was represented by Counsel. No communication or correspondence was received from any of the Respondents.

[10] Since none of the Respondents was present and no communication was received by any of them, this Panel must be satisfied that the Respondents received notice of the Hearing. Full and timely notice is a basic requirement of the rules of natural justice. This requirement must be balanced by the fact that a Temporary Cease Trade Order affects the reputation and livelihood of an individual and thus the *Act* is structured to revisit the matter in a short time-frame.

[11] While the Respondents are not required to appear, it is important to ensure that each has received sufficient notice in order to respond to the allegations. The Panel should only consider evidence when it is satisfied that a Respondent has been provided adequate notice.

[12] In their book *Principles of Administrative Law*, at page 257, Jones and de Villars advance the following comment on adequate notice.

In the absence of a specific statutory prescription, the general rule of procedural fairness is that an administrator must give adequate notice to permit affected persons to know how they might be affected and to prepare themselves adequately to make representation. Where the statute is silent as to the length of required notice, what is reasonable notice is contextual in nature.

[13] In this instance, while the statute is silent on the period of notice, the statute does require that a hearing be held within 15 days. That short period is intended to operate to the advantage of the Respondents by mitigating the damage to their reputations and livelihood. In the event that a Respondent is desirous of having more time to prepare, the solution is to offer an adjournment sufficient to enable proper preparation.

b. Facts and analysis regarding service.

[14] Section 199 of the Act governs the sending of information or material. Subsection (1) reads as follows:

199(1)Unless otherwise provided by New Brunswick securities law, (emphasis added) any information or material that under New Brunswick securities law is sent or is required to be sent to a person may be

(a)served on the person in the manner in which personal service may be made under the Rules of Court, or

(b)mailed to the person at the latest address known for that person by the sender of the information or material, at the address for service in New Brunswick filed by that person with the Executive Director or at the address of the person's solicitor if the person, or the solicitor, has advised that the solicitor is acting for the person.

[15] New Brunswick securities law is defined as follows:

“New Brunswick securities law” means

(a)this Act,

(b)the regulations,

(c)in respect of a person, **a decision of the Commission** (emphasis added) or the Executive Director to which the person is subject, and

(d)any extra-provincial securities laws adopted or incorporated by reference under section 195.3.

[16] In the Temporary Order dated 13 July 2007, the Commission ordered that service be effected by email, fax or courier. That provision satisfies the criteria of paragraph 199(1)(c) in that the order “otherwise provided” for service.

[17] Staff entered into evidence the Affidavit of Huguette Marie Champagne (the “Affidavit”) who deposed to service or attempted service of a package of documents (“the documents”) that included: the Notice of Motion for *ex parte* Temporary Order; Affidavit of Jake van der Laan sworn 9 July 2007; Affidavit of Ed LeBlanc sworn 10 July 2007; Affidavit of Ed LeBlanc sworn 13 July 2007; Temporary Order issued 13 July 2007; Notice of Hearing dated 13 July 2007 and Statement of Allegations dated 13 July 2007.

[18] The subject matter of each document and our comments is outlined below.

i. Saxon Financial Services Ltd.

[19] On 16 July 2007 the documents were faxed to 1-678-827-0921 which was the facsimile number for Saxon Financial Services Ltd. provided in the company’s ad for broker trainees. Exhibit “D” to the Affidavit shows the transmission as being completed.

[20] On 16 July 2007 the documents were emailed to Inquiries@saxonfs.com, customerService@saxonfs.com, HelpDesk@saxonfs.com, and Operations@saxonfs.com all of which were e-mail addresses found on the website www.saxonfs.com. Exhibit “G” to the Affidavit provides a copy of the e-mail sent.

[21] On 16 July 2007 the documents were sent by Purolator courier to Saxon Financial Services, 3340 Peachtree Road, Suite 1800, Atlanta, Georgia, 30326 which is the address provided on the Saxon Financial Services website shown in Exhibit “H” to the Affidavit. Delivery was refused.

[22] On 24 July 2007 the documents sent by Purolator courier to Saxon Financial Services were redirected and delivered to 3475 Lenox Road, 9th Floor, Atlanta, Georgia, 30326-1261 and were refused by someone who stated that his name was "Justin".

[23] We find that delivery by fax and e-mail was effected upon Saxon Financial Services Ltd. on 16 July 2007.

ii. Saxon Consultants, Ltd.

[24] On 13 July 2007 the documents were e-mailed to trading@saxonfx.com which was the e-mail address used by Justin Praamsma in his communications with Jake van der Laan. Exhibit "B" to the Affidavit provides the Microsoft Outlook tracking report.

[25] On 13 July 2007 the documents were also e-mailed to info@saxonfx.com and admin@saxonfx.com which were two additional addresses found on the www.saxonfx.com website. Exhibit "C" to the Affidavit provides the Microsoft Outlook tracking report.

[26] On 16 July 2007 the documents were faxed to 1-877-471-0266, the facsimile number for Saxon Consultants Ltd. provided on the fax cover sheet from Justin Praamsma. Exhibit "E" to the Affidavit shows the transmission as being completed.

[27] On 16 July 2007 the documents were sent by Purolator courier to Saxon Consultants Ltd. at RG Lodge Plaza, Upper Main Street, Tortola, British Virgin Islands, which is the street address that corresponds to P.O. Box 3161 Road Town, Tortola. The post office box was provided on the webpage www.saxonfx.com. The package was not delivered by Purolator.

[28] We find that delivery by e-mail and fax was effected upon Saxon Consultants, Ltd. on 13 July 2007 and 16 July 2007 respectively.

iii. Sean Wilson

[29] On 16 July 2007 the documents were faxed to Sean Wilson at 1-678-827-0921 which was the facsimile number for Saxon Financial Services Ltd. provided in the company's ad for broker trainees. Exhibit "D" to the Affidavit shows the transmission as being completed.

[30] On 16 July 2007 the documents were faxed to Sean Wilson at 1-877-471-0266 which was the facsimile number for Saxon Consultants, Ltd. provided on the fax cover sheet from Justin Praamsma. Exhibit "E" to the Affidavit shows the transmission as being completed.

[31] On 16 July 2007 the documents were sent by Purolator courier to Sean Wilson, 3340 Peachtree Road, Suite 1800, Atlanta, Georgia, 30326 which is the address provided on the Saxon Financial Services Ltd. website shown in Exhibit "H" to the Affidavit. Delivery was refused.

[32] On 24 July 2007 the documents sent by Purolator courier to Sean Wilson were redirected and delivered to 3475 Lenox Road, 9th Floor, Atlanta, Georgia, 30326-1261 and were refused by someone who stated that his name was "Justin".

[33] We find that delivery by fax was effected upon Sean Wilson on 16 July 2007.

iv. Justin Praamsma

[34] On 16 July 2007 the documents were faxed to Justin Praamsma at 1-678-827-0921 which was the facsimile number for Saxon Financial Services Ltd. provided in the company's ad for broker trainees. Exhibit "D" to the Affidavit shows the transmission as being completed.

[35] On 16 July 2007 the documents were faxed to Justin Praamsma at 1-877-471-0266 which was the facsimile number for Saxon Consultants, Ltd. provided on the fax cover sheet from Justin Praamsma. Exhibit "E" to the Affidavit shows the transmission as being completed.

[36] On 16 July 2007 the documents were sent by Purolator courier to Justin Praamsma, 3340 Peachtree Road, Suite 1800, Atlanta, Georgia, 30326 which is the address provided on the Saxon Financial Services website shown in Exhibit "H" to the Affidavit. Delivery was refused.

[37] On 23 July 2007 the documents sent by Purolator courier to Justin Praamsma were redirected and delivered to 5200 Peachtree Road, Apt. 3113, Atlanta, Georgia, 30341-2730, which is the residential address for the Praamsma brothers. Marjorie Bently of Purolator Courier advised the package was delivered 23 July 2007

[38] We find that delivery by fax and courier was effected upon Justin Praamsma on 16 July and 23 July 2007 respectively.

v. Conrad Praamsma

[39] On 16 July 2007 the documents were faxed to Conrad Praamsma at 1-678-827-0921 which was the facsimile number for Saxon Financial Services Ltd. provided in the company's ad for broker trainees. Exhibit "D" to the Affidavit shows the transmission as being completed.

[40] On 16 July 2007 the documents were faxed to Conrad Praamsma at 1-877-471-0266 which was the facsimile number for Saxon Consultants, Ltd. provided on the fax cover sheet from Justin Praamsma. Exhibit "E" to the Affidavit shows the transmission as being completed.

[41] On 16 July 2007 the documents were sent by Purolator courier to Conrad Praamsma, 3340 Peachtree Road, Suite 1800, Atlanta, Georgia, 30326 which is the address provided on the Saxon Financial Services website shown in Exhibit "H" to the Affidavit. Delivery was refused.

[42] On 23 July 2007 the documents sent by Purolator courier to Conrad Praamsma were redirected and delivered to 5200 Peachtree Road, Apt. 3113, Atlanta, Georgia,

30341-2730, which is the residential address for the Praamsma brothers. Marjorie Bently of Purolator Courier advised the package was delivered 23 July 2007.

[43] We find that delivery by fax and courier was effected upon Conrad Praamsma on 16 July 2007 and 23 July 2007 respectively.

vi. Todd Young

[44] On 16 July 2007 the documents were faxed to Todd Young at 1-678-827-0921 which was the facsimile number for Saxon Financial Services Ltd. provided in the company's ad for broker trainees. Exhibit "D" to the Affidavit shows the transmission as being completed.

[45] On 16 July 2007 the documents were faxed to Todd Young at 1-877-471-0266 which was the facsimile number for Saxon Consultants, Ltd. provided on the fax cover sheet from Justin Praamsma. Exhibit "E" to the Affidavit shows the transmission as being completed.

[46] On 16 July 2007 the documents were sent by Purolator courier to Todd Young, 3340 Peachtree Road, Suite 1800, Atlanta, Georgia, 30326 which is the address provided on the Saxon Financial Services website shown in Exhibit "H" to the Affidavit. Delivery was refused.

[47] On 24 July 2007 the documents sent by Purolator courier to Todd Young were redirected and delivered to 3475 Lenox Road, 9th Floor, Atlanta, Georgia, 30326-1261 and were refused by someone who stated that his name was "Justin".

[48] We find that delivery by fax was effected upon Todd Young on 16 July 2007.

vii. Merchant Capital Markets S.A. carrying on business as “Merchant Capital Markets” and as “MerchantMarx”

[49] On 13 July 2007 the documents were e-mailed to mail@merchantmarx.com which was the address provided in the Bank Wire Transfer instruction. Exhibit “A” to the Affidavit provides the Microsoft Outlook tracking report.

[50] On 16 July 2007 there were numerous attempts to fax the documents to Merchant Capital Markets S.A. in care of its solicitors LaChat Harari & Associés at 1-41 22 819 15 20 which was the facsimile number on the letter faxed to Ed LeBlanc by solicitor Julie Vaisy as shown in Exhibit “F” to the Affidavit. None of the transmissions was successful.

[51] On 16 July 2007 the documents were sent by Purolator courier to Merchant Capital Markets, Rue de Rhone, 14, 1204, Geneva, Switzerland, which was the address provided on the Customer Application. Delivery was made on 18 July 2007 as is evidenced in Exhibit “J” to the Affidavit.

[52] On 24 July 2007 the documents were e-mailed to info@lha.ch, the e-mail address of the law firm of LaChat Harari and Associés being the firm representing Merchant Capital Markets S.A. as described in the letter to Ed LeBlanc. Exhibit “K” to the Affidavit shows the e-mail as having been delivered.

[53] We find that delivery by e-mail and courier was effected upon Merchant Capital Markets S.A. on 13 July 2007 and 18 July 2007 respectively.

[54] In our opinion, each of the Respondents was served at least once by 16 July 2007, leaving a full 11 calendar days and nine clear business days in which to contact the Commission. Consequently, the Panel is satisfied that the requirement for sufficient notice of the Hearing has been met.

c. Evidence presented

[55] The only evidence adduced was documentary evidence in the form of Affidavits from Ed LeBlanc sworn 10 July 2007 and 13 July 2007 and Jake van der Laan sworn 9 July 2007. No witness gave evidence.

[56] Our decision and reasons follow.

3. THE FACTS

a. The Respondents

i. Saxon Financial Services Ltd.

[57] Saxon Financial Services Ltd. is a company purporting to be based on Tortola in the British Virgin Islands with a satellite office in Atlanta, Georgia, USA. Employees, documents and website information refer to Saxon Financial Services Ltd., Saxon Consultants, Ltd. as Saxon.

[58] The Saxon Financial Services Ltd. webpage invited visitors to try out its technology and features links to a number of demonstration sites listed as "Wynwood Mercantile", "Trade XL", "fxBridge Technologies", "chads fake office", "another fake office", "Arial Trading LLC", "IMFX Demonstration", "CIC-ONE" and "MerchantMarx".

[59] Saxon Financial Services Ltd. marketed unleaded gasoline futures and was advertising on the web for broker trainees. The advertisement makes no reference to any training or education required.

[60] A Temporary Cease Trade Order was issued by the Saskatchewan Financial Services Commission against Saxon Financial Services Ltd. on 12 July 2007.

[61] Saxon Financial Services Ltd. is not and has never been registered with the Commission in any capacity.

ii. Saxon Consultants, Ltd.

[62] Much of the website material is under the name of Saxon Consultants, Ltd.

[63] Documents produced by Saxon Consultants, Ltd. describe the company as an independent introducing broker for Merchant Capital Markets S.A.

[64] The Saxon Consultants, Ltd. webpage provides instructions for the transfer of money into an account in a bank in Frankfurt, Germany purportedly called MerchantMarx.

[65] The wire transfer instructions for MerchantMarx on the Saxon Consultants, Ltd. webpage are identical to the instructions provided by Meisner Incorporated (an entity also subject to a Permanent Cease Trade Order by this Commission dated 2 August 2007) and transfers of money for both entities are directed to the same account in Frankfurt, Germany.

[66] Alberta resident LD was called by Justin Praamsma, soliciting trades on behalf of Saxon Consultants, Ltd..

[67] A Temporary Cease Trade Order was issued by the Saskatchewan Financial Services Commission against Saxon Consultants, Ltd. on 12 July 2007.

[68] Saxon Consultants Ltd. is not and has never been registered with the Commission in any capacity.

iii. Sean Wilson

[69] Sean Wilson held himself out to be Vice-President and Sales Manager of Saxon Financial Services Ltd. On 27 June 2007, in a telephone conversation with Jake van der Laan, Sean Wilson solicited trades in gasoline futures.

[70] A Temporary Cease Trade Order was issued by the Saskatchewan Financial Services Commission against Wilson on 12 July 2007.

[71] Wilson is not and has never been registered with the Commission in any capacity.

iv. Justin Praamsma

[72] Justin Praamsma telephoned New Brunswick resident, Jake van der Laan, to solicit trades in gasoline futures.

[73] In conversation with van der Laan, Justin Praamsma said he “worked” for Saxon Financial Services Ltd., and was based in Atlanta, Georgia.

[74] Justin Praamsma advised he had been selling gasoline futures for two months; he had no training other than eight years on the phone; he did not sell to Americans, only to Canadians and Europeans; he had previously worked for ICA (International Currency Advisors); he worked on commission; he had other New Brunswick clients; he brought in \$1.2M – \$2M per month; and he would advise van der Laan when to buy and sell.

[75] A Temporary Cease Trade Order was issued by the Saskatchewan Financial Services Commission against International Currency Advisors on 10 February 2003.

[76] Justin Praamsma is not and has never been registered with the Commission in any capacity.

v. Conrad Praamsma

[77] Conrad Praamsma, who performs a role similar to his twin brother Justin Praamsma, promoted himself on the phone to New Brunswick resident FS as a sales consultant for Saxon Consultants, Ltd.; as having been in the options business for five to six years; as relying on Todd Young’s expertise; and as being the one to advise his clients on what to buy, sell and when.

[78] Conrad Praamsma is not and has never been registered with the Commission in any capacity.

vi. Todd Young

[79] Todd Young is an employee of Saxon Consultants, Ltd. and purports to have been in the business of trading options for 20 years. He made high pressure calls to New Brunswick resident FS soliciting trades, and advised FS that if he dealt with Young, FS could double his money.

[80] A Temporary Cease Trade Order was issued by the Saskatchewan Financial Services Commission against Young on 12 July 2007.

[81] Young is not and has never been registered with the Commission in any capacity.

vii. Merchant Capital Markets S.A. carrying on business as "Merchant Capital Markets" and as "MerchantMarx"

[82] Merchant Capital Markets S.A., carrying on business as "Merchant Capital Markets" and as "MerchantMarx" is located in a business centre / virtual office at Rue du Rhone 14, 1205 Geneva, Switzerland.

[83] The website of Saxon Consultants, Ltd. features a MerchantMarx application form to open an account. MerchantMarx is described as a clearing house.

[84] The operating mind behind MerchantMarx is Richard Clifford who registered the MerchantMarx.com domain name and is described by Justin Praamsma as the "head honcho".

[85] A Temporary Cease Trade Order was issued by the Saskatchewan Financial Services Commission against Merchant Capital Markets, S.A., Merchant Capital Markets, and MerchantMarx on 12 July 2007.

[85] Neither Merchant Capital Markets S.A., Merchant Capital Markets nor MerchantMarx is registered nor has ever been registered with the Commission in any capacity.

b. The investors

i. FS

[87] FS is a New Brunswick resident who is a client of Conrad Praamsma. While FS has a responsible position and earns a good income, he does not meet the definition of an accredited investor under New Brunswick Securities law. An accredited investor is defined in National Instrument 45-106 *Prospectus and Registration Exemptions* and in essence is an individual or entity that is a sophisticated investor of significant means, who has access to information and advice and is not always in need of the protections afforded by the Act.

[88] FS opened a trading account with Merchant Capital Markets S.A. in Geneva Switzerland through Saxon Consultants Ltd. on 31 May 2007 after receiving five phone calls from Conrad Praamsma.

[89] FS sent the forms to Switzerland via FedEx and wired €3,600 to Frankfurt, Germany. He was unable to execute trades on line. He subsequently had two telephone conversations with Todd Young.

[90] On 3 July 2007 he instructed Conrad Praamsma to sell his options and at the same time FS e-mailed MerchantMarx to return his money.

[91] FS spoke with Richard Clifford of Merchant Capital Markets requesting his money back. Clifford told FS that, because the seal on the certificate of the Notary Public attached to his passport was only black and white, Clifford was unable to return the money.

ii. LD

[92] LD, a resident of Alberta, opened an account with Saxon Consultants, Ltd through Justin Praamsma. LD invested €5,000 to buy heating oil options and an additional €150,000 to buy currency options.

[93] He paid €83,000 in fees and lost all but €7,000. Todd Young encouraged him to invest more and, when LD attempted to cash out the remaining money, no one returned his calls.

c. The investigation

[94] Staff's investigation was directed primarily by the Commission's Director of Enforcement, Jake van der Laan. Remarkably, he was the recipient of a cold call from Ryan Carson at home on the evening of 19 June 2007. His account of the frequent and aggressive calls, the pitch that was made and the documents he was invited to complete were similar to the experiences of investors FS and LD.

[95] With no information to the contrary before the Panel, we accept van der Laan's evidence that he was able to link the IP addresses for Saxon Financial Services Ltd., the demonstration pages, IMS (International Monetary Services), Wynnwood Mercantile, Arial Trading, fxBridge Technologies and MerchantMarx to the same server.

[96] While not all of those entities are Respondents in this matter, we take note of the fact that at least one linked "sister" company, Arial Trading, was the subject of a Temporary Cease Trade Order issued by the Saskatchewan Financial Services Commission on 6 March 2007.

[97] Ed LeBlanc, a Commission investigator, carried out the following actions: on 6 July 2007 he sent a letter to Saxon Financial Services Ltd. requesting particulars of clients in New Brunswick; on 6 July 2007 he sent a letter to Merchant Capital Markets, S.A. requesting particulars of clients in New Brunswick; and on 10 July 2007 he sent a

letter to Saxon Consultants, Ltd. requesting particulars of clients in New Brunswick. He also contacted and interviewed investors FS and LD.

[98] While LD is an Alberta resident and has no nexus to New Brunswick we accept his evidence in so far as it supports a pattern of behaviour.

d. The financial records

[99] Van der Laan appended to his Affidavit the MerchantMarx Customer application form for Forex, CFD and Option Trading sent to him by Justin Praamsma along with an Introducing Broker Account Application Supplement. Van der Laan downloaded the Bank Wire Transfer Instructions from the Saxonfx.com website.

[100] LeBlanc appended to his Affidavit copies of identical forms used by FS to open an account with Merchant Capital Markets S.A. through Saxon Consultants, Ltd. as an independent introducing broker. The Introducing Broker Application Supplement stipulated that Saxon be an intermediary acting on the client's trading instructions.

[101] Neither LD nor FS was able to trade online and both investors watched the balance of their respective accounts decline and, in spite of providing instructions, both were unable to cash out the balance in their accounts. Service fees ranged from €55 to €195 per option plus €7.25 to open and close each transaction.

4. ANALYSIS AND DECISION

a. Jurisdiction and mandate of the Commission

[102] The primary aim of the *Securities Act* is the protection of the public with respect to acts or conduct, particularly the solicitation of trades and the sale of securities within the province.

[103] It is the statutory mandate of the Commission to protect New Brunswick investors and the integrity of New Brunswick's capital markets.

[104] The purpose of the Commission's public interest jurisdiction is neither remedial nor punitive. It is protective and preventive, intended to be exercised to prevent likely future harm to capital markets and investors.

[105] In order for this matter to fall within the jurisdiction of the Commission, we must find that the investment solicited and sold, namely gasoline futures, is a "security".

b. Definition of "security"

[106] The *Securities Act* defines "security" as follows

"security" includes

(a) a document, record, instrument or writing commonly known as a security,

(b) a document or record constituting evidence of title to, or an interest in, the capital, assets, property, profits, earnings or royalties of any person,

(c) a document or record constituting evidence of an interest in an association of legatees or heirs,

(d) a document or record constituting evidence of an option, subscription or other interest in or to a security,

(e) a bond, debenture, note or other evidence of indebtedness, share, stock, unit, unit certificate, participation certificate, certificate of share or interest, preorganization certificate or subscription other than a contract of insurance issued by an insurance company licensed under the *Insurance Act* or an evidence of deposit issued by a bank listed in Schedule I, II or III of the *Bank Act* (Canada), by a credit union as defined in the *Credit Unions Act* or by a loan company or trust company licensed under the *Loan and Trust Companies Act*,

(f) an agreement under which the interest of the purchaser is valued for purposes of conversion or surrender by reference to the value of a proportionate interest in a specified portfolio of assets, except a contract issued by an insurance company licensed under the *Insurance Act* which provides for payment at maturity of an amount not less than 3/4 of the premiums paid by the purchaser for a benefit payable at maturity,

(g) an agreement providing that money received will be repaid or treated as a subscription to shares, stock, units or interests at the option of the recipient or of any person,

(h) a certificate of share or interest in a trust, estate or association,

(i) a profit-sharing agreement or certificate,

(j) a certificate of interest in an oil, natural gas or mining lease, claim or royalty voting trust certificate,

(k) an oil or natural gas royalty or lease or a fractional or other interest in either,

(l) a collateral trust certificate,

(m)an income or annuity contract not issued by an insurance company licensed under the *Insurance Act*,

(n)an investment contract,

(o)a document or record constituting evidence of an interest in a scholarship or educational plan or trust, and

(p)a document, record, instrument or writing prescribed by regulation, whether any of the above relate to an issuer or proposed issuer.

[107] The definition of a security in the Act is inclusive and not exhaustive and should be given a liberal and purposive interpretation. Staff argue that the gasoline futures being sold were “investment contracts” falling under paragraph (n) of the definition. What is an “investment contract” is well laid out in the Pre-hearing Submission of staff.

c. Interpretation of “investment contract”

[108] The elements of an investment contract are set out in the leading case of *Howey* [SEC v. W.J. Howey Co. (1946) 328 U.S. 293] and further enumerated in the *State Commissioner of Securities v. Hawaii Market Center Inc.* (1971), 485 P.2d 105 (Supreme Court of Hawaii) as:

- (a) “An offeree furnishes initial value to an offeror;
- (b) A portion of this initial value is subjected to the risks of the enterprise; and
- (c) The furnishing of the initial value is induced by the offeror’s promises or representations which give rise to a reasonable understanding that a valuable benefit of some kind, over and above the initial value, will accrue to the offeree as a result of the operation of the enterprise; and
- (d) The offeree does not receive the right to exercise practical and actual control over the managerial decisions of the enterprise.”

[109] The Pre-hearing Submission, at page 8 sets out how Canadian courts have further elaborated on the *Howey* test. The Supreme Court of Canada in *Pacific Coast Coin Exchange of Canada Ltd. v. OSC* [December 1977 Carswell Ontario 50] found that the expression “common enterprise” is “one in which the fortunes of the investor are interwoven with and dependent upon the efforts and success of those

seeking the investment or of third parties". It is a "common enterprise between the investor and the promoter or issuer."

[110] The investor FS provided over €3,000 to MerchantMarx through Saxon, with the entire amount being subject to the risks of the enterprise. The fortunes of FS in relation to the investment were dependent entirely on the efforts of those who solicited the investment.

[111] There is no question that the investment was induced by Conrad Praamsma's promise of high returns. FS did not go looking for gasoline futures in which to invest. It was Conrad Praamsma who contacted FS and pressured him to invest.

[112] With respect to the fourth part of the test relating to control, neither LD nor FS had any control over the money or the managerial decisions affecting its expenditure. They had no ability to trade the so-called "options" and could only watch their investments drain away on a computer screen. Interestingly, page 2 of the Introducing Broker Application Supplement purports to appoint Saxon Consultants, Ltd. as an intermediary to carry out the trading instructions of FS. In reality, on the only occasion FS and LD had to give an instruction to salvage the remains of their accounts, neither instruction was acted upon.

[113] We readily conclude that the gasoline futures, as promoted by the Respondents, constitute an investment contract and, therefore, fall within the definition of a security. As such, this matter falls within the jurisdiction of the Panel.

d. Contravention of New Brunswick Securities Law

i. Illegal Distributions – Section 45

[114] Section 45 reads:

45 Unless exempted under this Act or the regulations, no person shall

- (a) trade in a security or act as an underwriter unless the person is registered as a dealer, or is registered as a salesperson, as a partner or as an officer of a registered dealer and is acting on behalf of the dealer, or

(b) act as an adviser unless the person is registered as an adviser, or is registered as a representative, as a partner or as an officer of a registered adviser and is acting on behalf of the adviser.

[115] The term "trade" is defined in section 1 of the *Act* to include:

(a) a sale or disposition of a security for valuable consideration or an attempt to sell or dispose of a security for valuable consideration, whether the terms of payment be on margin, instalment or otherwise, but does not include a purchase of a security or, except as provided in paragraph (d), a transfer, pledge or encumbrance of securities for the purpose of giving collateral for a debt made in good faith,

. . .

(e) an act, advertisement, solicitation, conduct or negotiation directly or indirectly in furtherance of any of the activities specified in paragraphs (a) to (d).

[116] Justin Praamsma, Conrad Praamsma, Sean Wilson and Todd Young, holding themselves out to be employees of Saxon Financial Services Ltd. and Saxon Consulting Ltd., an introducing broker for Merchant Capital Markets S.A. (MerchantMarx), made solicitations and acted in furtherance of a trade and in so doing, by virtue of the fact that none of the entities were registered or exempt from registration requirements, we find to have been in violation of section 45 of the *Act*.

[117] There is no evidence before us that the investors' money was ever even invested in a security. The Panel was advised by staff counsel that the information on the investors' account reports bore no relation to the actual performance of the security. The reports showed an increase in the value of the investments in order to pressure the investor to invest more money to make greater profits. This is typical of securities scams and is reprehensible behaviour that strikes at the heart of our capital markets and public confidence in the investment process.

ii. Acting contrary to the public interest

[118] The public interest jurisdiction of the Commission under section 184 of the *Act* is animated by the purposes of the *Act*, namely "to provide protection to investors

from unfair, improper or fraudulent practices” and “to foster fair and efficient capital markets and confidence in capital markets.”

[119] In light of our conclusions, we find that Saxon Financial Services Ltd., Saxon Consultants, Ltd., Sean Wilson, Justin Praamsma, Conrad Praamsma, Todd Young, and Merchant Capital Markets S.A. carrying on business as “Merchant Capital Markets” and as “MerchantMarx” all engaged in conduct contrary to the public interest. They illegally solicited money for, and promoted with outrageous promises, the purchase of a security, thereby harming investors and jeopardizing and undermining confidence in the New Brunswick capital markets.

[120] These Reasons for Decision explain our Order of 27 July 2007 where we directed the Respondents to cease their solicitations and stipulated that exemptions in New Brunswick securities law do not apply to them.

e. Evidence presented for costs

i. The investigation

[121] Staff counsel provided estimates of the period of time spent on the investigation. The conservative estimate was that 50 hours were spent by van der Laan and five hours by LeBlanc.

[122] Local Rule 11-501 *Fees* specifies an hourly fee of \$50 per hour for investigation time and therefore, using the estimate of 55 hours, we assess costs for the investigation in the amount of \$2,750.

ii. The Hearing

[123] Two partial days were spent in Hearing.

[124] Local Rule 11-501 *Fees* specifies a fee of \$2,000 per day, or any part thereof, for hearings and therefore, we assess Hearing costs in the amount of \$4,000.

[125] Total costs in the amount of \$6,650 are assessed jointly and severally against each of the Respondents.

Dated at the City of Saint John this 9th day of October, 2007.

"original signed by"

David T. Hashey, Q.C., Panel Chair

"original signed by"

Donne W. Smith, Panel Member

"original signed by"

Hugh J. Flemming, Q.C., Panel Member

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