

**IN THE MATTER OF THE *SECURITIES ACT*
S.N.B 2004, c. S-5.5 (the "Act")**

AND

IN THE MATTER OF

ALAIN BRIEN

**STATEMENT OF ALLEGATIONS OF STAFF OF
THE SECURITIES COMMISSION**

- 1) Staff of the New Brunswick Securities Commission ("Staff") make the following allegations:

THE RESPONDENT

- 2) Alain Brien ("Brien") is an individual residing in Québec who was employed as a consultant with Les Services Investors Limitée/Investors Services Limited ("LSIL") for a period of seven years. Prior to January 1, 2006, Investors Group Inc. carried on its mutual fund dealer business through two dealers, LSIL in the province of Quebec and Investors Group Financial Services Inc. ("IGFSI") in the rest of Canada. Effective January 1, 2006, IGFSI and LSIL were amalgamated ("Amalgamation") under the name "Investors Group Financial Services Inc./Services Financiers Groupe Investors Inc." ("IGFS")
- 3) His employment with LSIL was terminated in November 2005 and according to the National Registration Database ("NRD") is currently employed with AXA Financial Services Inc./AXA Services Financiers Inc. Brien is registered with l'Autorité des marchés financiers ("AMF") in Québec but has not, at any time, been registered in any capacity with the New Brunswick Securities Commission ("Commission").

OVERVIEW OF STAFF ALLEGATIONS

- 4) In the course of an investigation, Staff learned that Brien had serviced New Brunswick clients without being registered to do so, in particular Brien traded on behalf of 18 New Brunswick clients for approximately 7 years.
- 5) Brien made statements to Staff during the course of the investigation that, in a material respect and at the time and in light of the circumstances in which

these statements were made, were misleading or untrue or did not state a fact that was required to be stated or that was necessary to make these statements not misleading. In particular the misleading representations were contained in the following documents submitted by Brien:

- a) Letter April 13, 2005;
- b) Application forms (forwarded by LSIL on behalf of Brien) dated April 14, 2005;
- c) Letter dated May 17, 2005;
- d) Letter dated May 25, 2005
- e) Affidavit submitted dated and May 26, 2005.

PARTICULARS OF ALLEGATIONS

- 6) On or about February 16, 2005 it came to the Staff's attention that Brien was trading on behalf of New Brunswick clients without being registered with the Commission.
- 7) On February 24, 2005, a letter was sent by Staff to Marcel Martin("Martin"), LSIL's Vice-President of Compliance, for the Québec and Atlantic region, indicating Staff's concerns about Brien's activities in New Brunswick. Staff also requested from LSIL further details of the said activities.
- 8) On March 21, 2005, Staff sent a second letter to Ray Dallaire, LSIL's Senior Vice-President for the Québec and Atlantic region, indicating that Martin had failed to respond to Staff's letter of February 24, 2005.
- 9) On March 29, 2005, Staff received a letter from Tom Vowell ("Vowell"), Vice-President Business Standards-Compliance Officer for Investors Group Financial Services Inc. ("IGFS") dated March 23, 2005, along with a binder of client information for 11 of Brien's clients who are residents in the Province of New Brunswick.
- 10) On April 13, 2005, Staff received correspondence from Brien in which he explained how he came to do business with 12 clients from New Brunswick. Brien indicated that all New Brunswick clients travelled to Québec to sign the necessary documents so that he could provide investment advice.
- 11) On April 18, 2005, Staff received a letter from Vowell along with copies of client account applications for those 12 New Brunswick clients that Brien had identified on April 13, 2005. The applications appeared to confirm Brien's statement, that the documents were signed in Québec. Brien also indicated that he had advised several clients that he is not permitted to do business in New Brunswick, but is currently waiting to be registered to do so.

- 12) On May 6, 2005, Staff advised LSIL that it suspected that; the list of New Brunswick clients was incomplete; LSIL representatives intentionally assigned Quebec addresses to New Brunswick clients to conceal unregistered trading activities; and required LSIL identify all New Brunswick clients.
- 13) On May 17, 2005, Staff received correspondence from Brien apologizing for inadvertently omitting six clients from his prior client list sent to Staff on April 13, 2005. Brien also indicated that he was under the impression that several of his clients were resident in Québec but after reviewing his files he was mistaken.
- 14) On May 31, 2005 Staff received a letter from Brien dated May 25, 2005, along with an affidavit of Brien dated May 26, 2005. Brien indicates in his letter that he admits misleading Staff in his previous correspondence regarding his New Brunswick clientele and regarding the location of meetings with those clients. He also indicates that he had made numerous attempts with LSIL to seek the possibility of being registered with the Commission. He admits his non compliance with the LSIL Compliance Manual ("LSIL Manual ") regarding non-resident matters. He states that if he had been aware of this issue sooner he would not have continued to serve New Brunswick clients or accepted additional New Brunswick clients. He indicated that by initially lying he had made an error in judgment. He further states that:
- "Je leurs ai promis de leurs donner un services de qualité et de les aider dans leurs planification de retraite et voyais que je ne pourrais donc pas rencontrer mes engagements avoir eux. J'ai eu peur de perdre ma crédibilité envers eux ..."
- Translation-**"I promised to give them quality service and to help them with their retirement planning, thus I could not meet my obligations. I was afraid of losing my credibility with them..."
- 15) On June 1, 2005, Staff received a binder of information from Monique Mireault of IGFS, dated May 30, 2005, which contained account documentation of all LSIL representatives not registered in New Brunswick but servicing clients residing in New Brunswick. The list includes six additional clients who were not initially disclosed by Brien. These additional clients, pursuant to instruction from Brien, used a Québec address on LSIL documents, but were New Brunswick residents.
- 16) On July 4, 2005, Staff submitted a letter to Vowell regarding Brien's conduct. A response was sent to Staff on July 20, 2005, by Pat Kloepfer ("Kloepfer"), Vice-President, IGFS Compliance Officer, stating that they had no knowledge of any application for registration in New Brunswick by or on behalf of Brien, however Brien had indicated to them that it was his intention to obtain registration. Kloepfer also states, in this letter, that Brien was not in

compliance with the LSIL Manual regarding non-resident matters. Brien was never authorized by LSIL to solicit clients or execute trades in New Brunswick.

17) On August 17 and 18, 2005, Staff conducted several interviews with Brien's clients in New Brunswick. Staff also interviewed Jean Pierre Couillard ("Couillard"), a businessman located in Lamèque, New Brunswick. He provides bookkeeping and tax returns services to individuals in the Lamèque area. During the course of his work, he has referred several of his clients to financial institutions including LSIL and Brien. Pursuant to these interviews, it was confirmed that Brien would either meet with his New Brunswick clients in the Province of New Brunswick, at their home, or via a telephone interview. During such telephone interviews the client would be with Couillard in his Lamèque, New Brunswick office, and Brien would be in Québec. Brien would later fax or send completed account opening documentation to Couillard's office for the clients' signature. Pursuant to these interviews, it is concluded that Brien submitted and made misleading and untrue statements and documents to Staff.

CONDUCT CONTRARY TO THE PUBLIC INTEREST

18) Staff submits that:

a) by trading on behalf of New Brunswick clients without being registered Brien has acted contrary to section 45 of the Act and contrary to the public interest. Section 45 of the Act states:

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

And

b) Brien made misleading statements to Staff contrary to subsections 179(2) (a) and (b).

179(2) A person who does any of the following commits an offence and is liable on conviction to a fine of not more than \$1,000,000 or to imprisonment for a term of not more than 5 years less a day, or to both:

(a) makes a statement in any information or material submitted, provided, produced, delivered or given to or filed with the Commission, the Executive Director, a compliance officer, an investigator or any person acting under the authority of the Commission or the Executive Director that is misleading or untrue or

does not state a fact that is required to be stated or that is necessary to make the statement not misleading;

(b) makes a statement in any information or material required to be submitted, provided, produced, delivered, given or filed under New Brunswick securities law that is misleading or untrue or does not state a fact that is required to be stated or that is necessary to make the statement not misleading;

19) Such other allegations as Staff may make and the Commission may permit.

Dated at Saint John, New Brunswick this 1st day of March, 2006.

<<original signed by>>
Lucie N. Mathurin-Ring,
Legal Counsel, Enforcement