IN THE MATTER OF

The *Securities Act*

S.N.B. 2004, c. S-5.5

- and -

IN THE MATTER OF

OIL INTERNATIONAL, LLC., TRINIDAD OIL AND GAS CORPORATION, BLACK GOLD INTERNATIONAL, LTD., GAVIN MORGAN and JOHN ANDREW

(RESPONDENTS)

REASONS FOR THE DECISION

Hearing Dates:	7 October 2009 and 14 January 2010
Date of Order:	19 February 2010
Date of Reasons for Decision:	14 May 2010

Panel:

David G. Barry, Q.C., Panel Chair

Anne W. La Forest, Panel Member

Counsel:

Marc Wagg	For staff of the New Brunswick Securities Commission

IN THE MATTER OF

The Securities Act
S.N.B. 2004, c. S-5.5

- and -

IN THE MATTER OF

OIL INTERNATIONAL, LLC., TRINIDAD OIL AND GAS CORPORATION, BLACK GOLD INTERNATIONAL, LTD., GAVIN MORGAN and JOHN ANDREW

(RESPONDENTS)

REASONS FOR THE DECISION

1. BACKGROUND

[1] This matter involves an application by staff (staff) of the New Brunswick Securities Commission (Commission) for an order under paragraph 184(1.1)(c) of the *Securities Act* (*Act)* against the respondents, Oil International, LLC. (Oil International), Trinidad Oil and Gas Corporation (Trinidad), Black Gold International, Ltd (Black Gold), Gavin Morgan (Morgan) and John Andrew (Andrew). Paragraph 184 (1.1)(c) of the *Act* states as follows:

> **184**(1.1)In addition to the power to make orders under subsection (1), the Commission may, after providing an opportunity to be heard, make one or more of the orders referred to in paragraphs (1)(*a*) to (*d*) and (1)(*g*) to (*i*) against a person if the person
>
> ...
>
> (*c*)is subject to an order made by a securities regulatory authority or self-regulatory organization in Canada or elsewhere imposing sanctions, conditions, restrictions or requirements on the person, or

[2] On 30 July 2009, staff filed an application (application) and the supporting affidavit of Commission Legal Counsel Mark McElman (supporting affidavit) seeking the following relief against the respondents, pursuant to subparagraphs 184(1)(c)(i) and (ii) and paragraph 184(1)(d) of the *Act*, for as long as the order issued by the Saskatchewan Financial Services Commission (as from time to time extended) remain in force:

(a) all trading in securities of BLACK GOLD INTERNATIONAL, LTD. shall cease (including without limitation, the solicitation of trades in securities or any acts constituting attempts or acts in furtherance of trading, in such securities);

(b) the respondents shall cease trading in all securities (including, without limitation, the solicitation of trades in securities or any acts constituting attempts or acts in furtherance of trading in securities); and

(c) any exemptions in New Brunswick securities law do not apply to the respondents.

[3] Staff based their application on the grounds that the respondents are subject to an order made by the Saskatchewan Financial Services Commission (SFSC) imposing sanctions, conditions, restrictions or requirements and that it is in the public interest for an order to be issued in New Brunswick.

[4] A notice of application was issued by the Commission on 30 July 2009. It provided notice to the respondents of the application and the relief sought. The notice of application advised the respondents of their right to be heard and of the requirement to notify the Commission of their intent in this regard by 14 August 2009. The notice of application also advised them that failure to notify the Commission might result in an order contrary to their interest being issued without further notice.

[5] Staff filed an affidavit on 27 August 2009 (affidavit of service) outlining their service on the respondents of the notice of application, the application and the supporting affidavit. As provided by subsection 5(1) of Local Rule 15-501 *Procedures for Hearings Before a Panel of the Commission*, the respondents were served either by email, fax, or courier. We were advised by the Office of the Secretary that one respondent, Trinidad, did send a letter through their lawyer indicating that Trinidad has not at any time had any presence in Canada, that they are oil property operators exclusively in Texas, and that they do not function as a capital raising entity selling securities. None of the respondents, including Trinidad, requested an opportunity to be heard.

2. THE FACTS

[6] With the exception of those matters outlined in paragraphs [20], [21], [22] and [23], the facts outlined below are derived from the orders made by SFSC that were submitted by staff in the supporting affidavit.

[7] Oil International holds itself out on its website at www.oilint.com as a Panamanian company operating out of Panama City, Panama.

[8] In its investment solicitations, Oil International holds itself out as being a company that raises investment capital for independent oil companies.

[9] Trinidad is a U.S. company with an office in Dickinson, Texas with a website at www.trinidadoilandgas.com.

[10] Black Gold is registered in Belize, and holds itself out as having an office in Nassau, Bahamas.

[11] Black Gold has engaged Oil International to sell Black Gold Securities.

[12] Morgan is a salesperson for Oil International who holds himself out as operating out of the office of Oil International in Panama City, Panama.

[13] Andrew is a salesperson for Oil International who holds himself out as operating out of the office of Oil International in Panama City, Panama. Andrew also holds himself out as operating out of his residence in Del Ray, Florida, U.S.A.

[14] Beginning in January 2009, the respondents contacted residents of Saskatchewan and other provinces in Canada and solicited the purchase of Black Gold securities.

[15] In carrying out the activities outlined in paragraph 13 above, the respondents traded in securities of Black Gold in Saskatchewan.

[16] None of the respondents are registered to trade in securities in Saskatchewan, and the SFSC found that the respondents had therefore contravened the registration requirement in section 27 of *The Securities Act, 1988* S.S. 1988, c. S-42.2 (Saskatchewan *Act*).

[17] The Director in Saskatchewan has not issued a receipt for a prospectus for the securities of Black Gold, and the SFSC found that the respondents had therefore also contravened the prospectus requirement in section 58 of the Saskatchewan *Act.*

[18] The respondents have not filed any reports of exempt distributions of Black Gold securities with the SFSC.

[19] The SFSC issued a temporary order on 8 May 2009. On 22 May 2009, this order was extended by the SFSC until such time as the SFSC is provided with satisfactory information to enable it to make a further order in this matter.

[20] Mark McElman, Enforcement Legal Counsel, is a member of the Reciprocal Enforcement Sub-Committee of the Canadian Securities Administrators (CSA) Enforcement Standing Committee. This committee reviews

cases with multi-jurisdictional aspects on a monthly basis. On a conference call in June 2009, Mr. McElman was informed of the order against the respondents by Ed Rodonets, Deputy Director of Enforcement of the SFSC, and that the SFSC was concerned because the respondents had known connections to other Canadian jurisdictions and as such may pose a risk to all capital markets in Canada.

[21] At the hearing on 7 October 2009, the Panel indicated that it required further evidence as to why the SFSC recommended that other jurisdictions should seek orders against the respondents.

[22] NBSC Enforcement Staff contacted Mr. Rodonets, Deputy Director of Enforcement of the SFSC, by email and he responded by email that the respondents "indicated that they had investors in every province of Canada".

[23] The Panel had also requested information regarding the practice of other Canadian securities jurisdictions in recognizing orders of sister jurisdictions. Staff provided this information for the 14 January 2010 hearing.

3. ANALYSIS AND DECISION

Pre-conditions of 184(1.1)(c)

[24] Prior to issuing an order under paragraph 184(1.1)(c) of the *Act*, the Panel must be satisfied that the respondents were provided with an opportunity to be heard, and that each respondent is a person who is subject to an order made by a securities regulatory authority in Canada or elsewhere imposing sanctions, restrictions or requirements on the respondents. The Panel is satisfied that these conditions have been met. As outlined in the A*dcapital Industries Inc. et al.* (*Adcapital*) decision issued on 19 August 2008, at paragraph 26:

> ...once these two pre-conditions have been met, a Panel must then determine if it is in the public interest to make the order.

Public Interest

[25] The panel must consider whether it is in the public interest to grant the order requested by staff. In the decision *Shire International Real Estate Investment Ltd. et al.* (*Shire*), issued on 14 May 2010, followed in *Landbankers International MX, S.A. de C.V. et al.*, issued on 14 May 2010, the Commission Panel assessed whether mutual support and cooperation between provinces is sufficient to satisfy the public interest provisions of subsection 184(1.1) of the *Act*. Previous decisions of the Commission such as *Al-tar Energy Corp. et al. (Altar)*, issued on 17 December 2007; *Adcapital (supra)*; and *Global Petroleum Strategies, LLC et al. (Global Petroleum)*, issued 8 September 2008, have held that an order under subsection 184(1.1) is appropriate where it would serve a protective purpose for New Brunswick investors and capital markets. In contract to the above-mentioned cases, however, there was no evidence of any connection between the respondents in that case and New Brunswick. Despite this lack of connection, the Panel held that the public interest was engaged. The Panel at paragraph 33 of *Shire*:

> In our view, the plain language of subsection 184(1.1) of the *Act* does not limit the provision to the protective purpose that was directly at issue in *Altar, Adcapital, and Global Petroleum*. Rather, it reasonably extends to recognizing the orders of a securities regulatory authority in another jurisdiction. Subsection 184(1.1) was implemented as part of the Canadian Securities Administrators efforts to ensure the protection of the capital markets across the country and reinforces our view that the public interest test to be applied should be broad in scope. Stated in other words, a narrow approach to subsection 184(1.1) of the *Act* does not, in our view, fully comply with the legislative intent of the 2007 legislative amendments.

[26] While the Commission clearly has the power to recognize the orders of a sister securities regulator, the authority to do so under s. 184 (1.1) is nevertheless discretionary. In *Shire*, the Panel took the position that it is in the public interest for the Commission to exercise this discretion when it is satisfied that the regulator

making the order has properly or appropriately exercised its jurisdiction. A regulator has so exercised its jurisdiction when there is a real and substantial connection between the regulator and the subject matter of the order. This approach protects the respondents from having an order issued in New Brunswick based upon an unwarranted exercise of jurisdiction by another regulatory authority.

[27] In Shire, the Panel also examined what evidence would be necessary to establish that jurisdiction had been exercised properly. The Panel stated as follows at paragraph 40 in *Shire*:

> While... we should not look behind the evidence led in the original proceeding, the mere existence of an order of another securities regulator should not be accepted as *prima facie* evidence that the order itself was properly or appropriately issued. Evidence that there was a real and substantial connection between the jurisdiction issuing the order and the subject matter of the order must be submitted in support of an application.

[28] In the present matter, the Panel accepts the evidence included in the supporting affidavit. That evidence has demonstrated that residents of Saskatchewan were contacted and solicited by the respondents who were not registered to trade securities in Saskatchewan. Based on these facts, the province of Saskatchewan has a real and substantial connection to the subject matter of the order and the SFSC has thus properly exercised its jurisdiction.

[29] Staff did not explain why the scope of the order requested was different, and indeed broader, than that issued by the SFSC. The Panel is of the view, in any event, that an order consistent with that of the SFSC should be issued in accordance with, but limited to orders authorized by, paragraph 184(1.1)(c) of the *Act*.

[30] The above constitutes the Panel's reasons for decision for its order issued on 19 February 2010 pursuant to paragraph 184(1.1)(c) of the *Act.*

Dated this 14th day of May, 2010.

"original signed by"
David G. Barry, Q.C., Panel Chair

"original signed by"
Anne W. La Forest, Panel Member

New Brunswick Securities Commission
Suite 300, 85 Charlotte Street
Saint John, New Brunswick E2L 2J2
Tel: 506-658-3060
Fax: 505-658-3059