

IN THE MATTER OF
THE *SECURITIES ACT*, R.S.N.S. 1989, C. 418, AS AMENDED (the Act)

- and -

IN THE MATTER OF JEAN-SMAILLE GERMEIL AND FPE TRADING
(collectively the Respondents)

MEMORANDUM OF PRE-HEARING CONFERENCE

WHEREAS:

1. This Memorandum of Pre-Hearing Conference is prepared pursuant to section 9.8 of Nova Scotia Securities Commission (the Commission) Rule 15-501 General Rules of Practice and Procedure (the Rules).
2. The following agreements, undertakings, and orders are in consideration of the written submissions of the Director of Enforcement (the Director) dated March 1, 2018 (the Director's Submissions) filed pursuant to the Pre-Hearing Conference held at 10:30 a.m. on Thursday, February 8, 2018, and the Memorandum of Pre-Hearing Conference issued by the Commission on February 12, 2018 (the February 12, 2018 Memorandum).
3. The Respondents have not filed any written submissions in support of or in opposition to proceeding by way of a written hearing in accordance with the February 12, 2018 Memorandum.
4. In the Director's Submissions, the following submissions are provided in support of proceeding by way of a written hearing:
 - a) The Rules are silent on the exact format of a hearing before the Commission;
 - b) Under section 18.2 of the Rules, the Commission may issue general or specific procedural directions at any time;
 - c) Under section 18.3 of the Rules, the Commission may waive, vary or abridge any of the Rules if it would be in the public interest or otherwise just in the circumstances;
 - d) Section 18.5 of the Rules requires the Commission to construe the Rules in a manner that secures the most expeditious and least expensive determination of every hearing, consistent with the requirements of natural justice;
 - e) The Respondents are located in Alberta and have shown very limited and unreliable engagement in this proceeding;
 - f) Three of the Director's witnesses reside outside of Nova Scotia;

- g) The specific violations alleged by the Director will not involve assessments of credibility;
 - h) The Supreme Court of Canada (the SCC) considered the duty of procedural fairness as it relates to the right to a hearing in *Baker v. Canada (Minister of Citizenship & Immigration)*, [1999] 2 SCR 817, in which the SCC determined that oral hearings are not required for immigration related decisions based on humanitarian and compassionate grounds and that a written hearing was procedurally fair given the circumstances of that case;
 - i) In the *Baker* decision, the SCC considered five factors in determining what procedural fairness requires in a particular circumstance; and
 - j) In considering the facts of this proceeding and the relevant law, including the five factors in *Baker*, a written hearing is fair to the Respondents, witnesses and Commission.
5. The Commission accepts the Director's Submissions and determines that a written hearing for this proceeding is expeditious, in the public interest, just in the circumstances and consistent with the requirements of natural justice.

AGREEMENTS:

None.

UNDERTAKINGS:

None.

ORDERS:

1. The hearing to consider the Statement of Allegations dated January 3, 2018 (the Hearing) shall proceed in writing unless otherwise ordered or directed by the Commission.
2. The written Hearing of this matter shall proceed as follows:
 - a) On or before May 11, 2018, the Director shall provide written notice to the Respondents in accordance with the February 12, 2018 Memorandum that all Documents and things in the possession and control of Staff that are relevant to this proceeding are available for inspection pursuant to part 8.1 of the Rules.
 - b) On or before June 29, 2018, the Director's written opening statement and all affidavit evidence to be relied on at the Hearing shall be filed with the Commission.
 - c) On or before June 29, 2018, written notice that the Director's opening statement and disclosure pursuant to part 8.2 of the Rules, including the


affidavit evidence filed with the Commission as set out above, are prepared and ready for delivery shall be provided to the Respondents in accordance with the February 12, 2018 Memorandum.

- d) Promptly upon receipt of the above written notice from the Director, the Respondents shall provide written notice to the Director that they wish to receive the Director's opening statement and disclosure pursuant to part 8.2 of the Rules, and the address where the opening statement and disclosure shall be delivered.
- e) Promptly upon receipt of the above written notice from the Respondents, the Director shall then deliver the opening statement and disclosure pursuant to part 8.2 of the Rules to the Respondents.
- f) On or before August 10, 2018, the Respondents shall file with the Commission and deliver to the Director all evidence they intend to rely on at the Hearing. This evidence shall be tendered to the Commission in affidavit form.
- g) On or before August 10, 2018, the Respondents shall file with the Commission and deliver to the Director their remaining disclosure pursuant to part 8.3 of the Rules.
- h) On or before August 10, 2018, the Respondents shall file with the Commission and deliver to the Director their written closing summaries and arguments.
- i) On or before August 10, 2018, the Respondents may also file with the Commission and deliver to the Director their written opening statements if they see fit to do so.
- j) On or before August 31, 2018, the Director shall file with the Commission any written reply evidence, if applicable.
- k) On or before August 31, 2018, written notice that the Director's reply evidence is prepared and ready for delivery shall be provided to the Respondents in accordance with the February 12, 2018 Memorandum.
- l) Promptly upon receipt of the above written notice from the Director, the Respondents shall provide written notice to the Director that they wish to receive the Director's reply evidence, and the address where the reply evidence shall be delivered.
- m) Promptly upon receipt of the above written notice from the Respondents, the Director shall then deliver the reply evidence to the Respondents.
- n) On or before, September 7, 2018, written notice of the Respondents' intention to cross-examine any of the Director's witnesses on the evidence contained in their affidavits shall be filed with the Commission and delivered to the Director.

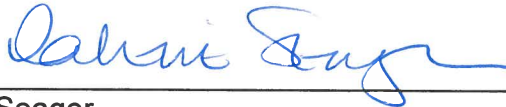
- o) On or before September 7, 2018, written notice of the Director's intention to cross-examine any of the Respondents' witnesses on the evidence contained in their affidavits shall be filed with the Commission and delivered to the Respondents.
- p) On or before October 5, 2018, the Director's written closing summary and arguments shall be filed with the Commission.
- q) On or before October 5, 2018, written notice that the Director's closing summary and arguments are prepared and ready for delivery shall be provided to the Respondents in accordance with the February 12, 2018 Memorandum.
- r) Promptly upon receipt of the above written notice from the Director, the Respondents shall provide written notice to the Director that they wish to receive the Director's closing summary and arguments, and the address where the closing summary and arguments shall be delivered.
- s) Promptly upon receipt of the above written notice from the Respondents, the Director shall then deliver the closing summary and arguments to the Respondents.
- t) On or before October 26, 2018, the Respondents shall file with the Commission and deliver to the Director any written replies to the Director's closing summary and arguments.

DATED at Halifax, Nova Scotia, this 11 day of April, 2018.


NOVA SCOTIA SECURITIES COMMISSION



Shirley P. Lee, Q.C.
Chair



Valerie Seager
Commissioner



Kenneth Wheelans
Commissioner