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

AND

IN THE MATTER OF
STEVEN ELLIOTT CLARKE (the "Respondent" or "Clarke")

HEARING:	**October 26, 2005**
PANEL:	**H. Leslie O'Brien, Q.C. - Chairman**
COUNSEL:	**Mr. R. Scott Peacock - for Commission Staff** **Ms. Heidi Schedler - for Commission Staff** **Mr. Mark Evans - for the Respondent**

Reasons for Decision

This proceeding was commenced by Notice of Hearing (the "Notice") dated October 7, 2005, issued by the Nova Scotia Securities Commission (the "Commission") pursuant to sections 33(1), 135 and 135A of the Act to consider whether it was in the public interest to approve a settlement agreement (the "Settlement Agreement") entered into between staff of the Commission ("Staff") and the Respondent. A copy of the Settlement Agreement is attached as Appendix "A" to these reasons.

At the commencement of the hearing Mr. Peacock indicated the Notice was provided to Mr. Evans, Counsel for the Respondent, in accordance with the Commission's General Rules of Practice and Procedure. This was confirmed by Mr. Evans. Mr. Peacock then advised the Commission he sought to make one motion, which was supported by Mr. Evans.

The motion was to have the hearing held in camera with members of the public excluded until a decision was made to approve or not approve the Settlement Agreement. Mr. Peacock indicated the Settlement Agreement had been concluded on the basis that it was to be released to

members of the public only if and when it was approved by the Commission.

Following submissions on the motion by Mr. Peacock and Mr. Evans, the Commission approved the motion and ordered the hearing to proceed in camera until a decision was made to approve or not approve the Settlement Agreement.

Once the Commission moved to an in camera proceeding it heard representations from Mr. Peacock on behalf of Staff and Mr. Evans on behalf of Clarke. Both counsel agreed that the Settlement Agreement set forth a full and fair disclosure of all relevant facts and circumstances necessary to resolve the matter. Mr. Evans on behalf of Clarke agreed with Mr. Peacock's submissions and made submissions of his own on his client's behalf.

Following these submissions and questions from the Commission, the Commission determined that it was appropriate in the circumstances of the particular matter and in the public interest to approve the Settlement Agreement. At that time the Commission indicated its approval and further indicated the hearing was no longer in camera and members of the public were readmitted to the hearing room.

When the members of the public were readmitted the Commission gave brief oral reasons for the decision to approve the Settlement Agreement and advised that written reasons would follow.

In this decision the facts stated are those that have been agreed upon by the parties to the Settlement Agreement and found in Part III, paragraphs (B) through (H) inclusive of the Settlement Agreement as set out below. The Commission notes that they are only for the purpose of the settlement hearing and that the facts agreed to here are important to the Commission in its decision to approve or not to approve the Settlement Agreement but do not go to prove any other matter not relevant to this particular settlement hearing.

"(B) The Respondent is a Nova Scotia resident who, at all relevant times, was an employee of National Bank Financial Limited ("NBFL"). The Respondent commenced his employment with NBFL in 1999 as a salaried, administrative employee under the principal tutelage and direction of Bruce Elliott Clarke ("Bruce Clarke"), who was an experienced registrant having first been registered under the provisions of the Act on June 18, 1980.

(C) The Respondent first became a registrant under the provisions of the Act in July 2000, and was thereafter a registrant under the provisions of the Act at all relevant times. Although a registrant, the Respondent's role at NBFL remained materially unchanged following his registration and, throughout the relevant period, he relied and acted upon the advice and direction he received from Bruce Clarke.

(D) At all relevant times Knowledge House Inc. ("KHI") was a reporting issuer in Nova Scotia and was traded publicly on the Toronto Stock Exchange (the "Exchange").

(E) The trading in KHI, [which] is the subject matter of this Settlement Agreement, took place on the Exchange between November 2000 and August 2001. During this period the Respondent was subject to the rules and policies of the Exchange in relation to such trading. He was also a registrant with the Nova Scotia District Council of the Investment Dealers Association of Canada ("IDA"), a self-regulatory organization recognized by the Nova Scotia Securities Commission, and was subject to IDA by-laws, regulations and policies.

(F) Commencing in 1999 a number of KHI insiders, their associates and relatives held accounts at NBFL as well as at other dealers. Bruce Clarke was the primary investment advisor for most of these accounts at NBFL.

(G) Commencing in late 1999, prior to the time that the Respondent first became a registrant under the provisions of the Act, certain KHI insiders and persons in a special relationship to KHI (the "Insider Group") entered into an arrangement to act jointly to maintain the price of KHI stock (the "Arrangement'), and to carry out transactions in the market to this effect and to provide liquidity for the stock. Bruce Clarke agreed to assist the Insider Group in putting the Arrangement into effect. The Arrangement was never disclosed to the public, contrary to the provisions of the Act. The Respondent was not aware of the Arrangement.

(H) During the period November 2000 to August 2001, at the direction and on the advice of Bruce Clarke, the Respondent entered purchases and bids of KHI for the Insider Group. The Respondent was not aware that the purpose of the purchases and bids was to facilitate the Arrangement. While the Respondent violated the Exchange's rules by entering the purchases and bids (which caused the price and bid of KHI to close on an uptick in furtherance of the Arrangement), he was not aware of the

> Arrangement at the time such trades were entered nor was the Respondent aware that such transactions were being effected for the purpose of maintaining the price of KHI within a certain range and creating the effect of a liquid market for the shares."

The Commission determined that the sanctions in the Settlement Agreement are in the public interest. The details of the sanctions agreed to in the Settlement Agreement are those set out in the order of the Commission, a copy of which is attached as Appendix "B" to these reasons.

The agreed upon sanctions against Clarke must be assessed in light of the fact he cooperated fully with Staff's investigation, including providing documentary evidence and sworn testimony, according to the Settlement Agreement. This will be helpful to Staff in gathering evidence in any ongoing investigation.

The Commission turns next to why the sanctions are appropriate and in the public interest. The Commission's mandate is to provide investors with protection from practices and activities that tend to undermine investor confidence in the fairness and efficiency of capital markets and, where it would not be inconsistent with an adequate level of investor protection, to foster the process of capital formation, to quote subsection 1A(1) of the Act.

In *Committee for the Equal Treatment of Asbestos Minority Shareholders v. Ontario (Securities Commission) [2001] 2 S.C.R. 132* at page 151, Iacobucci J. said the Ontario Securities Commission in exercising its public interest jurisdiction should consider "...the protection of investors and the efficiency of, and public confidence in, capital markets generally."

Imposing appropriate sanctions in this matter will reflect what the Ontario Securities Commission said in *M.C.J.C. Holdings and Michael Cowpland (2002), 25 O.S.C.B. 1133,* at page 1134 (the "first Cowpland case").

> "We have a duty to consider what is in the public interest. To do that, we have to take into account what sanctions are appropriate to protect the integrity of the marketplace.... In doing this, we have to take into account circumstances that are appropriate to the particular respondents. This requires us to be satisfied that proposed sanctions are proportionately appropriate with respect to the circumstances facing the particular respondents. We should not just look at absolute values, e.g. what has been paid voluntarily in other settlements ..."

Securities regulators in other Canadian jurisdictions have set out factors they consider to be relevant in determining the nature and duration of sanctions. The factors noted below were outlined in *re Belteco Holdings Inc. (1998), 21 O.S.C.B. 7743,* at pages 7746 and 7747. They have been taken into consideration here in measuring the sufficiency of the sanctions in the Settlement Agreement. The factors are:

a) the seriousness of the allegations;
b) the respondent's experience in the marketplace;
c) the level of the respondent's activity in the marketplace;
d) whether or not there has been recognition of the seriousness of the improprieties;
e) whether or not the sanction imposed may serve to deter not only those involved in the case being considered, but any like-minded people from engaging in similar abuses of the capital market; and
f) any mitigating factors.

The Commission has also taken into account the factors outlined in the first Cowpland case and listed in *re Daniel Duic (2004), 27 O.S.C.B. 2754,* at pages 2756 and 2757. They are the following:

a) the size of any profit or loss avoided from the illegal conduct;
b) the size of any financial sanction or voluntary payment when considered with other factors;
c) the effect any sanction may have on the livelihood of the respondent;
d) the restraint any sanction may have on the ability of the respondent to participate without check in the capital markets;
e) the reputation and prestige of the respondent; and
f) the shame or financial pain that any sanction would reasonably cost the respondent, and the remorse of the respondent.

The factors listed in Belteco and Duic were applied by the Commission in *Bruce Elliott Clarke [2004] NSSC* * and more recently in *OptionsExpress [2005]NSSC*.

The Commission emphasizes that the sanctions available to it under the Act are regulatory and they are "not remedial or punitive, but rather are preventative in nature and perspective in application" to quote Le Bel J. in *Cartaway Resources Corp. [2004] SCC 26* at para 58.

Futhermore in *Cartaway Resources Corp*, supra, at para.60, LeBel J. indicated that a securities regulator is permitted to consider general deterrence when making an order under an administrative penalty provision of provincial securities legislation such as section 135 of the Act. LeBel J. remarked: "...it is reasonable to view general deterrence as an appropriate, and perhaps necessary, consideration in making orders that are both protective and preventative."

Following a review of the Settlement Agreement in light of the jurisprudence noted above the Commission considers the following factors relevant in approving the Settlement Agreement:

*Nova Scotia Securities Commission decisions are available on the Commission's website.

a) Clarke admits that he breached Nova Scotia securities law and that his conduct was contrary to the public interest;

b) Clarke recognizes the seriousness of his activities, is remorseful and accepts the consequences;

c) Clarke as a salaried employee of National Bank Financial Limited at the relevant time did not profit from the trading in KHI except for commissions earned and his participation in the Arrangement was unintentional and occurred without his knowledge;

d) Clarke's admissions eliminate the need for a full hearing, and accordingly conserve the resources of the Commission and save the public considerable expense;

e) Clarke has cooperated fully with Staff's investigation;

f) Clarke was a relatively inexperienced registrant at the relevant times and relied on the advice of a more experienced registrant;

g) Clarke has no prior disciplinary record;

h) Clarke accepts an administrative penalty and agrees to make a payment in respect of costs; and finally,

i) Clarke is subject to a reprimand by the Commission.

In the circumstances the Settlement Agreement has been approved as being in the public interest and the order, a copy of which is attached hereto as Appendix "B", has been issued.

DATED at Halifax, Nova Scotia , this 2nd day of November, 2005.

"H. Leslie O'Brien"
H. Leslie O'Brien, Chairman