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

**AND**

**IN THE MATTER OF**
**NATIONAL BANK FINANCIAL LIMITED**
**AND**
**ERIC CECIL HICKS**

**(THE "RESPONDENTS")**

| | |
|---|---|
| **HEARING DATE:** | October 15, 2012 |
| **PANEL:** | John A. Morash, C.A., Panel Chair<br>Valerie Seager, Commissioner |
| **COUNSEL:** | Heidi Schedler and<br>Stephanie Atkinson - for Director of Enforcement |
| | James A. Hodgson and<br>David G. Coles, Q.C. - for the Respondents |

**DECISION**

## I INTRODUCTION

1. Pursuant to a Notice of Hearing by the Nova Scotia Securities Commission (the "Commission") dated September 27, 2012, a hearing was held on October 15, 2012 to consider whether pursuant to Sections 135 and 135A of the Act it is in the public interest to approve a Settlement Agreement dated June 15, 2005 (the "Settlement Agreement"), which was signed by Staff of the Commission ("Staff"), the Investment Dealers Association of Canada, Market Regulation Services Inc., National Bank Financial Limited ("NBFL") and Eric Cecil Hicks.

2. The Settlement Agreement includes certain facts, including those set out in a Statement of Allegations forming part of the Settlement Agreement, which were agreed to by Staff and the Respondents.

3. The Settlement Agreement relates to the Respondents' actions, or lack thereof, in connection with certain activities of Bruce Elliott Clarke, a former employee of NBFL.

Mr. Hicks was Mr. Clarke's immediate supervisor at NBFL. Mr. Clarke entered into a settlement agreement with the Commission in 2004 relating to his actions involving Knowledge House Inc. which were a violation of Nova Scotia securities laws and contrary to the public interest.

4. Also relevant to this proceeding is a letter dated May 30, 2005 (the "Escrow Agreement"), sent to R. Scott Peacock, Deputy Director, Compliance and Enforcement, of the Commission, and signed by James A. Hodgson, Counsel to NBFL and Mr. Hicks. The purpose of the Escrow Agreement was to confirm an arrangement made on behalf of NBFL and Mr. Hicks whereby

> "...the Settlement Agreement will be held in escrow until such time as there is a final disposition of all regulatory proceedings relating to trading activity in the common shares of Knowledge House Incorporated ("KHI"). This will further confirm that Market Regulation and the IDA will not initiate any regulatory proceedings against NBFL and/or Hicks relating to any of the matters which are subject of my clients' Settlement Agreement with the NSSC including the Statement of Allegations incorporated therein."

5. The Escrow Agreement was countersigned by R. Scott Peacock, Deputy Director, Compliance and Enforcement, of the Commission, by the Investment Dealers Association of Canada and by Market Regulation Services Inc.

6. As a result of the Escrow Agreement, the Settlement Agreement was held in escrow from June 2005 onwards. Regrettably, and notwithstanding the Commission's Rule 15-501 General Rules of Practice and Procedure ("Rule 15-501") relating to Settlement Agreements, it was not presented to the Commission for consideration until the present proceeding was convened.

7. In a decision dated April 17, 2012 and amended on September 30, 2012 (the "Gruchy Decision"), Commissioner David W. Gruchy, of the Commission, dealt with a number of matters relating to Kenneth G. MacLeod; Calvin W. Wadden; Daniel F. Potter; and Knowledge House Inc. The Gruchy Decision found that the effect of the Escrow Agreement has been a failure to protect the public interest, and that the Escrow Agreement was invalid and not permissible. As a result, this hearing was convened pursuant to the rules of the Commission pertaining to settlement agreements, as found in Part 10 of Rule 15-501.

## II ISSUES

8. The role of the Settlement Panel is to "...determine whether the proposed settlement is appropriate and in the public interest, and, if so, approve the Settlement Agreement and issue any related order" (Rule 15-501, section 10.5).

9. In a decision issued by Sarah P. Bradley, then Vice Chair of the Commission, dated June 29, 2011, In the Matter of John Alexander Allen, Vice Chair Bradley stated the following on pages 2 and 3 of that decision:

> "The role of a Commission panel reviewing a settlement agreement has been addressed in numerous cases, including *Re Melynk* 2007 LNONOSC 406; (2007) 30 OSCB 5253, and is well settled.
>
> As outlined in *Re Melynk*, my role in reviewing this Settlement Agreement is not to require the sanctions that I would impose after a contested hearing of the matter, but rather to ensure that the agreed-upon sanctions are within acceptable parameters and that the Settlement Agreement, as a whole, is in the public interest. Significant weight should be given to the agreement reached between adversarial parties, as a balancing of factors and interest will have already taken place in reaching the settlement agreement. My role is not to renegotiate the terms of the Settlement Agreement or to suggest changes to the facts, statements or sanctions set forth. My role is to decide whether to approve the Settlement Agreement, as a whole, on the terms presented to me...
>
> In numerous cases, including the decisions of this Commission in *Re Bruce Elliott Clarke* (NSSC, June 28, 2004), and *Re Beaton* (NSSC, May 31, 2011), securities commissions have set out several factors that may be relevant in determining whether, or what, sanctions are in the public interest in the circumstances of a particular case... which include, but are not limited to:
>
> - the seriousness of the allegations proved and the respondent's recognition of the seriousness of these improprieties;
> - the characteristics of the respondent, including capital market experience and activity and any prior sanctions;
> - any benefits received by the respondent and any harm to which investors or the capital market generally were exposed by the misconduct found;
> - any previous decisions based on similar circumstances;
> - the effect any sanctions may have on a respondent, including on the respondent's livelihood and ability to participate without check in the capital markets;
> - whether or not the sanctions imposed may serve to deter not only those involved in the matter being considered, but any like-minded people, from engaging in similar abuses of the capital markets; and
> - any mitigating considerations."

## III ADMINISTRATIVE PENALTY

10. Attached to the Settlement Agreement are proposed Orders for each of NBFL and Mr. Hicks. With respect to NBFL, Staff and counsel for NBFL submit that pursuant to section 135 (b) of the Act, NBFL pay an administrative penalty of $75,000, and further that pursuant to section 135A of the Act, NBFL pay costs with respect to the investigation and conduct of the proceeding in the amount of $50,000. With respect to Mr. Hicks, Staff and counsel for Mr. Hicks submit that the same administrative penalty of $75,000 be imposed, and that Mr. Hicks also pay costs in connection with the investigation and conduct of the proceeding in the amount of $50,000.

11. The violations of the Act admitted to by NBFL and Mr. Hicks occurred between 1999 and 2001. Staff advised the Panel that at that time the maximum allowable penalty pursuant to Section 135 of the Act was $100,000. Staff further advised that the Act was subsequently amended in 2005 to increase the maximum administrative penalty to $500,000, and amended again in 2007 to provide for a maximum administrative penalty of $1,000,000 for each violation of the Act. However, Staff noted that the Commission has determined in previous decisions that administrative penalty provisions cannot be applied retrospectively or retroactively.

12. The Commission dealt with this issue in a decision dated October 20, 2011, In the Matter of Quintin Earl Sponagle and Trevor Wayne Hill (the "Sponagle Decision"). Paragraph 99 of the Sponagle Decision discusses this issue:

> "The jurisprudence is clear that the presumption against retrospectivity applies to sanctions that are penal in nature, but does not apply to sanctions that are intended to protect the public. The Supreme Court of Canada discussed the limits of the application of the presumption against retrospectivity of securities commission penalties in *Brosseau v. Alberta (Securities Commission)* [1989] 1 S.C.R. 301. The Court cited the following passage from Elmer Driedger in *Statutes*: *Retroactive, Retrospective Reflections* (1978), 56 Can. Bar Rev. 264, at p.275 with approval (at para. 51):
>
> > In the end, resort must be had to the object of the statute. If the intent is to punish or penalize a person for having done what he did, the presumption applies, because a new consequence is attached to a prior event. But if the new punishment or penalty is intended to protect the public, the presumption does not apply."

13. In the Sponagle Decision, the Commission also stated the following in paragraphs 107, 108 and 111:

> "[107.] ...In our view, the nature of the administrative orders and prohibitions

that the Commission is empowered to impose pursuant to section 134 of the *Securities Act* differ from the monetary administrative penalties that may be imposed pursuant to section 135. Administrative orders under section 134 are inherently preventative in nature. Though they may be based on past conduct, their application is clearly protective of the public interest in the future. While such administrative orders can be exceptionally serious and disabling to those upon whom they are imposed, their object is to protect the public by ensuring compliance with the *Securities Act* and by removing from the capital markets those who, in the view of the Commission, pose threats to its integrity.

[108.] Monetary administrative penalties are imposed for different reasons. They are intended to deter future misconduct by the person against whom they are ordered, as well as by others who would consider similar activity, by penalizing those who have breached the Act. This deterrent effect is achieved by removing any financial incentive to breach the Act, and also by imposing additional penalties sufficient to cause an apprehension in any person considering a breach of the Act in the future that they too will suffer a similar penalty if they proceed with such activity. Thus, we agree with the BC Court of Appeal in *Thow*, that while such measures are not punitive in the narrow sense because they are preventative in nature and imposed in the public interest, they are nevertheless punitive in a broader sense, and therefore subject to the common law prohibition against retroactivity…

[111.] Therefore, in our view, the presumption against retrospectivity applies to the application of section 135, and we are bound in this case to apply the provision as it existed in 2006 when the breaches of the *Securities Act* committed by Mr. Sponagle and Mr. Hill took place, which is to say that the maximum administrative penalty that may be imposed on each of Mr. Sponagle and Mr. Hill is $500,000.00."

## IV DECISION

14. The rules pertaining to Settlement Agreements, as approved by the Commission, are set out in Part 10 of Rule 15-501. Sections 10.3, 10.4 and 10.5 state the following:

> "10.3 A Settlement Agreement is subject to review and approval by a Settlement Panel.
>
> 10.4 The Secretary shall prepare a Notice of Hearing for a Settlement Hearing. The Notice of Hearing shall be served upon the Parties to the Settlement Agreement. Copies of the Settlement Agreement will be forwarded to and distributed by the Secretary to the Settlement Panel in advance of the date set for the Settlement Hearing.

10.5 Based upon the Settlement Agreement and any submissions of the Parties, the Settlement Panel will determine whether the proposed settlement is appropriate and in the public interest, and, if so, approve the Settlement Agreement and issue any related order."

15. These rules are explicit and clear. Once a settlement agreement is signed, it must go to the Secretary of the Commission, who will distribute it to the settlement panel in advance of the date set for the settlement hearing.

16. In accordance with Section 10.5 of Rule 15-501, set out above, the settlement panel must consider the settlement agreement and determine whether it is appropriate and in the public interest.

17. It is clear that the violations specified in the Statement of Allegations attached to the Settlement Agreement were serious violations. The violations demonstrated, among others, a lack of attention to internal policies, a failure to detect a pattern of manipulative trading, a failure to establish and implement proper internal control procedures, a failure to ensure that the NBFL branch office conformed with prudent business practices and a failure to properly supervise certain staff members. The Respondents have admitted the facts set out in the Statement of Allegations, and acknowledge that during the relevant period they violated Nova Scotia securities laws, and engaged in conduct contrary to the public interest as set out in the Statement of Allegations.

18. The Panel also notes the comments by Staff that in this case the maximum amount which can be assessed as an administrative penalty is $100,000 for each Respondent, and that the recommended amount of $75,000 represents 75% of the maximum allowable penalty available to the Commission. Staff has submitted that a penalty equal to 75% of the maximum allowable in the circumstances demonstrates the seriousness of the violations of NBFL and Mr. Hicks.

19. The Panel is satisfied that it is bound in this case to apply the provisions of the Act as they existed during the period from December 6, 1999 to August 16, 2001, when the violations of the Act were committed by NBFL and Mr. Hicks. As a result, an administrative penalty of greater than $100,000 cannot be imposed.

20. The Panel is mindful of its responsibilities in reviewing the Settlement Agreement. As discussed above in *Re Melynk* and the Sponagle Decision, the Panel's role is not to impose the sanctions which it may otherwise impose after a contested hearing nor the sanctions that might be imposed under the current provisions of the Act, but to respect the legal principles of retroactivity and recognize that the agreed-upon sanctions are the result of a negotiation process between the parties. The Panel's responsibility is to ensure that the sanctions are within acceptable parameters and that the Settlement Agreement as a whole is in the public interest.

21. The Panel notes that Staff has advised that both Respondents have cooperated fully, and in

an exemplary fashion with the regulators in their investigation, and that NBFL has done a thorough examination of its internal procedures and policies, which has resulted in significant changes in its compliance regime.

22. After considering the nature of the violations and the various factors which the Panel is required to consider as set out above, the Panel accepts and approves the proposed administrative penalties and finds that they are in the public interest.

23. Further, the Panel accepts and approves the awarding of costs against NBFL and Mr. Hicks, and is satisfied, based on the explanations provided by Staff, that the proposed costs incurred in the investigation and conduct of the proceeding are reasonable, and in accordance with the normal procedures of Staff to determine such costs.

24. Accordingly, the Settlement Agreement, a copy of which is attached as Schedule A, is approved as being in the public interest.

25. Each of the orders contained in the Settlement Agreement state that... "IT IS ORDERED pursuant to section 135 (b) of the Act that: ...The Respondent pay an administrative penalty in the amount of seventy five thousand dollars ($75,000.00) forthwith." In the Panel's view, the orders should be amended to include a reference to section 135(a)(i) of the Act. In the Sponagle Decision, and consistent with section 135(a)(i) of the Act, the Commission determined that before ordering an administrative penalty, the Commission must, in addition to considering it in the public interest after a hearing to do so, make a positive finding that a breach of Nova Scotia securities laws has occurred. The Respondents have admitted to violations of the Act, and the Panel finds as a matter of fact that such violations have occurred. Accordingly, the Panel requests that Staff prepare revised orders for the Panel to sign which state that "IT IS ORDERED pursuant to section 135 (a) (i) and section 135 (b) of the Act that: ...The Respondent pay an administrative penalty in the amount of seventy five thousand dollars ($75,000.00) forthwith." *(new wording underlined).* The remaining section of each of the orders deals with Section 135A of the Act, and no changes are required to this section of the orders.

Dated at Halifax, Nova Scotia, this 4th day of December, 2012.

Nova Scotia Securities Commission

J. A. Morash

John A. Morash, CA

Valerie Seager

Schedule A

**IN THE MATTER OF THE SECURITIES ACT**

**R.S.N.S.1989, C.418 as amended ("the Act")**

**and**

**IN THE MATTER OF NATIONAL BANK FINANCIAL LIMITED**

**and**

**ERIC CECIL HICKS**

**("the Respondents")**

# SETTLEMENT AGREEMENT

## I INTRODUCTION

1. By Notice of Hearing dated the [date] (the "Notice of Hearing"), the Nova Scotia Securities Commission (the "Commission") announced that it proposed to hold a hearing to consider whether, pursuant to section 135 and 135A of the Act, in the opinion of the Commission, it is in the public interest for the Commission:

   a. to make an order pursuant to section 135(a) of the Act determining that the Respondents have contravened the Act or its regulations;

   b. to make an order pursuant to section 135(b) that the Respondents should pay an administrative penalty in an amount to be determined by the Commission upon hearing Staff of the Commission; and

   c. to make an order pursuant to section 135A of the Act that the Respondents should pay costs in connection with the Staff's investigation and conduct of the proceedings in an amount to be determined by the Commission upon hearing Staff of the Commission.

## II JOINT SETTLEMENT RECOMMENDATION

2. Staff of the Commission ("Staff") agree to recommend settlement of the proceedings initiated in respect of the Respondents by the Notice of Hearing in accordance with the terms and conditions set out below. The Respondents agree to the settlement on the basis of the facts agreed to as hereinafter provided and the Respondents consent to the making of an Order in the form attached as Scheduled "A" on the basis of the facts set out below in respect to the violation of the Act.

3. This settlement agreement including the attached Schedule "A" (collectively the "Settlement Agreement"), will be released to the public only if and when the settlement is approved by the Commission.

4. The parties to this agreement acknowledge and agree that the facts and conclusions set out in Part III of this Settlement Agreement herein are for the purposes of this Settlement Agreement only and further agree that this agreement of facts is without prejudice to the Respondents or Staff in any other proceeding of any kind including, but without limiting the generality of the foregoing, any proceeding brought by staff of the Commission under the Act (subject to paragraph 14) or any civil or other proceeding which may be brought by any other person or agency. No other person or agency may raise or rely upon the terms of this Settlement Agreement or any agreement to the facts stated herein whether or not this Settlement Agreement is approved by the Commission.

## III SETTLEMENT OF FACTS AND CONCLUSIONS

### Acknowledgment

5. Staff and the Respondent agree with the facts and conclusions set out in Part III of the Settlement Agreement.

### Introduction

6. NBFL has been registered with the Nova Scotia Securities Commission ("NSSC") since January 1, 1992. NBFL was also, during the Relevant Period, a Member of the Investment Dealers Association of Canada ("IDA"). NBFL has its head office located in Montreal, Quebec and during the Relevant Period, NBFL had a branch office located in Halifax, Nova Scotia (the "Branch Office").

### Facts

7. Staff of the Commission ("Staff") and the Respondents admit the facts set out in the Statement of Allegations dated the _____ day of _____ 2005 and expressly incorporate those facts into this Settlement Agreement.

### Conduct Contrary to the Public Interest

8. The Respondents acknowledge that during the Relevant Period they violated Nova Scotia securities law and engaged in conduct contrary to the public interest as set out in the Statement of Allegations.

## IV Mitigating Factors

9. Staff acknowledges that the Respondents have co-operated fully and in an exemplary fashion with the Regulators throughout the regulatory investigation and have entered into this Settlement Agreement thereby saving the Regulators the expenditure of resources and time to hold hearings. Further, NBFL has conducted a thorough and rigorous examination of its internal procedures and policies resulting in significant changes to its

compliance regimen in order to enhance its ability to supervise and detect compliance violations by its employees in their trading activity.

## V STAFF COMMITMENT

11. If this Settlement Agreement is approved by the Commission, Staff will not initiate any complaint to the Commission in accordance with the procedures described herein and such further procedures as may be agreed upon between Staff and the Respondents.

12. If this Settlement Agreement is approved by the Commission, it will constitute the entirety of the evidence to be submitted respecting the Respondents in this matter and the Respondents agree to waive any right to a full hearing and appeal of this matter under the Act.

13. If this Settlement Agreement is approved by the Commission, the parties to this Settlement Agreement will not make any statement that is inconsistent with this Settlement Agreement.

14. If, for any reason whatsoever, this settlement is not approved by the Commission, or the Order set forth in Schedule "A" is not made by the Commission:

    a. each of the Staff and the Respondents will be entitled to proceed to a hearing of the allegation in the Notice of Hearing and related Statement of Allegations unaffected by the Settlement Agreement or the settlement negotiations;

    b. the terms of the Settlement Agreement will not be raised in any other proceeding or disclosed to any person except with the written consent of the Staff and the Respondents or as may otherwise be required by law; and

    c. the Respondents agree that they will not raise in any proceeding the Settlement Agreement or the negotiations or process of approval thereof as a basis of any attack or challenge of the Commission's jurisdiction, alleged bias, appearance of bias, alleged unfairness or any other challenge that may otherwise be available.

## VI DISCLOSURE OF SETTLEMENT AGREEMENT

15. Staff or the Respondents may refer to any part or all of this Settlement Agreement in the course of the hearing convened to consider this agreement. Otherwise, this Settlement Agreement and its terms will be treated as confidential by all the parties to the Settlement Agreement until approved by the Commission, and forever if, for any reason whatsoever, this settlement is not approved by the Commission.

## VII EXECUTION OF SETTLEMENT AGREEMENT

16. This Settlement Agreement may be signed in one or more counterparts that together shall constitute a binding agreement and a facsimile copy of any signature shall be as effective as an original signature.

**Dated** this day of 2005.

**Signed in the presence of:**

_____ **Per:** _____

( **Witness** ) **National Bank Financial Limited**

**Dated** this day of 2005.

**Signed in the presence of:**

_____ _____

( **Witness** ) **Eric Cecil Hicks**

**Dated** this / day of June 2005.

**Staff of the Nova Scotia Securities Commission**

**Per:** _____

**R. Scott Peacock, Deputy Director**
**Compliance and Enforcement**
**Nova Scotia Securities Commission**

**Dated** this 6th day of June 2005.

**Per:** _____

**Investment Dealers Association of Canada**

**Dated** this 15th day of JUNE 2005.

**Per:** _____

**Market Regulation Services Inc.**

## VII EXECUTION OF SETTLEMENT AGREEMENT

16. This Settlement Agreement may be signed in one or more counterparts that together shall constitute a binding agreement and a facsimile copy of any signature shall be as effective as an original signature.

Dated this day of 2005.

**Signed in the presence of:**

_____

( Witness )

**Per:** _____

**National Bank Financial Limited**

**Dated** this day of 2005.

**Signed in the presence of:**

_____

( Witness )

_____

**Eric Cecil Hicks**

**Dated** this day of 2005.

**Staff of the Nova Scotia Securities Commission**

**Per:** _____

**R. Scott Peacock, Deputy Director**
**Compliance and Enforcement**
**Nova Scotia Securities Commission**

**Dated** this day of 2005.

**Per:** _____

**Investment Dealers Association of Canada**

**Dated** this day of 2005.

**Per:** _____

**Market Regulation Services Inc.**

## VII EXECUTION OF SETTLEMENT AGREEMENT

16. This Settlement Agreement may be signed in one or more counterparts that together shall constitute a binding agreement and a facsimile copy of any signature shall be as effective as an original signature.

**Dated this** day of 2005.

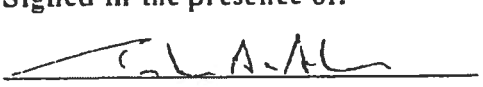
**Signed in the presence of:**

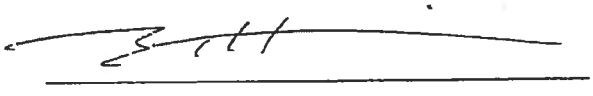
_____ **Per:** _____

( **Witness** ) **National Bank Financial Limited**

**Dated this** 1 day of June 2005.

**Signed in the presence of:**





( **Witness** ) **Eric Cecil Hicks**

**Dated this** day of 2005.

**Staff of the Nova Scotia Securities Commission**

**Per:** _____

**R. Scott Peacock, Deputy Director**
**Compliance and Enforcement**
**Nova Scotia Securities Commission**

**Dated this** day of 2005.

**Per:** _____

**Investment Dealers Association of Canada**

**Dated this** day of 2005.

**Per:** _____

**Market Regulation Services Inc.**

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

**- and -**

**IN THE MATTER OF**

**NATIONAL BANK FINANCIAL LIMITED**
**("the Respondent or NBFL")**

**ORDER**
**(Sections 135 and 135A)**

WHEREAS it appears to the Nova Scotia Securities Commission (the "Commission") that:

1. The Respondent has failed to comply with its obligations under the Act and the General Securities Rules to properly and adequately supervise the trading activities of its employees in respect to the trading of shares in Knowledge House Inc. in Nova Scotia, and further has failed to establish, maintain and implement procedures for dealing with clients that conformed with prudent business practice and to take whatever steps are necessary or appropriate to supervise those procedures properly.

WHEREAS THE Commission is of the opinion it is in the public interest to make this order;

IT IS ORDERED pursuant to section 135(b) of the Act that:

1. The Respondent pay an administrative penalty in the amount of seventy five thousand dollars ( $ 75,000.00 ) forthwith.

IT IS FURTHER ORDERED pursuant to section 135A of the Act:

2. The Respondent pay costs in the investigation and conduct of the proceeding in respect of which the order has been made pursuant to section 135 of the Act in the amount of fifty thousand dollars ( $ 50,000.00).

Dated at Halifax, Nova Scotia, this day of , 2005.

NOVA SCOTIA SECURITIES COMMISSION

_____

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

**- and -**

**IN THE MATTER OF**

**ERIC CECIL HICKS**
**("the Respondent or Hicks")**

# ORDER
**(Sections 135 and 135A)**

WHEREAS it appears to the Nova Scotia Securities Commission (the "Commission") that:

1. The Respondent has failed to comply with his obligations under the Act and the General Securities Rules to properly and adequately supervise the trading activities of employees of National Bank Financial Limited in respect to the trading of shares in Knowledge House Inc. in Nova Scotia, and further has failed to establish, maintain and implement procedures for dealing with clients that conformed with prudent business practice and to take whatever steps are necessary or appropriate to supervise those procedures properly.

WHEREAS THE Commission is of the opinion it is in the public interest to make this order,

IT IS ORDERED pursuant to section 135(b) of the Act that:

1. The Respondent pay an administrative penalty in the amount of seventy five thousand dollars ( $ 75,000.00 ) forthwith.

IT IS FURTHER ORDERED pursuant to section 135A of the Act:

2. The Respondent pay costs in the investigation and conduct of the proceeding in respect of which the order has been made pursuant to section 135 of the Act in the amount of fifty thousand dollars ( $ 50,000.00).

Dated at Halifax, Nova Scotia, this day of , 2005.

NOVA SCOTIA SECURITIES COMMISSION

_____

IN THE MATTER OF THE SECURITIES ACT

R.S.N.S. 1989, c. 418 as amended ("the Act")

- AND -

ERIC CECIL HICKS

("the Respondents")

STATEMENT OF ALLEGATIONS

OF

STAFF OF THE NOVA SCOTIA SECURITIES COMMISSION

Staff of the Nova Scotia Securities Commission ("Staff") make the following allegations:

**Relevant Period**

1. The conduct at issue in this Notice of Hearing took place from December 6, 1999 to August 16, 2001 (the "Relevant Period").

**Background of NBFL**

2. National Bank Financial Limited ("NBFL") has been registered with the Nova Scotia Securities Commission ("NSSC") since January 1, 1992. NBFL was also, during the Relevant period, a Member of the Investment Dealers Association of Canada ("IDA"). NBFL has its head office located in Montreal, Quebec and during the Relevant Period, NBFL had a branch office located in Halifax, Nova Scotia (the "Branch Office").

**Background of Eric Cecil Hicks**

Eric Cecil Hicks ("Hicks") first became approved as a Registered Representative in January 1980 when he was employed with Scotia McLeod Inc. He subsequently joined J.D. Mack Ltd. in September 1988. In or about 1995, Levesque Securities Ltd. purchased J.D. Mack Ltd., which in turn merged with First Marathon Securities Ltd. to become NBFL.

Hicks became the manager of the Branch Office in the spring of 1998. Hicks resigned from his position as Branch Manager in or about October 2002.

**Background of Bruce Elliott Clarke**

Bruce Elliott Clarke ("Clarke") has been employed in the securities industry since in or about 1970. He first became approved as a Registered Representative with J.D. Mack Ltd. on June 18, 1980. Clarke later became an officer, director and the controller of J.D. Mack Ltd.

3. In or about 1995, Levesque Securities Ltd. purchased J.D. Mack Ltd., which in turn merged with First Marathon Securities Ltd. to become NBFL.

4. Clarke was employed at the Branch Office as a Registered Representative from 1995 until his employment was terminated by NBFL on October 2, 2001.

5. During the Relevant Period, Hicks was Clarke's immediate supervisor.

6. On January 17, 2002, Clarke was approved as a Registered Representative with Union Securities Ltd. where he was employed until May 11, 2004.

**Background of Knowledge House Inc.**

7. Knowledge House Inc. ("KHI") is a Nova Scotia limited company incorporated on March 14, 1984.

8. KHI was a reporting issuer and listed on the Toronto Stock Exchange ("TSX") on December 6, 1999 as a result of the migration of senior equities from the Montreal Exchange to the TSX.

9. KHI, while trading on the TSX, was considered an illiquid stock.

10. Trading in KHI opened in December 1999 at the $4.00 level and reached a high of $9.00 in March 2000. It traded from $6.00 to $7.00 between April 2000 and January 2001 when it fell to the $5.00 level. The price remained at approximately $5.00 until August 16, 2001 when it closed at $5.10. By August 31, 2001, KHI was trading below $1.00. Trading of KHI was halted by the TSX on September 13, 2001 with a closing

price of approximately $0.17. KHI was suspended from trading on February 13, 2002 and de-listed by the TSX on February 13, 2003.

11. The NSSC issued a Cease Trade Order on July 22, 2002 after KHI failed to file financial statements as required by the Act.

**Clarke Settlement Agreement**

12. On April 30, 2004, Clarke entered into a Settlement Agreement with the NSSC. In the Settlement Agreement, Clarke admitted that:

(a) Commencing in 1999 a number of KHI insiders and their associates and relatives held accounts at NBFL and at other dealers. Clarke was the investment advisor for most of these accounts at NBFL. Clarke also operated an account at NBFL in the name of 2317540 Nova Scotia Limited ("540"), a corporation owned and controlled by him.

(b) Commencing in late 1999 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. Clarke agreed to assist the Insider Group in carrying this Arrangement into effect. The Arrangement was never disclosed to the public, contrary to the provisions of the Act.

(c) In the period March, 2000 to July, 2001, Clarke made a large number of purchases of KHI shares on margin through 540. Those purchases were made under the overall direction and control of the Insider Group, who held a beneficial interest in the account. The purpose of the trades was to maintain the price of KHI within a certain range; to create the effect of a liquid market for the shares and in consequence to collaterally affect the values upon which margin could be based in the accounts of shareholders.

(d) Clarke's purchases of KHI shares. through 540, were funded by transfers of freely trading KHI shares and cash from the Insider Group. None of the members of the Insider Group filed any reports with respect to the transfer of KHI shares into the 540 account, as required by section 116 of the *Act*. None of the members of the Insider Group filed any reports under section 113 of the *Act* with respect to the transactions taking place within

the 540 account. Clarke did not file any reports of beneficial ownership by members of the Insider Group in the 540 account, as required by section 117 of the *Act*.

(e) In addition to the transactions made through the 540 account, during the relevant time period Clarke entered a large number of purchase and bids for the Insider Group, the purpose of which was to facilitate the Arrangement.

**Branch Office Reviews**

13. Hicks was responsible for reviewing all accounts pursuant to Regulation 31 (1) and 31(2)(b) made pursuant to the *Act* and IDA by-laws, including Policy 2.

14. Monthly review of "Employee, investment advisors and connected accounts" were signed by Hicks. All comment sheets reviewed by this investigation and signed off by Hicks reveal that:

(a) they did not include any mention of the March 2000 activity in the 540 account;

(b) account reviews for the months November 1999 through July 2001 did not make any queries of unusual activity in KHI by Clarke. No substantive comment or questions were made by Hicks until after April of 2001, when head office commenced scrutinizing concentration issues in KHI at the Branch Office; and

(c) no questions were made of the 540 account with respect to any of these months, including March, August and December of 2000 when the 540 account received large deposits of more KHI shares.

15. During the Relevant Period, Hicks, as manager of the Branch Office, failed to ensure that the Branch Office conformed with prudent business practices and serviced its clients adequately.

**Personal Computer and E-Mail Address**

16. NBFL had a policy, entitled "Computer Security" – Security Standards Electronic Mail, which outlines NBFL's policy with respect to the use of e-mails (the "E-Mail Policy"). The E-Mail Policy states "In the normal course of business, only Company addresses will

be considered valid for employees' incoming and outgoing e-mail". The E-Mail Policy also provides that "The Company reserves the right to have duly authorized personnel check e-mail content." A clarification of E-Mail policy states that "E-Mail sent to clients is considered written correspondence and must therefore comply with the applicable securities industry standards.

17. Clarke used his personal e-mail address to communicate with NBFL clients, including the insiders of KHI. These e-mails were not monitored by Hicks or anyone at NBFL. Clarke's personal e-mail address was cited on official NBFL monthly client account statements as a method of contacting him.

18. NBFL's Compliance Manual provides that "If an employee uses a personal computer at home or elsewhere than NBFL's offices, the work and documents produced which are intended for clients must be reviewed by the branch manager or his delegate and are subject to all of NBFL's applicable policies."

19. Clarke did not obtain prior approval or copy Hicks on any e-mail communication sent via Clarke's personal e-mail even though Hicks was aware that Clarke was using a personal email address for NBFL business.

20. Hicks and NBFL failed to properly supervise Clarke pursuant to Regulation 31(1) of the *Act* and IDA bylaw 29.7(2) and policy 2, in that they permitted Clarke and other staff at the Branch Office to communicate with clients and others through Clarke's personal e-mail address. Hicks also failed to monitor the contents of the e-mail transmissions to and from Clarke's personal e-mail address in contravention of NBFL's own internal policies and as required pursuant to Regulation 31(1) made pursuant to the *Act* and IDA bylaw 29.7(2) and policy 2.

**Personal Financial Dealings**

**$100,000 Deposit**

21. The NBFL Compliance Manual prohibits registered representatives from carrying out any personal financial transactions with clients, including loans and the borrowing of money.

22. On March 6, 2000 a transfer request sheet was completed for Clarke by Martha Lynn MacDonald, which provided the particulars of a transfer of $100,000 Deposit to the 540 Account. There was attached to the transfer request sheet a copy of an e-mail dated March 3, 2000 from Dan Potter ("Potter") to Clarke's personal e-mail address in which Potter authorized the "advance of a $100,000" to 540 Account.

**Off market Security Purchases by Clarke**

23. The NBFL Compliance Manual, Chapter 10, Page 5, required that "all investments made by employees in public issuers other than market purchases (e.g. private placements) must be pre-approved by the Head of Compliance."

24. Clarke did not seek the approval of NBFL for any non-market purchases. NBFL did not query Clarke with respect to the share certificate deposits of KHI and Crossoff to the 540 Account.

25. Hicks and NBFLfailed to properly supervise Clarke in that they failed to detect and/or permitted Clarke to participate in personal financial dealings with clients.

**Pro Account**

26. Clarke was the sole owner, director and officer of 540. In September 1995, 540 established a margin account at NBFL, which was properly coded as a pro account (the "540 Account"). The 540 Account was virtually inactive between late 1996 and March 2000.

27. Clarke used the 540 Account to facilitate the market support for KHI on behalf of KHI Insiders as follows:

(a) On March 6, 2000, $100,000 was deposited to the 540 Account via transfer from an NBFL account that was beneficially owned by Dan Potter. (the "$100,000 Deposit"). NBFL did not make any inquiries of Clarke with respect to this deposit to the 540 account;

(b) In March 2000, Calvin Wadden caused a share certificate for 220,000 shares of KHI to be deposited to the 540 Account. NBFL did not make any inquiries of Clarke with respect to the deposit of this share certificate to the 540 Account;

(c) On September 15, 2000, a share certificate for 350,000 shares of a TSX Venture traded security, Crossoff Inc., was deposited by Clarke to the 540 Account. NBFL did not make any inquiries of Clarke with respect to the deposit of this share certificate to the 540 Account; and

(d) In or about December 2000, Raymond Courtney caused a share certificate for 100,000 shares of KHI to be deposited to the 540 Account. NBFL did not make any inquiries of Clarke with respect to the deposit of this share certificate to the 540 Account.

28. Hicks and NBFL failed to properly supervise Clarke in that they failed to establish and implement internal controls to monitor the activity in 540 Account.

Concentration of KHI in the 540 Account

29. After the $100,000 Deposit and the deposit of the 220,000 KHI shares to the 540 Account in March 2000, the 540 Account began to accumulate holdings in KHI as follows:

| Month End | Closing Balance | KHI Position | KHI Mkt Value | Total Mkt Value of the 540 Account | KHI % of total Mkt Value |
|---|---|---|---|---|---|
| March-00 | $144,110.34 | 222,600 | $1,892,100.00 | $1,909,840.00 | 99.07% |
| April-00 | ($585,516.97) | 316,800 | $2,280,960.00 | $2,305,617.50 | 98.93% |
| May-00 | ($1.256,611.23) | 408,300 | $2.817,270.00 | $2,881,564.50 | 97.77% |
| June-00 | ($1,448,327.33) | 439,800 | $3,056,610.00 | $3,096,917.50 | 98.70% |
| July-00 | ($1,510,567.80) | 452,200 | $3,029,740.00 | $3,034,420.00 | 99.85% |
| August-00 | ($1,409,778.83) | 435,970 | $2.899.200.50 | $2,903,363.00 | 99.86% |
| Sept-00 | ($792.736.91) | 340,070 | $2.278,469.00 | $2,687,584.00 | 84.78% |
| October-00 | ($1.402,935.45 | 435,870 | $2,920,329.00 | $3,473,424.00 | 84.08% |
| Nov 2000 | ($1,777.616.21) | 501,670 | $3.235,771.50 | $3,780,101.50 | 85.60% |
| Dec 2000 | ($1,886,537.66) | 633,370 | $3.895,225.50 | $4,431,510.50 | 87.90% |
| January-01 | ($2,146.572.09) | 680,170 | $3,570.892.50 | $3,956,452.50 | 90,25% |
| February-01 | ($2,160,141.12) | 710,170 | $3,976,952.00 | $4,126,899.50 | 96.37% |
| March-01 | ($2,160,945.08) | 707,845 | $3.822.363.00 | $3,964,955.50 | 96.40% |
| April-01 | ($2,179,244.00) | 707,845 | $3.751.578.50 | $3,796,758.50 | 98.81% |
| May-01 | ($2,191.721.97) | 707,845 | $3.822.363.00 | $3,865,063.00 | 98.90% |
| June-01 | ($2.205,427.74) | 707,845 | $3,702.029.35 | $3,739,634.35 | 98.99% |
| July-01 | ($2,220,846.34) | 707,845 | $3.779.892.30 | $3,812,469.80 | 99.15% |
| August-01 | ($2.016,393.41) | 421,745 | $139.175.85 | $139.175.85 | 100.00% |

30. In July and August 2000, NBFL became concerned about its concentration in KHI. However, notwithstanding this concern, the concentration in KHI in the 540 Account and others continued for another year.

31. IDA Policy 2 and NBFL compliance procedures required its Branch Managers to review all pro accounts on a monthly basis. However, Hicks did not conduct any substantive review during the Relevant Period up to April 2001.

32. Hicks and NBFL failed to properly supervise the 540 Account pursuant to Regulation 31(1), 31(2)(b) and 31(4) made pursuant to the Act, in that they failed to monitor the creditworthiness of the 540 Account and the continued accumulation of KHI shares therein.

**High Closing**

33. During the Relevant Period, NBFL did not adequately review month end closing bids of KHI by Clarke and his clients which resulted in a failure to detect a pattern of manipulative trading, contrary to Regulation 31(1)(b) made pursuant to the *Act*.

34. It is therefore in the public interest for the Commission to order that each of the Respondents pay an administrative penalty and costs in accordance with sections 135(b) and 135A of the *Act* respectively.

DATED this day of , 2005.

**R. Scott Peacock**
Deputy Director, Compliance and Enforcement
Nova Scotia Securities Commission