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

-AND-

IN THE MATTER OF CLARKE INC. AND GEOSAM INVESTMENTS LIMITED
(COLLECTIVELY THE "RESPONDENTS")

HEARING: Friday, October 9, 2009

PANEL: Paul Radford, Q.C., Commissioner

COUNSEL: Heidi Schedler – On behalf of staff of the Nova Scotia Securities Commission
Rory Rogers and Andrew Burke – On behalf of Clarke Inc.
George MacDonald, Q.C. – On behalf of Geosam Investments Limited

REASONS FOR THE DECISION OF THE
NOVA SCOTIA SECURITIES COMMISSION

The following is the written decision of the Nova Scotia Securities Commission (the "Commission") supplementing brief oral reasons given and Order granted on October 9, 2009.

The hearing was held under sections 135 and 135A of the Act to consider a Settlement Agreement between staff of the Commission and the Respondents. The October 9, 2009 Order approved the Settlement Agreement as being in the public interest.

The hearing was opened as a public hearing and upon motion was closed to continue as an in camera session for the purposes of determining whether the without prejudice Settlement Agreement would be approved by the Commission and, only if so approved, made public.

The Statement of Allegations acknowledged and admitted by the Respondents and the Statement of Agreed Facts are contained in the Settlement Agreement.

The purpose of the Act, as set out in section 1A of the Act, 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. A key principle of Nova Scotia securities laws essential to provide confidence to investors is to ensure the wide dissemination of information deriving from a reporting issuer that is material or is a "material fact", namely information that significantly affects or would reasonably be expected to have a significant effect on the market price or value of issued

securities. The concomitant obligation is that a market participant must determine whether any information deriving from a reporting issuer that comes into their possession is material or is a material fact before acting further.

The only evidence before the Commission in this hearing was the Statement of Agreed Facts. From these facts, it appears that the Respondents came into possession of information from the Chief Investment Officer ("CIO") of the Respondent Clarke Inc. ("Clarke") from a meeting of the members of a special committee of Advanced Fiber Technologies (AFT) Income Fund ("AFT") with representatives of Aikawa Iron Works Inc. ("Aikawa") and Aikawa's investment bankers. The Respondents did not evaluate that information to determine whether it was "material". Clarke's CIO was a Trustee of AFT. Subsequent to the meeting the Respondents purchased in total 905,400 units of AFT in various circumstances and subsequent to those purchases Aikawa announced publicly it was offering to purchase the issued and outstanding units of AFT at $2.50 per unit.

There was no evidence before the Commission indicating that the information about the meeting obtained by Clarke's CIO and passed on to both Respondents was "material", rather the allegation by Staff of the Commission against the Respondents is that the Respondents failed to exercise due diligence to determine whether that information was material.

The Hearing was called under sections 135 and 135A of the Act. The first mentioned section allows the Commission to make an order for a person to pay an administrative penalty when it is of the view that the making of the order is in the public interest. The purpose of an order under s. 135 is the same as under s. 127 of the Ontario Securities Act described in Committee for the Equal Treatment of Asbestos Minority Shareholders v. Ontario (Securities Commission), [201] 2 S.C.R. 132 as quoted in the Nova Scotia Court of Appeal decision in Electronic Benefits Inc. v. Nova Scotia (Securities Commission), 2009 NSCA 6 at paragraph 37, and is described as being to restrain future conduct that is likely to be prejudicial to the public interest in fair and efficient capital markets. Thus it is protective and preventative and not punitive, nor intended to provide a remedy for any breaches of the Act for any harm or damages caused to private parties. The discretion to make public interest orders is very broad, but not unlimited, and must be exercised for the purposes in section 1A of the Act.

In the present case, being a hearing to approve a settlement agreement with both parties consenting to an order, it was the Commission's role to determine whether it is in the public interest to make the order for an administrative penalty submitted to it under s. 135 and the order for payment of costs under s. 135A.

The Commission accepts that in protecting investors from practices that tend to undermine public confidence in fair and efficient capital markets in Nova Scotia there is a duty on a market participant who receives any information deriving from a reporting issuer that is not widely disseminated, such as would be apparent from the nature of the meeting attended by the CIO of Clarke described in the Statement of Agreed Facts, to exercise due diligence in

determining if that information is "material". Such a practice is a concomitant duty that arises from the numerous disclosure provisions of Nova Scotia securities laws which seek to enhance equal access for investors to information that may affect their investment decisions.

Thus, the Commission determined that it was in the public interest to make an order requiring the Respondents to pay an administrative penalty, not as any sanction arising from use of such information (of which no evidence was submitted nor any consideration given by the Commission), but as a sanction to ensure that the Respondents and others take appropriate due diligence measures to evaluate whether such information is material.

The determination of the appropriateness of an administrative penalty was referenced in the Commission's decision by Chairman H. Leslie O'Brien, Q.C. dated April 4, 2006 In the Matters of Knowledge House Inc. and R. Blois Colpitts, including the excerpts from Re Beltco Holdings Inc. (1998), 21 O.S.C.B. 7743 and Re. M.C.J.C. Holdings, (2002), 25 O.S.C.B. 1133 at 1134 and the Commission has considered those factors in determining whether the $400,000 administrative penalty proposed in the Settlement Agreement in this matter is appropriate for the circumstances of this case.

First, the Commission received evidence that the Respondents co-operated in the Staff's investigation of this matter, that some of the purchases of units in AFT arose from standing orders put in place before the meeting that the CIO attended took place, that Clarke had previously expressed an interest in investing further in AFT, that Clarke has since put in place a Trading Policy and Personal Trading Policy and an Investment Policy that requires trades to be approved by an Investment Committee of three specific officers and finally agreed to have certain of its officers complete a course in corporate governance and securities law acceptable to Commission Staff. These measures indicate that the Respondents have recognized the seriousness of their conduct and should likely lessen the likelihood of the conduct in issue reoccurring, and hence tend to reduce the magnitude of the administrative sanction that would otherwise be considered appropriate.

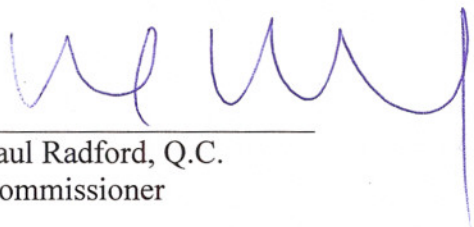
Factors that support a sanction of a larger magnitude are that Clarke is itself a reporting issuer and is active in the public markets, that the information was obtained in circumstances that should have raised concern that it could be of a material and sensitive quality and should have caused the Respondents to formally evaluate it for materiality before allowing further acquisitions of units to take place and finally, that since materiality of information is such a central principle for fair and efficient capital markets, that a strong message should be given for general deterrence for other market participants to put in place and use procedures to screen and evaluate information for materiality in light of the provisions of securities laws to protect and instill confidence in investors and capital markets in future.

Thus, taking the above factors into account the Commission determined that it is in the public interest to approve a significant administrative penalty of $400,000, which is

proportionate to the facts disclosed in this hearing and to the central principle of securities laws that are in issue.

Pursuant to section 135A, the Commission may, after a hearing, order a person against whom an order has been made under s. 135 to pay costs in connection with the investigation and prosecution of the proceedings. The Respondents and the Staff of the Commission agreed to costs of $15,000 against each of the two Respondents and the Commission determined that these costs are appropriate and order the Respondents to pay such costs.

Dated at Halifax, Nova Scotia, this 8th day of March, 2010.



Paul Radford, Q.C.
Commissioner