In the Matter of the Securities Act,
R.S.N.S. 1989, Chapter 418, as amended ("Act")

-and-

In the Matter of
Quintin Earl Sponagle, Trevor Wayne Hill and Larry Enos Beaton
(Collectively the "Respondents")

Reasons for Decision of
Nova Scotia Securities Commission

Hearing Date:	Monday, May 30, 2011, and Tuesday, May 31, 2011
Panel:	J. Walter Thompson, QC, Commissioner Sarah P. Bradley, Vice Chair Paul F. Radford, QC, Commissioner
Present:	Heidi Schedler, on behalf of the Staff of the Nova Scotia Securities Commission Stephanie Atkinson, on behalf of the Staff of the Nova Scotia Securities Commission Mr. Brian Awad, Counsel for Mr. Larry Beaton

The allegations made by the enforcement staff of the Nova Scotia Securities Commission in this proceeding against Mr. Sponagle, Mr. Hill and Mr. Beaton are serious. Mr. Beaton has come to an agreement for a settlement with enforcement staff. We approve this settlement as being in the public interest. We thought, however, that we should make some remarks in doing so because the charges are serious and because the allegations against Mr. Sponagle and Mr. Hill will continue.

I shall summarize the legal context. We are an administrative tribunal. It is trite to say, but we are guided by the law which for these purposes consists of: Our mandate under the Nova Scotia *Securities Act,* R.S.N.S. 1989, c.418 to make orders in the public interest; rule 15-501 of the Nova Scotia Securities Commission (General Rules of Practice and Procedure); and the earlier decisions of the Nova Scotia Securities Commission and other Securities Commissions interpreting the public interest in the context of approving settlement agreements.

Monday, May 30th, 2011, was to be the opening day of the hearing of the allegations of violations of the *Securities Act* by Quintin Sponagle, Trevor Hill and Larry Beaton. The day was, however, consumed by our deliberations and discussions with enforcement counsel for the Commission and Mr. Beaton about the settlement agreement. We were not satisfied initially with the information provided to us in explanation of the administrative penalty and costs which

the parties sought to have us impose by our order. Counsel went back to work and during the afternoon were able to provide us with more information which has now satisfied us that it is in the public interest to approve the settlement they have negotiated.

The Commission panel's role in reviewing a settlement agreement:

> "is not to require the sanctions it would impose after a contested hearing for what is proposed in the settlement agreement, but rather to ensure that the agreed 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 interests will have already taken place in reaching the settlement agreement. We note that our role is not to renegotiate the terms of the settlement agreement or suggest changes to the facts, statements or sanctions set forth in the Settlement Agreement. Our role is to decide whether to approve the Settlement Agreement, as a whole, on the terms presented to us." (*Re Melnyk, Carmichael and McKenney* (2007), 30 O.S.C.B. 5253 at paragraph 15, citing *Re Sohan Singh Koonar et al.* (2002), 25 O.S.C.B. 2691 at 2692 and *Re Pollitt* (2004), 27 O.S.C.B. 9643 at para 33. This opinion is hereafter referred to as *Melynk*)

We also point out that the sanctions we impose are regulatory, they are not "remedial or punitive, but rather preventative in nature and prospective in application." *(Re Bruce Elliot Clarke,* N.S.S.C. (June 28, 2004) at page 7, quoting LeBel, J. in *Cartaway Resources Corp.* [2004] SCC 26, at paragraph 58. Hereafter referred to as *Re Clarke*)

We wish to state, particularly since we will be hearing the allegations against Mr. Sponagle and Mr. Hill, that the facts and circumstances agreed to by Staff of the Commission and Mr. Beaton are not findings of fact by this Panel. They are facts agreed upon by Staff and Mr. Beaton for the purposes of this settlement agreement only. We have relied solely on these facts in determining whether the settlement agreement is consistent with the public interest. These facts maybe summarized as follows.

Mr. Beaton is a self-employed carpenter. He is not, by contrast, a man who has been engaged in the financial business. He has limited experience and investment knowledge. He was unfamiliar with securities law and in particular the requirement that one may not solicit others to invest in securities unless registered under the *Securities Act*.

Mr. Beaton believed that investing in Jabez was lawful and legitimate. It never occurred to him, notwithstanding the "too good to be true" returns promoted on the investment, to investigate Jabez. He had no knowledge of how the investment would generate the advertised returns.

Mr. Beaton was motivated to help others by introducing them to a lucrative investment. Those others included his family and his friends. He himself invested $250,000 from his

RRSP's and a line of credit. Jabez proposed to pay Mr. Beaton a commission, but that commission, if it was paid at all, was blended into the $15,000.00 which he withdrew under the investment scheme.

Mr. Beaton has lost virtually all of his money. So he believes have those others who he introduced to this promotion. These losses have caused Mr. Beaton personally a great deal of stress and have placed immense stress on his relationships with his family and friends.

We do bear in mind the impact of such actions on investors who trust in the representations of those who ignore the securities laws designed to protect the community. There have been enough notorious cases in recent years to remind us of the importance of securities regulations and the need for vigorous enforcement of them.

We refer to the decision of our Commission in *Re Clarke* at pages 6-7 which provided the following guidance with respect to the factors to be considered:

> "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.
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> 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 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."

These are some of the factors to be considered. Each case will have to be considered in light of its own facts. The Ontario Securities Commission, in *Re M.C.J.C. Holdings and Michael Cowpland* (2002) O.S.C.B. 1133, stated at page 3:

> "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 look at absolute values...."

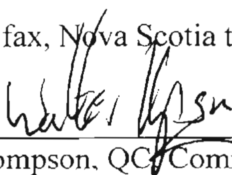
The breaches of the *Securities Act* which Mr. Beaton has admitted are indeed serious. There are people who have invested and lost money as a result of his having taken it upon himself to introduce this investment in Jabez to them. Mr. Beaton, however, is not experienced in investment dealing and knew little of it. We conclude that Mr. Beaton was indeed extremely naive. He now recognizes the seriousness of what he has done and "greatly regrets becoming involved in this matter." Mr. Beaton himself has lost a large sum of money. He has not profited. We accept that Mr. Beaton is a man of modest means; the pain of the sanction the Settlement Agreement imposes will be significant. Certainly the public sanction will exacerbate the shame he no doubt already feels.

We also note that Mr. Beaton, unlike Mr. Sponagle and Mr. Hill, has participated in the process and subjected himself to it. He has acknowledged his transgressions, expressed regret, and accepted the order against him. This will facilitate the work of the enforcement staff of the Commission in presenting the evidence and simplify this tribunal's deliberations. Mr. Beaton's acceptance of the process and his own responsibility, in our view, should mitigate the penalty against him.

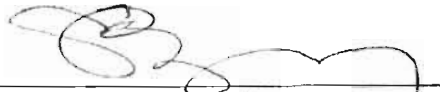
We hope this process will show as a matter of general deterrence that the securities laws of the province serve an important function and violators of them will be subject to enforcement proceedings leading to public sanctions. We acknowledge, however, that the sanctions agreed to may be below what we might have imposed after a hearing on the merits. We repeat that this was not a hearing on the merits but rather a settlement agreement.

We, having considered the above, approve the settlement arrived at between Mr. Beaton and staff of the Commission as being in the public interest. We particularly wish to thank Mr. Brian Awad, counsel to Mr. Beaton, for his participation and assistance.

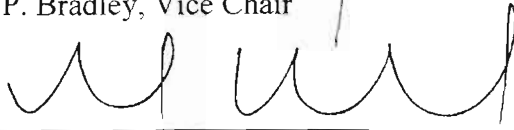
Dated at Halifax, Nova Scotia this 28th Day of June, 2011.



J. Walter Thompson, QC, Commissioner



Sarah P. Bradley, Vice Chair



Paul F. Radford, QC, Commissioner