



Ontario  
Securities  
Commission

Commission des  
valeurs mobilières  
de l'Ontario

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**IN THE MATTER OF THE *SECURITIES ACT*,  
RSO 1990, c S.5**

**- AND -**

**IN THE MATTER OF SCOTIA CAPITAL INC.,  
SCOTIA SECURITIES INC. AND  
HOLLISWEALTH ADVISORY SERVICES INC.**

**ORAL RULING AND REASONS  
(Subsections 127(1) and 127(2) of the *Securities Act*)**

**Hearing:** July 29, 2016

**Oral Ruling:** July 29, 2016, approved by the Chair of the Panel on August 11, 2016

**Panel:** Timothy Moseley Commissioner and Chair of the Panel  
Monica Kowal Vice-Chair  
William J. Furlong Commissioner

**Appearances:** Yvonne B. Chisholm For Staff of the Commission  
Michelle Vaillancourt

James Douglas For Scotia Capital Inc., Scotia  
Caitlin Sainsbury Securities Inc., and Holliswealth  
Advisory Services Inc.

## ORAL RULING AND REASONS

*The following ruling and reasons have been prepared for the purpose of publication in the Ontario Securities Commission Bulletin and are based on portions of the transcript of the hearing. The excerpts from the transcript have been edited, and the text has been approved by the Chair of the panel for the purpose of providing a public record of the oral ruling and reasons.*

### Chair of the panel:

- [1] Staff has made allegations against Scotia Capital Inc., Scotia Securities Inc., and Hollisweath Advisory Services Inc., which I will refer to collectively as the "**Scotia Dealers**". The allegations relate to matters that were reported by the Scotia Dealers to Staff beginning in February 2015. Specifically, Staff alleges that each of the Scotia Dealers failed to establish, maintain and apply appropriate controls and procedures with respect to supervision, as a result of which certain clients paid excess fees. Staff also alleges that these inadequacies were not detected or corrected by the Scotia Dealers in a timely manner.
- [2] Had Staff's allegations been proven at a contested hearing, the inadequacies referred to would have constituted a breach of section 11.1 of National Instrument 31-103 – *Registration Requirements, Exemptions and Ongoing Registrant Obligations*, which requires registered firms such as the Scotia Dealers to establish, maintain and apply policies and procedures that establish a sufficient system of controls and supervision. However, this is not a contested hearing. Staff and the Scotia Dealers have entered into a settlement agreement in which the Scotia Dealers neither admit nor deny Staff's allegations or the facts underlying those allegations.
- [3] Our obligation is to consider whether the settlement agreement should be approved and whether it would be in the public interest to issue the order contemplated by that agreement and proposed by the parties.
- [4] The settlement agreement is the product of negotiation between Staff and the Scotia Dealers. The Commission respects that process and accords significant deference to the resolution reached by the parties in cases like this. However, we must still be satisfied that the measures called for in the settlement agreement are appropriate and in the public interest.
- [5] This panel had the opportunity to meet with counsel for Staff and for the Scotia Dealers in a confidential pre-settlement conference. We reviewed the proposed settlement agreement and the compensation plan referred to in that agreement and we heard submissions from counsel.
- [6] All of the factors that we have heard today from both counsel are relevant to our decision. There are several factors that are particularly important.
- [7] First, the Scotia Dealers will be accountable for paying compensation to the affected clients.
- [8] Second, the Scotia Dealers have committed to produce enhanced policies and procedures designed to prevent a recurrence of the alleged inadequacies. These revised policies and procedures will be subject to review by Staff.
- [9] Third, the Scotia Dealers have made a voluntary payment of \$800,000 to the Commission for the benefit of third parties or for investor education, and an additional voluntary payment of \$50,000 to reimburse the Commission for costs.

- [10] Fourth, as counsel have noted, the Scotia Dealers discovered the inadequacies and self-reported them to Staff. Following that self-reporting, the Scotia Dealers provided prompt, detailed and candid co-operation to Staff. The Scotia Dealers had already formulated an intention to pay appropriate compensation to affected clients.
- [11] Fifth, there is no evidence of dishonest conduct on the part of the Scotia Dealers.
- [12] Finally, Staff and counsel for the Scotia Dealers have submitted that based on all the facts underlying the alleged inadequacies, and that are relevant to this settlement, the compensation plan called for in the agreement is globally appropriate across all affected clients. Based on the facts before us, and on those submissions, in our view the compensation plan achieves that goal.
- [13] As with all settlements, this one succeeds in resolving a matter in a timely and effective way that is efficient and that saves the substantial costs that would be incurred as a result of a contested hearing.
- [14] This is a settlement where the respondents neither admit nor deny the specific allegations made. That is unusual, but not unprecedented. Even where a registrant responds appropriately to issues that have been raised, as the Scotia Dealers did, it does not follow automatically that the registrant is entitled to have a no-contest settlement approved. However, taking into account the steps taken by the Scotia Dealers, and with reference to the factors identified in section 17 of *OSC Staff Notice 15-702 – Revised Credit for Co-operation Program*,<sup>1</sup> in our view it is appropriate to approve a no-contest settlement in this case.
- [15] The reality is that compliance inadequacies occur, even at well-meaning registered firms. It is critical that when such inadequacies do occur, the registrant responds in the way that the Scotia Dealers have.
- [16] This proposed settlement should make it clear to all that registered firms must have in place strong compliance systems, a principal purpose of which is to provide reasonable assurance that investors are protected and that they are treated fairly.
- [17] For all these reasons, we approve the settlement agreement and we find that it is in the public interest to issue an order in the form of Schedule 'A' to that agreement.

Approved by the Chair of the Panel on 11<sup>th</sup> day of August, 2016.

*"Timothy Moseley"*

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Timothy Moseley

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<sup>1</sup> (2014), 37 OSCB 2583.