



Ontario
Securities
Commission

Commission des
valeurs mobilières
de l'Ontario

22nd Floor
20 Queen Street West
Toronto ON M5H 3S8

22e étage
20, rue Queen Ouest
Toronto ON M5H 3S8

Citation: Royal Mutual Funds Inc. (Re), 2018 ONSEC 32

Date: 2018-06-13

File No. 2018-31

**IN THE MATTER OF
ROYAL MUTUAL FUNDS INC.**

**ORAL REASONS FOR APPROVAL OF A SETTLEMENT
(Subsection 127(1) and 127.1 of the *Securities Act*, RSO 1990, c S.5)**

Hearing: June 13, 2018

Decision: June 13, 2018

Panel: Janet Leiper
William J. Furlong
Commissioner and Chair of the Panel
Commissioner

Appearances: Daniel Bernstein
Doug McLeod
For Staff of the Commission
For Royal Mutual Funds Inc.

ORAL REASONS FOR APPROVAL OF A SETTLEMENT
(Subsection 127(1) and 127.1 of the *Securities Act*, RSO 1990, c S.5)

The following reasons have been prepared for publication in the Ontario Securities Commission Bulletin, based on the reasons delivered orally in the hearing, and as edited and approved by the Panel, to provide a public record.

- [1] The Panel would like to begin by thanking counsel for completing the settlement agreement and for their helpful submissions and thoroughness in dealing with the matter.
- [2] On June 8, 2018 the Ontario Securities Commission (the **Commission**) issued a Notice of Hearing to consider whether it is in the public interest for the Commission to make certain orders in respect of Royal Mutual Funds Inc. (**RMFI**).
- [3] RMFI is a member of the Mutual Fund Dealers Association of Canada (**MFDA**) and is registered with the Commission as a mutual fund dealer. RMFI is the principal distributor of proprietary funds, including the RBC Portfolio Solutions suite of mutual funds (**RBC PS Funds**) and other proprietary funds (the **RBC Funds**) and a participating dealer of non-proprietary mutual funds (the **Third Party Funds**), which accounts for a small proportion of RMFI's gross sales.
- [4] Between November 2011 and October 2016 (the **Material Period**), RMFI provided its representatives ten basis points more in commissions (the **Enhanced Compensation**) for the sale of units of RBC PS Funds than for the sale of units of Third Party Funds, in contravention of section 4.2(1) of National Instrument (**NI**) 81-105 *Mutual Funds Sales Practices*. As a result, RMFI made additional payments to its "Investment & Retirement Planning" (**IRP**) financial planners in the aggregate amount of \$24,517,931; at an average of \$5,500 per IRP per year.
- [5] In addition, RMFI failed to establish, maintain and apply policies and procedures to establish a system of controls and supervision to ensure that it and each individual acting on its behalf complied with subsection 4.2(1) of NI 81-105 in contravention of section 11.1 of NI 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations*.
- [6] The parties recommend settlement of the proceeding against RMFI on the following terms, which were the subject of a settlement agreement:
 - a. RMFI is reprimanded pursuant to paragraph 6 of subsection 127(1) of the Act¹;
 - b. RMFI pay an administrative penalty in the amount of \$1,100,000 to the Commission; and

¹ *Securities Act*, RSO 1990, c S.5

- c. RMFI pay costs of the investigation by the Commission in the amount of \$20,000.
- [7] The Panel understands from Staff that the payments to the Commission have been made.
- [8] The role of the Panel is to decide whether the proposed settlement agreement as a whole, on the terms presented and agreed to, falls within an acceptable range and should be approved as being in the public interest.²
- [9] Settlement proceedings serve the public interest in resolving regulatory proceedings efficiently, thus using enforcement resources prudently. Settlements allow registrants to have an opportunity to cooperate and demonstrate a willingness to redress regulatory breaches. Having regard to the conduct, the mitigating factors and prior regulatory decisions, we have concluded that the proposed settlement is reasonable and appropriate. For the reasons that follow, we will approve this settlement and make the order in the terms it contemplates.
- [10] The seriousness of the conduct in this case arises from the \$24,517,931 inducement paid to IRP financial planners over the Material Period.
- [11] In considering whether it is in the public interest to approve the proposed settlement agreement, we note the following mitigating factors:
- a. RMFI asserts that the Enhanced Compensation was intended to encourage the IRPs to recommend the RBC PS Funds in relation to both the RBC Funds and the Third Party Funds, rather than specifically target Third Party Funds which account for a small proportion of RMFI's gross sales;
 - b. Staff do not allege any harm to clients as a result of investments in the RBC PS Funds during the Material Period;
 - c. The Enhanced Compensation had no bearing on the fees charged to clients for any of the RBC PS Funds, RBC Funds or Third Party Funds;
 - d. RMFI cooperated with MFDA and Staff during their investigation;
 - e. RMFI reported the Enhanced Compensation to Staff of the Commission following inquiries made by MFDA staff into RMFI's compensation practices;
 - f. Effective October 28, 2016, RMFI eliminated the Enhanced Compensation incentive to its financial planners; and
 - g. RMFI engaged in an extensive review and testing of its systems of control and supervision, and developed enhanced procedures and controls designed to prevent the reoccurrence of a breach of subsection 4.2(1) of NI 81-105.
- [12] This is the fourth settlement agreement to come before the Commission relating to breaches of NI 81-105. While the settlement agreements in *Sentry Investments*, *Mackenzie Financial*, and *1832 Asset Management* focus on breaches of a different section of NI 81-105, the underlying purpose of the

² *Rankin (Re)* (2008), 31 OSCB 3303; 2008 ONSEC 6 at para 18.

instrument remains the same – to ensure that the interests of investors remain uppermost in the actions of participants in the mutual funds industry.³

- [13] As such, these settlement agreements assist us in deciding whether the proposed settlement agreement falls within an acceptable range and should be approved as being in the public interest. By focusing on the duration of the misconduct, the amount of the inducement paid, and the mitigating factors in particular, we conclude that the administrative penalty proposed in the settlement agreement falls within an acceptable range.
- [14] While the duration of the misconduct of RMFI was similar to *Sentry* and *1832*, the amount of inducement paid by RMFI as part of the Enhanced Compensation incentive was higher than in these cases. However, a significant mitigating factor specific to this case is that the Enhanced Compensation was advantageous relative to both the RBC Funds and the Third Party Funds, the latter of which accounted for only a small proportion of RMFI's gross sales. This provides evidence that the intention of Enhanced Compensation was not predatory towards the Third Party Funds, but rather an incentive to recommend the RBC PS Funds. Indeed the substantial majority of the effect of the Enhanced Compensation would be borne by the RBC Funds for which RMFI is a principal distributor, not a participating dealer.
- [15] Further, an administrative penalty in excess of \$1,000,000 is appropriate and serves as a meaningful deterrent given the role of RMFI in the marketplace and the significant amount of inducement.
- [16] Staff's costs submissions of \$20,000 reflect the fact that this settlement has saved the expense of a full hearing.
- [17] For the reason provided, it is in the public interest for the Panel to approve the settlement agreement and make an order as requested by the parties.
- [18] The order to be made today includes a reprimand of RMFI. To the representative of RMFI who is here today, Mr. Walker, this is a symbolic reprimand given that it is being issued against the company. Your presence here today allows the Panel to convey to RMFI the importance of these matters. We trust that RMFI, through its directors, officers, and employees accepts the reprimand on that basis, and will continue make comprehensive, effective and sustained efforts to avoid a recurrence.

Approved by the Panel on this 13th day of June, 2018.

"Janet Leiper"

Janet Leiper

"William J. Furlong"

William J. Furlong

³ Companion Policy 81-105CP to NI 81-105, Part 2.2(1) and 2.2(2)(a)