



Ontario
Securities
Commission

Commission des
valeurs mobilières
de l'Ontario

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Citation: RBC Dominion Securities Inc. et al, 2017 ONSEC 24
Date: 2017-06-27

**IN THE MATTER OF
RBC DOMINION SECURITIES INC.,
ROYAL MUTUAL FUNDS INC., and
RBC PHILLIPS, HAGER & NORTH INVESTMENT COUNSEL INC.**

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

Hearing: June 27, 2017

Oral Ruling: June 27, 2017

Panel:

Timothy Moseley	Commissioner and Chair of the Panel
Philip Anisman	Commissioner
AnneMarie Ryan	Commissioner

Appearances:

Yvonne B. Chisholm Michelle Vaillancourt	For Staff of the Commission
Paul Steep Dharshini Sinnadurai	For RBC Dominion Securities Inc., Royal Mutual Funds Inc., and RBC Phillips, Hager & North Investment Counsel Inc.

ORAL RULING AND REASONS

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

- [1] Staff of the Commission has made allegations against RBC Dominion Securities Inc., Royal Mutual Funds Inc., and RBC Phillips, Hager & North Investment Counsel Inc., all of which are wholly-owned indirect subsidiaries of Royal Bank of Canada (referred to in these reasons as the "**RBC Registrants**"). Staff's allegations relate to matters that were reported by the RBC Registrants promptly to Staff beginning in February 2015.
- [2] The RBC Registrants have entered into a settlement agreement with Staff, in which the RBC Registrants neither admit nor deny the truth of Staff's allegations. The RBC Registrants and Staff submit jointly that it would be in the public interest for us to approve the agreement and to issue the requested order. For the following reasons, we agree.
- [3] Staff alleges that each RBC Registrant failed to establish, maintain and apply procedures to establish sufficient controls and supervision, as a result of which certain clients paid excess fees. Staff also alleges that these inadequacies were not detected or corrected by the RBC Registrants in a timely manner.
- [4] Staff alleges that the excess fees fell into two categories. First, for some clients with fee-based accounts, certain products held in those accounts were incorrectly included in the calculation of account fees, even though the products were also subject to embedded trailer fees, or to service fees negotiated between the client and the investment advisor. Second, some clients were not advised that they qualified for a mutual fund series that had a lower management expense ratio than the series of the same fund in which the client was invested.
- [5] 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*. That section requires registered firms such as the RBC Registrants to establish, maintain and apply policies and procedures that establish a sufficient system of controls and supervision.
- [6] The settlement agreement is the product of negotiation between Staff and the RBC Registrants. The Commission respects that process and accords significant deference to the resolution reached by the parties. However, we must still be satisfied that the measures called for in the settlement agreement are appropriate and in the public interest.
- [7] This panel had the opportunity to meet with counsel for Staff and for the RBC Registrants in a confidential settlement conference. We reviewed the proposed settlement agreement and we heard submissions from counsel.
- [8] We highlight the fact that after the RBC Registrants discovered the alleged inadequacies, they then promptly self-reported them to Staff. Following that self-reporting, the RBC Registrants provided prompt, detailed and candid co-operation to Staff. Further, there is no allegation or evidence of dishonest conduct on the part of the RBC Registrants.
- [9] The RBC Registrants will be accountable for paying compensation totalling more than \$21 million to the affected clients, on the basis set out in the settlement

agreement, subject to oversight by Commission Staff. The RBC Registrants have also committed to take corrective action, including establishing and implementing enhanced procedures and controls, supervisory and monitoring systems designed to prevent a recurrence of the alleged inadequacies. These revised policies and procedures will be subject to review and approval by Staff.

- [10] Finally, the RBC Registrants have made a voluntary payment of \$925,000 to the Commission for allocation or use by the Commission under subsection 3.4(2) of the *Securities Act*, and an additional voluntary payment of \$50,000 to reimburse the Commission for costs.
- [11] Based on the facts alleged and on the parties' submissions, in our view the compensation called for in the settlement agreement is appropriate.
- [12] The settlement resolves this matter in a timely and efficient way that saves the substantial costs and delay that would be incurred as a result of a contested hearing. The affected clients and others benefit by a resolution of this nature at this stage.
- [13] This is a no-contest settlement. It is difficult to secure the Commission's approval of a settlement in which the respondents do not admit the truth of Staff's allegations. However, taking into account the RBC Registrants' self-identification, prompt self-reporting, measures to adopt new policies and controls, payment of compensation to affected clients, significant additional payments, and prompt, detailed and candid co-operation with Staff, and with reference to the factors identified in sections 16 and 17 of *OSC Staff Notice 15-702 – Revised Credit for Co-operation Program*,¹ including Staff's statement that the facts are true based on its investigation, in our view it is appropriate to approve a no-contest settlement in this case.
- [14] When compliance inadequacies occur, and they do from time to time, it is critical that the registrant responds in the responsible way that the RBC Registrants have. The *Credit for Co-operation Program* was designed for cases such as this, and the RBC Registrants have earned the benefit of the credit called for by that program.
- [15] This settlement should make it clear that registered firms must have in place robust and effective compliance systems, a principal purpose of which is to provide reasonable assurance that investors are protected and that they are treated fairly.
- [16] For all these reasons, we approve the settlement agreement as requested and we conclude that it is in the public interest to issue an order substantially in the form of Schedule 'A' to that agreement.

DATED at Toronto the 27th day of June, 2017.

"Timothy Moseley"

Timothy Moseley

"AnneMarie Ryan"

AnneMarie Ryan

"Philip Anisman"

Philip Anisman

¹ (2014), 37 OSCB 2583.