



## ORAL REASONS FOR APPROVAL OF A SETTLEMENT

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

- [1] The Panel would like to thank Staff of the Ontario Securities Commission (the **Commission**) and 1832 Asset Management L.P. (**1832**) and counsel to the parties for their helpful submissions and their joint efforts in arriving at the settlement agreement that is before us today.
- [2] 1832 is registered with the Commission as, among other things, an Investment Fund Manager. 1832 is wholly owned by the Bank of Nova Scotia. 1832 is the manager for the Dynamic family of mutual funds (the **Products**), among other mutual funds. The Products were acquired by 1832 in 2011. The only activities of 1832 as an Investment Fund Manager in respect of which the sales practices at issue in this proceeding are relevant are those in its role as manager of the Products. 1832 distributes these Products to investors through dealing representatives registered with participating dealers, including both third party and affiliated dealers.
- [3] Between November 2012 and October 2017, 1832 failed to comply with National Instrument 81-105 *Mutual Funds Sales Practices* (**NI 81-105**) by failing to meet the minimum standards of conduct expected of industry participants in relation to certain sales practices. As set out in the Companion Policy to that National Instrument, the purpose of NI 81-105 is to ensure that the interests of investors remain uppermost in the actions of participants in the mutual fund industry by setting minimum standards of conduct to be followed by industry participants in their activities in distributing mutual fund securities. The minimum standards of conduct established by NI 81-105 are designed to minimize the conflicts between the legitimate commercial goals of industry participants and the fundamental obligations that are owed by industry participants towards investors.<sup>1</sup> The materials filed by the parties articulate in greater detail the areas of 1832's non-compliance.
- [4] These standards were not met in this case. Specifically 1832 admitted to five particular kinds of conduct in this regard in that it:
  - a. Engaged in excessive spending on promotional activities in relation to:
    - i. One-time events, such as concerts and sports events,
    - ii. Quarterly spending on dealing representatives contrary to 1832's Mutual Fund Sales Practices Guide, and
    - iii. Annual spending on dealing representatives for promotional activities;
  - b. Stocked items in the 1832 Warehouse store and provided items to dealing representatives, such as sound systems and tablets, which were not of minimal value and, in some cases, were not of a promotional nature;

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<sup>1</sup> Companion Policy 81-105CP to National Instrument 81-105 *Mutual Fund Sales Practices*, Part 2.2(1).

- c. Provided excessive non-monetary gifts of tickets to major events, such as concerts and sports events, without requiring 1832 staff to attend the events;
  - d. Provided monetary benefits to dealing representatives in the form of gift cards outside the bounds of NI 81-105; and
  - e. Provided excessive non-monetary benefits to dealing representatives at conferences through meals, dinners and entertainment and through the gifting of iPad minis and other items.
- [5] 1832 also failed to comply with section 32(2) of the *Securities Act*<sup>2</sup> (the **Act**) and section 11.1 of National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (**NI 31-103**) by failing to establish and maintain a system of controls and supervision over its sales practices that were sufficient to provide reasonable assurances that it was complying with its obligations under NI 81-105. Further, 1832 failed to maintain adequate books, records and other documents in breach of paragraph 3 of subsection 19(1) of the Act in order to demonstrate 1832's compliance with NI 81-105.
- [6] These practices took place for a period of nearly five years. With respect to this long period of non-compliance, the Panel understands from 1832 that its conduct and the conduct of other investment fund managers may have been based on a common understanding or misunderstanding of the expected requirements. While the Panel cannot comment on the practices of the industry as a whole during this period of time (as no such evidence was before the Panel), it is evident that the type of conduct admitted to by 1832 is a serious breach of Ontario securities laws.
- [7] The specific details of the misconduct are described in greater detail in the settlement agreement itself and 1832 has agreed to an order by this Panel that includes the following terms:
- a. 1832 shall submit to a review of its practices and procedures by an independent consultant (the **Consultant**) at 1832's expense, as set out in Schedule B of the settlement agreement, and to the satisfaction of Staff of the Commission;
  - b. 1832 shall pay an administrative penalty in the amount of \$800,000 to the Commission;
  - c. 1832 shall pay costs of the investigation by Staff of the Commission in the amount of \$150,000; and
  - d. 1832 shall be reprimanded for its conduct.
- [8] The Panel understands from Staff that the payments to the Commission have been made.
- [9] 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.<sup>3</sup> These sanctions are not

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<sup>2</sup> RSO 1990, c S.5

<sup>3</sup> *Rankin (Re)* (2008), 31 OSCB 3303 at para 18.

necessarily the sanctions that might have been imposed by a panel, had this matter proceeded to a contested hearing.<sup>4</sup> However, in our view, the sanctions and costs ordered will deter not only 1832, but also others in the industry from engaging in similar misconduct and will emphasize to industry participants that these types of practices are inconsistent with the obligations of registrants under NI 81-105, NI 31-103 and the provisions of the Act that have been referenced.

- [10] In considering whether it is in the public interest to approve the proposed settlement agreement, we note the following mitigating factors:
- a. 1832 has no disciplinary history with any securities regulator;
  - b. 1832 has been fully cooperative with Staff during the investigation; and
  - c. although it did not self-report, 1832's response to these issues, once identified by Commission Staff, has been proactive. Specifically, in 2017, 1832 began to make changes to its internal practices with a view to improving its compliance and supervision functions in relation to sales practices and NI 81-105. With the assistance of the Consultant retained in December 2017, 1832 advised that it is developing and implementing a comprehensive action plan to enhance its training of personnel and tracking of expenditures, and to improve controls and supervision relating to the provision of promotional activities and items to dealing representatives.
- [11] The Panel would like to emphasize that we view these types of training initiatives as being particularly important. While the proposed settlement in this matter is only between 1832 as a corporate entity and Staff, with no individuals named, changing what may be an industry practice ultimately requires individuals operating in the industry to clearly understand their obligations under NI 81-105.
- [12] The Ultimate Designated Person and Chief Compliance Officer of 1832 are responsible for promoting a culture of compliance, overseeing the effectiveness of the firm's compliance system and assessing the firm's compliance with securities laws, including NI 81-105. To that end, as part of the ongoing review by the Consultant required by the settlement agreement, the Ultimate Designated Person and Chief Compliance Officer of 1832 will be required to, among other things, provide written confirmation to the Deputy Director or Manager in the Compliance and Registrant Regulation Branch of the Commission that there has been full implementation of the Consultant's recommendations, which shall be confirmed by the Consultant and to the satisfaction of Commission Staff.
- [13] The settlement agreement also contemplates a reprimand of 1832. A reprimand is sometimes considered to be a symbolic sanction and/or of little regulatory consequence. However, it should be understood that the Panel imposes the reprimand of 1832 on the basis of it being a very strong statement of disapproval of 1832's conduct, which is the subject of this proceeding. We trust that 1832, through its personnel, its directors, officers and employees, however they may be called, accept and understand the reprimand on that basis. The Panel would like to acknowledge the presence of Glen Gowland, the Senior Vice President and Head, Asset Management of Scotiabank. The Panel understands

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<sup>4</sup> *Rankin (Re)* (2008), 31 OSCB 3303 at para 22.

that 1832 is part of Scotiabank's asset management business and as such currently falls within Mr. Gowland's area of responsibility. Mr. Gowland's presence here today allows the Panel to convey to 1832 and Mr. Gowland directly the importance of these matters.

- [14] For the reasons discussed, it is in the public interest for the Panel to approve the settlement agreement and make an order as requested by the parties.

Approved by the Panel on this 24<sup>th</sup> day of April, 2018.

"Robert P. Hutchison"

Robert P. Hutchison

"Frances Kordyback"

Frances Kordyback

"Deborah Leckman"

Deborah Leckman