

**IN THE MATTER OF THE *SECURITIES ACT*  
R.S.O. 1990, c. S.5, AS AMENDED**

**- and -**

**SCOTIA CAPITAL INC., SCOTIA SECURITIES INC. AND HOLLISWEALTH  
ADVISORY SERVICES INC.**

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**SETTLEMENT AGREEMENT BETWEEN STAFF OF THE COMMISSION**

**- and -**

**SCOTIA CAPITAL INC., SCOTIA SECURITIES INC. AND HOLLISWEALTH  
ADVISORY SERVICES INC.**

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**PART I - INTRODUCTION**

1. The Ontario Securities Commission (the “Commission”) will issue a Notice of Hearing to announce that it will hold a hearing to consider whether, pursuant to subsections 127(1) and (2) of the *Securities Act*, R.S.O. 1990, c. S-5, as amended (the “Act”), it is in the public interest for the Commission to make certain orders in respect of Scotia Capital Inc. (“SCI”), Scotia Securities Inc. (“SSI”) and HollisWealth Advisory Services Inc. (“HW”) (together, the “Scotia Dealers”).
2. SCI is a corporation amalgamated pursuant to the laws of Ontario. SCI is a member of the Investment Industry Regulatory Organization of Canada (“IIROC”) and is registered with the Commission as an investment dealer. The matters described below with regard to SCI pertain only to the business units within SCI that provide advice to retail clients, namely ScotiaMcLeod, a division of SCI, and HollisWealth, a division of SCI.
3. Each of SSI and HW is a corporation incorporated pursuant to the laws of Ontario and each is a member of the Mutual Fund Dealers Association of Canada (“MFDA”) and is registered with the Commission as a mutual fund dealer.
4. Commencing in February 2015, the Scotia Dealers self-reported to Staff of the Commission (“Commission Staff”) the matters described in Part III below. During Commission Staff’s investigation of these matters, the Scotia Dealers provided prompt, detailed and candid co-operation to Commission Staff.
5. As summarized at paragraph 12 below and more fully described in Part III below, it is Commission Staff’s position that there were inadequacies in the Scotia Dealers’ systems of controls and supervision which formed part of their compliance systems (the “Control and Supervision Inadequacies”) which resulted in certain clients

paying, directly or indirectly, excess fees that were not detected or corrected by the Scotia Dealers in a timely manner.

## **PART II - JOINT SETTLEMENT RECOMMENDATION**

6. Commission Staff and the Scotia Dealers have agreed to a settlement of the proceeding initiated in respect of the Scotia Dealers by Notice of Hearing dated July 26, 2016 (the “Proceeding”) based on the terms and conditions set out in this settlement agreement (the “Settlement Agreement”). Commission Staff have consulted with IIROC Staff and MFDA Staff in relation to the underlying facts which are the subject matter of this Settlement Agreement.
7. Pursuant to this Settlement Agreement, Commission Staff agree to recommend to the Commission that the Proceeding be resolved and disposed of in accordance with the terms and conditions contained herein.
8. It is Commission Staff’s position that:
  - (a) the statement of facts set out by Commission Staff in Part III below, which is based on an investigation carried out by Commission Staff following the self-reporting by the Scotia Dealers, is supported by the evidence reviewed by Commission Staff and the conclusions contained in Part III are reasonable; and
  - (b) it is in the public interest for the Commission to approve this Settlement Agreement, having regard to the following considerations:
    - (i) Commission Staff’s allegations are that each of the Scotia Dealers failed to establish, maintain and apply procedures to establish controls and supervision:
      - A. sufficient to provide reasonable assurance that the Scotia Dealers, and each individual acting on behalf of the Scotia Dealers, complied with securities legislation, including the requirement to deal fairly with clients with regard to fees; and
      - B. that were reasonably likely to identify the non-compliance described in A. above at an early stage that would have allowed the Scotia Dealers to correct the non-compliant conduct in a timely manner;
    - (ii) Commission Staff do not allege, and have found no evidence of dishonest conduct by the Scotia Dealers;
    - (iii) the Scotia Dealers discovered and self-reported the Control and Supervision Inadequacies to Commission Staff;

- (iv) during the investigation of the Control and Supervision Inadequacies following the self-reporting by the Scotia Dealers, the Scotia Dealers provided prompt, detailed and candid cooperation to Commission Staff;
- (v) the Scotia Dealers had formulated an intention to pay appropriate compensation to clients and former clients when they self-reported the Control and Supervision Inadequacies to Commission Staff and, thereafter, the Scotia Dealers co-operated with Commission Staff with a view to providing appropriate compensation to clients and former clients who were harmed by any of the matters in Part III below, including the Control and Supervision Inadequacies (the “Affected Clients”);
- (vi) as part of this Settlement, the Scotia Dealers have agreed to pay appropriate compensation to the Affected Clients, in accordance with a plan submitted by the Scotia Dealers to Commission Staff and presented to the Commission (the “Compensation Plan”). As at the date of this Settlement Agreement, the Scotia Dealers anticipate paying compensation to Affected Clients of \$19,997,821.01 in the aggregate in respect of the Control and Supervision Inadequacies;
- (vii) the Compensation Plan prescribes, among other things:
  - A. the detailed methodology to be used for determining the compensation to be paid to the Affected Clients, including the time value of money in respect of any monies owed by the Scotia Dealers to the Affected Clients;
  - B. the approach to be taken with regard to contacting and making payments to the Affected Clients;
  - C. the timing to complete the various steps included in the Compensation Plan;
  - D. a \$25 *de minimis* exception (the aggregate of such *de minimis* amounts as at the date of this settlement is approximately \$89,835.64 as compared to \$19,997,821.01 in compensation to be paid), which aggregate *de minimis* amount will be donated to Canadian Foundation for Economic Education;
  - E. the approach to be taken to any remaining funds that are not paid out to Affected Clients after the steps included in the Compensation Plan have been fully implemented. In that regard, the Compensation Plan provides that if the Scotia Dealers are not able to contact any former Affected Clients, notwithstanding the steps described in the Compensation

Plan, each Scotia Dealer will use reasonable efforts to locate any Affected Clients who are entitled to payment of \$200 or more including directory searches, internet searches, and the employment of third parties to assist in the search. If the Scotia Dealer determines that a client is deceased but does not know the identity of the personal representative of the client's estate, and the estate is entitled to more than \$400, the Scotia Dealer shall make reasonable efforts to identify the personal representative of the deceased client. Subject to any applicable unclaimed property legislation, any amounts remaining undistributed to non-located clients by December 31, 2018 will be donated to Canadian Foundation for Economic Education;

- F. the resolution of client inquiries through an escalation process; and
  - G. regular reporting to a manager or deputy director in the Compliance and Registrant Regulation Branch of the Commission ("OSC Manager") detailing the Scotia Dealers' progress with respect to the implementation of the Compensation Plan, including with regard to the resolution of client inquiries;
- (viii) at the request of Commission Staff, each of the Scotia Dealers conducted an extensive review of its other businesses operating in Canada to identify whether there were any other instances of inadequacies in their systems of controls and supervision leading to clients directly paying excess fees, or indirectly paying excess fees on mutual funds managed by 1832 Asset Management L.P. ("1832 LP"), an affiliate of the Scotia Dealers. Based on this review, the Scotia Dealers have advised Commission Staff that there are no other instances other than those instances of Control and Supervision Inadequacies described herein;
- (ix) the Scotia Dealers are taking corrective action including implementing additional controls and supervision to address the Control and Supervision Inadequacies, by establishing procedures and implementing controls, supervisory and monitoring systems designed to prevent the re-occurrence of the Control and Supervision Inadequacies in the future (the "Enhanced Control and Supervision Procedures") and, as part of this Settlement Agreement, the Scotia Dealers are required to report to the OSC Manager on the development and implementation of the Enhanced Control and Supervision Procedures;

- (x) the Scotia Dealers have agreed to make a voluntary payment of \$800,000 to be designated for allocation or use by the Commission in accordance with paragraphs (b)(i) or (ii) of subsection 3.4(2) of the Act;
- (xi) the Scotia Dealers have agreed to make a further voluntary payment of \$50,000 to reimburse the Commission for costs incurred or to be incurred;
- (xii) the total agreed voluntary payment of \$850,000 will be paid by wire transfer before the commencement of the hearing before the Commission to approve this Settlement Agreement, which payment is conditional upon approval of this Settlement Agreement by the Commission; and
- (xiii) the terms of this Settlement Agreement are appropriate in all the circumstances, including mitigating factors and the principles of general and specific deterrence. Commission Staff are of the view that the voluntary payments referred to above in addition to the amounts to be paid as compensation to Affected Clients by the Scotia Dealers will emphasize to the marketplace that Commission Staff expect registrants to have compliance systems with appropriate controls and supervision in place which:
  - A. provide reasonable assurance that registrants, and each individual acting on behalf of registrants, are complying with securities legislation, including the requirement to deal fairly with clients with regard to fees; and
  - B. are reasonably likely to allow registrants to identify and correct non-compliance with securities legislation in a timely manner.

9. The Scotia Dealers neither admit nor deny the accuracy of the facts or the conclusions of Commission Staff as set out in Part III of this Settlement Agreement.

10. The Scotia Dealers agree to this Settlement Agreement and to the making of an order in the form attached as Schedule "A".

### **PART III - COMMISSION STAFF'S STATEMENT OF FACTS AND CONCLUSIONS**

#### **A. Overview**

11. Commencing in February 2015, the Scotia Dealers self-reported the Control and Supervision Inadequacies to Commission Staff. Some SCI clients have fee-based accounts and are charged a fee for investment management services received in

respect of assets held in the account (the “Fee-Based Accounts”). The investment management fee is based on the client’s assets under management (the “Account Fee”).

12. The Control and Supervision Inadequacies are summarized as follows:
  - (a) for some SCI clients with Fee-Based Accounts, certain non-exchange traded mutual funds with embedded trailer fees held in Fee-Based Accounts were incorrectly included in Account Fee calculations, resulting in some clients paying excess fees during the period January 1, 2009 to May 1, 2015;
  - (b) for some SCI clients with Fee-Based Accounts, assets held in their Fee-Based Accounts included exchange traded funds (“ETFs”), resulting in some clients paying excess fees because SCI received trailer fees during the period January 1, 2009 to December 31, 2015 in addition to the Account Fee;
  - (c) for some SCI clients with Fee-Based Accounts, assets held in their Fee-Based Accounts included structured notes and closed end funds (“Structured Products”), resulting in some clients paying excess fees because SCI received trailer fees during the period January 1, 2009 to December 31, 2015 in addition to the Account Fee; and
  - (d) beginning in November 2008, some clients of the Scotia Dealers were not advised that they qualified for a lower Management Expense Ratio (“MER”) series of an MER Differential Fund (as defined below) and indirectly paid excess fees when they invested in the higher MER series of the same mutual fund (the “MER Differential Issue”).
13. These Control and Supervision Inadequacies continued undetected for an extended period of time. The Scotia Dealers discovered the Control and Supervision Inadequacies following inquiries made and/or reviews conducted by the relevant Scotia Dealers.
14. As set out in greater detail below in the section entitled Mitigating Factors, the Scotia Dealers have taken and are taking several remedial steps in order to correct the Control and Supervision Inadequacies.
15. The Scotia Dealers have engaged an independent third party to assist them in identifying, calculating, and validating the amounts to be paid to Affected Clients.

## **B. The Control and Supervision Inadequacies**

- (a) **Excess Account Fees Paid on Certain Mutual Funds**
16. For some of SCI’s clients who have Fee-Based Accounts, assets held in a Fee-Based Account included certain non-exchange traded mutual funds with trailer

fees paid by the investment fund manager of such funds to SCI. As part of its review relating to this matter, SCI identified that 15 of these mutual funds had been incorrectly classified for fee-billing purposes during the period January 1, 2009 to December 31, 2014 and were therefore incorrectly included in the calculation of the Account Fee in some Fee-Based Accounts and, as a result, some SCI clients were charged excess Account Fees. Specifically,

- (a) it was determined that SCI did not have adequate systems of internal controls and supervision in place to ensure that the incorrectly classified mutual funds were classified correctly and excluded consistently from the calculation of the Account Fee;
  - (b) it was determined that SCI's internal controls failed to detect this Control and Supervision Inadequacy in a timely manner; and
  - (c) SCI took immediate steps to ensure the incorrectly classified mutual funds were classified correctly and excluded consistently from the calculation of the Account Fee on a going forward basis.
17. Upon identification of the issue described above, SCI took steps to determine the extent of the problem and how to compensate Affected Clients who paid excess Account Fees. SCI engaged an independent third party to identify, calculate and validate the amounts to be paid to Affected Clients as compensation for the excess Account Fees paid by them. Having taken the steps described above, SCI self-reported this Control and Supervision Inadequacy to Commission Staff. By May 1, 2015, SCI had corrected the classification errors that had occurred so that there would be no recurrence of an excess Account Fee being charged in respect of these securities.
18. SCI has determined that, as a result of this Control and Supervision Inadequacy, approximately 111 client accounts were charged excess Account Fees during the period January 1, 2009 to May 1, 2015.
19. SCI has agreed to compensate the Affected Clients who held these securities in their Fee-Based Accounts during the relevant period in accordance with the Compensation Plan, which requires that SCI pay to the Affected Clients:
- (a) the excess Account Fee;
  - (b) an amount representing the applicable sales tax charged on the excess Account Fee; and
  - (c) an amount representing the time value of money in respect of the excess Account Fee from the time the excess Account Fee was charged to July 31, 2016, based on a simple interest rate of 5% per annum calculated monthly (the "MF Opportunity Cost").

20. Where Account Fees were undercharged to the client, the benefit of those undercharges will not be set off against any compensation amounts paid to the client. The undercharges will also not otherwise be charged to Affected Clients or any other clients.
21. As at the date of this Settlement Agreement, SCI has determined that the total amount to be paid to these Affected Clients pursuant to the Compensation Plan, inclusive of the MF Opportunity Cost, is \$152,709.07.

**(b) Trailer Fees Received in Respect of Certain ETFs**

22. For some SCI clients with Fee-Based Accounts, assets held in the Fee-Based Account included certain trail version ETFs that were subject to an Account Fee, thereby resulting in some clients indirectly paying excess fees when SCI received trailer fees in addition to the Account Fee.
23. As part of its review, SCI identified instances during the period from January 1, 2009 to December 31, 2015 in which its clients had purchased trail version ETFs in Fee-Based Accounts. All of the securities in question were issued by third party issuers unrelated to SCI. Specifically,
  - (a) it was determined that SCI did not have adequate systems of internal controls and supervision in place to ensure that clients were not subject, directly or indirectly, to trailer fees on ETFs in Fee-Based Accounts if the ETFs were subject to an Account Fee;
  - (b) it was determined that SCI's internal controls failed to identify this Control and Supervision Inadequacy in a timely manner; and
  - (c) commencing in January 2016 SCI began taking steps to ensure that when clients purchase ETFs in a Fee-Based Account that are subject to an Account Fee, they are not subject, directly or indirectly, to trailer fees on the ETFs.
24. Thereafter, SCI took steps to determine the extent of the problem and how to compensate Affected Clients. SCI self-reported this Control and Supervision Inadequacy to Commission Staff.
25. SCI has determined that, as a result of this Control and Supervision Inadequacy, approximately 2,623 client accounts were affected during the period January 1, 2009 to December 31, 2015.
26. SCI has agreed to compensate the Affected Clients who held these ETFs with trailer fees in their Fee-Based Accounts during the relevant period in accordance with the Compensation Plan, which requires that SCI pay to the Affected Clients:
  - (a) an amount equal to the trailer fee received on these ETFs; and

- (b) an amount representing the time value of money in respect of this trailer fee from the time the trailer fee was received to July 31, 2016, based on a simple interest rate of 5% per annum calculated monthly (the “ETF Opportunity Cost”).
- 27. As at the date of this Settlement Agreement, SCI has determined that the total amount to be paid to these Affected Clients pursuant to the Compensation Plan, inclusive of the ETF Opportunity Cost, is approximately \$589,673.98.
- (c) **Trailer Fees Received in Respect of Certain Structured Products**
- 28. As part of its review, SCI identified instances during the period from January 1, 2009 to December 31, 2015 in which its clients had purchased Structured Products in Fee-Based Accounts where SCI received trailer fees from the issuer in addition to the Account Fee. All of the securities in question were issued by third party issuers unrelated to SCI.
- 29. In these instances, some SCI clients were charged an Account Fee in addition to an indirect trailer fee resulting in some clients indirectly paying an excess fee. Specifically,
  - (a) the calculation of fees for these Structured Products did not exclude the trailer fee; and
  - (b) effective in 2016, SCI will implement the Enhanced Control and Supervision Procedures, including procedures to ensure that any trailer fees received for Structured Products held in Fee-Based Accounts on or after January 1, 2016 for which Account Fees are charged will be paid to the client.
- 30. SCI has determined that, as a result of this Control and Supervision Inadequacy, approximately 30,218 client accounts were affected during the period January 1, 2009 to December 31, 2015.
- 31. SCI has agreed to compensate Affected Clients who held these Structured Products in their Fee-Based Accounts during the relevant period in accordance with the Compensation Plan, which requires that SCI pay to the Affected Clients:
  - (a) an amount equal to the trailer fee received on these Structured Products; and
  - (b) an amount representing the time value of money in respect of this trailer fee from the time the fee was received to July 31, 2016, based on a simple interest rate of 5% per annum calculated monthly (the “Structured Product Opportunity Cost”).

32. As at the date of this Settlement Agreement, SCI has determined that the total amount to be paid to these Affected Clients pursuant to the Compensation Plan, inclusive of the Structured Product Opportunity Cost, is \$10,332,039.30.

**(d) Excess Indirect Fees paid by some clients of the Scotia Dealers who invested in the MER Differential Funds**

33. 1832 LP, an affiliate of the Scotia Dealers, manages a number of mutual funds that are available in different series. For certain of these mutual funds, there are two series of the same mutual fund which differ solely in that the MER of one series, which has a higher minimum investment threshold, is lower than the MER of the other series (the “MER Differential Funds”).

34. The MER Differential Funds identified with instances of the Control and Supervision Inadequacies were:

- (a) Dynamic Funds with a Series A and Series E where the MER differential varies from 8 to 56 basis points;
- (b) Dynamic Funds with a Series F and Series FI where the MER differential varies from 4 to 36 basis points; and
- (c) Scotia Money Market Fund with a Series A and Premium Series where the MER differential varies from 45 to 70 basis points.

35. In most cases the threshold for the lower MER series was an investment of \$100,000 or greater, while in some cases it was \$25,000 or greater.

36. These MER Differential Funds were launched between 2012 and 2014 except for the Scotia Money Market Fund, Premium Series which was launched in November 2008.

37. The Scotia Dealers conducted a review of the MER Differential Funds to cover the period from November 2008 to July 31, 2016 and determined that certain client accounts invested in an MER Differential Fund that appeared to qualify for the lower MER series of an MER Differential Fund were not invested in that series and therefore the holders of those client accounts did not benefit from its lower MER. Specifically,

- (a) the Scotia Dealers determined that they did not have adequate systems of internal controls and supervision in place to ensure that when a purchase or transfer-in of an investment in an MER Differential Fund, alone or combined with existing holdings of the MER Differential Fund, exceeded the minimum investment threshold required to qualify for the lower MER series of the same mutual fund, the client was advised consistently that a lower MER series of the same mutual fund was available to the client;

- (b) the Scotia Dealers determined that their internal controls failed to identify this Control and Supervision Inadequacy in a timely manner; and
  - (c) the Scotia Dealers began to implement enhancements to their processes to help identify clients that meet the minimum thresholds required to qualify for the lower MER series.
- 38. The Scotia Dealers have determined that there are approximately 12,751 client accounts that ought to have been invested in the lower MER series of an MER Differential Fund but were not from November 2008 to July 31, 2016.
- 39. In accordance with the Compensation Plan, in respect of those client accounts, the Scotia Dealers will pay Affected Clients:
  - (a) an amount representing the difference in the return that the Affected Client would have received on any share or unit held by the client of an MER Differential Fund had the client been invested in the lower MER class or series of that mutual fund in a timely manner upon becoming eligible to invest in the lower MER class or series held in that mutual fund for the entire period in which the Affected Client qualified for the lower MER class or series (the “Difference in Return”); and
  - (b) an amount representing the time value of money in respect of the Difference in Return from the date of sale, conversion, transfer or disposition of any higher MER class or series of the Affected Funds for any periods up to July 31, 2016, based on a simple interest rate of 5% per annum except in respect of the Scotia Money Market Fund where the rate is the average annual return on the Scotia Money Market Fund Premium Series units for the 7 year compensation period from January 1, 2009 (the “MER Opportunity Cost”).
- 40. On this basis, the Scotia Dealers have determined that the total compensation to be paid to Affected Clients as a result of the MER Differential Issue is approximately \$8,923,398.66, inclusive of the MER Opportunity Cost, where applicable. The Scotia Dealers have also taken steps to migrate Affected Clients who continue to hold eligible units of the higher MER series of an MER Differential Fund as of August 2, 2016 to units of the lower MER series of the same fund. These are one-time changes which the Scotia Dealers will describe in their communication to Affected Clients, and which are for the sole purpose of resolving the Control and Supervision Inadequacy related to the MER Differential Funds. Other than a difference in the fees, there are no material differences between the higher MER series units and lower MER series units of the same MER Differential Fund. Further, the migration process will result in Affected Clients receiving a trade confirmation and, where applicable, a Fund Facts document in respect of the lower MER series of the Fund.

### **C. Breaches of Ontario Securities Law**

41. In respect of the Control and Supervision Inadequacies, the Scotia Dealers failed to establish, maintain and apply procedures to establish controls and supervision:
  - (a) sufficient to provide reasonable assurance that the Scotia Dealers, and each individual acting on behalf of the Scotia Dealers, complied with securities legislation, including the requirement to deal fairly with clients with regard to fees; and
  - (b) that were reasonably likely to identify the non-compliance described in (a) above at an early stage that would have allowed the Scotia Dealers to correct the non-compliant conduct in a timely manner.
42. As a result, these instances of Control and Supervision Inadequacies constituted a breach of section 11.1 of National Instrument 31-103 – *Registration Requirements, Exemptions and Ongoing Registrant Obligations*. In addition, the failures in the Scotia Dealers' systems of controls and supervision associated with the Control and Supervision Inadequacies were contrary to the public interest.

### **D. Mitigating Factors**

43. Commission Staff do not allege, and have found no evidence of dishonest conduct by the Scotia Dealers.
44. The Scotia Dealers discovered and self-reported the Control and Supervision Inadequacies to Commission Staff.
45. During the investigation of the Control and Supervision Inadequacies by Commission Staff following the self-reporting by the Scotia Dealers, the Scotia Dealers provided prompt, detailed and candid cooperation to Commission Staff.
46. The Scotia Dealers had formulated an intention to pay appropriate compensation to Affected Clients in connection with their self-reporting of the Control and Supervision Inadequacies to Commission Staff and, thereafter, the Scotia Dealers co-operated with Commission Staff with a view to providing appropriate compensation to the Affected Clients who were harmed by any of the Control and Supervision Inadequacies.
47. As part of this Settlement Agreement, the Scotia Dealers have agreed to pay appropriate compensation to the Affected Clients, in accordance with the Compensation Plan. As at the date of this Settlement Agreement, the Scotia Dealers anticipate paying compensation to Affected Clients of approximately \$19,997,821.01 in the aggregate in respect of the Control and Supervision Inadequacies.
48. The Compensation Plan prescribes, among other things:

- (a) the detailed methodology to be used for determining the compensation to be paid to the Affected Clients, including the time value of money owed by the Scotia Dealers to the Affected Clients;
  - (b) the approach to be taken with regard to contacting and making payments to the Affected Clients;
  - (c) the timing to complete the various steps included in the Compensation Plan;
  - (d) a \$25 *de minimis* exception (the aggregate of such *de minimis* amounts as at the date of this settlement is approximately \$89,835.64 as compared to \$19,997,821.01 in compensation to be paid), which aggregate *de minimis* amount will be donated to Canadian Foundation for Economic Education;
  - (e) the approach to be taken to any remaining funds that are not paid out to Affected Clients after the steps included in the Compensation Plan have been fully implemented. In that regard, the Compensation Plan provides that if the Scotia Dealers are not able to contact any former Affected Clients, notwithstanding the steps described in the Compensation Plan, each Scotia Dealer will use reasonable efforts to locate any Affected Clients who are entitled to payment of \$200 or more including directory searches, internet searches, and the employment of third parties to assist in the search. If the Scotia Dealer determines that a client is deceased but does not know the identity of the personal representative of the client's estate, and the estate is entitled to more than \$400, the Scotia Dealer shall make reasonable efforts to identify the personal representative of the deceased client. Subject to any applicable unclaimed property legislation, any amounts remaining undistributed to non-located clients on December 31, 2018 will be donated to Canadian Foundation for Economic Education;
  - (f) the resolution of client inquiries through an escalation process; and
  - (g) regular reporting to the OSC Manager detailing the Scotia Dealers' progress with respect to the implementation of the Compensation Plan, including with regard to the resolution of client inquiries.
49. At the request of Commission Staff, each of the Scotia Dealers conducted an extensive review of its other businesses operating in Canada to identify whether there were any other instances of inadequacies in their systems of controls and supervision leading to clients directly paying excess fees, or indirectly paying excess fees on mutual funds managed by 1832 LP. Based on this review, the Scotia Dealers have advised Commission Staff that there are no instances of Control and Supervision Inadequacies other than those described herein.
50. The Scotia Dealers are taking corrective action including implementing the Enhanced Control and Supervision Procedures and, as part of this Settlement

Agreement, the Scotia Dealers are required to report to the OSC Manager on the development and implementation of the Enhanced Control and Supervision Procedures.

51. The Scotia Dealers have agreed to make voluntary payments totalling \$850,000, as described in paragraphs 8(b)(x) and 8(b)(xi) above.
52. The Scotia Dealers will pay the total agreed voluntary payment of \$850,000 by wire transfer before the commencement of the hearing before the Commission to approve this Settlement Agreement, which payment is conditional upon approval of this Settlement Agreement by the Commission.
53. The terms of settlement are appropriate in all the circumstances, including mitigating factors and the principles of general and specific deterrence. Commission Staff are of the view that the voluntary payments referred to above in addition to the amounts to be paid as compensation to Affected Clients by the Scotia Dealers will emphasize to the marketplace that Commission Staff expect registrants to have compliance systems with appropriate controls and supervision in place which:
  - (a) provide reasonable assurance that registrants, and each individual acting on behalf of registrants, are complying with securities legislation, including the requirement to deal fairly with clients with regard to fees; and
  - (b) are reasonably likely to allow registrants to identify and correct non-compliance with securities legislation in a timely manner.

**E. The Scotia Dealers' Undertaking**

54. By signing this Settlement Agreement, the Scotia Dealers undertake to:
  - (a) pay compensation to the Affected Clients in accordance with the Compensation Plan and to report to the OSC Manager in accordance with the Compensation Plan; and
  - (b) make the voluntary payments referred to in paragraphs 8(b)(x) and 8(b)(xi) above(the "Undertaking").

**PART IV - TERMS OF SETTLEMENT**

55. The Scotia Dealers agree to the terms of settlement listed below and consent to the Order in substantially the form attached hereto, that provides that:
  - (a) pursuant to subsection 127(1) of the Act, the Settlement Agreement is approved;

- (b) pursuant to subsection 127(2) of the Act, the approval of the Settlement Agreement is subject to the following terms and conditions:
- (i) within 90 days of receiving comments from Commission Staff regarding the Enhanced Control and Supervision Procedures, the Scotia Dealers shall provide to the OSC Manager, revised written policies and procedures (the “Revised Policies and Procedures”) that, to the satisfaction of the OSC Manager, are responsive to any remaining issues raised by Commission Staff with regard to the Scotia Dealers’ policies and procedures to establish the Enhanced Control and Supervision Procedures (the “Remaining Issues”);
  - (ii) thereafter, the Scotia Dealers shall make such further modifications to their Revised Policies and Procedures as are required to ensure that the Revised Policies and Procedures address any Remaining Issues to the satisfaction of the OSC Manager;
  - (iii) within 8 months of receiving confirmation from the OSC Manager that the Revised Policies and Procedures satisfy the Remaining Issues raised by Commission Staff (the “Confirmation Date”), the Scotia Dealers shall submit a letter (the “Attestation Letter”), signed by the Ultimate Designated Person and the Chief Compliance Officer for each of the Scotia Dealers, to the OSC Manager, expressing their opinion on whether the Enhanced Control and Supervision Procedures were adequately followed, administered and enforced by the Scotia Dealer for the 6 month period commencing from the Confirmation Date;
  - (iv) the Attestation Letter shall be accompanied by a report which provides a description of the testing performed to support the conclusions contained in the Attestation Letter;
  - (v) the Scotia Dealers shall submit such additional reports as may be requested by the OSC Manager for the purpose of satisfying the OSC Manager that the opinion expressed in the Attestation Letter described in subparagraph (b)(iii) above is valid;
  - (vi) any of the Scotia Dealers or Commission Staff may apply to the Commission for directions in respect of any issues that may arise with regard to the implementation of subparagraphs (b)(i) to (v) above; and
  - (vii) the Scotia Dealers shall comply with the Undertaking.
56. The Scotia Dealers agree to make the voluntary payments described in subparagraph 54(b) by wire transfer before the commencement of the hearing before the Commission to approve this Settlement Agreement.

## **PART V - COMMISSION STAFF COMMITMENT**

57. If the Commission approves this Settlement Agreement, Commission Staff will not commence any proceeding under Ontario securities law in relation to the Commission Staff's Statement of Facts and Conclusions set out in Part III of this Settlement Agreement, subject to the provisions of paragraph 58 below and except with respect to paragraph 49 above, and nothing in this Settlement Agreement shall be interpreted as limiting Commission Staff's ability to commence proceedings against the Scotia Dealers in relation to any control and supervision inadequacies leading to clients paying excess fees other than in respect of the matters described herein.
58. If the Commission approves this Settlement Agreement and any of the Scotia Dealers fails to comply with any of the terms of this Settlement Agreement, Commission Staff may bring proceedings under Ontario securities law against the Scotia Dealers. These proceedings may be based on, but are not limited to, the Commission Staff's Statement of Facts and Conclusions set out in Part III of this Settlement Agreement as well as the breach of this Settlement Agreement.

## **PART VI - PROCEDURE FOR APPROVAL OF SETTLEMENT**

59. The parties will seek approval of this Settlement Agreement at a public hearing before the Commission scheduled for July 29, 2016, or on another date agreed to by Commission Staff and the Scotia Dealers, according to the procedures set out in this Settlement Agreement and the Commission's Rules of Procedure.
60. Commission Staff and the Scotia Dealers agree that this Settlement Agreement will form all of the evidence that will be submitted at the settlement hearing on the Scotia Dealers' conduct, unless the parties agree that additional evidence should be submitted at the settlement hearing.
61. If the Commission approves this Settlement Agreement, the Scotia Dealers agree to waive all rights to a full hearing, judicial review or appeal of this matter under the Act.
62. If the Commission approves this Settlement Agreement, the Scotia Dealers will not make any public statement that is inconsistent with this Settlement Agreement or with any additional evidence submitted at the settlement hearing. In addition, the Scotia Dealers agree that they will not make any public statement that there is no factual basis for this Settlement Agreement. Nothing in this paragraph affects the Scotia Dealers' testimonial obligations or the right to take legal or factual positions in other reviews or legal proceedings in which the Commission and/or Commission Staff is not a party or in which any provincial or territorial securities regulatory authority in Canada and/or its Commission Staff is not a party ("Other Proceedings") or to make public statements in connection with Other Proceedings.
63. The Scotia Dealers will not use, in any proceeding, this Settlement Agreement or the negotiation or process of approval of this Settlement Agreement as the basis for

any attack on the Commission's jurisdiction, alleged bias, alleged unfairness, or any other remedies or challenges that may otherwise be available.

#### **PART VII - DISCLOSURE OF SETTLEMENT AGREEMENT**

64. If the Commission does not approve this Settlement Agreement or does not make the order attached as Schedule "A" to this Settlement Agreement:
- (a) this Settlement Agreement and all discussions and negotiations between Commission Staff and the Scotia Dealers before the settlement hearing takes place will be without prejudice to Commission Staff and the Scotia Dealers; and
  - (b) Commission Staff and the Scotia Dealers will each be entitled to all available proceedings, remedies and challenges, including proceeding to a hearing of the allegations contained in the Statement of Allegations. Any proceedings, remedies and challenges will not be affected by this Settlement Agreement, or by any discussions or negotiations relating to this Settlement Agreement.
65. The parties will keep the terms of this Settlement Agreement confidential until the commencement of the public hearing to obtain approval of this Settlement Agreement by the Commission. Any obligations of confidentiality shall terminate upon the commencement of the public settlement hearing. If, for whatever reason, the Commission does not approve this Settlement Agreement, the terms of this Settlement Agreement remain confidential indefinitely, unless Commission Staff and the Scotia Dealers otherwise agree or if required by law.

#### **PART VIII - EXECUTION OF SETTLEMENT AGREEMENT**

66. This agreement may be signed in one or more counterparts which, together, constitute a binding agreement.

67. A facsimile copy or other electronic copy of any signature will be as effective as an original signature.

Dated this 25<sup>th</sup> day of July, 2016.

SCOTIA CAPITAL INC.

“Glen Gowland”

“Rosemary Chan”

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Glen Gowland

Co-CEO

Witness Name: Rosemary Chan

SCOTIA SECURITIES INC.

“Jordy Chilcott”

“Rosemary Chan”

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Jordy Chilcott

Director & Chairman

Witness Name: Rosemary Chan

HOLLISWEALTH ADVISORY SERVICES INC.

“Glen Gowland”

“Rosemary Chan”

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Glen Gowland

Senior Vice President

The Bank of Nova Scotia

Witness Name: Rosemary Chan

Commission Staff:

“James Sinclair”

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James Sinclair

Acting Director, Enforcement Branch

## SCHEDULE "A"



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

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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.**

**ORDER  
(Subsections 127(1) and 127(2))**

**WHEREAS:**

1. on July 26, 2016, the Ontario Securities Commission (the "Commission") issued a Notice of Hearing in relation to the Statement of Allegations filed by Staff of the Commission ("Commission Staff") on July 26, 2016 with respect to Scotia Capital Inc., Scotia Securities Inc. and HollisWealth Advisory Services Inc. (the "Scotia Dealers");
2. the Notice of Hearing gave notice that on July 29, 2016, the Commission would hold a hearing to consider whether it is in the public interest to approve a settlement agreement between Commission Staff and the Scotia Dealers dated July 25, 2016 (the "Settlement Agreement");
3. in the Statement of Allegations, Commission Staff alleged that there were inadequacies in the Scotia Dealers' systems of controls and supervision which formed part of their compliance systems (the "Control and Supervision Inadequacies") which resulted in clients of the Scotia Dealers paying excess fees that were not detected or corrected by the Scotia Dealers in a timely manner;
4. Commission Staff do not allege, and have found no evidence of dishonest

conduct by the Scotia Dealers;

5. Commission Staff are satisfied that the Scotia Dealers discovered and self-reported the Control and Supervision Inadequacies to Commission Staff;
6. Commission Staff are satisfied that during their investigation of the Control and Supervision Inadequacies, the Scotia Dealers provided prompt, detailed and candid cooperation to Commission Staff;
7. Commission Staff are satisfied that the Scotia Dealers had formulated an intention to pay appropriate compensation to clients and former clients when they self-reported the Control and Supervision Inadequacies to Commission Staff;
8. as part of the Settlement Agreement, the Scotia Dealers undertake to:
  - (a) pay appropriate compensation to eligible clients and former clients who were harmed by the Control and Supervision Inadequacies (the “Affected Clients”) in accordance with a plan submitted by the Scotia Dealers to Commission Staff (the “Compensation Plan”) and to report to a manager or deputy director in the Compliance and Registrant Regulation Branch of the Commission (the “OSC Manager”) in accordance with the Compensation Plan;
  - (b) make a voluntary payment of \$50,000 to reimburse the Commission for costs incurred or to be incurred by it, in accordance with subsection 3.4(2)(a) of the *Securities Act* (the “Act”); and
  - (c) make a further voluntary payment of \$800,000, to be designated for allocation or use by the Commission in accordance with paragraphs (b)(i) or (ii) of subsection 3.4(2) of the Act(the “Undertaking”);
9. the Commission has received the voluntary payments totalling \$850,000 in escrow pending approval of the Settlement Agreement;

10. the Commission reviewed the Settlement Agreement, the Notice of Hearing and the Statement of Allegations and heard submissions from counsel for the Scotia Dealers and from Commission Staff; and
11. the Commission is of the opinion that it is in the public interest to make this order;

**IT IS ORDERED THAT:**

- (a) pursuant to subsection 127(1) of the Act, the Settlement Agreement is approved;
- (b) pursuant to subsection 127(2) of the Act, the approval of the Settlement Agreement is subject to the following terms and conditions:
  - (i) within 90 days of receiving comments from Commission Staff regarding the procedures, controls and supervisory and monitoring systems designed to prevent the re-occurrence of the Control and Supervision Inadequacies in the future (the “Enhanced Control and Supervision Procedures”), the Scotia Dealers shall provide to the OSC Manager revised written policies and procedures (the “Revised Policies and Procedures”) that, to the satisfaction of the OSC Manager, are responsive to any remaining issues raised by Commission Staff with regard to the Scotia Dealers’ policies and procedures to establish the Enhanced Control and Supervision Procedures (the “Remaining Issues”);
  - (ii) thereafter, the Scotia Dealers shall make such further modifications to their Revised Policies and Procedures as are required to ensure that the Revised Policies and Procedures address any Remaining Issues to the satisfaction of the OSC Manager;
  - (iii) within 8 months of receiving confirmation from the OSC Manager that the Revised Policies and Procedures satisfy the Remaining Issues raised by Commission Staff (the “Confirmation Date”), the Scotia Dealers shall submit a letter (the “Attestation Letter”), signed by the Ultimate Designated Person and the Chief Compliance Officer for each of the Scotia Dealers, to the OSC Manager, expressing their opinion as to whether the Enhanced Control and Supervision Procedures were adequately followed, administered and enforced by the Scotia Dealer for the 6

- month period commencing from the Confirmation Date;
- (iv) the Attestation Letter shall be accompanied by a report which provides a description of the testing performed to support the conclusions contained in the Attestation Letter;
  - (v) the Scotia Dealers shall submit such additional reports as may be requested by the OSC Manager for the purpose of satisfying the OSC Manager that the opinion expressed in the Attestation Letter described in subparagraph (b)(iii) above is valid;
  - (vi) any of the Scotia Dealers or Commission Staff may apply to the Commission for directions in respect of any issues that may arise with regard to the implementation of subparagraphs (b)(i) to (v) above; and
  - (vii) the Scotia Dealers shall comply with the Undertaking; and
- (c) the voluntary payment referred to in recital 8(c) above is designated for allocation or use by the Commission in accordance with paragraphs (b)(i) or (ii) of subsection 3.4(2) of the Act.

DATED at Toronto, Ontario this 29<sup>th</sup> day of July, 2016

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