



Ontario  
Securities  
Commission

Commission des  
valeurs mobilières  
de l'Ontario

22<sup>nd</sup> Floor  
20 Queen Street West  
Toronto ON M5H 3S8

22e étage  
20, rue queen ouest  
Toronto ON M5H 3S8

---

**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.**

**STATEMENT OF ALLEGATIONS  
OF STAFF OF THE ONTARIO SECURITIES COMMISSION**

Staff (“Commission Staff”) of the Ontario Securities Commission (the “Commission”) make the following allegations:

**I. THE RESPONDENTS**

1. Scotia Capital Inc. (“SCI”) is a corporation amalgamated pursuant to the laws of Ontario. SCI is a member of the Investment Industry Regulatory Organization of Canada 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. Each of Scotia Securities Inc. (“SSI”) and HollisWealth Advisory Services Inc. (“HW”) is a corporation incorporated pursuant to the laws of Ontario, each is a member of the Mutual Fund Dealers Association of

Canada, and each is registered with the Commission as a mutual fund dealer. Together, SCI, SSI and HW are referred to herein as the “Scotia Dealers.”

## **II. THE SCOTIA DEALERS’ CONDUCT**

2. Commencing in February 2015, the Scotia Dealers self-reported to Commission Staff inadequacies in their 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.

3. Commission Staff do not allege, and have found no evidence of dishonest conduct by the Scotia Dealers.

4. 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. The Scotia Dealers are taking corrective action, including implementing additional controls, supervisory and monitoring systems, to prevent the re-occurrence of the Control and Supervision Inadequacies in the future.

5. 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”).

6. 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 management expense ratio (“MER”) of one series, which has a higher minimum investment threshold, is lower than the MER of the other series (the “MER Differential Funds”).

7. 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, 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, 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 MER series of an MER Differential Fund and indirectly paid excess fees when they invested in the higher MER series of the same mutual fund.

### **III. BREACH OF ONTARIO SECURITIES LAW AND CONDUCT CONTRARY TO THE PUBLIC INTEREST**

8. 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.

9. 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.

10. Commission Staff reserve the right to make such other allegations as Commission Staff may advise and the Commission may permit.

**DATED** at Toronto, this 26<sup>th</sup> day of July, 2016.