



Ontario  
Securities  
Commission

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de l'Ontario

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**IN THE MATTER OF  
1832 ASSET MANAGEMENT L.P.**

**- and -**

**IN THE MATTER OF A  
SETTLEMENT AGREEMENT BETWEEN STAFF  
OF THE ONTARIO SECURITIES COMMISSION AND  
1832 ASSET MANAGEMENT L.P.**

**SETTLEMENT AGREEMENT**

**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 sections 127 and 127.1 of the *Securities Act*, RSO 1990, c S.5, as amended (the “**Act**”), it is in the public interest for the Commission to make certain orders in respect of 1832 Asset Management L.P. (“**1832**”).

2. Investment fund managers (“**IFMs**”) are prohibited from making a payment of money or providing a non-monetary benefit to a participating dealer or dealing representatives (“**DRs**”) of a participating dealer in connection with the distribution of securities, except in certain permitted circumstances under Parts 3 and 5 of National Instrument 81-105 *Mutual Fund Sales Practices* (“**NI 81-105**”).

3. The Companion Policy to NI 81-105 provides that NI 81-105 was adopted in order to discourage sales practices and compensation arrangements that could be perceived as inducing

participating dealers and their representatives to sell mutual fund securities on the basis of incentives they were receiving rather than on the basis of what was suitable for and in the best interests of their clients. The purpose of NI 81-105 is to provide a minimum standard of conduct to ensure that investor interests remain uppermost in the actions of mutual fund industry participants when they are distributing mutual fund securities and that conflicts of interest arising from sales practices and compensation arrangements are minimized.

4. 1832 is registered with the Commission as, among other things, an IFM and is the manager of the Dynamic family of mutual funds (the “**Products**”), among other mutual funds. The Products are distributed to investors by DRs registered with participating dealers, both third party and affiliated dealers. The only activities of 1832 as an IFM in respect of which the sales practices at issue in this proceeding are relevant are those in its role as manager of the Products.

5. As summarized below, from November 2012 to October 2017 (the “**Relevant Period**”), 1832 failed to comply with NI 81-105 and failed to meet the minimum standards of conduct expected of industry participants in relation to certain of its sales practices. In addition, 1832 did not have systems 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 and did not maintain adequate books, records and other documents to demonstrate 1832’s compliance with NI 81-105.

6. In particular, 1832 engaged in excessive spending on promotional activities on DRs including in relation to:

- (a) one-time events such as concerts and sports events, including play-off events. In many instances, the cost of these events to 1832 exceeded \$700 per DR per event and, in more limited instances, the cost exceeded \$1,000 per DR per event;

- (b) multiple promotional activities within the same quarter in breach of 1832's guidelines, including taking a DR to back-to-back Blue Jays baseball ("**Jays**") play-off games at a cost to 1832 of \$1,340 for the DR and, in a one month period, taking a DR to two Toronto Maple Leafs hockey ("**Leafs**") games and a Rihanna concert at a cost to 1832 of \$1,111 for the DR; and
- (c) on occasion, annual promotional activities, including spending more than \$3,500 on one DR in 2015.

7. 1832 also provided promotional items and gifts (collectively "**Items**") to DRs that were not of minimal value (and were therefore excessive) and/or were not promotional in nature including by:

- (a) approving Items included in 1832's warehouse store (the "**Warehouse**") that were distributed to DRs, including a Bose wireless music system (\$200), an executive briefcase (\$190) and a golf GPS (\$150);
- (b) providing, with the approval of management, gifts of tickets to major events to DRs without requiring that an 1832 employee attend the event, including tickets to Jays games (\$245) and to concerts such as Justin Bieber (\$253);
- (c) providing more than 2,000 gift cards to DRs, including approximately 150 gift cards costing more than \$50 each to DRs, all of which gift cards constituted monetary benefits that were not permitted under NI 81-105; and
- (d) providing Apple iPad minis and keyboards with a combined cost of approximately \$325 each to 215 DRs who attended a mutual fund conference sponsored by 1832 in 2015 (the "**2015 Conference**") and with a combined cost of approximately \$375 each, to 210 DRs who attended a mutual fund conference sponsored by 1832 in 2016 (the "**2016 Conference**") as well as Maui Jim sunglasses (\$111) to those 210 DRs and, where applicable, the DR's guest.

8. In addition, 1832 provided excessive non-monetary benefits to DRs on food, drinks and entertainment at the 2015 and 2016 Conferences including:

- (a) spending over \$1,000 per DR on the final day of the 2015 Conference on food, drinks and a celebrity speaker; and
- (b) spending over \$850 per DR on the final day of the 2016 Conference on food, drinks and a celebrity speaker.

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

9. Staff of the Commission (“**Staff**”) agrees to recommend settlement of the proceeding commenced by the Notice of Hearing dated April 19, 2018 (the “**Proceeding**”) against 1832 according to the terms and conditions set out in Part VI of this Settlement Agreement (the “**Settlement Agreement**”). 1832 agrees to the making of an order in the form attached as Schedule “A” (the “**Order**”), based on the facts set out below.

10. For the purposes of this Proceeding, and any other regulatory proceeding commenced by a securities regulatory authority, 1832 agrees with the facts as set out in Parts III and IV and the conclusions set out in Part V of this Settlement Agreement.

## **PART III - AGREED FACTS**

### **A. 1832**

11. 1832 is registered with the Commission as an IFM, a Portfolio Manager, an Exempt Market Dealer and a Commodity Trading Manager. 1832 is wholly owned by The Bank of Nova Scotia and acquired the Products in 2011.

12. This Proceeding relates solely to 1832’s role as manager of the Products and certain of its sales practices relating thereto.

### **B. The Legislative Framework**

13. Subsection 2.1(1) of NI 81-105 states, among other things, that no member of the organization of a mutual fund shall, in connection with the distribution of securities of the mutual fund:

- (a) make a payment of money to a participating dealer or a DR;
- (b) provide a non-monetary benefit to a participating dealer or a DR; or
- (c) pay for or make reimbursement of a cost or expense incurred or to be incurred by a participating dealer or a DR.

14. Pursuant to section 1.1 of NI 81-105, a “member of the organization” referred to in subsection 2.1(1) includes the manager of the mutual fund or an IFM (the “**Fund Manager**”).

15. Subsection 2.1(2) of NI 81-105 provides the following exceptions to subsection 2.1(1) and allows a Fund Manager to:

- (a) make a payment of money or provide a non-monetary benefit to a participating dealer, or pay for or make reimbursement of a cost or expense incurred or to be incurred by a participating dealer or its DRs, if permitted by Part 3 or 5 of NI 81-105; and
- (b) provide a non-monetary benefit to a DR, if permitted by Part 5 of NI 81-105.

16. Parts 3 and 5 of NI 81-105 set out certain limited circumstances in which Fund Managers are permitted to provide monetary and non-monetary benefits to DRs and participating dealers.

17. Subsection 5.2(e) of NI 81-105 allows a Fund Manager to provide DRs with a non-monetary benefit through attendance at a conference organized by the Fund Manager if, among other things, the costs of the conference are reasonable having regard to the purpose of the conference.

18. Section 5.6 of NI 81-105 allows a Fund Manager to provide DRs with non-monetary benefits of a promotional nature and of minimal value, and to engage in business promotion activities that result in a DR receiving a non-monetary benefit if, among other things, the provision of the benefits and activities is neither so extensive nor so frequent as to cause a

reasonable person to question whether the provision of the benefits or activities improperly influence the investment advice given by the DR to his or her clients.

**C. Excessive Spending on DRs on Promotional Activities**

19. During the Relevant Period, 1832's Mutual Fund Sales Practices Compliance Guide ("**1832's Guide**") imposed a quarterly spending limit of \$400 per DR on promotional activities, or alternatively, 1832 staff could take a DR to one "Box Event" or one "Golf Event" per quarter. No limit was imposed on the cost of a Box or Golf Event.

20. Box Events were defined in 1832's Guide as events hosted at venues such as the Air Canada Centre, Bell Centre, Scotiabank Place and Rogers Centre, where ticket and catering costs are set and fixed by the venue. For these events, 1832's Guide specified that it was acceptable to provide a DR with one pair of tickets to such an event per quarter and supply standard suite catering and bar service.

21. Golf events were described in 1832's Guide as generally being foursomes purchased for charity or sponsorship golf tournaments that are higher cost and higher profile events (including golf, cart rental and dinner) and to which the purchasing wholesaler takes three advisors.

***1. Excessive Spending on One-Time Events***

22. During the Relevant Period, 1832 spent more than \$400 on DRs not only on a quarterly basis but on one-time events, including Box and Golf Events. Some examples of excessive

spending on one time-events in 1832's fiscal years<sup>1</sup> in 2013 and 2014 include \$755 spent on a DR for an Eagles concert, several Montreal Canadiens hockey ("**Canadiens**") games ranging in cost from \$656 to \$743 per DR and \$641 spent on a DR for a Fleetwood Mac concert.

23. On a quarterly basis, 1832's compliance department reviewed amounts spent on DRs in the prior quarter for the purpose of reviewing spending on Golf and Box Events and to determine whether more than \$400 had been spent on a DR in the quarter in connection with other promotional activities. For the 2015 fiscal year, there were more than 650 instances when more than \$400 was spent on a DR, not only in a single quarter but on a one-time event, including approximately 480 instances when between \$400 and \$599 was spent on a one-time event and approximately 178 instances when between \$600 and \$863 was spent on a one-time event.

24. Some examples of excessive spending on DRs on one-time events in fiscal 2015 include:

<b>Event</b>	<b>No. of DRs</b>	<b>Cost Per DR</b>
Various Vancouver Canucks hockey (" <b>Canucks</b> ") games	39	\$740-863
Various Canadiens games	42	\$703-\$770
Stevie Wonder concert	5	\$749
Paul McCartney concert	3	\$672
Golf green fees	3	\$625
Hospital Foundation Gala	9	\$500
Dinner	53	\$424

25. In fiscal 2016, there were more than 960 instances when more than \$400 was spent on a DR on a one-time event, including approximately 664 instances when between \$400 and \$599 was spent on a one-time event and approximately 305 instances when between \$600 and \$1,169 was spent on a one-time event.

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<sup>1</sup> 1832's fiscal year commences on October 1 of the previous calendar year. For example, 1832's 2013 fiscal year

26. Some examples of excessive spending on DRs on one-time events in fiscal 2016 include:

Event	No. of DRs	Cost Per DR
Adele concert	1	\$1,169
Canadiens games	7	\$912-\$1,031
Jays game	4	\$1,009
Charles Aznavour concert	6	\$932
Jays games	36	\$825-\$891
Leafs games	5	\$818
Jays games	30	\$717-\$779
Celine Dion concert	23	\$701-\$755
Canucks games	28	\$701-\$763
Kanye West concert	2	\$662
Usher concert	6	\$608
Green fees	3	\$500

27. Excessive spending on DRs on one-time events continued in 2017, including spending on a DR at a cost of \$1,028 for a Tears for Fears and Hall & Oates concert, \$732 on a DR for a Canucks game and \$644 on each of 14 DRs for a Calgary Flames play-off hockey game.

## 2. *Excessive Quarterly Spending on DRs in Breach of 1832's Guide*

28. Pursuant to 1832's Guide, DRs should have been offered no more than one Box Event or Golf Event per quarter or no more than \$400 in equivalent entertainment per quarter. However, during the Relevant Time, 1832 frequently breached this requirement.

29. In fiscal 2015, there were approximately 600 instances when 1832's quarterly spending on a DR was not limited to one Box or Golf Event or total spending on other promotional activities exceeded \$400. In fiscal 2016, there were approximately 800 of such instances.

30. In particular, DRs were taken to an event or event(s) in addition to a Box or Golf Event in the quarter or DRs were taken to multiple events and more than \$400 was spent on the DR in the

quarter in breach of 1832's Guide. Examples of excessive spending on DRs in the same quarter in breach of 1832's Guide include, in 2015, taking a DR to back-to-back Jays play-off games at a cost to 1832 of \$1,340 and, in 2016, in a one month period, taking a DR to two Leafs games and a Rihanna concert at a cost to 1832 of \$1,111.

31. This type of excessive spending in breach of 1832's Guide continued in fiscal 2017. For example, a DR and two guests of the DR were taken to a Tears for Fears and Hall & Oates concert on June 16, 2017 at a cost to 1832 of \$1,028, and, in the same quarter, the DR was taken to a Tom Petty concert on July 26, 2017 at a cost to 1832 of \$607.

### **3. *Excessive Annual Spending on DRs on Promotional Activities***

32. During the Relevant Period, although 1832's Guide did not expressly impose any annual limits on the spending on DRs on promotional activities, 1832 treated 1832's Guide as establishing a combined DR annual limit on DR spending of \$2,000 (for both promotional activities and Items). Since fiscal 2013, 1832 has, on occasion, spent excessive amounts annually on DRs on promotional activities including, in some cases, more than \$2,000 annually on DRs and on one occasion, more than \$3,500 on one DR in 2015.

## **D. Excessive Spending on Items**

### **1. *1832's Gift Policy***

33. According to 1832's Guide, 1832 could spend up to \$400 per year on a DR on Items. However, approval from a regional vice-president ("**RVP**") was required if a single item or combination of items spent at one time exceeded \$100 ("**Gift Limit**").

## 2. *Stocking Excessive Items in the 1832 Warehouse*

34. Among other requirements, in order for the provision of an item to be permissible under section 5.6 of NI 81-105, the item must be of a promotional nature and of minimal value.

35. 1832's Guide provided examples of acceptable promotional items as being "pens, coffee mugs, golf balls and t-shirts." These examples duplicated the examples of reminder advertising referred to in section 7.6 of the Companion Policy to NI 81-105 as being the type of promotional items contemplated by section 5.6 of NI 81-105 and as being non-monetary benefits of a promotional nature and of minimal value.

36. However, during the Relevant Period, 1832 maintained a warehouse (already defined above as the "Warehouse") that carried many Items for distribution to DRs bearing 1832's corporate logo that were not of minimal value and were not comparable to the promotional items referred to in 1832's Guide. Examples of such Items carried in the Warehouse from 2015 to 2017 that were gifted to DRs included:

Warehouse Item	Cost
BOSE Sound Touch 10 wireless music system	\$200
Executive briefcase	\$190
BOSE around-ear headphones	\$155
BUSHNELL Neo-Ghost golf GPS	\$150
Nike golf bag	\$145
Sound Link Bluetooth speaker and carry	\$138

## 3. *Excessive Gifting with the Approval of Management*

37. As set out above, 1832's Guide permitted 1832 staff to purchase single Items for DRs above the Gift Limit if RVP approval was obtained. 1832's RVPs regularly permitted the provision of Items to DRs at costs above the Gift Limit, either by approving Item requests made

by 1832 staff or by providing Items directly to DRs. In some cases, RVP approval was not obtained until after the expense for the Item had been incurred. In other cases, RVP approval could not be located for the Item.

38. Examples of Items that were not of minimal value and, in some cases, that were not of a promotional nature, that were provided to DRs in 2016 with the approval of an RVP or provided to a DR directly by an RVP include:

Item(s)	Cost
Samsung Galaxy Tablet	\$261
Dom Pérignon champagne	\$247
Sports jacket	\$232
High Sierra rolling duffel bag	\$213
Bose wireless music system	\$203
Gift of wine	\$200

#### 4. *Gifts of Tickets to Major Events in Breach of NI 81-105*

39. Although not specifically addressed in 1832's Guide, 1832 allowed its staff to gift tickets to DRs that were not of minimal value to major events without requiring 1832 staff to attend the event. This practice resulted in 1832 providing gifts to DRs of a non-promotional nature that were not of minimal value.

40. During the Relevant Period, 1832 gifted ticket(s) to major events to DRs, generally with the approval of RVPs, that were neither of minimal value nor promotional in nature. Examples include gifts of ticket(s) to the following events:

Year	Event Ticket(s)	Cost
2014	Leafs game	\$410
2014	Tom Petty concert	\$200
2015	Raptors game	\$205
2015	Rush concert	\$191
2015	Marvel on Ice performance	\$156

Year	Event Ticket(s)	Cost
2016	Justin Bieber concert	\$253
2016	Jays game	\$245
2016	Canadiens game	\$213
2016	Celine Dion concert	\$218
2016	Calgary Stampede	\$146

### 5. *Gift Cards and Gift Certificates*

41. From 2013 to 2015, 1832's Guide permitted the gifting of gift certificates up to a maximum value of \$50, as part of an approved regional advisor recognition program. By fiscal 2016, 1832's revised Guide prohibited the giving of gift certificates.

42. During fiscal 2013 to fiscal 2016, 1832 provided over 1,920 gift cards to DRs up to a maximum value of \$50, of which 94 gift cards were provided in fiscal 2016 in breach of 1832's revised Guide.

43. In addition to providing gift cards to DRs with a maximum value of \$50, during this same period, 1832 provided over 75 gift cards to DRs with a value of between \$51 and \$99 and approximately 75 gift cards with a value of \$100 or more, in breach of 1832's Guide.

44. Regardless of the value, the provision of gift cards and gift certificates constitutes the provision of monetary benefits which is contrary to Part 5 of NI 81-105 as only the provision of non-monetary benefits to DRs is permitted under that part. Part 3 of NI 81-105 deals with the provision of permitted monetary benefits to DRs. However, gift certificates are not allowable under this part of NI 81-105. As a result, 1832 provided these monetary benefits to DRs in breach of section 2.1 of NI 81-105.

**E. 1832 Conferences**

***1. Excessive Gifts of iPad Minis and Other Gifts***

45. 1832 hosted the 2015 Conference and the 2016 Conference pursuant to section 5.2 of NI 81-105. At each of these conferences, 1832 gifted Apple iPad minis and keyboards to the DRs who attended the conferences. In 2015, approximately 215 DRs received iPad minis and keyboards at a combined cost to 1832 of approximately \$325 per DR and in 2016, approximately 210 DRs received iPad minis and keyboards at a combined cost to 1832 of approximately \$375 per DR.

46. Attendees at the 2016 Conference received other Items in addition to the Apple iPad mini and keyboard, including, among other Items, Maui Jim sunglasses (at a cost to 1832 of \$111) resulting in a cost to 1832 for the total Items of over \$535 per DR. Approximately 43 DRs received a VIP gift which increased the cost of the total Items received by those DRs to over \$580. In addition, approximately 95 DRs brought guests to the conference who also received Maui Jim sunglasses resulting in a total cost to 1832 of the Items provided to the DRs (inclusive of the sunglasses given to their guest) of over \$646 per DR.

47. The provision of the Items referred to above did not comply with section 5.6 of NI 81-105 as they were not of minimal value and, with respect to the sunglasses, were not promotional in nature.

48. While 1832 intended for conference attendees to use the iPad minis to access the conference materials during the conference and eliminate the printing and shipping costs for

conference materials, this goal should have been pursued in a manner that did not result in DRs receiving items that were not of minimal value.

## **2. *Excessive Food, Drinks and Entertainment***

49. Section 5.2 of NI 81-105 allows a Fund Manager to provide a non-monetary benefit to a DR by allowing the DR to attend a conference organized and presented by the Fund Manager provided that, among other requirements, the costs relating to the organization and presentation of the conference are reasonable having regard to the purpose of the conference (subsection 5.2(e) of NI 81-105).

50. During part of the 2015 and 2016 Conferences, 1832 provided non-monetary benefits to DRs on food, drinks and entertainment that did not comply with this requirement.

51. In particular, 1832 spent over \$1,000 per DR on the final day of the 2015 Conference which included:

- (a) approximately \$377 per DR on a celebrity speaker, Magic Johnson, a retired professional basketball player who spoke about the “Magic of Winning”; and
- (b) over \$670 per DR attending alone or over \$1,340 per DR attending with a guest (inclusive of ancillary costs) on evening activities including cocktails, a clambake and post-event cocktails and entertainment, all at the Bacara Resort in Santa Barbara, California.

52. In addition, 1832 spent over \$850 per DR on the final day of the 2016 Conference which included:

- (a) approximately \$390 per DR on a celebrity speaker, Steve Wozniak, a co-founder of Apple, who spoke on the “Art of Entrepreneurship”; and
- (b) over \$490 per DR attending alone or over \$980 per DR attending with a guest (inclusive of ancillary costs) on evening activities including dinner and an after-party at the Loews Ventana Canyon hotel in Tucson, Arizona.

**F. Lack of Controls over 1832's Sales Practices**

53. Pursuant to subsection 32(2) of the Act and section 11.1 of NI 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (“**NI 31-103**”), 1832 was required to establish and maintain a system of controls and supervision around its sales practices sufficient to provide reasonable assurances that it was complying with its obligations under NI 81-105.

54. However, as set out below, during the Relevant Period, 1832 failed to establish and maintain a system of controls and supervision around its sales practices sufficient to provide reasonable assurances that it was complying with its obligations under NI 81-105.

**1. Failure to Record All Costs Associated with the Same Event**

55. 1832 failed to ensure that all costs associated with the same event were attributed to a DR for the purpose of its system for tracking benefits provided to DRs (the “**DR Spending Records System**”).

56. Tickets for events such as concerts and hockey, basketball and baseball games were purchased at a corporate level and allocated to different regions, and then to DRs within the region. However, on a number of occasions, 1832 did not ensure that the cost of tickets gifted to a DR as part of a promotional event was properly allocated to that DR in its DR Spending Records System. In other cases, 1832 did not record the meals and/or drinks associated with an event in its DR Spending Records System.

57. As part of its investigation into this matter, Staff sought and obtained summaries of 1832's quarterly spending on DRs above \$400 (“**Quarterly Spending Summaries**”) for fiscal

2015 and 2016. As a result of follow-up questions raised by Staff regarding these Quarterly Spending Summaries, 1832 made numerous additions to the Quarterly Spending Summaries provided to Staff for fiscal 2015 and fiscal 2016 to add missing expenditures on DRs including missing costs for ticket(s), meals and/or beverages. Based on the Quarterly Spending Summaries reviewed by Staff, 1832's DR Spending Records System underreported amounts 1832 spent on DRs approximately 10 percent of the time.

**2. *Failure to Record Actual Cost of Items provided to DRs and their Guests at the 2015 and 2016 Conferences***

58. In 2015 and 2016, 1832's Guide required that following a conference, "all promotional items provided to conference attendees must be recorded against the individual DR's \$400 per year limit." The Guide also required that "at all times, promotional items are valued at their actual purchase price, including tax where applicable, and will be recorded in OOD [Oracle on Demand] against the receiving DR's name."

59. However, 1832 did not follow this practice with regard to the allocation of the Items given at the 2015 and 2016 Conferences. Instead, 1832 applied a cost savings analysis in assessing the value of the iPad minis gifted to DRs in 2015 and 2016 and attributed a reduced amount against the receiving DR's name on its DR Spending Records System in breach of 1832's Guide.

60. In particular, in relation to the total cost to 1832 of approximately \$400 per DR for the total Items provided to DRs at the 2015 Conference (including the iPad mini and keyboard), only \$251 was allocated against the receiving DR's name in the DR Spending Records Systems. In relation to the total cost to 1832 of approximately \$580 per DR for the Items provided to DRs at

the 2016 Conference, only \$280 was allocated against the receiving DR's name in the DR Spending Records Systems. In addition, for those DRs whose guests received Maui Jim sunglasses, 1832 failed to allocate the cost of those sunglasses against the receiving DR's name in the DR Spending Records System.

**3. *Failure to Prevent Re-Occurrences of Breaches of Promotional Activity Guidelines in Relation to the Same DR in Subsequent Quarters***

61. As referred to above, on a quarterly basis, 1832's compliance department reviewed amounts spent on DRs in the prior quarter for the purpose of reviewing spending on Box and Golf Events and to determine whether more than \$400 had been spent on a DR in the quarter in connection with other promotional activities. With the exception of Box or Golf Events, if spending on promotional activities in the quarter exceeded \$420 in aggregate, 1832's compliance department would send an email to the 1832 employee responsible for the spending on the DR to advise the employee that the quarterly spending limit had been exceeded and to spend less on the DR in the following quarter.

62. In addition, 1832 relied on its sales management and its sales teams to review and verify that 1832's quarterly promotional spending limit/parameters would not be breached by offering a ticket to an event to a particular DR.

63. Despite these practices, on a number of occasions in 2015 and 2016, 1832 breached its quarterly promotional activity spending limit/parameters in more than one quarter during the year for the same DR. For example, in 2015, 1832 breached its quarterly promotional activity spending limit/parameters in every quarter that year in relation to the same DR.

#### **4. *Inadequate Internal Parameters around Spending***

64. During the Relevant Period, 1832 did not establish any internal spending parameters for Golf and Box Events or for meals. In addition, 1832 did not establish adequate internal spending parameters around annual spending on DRs or to assist 1832 in evaluating the reasonableness of proposed non-monetary benefits, on an individual and aggregate basis, to be provided to DRs at conferences. Nor did 1832 require approval of conference budgets by its compliance department.

#### **5. *Conclusions regarding Controls and Supervision***

65. As a result of the above, during the Relevant Period, 1832 failed to:

- (a) establish internal parameters for spending on one-time events, meals and annual spending on DRs and to assist in evaluating the reasonableness of proposed non-monetary benefits, on an individual and aggregate basis, to be provided at conferences;
- (b) adequately train and supervise its employees who provided non-monetary benefits to DRs and the employees entering information into the DR spending Record-System;
- (c) adequately monitor its allocation methodology and tracking of tickets;
- (d) require approval of conference budgets by 1832's compliance department;
- (e) carry out adequate testing of its DR Spending Records System and internal controls, which resulted in excessive spending on DRs that continued undetected during the Relevant Period; and
- (f) ensure appropriate escalation and discipline in relation to instances of spending in excess of 1832's Guide.

66. Consequently, during the Relevant Period, 1832 failed to establish and maintain systems of controls and supervision around its sales practices sufficient to provide reasonable assurances

that it was complying with its obligations under section 2.1 and Part 5 of NI 81-105 and was therefore in breach of subsection 32(2) of the Act and section 11.1 of NI 31-103.

**G. Failure to Maintain Adequate Books and Records in Relation to 1832's Sales Practices**

67. 1832 was required to maintain such books, records and other documents as was reasonably required to demonstrate its compliance with Part 5 of NI 81-105.

68. As set out above, during the Relevant Period, 1832 failed to maintain adequate books, records and other documents in relation to its sales practices in the following respects:

- (a) 1832 failed to enter all expenditures on DRs into the DR Spending Records System;
- (b) 1832 failed to enter expenditures on DRs into the DR Spending Records System on a timely basis;
- (c) in isolated instances, records reflecting RVP approval of Items provided to DRs were either not kept or were unavailable;
- (d) in relation to the 2015 and 2016 Conferences, the actual purchase price of all Items provided to DRs attending the conferences was not properly recorded in the DR Spending Records System; and
- (e) in relation to the 2016 Conference, the actual purchase price of all Items provided to guests of DRs was not attributed to the DR in the DR Spending Records System.

69. In addition, in February 2018, as a result of documents sought by Staff as part of its investigation into this matter, 1832 discovered that one of its employees (the "**Employee**") had on three occasions provided tickets to a DR without fully attributing the cost of the tickets to the DR in 1832's DR Spending Records System. At least on one occasion, the Employee spread the ticket cost among other DRs in the DR Spending Records System and characterized the gift as a promotional activity rather than as a gift. The Employee is no longer employed by 1832.

70. As a result of the above, during the Relevant Period, 1832 failed to maintain adequate books, records and other documents as was reasonably required to demonstrate its compliance with Part 5 of NI 81-105, and was therefore in breach of paragraph 3 of subsection 19(1) of the Act.

#### **PART IV - MITIGATING FACTORS**

##### **A. Corrective Action Already Initiated**

71. In 2017, 1832 began to make changes to its internal practices with a view to improving its compliance with NI 81-105, including terminating a 2017 annual offsite Conference in the U.S. and increasing the involvement of its compliance department in the planning and budgeting for smaller, domestic mutual fund conferences.

72. Commencing in late 2017, while Staff's investigation into the matters in issue was ongoing and of its own volition, 1832 took additional steps to improve its compliance and supervision functions in relation to sales practices and NI 81-105. These initiatives include but are not limited to the following:

- (a) with the assistance of an independent consultant (the "**Consultant**") retained in December 2017, updating and revising 1832's Guide; and
- (b) development and roll out of a comprehensive action plan to enhance its training of staff and tracking of expenditures, and to improve controls and supervision relating to the provision of promotional activities and Items to DRs to ensure compliance with NI 81-105 (the "**Action Plan**") to enhance the internal sales practices program.

73. The Action Plan includes:

- (a) education of all sales employees on the new Guide;
- (b) enhanced training programs;

- (c) pre-approval processes prior to expenditures on promotional events and conferences, including creation of a new centralized event ticket management group to review and confirm that the quarterly limit for a DR has not and will not be exceeded if the ticket is issued to him or her; and
- (d) enhanced monitoring and reporting by management and compliance on a monthly and quarterly basis.

74. As part of this Settlement Agreement, the Consultant will complete its review of 1832's sales practices and internal controls around its sales practices and make recommendations to 1832 to ensure that 1832's sales practices and internal controls comply with, among other things, the requirements of NI 81-105, subsection 32(2) of the Act and section 11.1 of NI 31-103. Thereafter, the Consultant will conduct testing to ensure that its recommendations have been fully implemented. The Consultant has been approved by a Deputy Director of the Compliance and Registrant Regulation Branch of the Commission.

#### **B. Other Context**

75. 1832 advises Staff of the following:

- (a) most of the Items in the Warehouse were not excessive items; and
- (b) the iPad minis provided to DRs at the Conferences in 2015 and 2016 were intended to eliminate the printing and shipping costs for the conference materials.

#### **C. 1832 Paid for the Benefits in Issue**

76. 1832 advises Staff of the following:

- (a) 1832, not the Products, paid for the monetary and non-monetary benefits at issue;
- (b) the performance of the Products has not been impacted by these matters. The management expense ratios of the Products were not affected by the monetary and non-monetary benefits that were paid to DRs; and

- (c) 1832, not the Products, will pay all costs, fines and expenses relating to the resolution of the matters described in this Settlement Agreement, including the administrative fine, costs of the Commission's investigation, and the fees charged by the Consultant in relation to its engagement, as described in Schedule "B" to this Settlement Agreement.

**D. Cooperation with Staff's Investigation**

- 77. 1832 was fully cooperative with Staff during the investigation.
- 78. 1832 has no disciplinary history with any securities regulator.

**PART V - CONDUCT CONTRARY TO ONTARIO SECURITIES LAW AND THE PUBLIC INTEREST**

- 79. By engaging in the conduct described above, 1832 admits and acknowledges that it has breached Ontario securities law and that it has acted contrary to the public interest. In particular,
  - (a) during the Relevant Period, 1832 did not comply with section 5.6 of NI 81-105 by providing excessive non-monetary benefits to DRs through business promotion activities and through the provision of Items resulting in a breach by 1832 of section 2.1 of NI 81-105;
  - (b) during the months of May 2015 and May 2016, 1832 did not comply with subsection 5.2(e) and section 5.6 of NI 81-105 by providing excessive non-monetary benefits to DRs through meals, dinners and entertainment and through the gifting of iPad minis and other Items at the 2015 and 2016 Conferences resulting in a breach by 1832 of section 2.1 of NI 81-105;
  - (c) during the period November 2012 to October 2016, 1832 provided monetary benefits to DRs in the form of gift cards that were not permitted under Part 3 of NI 81-105 resulting in a breach by 1832 of section 2.1 of NI 81-105;
  - (d) during the Relevant Period, 1832 failed to establish and maintain systems of controls and supervision around its sales practices sufficient to provide reasonable assurances that it was complying with its obligations under section 2.1 and Part 5 of NI 81-105, in breach of subsection 32(2) of the Act and section 11.1 of NI 31-103;
  - (e) during the Relevant Period, 1832 failed to maintain books, records and other documents as were reasonably required to demonstrate its compliance with

section 2.1 and Part 5 of NI 81-105, in breach of paragraph 3 of subsection 19(1) of the Act; and

- (f) the conduct referred to above is also contrary to the public interest.

## **PART VI - TERMS OF SETTLEMENT**

80. 1832 agrees to the terms of settlement listed below and consents to the Order in substantially the form attached hereto as Schedule “A”, that provides that:

- (a) the Settlement Agreement is approved;
- (b) 1832 is reprimanded, pursuant to paragraph 6 of subsection 127(1) of the Act;
- (c) 1832 shall
  - (i) submit to a review of its practices and procedures carried out by the Consultant, at 1832’s expense, as set out in Schedule “B” to the Settlement Agreement, until a Deputy Director or a Manager in the Compliance and Registrant Regulation Branch of the Commission is satisfied that the conclusions expressed in the Attestation Letter by the Consultant described in Schedule “B” are valid, pursuant to paragraph 4 of subsection 127(1) of the Act;
  - (ii) pay an administrative penalty in the amount of \$800,000 by wire transfer to the Commission before the commencement of the Settlement Hearing, which amount shall be designated for allocation or for use by the Commission in accordance with subsections 3.4(2)(b)(i) or (ii) of the Act, pursuant to paragraph 9 of subsection 127(1) of the Act; and
  - (iii) pay costs of the Commission’s investigation in the amount of \$150,000 by wire transfer to the Commission before the commencement of the Settlement Hearing, pursuant to section 127.1 of the Act.

81. 1832 consents to a regulatory order made by any provincial or territorial securities regulatory authority in Canada containing any or all of the terms and conditions as may be imposed pursuant to the preceding sub-paragraph (c)(i). These prohibitions may be modified to reflect the provisions of the relevant provincial or territorial securities law.

82. 1832 agrees to attend in person at the hearing before the Commission to consider the proposed settlement.

83. 1832 acknowledges that this Settlement Agreement and proposed Order may form the basis for parallel orders in other jurisdictions in Canada. The securities laws of some other Canadian jurisdictions allow orders made in this matter to take effect in those other jurisdictions automatically, without further notice to 1832. 1832 should contact the securities regulator of any other jurisdiction in which it may intend to engage in any securities or derivatives related activities, prior to undertaking such activities.

#### **PART VII - FURTHER PROCEEDINGS**

84. If the Commission approves this Settlement Agreement, Staff will not commence any proceeding under Ontario securities law against 1832 in relation to the facts set out in Part III of this Settlement Agreement, subject to paragraph 85 below.

85. If the Commission approves this Settlement Agreement and 1832 fails to comply with any of the terms of the Settlement Agreement, Staff may bring proceedings under Ontario securities law against 1832. These proceedings may be based on, but need not be limited to, the facts set out in Part III of this Settlement Agreement as well as the breach of the Settlement Agreement.

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

86. The parties will seek approval of this Settlement Agreement at a public hearing (the “**Settlement Hearing**”) before the Commission scheduled for April 24, 2018, or on another date

agreed to by Staff and 1832, according to the procedures set out in this Settlement Agreement and the Commission's Rules of Procedure.

87. Staff and 1832 agree that this Settlement Agreement will form all of the agreed facts that will be submitted at the Settlement Hearing on 1832's conduct, unless the parties agree that additional facts should be submitted at the Settlement Hearing.

88. If the Commission approves this Settlement Agreement:

- (a) 1832 irrevocably waives all rights to a full hearing, judicial review or appeal of this matter under the Act; and
- (b) neither party will make any public statement that is inconsistent with this Settlement Agreement or with any additional agreed facts submitted at the Settlement Hearing.

89. Whether or not the Commission approves this Settlement Agreement, 1832 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 IX - DISCLOSURE OF SETTLEMENT AGREEMENT**

90. If the Commission does not approve this Settlement Agreement or does not make an order substantially in the form of the Order attached as Schedule "A" to this Settlement Agreement:

- (a) this Settlement Agreement and all discussions and negotiations between Staff and 1832 before the Settlement Hearing takes place will be without prejudice to Staff and 1832; and
- (b) Staff and 1832 will each be entitled to all available proceedings, remedies and challenges, including proceeding to a hearing on the merits of the allegations contained in the Statement of Allegations. Any such proceedings, remedies and

challenges will not be affected by this Settlement Agreement, or by any discussions or negotiations relating to this Settlement Agreement.

91. The parties will keep the terms of this Settlement Agreement confidential until the Commission approves the Settlement Agreement, except as is necessary to make submissions at the Settlement Hearing. If, for whatever reason, the Commission does not approve the Settlement Agreement, the terms of the Settlement Agreement shall remain confidential indefinitely, unless Staff and 1832 otherwise agree in writing or if required by law.

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

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

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

Dated at Toronto this 19th day of April, 2018

**1832 ASSET MANAGEMENT L.P.**

By: “John Pereira”  
John Pereira  
Senior Vice President and Chief  
Operating Officer, Asset  
Management  
The Bank of Nova Scotia

**COMMISSION STAFF**

By: “Jeff Kehoe”  
Jeff Kehoe  
Director, Enforcement Branch

**SCHEDULE “A” – DRAFT ORDER**



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

**File No.:**

**IN THE MATTER OF  
1832 ASSET MANAGEMENT L.P.**

**ORDER**

Subsection 127(1) and Section 127.1 of the  
*Securities Act*, RSO 1990, c S.5

WHEREAS on April 24, 2018, the Ontario Securities Commission (the “**Commission**”) held a hearing at the offices of the Commission, located at 20 Queen Street West, 17th Floor, Toronto, Ontario to consider the Application made jointly by 1832 Asset Management L.P. (“**1832**”) and Staff of the Commission for approval of a settlement agreement dated April 19, 2018 (the “**Settlement Agreement**”);

ON READING the Joint Application Record for a Settlement Hearing, including the Statement of Allegations dated April 19, 2018, the Settlement Agreement and the Consent of the parties to an Order in substantially this form, and on hearing the submissions of counsel for both parties;

IT IS ORDERED THAT:

1. The Settlement Agreement is approved pursuant to subsection 127(1) of the Securities Act, RSO 1990, c S.5, as amended (the “**Act**”).
2. 1832 is reprimanded, pursuant to paragraph 6 of subsection 127(1) of the Act;
3. 1832 shall:
  - (a) 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” to the Settlement Agreement until a Deputy Director or a Manager in the Compliance

and Registrant Regulation Branch of the Commission is satisfied that the conclusions expressed in the Attestation Letter by the Consultant described in Schedule "B" are valid, pursuant to paragraph 4 of subsection 127(1) of the Act;

- (b) pay an administrative penalty in the amount of \$800,000 to the Commission, which amount shall be designated for allocation or for use by the Commission in accordance with subsections 3.4(2)(b)(i) or (ii) of the Act, pursuant to paragraph 9 of subsection 127(1) of the Act; and
  - (c) pay costs of the Commission's investigation in the amount of \$150,000, pursuant to section 127.1 of the Act.
-

## SCHEDULE "B" – REVIEW OF PRACTICES AND PROCEDURES

1. 1832 Asset Management L.P. ("**1832**") shall continue to retain the independent consultant (the "**Consultant**"), it first retained in December 2017, to review 1832's sales practices and the controls around 1832's sales practices relating to the Dynamic family of mutual funds (the "**Products**") which includes a review of 1832's operations, internal controls, practices, policies and procedures relating to its sales practices in connection with the Products (the "**Sales Practice System**") to ensure that:
  - a. the Sales Practice System fully complies with applicable law, including National Instrument 81-105 - *Mutual Fund Sales Practices* ("**NI 81-105**"), subsection 32(2) of the *Securities Act*, RSO 1990, c S.5, as amended, and section 11.1 of National Instrument 31-103 - *Registration Requirements, Exemptions and Ongoing Registrant Obligations*;
  - b. the Sales Practice System is tailored to the specific manner of business conducted by 1832 and is consistent with prudent business practices and best industry standards;
  - c. the Sales Practice System is designed to prevent and identify any non-compliance at an early stage, to allow for correction of the conduct in a timely manner, and to escalate breaches for appropriate disciplinary action; and
  - d. all applicable 1832 staff are trained on business promotion matters to ensure compliance with applicable laws related to the Sales Practice System, including NI 81-105;
2. 1832 shall require the Consultant to deliver to a Deputy Director or Manager in the Compliance and Registrant Regulation Branch of the Commission (the "**OSC Manager**") a written report describing the Consultant's recommendations to ensure that 1832's Sales Practice System conforms with the obligations set out in paragraph 1 above (the "**Report**"), within 60 days of the Order approving the Settlement Agreement between Staff of the Commission ("**Staff**") and 1832 dated April 19, 2018;
3. Within 12 months of the delivery of the Report to the OSC Manager, 1832 shall have fully implemented the recommendations of the Consultant described in the Report, and the Ultimate Designated Person and the Chief Compliance Officer of 1832 shall provide written confirmation to the OSC Manager that there has been full implementation of the Consultant's recommendations in the Report (the "**Confirmation Letter**");
4. Commencing 6 months after the delivery of the Confirmation Letter to the OSC Manager, 1832 shall cause the Consultant to conduct testing to determine whether the recommendations in the Report have been fully implemented, and whether any changes resulting from those recommendations are being appropriately followed, administered and enforced by 1832 ("**Final Testing**");

5. Within 12 months of the provision of the Confirmation Letter to the OSC Manager, the Consultant shall provide a letter (the “**Attestation Letter**”) to the OSC Manager, expressing his or her conclusions with respect to the Final Testing and:
  - a. include a report with the Attestation Letter which provides a description of the testing performed to support the conclusions contained in the Attestation Letter; and
  - b. submit such additional reports as may be requested by the OSC Manager for the purpose of satisfying the OSC Manager that the conclusions expressed in the Attestation Letter described above are valid;
6. 1832 shall provide the Consultant with reasonable access to all of 1832’s books and records necessary to complete the Consultant’s mandate and will allow the Consultant to meet privately with 1832’s officers, directors and employees. 1832 shall require its officers, directors and employees to cooperate fully with the Consultant with respect to the Consultant’s work and with respect to the implementation of the recommendations in the Report;
7. 1832 shall not terminate the Consultant’s retainer without prior written approval by the OSC Manager; and
8. 1832 shall immediately submit to Staff a direction giving consent for unrestricted access and permission for Staff and the Consultant to communicate with one another regarding the Consultant’s work and 1832’s progress with respect to the implementation of the recommendations in the Report and/or any other matter relevant to this review.