



Ontario  
Securities  
Commission

Commission des  
valeurs mobilières  
de l'Ontario

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

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

**A. ORDER SOUGHT:**

Staff of the Enforcement Branch (“**Enforcement Staff**”) of the Ontario Securities Commission (the “**Commission**”) requests that the Commission make an order pursuant to subsections 127(1) and (2) and section 127.1 of the *Securities Act*, RSO 1990, c S.5 (the “**Act**”) to approve the settlement agreement dated April 19, 2018 between Enforcement Staff and 1832 Asset Management L.P. (“**1832**”).

**B. FACTS:**

Enforcement Staff makes the following allegations of fact:

**1. The Respondent**

1. 1832 is registered with the Commission as an investment fund manager (“**IFM**”), a Portfolio Manager, an Exempt Market Dealer and a Commodity Trading Manager.
2. 1832 is wholly owned by The Bank of Nova Scotia. 1832 acquired the Dynamic family of mutual funds (the “**Products**”) in 2011.

3. 1832 is the manager of the Products, among other mutual funds. 1832's investment fund products are distributed to investors by dealing representatives ("DRs") registered with participating dealers, both third party and affiliated dealers.

4. The sales practices at issue in this proceeding only relate to 1832's role as manager of the Products.

## 2. Legislative Framework

5. Subsection 2.1(1) of National Instrument 81-105 *Mutual Fund Sales Practices* ("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.

6. 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**").

7. 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.

8. 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.

9. 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.

10. 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.

### **3. 1832's Conduct**

#### **(a) Excessive Spending on Business Promotional Activities and Promotional Items**

11. From November 2012 to October 2017 (the "**Relevant Period**"), 1832 permitted excessive spending on DRs for promotional activities, contrary to section 5.6 of NI 81-105.

12. During the Relevant Period, 1832 also permitted the provision of items to DRs that were not of minimal value and/or were not promotional in nature, contrary to section 5.6 of NI 81-105. 1832 also provided monetary benefits to DRs in the form of gift cards that were not permitted under NI 81-105.

**(b) 1832 Conferences**

13. During the months of May 2015 and May 2016, 1832 hosted two mutual fund sponsored conferences pursuant to section 5.2 of NI 81-105 and provided non-monetary benefits to DRs at these conferences that did not comply with subsection 5.2(e) and section 5.6 of NI 81-105.

**(c) Controls, Supervision and Books and Records Relating to Sales Practices**

14. 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.

15. During the Relevant Period, 1832 failed to maintain adequate books, records and other documents in relation to its sales practices as was reasonably required to demonstrate its compliance with Part 5 of NI 81-105.

**C. BREACHES AND CONDUCT CONTRARY TO THE PUBLIC INTEREST:**

Enforcement Staff alleges the following breaches of Ontario securities law and/or conduct contrary to the public interest:

1. 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;

2. 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 at the two conferences it held, resulting in a breach by 1832 of section 2.1 of NI 81-105;

3. 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;
4. 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 *Registration Requirements, Exemptions and Ongoing Registrant Obligations*;
5. 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
6. The conduct referred to above is also contrary to the public interest.

**DATED** this 19th day of April, 2018.

**Ontario Securities Commission**

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