INVESTMENT INDUSTRY REGULATORY ORGANIZATION OF CANADA

IN THE MATTER OF:

THE RULES OF THE INVESTMENT INDUSTRY REGULATORY ORGANIZATION OF CANADA (IIROC)

AND

SCOTIA CAPITAL INC.

SETTLEMENT AGREEMENT

I. INTRODUCTION

1. IIROC Enforcement Staff ("Staff") and Scotia Capital Inc. (the "Respondent") consent and agree to the settlement of this matter by way of this agreement (the "Settlement Agreement").

2. The Enforcement Department of IIROC has conducted an investigation ("Investigation") into the conduct of HollisWealth, a division of the Respondent, which was formerly DundeeWealth, a division of DWM Securities Inc.

3. The Investigation discloses matters for which the Respondent may be disciplined by a hearing panel appointed pursuant to IIROC Transitional Rule No.1, Schedule C.1, Part C (the "Hearing Panel").

II. JOINT SETTLEMENT RECOMMENDATION

4. Staff and the Respondent jointly recommend that the Hearing Panel accept this Settlement Agreement.

5. The Respondent admits to the following contravention of IIROC Dealer Member Rules, Guidelines, Regulations or Policies:

> Between September 14, 2005 and June 2013, DWM Securities Inc. ("DWM"), which subsequently amalgamated with the Respondent, failed to establish and maintain a system of controls and supervision that was adequate to ensure that certain clients were qualified to purchase investment funds offered pursuant to prospectus exemptions, contrary to

IIROC Dealer Member Rules 38.1, 1300.1(a) and 2500(II) (formerly IDA By-Law 29.27(a)(i), Regulation 1300.1(a) and Policy 2).

6. Staff and the Respondent agree to the following terms of settlement:

   (a) A fine of $500,000;

   (b) the Respondent will report on the execution of the Remediation Plan (as defined below in paragraph 28) to IIROC's Vice-President of Enforcement by no later than October 30, 2015, and as thereafter required by the Vice-President of Enforcement to ensure the Remediation Plan is completed satisfactorily; and

   (c) the internal fines imposed, as set out in paragraph 31, will be donated by the Respondent to charity.

7. Staff and the Respondent agree that no costs be paid by the Respondent to IIROC in connection with this Settlement Agreement.

III. STATEMENT OF FACTS

(i) Acknowledgement

8. For the purposes of this Settlement Agreement only, Staff and the Respondent agree with and rely upon the admitted facts and conclusions set out in this Section III.

(ii) Factual Background

Overview

9. DWM's advisors sold certain investment funds offered pursuant to prospectus exemptions ("Exempt Funds") to clients over the course of approximately eight years without ensuring that certain clients were qualified to purchase the Exempt Funds.

10. During much of that time DWM failed to identify that Exempt Funds were being sold by advisors to certain clients where the account information contained in client files did not evidence the clients' qualifications to purchase Exempt Funds.

11. The Respondent self-identified the documentation deficiencies and conducted an internal review of all Exempt Funds sold to clients during the period September 14, 2005 to December 31, 2013 (the "Review Period") to determine the scope of the issue. The Respondent reported the issue to, and shared the results of the internal review with, IIROC Staff.

The Respondent

12. DWM was acquired by the parent company of the Respondent on February 1, 2011. DWM subsequently amalgamated with the Respondent on November 1, 2013 at which time it became a division of the Respondent under the name HollisWealth. References to

the Respondent in this Settlement Agreement refer to DWM prior to November 1, 2013 and to HollisWealth on and after November 1, 2013.

13. At all material times, the Respondent was a Member of the IDA, and then IIROC, with its head office located in Toronto, Ontario.

Sale of the Exempt Funds by the Respondent

14. The Exempt Funds consist of (a) investment funds previously managed by GCIC Ltd. and now managed by an affiliate of the Respondent (the "Dynamic Exempt Market Funds") and (b) investment funds managed by unaffiliated third party fund managers ("Third Party Funds").

15. During the Review Period, none of the Exempt Funds were qualified by a prospectus and, therefore, the Exempt Funds were only permitted to be distributed pursuant to prospectus exemptions.

16. During the Review Period, Exempt Funds were sold to approximately 9,983 separately identified clients[1] of the Respondent.

17. During the Review Period, the Respondent sold the Exempt Funds to clients primarily pursuant to the following prospectus exemptions in National Instrument 45-106 *Prospectus and Registration Exemptions*:

    (a) Section 2.3 (Accredited Investor);

    (b) Section 2.9 (Offering Memorandum) (except Ontario);

    (c) Section 2.10 (Minimum Amount Investment);

    (d) Section 2.19 (Additional Investment in Investment Fund); and

    (e) Section 2.24 (Employee, Executive Officer, Director and Consultant).

Internal Review of Client Documentation Deficiencies

18. In mid to late 2012, instances of lack of documentation to support clients' qualifications to purchase certain Dynamic Exempt Market Funds were identified. That led to a comprehensive internal review for the Review Period of the sale of both the Dynamic Exempt Market Funds and Third Party Funds (the "Review").

[1]Individual clients are assigned identification markers. A single client may have one or more such markers, each of which may be associated with one or more accounts. The term "separately identified clients" is synonymous with client identification markers.

19. Due to its comprehensive scope and complexity, the Review took over a year to complete. During that time and thereafter, the Respondent has devoted substantial internal resources to completing the Review and to implementing changes to its policies, procedures and internal controls as outlined below. In addition, the Respondent retained at significant expense the services of external legal and forensic accounting advisors to assist in conducting the Review and designing and implementing the Remediation Plan.

20. The Review analysed each purchase of the Exempt Funds together with the available client account documentation to determine whether those documents were sufficient to support that the client qualified for a prospectus exemption at the time of the transaction.

21. The Review found that:

    (a) certain Exempt Funds (the "Identified Funds") were sold by advisors to approximately 1,710 separately identified clients with the Respondent where (i) the account information did not support the clients' qualifications for a prospectus exemption; and (ii) such clients have already sold the Identified Fund(s) and the clients have experienced a realized loss/gain or such clients continue to hold the Identified Fund(s) in their accounts with the Respondent (the "Affected Clients");

    (b) Affected Clients experienced approximately $16.7 million in net gains (including unrealized gains) in respect of purchases of the Identified Funds and approximately $4.5 million in net losses (including unrealized losses) in respect of purchases of the Identified Funds;

    (c) approximately 594 of the Affected Clients were in a net loss position;

    (d) 72 advisors across Canada sold Identified Funds to Affected Clients that resulted in net losses;

    (e) approximately 84% of the net losses experienced by Affected Clients were less than $25,000 and only one Affected Client lost more than a $100,000; and

    (f) approximately 91% of the purchases of the Identified Funds that led to the net losses in question took place prior to the aforesaid purchase of DWM and all took place prior to the amalgamation referred to in paragraph 12 above.

Failure to Supervise

22. DWM's advisors had frontline responsibility for ensuring that clients qualified to purchase Exempt Funds.

23. DWM had policies, procedures and advisor training programs relating to the sale of Exempt Funds during the Review Period.

24. DWM failed to establish and maintain a system of controls and supervision that was adequate:

(a) to reasonably ensure that its advisors were following the policies and procedures and discharging their responsibilities under the policies and procedures;

(b) to reasonably ensure that its Branch Managers were adequately implementing and enforcing the policies and procedures; and

(c) to detect in a timely manner that the Identified Funds were being sold to clients where the account information in client files did not support the clients' qualifications for a prospectus exemption.

Mitigating Factors

(i) Proactive and Exceptional Cooperation

25. The Respondent self-identified the lack of adequate documentation to support that certain clients qualified to purchase the Exempt Funds pursuant to prospectus exemptions. Furthermore, the Respondent self-reported the issue to IIROC in December 2013 and conducted the Review while providing IIROC with regular progress updates. The Respondent promptly shared the detailed findings of the Review with IIROC and otherwise fully cooperated with the regulatory investigation. Staff has considered this proactive and exceptional cooperation as a factor in agreeing to the sanction set out above.

(ii) Remedial Steps

26. The Respondent's own compliance program identified instances of lack of adequate documentation relating to the purchase of certain Dynamic Exempt Market Funds. The Respondent thereafter initiated the Review and, in order to ensure its comprehensiveness, expanded its scope to include all Exempt Funds sold during the Review Period.

27. A number of enhanced compliance procedures and policies and training modules have been implemented, and continue to be implemented, by HollisWealth relative to the documentation and sale of exempt market products. HollisWealth introduced a new mandatory Prospectus Exemption Certificate ("PEC") in June 2013 to be completed and signed by clients, advisors and branch managers and forwarded to Head Office Compliance in connection with each purchase of a product sold pursuant to a prospectus exemption; enhanced its automated compliance system to flag all purchases of Exempt Funds which Compliance matched to PECs on file; and more recently further enhanced its automated compliance system to automatically permit the qualification of clients for prospectus exempt transactions based on account information in client files and produce exceptions for review.

(iii) Remediation Plan

28. The Respondent has voluntarily developed and is implementing a remediation plan that is based on client transaction information contained in its books and records. The Respondent intends to pay Affected Clients who have suffered a net realized loss, an amount equal to that realized loss, plus interest from the date of realization of the loss,

and to encourage Affected Clients who continue to hold the Identified Funds in accounts with the Respondent to redeem their holdings and receive payment for any net realized losses (the "Remediation Plan").

29. The Respondent will forthwith begin to communicate to Affected Clients the details of the compensation to be provided under the Remediation Plan.

30. The Respondent will ensure that the account documentation for any Affected Client who wants to retain an Identified Fund is up-to-date and that a client suitability assessment is conducted.

(iv) Internal Discipline

31. The Respondent will require all advisors who sold the Exempt Funds to clients where the account information did not support the clients' qualifications for a prospectus exemption (the "Affected Advisors") to re-write the Conduct and Practices Handbook Examination (the "CPH"). The Respondent will also be imposing internal fines on Affected Advisors ranging from $2,500 to $30,000, totalling approximately $440,000 (which will be donated by the Respondent to charity) and will require those with Affected Clients who experienced a loss in connection with the purchase of an Identified Fund to reimburse it, in percentage amounts ranging from 20% to 50%, for remediation payments made to clients. The fine and client remediation ranges for Affected Advisors will be determined according to the number of sales of Exempt Funds to clients where the account information did not support the clients' qualifications for a prospectus exemption and by the total losses of Affected Clients, respectively.

32. Moreover, all current Branch Managers who supervised the advisors in question at the relevant time will be required to re-write the CPH. Lastly, all current Branch Managers will be required to write or re-write a relevant industry course on exempt market products and have been or will be trained on new system alerts and accredited investor supervision processes and requirements.

IV. TERMS OF SETTLEMENT

33. This settlement is agreed upon in accordance with IIROC Dealer Member Rules 20.35 to 20.40, inclusive and Rule 15 of the Dealer Member Rules of Practice and Procedure.

34. The Settlement Agreement is subject to acceptance by the Hearing Panel.

35. The Settlement Agreement shall become effective and binding upon the Respondent and Staff as of the date of its acceptance by the Hearing Panel.

36. The Settlement Agreement will be presented to the Hearing Panel at a hearing ("the Settlement Hearing") for approval. Following the conclusion of the Settlement Hearing, the Hearing Panel may either accept or reject the Settlement Agreement.

37. If the Hearing Panel accepts the Settlement Agreement, the Respondent waives its right under IIROC rules and any applicable legislation to a disciplinary hearing, review or appeal.

38. If the Hearing Panel rejects the Settlement Agreement, Staff and the Respondent may enter into another settlement agreement; or Staff may proceed to a disciplinary hearing in relation to the matters disclosed in the Investigation.

39. The Settlement Agreement will become available to the public upon its acceptance by the Hearing Panel.

40. Staff and the Respondent agree that if the Hearing Panel accepts the Settlement Agreement, they, or anyone on their behalf, will not make any public statements inconsistent with the Settlement Agreement.

41. Unless otherwise stated, any monetary penalties and costs imposed upon the Respondent are payable immediately upon the effective date of the Settlement Agreement.

42. Unless otherwise stated, any suspensions, bars, expulsions, restrictions or other terms of the Settlement Agreement shall commence on the effective date of the Settlement Agreement

AGREED TO by the Respondent at the City of Toronto in the Province of Ontario, this___day of July, 2015.

WITNESS

RESPONDENT

AGREED TO by Staff at the City of Toronto in the Province of Ontario, this ___day of July, 2015.

WITNESS

CHARLES CORLETT

Enforcement Counsel on behalf of Staff of the Investment Industry Regulatory Organization of Canada

ACCEPTED at the City of Toronto in the Province of Ontario, this 5th day of August, 2015, by the following Hearing Panel:

Per: _____

Martin Friedland – Panel Chair

Per: _____

Peter Gribbin – Panel Member

Per: _____

Guenther Kleberg – Panel Member