



Citation: 2021 BCSECCOM 457

Settlement Agreement

Credential Asset Management Inc.

Securities Act, RSBC 1996, c. 418 (Act)

- ¶ 1 The Director of Enforcement of the British Columbia Securities Commission (**Director, Enforcement**) and Credential Asset Management Inc. (**the Respondent**) have entered into a settlement agreement with respect to its mutual fund incentive arrangements and agree as follows:

Agreed Statement of Facts

Background

1. The Respondent is registered as a mutual fund dealer under the Act. The Respondent serves as a mutual fund dealer for various financial institutions that operate in British Columbia and throughout Canada (**financial institution partners**).
2. The Respondent's head office is in Vancouver, British Columbia.
3. The Respondent must comply with National Instrument 81-105, *Mutual Fund Sales Practices (NI 81-105)*. NI 81-105 is designed to minimize conflicts of interest by ensuring that mutual fund dealers and their representatives sell mutual funds that are suitable for and in the best interests of their clients, as opposed to being induced to sell mutual funds on the basis of incentives they were receiving.
4. The Respondent employs representatives at its financial institution partners who are registered to sell mutual funds. Those representatives are dually-employed by the Respondent and the financial institution partners (dually-employed representatives). The Respondent also employs a small number of representatives at its head office who are registered to sell mutual funds. The Respondent's head office representatives and most of its dually-employed representatives are compensated primarily by an annual salary.
5. The Respondent entered into participation agreements with its financial institution partners in which it agreed to share revenues from mutual fund sales by its dually-employed representatives with the financial institution partners who also employ them.
6. In 2017, the Mutual Fund Dealers Association's (MFDA) compliance staff conducted a compliance examination at the Respondent's head office and four of its financial institution partners to evaluate the Respondent's compliance with the MFDA's by-laws, rules and policies during the period April 1, 2013 to October 31, 2016.



Misconduct

Incentives contrary to NI 81-105: OnCourse Program

7. In November 2011, the Respondent launched its OnCourse Program, which involved the promotion of a customized and branded suite of related party and third party mutual funds for sale to clients of the Respondent's financial institution partners. The Respondent launched the OnCourse Program to offer clients branded mutual fund portfolios similar to the proprietary mutual fund products offered by the Respondent's competitors in the financial services industry.
8. Part of the OnCourse Program's product development shifted operational control of sales and marketing costs from the mutual fund companies to the Respondent. The Respondent performed some of the tasks that would otherwise be performed by the mutual fund companies, including the preparation of marketing and collateral materials (**OnCourse Program Attributes**).
9. The related party mutual funds in the OnCourse Program were offered by Northwest & Ethical Investments LP (**NEI**). The third-party mutual funds in the OnCourse Program were offered by AGF Investments Inc. (**AGF**). Each of NEI and AGF created specific series of their funds for inclusion in the OnCourse Program.
10. The Respondent offered other series of the same NEI and AGF mutual funds for sale outside of the OnCourse Program that had substantially the same holdings, fees and expenses as the series of the NEI and AGF mutual funds offered for sale in the OnCourse Program.
11. The Respondent was the principal distributor of the NEI mutual funds in the OnCourse Program under section 1.1 of National Instrument 81-102, *Investment Funds* (**NI 81-102**).
12. The Respondent was a participating dealer of the AGF mutual funds in the OnCourse Program under section 1.1 of NI 81-102.
13. In part as compensation for doing the OnCourse Program Attributes, the Respondent received higher trailing commissions for selling NEI and AGF mutual funds in the OnCourse Program than those payable for selling the same NEI and AGF mutual funds outside of the OnCourse Program. Specifically, the Respondent received trailing commissions on units of NEI series funds purchased through the OnCourse Program that were on average 27 basis points higher than the trailing commissions it received on units of similar NEI funds purchased outside the OnCourse Program. In addition, the Respondent received trailing commissions on units of AGF series funds purchased through the OnCourse Program that were on average 15 basis points higher than the trailing commissions it received on units of similar AGF funds purchased outside the OnCourse Program. No increased fees were paid by clients of the Respondent with respect to higher trailing commissions.



14. After the MFDA's 2017 compliance examination, the Respondent conducted an investigation to determine the scope and extent of incentive programs that had been implemented at its financial institution partners to promote the OnCourse Program.
15. Between November 2011 and May 2017, the Respondent offered performance bonuses to two head office representatives if they achieved certain sales targets tied to their sales of mutual funds in the OnCourse Program. The Respondent did not offer the head office representatives performance bonuses tied to their sales of mutual funds outside of the OnCourse Program.
16. By providing performance bonuses to two head office representatives tied to their sales of mutual funds in the OnCourse Program, the Respondent provided incentives to its head office representatives contrary to sections 4.1 and 4.2 of NI 81-105.
17. Between November 2011 and May 2017, certain of the Respondent's financial institution partners offered incentives to their dually-employed representatives tied to their sale of mutual funds in the OnCourse Program that were not tied to their sale of mutual funds outside of the OnCourse Program. They included the following:
 - (a) certain of the financial institution partners offered performance bonuses if the representatives achieved OnCourse Program sales targets;
 - (b) one of the financial institution partners offered increased commissions if the representatives obtained new mutual fund sales in the OnCourse Program or for converting existing client assets to the OnCourse Program; and
 - (c) some dually-employed representatives were expected to offer clients OnCourse Program products unless a client specifically requested an alternative.
18. Between November 2011 and May 2017, one of the Respondent's financial institution partners also paid out 5% of its profit share from NEI to dually-employed representatives who sold NEI mutual funds (including NEI mutual funds (or series thereof) sold through the OnCourse Program) to clients in proportion to the amount of sales made.
19. In 2015, 91 of the Respondent's dually-employed representatives received increased compensation of a total of \$65,289 in the form of performance bonuses, increased commissions and profit sharing attributable to \$37,578,793 of sales of mutual funds in the OnCourse Program. This was out of a total of 979 dually-employed representatives who sold \$307,140,547 of mutual funds in the OnCourse Program that year.
20. In 2016, 91 of the Respondent's dually-employed representatives received increased compensation of a total of \$67,177 attributable to \$28,162,308 of sales of mutual



funds in the OnCourse Program. This was out of a total of 1,162 dually-employed representatives who sold \$311,894,967 of mutual funds in the OnCourse Program that year. In total, the Respondent determined that 470 representatives were eligible to receive incentives (including year-end performance bonuses) linked to the promotion of the OnCourse Program.

21. By sharing revenues from mutual fund sales in the OnCourse Program with its financial institution partners, the Respondent provided revenues out of which some financial institution partners paid incentives to dually-employed representatives. In doing so, the Respondent provided incentives in a manner contrary to sections 4.1 and 4.2 of NI 81-105.

Incentives contrary to NI 81-105: Socially Responsible Investing Mutual Funds

22. In January 2016, one of the Respondent's financial institution partners implemented a number of promotional incentives to encourage its dually-employed representatives to promote "socially responsible investing" (SRI). SRI refers to the integration of environmental, social and governance factors into the investment decision-making process.

23. The incentives included the following:

- (a) representatives who sold SRI mutual funds were eligible to receive bonus compensation, which was not otherwise payable in respect of mutual funds that did not qualify as SRI mutual funds;
 - (b) in 2016, representatives earned credit for soliciting new monies into the sale of SRI mutual funds only; and
 - (c) in 2017, in addition to accumulating credit for soliciting new monies into investments in SRI mutual funds, representatives were eligible to earn additional credit for converting existing client assets into units of SRI mutual funds.
24. Approximately 45 mutual funds offered by the Respondent qualified as SRI mutual funds. The Respondent was either the principal distributor or a participating dealer of those mutual funds under section 1.1 of NI 81-102. Only a small number of those mutual funds were issued by NEI.
 25. In 2016, 47 of the Respondent's dually-employed representatives earned bonus compensation totaling \$250,576 linked to the sale of SRI mutual funds, with the highest payout to a representative being 24.5% of their salary.
 26. In 2017, 49 of the Respondent's dually-employed representatives earned bonus compensation totaling \$394,554 linked to the sale of SRI mutual funds, with the highest payout to a representative being 27.5% of their salary.



27. By sharing revenues from SRI mutual fund sales with the financial institution partner, the Respondent provided revenues out of which the financial institution partner paid incentives to its dually-employed representatives. In doing so, the Respondent provided incentives in a manner contrary to sections 4.1 and 4.2 of NI 81-105.

Lack of systems of control and supervision contrary to NI 31-103

28. The MFDA's 2017 compliance examination found that the Respondent failed to establish and maintain adequate policies and procedures, controls, and supervision to ensure that it complied with securities legislation relating to internal dealer incentive and sales practices, contrary to MFDA Rule 2.5.1.

29. By failing to establish a system of controls and supervision to assure that its head office representatives and dually-employed representatives were not being provided with any incentives to sell mutual funds contrary to NI 81-105, the Respondent failed to establish and maintain a system of controls and supervision sufficient to provide reasonable assurance that the Respondent and each individual acting on its behalf complied with securities legislation, contrary to section 11.1 of National Instrument 31-103, *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (NI 31-103).

Mitigating Factors

30. It is a significant mitigating factor that the Respondent entered into this settlement and allowed the Commission to avoid a potentially lengthy hearing to determine liability.

31. None of the incentives described in this Settlement Agreement that were contrary to NI 81-105 had any bearing on the fees or costs borne by clients investing through the OnCourse Program or in an SRI mutual fund.

32. The higher trailing commissions paid to the Respondent for mutual fund sales in the OnCourse Program were not financed by increased fees paid by the Respondent's clients. The management expense ratio (MER) for the OnCourse Program series of AGF and NEI funds was not higher than the MER applicable to series A of the same AGF and NEI funds.

33. According to the Respondent, the enhanced compensation for the SRI mutual funds was intended to encourage dually-employed representatives to recommend that clients consider environmental, social and governance factors in their investment decision-making process, as this was the core philosophy of this financial institution partner, rather than to specifically discourage investments in other funds.

34. The Respondent has also taken steps to address the deficiencies described herein after receiving the 2017 compliance report. Specifically:

- (a) in May 2017, the Respondent amended its compensation policies to remove bonuses paid in respect of sales of the OnCourse Program for its head office



representatives. The Respondent also instructed its financial institution partners, who offered incentives to promote the OnCourse Program to its dually-employed representatives, to remove any OnCourse Program incentive altogether and amend their bonus structures to compensate equally for sales of all mutual fund products;

- (b) in 2018, the Respondent directed its financial institution partners to discontinue incentivizing compensation programs associated with the sale of SRI mutual funds;
- (c) the Respondent has also recently revised its policies and procedures to specifically state that NI 81-105 does not permit dealers (whether a participating dealer or a dealer in a principal distributor role) to provide an incentive to its representatives or recommend mutual funds of one mutual fund family over mutual funds of another mutual fund family;
- (d) the Respondent has also established a conflicts of interest committee which includes senior management to review conflicts of interest related to compensation. The Respondent's compliance department has implemented a proactive process to review compensation arrangements with its financial institution partners; and
- (e) starting in 2018, the Respondent's policies and procedures have required its financial institution partners to discontinue practices that would have the result of incentivizing its dually-employed representatives to solicit investments in OnCourse products or SRI products in contravention of NI 81-105.

Public Interest

35. It is not in the public interest that the Director, Enforcement issue orders under section 161 of the Act.

Undertakings

36. The Respondent undertakes to:

- (a) pay \$300,000 to the Commission, which is due and payable immediately without further demand;
- (b) to the extent not already undertaken, cease all incentives offered to its head office representatives and dually-employed representatives that are contrary to sections 4.1 and 4.2 of NI 81-105; and
- (c) confirm that it has put in place systems and policies that are acceptable to the Director, Enforcement to ensure it is complying with sections 4.1 and 4.2 of NI 81-105 and section 11.1 of NI 31-103.



Waiver

¶ 2 The Respondent waives any right it may have, under the Act or otherwise, to a hearing, hearing and review, judicial review or appeal related to, in connection with, or incidental to this settlement.

Counterpart

¶ 3 This Settlement Agreement may be signed in counterpart and all such counterparts of signed copies, whether delivered electronically or otherwise, shall be read or construed together as if they formed one originally executed document.

¶ 4 December 3 , 2021

¶ 5 Yasmin Lalani
Credential Asset Management Inc.
(per: Yasmin Lalani, SVP, Chief Legal Officer, Chief Governance Officer
Signing Authority)

(Redacted))
Witness Signature)
(Redacted))
Witness Name (please print))
(Redacted))
(Redacted))
Address)
(Redacted))
Occupation)

Douglas B. Muir
Dec 9 2021 9:42 AM -08:00

¶ 6 Douglas B. Muir
Director, Enforcement