



Citation: 2021 BCSECCOM 380

Settlement Agreement

Kilburn Ogilvie Waymann Investment Management Ltd.

Securities Act, RSBC 1996, c. 418

- ¶ 1 The Executive Director of the British Columbia Securities Commission (the Executive Director) and Kilburn Ogilvie Waymann Investment Management Ltd. (KOWIM) agree as follows:

Agreed Statement of Facts

Background

1. KOWIM is a registered portfolio manager (PM) that has been registered with the British Columbia Securities Commission (Commission) since 2004. It has two advising representatives and its head office is in Kelowna, British Columbia. It is also registered as a PM in Ontario, Manitoba and Alberta.

Misconduct

2. In 2019, Commission staff conducted a compliance field examination to assess KOWIM's overall business conduct, system of compliance, and internal controls against the regulatory requirements of British Columbia's securities legislation.
3. Commission staff identified deficiencies in KOWIM's overall compliance systems, record keeping systems, marketing statements, administrative requirements, and financial reporting.
4. Specifically, Commission staff found that KOWIM:
 - (a) did not maintain records capable of generating certain account activity reports;
 - (b) made unsubstantiated marketing claims on its website about the benefits of investing through a PM;
 - (c) failed to ensure it was registered in each province in which it had clients;
 - (d) paid client management fees it earned to an unregistered holding company;
 - (e) inaccurately calculated its excess working capital; and



- (f) delivered deficient audited financial statements and a deficient auditor's opinion to Commission staff as part of its required filings.

Commission staff also found that KOWIM's Chief Compliance Officer and Ultimate Designated Person failed to adequately perform his responsibilities.

5. Because of the deficiencies, KOWIM's system of controls and supervision did not sufficiently manage the risks associated with its business, or provide reasonable assurance that the firm complied with securities legislation. As a result, KOWIM failed to meet the requirements of section 11.1 of National Instrument 31-103, *Registration Requirements, Exemptions and Ongoing Registrant Obligations*.

History of Regulatory Proceedings

6. In 2012, KOWIM entered in to a settlement agreement with the Executive Director with respect to a prior failure to maintain an adequate compliance system.

Factors relevant to settlement

7. KOWIM agreed to make admissions with respect to the above noted misconduct after receiving the compliance field examination report.
8. There is no evidence indicating that any of the deficiencies negatively impacted KOWIM's clients.
9. KOWIM has corrected each deficiency and retained new auditors and an independent compliance consultant.
10. KOWIM has paid \$25,700 to the Commission toward the cost of the compliance field examination.

Undertakings

11. KOWIM undertakes to:
 - (a) comply with National Instrument 31-103 and all applicable securities legislation;
 - (b) continue to retain an independent compliance consultant for two years from the date of this Settlement Agreement;
 - (c) submit its next two annual Chief Compliance Officer reports to the board to Commission staff; and
 - (d) pay \$30,000 to the Commission in respect of settlement of this matter, which sum is due and payable immediately without further demand.



Public Interest

12. In light of all the circumstances, including the undertakings provided by KOWIM in paragraph 11 of this agreement, it is not in the public interest to issue orders under section 161 of the Act against KOWIM.

Waiver

¶ 2 KOWIM 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 September 29, 2021

¶ 5 *Kilburn Ogilvie Waymann Investment Management Ltd.*
Kilburn Ogilvie Waymann Investment Management Ltd.
(Signing Authority)

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

¶ 6 October , 2021
Peter J Brady
October 7 2021 11:16 AM -07:00

¶ 7 Peter J. Brady
Executive Director