

# 2012 BCSECCOM 289

## Settlement Agreement

### Kilburn Ogilvie Waymann Investment Management Ltd. and Trevor G. Kilburn

#### *Securities Act, RSBC 1996, c. 418*

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

#### **Agreed Statement of Facts**

1. KOWIM is a British Columbia corporation, registered under the Act as a portfolio manager. KOWIM has its principal business office in Kelowna.
2. Kilburn resides in Kelowna, and is registered under the Act as an advising representative, director and officer of KOWIM. At all material times, Kilburn was KOWIM's ultimate designated person (UDP) and its chief compliance officer (CCO).

#### **Misconduct**

3. A compliance examination conducted in June 2011 found that KOWIM and Kilburn:
  - (a) failed to establish and maintain an adequate compliance system, contrary to sections 5.2 and 11.1 of National Instrument 31-103 (NI 31-103); and
  - (b) between September 29, 2010 and July 14, 2011 failed to maintain minimum regulatory capital as required by section 12.1(3) of NI 31-103.

#### **Mitigating Factors**

4. KOWIM and Kilburn have no prior history of regulatory or disciplinary proceedings.
5. KOWIM and Kilburn cooperated fully with Commission staff during and after the examination.
6. KOWIM and Kilburn acted quickly to correct the capital deficiency.

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7. Before staff fully completed the examination, Kilburn chose to hire an experienced compliance consultant to build a more comprehensive, firm specific compliance system, and to rewrite a comprehensive Policy and Procedures Manual for KOWIM.
8. The compliance consultant subsequently reviewed the firm's compliance system and found that:
  - (a) it was in compliance with sections 5.2 and 11.1 of NI 31-103; and
  - (b) the firm is monitoring its regulatory capital to ensure it exceeds minimum requirements.

### ***Undertakings***

9. KOWIM and Kilburn undertake to pay \$12,000.00 to the Commission, which is due and payable immediately without further demand.

### **Order**

- ¶ 2 Under the *Securities Act*, RSBC 1996, c. 418 (Act) the Executive Director will issue an order that Kilburn and KOWIM be reprimanded under section 161(1)(j), for KOWIM's significant compliance deficiencies.

### **Consent to Reciprocal Orders**

- ¶ 3 Any securities regulator in Canada may rely on the facts admitted in this agreement solely for the purpose of making an order similar to the one contemplated above.

### **Waiver**

- ¶ 4 Kilburn and KOWIM waive any right they 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.

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### Counterpart

¶ 5 This Settlement Agreement may be executed in counterpart.

¶ 6 July 13, 2012

¶ 7 “Trevor Grant Kilburn” )

Trevor Grant Kilburn )

)

Personal information has been redacted to protect the privacy of a third party

Witness Signature )

)

Personal information has been redacted to protect the privacy of a third party

Witness Name (please print) )

)

Personal information has been redacted to protect the privacy of a third party

Address )

Personal information has been redacted to protect the privacy of a third party

)

Personal information has been redacted to protect the privacy of a third party

Occupation )

¶ 8 “Trevor Kilburn” )

Kilburn Ogilvie Waymann )

Investment Management Inc. )

(Signing Authority) )

)

Trevor Kilburn )

Print Signing Authority Name )

)

Personal information has been redacted to protect the privacy of a third party

Witness Signature )

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Witness Name (please print) )

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Occupation )

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¶ 9 July 18, 2012

“Paul Bourque”  
¶ 10 Paul C. Bourque, Q.C.  
Executive Director