

ALBERTA SECURITIES COMMISSION

Citation: Re Privest Wealth Management Inc., 2017 ABASC 107

Docket: MRV-005522

Date: 20170606

**COMPLIANCE
SETTLEMENT AGREEMENT
AND UNDERTAKING**

Privest Wealth Management Inc. (Privest)

Introduction

1. Staff of the Alberta Securities Commission (**Staff** and **Commission**, respectively) conducted a review of Privest (the **Review**) in accordance with section 58 of the *Securities Act*, RSA 2000, c S-4, as amended (**Act**).
2. During the course of the Review, Staff came to the conclusion both that changes in certain practices, procedures and conduct of Privest were necessary in the public interest, and that certain actions on the part of Privest constituted breaches of Alberta securities laws and were contrary to the public interest.
3. Staff are of the view that it is in the public interest for Privest to acknowledge and account for actions that constituted breaches of Alberta securities laws and were contrary to the public interest.
4. Privest has agreed to terms and conditions with respect to its future practices, procedures and conduct (as set out in Appendix A), has admitted the breaches of Alberta securities laws set out in this Agreement, and has agreed to the terms of settlement set out in Paragraph 16 of this Agreement below.
5. Terms used in this Agreement have the same meaning as provided in the Alberta securities laws, a defined term in the Act.

Parties

6. Privest is registered in Alberta as an Exempt Market Dealer in accordance with Alberta securities laws.

Circumstances

7. Staff's review of Privest focused principally on the period between January 1 and December 31, 2015.

8. In conducting the Review, Staff reviewed records, and interviewed management, staff, and contracted Dealing Representatives (**DRs**) of Privest.

9. Staff determined that Privest was materially non-compliant with respect to requirements under Alberta securities laws, including in particular several requirements of National Instrument NI 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (**NI-31-103**).

10. Specifically, based on the Review, Staff determined among other things that:

Conflicts of Interest

10.1 Privest failed to adequately identify and respond to material conflicts of interest arising from its relationships with certain connected issuers of securities sold by Privest, and further failed to include in its relationship disclosure information (**RDI**) a description of conflicts of interest, as required.

10.2 The failures referred to in paragraph 10.1 constituted breaches of section 75.2(1) of the Act and sections 13.4 and 14.2(2) of NI 31-103.

Controls, Supervision, and Dealer Oversight and Training

10.3 Privest failed to establish, maintain and apply a system of controls and supervision sufficient to (i) provide reasonable assurance that the firm and individuals acting on its behalf comply with securities legislation; and (ii) manage business risks in accordance with prudent business practices.

10.4 These failures included (but were not limited to):

10.4.1 failing to adequately oversee its DRs;

10.4.2 failing to provide adequate training to its DRs, including training with respect to product risks; and

10.4.3 failing to adequately oversee and review the marketing activities of its DRs, which resulted in DRs using materials with unsubstantiated, inaccurate and potentially misleading statements.

10.5 The failures identified immediately above constituted breaches of section 11.1 of NI 31-103.

KYC, KYP, and Suitability

10.6 Privest failed, in its obligations to take reasonable steps, to ensure it had adequate information with respect to its clients and with respect to the securities in which it dealt, and failed to take reasonable steps to ensure that securities recommended for sale to its clients were suitable for those clients.

10.7 These failures included (but were not limited to):

10.7.1 not adequately or accurately collecting and documenting know-your-client (**KYC**) information, including risk-tolerance information, investment knowledge information, and information regarding client funds being borrowed;

10.7.2 failing to conduct adequate know-your-product (**KYP**) assessments of securities in which it was dealing, or to ensure that DRs understood such securities and their risks; and

10.7.3 failing to adequately assess client concentration in exempt market securities, and in turn failing to take reasonable steps to ensure clients were not over-concentrated in specific securities products or product types.

10.8 The failures identified immediately above constituted breaches of sections 11.1, 11.5, 13.2 and 13.3 of NI 31-103.

Marketing

10.9 Privest included unsubstantiated claims, unbalanced information, and inadequate disclosures in its marketing materials. This included, (but was not limited to):

10.9.1 unsubstantiated claims by certain DRs about risks, returns, stability and growth with respect to securities offered by Privest;

10.9.2 statements focusing only on returns, income or yields, without addressing risks;

10.9.3 claims that investments in exempt products lowered risk or volatility for portfolios containing "public market securities"; and

10.9.4 failing to maintain records to demonstrate the basis for or reasonableness of representations.

10.10 The conduct identified immediately above constituted breaches of sections 75.2(1) and 100(2) of the Act.

Admissions

11. Solely for securities regulatory purposes in Alberta and elsewhere, and as the basis for the terms of settlement and undertaking referred to in paragraph 16 below and for no other use or purpose, Privest admits that it breached those provisions of Alberta securities laws referred to in paragraph 10 of this Agreement, and that it acted contrary to the public interest.

Circumstances Relevant to Settlement

12. Privest has not been previously sanctioned by the Commission.

13. Privest has made changes in personnel, improved its written policies and procedures, reduced the number of DRs operating within and supervised by Privest, and committed to enhanced oversight (including as described in the appended Terms and Conditions) to help ensure compliance with Alberta securities laws going forward.

14. Privest cooperated with Staff during the Review and with respect to this Agreement, without the need for further investigation or a contested hearing.

15. Privest's cooperation with respect to this Agreement has saved the Commission the time and expense of one or more contested hearings.

Settlement and Undertakings

16. Based on the Agreed Facts and Admitted Breaches, Privest agrees and undertakes to the Executive Director of the Commission to:

16.1 pay \$10,000.00 to the Alberta Securities Commission; and

16.2 abide by the terms and conditions set out in Appendix A to this Agreement.

Administration

17. Privest acknowledges that it has received independent legal advice and has voluntarily made the admissions and undertakings in this Agreement.

18. Privest waives any right existing under the Act, or otherwise, to a hearing, review, judicial review or appeal of this matter.

19. Privest acknowledges and agrees that the Commission may enforce this Agreement in the Court of Queen's Bench or in any other court of competent jurisdiction.

20. Except as noted below, execution and fulfillment of the terms of this Agreement by Privest resolves all issues involving Privest relating to the conduct identified in connection with the Review, and staff will take no further steps against Privest arising from these facts. This does not include: (a) issues that may arise with respect to the Settlement and Undertakings set out in paragraph 16 of this Agreement; or (b) issues, investigations or actions that may exist or arise in response to specific complaints received by ASC staff from clients regarding the conduct of Privest or its representatives.

21. This Agreement may be executed in counterpart.

Signed by the duly authorized signatory of)
PRIVEST WEALTH MANAGEMENT) PRIVEST WEALTH MANAGEMENT INC.
INC. at Calgary, Alberta)
this 5 day of June 2017,)
in the presence of:)

Saunder Van Dijk)
WITNESS NAME) Per: "Original Signed By"
) Signature of Authorized Signatory
"Original Signed By") (Print Name Below)
SIGNATURE)

) ALBERTA SECURITIES COMMISSION
)
Calgary, Alberta, this 6 day of June 2017)
)
) "Original Signed By"
) David C. Linder, Q.C.
) Executive Director

Appendix A

AGREED TERMS AND CONDITIONS

To: The Executive Director of the Alberta Securities Commission (**ASC**)

Re: Privest Wealth Management Inc. (**Firm**)

We acknowledge and agree to comply with the following terms and conditions:

1. By June 30, 2017, the Firm must retain, at its own expense, the services of an independent compliance monitor (**Monitor**), approved by the Director, Market Regulation (the **Director**) or by a delegate appointed by the Director for such purpose. The Monitor shall be proficient in and have experience related to all areas of the Firm's operations as an exempt market dealer, and this Monitor shall:
 - a. perform a review of the Firm's operations (the **Review**) in light of the deficiencies outlined in the ASC Compliance Report dated March 28, 2017 (the **Compliance Report**);
 - b. following the completion of the Review, prepare and assist the Firm in implementing a plan (the **Plan**) to fully address the deficiencies outlined in the Compliance Report and any other deficiencies identified during the Review;
 - c. by no later than September 4, 2017, the Monitor shall deliver the Plan to the Director for approval and make changes to the Plan as directed by ASC staff. The Plan must be reviewed and approved by the Ultimate Designated Person (**UDP**) and the Chief Compliance Officer (**CCO**) of the Firm and signed by the UDP and the CCO of the Firm as evidence of their review and approval. The Plan must be approved by the Director prior to its implementation by the Firm;
 - d. review the Firm's progress with respect to the implementation of the Plan;
 - e. submit written progress reports (**Progress Reports**) to the Director which (i) detail the Firm's progress with respect to the implementation of the Plan and state whether the specific recommendations included in the Plan have been implemented and, if not, the expected date of completion and person(s) responsible for the implementation, and (ii) set out the results (including the Monitor's conclusions) of the Marketing Review (as defined below), the KYP Review (as defined below), the COI Review (as defined below), and the Concentrated Trade Review (as defined below) for the relevant period. The first Progress Report shall be delivered on December 15, 2017, and subsequent Progress Reports shall be delivered every three months thereafter, no later than the last calendar day of the relevant month. The Progress Reports must be submitted to the Director until the Director approves the termination of this requirement in writing (such termination, the **Progress Report Termination**), which will not occur prior to the receipt and review by the ASC of the fourth

Progress Report. The Progress Reports must be reviewed by the CCO and the UDP of the Firm and signed by the CCO and the UDP as evidence of their review;

- f. commencing within a reasonable timeframe following the approval of the Monitor by the Director and continuing until the Progress Report Termination, and as specified in the Plan, conduct a review and/or testing of all marketing materials used by the Firm (including its dealing representatives), to ensure the Firm removes any unsubstantiated and/or misleading statements, that such marketing materials are balanced and contain adequate disclosures, and that the Firm maintains supporting documentation for all marketing claims (the **Marketing Review**);
- g. commencing within a reasonable timeframe following the approval of the Monitor by the Director and continuing until the Progress Report Termination, and as specified in the Plan, conduct a review and/or testing of all know-your-product and due diligence materials prepared and/or used by the Firm in respect of exempt market securities being sold, or under consideration for sale, with special attention to the Firm's evaluation of the risk of each exempt market security reviewed (the **KYP Review**);
- h. commencing within a reasonable timeframe following the approval of the Monitor by the Director and continuing until the Progress Report Termination, and as specified in the Plan, conduct a review and/or testing of (i) the Firm's internal controls for identifying, assessing and responding to conflicts of interest, (ii) the Firm's assessment and response to the conflicts of interest it has identified, including the disclosure of conflicts of interest in the Firm's relationship disclosure information document, and (iii) the Firm's preparation and delivery to its clients of COI Disclosure (as defined below) to ensure it includes all required information that a reasonable client would want to be informed of and that all required clients have been provided with this disclosure by August 31, 2017 (the **COI Review**);
- i. commencing within a reasonable time following the approval of the Monitor by the Director and continuing until the Progress Report Termination, and as specified in the Plan, conduct a review and/or testing of exempt market securities sales by the Firm where the client's total investment in exempt market securities exceeds specified concentration thresholds (the **Concentrated Trade Review**) as follows:
 - i. the Monitor shall review each such sale where the Concentration Level (as defined below) of the client (determined after the sale) is equal to or greater than 25% to opine whether the trade was properly assessed for suitability in accordance with Alberta securities laws and, once the Plan is implemented, the Plan;

- ii. the Monitor shall review a reasonable sample size, as specified in the Plan, of all sales where the Concentration Level (as defined below) of the client (determined after the sale) is greater than 10% but less than 25% to opine whether the trade was properly assessed for suitability in accordance with Alberta securities laws and, once the Plan is implemented, the Plan.

For the purposes of the terms and conditions provided herein, **Concentration Level** means, in respect of a client, the quotient (expressed as a percentage) determined by dividing (i) the total amount of such client's investment in exempt market securities (including securities sold by the Firm and acquired by the client from other sources), by (ii) the amount of such client's net financial assets. Concentration Levels shall be reasonably determined based on an adequate collection and documentation of know your client information, including asking clients to confirm total exempt securities acquired by clients from sources other than the firm; and

- j. subject to the provisions of paragraph 10 below, conduct a minimum of two Annual Reviews (as defined below) and submit an Annual Report (as defined below) in respect of each Annual Review, all in accordance with the requirements of paragraph 5 below.
2. Prior to the approval of the Monitor by the Director, the Firm shall not complete the sale of any security to any client if the client has, or after the sale would have, a Concentration Level exceeding 25%.
 3. Following the approval of the Monitor by the Director and continuing until the Progress Report Termination, the Firm will report to the Monitor all sales of any security to any client where the client's Concentration Level (determined after the sale) exceeds 10%. The Firm will also provide all account and trade documentation requested by the Monitor to enable the Monitor to conduct the Concentrated Trade Review.
 4. The Firm shall:
 - a. ensure its relationship disclosure information document includes written disclosure of existing conflicts of interest for all products from issuers related or connected to the Firm that are being distributed by the Firm as of June 30, 2017 (the **COI Disclosure**). The information in the relationship disclosure document must include any conflicts of interest that were identified in the Compliance Report which continue to exist;
 - b. if requested by the Monitor, review and amend the COI Disclosure; and
 - c. ensure the relationship disclosure information document that contains the COI Disclosure, including any changes requested by the Monitor if applicable, has been delivered by August 31, 2017 to all investors who have purchased

investments in products covered by the COI Disclosure as of that date. The Firm must retain evidence of the delivery of this information.

5. Following the Progress Report Termination:
 - a. subject to the provisions of paragraph 10 below, the Firm shall be subject to a minimum of two annual reviews conducted by the Monitor (**Annual Reviews**, and individually an **Annual Review**), each covering a one year period, and the Monitor shall in respect of each Annual Review submit to the Director a written compliance report (an **Annual Report**) setting out the results of such Annual Review, including any deficiencies identified;
 - b. the first Annual Review shall assess the Firm's compliance with Alberta securities laws for the one year period ending on the last day of the calendar month immediately preceding the calendar month in which the Progress Report Termination occurs, and the Annual Report for the first Annual Review shall be submitted to the Director within four months following the Progress Report Termination; and
 - c. subject to the provisions of paragraph 10 below, the second Annual Review shall assess the Firm's compliance with Alberta securities laws for the one year period commencing on the first day immediately following the end of the one year period covered by the first Annual Review, and if any subsequent Annual Reviews are required, each such subsequent Annual Review shall assess the Firm's compliance with Alberta securities laws for the one year period commencing on the first day immediately following the end of the one year period covered by the immediately preceding Annual Review. The Annual Report for the second Annual Review and each subsequent Annual Review that is required shall be submitted to the Director within four months following end of the one year period covered by such Annual Review.
6. The Firm must provide the Monitor with access to its premises, directors, officers, employees, consultants, dealing representatives, and all records and other information the Monitor may require, and will otherwise co-operate fully with the Monitor in every respect.
7. The Firm must, at the time the Monitor is retained, provide a written direction to the Monitor authorizing the Monitor to provide the ASC with unrestricted access to the Monitor including any and all documentation compiled and prepared by the Monitor.
8. The Firm understands and acknowledges that ASC staff expect substantial progress towards the rectification of deficiencies outlined in the Compliance Report and identified during the Review, and towards the implementation of the Plan, which must be demonstrated in each of the Progress Reports and the Annual Reports. The Firm also understands and acknowledges that it is the Firm's responsibility to ensure that

substantial progress is made and that the Firm must ultimately be able to evidence its understanding of and compliance with Alberta securities laws.

9. The Monitor must remain in place until the terms and conditions relating to the Monitor are removed from the Firm's registration. Subject to the provisions of paragraph 10 below, the terms and conditions relating to the Monitor will be reviewed by staff of the ASC following the receipt of the second Annual Report. For greater clarity, the terms and conditions will not be removed until the Firm has demonstrated the resolution of all the deficiencies identified in the Compliance Report, the Plan, the first Annual Report, the second Annual Report and, if required, each subsequent Annual Report, in addition to being able to evidence its understanding of and compliance with Alberta securities laws.
10. Within sixty days following the Monitor's submission of the Annual Report to the Director relating to the first Annual Review, the Firm may request in writing, through ASC staff, that the Executive Director remove or revise the terms and conditions. If the Firm makes this request, ASC staff may conduct such further review of the Firm's operations and any documentation requested by ASC staff and will determine whether:
 - a. all the deficiencies identified in the Compliance Report, the Plan, and the first Annual Report have been satisfactorily resolved and rectified, and
 - b. the Firm has demonstrated proficient understanding and execution of its obligations as a registrant under Alberta securities laws.

In connection with such review by ASC staff, if ASC staff are not satisfied that these conditions have been met and they will not recommend the removal of these terms and conditions, then the Firm shall be obligated to pay the fees prescribed by section 58(5) of the *Securities Act* (Alberta), as amended (the **Act**), on the same basis as if such review was an examination conducted pursuant to section 58 of the Act, such fees being as specified in sections 43(1) and 43(2) of Alberta Securities Commission Rule 13-501 *Fees*.

If ASC staff are satisfied that these conditions have been met based on such review, they will recommend in writing that the Executive Director remove these terms and conditions from the Firm's registration. In such circumstances, ASC staff will waive any fees associated with such review conducted by ASC staff prescribed by section 58(5) of the Act, or otherwise.

The Firm acknowledges that it has sought independent legal advice and that it has voluntarily given its consent to the terms and conditions provided herein.

The Firm acknowledges that pursuant to section 76(3) of the Act the Firm is entitled to an opportunity to be heard before the imposition of the terms and conditions. The Firm hereby waives its right to be heard under section 76(3) of the Act.

The Firm acknowledges that this document may be referred to in any other proceedings under the Act, and in securities regulatory proceedings in other jurisdictions.

The Firm acknowledges that any breach of these terms and conditions violates the Act and is sufficient cause for an immediate hearing before the Executive Director.

Signed this 5 of June, 2017 in the Province of Alberta.

Rick Couronne

Name

UDP, CEO & President

Title

Privest Wealth Management Inc.

Firm