Ontario Securities Commission | Commission des valeurs mobilières de l'Ontario | 22nd Floor, 20 Queen Street West, Toronto ON M5H 3S8 | 22e étage, 20, rue Queen Ouest, Toronto ON M5H 3S8

Citation: AlphaNorth Asset Management (Re), 2019 ONSEC 10
Date: 2019-02-19
File No.: 2019-3

IN THE MATTER OF
ALPHANORTH ASSET MANAGEMENT
and STEVEN DOUGLAS PALMER

ORAL REASONS FOR APPROVAL OF A SETTLEMENT
(Sections 127 and 127.1 of the *Securities Act*, RSO 1990, c S.5)

Hearing:	February 19, 2019	
Decision:	February 19, 2019	
Panel:	Timothy Moseley	Vice-Chair and Chair of the Panel
Appearances:	Christina Galbraith	For Staff of the Commission
	Laura Paglia	For AlphaNorth Asset Management and Steven Douglas Palmer

REASONS AND DECISION

The following reasons have been prepared for publication in the Ontario Securities Commission Bulletin, based on the reasons delivered orally at the hearing, and as edited and approved by the Panel, to provide a public record.

[1] Staff of the Commission has made various allegations against AlphaNorth Asset Management and its President and CEO, Steven Douglas Palmer. The purpose of today's hearing is to consider a settlement agreement between Staff and the respondents relating to those allegations.

[2] The factual background is set out in detail in the settlement agreement, so I will not repeat it here. To summarize, AlphaNorth is an Ontario general partnership that is registered with the Commission as an investment fund manager, portfolio manager and exempt market dealer. Mr. Palmer is a founding partner of AlphaNorth and is registered with the Commission as AlphaNorth's Ultimate Designated Person.

[3] AlphaNorth is the investment fund manager and portfolio manager of the AlphaNorth Growth Fund and the AlphaNorth Resource Fund. In 2016 and 2017, AlphaNorth implemented certain changes that resulted in AlphaNorth being paid performance fees that it was not entitled to collect, with respect to those two funds.

[4] AlphaNorth's actions resulted in a number of breaches of Ontario securities law.

[5] AlphaNorth should have brought the proposed changes to the Investment Review Committee of the two funds. It did not, and its failure to do so was a breach of NI 81-107.[1] AlphaNorth should also have brought the proposed changes to fund shareholders for approval. It did not, and its failure to do that was a breach of NI 81-102.[2] AlphaNorth failed to make proper disclosure regarding the changes it had made, contrary to sections 56 and 57 of the *Securities Act*[3] and NI 81-106.[4]

[6] AlphaNorth admits that it did not exercise the necessary degree of care, diligence and skill that an investment fund manager is required to exercise, and thereby contravened paragraph 116(b) of the Act. Finally, AlphaNorth failed to maintain adequate internal controls and compliance systems, contrary to subsection 32(2) of the Act and NI 31-103.[5]

[7] Because Mr. Palmer authorized and permitted AlphaNorth's non-compliance, he is deemed by section 129.2 of the Act to have not complied with Ontario securities law. He also failed to meet his obligations as Ultimate Designated Person of AlphaNorth, contrary to NI 31-103.

[8] The settlement agreement sets out a number of mitigating factors. I will not repeat all of them. I will highlight that AlphaNorth and Mr. Palmer made the changes while at the same time attempting to be fair and reasonable to the fund

---

[1] National Instrument 81-107 *Independent Review Committee for Investment Funds* (**NI 81-107**)
[2] National Instrument 81-102 *Investment Funds* (**NI 81-102**)
[3] RSO 1990, c S.5 (the **Act**)
[4] National Instrument 81-106 *Investment Fund Continuous Disclosure* (**NI 81-106**)
[5] National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (**NI 31-103**)

shareholders. After the problems surfaced, AlphaNorth and Mr. Palmer worked expeditiously to rectify the issues, and to fully compensate the funds and their shareholders. AlphaNorth has addressed its compliance issues.

[9] Staff and the respondents have agreed to various sanctions and other measures, and to the payment of costs by AlphaNorth. While the terms of the settlement have been agreed to by the parties, I must decide whether the settlement should be approved.

[10] The principal terms of the settlement are as follows:

a. AlphaNorth is to pay an administrative penalty of $147,000, half of which has been paid, with the balance to be paid in quarterly instalments;

b. Mr. Palmer is required to pay, and has now paid, an administrative penalty of $100,000;

c. AlphaNorth is required to pay $10,000 in costs, which amount has now been paid; and

d. the respondents are to be reprimanded.

[11] As a term of his registration, Mr. Palmer must also complete an educational program in regulatory compliance and risk management within one year. Finally, AlphaNorth has undertaken not to increase its fees or take any other steps that would result in its clients sharing the burden of this settlement.

[12] The Commission's role at a settlement hearing is to determine whether the negotiated result falls within a range of reasonable outcomes, and whether it would be in the public interest to make the order requested.

[13] I have reviewed this settlement in detail, and I recently conducted a confidential settlement conference with counsel for all parties. I asked questions of counsel and heard their submissions. With the benefit of that session and my review, I conclude that it would be in the public interest to approve this settlement.

[14] In making that decision, I recognize that the agreement is the product of negotiation between Staff and the respondents, all ably represented by counsel. The Commission respects the negotiation process and accords significant deference to the resolution reached by the parties.

[15] I have also taken account of the fact that approval of this settlement would resolve the matter promptly, efficiently and with certainty. A settlement avoids the expenditure of significant resources that would be associated with a contested hearing.

[16] In my view, the terms of the settlement properly reflect the principles applicable to sanctions, including:

a. the recognition of the seriousness of misconduct;

b. the importance of fostering investor protection and confidence in the capital markets; and

c. the need for specific and general deterrence.

[17] The payment of costs helps to reduce the burden on market participants to pay for investigations and enforcement proceedings.

[18] I will therefore issue an order substantially in the form of the draft attached to the settlement agreement.

Dated at Toronto this 19th day of February, 2019.

"*Timothy Moseley*"
Timothy Moseley