



Ontario
Securities
Commission

Commission des
valeurs mobilières
de l'Ontario

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**IN THE MATTER OF THE *SECURITIES ACT*
R.S.O. 1990, c. S.5, AS AMENDED**

- AND -

**IN THE MATTER OF DANIEL STERNBERG, PARKWOOD GP INC.
AND PHILCO CONSULTING INC.**

**STATEMENT OF ALLEGATIONS
OF STAFF OF THE ONTARIO SECURITIES COMMISSION**

Staff of the Ontario Securities Commission (the "Commission") make the following allegations:

I. OVERVIEW

1. During the period May 2004 to June 2011 (the "Material Time"), Daniel Sternberg ("Sternberg") and Philco Consulting Inc. ("Philco") engaged in advising without being registered to advise in securities contrary to the *Securities Act*, R.S.O. 1990, c.S.5 as amended (the "Act") and contrary to the public interest.
2. During the Material Time, Sternberg and Parkwood GP Inc. ("Parkwood GP") traded in securities without registration when an exemption was not available to them contrary to the Act and contrary to the public interest.
3. Sternberg and Parkwood GP also acted contrary to the public interest by breaching undertakings made to Staff on January 15, 2010.

II. BACKGROUND

4. Sternberg is a resident of Toronto, Ontario.
5. Sternberg is the sole shareholder, officer and director of Parkwood GP. Parkwood GP is an Ontario company incorporated on March 12, 2004.

6. Parkwood GP is the general partner of the Parkwood Limited Partnership Fund (the “Fund”), a limited partnership formed under the *Limited Partnerships Act*, R.S.O. 1990, c. L.16, on May 1, 2004.
7. Pursuant to an advisory agreement dated May 1, 2004, Parkwood GP retained Eosphoros Asset Management Inc. (“EAM”), an Ontario corporation, to act as the advisor to the Fund.
8. Commencing in March 2004, EAM was registered under the Act as an adviser in the category of investment counsel and portfolio manager, which transitioned to the category of portfolio manager on September 28, 2009. On April 22, 2005, EAM also became registered as a dealer in the category of limited market dealer, which transitioned to the category of exempt market dealer on September 28, 2009. EAM also became registered as an investment fund manager on September 29, 2010.
9. During the Material Time, EAM paid consulting fees to Philco for services provided by Philco in relation to the Fund. Philco is an Ontario company incorporated on October 1, 2003. Sternberg is the sole shareholder, officer and director of Philco.
10. Parkwood Investment Management Inc. (“Parkwood IM”) is an Ontario company incorporated on June 9, 2010. Sternberg is the sole shareholder, officer and director of Parkwood IM.
11. On or about July 5, 2010, Parkwood IM made an application to the Commission for registration as an adviser in the category of portfolio manager and as a dealer in the category of exempt market dealer. Parkwood IM also made an application for registration as an investment fund manager on or about September 7, 2010.
12. On or about August 5, 2010, Sternberg made an application to the Commission for registration as the ultimate designated person, chief compliance officer, advising representative and dealing representative of Parkwood IM.
13. None of Sternberg, Philco or Parkwood GP was registered with the Commission in any capacity during the Material Time.

The Offering Memorandums

14. During the Material Time, the Fund used two Offering Memorandums; one was used from May 2004 to April 2010 (“OM1”); a second, dated April 30, 2010 (“OM2”), was used thereafter (together the “OMs”). Parkwood GP was identified as the Promoter to the Fund in OM2. According to the OMs, the Fund was required to pay Parkwood GP:

- (a) a management fee, payable monthly in arrears, at an annual rate of 2% of the Net Asset Value of the Fund, plus GST or HST, as applicable (the “Management Fee”);
- (b) a 20% performance fee calculated and accrued monthly and payable annually in accordance with a formula set out in the OMs and a 5% additional performance fee calculated and paid annually in accordance with a formula set out in the OMs (collectively, the “Performance Fees”).

15. The OMs also provided that Parkwood GP would engage EAM or such other qualified and registered portfolio manager as selected by Parkwood GP as the investment advisor to the Fund (the “Advisor”).

16. OM1 stated that Philco would act as a consultant to the Advisor. OM2 did not refer to Philco or a consultant to the Advisor.

A. Advising Without Registration

17. During the period from May 2004 to April 30, 2010 (the “Consulting Period”), Parkwood GP remitted the Management Fees and Performance Fees paid by the Fund to EAM. EAM subsequently remitted the majority of the Management Fees and Performance Fees, between approximately 85% to 95% of these fees, to Philco for consulting services (the “Services”). The percentage of the fees paid to Philco increased over the course of the Consulting Period.

18. During the Consulting Period, Sternberg, as the sole officer and director of Philco, provided the Services. In providing the Services, Sternberg assisted EAM in providing advisory services to and in making investment decisions for the Fund, thereby engaging in the business of advising the Fund with respect to investing in, buying or selling securities.

19. Neither Philco nor Sternberg was registered as an adviser during the Consulting Period.
20. In June, 2009, Staff of the Compliance and Registrant Regulation Branch conducted a compliance review of the Fund as part of its hedge fund sweep. Staff communicated to Sternberg in writing on December 14, 2009 (the “Deficiency Report”) that in providing the Services, Philco and Sternberg were engaging in advising without registration.
21. On January 15, 2010, Sternberg signed and submitted a letter to Staff (the “January 2010 Response”) indicating that while he disagreed that, in providing the Services, Philco had been engaging in advising without registration, Philco would cease to act as a consultant to EAM and that Sternberg would apply for registration as an associate advising representative of EAM.
22. On April 30, 2010, Sternberg signed and submitted a letter to Staff “confirming” that Philco had “ceased acting as a consultant to [EAM] in respect of the Fund or otherwise” and stating that Sternberg and Parkwood GP were in the process of determining how to proceed and that he would apply for registration as an associate advising representative of EAM or as the advising representative of a new portfolio manager for the Fund. The letter was accompanied by a copy of OM2.
23. During the period from April 30, 2010 to June, 2011 (the “Post-Consulting Period”), Sternberg continued to assist EAM in providing advisory services to and in making investment decisions for the Fund, thereby engaging in the business of advising the Fund with respect to investing in, buying or selling securities, without being registered as an adviser.
24. During the Post-Consulting Period, Parkwood GP retained the Management Fees and Performance Fees paid by the Fund, and deferred paying fees to EAM, which remained the contractual portfolio manager to the Fund. The Fund paid approximately \$1.02 million in Management Fees for the period of April 2010 to May 2011 and \$1.5 million in Performance Fees to Parkwood GP, of which the \$1.5 million was paid to Sternberg as a dividend on February 1, 2011 (for 2011) and invested by him in the Fund and \$350,000 was paid to Sternberg as a dividend on April 15, 2011 (for 2010). Parkwood subsequently paid approximately 5% of the Management Fees and Performance Fees for the Post-Consulting Period to EAM.

25. Sternberg's activities during the Post-Consulting Period were indistinguishable from his activities during the Consulting Period.

B. Trading Without Registration

26. During the Material Time, Sternberg and Parkwood GP distributed limited partnership units of the Fund to investors, when they were not registered with the Commission and when an exemption from registration was not available to them under the Act. In December, 2009, when the Deficiency Report was received, there were approximately 39 holders of limited partnership units of the Fund.

27. In the Deficiency Report, Staff communicated to Sternberg in writing that such trading activities required Parkwood GP to be registered as an exempt market dealer under the Act.

28. The January 2010 Response to Staff stated that to the extent that Parkwood GP had been involved in the distribution of units of the Fund "all such dealing activity will cease and all units will be distributed by properly registered dealers in the Province of Ontario in reliance on the exemption from registration in Section 8.5 of National Instrument 31-103."

29. Sternberg and/or Parkwood GP subsequently made eleven sales of limited partnership units of the Fund to investors in 2010, none of which were distributed by properly registered dealers.

C. Undertakings To Staff

30. The statements in the January 2010 Response described in paragraphs 21 and 28 above constituted undertakings to Staff (the "Undertakings"). The conduct during the Post-Consulting period described in paragraphs 23 to 25 and the sales of units described in paragraph 29 breached the Undertakings.

III. STAFF'S ALLEGATIONS - Conduct Contrary to Ontario Securities Law and Contrary to the Public Interest

31. The specific allegations advanced by Staff are:

- (a) Sternberg and Philco engaged in advising without being registered to advise in securities contrary to subsection 25(1)(c) of the Act (as that subsection existed prior to September 28, 2009) and, after September 28, 2009, engaged in the business of advising in securities without registration contrary to subsection 25(3) of the Act and contrary to the public interest;
- (b) Sternberg and Parkwood GP traded in securities of the Fund without registration when an exemption was not available to them contrary to subsection 25(1)(a) of the Act (as that subsection existed prior to September 28, 2009) and, after September 28, 2009, engaged in the business of trading in securities of the Fund without registration contrary to subsection 25(1) of the Act and contrary to the public interest; and
- (c) Sternberg and Parkwood GP also acted contrary to the public interest by breaching the Undertakings.

32. Staff reserve the right to make such other allegations as Staff may advise and the Commission may permit.

Dated at Toronto this 24th day of April, 2012