



Ontario Commission des
Securities valeurs mobilières
Commission 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 POLLITT INVESTMENT COUNSEL INC.

DECISION OF THE DIRECTOR

Having reviewed and considered the agreed statement of facts, the admissions by Pollitt Investment Counsel Inc. (**PIC**), and the joint recommendation to the Director by PIC and Compliance and Registrant Regulation Branch of the Ontario Securities Commission (**CRR Branch**) contained in the settlement agreement signed by Douglas Pollitt on behalf of PIC on December 15, 2023, by Kevin Richard, Counsel for PIC, on December 18, 2023 and by Michael Denyszyn, Manager, CRR Branch, on December 18, 2023 (the **Settlement Agreement**), a copy of which is attached as Appendix "A" to this Decision, and on the basis of those agreed facts and admissions, I, Debra Foubert, in my capacity as Director under the *Securities Act*, R.S.O. 1990, c. S.5 (the **Act**), accept the joint recommendation of the parties, and make the following decision:

1. The registration of PIC is suspended pursuant to s. 28 of the Act effective from the date of this decision (the **Effective Date**), and PIC will not apply for reactivation of registration for a period of at least six-months from the Effective Date unless there is a proposed material change in its ownership.

2. In case there is a proposed material change in ownership, PIC may apply for reactivation of registration before six months end subject to satisfying the requirements under sections 11.9 and 11.10 of NI 31-103. CRR Branch will conduct due diligence on the combined entity of the acquiring party and PIC as if the combined entity were a new applicant for registration unless the acquiring party is already a registered firm in the portfolio manager category.
3. The remaining transfers of client accounts will be completed by January 2024.
4. If PIC applies for reactivation of registration after six months, the CRR Branch will review PIC's suitability for registration and whether its registration would be objectionable.
5. This Settlement Agreement will be published on the website of the Ontario Securities Commission and in the OSC Bulletin.

December 19, 2023

Date

"Debra Foubert"

Debra Foubert

Appendix “A”

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

- and -

IN THE MATTER OF POLLITT INVESTMENT COUNSEL INC.

SETTLEMENT AGREEMENT

I. INTRODUCTION

1. This settlement agreement (the **Settlement Agreement**) between the Compliance and Registrant Regulation Branch (**CRR Branch**) of the Ontario Securities Commission (**OSC**) and Pollitt Investment Counsel Inc. (**PIC**) relates to CRR Branch’s recommendation to the Director that PIC’s registration be suspended pursuant to s. 28 of the *Securities Act*, R.S.O. 1990, c. S.5 (the **Act**).

2. It is a central requirement that Investment Fund Managers and Portfolio Managers comply with securities law. PIC has failed to comply with the requirement in National Instrument 31-103 *Registration Requirements, Exemptions, and Ongoing Registrant Obligations* (**NI 31-103**) to deliver audited annual financial statements to the OSC. PIC has also failed to designate an ultimate designated person (**UDP**) pursuant to s. 11.2 of NI 31-103. Although PIC proposed an applicant in the category of chief compliance officer (**CCO**) and the applicant’s principal regulator continued to consider the application, the application was not approved and was withdrawn.

3. As a result, the CRR Branch has recommended to the Director that PIC’s registration as a portfolio manager be suspended. Pursuant to section 31 of the Act, PIC would be entitled to an opportunity to be heard (an **OTBH**) in respect of CRR Branch’s recommendation. However, in lieu

of an OTBH, the CRR Branch and PIC have agreed to make a joint recommendation to the Director regarding PIC's registration, as more particularly described in this Settlement Agreement.

II. AGREED STATEMENT OF FACTS

4. CRR Branch and PIC agree as to the following facts.
5. PIC was registered under the Act as an investment fund manager from September 2013 until May 1, 2023. PIC has been registered as a portfolio manager since September 2009 and offers discretionary and non-discretionary portfolio management services to its clients.
6. The firm is located in Toronto, Ontario.
7. PIC's financial year end is May 31.

A. Compliance Review of PIC

8. CRR Branch conducted a compliance review of PIC, which commenced on June 1, 2021 (the **Compliance Review**). The Compliance Review identified a number of deficiencies in PIC's compliance with Ontario securities law, which are set out in a Compliance Field Review Report dated January 10, 2023 (the **Report**). Yvan Gregoire was registered as the Chief Compliance Officer (**CCO**) and the UDP of PIC since 2009. CRR Branch invited Mr. Gregoire to discuss the deficiencies identified in the Report.
9. On January 20, 2023, the Director issued a summons to Mr. Gregoire pursuant to s. 33.1 of the Act (the **Summons**). The Summons required Mr. Gregoire, on behalf of PIC, to attend an examination under oath by a person appointed by the Director at a specified time and place (the

Proposed Examination). However, Mr. Gregoire did not make himself available to attend the Proposed Examination.

B. Failure to Designate a CCO and a UDP

10. Instead, PIC submitted a Notice of End of Individual Registration in respect of Mr. Gregoire on February 15, 2023 and informed CRR Branch that Mr. Gregoire had resigned his position at PIC.

11. Accordingly, since February 15, 2023, no CCO and UDP have been registered on behalf of PIC, contrary to s. 11.2 and 11.3(1) of NI 31-103.

12. On March 7, 2023, PIC submitted a request for a predetermination application for an interim CCO in the portfolio manager category. On April 18, 2023, the CRR Branch advised PIC that it was of the opinion that the education and experience qualified the applicant as an interim CCO in the portfolio manager category.

13. On April 28, 2023, PIC submitted an application to register its interim CCO through the National Registration Database, which is now withdrawn.

14. On May 1, 2023, PIC surrendered its IFM registration because PIC was unable to identify a proficient CCO applicant for the IFM category.

15. PIC has been without a CCO and a UDP since February 15, 2023.

C. Failure to Submit Audited Financial Statements

16. Subsection 12.12(1) of NI 31-103 requires portfolio managers, like PIC, to deliver to the OSC their audited annual financial statements and a completed Form 31-103F1 Calculation of Excess

Working Capital (a **Form F1**) as at the end of their financial year within 90 days of the end of that financial year.

17. On August 29, 2022, PIC was late in delivering its audited financial statements and Form F1 for its financial year ending May 31, 2022.

18. PIC has not submitted the audited financial statements to the CRR Branch that were due August 29, 2022.

19. Subsection 12.1(2) of NI 31-103 provides that the excess working capital of a registered firm, as calculated in accordance with Form F1, must not be less than zero for two consecutive days. PIC has failed to comply with these provisions. PIC was deficient in meeting the minimum capital requirements in subsection 12.1 of NI 31-103 by \$58,412 based on the draft financial statements as of May 31, 2022. PIC was able to demonstrate on March 22, 2023 that it had rectified the capital deficiency. On March 27, 2023, CRR Branch imposed terms and conditions on PIC's registration, as is typically the case once an identified capital deficiency is rectified.

D. Recommendation to Suspend

20. By letter dated June 1, 2023, CRR Branch advised PIC, that it recommended that the firm's registration be suspended for failure to comply with the requirements in NI 31-103 to deliver audited financial statements and to designate a UDP.

III. JOINT RECOMMENDATION TO THE DIRECTOR

21. The parties jointly recommend to the Director that PIC's registration be suspended pursuant to s. 28 of the Act, subject to the following:

(a) The registration of PIC shall be suspended, pursuant to section 28 of the Act effective the date the Director approves this Settlement Agreement, and PIC will not reapply for registration under the Act in any category for a period of at least six months from that date unless there is a proposed material change in its ownership;

(b) In case there is a proposed material change in ownership, PIC may reapply for registration before six months subject to satisfying the requirements under sections 11.9 and 11.10 of NI 31-103. PIC acknowledges that in the event of a material change in ownership, the CRR Branch will conduct the due diligence on the combined entity of the acquiring party and PIC as if the combined entity were a new applicant for registration, unless the acquiring party is already a registered firm in the portfolio manager category.

(c) PIC submits that except two client accounts, all of PIC's clients' accounts have been transferred to other registrants. The client residing in the US is in the process of an account transfer to another registered firm in the US which will be completed by January 2024. The client residing in Canada is in the process of account transfer which will be completed in December 2023. Both clients have no registrable activities and will not require any advice from PIC until their account transfers are completed.

(d) If PIC reapplies for registration after six months, the CRR Branch will review PIC's suitability for registration and whether its registration otherwise would be objectionable.

22. CRR Branch and PIC acknowledge that if the Director does not accept this Joint Recommendation:

(a) this joint recommendation and all discussions and negotiations between CRR Branch and PIC in relation to this matter shall be without prejudice to the parties; and

- (b) PIC will be entitled to an OTBH in accordance with section 31 of the Act in respect of any recommendation that may be made by CRR Branch regarding its registration status.

23. PIC waives its right to an opportunity to be heard under s. 31 of the Act, and its right to a hearing and review under s. 8 of the Act, in connection with this decision of the Director to suspend its registration for the reasons described herein.

24. The parties agree that this Joint Recommendation, and any Director's decision approving of it, will be published on the OSC's website and in the OSC Bulletin.

“Michael Denyszyn”

Michael Denyszyn
Manager, Registrant Conduct
Compliance and Registrant Regulation

December 18, 2023

Date

“Douglas Pollitt”

Douglas Pollitt, on behalf of Pollitt
Investment Counsel Inc.

December 15, 2023

Date

“Kevin Richard”

Kevin Richard
Groia & Company Professional
Corporation, Counsel to Pollitt
Investment Counsel Inc.

December 18, 2023

Date