

ALBERTA SECURITIES COMMISSION

Citation: Re Northern Alliance Financial Corporation, 2020 ABASC 5 **Docket:** CFR-006913
Date: 20200107

COMPLIANCE SETTLEMENT AGREEMENT

Northern Alliance Financial Corporation

Regulatory Message

Section 110(1) of the *Securities Act*, R.S.A. 2000, c. S-4, as amended (*Act*) provides in part that no person or company is permitted to trade in a security if the trade would be a distribution of the security unless a preliminary prospectus and prospectus have been filed with and received by the Executive Director (**Prospectus Requirement**).

The Prospectus Requirement is a fundamental element of Alberta's securities regulatory regime. It is intended to protect investors by assisting them in making informed investment decisions based on reliable disclosure about an offered investment, the issuer and its promoters, and associated risks. A breach of the Prospectus Requirement deprives investors of this fundamental protection, exposing them to the risks of ill-informed investment decisions, undermines the fairness and efficiency of the capital market and jeopardizes confidence in that market.

Alberta securities laws recognize that not every securities transaction or every prospective investor requires these protections, and accordingly allows for certain exemptions from the Prospectus Requirement.

When relying on an exemption, an issuer distributing securities in Alberta must ensure that the exemption is available at the time of the distribution, and that all of the requirements of the relied-on exemption are met.

Agreed Facts

Introduction

1. Staff of the Alberta Securities Commission (**Staff** and **Commission**, respectively) conducted a review into Northern Alliance Financial Corporation (**Northern Alliance**) to determine if Alberta securities laws had been breached.

2. The review confirmed and Northern Alliance admits that it breached subsection 110(1) of the *Act* and that it acted contrary to the public interest.
3. Solely for securities regulatory purposes in Alberta and elsewhere, and as the basis for the settlement referred to in paragraph 21 and for no other use or purpose, Northern Alliance agrees to the facts and consequences set out in this Compliance Settlement Agreement (**Agreement**).
4. Terms used in this Agreement have the same meaning as provided in the Alberta securities laws, a defined term in the *Act*.

Party

5. Northern Alliance is a private company incorporated in British Columbia in 2014 with its head office located in Kelowna, British Columbia. It is a financial management company focused on the management and administration of mortgage investment entities and the provision of exempt market dealer services.
6. Northern Alliance currently acts as a manager and exempt market dealer for and on behalf of Northern Alliance Trust, a British Columbia based mortgage investment entity.
7. As Northern Alliance is a registered exempt market dealer, it can only engage in prospectus-exempt trades.
8. At all relevant times, Northern Alliance was aware of the requirements in National Instrument 45-106, *Prospectus and Registration Exemptions (NI 45-106)*.

Circumstances

9. Staff commenced a compliance review of Northern Alliance Forms 45-106F1 – *Report of Exempt Distribution* for the years ended December 31, 2016, 2017 and 2018, and the associated Schedule 1 filings, which contain information regarding the purchasers of Northern Alliance’s securities (the **Compliance Review**).
10. During the Compliance Review Staff advised Northern Alliance that they had identified a concern regarding a distribution.
11. Northern Alliance replied to Staff’s concern and advised:
 - 11.1 On February 6, 2019, Northern Alliance received a letter from an investor (**Investor A**), of Calgary, Alberta (the **February 6 Letter**), which read, in part:

...I’m investing more than \$30,000 and more than 10% of my net financial assets in an Exempt Market Product (Northern Alliance Trust). I know that this is higher than what is recommended by the Alberta Securities Commission.

- 11.2 Northern Alliance qualified Investor A as an eligible investor by virtue of Investor A having over \$400,000 in net assets.
 - 11.3 Northern Alliance provided Investor A with advice and recommendations about her maximum investment; Investor A continued to pursue an investment limit greater than that prescribed by the offering memorandum exemption (**OM Exemption**).
 - 11.4 Northern Alliance states that it erroneously believed that Investor A's February 6 Letter granted the investor an exemption from the eligible investor limit found in NI 45-106, section 2.9(2.1)(b)(iii).
 - 11.5 Northern Alliance did not make further inquiries into the legal and regulatory requirements for a distribution to Investor A in light of the above.
- 12. Pursuant to section 2.9(2.1)(b)(iii) Northern Alliance was exempt from having to file a prospectus provided that it ensured that Investor A purchased no more than \$100,000 in securities in a 12-month period, and Northern Alliance observed the other requirements of the OM Exemption.
 - 13. On February 27, 2019, Northern Alliance sold \$165,858 in securities to Investor A.
 - 14. At the time of the distribution, Northern Alliance sought to rely upon the eligible investor criteria for the OM Exemption and filed an exempt distribution report with the Commission for this distribution.
 - 15. By failing to comply with the limits prescribed in section 2.9(2.1)(b)(iii) NI 45-106, Northern Alliance was not entitled to rely upon the OM Exemption.

Admitted Breach of Alberta Securities Laws (Admitted Breach)

- 16. Based on the Agreed Facts, Northern Alliance admits it breached section 110(1) of the *Act* by distributing its securities without having filed and received a receipt for a preliminary prospectus or a prospectus, and without an exemption from that requirement.

Circumstances Relevant to Settlement

- 17. Northern Alliance acted in good faith and cooperated with the Commission during the review and with respect to this Agreement without the need for further review or a contested hearing.
- 18. Northern Alliance's breach did not result in any known investor losses.
- 19. The Commission has not previously sanctioned Northern Alliance.
- 20. The Agreement has saved the Commission the time and expense associated with a contested hearing under the *Act*.

Settlement

- 21. Based on the Admitted Facts and the Admitted Breach, Northern Alliance agrees to pay to the Commission a monetary settlement of \$5,000.

Administration

- 22. Northern Alliance acknowledges that it received independent legal advice and has voluntarily made the admissions in this Agreement.
- 23. Northern Alliance waives any right existing under the *Act*, or otherwise, to a hearing, review, judicial review or appeal of this matter.
- 24. Northern Alliance 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.
- 25. Execution and fulfillment of the terms of this Agreement resolves all issues involving Northern Alliance relating to the conduct described above, and Staff will take no further steps against him arising from these facts.
- 26. This Agreement may be executed in counterpart.

Signed by the duly authorized signatory of) Northern Alliance Financial Corporation
 Northern Alliance Financial Corporation)
 at Victoria, BC this 23 day of December)
 2019, in the presence of:)

 " *witness name* ")
 WITNESS NAME)

 " *Original signed by* ")
 SIGNATURE)

) Northern Alliance Financial Corporation
)
)
)
) Per: " *Original signed by* "
) David McKitrick
) Chief Executive Officer
) Northern Alliance Financial Corporation

) ALBERTA SECURITIES COMMISSION
)

Calgary, Alberta, 7 January 2020)

) " *Original signed by* "
) David C. Linder, Q.C.
) Executive Director