



Ontario  
Securities  
Commission

Commission des  
valeurs mobilières  
de l'Ontario

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**IN THE MATTER OF  
MOSKOWITZ CAPITAL MANAGEMENT INC.  
and BRIAN MOSKOWITZ**

**STATEMENT OF ALLEGATIONS**

(Subsection 127(1) and Section 127.1 of the *Securities Act*, RSO 1990, c S.5)

**A. OVERVIEW**

1. Strong housing prices and low interest rates in traditional investment products such as GICs and annuities have fueled interest in real estate securities in the exempt market over the last decade. As investor interest in these investments has increased, it has become even more critical that mortgage investment entities (**MIEs**) and others offering these investments comply with their obligations under Ontario securities law in order to ensure adequate protection for investors and promote confidence in Ontario's capital markets.

2. Moskowitz Capital Management Inc. (**MCMI**) is a mortgage broker and administrator based in Ontario. During the Material Time, MCMI distributed preferred shares in the MIEs under its management to investors without first obtaining registration as a dealer as required under Ontario securities law. MCMI raised approximately \$32 million from these distributions to 113 investors in the exempt market. In doing so, MCMI engaged in the business of trading in securities without being registered as a dealer, contrary to subsection 25(1) of the *Securities Act*, RSO 1990, c S.5 (the **Act**).

3. Brian Moskowitz (**Moskowitz**) founded MCMI and has been its directing mind since inception. Moskowitz authorized and permitted MCMI's unregistered dealing activities and, as a result, breached Ontario securities law pursuant to section 129.2 of the Act.

4. Registration is a cornerstone of Ontario securities law. The registration requirement serves an important gate-keeping function by ensuring that only properly qualified and suitable persons are permitted to engage in the business of trading securities with the public. Registrants under the Act are subject to a robust regulatory regime that requires applicants to submit to a detailed application process for registration as well as to ongoing oversight by the Commission and other important safeguards designed to protect investors.

5. The Canadian Securities Administrators (**CSA**) released CSA Staff Notice 31-323 *Guidance Relating to the Registration Obligations of Mortgage Investment Entities* in 2011 to clarify the registration requirements that apply to MIEs in each of the CSA Jurisdictions. Since that time, the Commission has continued to communicate these requirements to the industry including through news releases, industry outreach and enforcement actions. Staff will continue to take appropriate action against MIEs that fail to comply with their obligations under Ontario securities law.

## **B. FACTS**

Staff of the Enforcement Branch (**Enforcement Staff**) of the Ontario Securities Commission (the **Commission** or **OSC**) make the following allegations of fact:

### **UNREGISTERED TRADING**

6. MCMI is a licensed mortgage brokerage and mortgage administrator based in Toronto. Between June 2009 and April 2019 (the **Material Time**), MCMI distributed preferred shares in the MIEs under its management to investors without obtaining dealer registration as required under Ontario securities law.

7. MCMI manages the Moskowitz Capital Mortgage Fund II Inc. (**MCM Fund II**). MCMI originates, structures, underwrites and funds residential and commercial mortgages on behalf of MCM Fund II, in Atlantic Canada, Ontario, Alberta and Saskatchewan. In order to fund these mortgages, MCMI primarily raises capital from investors in the exempt market.

8. During the Material Time, MCMI directly raised approximately \$31.7 million from 113 investors through the distribution of preferred shares of Moskowitz Capital Mortgage Fund Inc. (**MCM Fund I**) and MCM Fund II (together, the **MCM Funds**).<sup>1</sup> These distributions were all made pursuant to the accredited investor exemption from the prospectus requirement under Ontario securities law. These distributions are the subject of this proceeding.

9. MCMI carried on its unregistered capital raising activities with repetition, regularity and continuity, raising an average of approximately \$3.2 million from 11 investors per year through these direct distributions.

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<sup>1</sup> MCM Fund I and MCM Fund II amalgamated on June 30, 2011.

10. MCMI provided slide decks to potential investors upon request that included historical performance information of the MCM Funds and testimonials from borrowers and investors, which amounted to solicitations to invest in the MCM Funds. MCMI also included this same information on its website during the Material Time.
11. MCMI has never been registered with the Commission.
12. As a result of the above, MCMI engaged in the business of trading in securities without being registered as a dealer under Ontario securities law.
13. Moskowitz is the President and sole director of MCMI and held these positions throughout the Material Time.
14. As MCMI's President, Moskowitz was responsible for engaging with investors in the MCM Funds and ultimately responsible for the content of MCMI's website and the slide decks provided to potential investors.
15. Moskowitz authorized and permitted MCMI's unregistered dealing activities and as a result is deemed to have breached Ontario securities law pursuant to section 129.2 of the Act.
16. During the Material Time, MCMI also raised capital for the MCM Funds from investors through the sale of preferred shares through registered investment dealers and exempt market dealers. Staff has not taken issue with these distributions.
17. In the spring of 2019, MCMI stopped the unregistered dealing activities, removed the statements deemed to be solicitations from its website and self-reported to the Commission. MCMI has since submitted an application for registration as an exempt market dealer to the Commission.

**C. BREACHES OF ONTARIO SECURITIES LAW AND CONDUCT CONTRARY TO THE PUBLIC INTEREST**

Enforcement Staff allege the following breaches of Ontario securities law and/or conduct contrary to the public interest:

18. MCMI engaged in or held itself out as engaging in the business of trading in securities, without being registered in accordance with Ontario securities law as a dealer, where no exemption to the registration requirement was available, contrary to subsection 25(1) of the Act;

19. Moskowitz authorized, permitted or acquiesced in MCMI's failure to comply with subsection 25(1) of the Act, contrary to section 129.2 of the Act; and
20. The Respondents acted in a manner contrary to the public interest.

**D. ORDER SOUGHT**

21. Enforcement Staff request that the Commission make an order pursuant to subsection 127(1) and section 127.1 of the Act to approve the settlement agreement dated February 17, 2021 between the Respondents and Enforcement Staff.
22. Enforcement Staff reserve the right to amend these allegations and to make such further and other allegations as Enforcement Staff may advise and the Commission may permit.

**DATED** this 17<sup>th</sup> day of February, 2021.

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**Staff of the Enforcement Branch**