



Ontario
Securities
Commission

Commission des
valeurs mobilières
de l'Ontario

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Citation: HRU Mortgage Investment Corporation (Re) 2022 ONSEC 6
Date: 2022-04-08
File No. 2022-10

**IN THE MATTER OF
HRU MORTGAGE INVESTMENT CORPORATION, HRU FINANCIALS LTD.,
YAU LING (PATRICK) LAM, QINGYANG (MICHAEL) XIA,
and ZICHAO (MARSHALL) LIANG**

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

Hearing: April 8, 2022

Decision: April 8, 2022

Panel: M. Cecilia Williams Commissioner and Chair of the Panel

Appearances: Sarah McLeod For Staff of the Commission
Adrienne Wong For HRU Mortgage Investment Corporation,
HRU Financials Ltd., Yau Ling (Patrick)
Lam, Qingyang (Michael) Xia, Zichao
(Marshall) Liang

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] Enforcement Staff of the Ontario Securities Commission (**Staff**), HRU Mortgage Investment Corporation (**HRUMIC**), HRU Financials Ltd. (**HRUFL**, jointly with HRUMIC, **HRU**), Yau Ling (Patrick) Lam (**Lam**), Qingyang (Michael) Xia (**Xia**) and Zichao (Marshall) Liang (**Liang**) (HRU, Lam, Xia and Liang are collectively the **Respondents**) have jointly submitted it is in the public interest to approve a settlement agreement among the parties dated March 30, 2022 (the **Settlement Agreement**).
- [2] I agree. These are my reasons for approving the Settlement Agreement.
- [3] The relevant facts and admissions, which are set out in detail in the Settlement Agreement, are:
- a. Between September 2017 and November 2020, HRUMIC, a mortgage investment entity (**MIE**) based in Ontario, and HRUFL, a related Ontario company that acts as manager for HRUMIC, raised approximately \$13 million CAD from 80 investors in the exempt market without being registered as a dealer.
 - b. Despite not being registered, HRU promoted itself as being registered and/or recognized by the Commission, made untrue statements about the registration of one of its directors, and made misleading statements as to its regulation by other Canadian regulators and supervisory bodies.
 - c. Lam, Xia and Liang are directors and officers of HRU and former registrants with the Commission. Lam, Xia and Liang engaged in the business of trading, were involved in the misleading and prohibited representations in HRU's marketing materials, and authorized and permitted HRU's breaches of Ontario securities law.
- [4] The breaches of Ontario securities law here are serious. The registration requirement is a cornerstone of the securities regulatory framework. It is an important gate-keeping mechanism that protects investors and the capital markets by imposing obligations of proficiency, integrity and solvency on those who seek to be engaged in the business of trading in securities with or on behalf of the public.
- [5] MIEs must be registered to engage in the business of trading in securities with the public. The Commission has communicated this message to the MIE industry for the past decade, through news releases, industry outreach and enforcement actions. When MIEs fail to comply with the registration requirement or promote that they are registered when they are not, they undermine this important gate-keeper function. When this conduct involves former registrants it is even more concerning.
- [6] I have considered, as a mitigating factor, that the Respondents cooperated with Staff during its investigation, the details of which are included in the Settlement Agreement.

- [7] I have also taken into consideration the fact that HRUMIC provided positive returns to investors during the Material Time, and HRU has received no complaints from investors. While HRUFL earned management fees from managing HRUMIC, it received no direct compensation from the sale of HRUMIC's preferred shares, and HRU paid no commission or other incentives in connection with the sale of HRUMIC's preferred shares.
- [8] The terms under which Staff and the Respondents have agreed to settle this matter are detailed in the Settlement Agreement and need not be repeated here. They include:
- a. a reprimand of all Respondents;
 - b. payment of an administrative penalty and costs by HRUFL and the individual respondents;
 - c. immediate resignation by the individual respondents from the director or officer positions they hold with a reporting issuer or registrant;
 - d. a 3-year ban on the individual respondents from acting as a director or officer of a reporting issuer or registrant, or becoming a promoter or a registrant; and
 - e. a requirement that, after the 3-year ban, the individual respondents successfully complete specified courses prior to applying to become a registrant, promoter, or an officer and/or director of a registrant or reporting issuer.
- [9] I have reviewed the Settlement Agreement in detail and have had the benefit of a confidential settlement conference, held by teleconference, with the parties' counsel. I asked questions of counsel and heard their submissions.
- [10] My obligation at this hearing is to determine whether the negotiated result reflected in the Settlement Agreement falls within a range of reasonable outcomes, and whether it would be in the public interest to approve the Settlement Agreement.
- [11] The Settlement Agreement is the product of negotiations between Staff and the Respondents. When considering settlements for approval, the Commission respects the negotiation process and accords significant deference to the resolution reached by the parties.
- [12] Approval of the Settlement Agreement would resolve the matter promptly, efficiently and with certainty. A settlement avoids the expenditure of significant resources that would be associated with a lengthy, contested merits hearing. Further, the Respondents' payment of the costs of the investigation appropriately recognizes that Staff were required to expend resources investigating and prosecuting this matter.
- [13] All of these factors weigh in favour of approving the Settlement Agreement. However, I must still be satisfied that doing so would have the necessary deterrent effect, both generally to all those who participate in Ontario's capital markets, and specifically to the Respondents.
- [14] The parties submit that the proposed financial sanctions, bans and reprimand reflect the misconduct of the individual respondents. Given their roles and

responsibilities as the directing minds of HRU and the aggravating factor of being former registrants, I agree.

- [15] Staff and the Respondents have agreed that HRUFL, Lam, Xia and Liang pay an administrative penalty of \$400,000, on a joint and several basis. This administrative penalty is consistent with the penalty in *Kuber Mortgage Investment Corporation (Re)*¹ and *Moskowitz Capital Management Inc. (Re)*². The Respondents in those cases were involved in unregistered trading within an MIE where there was no loss to investors. The total capital raised by HRU was smaller than the amounts raised in those cases, however, the proposed administrative penalty also reflects the additional breaches of the Act in this case and the aggravating factor of the directing minds of HRU being former registrants.
- [16] The Commission noted in *MRS Sciences Inc.*³ that former registrants are expected to have a high level of awareness of securities law requirements and their importance to the capital markets. In *MRS* the Commission also noted that the status of respondents as former registrants is an important consideration when imposing sanctions.
- [17] I find a reprimand of all the Respondents is appropriate, particularly considering that all the individual respondents are former registrants, and it is consistent with the recent MIE cases of *Kuber*, *Moskowitz* and *Clifton Black Asset Management Ltd.*⁴
- [18] I find the director/officer bans appropriate given that the individual Respondents are all former registrants. There were no bans in the previous MIE cases cited by Staff, but those cases did not involve former registrants or misrepresentations regarding registration.
- [19] I find that the duration of the bans and the requirement to meet additional proficiency requirements prior to seeking registration in the future reflects the seriousness of the misconduct and recognizes the mitigating factors. While the Respondents' misconduct was serious, there have been no major issues with the management and operation of the MIE, and no loss to investors. These bans allow the Respondents to continue to operate HRU by distributing shares or raising additional capital through a third party registered dealer.
- [20] I find the undertaking from HRU to complete an exempt market dealer suitability review and redemption of shares appropriate. This will protect investors who did not buy their shares through a registered dealer and it is consistent with the suitability reviews agreed to in *Kuber* and *Moskowitz*, and the share redemption provisions in *Kuber* and *Clifton Black*.
- [21] I further find that the costs amount the Respondents have agreed to pay recognizes that Staff was required to expend resources investigating and prosecuting this matter and is consistent with the approach to costs taken in *Kuber* and *Moskowitz*.
- [22] I agree that a disgorgement order is not appropriate or necessary in this matter as no investor lost money.

¹ 2020 ONSEC 10 (*Kuber*)

² 2021 ONSEC 6 (*Moskowitz*)

³ 2014 ONSEC 14 (*MRS*)

⁴ 2019 ONSEC 12 (*Clifton Black*)

- [23] In my view, the terms of the Settlement Agreement fall within a range of reasonable outcomes in the circumstances. The Settlement Agreement also properly reflects the principles applicable to sanctions, including recognition of the seriousness of the misconduct and the importance of fostering investor protection and confidence in the capital markets.
- [24] For these reasons, I conclude that it is in the public interest to approve the settlement. I will therefore issue an Order substantially in the form attached to the Settlement Agreement.
- [25] Each of HRUMIC, HRUFL, Lam, Xia and Liang is hereby reprimanded.

Dated at Toronto this 8th day of April, 2022.

"M. Cecilia Williams"
M. Cecilia Williams