



Ontario  
Securities  
Commission

Commission des  
valeurs mobilières  
de l'Ontario

22nd Floor  
20 Queen Street West  
Toronto ON M5H 3S8

22e étage  
20, rue queen ouest  
Toronto ON M5H 3S8

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**IN THE MATTER OF  
KUBER MORTGAGE INVESTMENT CORPORATION  
and SUTHARSAN KUNARATNAM**

Timothy Moseley, Vice-Chair and Chair of the Panel

File No. 2020-6

March 23, 2020

**ORDER**

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

WHEREAS the Ontario Securities Commission (the **Commission**) held a hearing in writing to consider the request made jointly by Kuber Mortgage Investment Corporation (**Kuber**) and Sutharsan Kunaratnam (**Kunaratnam**) (collectively, the **Respondents**) and Staff of the Commission (**Staff**) for approval of a settlement agreement dated March 6, 2020 (the **Settlement Agreement**);

AND WHEREAS Kuber has given an undertaking to the Commission, in the form attached as Appendix A to this Order (the **Undertaking**);

ON READING the Statement of Allegations dated March 13, 2020, the Settlement Agreement and the submissions of the representative of Staff, and on considering the Undertaking;

IT IS ORDERED THAT:

1. the Settlement Agreement is approved;
2. each of the Respondents is reprimanded, pursuant to paragraph 6 of subsection 127(1) of the *Securities Act*, RSO 1990, c S.5 (the **Act**);
3. the Respondents shall pay an administrative penalty in the amount of \$400,000, on a joint and several basis, pursuant to paragraph 9 of subsection 127(1) of the Act, which amount is designated for allocation or use by the Commission in accordance with paragraph 3.4(2)(b) of the Act; and
4. Kuber shall pay costs in the amount of \$30,000, pursuant to section 127.1 of the Act.

"Timothy Moseley"

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Timothy Moseley

## APPENDIX A

### UNDERTAKING OF KUBER MORTGAGE INVESTMENT CORPORATION

#### IN THE MATTER OF KUBER MORTGAGE INVESTMENT CORPORATION and SUTHARSAN KUNARATNAM

#### UNDERTAKING TO THE ONTARIO SECURITIES COMMISSION

1. This Undertaking is given in connection with the settlement agreement dated March 6, 2020 (the **Settlement Agreement**) between Kuber Mortgage Investment Corporation (**Kuber**), Sutharsan Kunaratnam (**Kunaratnam**) and Staff (**Staff**) of the Ontario Securities Commission (the **Commission**). All terms shall have the same meanings in this Undertaking as in the Settlement Agreement.
2. Kuber undertakes to the Commission to:
  - (a) conduct any subsequent trades of securities of Kuber through or to a firm registered under Ontario securities law in a category that permits such trade, or by Kuber directly only if and when registered to conduct such trades;
  - (b) amend its most recent offering memorandum by:
    - (i) removing all references to the Blanket Order,
    - (ii) stating that Kuber is not registered as a dealer and trades its securities through a firm registered under Ontario securities law in a category that permits such trades,
    - (iii) stating that Kuber would be required to be registered in the appropriate dealer category under Ontario securities law if it does not trade through a dealer registered in a category that permits such a trade, and
    - (iv) detailing Square Capital's control over the general partner of Zephyr LP;
  - (c) retain an EMD to:
    - (i) conduct a review of the adequacy of the KYC and suitability documentation obtained by Kuber with respect to its current existing investors who did not purchase Kuber's preferred shares through a registered dealer, to be completed within four months from the date of the Settlement Hearing,
    - (ii) obtain such additional KYC and suitability information as required for a suitability assessment where the EMD deems that the existing documentation at Kuber is inadequate pursuant to paragraph 2(c)(i) above,
    - (iii) conduct suitability analysis in accordance with sections 13.2 and 13.3 of NI 31-103 for a random sample of 20 current existing investors, selected by the EMD, who did not purchase Kuber's preferred shares through a registered dealer, to be completed within four months from the date of the Settlement Hearing, and
    - (iv) if 5 or more of the 20 investors are identified by the EMD to have made unsuitable

- investments in Kuber pursuant to paragraph 2(c)(iii) above, conduct suitability analysis in accordance with sections 13.2 and 13.3 of NI 31-103 for all current existing investors who did not purchase Kuber's preferred shares through a registered dealer, to be completed within a time period proposed by the EMD which is not unacceptable to Staff;
- (d) once an EMD has been retained pursuant to paragraph 2(c) above, Kuber shall immediately provide Staff with a written authorization granting Staff free and unfettered access to communicate with the EMD; and
- (e) redeem the preferred shares held by all investors identified by the EMD to have made an unsuitable investment in Kuber pursuant to paragraph 2(c) above at the issue price of \$10 per preferred share, unless the investors instruct the EMD that they wish to retain their investments in accordance with subsection 13.3(2) of NI 31-103.

**DATED** at Toronto, Ontario this 6th day of March, 2020.

**KUBER MORTGAGE INVESTMENT  
CORPORATION**

By: "Ranier De Lambert"  
Name: Ranier De Lambert  
Title: COO