Ontario Securities Commission
Commission des valeurs mobilières de l'Ontario
P.O. Box 55, 19th Floor, 20 Queen Street West, Toronto ON M5H 3S8
CP 55, 19e étage, 20, rue queen ouest, Toronto ON M5H 3S8

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

-AND-

IN THE MATTER OF
PETER SBARAGLIA

SETTLEMENT AGREEMENT

PART I – INTRODUCTION

1. The Ontario Securities Commission (the "Commission") will issue a Notice of Hearing to announce that it will hold a hearing to consider whether, pursuant to section 127 of the *Securities Act*, R.S.O. 1990, c. S-5, as amended (the "Act"), it is in the public interest for the Commission to make certain orders in respect of Peter Sbaraglia (the "Respondent").

PART II – JOINT SETTLEMENT RECOMMENDATION

2. Staff of the Commission ("Staff") agree to recommend settlement of the proceeding commenced by Notice of Hearing dated March 4, 2013 (the "Proceeding") against the Respondent according to the terms and conditions set out in Part VI of this Settlement Agreement. The Respondent agrees to the making of an order in the form attached as Schedule "A", based on the facts set out below.

PART III – AGREED FACTS

3. For this proceeding, and any other regulatory proceeding commenced by a securities regulatory authority, the Respondent agrees with the facts as set out in Part III of this Settlement Agreement.

4. Between January 2006 and August 2009 (the "Relevant Period"), Peter Sbaraglia ("Sbaraglia") operated C.O. Capital Growth Inc. ("CO"), a private issuer in Ontario, and was an officer and director of CO. For most of the Relevant Period, Sbaraglia ran CO together with Robert Mander ("Mander"). From March, 2007 until November, 2008, Mander was also the Chief Portfolio Strategist for CO.

5. CO was used by Sbaraglia as an investment vehicle to solicit third party investors (the "CO Investors") to invest with Mander through CO. At no time during the Relevant Period was Sbaraglia registered with the Commission. CO raised approximately $21.2 million from CO Investors, most of whom were friends and family of the Sbaraglias. The funds were raised by way of loan agreements with CO who correspondingly issued promissory notes. The loan agreements and promissory notes issued by CO constitute securities under the *Securities Act*, R.S.O. 1990, c. s.5, as amended (the "Act"). In total, there were approximately 25 to 30 CO Investors.

6. Mander operated and owned E.M.B. Asset Group Inc. ("EMB"), and was its directing mind. Through EMB, Mander operated a fraudulent scheme where, contrary to his promises to investors, including Sbaraglia, to invest their funds, Mander used the funds to pay interest and principal to other investors, also known as a Ponzi scheme. Mander's Ponzi scheme involved in excess of $40 million of investors' funds, including Sbaraglia's, which it received from CO and other investors.

7. Although investors were told that their money would be invested by Mander/EMB, a portion of some investors' funds were used by CO, at the

direction of Sbaraglia, in a manner that was contrary to those representations and to the Act. Sbaraglia, acting on behalf of CO, used some investors' funds to repay other investors and to pay for some of his personal expenses and not for the benefit of CO Investors. In addition, Sbaraglia and his spouse (the "Sbaraglias") received over $2 million that Mander told them were profits and dividends earned by them during the Relevant Period.

8. As further described below, Sbaraglia, through his role in CO and his close involvement with Mander, participated in Mander's Ponzi scheme in a manner which he ought reasonably to have known perpetrated a fraud on investors contrary to s. 126(1)(b) of the Act.

9. In addition, Sbaraglia himself and through his counsel materially misled Staff of the Commission in its investigation into Sbaraglia, Mander and CO about the business of CO and others. Throughout the investigation, a number of statements were made to Staff by Sbaraglia and by his counsel that were false and/or that misled Staff in determining whether investors' funds were at risk. At no point in the investigation did Sbaraglia take any steps to correct his statements or those of his counsel (other than to correct his counsel on three separate occasions during his interview).

BACKGROUND AND PARTICULARS TO CONDUCT

A. Conduct Contrary to section 126.1(b)

(i) CO's Supposed Business Model

10. CO's purported business model was as follows:

(a) CO would solicit investors to loan money to it;

(b) The funds were to be loaned to CO for a fixed term (generally one to three years) at a fixed, high rate of interest ranging from 20% to

30%;

(c) CO would issue a loan agreement to each investor and, from 2007 onward, would issue a corresponding promissory note for the amount loaned together with the interest payable;

(d) The funds from CO were to be transferred to Mander personally or through EMB to other Mander controlled companies for investment purposes; and

(e) The profits generated from the investments above the fixed interest rate promised to investors were to be split equally between CO and Mander/EMB.

11. At the time that Sbaraglia began soliciting investors (including his mother and other close family members), he had not been provided with any evidence regarding the actual performance of Mander's supposed invements on his behalf other than Mander's representations to him.

(ii) CO's Actual Business

12. In practice, and as further described below, CO's actual business varied from the above model in a number of ways. First, CO did not transfer all of the funds of CO Investors to Mander/EMB. Approximately one third of the funds raised by CO (approximately $6-7 million) were not transferred to Mander/EMB. Those funds were used in one of a number of ways by Sbaraglia acting on behalf of CO, including: (i) making payments to CO Investors with newly received funds from other CO Investors; (ii) making investments in securities, either directly in trading accounts of CO or indirectly in trading accounts in the names of other companies, that resulted in significant losses; and (iii) making payments for personal expenses of the Sbaraglias.

13. Of the $21.2 million raised by CO from its investors, $15.4 million was transferred to Mander/EMB, the balance of which (between $6-7 million) can be accounted for as follows:

    (a) $2.1 million was received personally by Sbaraglia at the direction of Mander, notionally for profits and dividends earned by the Sbaraglias from the actions of Mander;

    (b) approximately $2.4 million was lost through trading accounts;

    (c) approximately $985,000 in general expenses of CO were paid from the CO bank accounts;

    (d) approximately $585,000 was used by CO to purchase open venture securities, which securities have almost no current value;

    (e) approximately $213,000 in rent payments in respect of a property located at 239 Church Street were made by CO to 91 Days Hygiene ("91 Days"), a company wholly owned by Sbaraglia's spouse;

    (f) approximately $383,000 in charges were incurred on a corporate Visa in the name of CO, some of which were not for the benefit of CO Investors but, rather, were for the personal benefit of the Sbaraglias, including payments for restaurants, renovations of a building owned by 91 Days and other personal expenses.

14. In addition, at certain points during the Relevant Period, CO used funds raised from some investors to pay amounts owing to other investors. The payments to investors were made from the CO bank accounts over which Sbaraglia had control and were made by cheques signed by him.

15. As a consequence of the foregoing conduct, Sbaraglia engaged or participated in acts, practices or courses of conduct relating to the securities of CO that he ought

reasonably to have known perpetrated a fraud on persons, contrary to section 126.1(b) of the Act.

B. Misleading Staff of the Commission Contrary to Section 122 of the Act

(i) Sbaraglia's Evidence Under Oath During The OSC Investigation

16. In July 2009, as part of an investigation into the business and affairs of Sbaraglia, Mander, CO and others, Staff conducted examinations of Sbaraglia and Mander. These examinations were conducted under oath with counsel present where Sbaraglia swore to tell the truth. Both Mander and Sbaraglia were represented by the same lawyers during the investigation.

17. Sbaraglia was advised by Staff that Staff's primary concern at that stage of the investigation was whether investors' funds were at risk and whether CO could properly account for the funds.

18. Staff advised Sbaraglia during the investigation that it was seeking verification from CO that the assets between CO and Mander/EMB were in excess of what was owed to CO Investors. To that end, Sbaraglia's counsel gathered documentation from Mander and the Sbaraglias and prepared it for presentation to Staff.

19. During Sbaraglia's examination, Staff were advised by his counsel of the following:

    (a) CO Investors consisted of only friends and family of Sbaraglia and that each of the CO Investors had approached Sbaraglia about investing;

    (b) CO had relied on legal advice obtained by a Toronto law firm with respect to CO's compliance with Ontario securities laws in raising funds from third parties;

    (c) CO Investors' funds were not at risk;

(d) The total amount owing by CO to the CO Investors was approximately $8.5 million but the bulk of the value of CO Investors' funds were invested in real estate assets purchased by Mander and Sbaraglia;

(e) Sbaraglia and Mander had a verbal arrangement whereby all assets held by Sbaraglia and Mander (either personally or through corporate entities) were for the benefit of the CO Investors and that the assets held by Sbaraglia and Mander were valued at approximately $12 million and were, therefore, well in excess of all amounts owing to CO Investors.

(f) Sbaraglia knew his counsel was speaking on his behalf during the examination and that Staff would rely on the above statements as being true and at no time did he correct the record.

20. In addition to the above statements by counsel, Sbaraglia gave evidence under oath:

(a) in detail about his strategy for purchasing undervalued assets, including equities and real estate;

(b) that he would ensure that the CO Investors would be fully repaid and that he was pledging his own personal assets to ensure that the CO Investors would be protected.

(ii) Sbaraglia's Evidence Was Misleading

21. The above statements were materially misleading in a number of ways, including but not limited to:

(a) Sbaraglia had solicited investors directly by making representations to them about his success with Mander and Mander's role in CO in achieving the promised returns for investors;

(b) CO had raised almost $1 million in 2006 prior to obtaining any legal advice about whether CO was in compliance with Ontario securities laws;

(c) the actual business of CO did not involve the purchase of real estate assets;

(d) the trading accounts operated by CO suffered aggregate losses of approximately $2.4 million of investors' funds;

(e) CO had additional obligations to investors, specifically additional private loan agreements totalling $9.4 million, the knowledge of which was within the exclusive knowledge of Sbaraglia and CO;

(f) all of the assets of Sbaraglia, Mander and CO were not, in fact, available to satisfy the amounts owing to CO Investors as Mander (and his companies, which were owners of many of the assets) had loans outstanding with many additional investors other than the CO Investors.

(iii) The Undertaking Given by Sbaraglia Was Also Misleading

22. On August 7, 2009, following the examination, Sbaraglia's counsel prepared and provided Staff with a loan agreement between EMB and CO and an undertaking in respect of loans made by CO Investors and the real estate assets which were being held for the benefit of those investors (the "Undertaking").

23. The Undertaking provided among other things that: (a) CO would not enter into any further loan agreements with third party investors; (b) CO would cause the outstanding loans to CO Investors to be paid as they become due; and (c) CO had used the loans by CO Investors to acquire the assets listed in a Schedule B to the Undertaking.

24. With respect to the Undertaking, Sbaraglia failed to identify material obligations of CO in its schedule of outstanding loans. The Undertaking failed to list nine loan agreements for a total of approximately $9.4 million. Subsequently, Sbaraglia has resiled from the Undertaking and ultimately sought to be relieved of his obligations under it.

25. As a consequence of the foregoing conduct, Staff was materially misled in respect of the operation and business of CO, contrary to section 122(1) of the Act.

RESPONDENT'S POSITION

26. The legal advice Sbaraglia sought in late 2006 included advice regarding his obligations under Ontario's securities laws and regulations and how to comply with those obligations.

27. The legal advice that Sbaraglia received included advice that the relationship between CO and the CO Investors was one of debtor and creditor, and that therefore CO was permitted to treat the funds received from the CO Investors as its own.

28. During the Relevant Period, Mander made numerous representations to Sbaraglia regarding his purported knowledge, expertise and success concerning investing and directed Sbaraglia about how to invest some of the funds received from CO Investors but not transferred to Mander/EMB.

RELATED PROCEEDINGS

29. In a related proceeding commenced by Staff, on behalf of the Commission, under section 129 of the Act (the "Receivership Action"), the Ontario Superior Court of Justice made an order appointing RSM Richter Inc. as receiver of the assets (the "Receiver"), undertakings and property of the Sbaraglias, CO and 91 Days on the basis that it was a) in the best interests of the creditors of CO; and b) that it was appropriate for the due administration of Ontario securities law. The Receiver's mandate is to secure and recover assets from the Sbaraglias and their related entities for the benefit of investors, or, more particularly, the creditors, security holders or subscribers of CO.

30. But for the appointment of the Receiver, Staff would be seeking significant monetary sanctions, including costs, as against Sbaraglia for the conduct set out herein.

31. While the receivership order was amended in June, 2011 to exclude the Sbaraglias and their after-acquired property, the receivership is ongoing.

32. The Sbaraglias and CO have also commenced litigation against Michael Miller, Julia Dublin and Aylesworth LLP (the lawyers referred to above in paragraphs 16 – 25) and Peter R. Welsh (a lawyer that provided services to CO and Mander). This litigation is being pursued for the benefit of the CO Investors and, subject to the amount recovered, for the benefit of the Sbaraglias and their unsecured creditors.

PART IV – CONDUCT CONTRARY TO ONTARIO SECURITIES LAW AND CONTRARY TO THE PUBLIC INTEREST

33. By using investors' funds from the sale of securities of CO for personal use or for related corporate use and by using new investor funds to make payments to old investors, Sbaraglia engaged or participated in acts, practices or courses of conduct relating to the securities of CO that he ought to have known perpetrated a fraud on persons contrary to section 126.1(b) of the Act.

34. Further, Sbaraglia and his counsel made statements to Staff during the course of its investigation, including statements made by him under oath at his examination, that were materially misleading or untrue and/or failed to state facts which were required to be stated contrary to subsection 122(1) of the Act and contrary to the public interest.

PART V – TERMS OF SETTLEMENT

35. The Respondent agrees to the terms of settlement listed below.

36. The Commission will make an order pursuant to section 127(1) of the Act that:

    (a) The settlement agreement is approved.

(b) Pursuant to clause 2 and 2.1 of subsection 127(1) of the Act, that the acquisition of and trading in any securities by the Respondent shall permanently cease, with the exception that the Respondent shall be permitted to acquire and trade securities for the account of his registered retirement savings plans as defined in the *Income Tax Act*, R.S.C. 1985, c.1, as amended (the "*Income Tax Act*"), solely through a registered dealer or, as appropriate, a registered dealer in a foreign jurisdiction (which dealer must be given a copy of this Order) in (a) any "exchange-traded security" or "foreign exchange-traded security" within the meaning of National Instrument 21-101 provided that he does not own beneficially or exercise control or direction over more than 5 percent of the voting or equity securities of the issuer(s) of any such securities, or (b) any security issued by a mutual fund that is a reporting issuer.

(c) The Respondent shall not provide monies to his spouse for the purpose of acquiring or trading in any securities.

(d) Any exemptions contained in Ontario securities law shall permanently not apply to the Respondent.

(e) The Respondent shall be reprimanded.

(f) The Respondent shall immediately resign from any position he holds as a director or officer of any issuer, except CO and Dr. Sbaraglia Dentistry Professional Corporation.

(g) The Respondent shall permanently be prohibited from becoming or acting as a director or officer of any issuer.

(h) The Respondent shall permanently be prohibited from becoming or acting as a director or officer of a registrant.

(i) The Respondent shall permanently be prohibited from becoming or acting as a director or officer of an investment fund manager.

(j) The Respondent shall permanently be prohibited from becoming or acting as a registrant, as an investment fund manager or as a promoter.

37. The Respondent undertakes to consent to a regulatory Order made by any provincial or territorial securities regulatory authority in Canada containing any or all of the prohibitions set out in sub-paragraphs 36 (a) – (j) above. These prohibitions may be modified to reflect the provisions of the relevant provincial or territorial securities law.

PART VI – STAFF COMMITMENT

38. If the Commission approves this Settlement Agreement, Staff will not commence any proceeding under Ontario securities law in relation to the facts set out in Part III of this Settlement Agreement, subject to the provisions of paragraph 39 below.

39. If the Commission approves this Settlement Agreement and the Respondent fails to comply with any of the terms of the Settlement Agreement, Staff may bring proceedings under Ontario securities law against the Respondent. These proceedings may be based on, but are not limited to, the facts set out in Part III of this Settlement Agreement as well as the breach of the Settlement Agreement.

PART VII – PROCEDURE FOR APPROVAL OF SETTLEMENT

40. The parties will seek approval of this Settlement Agreement at a public hearing before the Commission scheduled for March 5, 2013, or on another date agreed to by Staff and the Respondent, according to the procedures set out in this Settlement Agreement and the Commission's Rules of Practice.

41. Staff and the Respondent agree that this Settlement Agreement will form all of the agreed facts that will be submitted at the settlement hearing on the Respondent's conduct, unless the parties agree that additional facts should be submitted at the settlement hearing.

42. If the Commission approves this Settlement Agreement, the Respondent agrees to waive all rights to a full hearing, judicial review or appeal of this matter under the Act.

43. If the Commission approves this Settlement Agreement, neither party will make any public statement that is inconsistent with this Settlement Agreement or with any additional agreed facts submitted at the settlement hearing.

44. Whether or not the Commission approves this Settlement Agreement, the Respondent will not use, in any proceeding, this Settlement Agreement or the negotiation or process of approval of this agreement as the basis for any attack on the Commission's jurisdiction, alleged bias, alleged unfairness, or any other remedies or challenges that may otherwise be available.

PART VIII – DISCLOSURE OF SETTLEMENT AGREEMENT

45. If the Commission does not approve this Settlement Agreement or does not make the order attached as Schedule "A" to this Settlement Agreement:

    i. this Settlement Agreement and all discussions and negotiations between Staff and the Respondent before the settlement hearing takes place will be without prejudice to Staff and the Respondent; and

    ii. Staff and the Respondent will each be entitled to all available proceedings, remedies and challenges, including proceeding to a hearing of the allegations contained in the Statement of Allegations. Any proceedings, remedies and challenges will not be affected by this Settlement

Agreement, or by any discussions or negotiations relating to this agreement.

46. Both parties will keep the terms of the Settlement Agreement confidential until the Commission approves the Settlement Agreement. At that time, the parties will no longer have to maintain confidentiality. If the Commission does not approve the Settlement Agreement, both parties must continue to keep the terms of the Settlement Agreement confidential, unless they agree in writing not to do so or if required by law.

PART IX – EXECUTION OF SETTLEMENT AGREEMENT

47. The parties may sign separate copies of this agreement. Together, these signed copies will form a binding agreement.

48. A fax copy of any signature will be treated as an original signature.

Dated this 4th day of March, 2013.

Peter Sbaraglia
Respondent

Richard Niman
Witness

Tom Atkinson
Director, Enforcement Branch

Schedule "A"

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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
PETER SBARAGLIA

ORDER

WHEREAS on February 24, 2011, the Ontario Securities Commission (the "Commission") issued a Notice of Hearing pursuant to section 127 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act") in relation to a Statement of Allegations filed by Staff of the Commission ("Staff") on February 24, 2011 with respect to Peter Sbaraglia ("Sbaraglia");

AND WHEREAS Sbaraglia entered into a Settlement Agreement dated March 4, 2013, (the "Settlement Agreement") in relation to the matters set out in the Statement of Allegations;

AND WHEREAS the Commission issued a Notice of Hearing dated March 4, 2013, setting out that it proposed to consider the Settlement Agreement;

UPON reviewing the Settlement Agreement, the Notice of Hearing, the Statement of Allegations, and upon considering submissions from Sbaraglia through his counsel and from Staff of the Commission;

AND WHEREAS the Commission is of the opinion that it is in the public interest to make this Order;

IT IS HEREBY ORDERED THAT:

(a) The settlement agreement is approved.

(b) Pursuant to clause 2 and 2.1 of subsection 127(1) of the Act, that the acquisition of and trading in any securities by the Respondent shall permanently cease, with the exception that the Respondent shall be permitted to acquire and trade securities for the account of his registered retirement savings plans as defined in the *Income Tax Act*, R.S.C. 1985, c.1, as amended (the "*Income Tax Act*"), solely through a registered dealer or, as appropriate, a registered dealer in a foreign jurisdiction (which dealer must be given a copy of this Order) in (a) any "exchange-traded security" or "foreign exchange-traded security" within the meaning of National Instrument 21-101 provided that he does not own beneficially or exercise control or direction over more than 5 percent of the voting or equity securities of the issuer(s) of any such securities, or (b) any security issued by a mutual fund that is a reporting issuer.

(c) The Respondent shall not provide monies to his spouse for the purpose of acquiring or trading in any securities.

(d) Any exemptions contained in Ontario securities law shall permanently not apply to the Respondent.

(e) The Respondent shall be reprimanded.

(f) The Respondent shall immediately resign from any position he holds as a director or officer of any issuer, except CO and Dr. Sbaraglia Professional Dentistry Corporation.

(g) The Respondent shall permanently be prohibited from becoming or acting as a director or officer of any issuer.

(h) The Respondent shall permanently be prohibited from becoming or acting as a director or officer of a registrant.

(i) The Respondent shall permanently be prohibited from becoming or acting as a director or officer of an investment fund manager.

(j) The Respondent shall permanently be prohibited from becoming or acting as a registrant, as an investment fund manager or as a promoter.

Dated at Toronto, Ontario this day of March, 2013.

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