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

STATEMENT OF ALLEGATIONS OF STAFF OF THE ONTARIO SECURITIES COMMISSION

Staff of the Ontario Securities Commission ("the Commission") make the following allegations:

I. OVERVIEW

1. 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").

2. 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, whom Sbaraglia described as friends and family. The funds were raised by way of loan agreements with CO and 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.

3. 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 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 which it received from CO and other investors.

4. Although investors were told that their money would be invested by Mander/EMB, a significant portion of investors' funds were used by CO, at the direction of Sbaraglia, in an unlawful and fraudulent manner. Sbaraglia, acting on behalf of CO, used investors' funds to repay other investors and to pay for his and his family's personal expenses and not for the benefit of CO Investors. In addition, Sbaraglia and his spouse (the "Sbaraglias") received over $2 million as purported profits earned by them in the Ponzi scheme.

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

6. In addition to the fraudulent conduct described herein, Sbaraglia 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 Sbaraglia knew were false and that Sbaraglia knew would mislead Staff in determining whether investors' funds were at risk. At no point in the investigation did Sbaraglia take any steps to correct his false statements or those of his counsel.

II. BACKGROUND AND PARTICULARS TO ALLEGATIONS

A. Sbaraglia Engaged in Securities Fraud Contrary to Section 126.1 of the Act

(i) CO's Supposed Business Model

7. 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.

(ii) No Objective Evidence From Mander About Investment Profits

8. At the time that Sbaraglia began soliciting investors, he had no evidence whatsoever about the actual performance of Mander's supposed investments. Furthermore, at no time during the Relevant Period did Sbaraglia perform any due diligence or see any independent evidence of the exorbitant returns Mander claimed to be earning on investors' funds.

(iii) CO's Actual Business

9. 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.

10. 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 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, a significant number of which were not for the benefit of CO Investors but, rather, were for the personal benefit of the Sbaraglias, including significant payments for restaurants, renovations of a building owned by 91 Days and numerous other personal expenses.

11. In addition, throughout the Relevant Period, CO used funds raised from 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.

12. 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 they knew or ought 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

13. During Staff's investigation and as further described herein, Sbaraglia materially misled Staff in respect of the operation and business of CO, contrary to section 122(1) of the Act.

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

14. 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.

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

16. 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 gathered and prepared documentation for Staff.

17. 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 of $12 million and were, therefore, well in excess of all amounts owing to CO Investors.

18. 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.

19. 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

20. 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 beyond $8.5 million, 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

21. On August 7, 2009, following the examination, Sbaraglia's counsel 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").

22. 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.

23. 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. Contrary to Sbaraglia's representations to Staff and due to his misleading Staff, the Undertaking was of no value in protecting investors. Subsequently, Sbaraglia has resiled from the Undertaking and ultimately sought to be relieved of his obligations under it.

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

III. RELATED PROCEEDINGS

25. In a related proceeding commenced by Staff, on behalf of the Commission, under section 129 of the Act, the Ontario Superior Court of Justice made an order appointing RSM Richter Inc. as receiver of the assets, 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.

26. In so doing, the Honourable Mr. Justice Morawetz stated that "I cannot overlook that CO, Dr. Sbaraglia and Ms. Sbaraglia retained and had access to funds in excess of $6 million. I also cannot overlook that they improperly used some of these funds for personal use or for related corporate use. I also cannot overlook that some of the new money was used to pay interest payments to old investors. To use the words of counsel to the receiver: This is the hallmark of a Ponzi scheme where you keep the dollars rolling."

27. The Court also noted that the "[t]he factors that have led to my decision to appoint a receiver as being in the best interests of the company's creditors and the potential Sbaraglia creditors is also applicable for the appointment under the second part of the test. This was a Ponzi scheme." The Court went on to state that "[i]t cannot be overlooked that the Sbaraglias misled the OSC in the course of its investigation. This type of activity cannot and should not be overlooked and I am satisfied that the appointment of a receiver is also justified [as being appropriate for the due administration of Ontario securities law]."

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

28. 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 knew or ought to have known perpetrated a fraud on persons contrary to section 126.1(b) of the Act.

29. Further, Sbaraglia 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.

30. Further, pursuant to section 127(10)3 of the Act, the findings of the Court in the Receivership Proceeding may form the basis of an order in the public interest in Ontario under section 127(1).

31. Staff allege that it is in the public interest to make orders against the Respondent.

32. Staff reserve the right to amend these allegations and to make such further and other allegations as they deem fit and the Commission may permit.

DATED at Toronto this 24th day of February, 2011.