



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

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

A. OVERVIEW

1. Beginning in June 2016, Kuber Mortgage Investment Corporation (“**Kuber**”) and Sutharsan Kunaratnam (“**Kunaratnam**”) (collectively, the “**Respondents**”) sold approximately \$26 million worth of preferred shares in Kuber to approximately 200 investors in the exempt market. The Respondents 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**”).
2. 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 trade with or on behalf of the public. Issuers in the exempt market that are in the business of trading their own securities, including mortgage investment entities (“**MIEs**”) such as Kuber, must comply with the registration requirements under Ontario securities law.

B. FACTS

Staff of the Enforcement Branch of the Commission (“**Enforcement Staff**”) make the following allegations of fact:

(i) THE RESPONDENTS

3. Kuber is an Ontario corporation based in Toronto. As a MIE, Kuber’s primary business is mortgage origination and lending. In order to fund its mortgages, Kuber primarily raises capital from investors in the exempt market and has also obtained debt financing.
4. Kunaratnam is one of the founding directors of Kuber and its Chief Executive Officer. Kunaratnam also provides various mortgage brokerage, management and administrative

services to Kuber through his company, Square Capital Management Inc. (“**Square Capital**”).

5. Neither Kuber nor Kunaratnam have been registered with the Commission in any capacity.

(ii) UNREGISTERED TRADING

6. During the period between June 2016 and January 2019, Kuber raised approximately \$26 million through distributions of its preferred shares to approximately 200 investors. Almost all of the distributions were made pursuant to the accredited investor exemption to the prospectus requirement.

7. Beginning in November 2018, Kuber had used a registered exempt market dealer (“**EMD**”) from time to time to sell its securities. However, most of the investors in Kuber purchased the preferred shares without the involvement of any registered dealer.

8. Kunaratnam was the individual at Kuber primarily responsible for selling its preferred shares to investors. He engaged in activities in furtherance of the sale of the preferred shares, including by preparing and disseminating promotional materials, soliciting investors, and performing “know your client” procedures.

9. The Respondents engaged in the business of trading in securities without being registered as a dealer under Ontario securities law.

10. In response to a request from Staff, Kuber voluntarily agreed in January 2019 to cease trading in securities, except trades of its own securities that were distributed through a registered EMD, including by removing solicitations for investment on its website.

(iii) OFFERING MEMORANDA

Statements Regarding the Dealer Registration Requirement

11. Kuber disseminated three offering memoranda to prospective investors which contained the following statement concerning its registration status:

Neither the Corporation nor the Manager is registered with the Ontario Securities Commission (“OSC”) as an adviser, dealer or as an investment fund manager and is operating in reliance on the blanket order issued by the OSC on August 17, 2010 that provides relief from these registration requirements and the Corporation’s interpretation of Staff Notice 31-323 *Guidance Relating to Registration Obligations of Mortgage Investment Entities* (“Staff Notice 31-323”). If the Corporation’s interpretation of Staff Notice 31-323 is incorrect or the OSC otherwise requires registration for

MICs or MIC managers/administrators, the Corporation will comply with the requirements or seek further relief if appropriate.

12. The Commission's blanket order dated August 17, 2010¹ ("**Blanket Order**") did not provide any relief to the requirement to be registered as a dealer. Furthermore, any relief provided by the Blanket Order (and a subsequent order extending the relief²) expired on March 31, 2011.

Information Regarding Related Party Loan Facility

13. Between January 2018 and November 2018, Kuber disseminated an offering memorandum which disclosed in multiple sections that Kuber may obtain debt financing. The offering memorandum did not disclose an unsecured loan between Kuber and a limited partnership ("**Zephyr LP**") which was controlled by Kunaratnam's company, Square Capital. A subsequent offering memorandum disclosed the loan and certain aspects of Square Capital's relationship with Zephyr LP but did not detail Square Capital's control over Zephyr LP.

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:

14. The Respondents engaged in or held themselves 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. In doing so, the Respondents acted in a manner contrary to the public interest.

D. ORDER SOUGHT

15. 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 March 6, 2020 between the Respondents and Enforcement Staff.

¹ *In the Matter of the Securities Legislation of Ontario and In the Matter of Trez Capital Corporation (The Lead Filer) and Other Persons and Companies Conducting Investment Fund Management Activities or Advising in Respect of Mortgage Investment Entities* (2010), 33 OSCB 7355.

² See 33 OSCB 11155.

16. 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 13th day of March, 2020.

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