



Ontario
Securities
Commission

Commission des
valeurs mobilières
de l'Ontario

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**IN THE MATTER OF
MONEY GATE MORTGAGE INVESTMENT CORPORATION,
MONEY GATE CORP., MORTEZA KATEBIAN,
and PAYAM KATEBIAN**

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

A. ORDER SOUGHT

1. Staff of the Enforcement Branch of the Ontario Securities Commission (**Enforcement Staff**) requests that the Commission make the following orders against Morteza (Ben) Katebian (**Ben**), Payam Katebian (**Payam**) (together, the **Principals**), Money Gate Mortgage Investment Corporation (**MGMIC**), and Money Gate Corp. (**MGC**), (together with the Principals, the **Respondents**):
 - (a) pursuant to paragraph 2 of subsection 127(1) of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the **Act**), that trading in any securities or derivatives by the Respondents cease permanently or for such period as is specified by the Commission;
 - (b) pursuant to paragraph 2.1 of subsection 127(1) of the Act, that the acquisition of any securities by the Respondents is prohibited permanently or for such period as is specified by the Commission;
 - (c) pursuant to paragraph 3 of subsection 127(1) of the Act, that any exemptions contained in Ontario securities law do not apply to the Respondents permanently or for such period as is specified by the Commission;
 - (d) pursuant to paragraph 6 of subsection 127(1) of the Act, that the Principals be reprimanded;

- (e) pursuant to paragraphs 7, 8.1 and 8.3 of subsection 127(1) of the Act that the Principals resign one or more positions that they hold as a director or officer of any issuer, registrant, or investment fund manager;
- (f) pursuant to paragraphs 8, 8.2 and 8.4 of subsection 127(1) of the Act, that the Principals be prohibited from becoming or acting as directors or officers of any issuer, registrant, or investment fund manager, permanently or for such period as is specified by the Commission;
- (g) pursuant to paragraph 8.5 of subsection 127(1) of the Act that the Respondents be prohibited from becoming or acting as registrants, investment fund managers, or as promoters, permanently or for such period as is specified by the Commission;
- (h) pursuant to paragraph 9 of subsection 127(1) of the Act, that each Respondent pay an administrative penalty of not more than \$1 million for each failure by the respective Respondent to comply with Ontario securities law;
- (i) pursuant to paragraph 10 of subsection 127(1) of the Act, that each Respondent disgorge to the Commission any amounts obtained as a result of non-compliance with Ontario securities law;
- (j) that the Respondents be ordered to pay the costs of the Commission investigation and the hearing, pursuant to section 127.1 of the Act; and
- (k) such other order as the Commission considers appropriate in the public interest.

B. FACTS

2. Enforcement Staff make the following allegations of fact:

(a) Overview

3. This proceeding involves fraud, misleading and untrue statements in disclosure documents, unregistered trading, and the illegal distribution of securities.

4. Between August 2014 and April 2017 (the **Material Time**), the Respondents raised approximately \$11 million from approximately 155 investors through the sale of preferred shares of MGMIC.
5. The Respondents solicited investors in Ontario to purchase securities of MGMIC, which invested in pools of residential and commercial mortgages. Disclosure provided to investors and other relevant documents outlined various business practices and lending policies, which provided safeguards to reduce risks for investors. MGMIC was supposed to abide by these practices and policies in its operation as a mortgage investment entity.
6. In fact, MGMIC was not following these practices and policies and MGMIC was operating a far riskier mortgage investment business than the one represented to investors. Instances where MGMIC failed to comply with stated business practices and lending policies, resulting in increased risk to investors, include the following:
 - (a) The Respondents represented that MGMIC's Investment Committee would review transactions involving potential conflicts of interest, when in fact no review was conducted in accordance with the stated practice. As a result, MGMIC made several investments in mortgages on properties with potential conflicts of interest directly or indirectly owned by the Principals and related parties;
 - (b) The Respondents represented that MGMIC would limit its exposure to any one asset class by limiting investment in commercial and industrial properties, when in fact MGMIC made significant investments in mortgages on two (2) industrial properties owned indirectly by related parties accounting for over 60% of MGMIC's total mortgage portfolio, well in excess of its stated limitations; and
 - (c) The Respondents represented that MGMIC would limit the loan-to-value (**LTV**) ratio on mortgages it invested in, when in fact MGMIC made significant investments in mortgages on several properties owned directly or indirectly by related parties with LTV ratios well in excess of the stated limits.
7. Information that is publicly disclosed by an issuer must be accurate and not misleading or untrue in order to accomplish the goals of Ontario securities law to protect investors from unfair or improper practices and to foster fair and efficient capital markets and

confidence in those markets. Disclosure that intentionally deceives investors about the true nature of a company's operations and use of investors' funds, that prevents investors from making informed investment decisions, and that misrepresents to investors the risk actually posed to their investment thwarts these important objectives.

8. In the course of their conduct, the Respondents failed to comply with the registration and prospectus requirements of Ontario securities law and, in doing so, breached important investor protection provisions. The registration requirements ensure that properly qualified and suitable individuals are permitted to engage in the business of trading in securities, ensuring honest and responsible conduct. Further, the prospectus requirements and available exemptions ensure that investors have appropriate information to enable them to properly assess risks and make fully informed investment decisions.
9. By disseminating documents to investors that contained information that was misleading or untrue and which impermissibly failed to disclose the material risks that the actual operations, practices and policies of MGMIC posed to investors' capital, the Respondents engaged in improper disclosure practices and fraudulent conduct that breached Ontario securities laws and undermined the integrity of Ontario's capital markets.

(b) The Respondents

10. MGMIC was incorporated in the province of Ontario in May 2014. It has a registered address located in Thornhill, Ontario. It is a mortgage investment entity, as such term is defined in CSA Staff Notice 31-323 *Guidance Relating to the Registration Obligations of Mortgage Investment Entities*, and lends capital for pooled residential and commercial mortgages. All of these mortgages are on underlying properties in Ontario.
11. Further, MGMIC represented to investors that it would conduct its affairs to qualify at all times as a mortgage investment corporation (**MIC**), as such term is defined in the *Income Tax Act*, R.S.C., 1985, c. 1, as amended (the **ITA**).
12. MGC was incorporated federally under the laws of Canada and registered extra-provincially in the province of Ontario in August 2007. It has a registered address located in Toronto, Ontario. MGC is licensed by the Financial Services Commission of Ontario (**FSCO**) as a mortgage brokerage and mortgage administrator. It operates as a mortgage

administrator for MGMIC, finding and servicing the mortgages MGMIC lends on. It receives a fee from MGMIC for performing these services.

13. Ben is a director, officer and directing mind of MGMIC. He is the sole director of MGC and he is licensed by FSCO as the principal broker of MGC. He is a resident of Ontario.
14. Payam is a director, officer and a directing mind of MGMIC. He is licensed by FSCO as an agent with MGC. Payam is Ben's son. He is a resident of Ontario.
15. Neither MGMIC nor MGC is a reporting issuer in Ontario and neither has ever filed a preliminary prospectus and prospectus in Ontario. None of the Respondents has ever been registered with the Commission in any capacity.

(c) Conduct at Issue

(i) *Unregistered Trading and Illegal Distribution*

16. In 2014, the Principals began offering preferred shares in MGMIC to prospective investors. They offered the shares at a price of \$1 per share and represented that investors would receive an annualized return of approximately 9% to 10% on their investment. Investors were told that dividends would be paid monthly to each shareholder or could be reinvested in a dividend reinvestment and share purchase program (**DRIP**). The preferred shares of MGMIC are "securities", as defined in subsection 1(1) of the Act.
17. MGMIC prepared five (5) offering memorandums (the **OMs**) in connection with the sale and distribution of its preferred shares to investors. The date of the initial OM is August 1, 2014 and four (4) revised versions followed on May 5, 2015, May 13 and May 30, 2016, and January 31, 2017. These OMs were provided to prospective investors and contained disclosure about the terms of the investment and the business practices and activities of MGMIC, including MGMIC's investment policies, which set out the terms and conditions under which MGMIC made investments.
18. The Principals actively solicited investors, discussing the investment opportunity in MGMIC during meetings with prospective investors, and answering questions that investors had about the opportunity. The Principals also prepared and provided marketing

materials to prospective investors, which set out MGMIC's proposed investment activities and the terms of the investment. Solicitations to investors involved advertising via live presentations, websites, social media postings, and print materials. The Respondents executed formal subscription agreements with investors who purchased shares in MGMIC.

19. By engaging in this conduct, the Respondents traded and engaged in, or held themselves out as engaging in, the business of trading in MGMIC securities, in circumstances where there were no exemptions available under the Act, contrary to section 25 of the Act.
20. None of the Respondents has ever filed a preliminary prospectus and prospectus with the Commission or obtained a receipt to qualify the sale of MGMIC securities, contrary to section 53 of the Act. In distributing MGMIC securities, the Respondents did not properly rely on available exemptions to the prospectus requirements, as set out in National Instrument 45-106 *Prospectus Exemptions*.

(ii) *Misleading Statements and Fraudulent Conduct*

21. The OMs and marketing materials provided to investors, as well as other relevant documents, contained numerous misleading or untrue statements about (1) the controls and processes governing the business operations of MGMIC, including the process by which it made investment decisions, and (2) the lending parameters, practices and restrictions in place with respect to the investments in MGMIC's mortgage portfolio.
22. Failure by the Respondents to adhere to stated business practices and lending policies, which provided safeguards for investors, placed investors' capital at increased risk.
23. By engaging in the conduct described below, the Respondents perpetrated a fraud on investors by exposing investors' capital to higher risks than those disclosed. In addition, the Respondents made statements to investors in an offering document that were misleading or untrue in a material respect in the circumstances they were made, as follows:

1. *Failure to Disclose the True Nature of MGMIC's Operations, Controls and Processes*

Failure to Fulfill the Mandate of the MGMIC Credit Committee

24. The Respondents represented to investors that MGMIC only makes investment decisions, which include decisions relating to loans, borrowings, acquisitions and/or dispositions by MGMIC, if recommended by MGC and approved by the Credit Committee.
25. The mandate of the Credit Committee is to review all proposals and to approve or reject such proposals. According to the OMs, the Credit Committee was supposed to meet as required and no less than on a quarterly basis, to provide strategic guidance and direction.
26. However, the Credit Committee did not meet as required and did not review and approve many of the investments made by MGMIC, contrary to the disclosure provided to investors. The function of the Credit Committee was to provide oversight and supervision over MGMIC's investment decisions, when in reality this safeguard was absent.

Failure to Fulfill the Mandate of the MGMIC Investment Committee

27. The Respondents represented to investors that MGMIC established an Investment Committee to, among other things, (1) adjudicate and advise on transactions involving potential conflicts of interest and (2) approve or reject investments in mortgages which may adversely affect MGMIC's status as a MIC.
28. However, contrary to the disclosure provided to investors, the members of the Investment Committee did not appropriately review such transactions. The function of the Investment Committee was to provide oversight and supervision over MGMIC's lending practices, when in reality this safeguard was absent.
29. As a result, MGMIC invested in a number of mortgages involving potential conflicts of interest on properties owned, directly or indirectly, by the Principals and related parties.

MGMIC Did Not Qualify as a Mortgage Investment Corporation (MIC)

30. Throughout the Material Time, the Respondents represented to investors that MGMIC conducted its affairs to qualify at all times as a MIC, as defined in the ITA.

31. As a MIC, MGMIC would be subject to “special rules” under the ITA that would permit MGMIC to be operated, in effect, as a tax-free “flow through” conduit of its profit to shareholders. This meant that MGMIC would pay out substantially all of its net income and realized gains and would not be liable to pay income tax in any year. Further, as long as MGMIC qualified as a MIC, shares of MGMIC would be qualified investments for the purpose of registered retirement savings plans, deferred profit sharing plans, registered retirement income funds and registered education savings plans.
32. However, MGMIC did not qualify as a MIC from its inception until approximately mid-2016. In particular, notes to the fiscal 2015 and 2016 audited financial statements state that MGMIC did not meet the criteria to qualify as a MIC. Further, the 2016 audited financial statements state that MGMIC was in a taxable position for the relevant year.
33. No revisions to the OMs were made to reflect the fact that MGMIC did not qualify as a MIC and investors were never otherwise adequately informed. MGMIC’s inability to maintain its tax status as a MIC jeopardized its ability to pay returns to shareholders and potentially meant adverse tax consequences for investors.

Undisclosed Control of MGMIC

34. Until May 30, 2016, the Respondents represented to investors that the Principals, along with one other individual, BG, were the directors and senior officers of MGMIC. Beginning May 30, 2016, the revised OMs disclose that the Principals were the sole directors and senior officers of MGMIC after BG left the company in April 2016.
35. However, in March 2016 Ben sent an email to BG stating that control of MGMIC rested with himself and two other individuals. The control and direction of MGMIC by these two individuals was not disclosed to investors in the previous or subsequent revised OMs. Further, MGMIC invested in mortgages on properties with potential conflicts of interest owned, directly or indirectly, by these two individuals, in contravention of its investment policies.
36. No revision to the OMs was made to reflect this undisclosed control over MGMIC and investors were never otherwise informed. No information was provided to investors about the management experience or qualifications of the other two individuals with whom

actual control and direction over MGMIC rested, which restricted investors' ability to make a fully informed decision about the potential risks of investing in MGMIC.

2. *Failure to Abide by MGMIC's Lending Parameters, Policies and Restrictions*

Undisclosed Investment in Third Mortgages

37. Until January 2017, the Respondents represented to investors that MGMIC would invest in only certain types of mortgages, including builders' mortgages, first and second mortgages, development and construction mortgages, and term financing mortgages on income producing properties. The OMs stated that approximately 85% of its investments would be secured by second mortgages with the balance secured by first mortgages.
38. However, in April 2015 MGMIC made an investment in a third mortgage in the amount of \$500,000 with respect to a property owned by one of the Principals located in Richmond Hill, Ontario (the **Richmond Hill Property**). The Respondents applied investors' funds in a manner wholly inconsistent with the disclosure provided in the OMs by investing in a higher-risk third mortgage on a property owned by a related party.

Investment in Mortgages in Excess of Stated Size and Concentration

39. Until January 2017, the Respondents represented to investors that a "typical loan size" would range from \$20,000 to \$2 million with respect to the mortgages in MGMIC's portfolio. Similarly, marketing materials distributed by MGMIC stated that the mortgages provided by MGMIC would range from \$20,000 to \$1 million in value.
40. Further, the Respondents represented to investors that MGMIC established a policy that limited its credit exposure to any one borrowing group. To achieve this, the OMs provide that a maximum of 35% of MGMIC's assets may consist of mortgages on commercial and industrial properties and that a minimum of 50% of MGMIC's assets will consist of mortgages on residential properties.
41. However, contrary to the representations made to investors:

- In or around February 2016, MGMIC lent a total of approximately \$2.4 million on an industrial property owned indirectly by a related party located in Timmins, Ontario (the **Timmins Property**).
 - In June and July 2016, MGMIC lent a total of approximately \$4 million on an industrial property owned indirectly by a related party located in Temiskaming Shores, Ontario (the **Temiskaming Property**).
42. These investments were in excess of the typical loan ranges disclosed to investors. Further, these investments accounted for 62% of MGMIC's total mortgage portfolio¹ and were significantly in excess of the stated maximum of 35% of MGMIC's assets that may consist of industrial or commercial properties. The Respondents applied investors' funds in a manner wholly inconsistent with the disclosure provided in the OMs by failing to limit its credit exposure and overexposing investors' funds to certain asset classes.

Lending Contrary to Terms of Commitment

43. In August 2015, MGMIC lent on a mortgage to a related party contrary to the terms of its own mortgage commitment on a condominium unit located in Toronto, Ontario (the **Lakeshore Property**). The commitment letter for this property required an appraisal of reflecting a minimum value of \$1.65 million. The appraisal attributed a value of only \$1.55 million. Regardless, MGMIC lent the full amount of the mortgage commitment.
44. In 2016, the terms of the mortgage commitment letters for the Temiskaming and Timmins Properties required marketability timelines of 60 to 90 days. The appraisals for these properties gave marketability timelines of 5 years, which reflected decreased marketability and therefore decreased liquidity for the properties. Regardless, MGMIC granted the mortgages on both properties.
45. MGMIC failed to follow its own internal lending parameters by not complying with the terms of its mortgage commitment documents. As a result, MGMIC created higher-risk lending circumstances in which there was insufficient value in the Lakeshore Property and decreased marketability and liquidity in the Temiskaming and Timmins Properties.

¹ As at March 2017

Investment in Mortgages in Excess of Appraised Values

46. The Respondents represented to investors that MGMIC attempted to minimize risk by being prudent in both its credit decisions and in assessing the value of the underlying real property offered as security. Further, the Respondents stated that MGMIC restricted its lending to mortgages where the maximum loan-to-value (**LTV**) ratio was 85% on second mortgages and 90% on bundled first and second mortgages.
47. However, the Respondents applied investors' funds in a manner wholly inconsistent with the disclosure provided in the OMs by investing in high-risk assets where the LTV ratio exceeded the stated maximums in the following instances:
- In April 2015, a third mortgage in the amount of \$500,000 granted by MGMIC on the Richmond Hill Property caused the LTV ratio to exceed 100%. The appraisal on the Richmond Hill Property attributed a value of \$2,150,000 while the addition of the \$500,000 mortgage brought the total of the mortgages on the property to \$2,284,566.
 - As additional collateral for its mortgage on the Richmond Hill Property, MGMIC took security on a property owned by Ben located in Vaughan, Ontario (the **Vaughan Property**). However, the Vaughan Property provided no additional collateral since the property was funded by mortgages totalling \$1,750,729, which exceeded its appraised value.
48. Further, the mortgages on the Temiskaming and Timmins Properties also had LTV ratios in excess of the stated maximum. Although the Respondents caused appraisals to be done on the properties prior to granting the mortgages, the appraisals significantly overvalued both the Temiskaming and the Timmins Properties.
49. With respect to monitoring LTV ratios, the Respondents represented to investors that MGC would establish a database of comparative properties with similar characteristics to assess the LTV ratio of the portfolio as part of its ongoing risk management practices. Contrary to the disclosure provided to investors, this database was never established.
50. By engaging in the conduct described above, individually and collectively, each of the Respondents breached subsection 126.1(b) of the Act by directly or indirectly engaging

in or participating in an act, practice or course of conduct relating to securities which they each knew, or reasonably ought to have known, would perpetrate a fraud on investors.

51. Further, each of the Respondents breached subsection 122(1)(b) of the Act by making statements in an offering document that, in a material respect and in the circumstances they were made, were misleading or untrue.

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

52. Enforcement Staff alleges the following breaches of Ontario securities law and/or conduct contrary to the public interest:

- (a) The Respondents traded and engaged in, or held themselves out as engaging in, the business of trading in securities without being registered to do so, and where no exemption to the registration requirements of Ontario securities law was available, contrary to subsection 25(1) of the Act;
- (b) The Respondents distributed securities where no preliminary prospectus and prospectus was issued or receipted under the Act, and where exemptions to the prospectus requirements of Ontario securities law were improperly relied upon, contrary to subsection 53(1) of the Act;
- (c) The Respondents made statements in a document required to be furnished or filed under Ontario securities law that, in a material respect at the time and in light of the circumstances under which it is made, are misleading or untrue or do not state a fact that is required to be stated or that is necessary to make the statements not misleading, contrary to subsection 122(1)(b) of the Act;
- (d) The Respondents engaged in or participated in acts, practices, or courses of conduct relating to securities that they knew or reasonably ought to have known perpetrated a fraud on persons or companies, contrary to subsection 126.1(b) of the Act; and
- (e) The Principals, as directors and officers of the corporate Respondents, authorized, permitted or acquiesced in the breaches by the corporate Respondents set out

above, and, in doing so, are deemed to have not complied with Ontario securities law, pursuant to section 129.2 of the Act.

53. Enforcement Staff reserve the right to make such other allegations as Enforcement Staff may advise and the Commission may permit.

DATED at Toronto, December 19, 2017.

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