



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

Citation: Kuber Mortgage Investment Corporation (Re), 2020 ONSEC 10

Date: 2020-03-23

File No. 2020-6

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

**REASONS FOR APPROVAL OF A SETTLEMENT
(Sections 127 and 127.1 of the *Securities Act*, RSO 1990, c S.5)**

Hearing: In writing

Decision: March 23, 2020

Panel: Timothy Moseley Vice-Chair and Chair of the Panel

Appearances: Alvin Qian For Staff of the Commission

Usman M. Sheikh
Andrew Locatelli For Kuber Mortgage Investment
Corporation and Sutharsan
Kunaratnam

REASONS AND DECISION

- [1] Beginning in 2016, Kuber Mortgage Investment Corporation and Sutharsan Kunaratnam sold approximately \$26 million worth of preferred shares of Kuber to approximately 200 investors. Staff of the Ontario Securities Commission alleges that Kuber and Mr. Kunaratnam contravened Ontario securities law by doing so. Staff, Kuber and Mr. Kunaratnam have entered into a settlement agreement regarding those allegations, and they jointly submit that it would be in the public interest for the Commission to approve that settlement. I agree.
- [2] The facts, which are set out in detail in the settlement agreement, include the following:
- a. over the course of two and a half years, Kuber raised approximately \$26 million from approximately 200 investors, through distributions of its preferred shares;
 - b. most investors purchased their shares without the involvement of a registered dealer;
 - c. Mr. Kunaratnam is a founder of Kuber, and is a director and the CEO, and he was the individual at Kuber who was primarily responsible for selling Kuber shares to investors, including by preparing and disseminating promotional materials, and by soliciting investors; and
 - d. Mr. Kunaratnam performed “know your client” procedures.
- [3] Kuber and Mr. Kunaratnam have agreed that by engaging in this conduct, they contravened Ontario securities law by engaging in, or holding themselves out as engaging in, the business of trading in securities, without being registered to do so, and without an available exemption under Ontario securities law.
- [4] The parties submit, and we agree, that the conduct described in the settlement agreement meets the “business purpose” test (also referred to as the “business trigger” test) set out in s. 1.3 of Companion Policy 31-103CP *Registration Requirements, Exemptions and Ongoing Registrant Obligations*. In particular, the amount raised, the number of investors, and the period over which Kuber raised the funds, constitute trading with repetition, regularity and continuity. In addition, the respondents engaged in activities similar to those of a registrant, by promoting the sale of Kuber’s shares and by performing the “know your client” procedures.
- [5] Registration is a cornerstone of Ontario’s securities regulatory regime. It is important that companies and individuals that engage in the business of trading in securities, or that hold themselves out as doing so, be properly registered, or be entitled to rely on available exemptions.
- [6] There are mitigating circumstances in this case, as follows:
- a. in response to a request from Staff, Kuber agreed to remove solicitations for investment on its website and to cease trading securities, except for distributions of its own securities through a registered dealer;

- b. the respondents cooperated with Staff during its investigation, as detailed in the settlement agreement;
 - c. neither of the respondents has a prior disciplinary record with any securities regulatory authority; and
 - d. Mr. Kunaratnam has accepted responsibility and demonstrated his desire to make things right, by successfully completing two securities industry courses, and by agreeing to pay an administrative penalty personally, so as not to affect the dividend distributions payable to Kuber's investors.
- [7] The parties have agreed to a \$400,000 administrative penalty (which has been paid by Mr. Kunaratnam pending this settlement approval hearing), a payment by Kuber of \$30,000 in costs, and a reprimand of both respondents.
- [8] In addition, Kuber has given an undertaking to the Commission. Kuber has promised to ensure that future trades of Kuber's securities are conducted through appropriate channels and to amend its offering memorandum to correct deficiencies. Kuber will also retain a registered exempt market dealer to review Kuber's know-your-client and suitability documentation, and to conduct a suitability analysis first for a random sample of existing investors who did not purchase through a registered dealer, and then depending on the results of that analysis, potentially for all such investors. Finally, Kuber has undertaken to redeem the shares of any investors whose investment in Kuber is found to have been unsuitable.
- [9] The Commission's role at a settlement hearing is to determine whether the negotiated result falls within a range of reasonable outcomes, and whether it would be in the public interest to approve the settlement. The Commission respects the negotiation process and accords significant deference to the resolution reached by the parties.
- [10] In all the circumstances, I conclude that the sanctions in this proceeding are appropriate, and that it would be in the public interest for me to approve the settlement. I shall therefore issue an order substantially in the form of the draft attached to the settlement agreement.
- [11] Kuber and Mr. Kunaratnam have agreed to a reprimand. That permits me to reinforce the importance of compliance with Ontario securities law. They are hereby reprimanded.

Dated at Toronto this 23rd day of March, 2020.

"Timothy Moseley"
Timothy Moseley