



Ontario
Securities
Commission

Commission des
valeurs mobilières
de l'Ontario

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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 MORTGAGE COMPANY OF CANADA INC., MCC ASSET
MANAGEMENT INC., MCC MORTGAGE HOLDINGS INC., RAJ BABBER, and
GREG GOUTIS**

- and -

**IN THE MATTER OF A
SETTLEMENT AGREEMENT BETWEEN
STAFF OF THE ONTARIO SECURITIES COMMISSION
AND MORTGAGE COMPANY OF CANADA INC., MCC ASSET MANAGEMENT INC.,
MCC MORTGAGE HOLDINGS INC.,
RAJ BABBER, and GREG GOUTIS**

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 sections 127 and 127.1 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 approve this Settlement Agreement and to make certain orders in respect of Mortgage Company of Canada Inc. (“**MCOCI**”), MCC Asset Management Inc. (“**MCC**”), MCC Mortgage Holdings Inc. (“**MCCMH**”), Raj Babber (“**Babber**”) and Greg Goutis (“**Goutis**”) (collectively, the “**Respondents**”).

PART II - JOINT SETTLEMENT RECOMMENDATION

2. Staff of the Commission (“**Staff**”) agree to recommend settlement of the proceeding commenced against the Respondents by Notice of Hearing dated August 14, 2015 (the “**Proceeding**”) according to the terms and conditions set out in Part V of this Settlement Agreement (this “**Settlement Agreement**”). The Respondents agree to the making of

an order in the form attached as Schedule “A” to this Settlement Agreement, based on the facts set out below.

3. For the purposes of the Proceeding, and any other regulatory proceeding commenced by a securities regulatory authority, the Respondents agree with the facts as set out in Part III and the conclusion in Part IV of this Settlement Agreement.

PART III - AGREED FACTS

A. OVERVIEW

4. Between November 1, 2013 and December 1, 2014 (the “**Material Time**”), the Respondents sold shares of MCOCI with a value of approximately \$32,231,040 to 147 investors. These sales were trades in securities not previously issued and were therefore distributions. The Respondents never filed a preliminary prospectus or a prospectus with the Commission, and no prospectus receipt has ever been issued to qualify the sale of these securities. Further, the Respondents have never been registered with the Commission and were not exempt from registration.
5. For some of these trades, prospectus exemptions were not available. MCOCI has agreed to redeem the shares of any investors who did not or do not qualify for any prospectus exemptions. MCOCI also offered to redeem the shares of all of its shareholders for whom the investment is unsuitable, none of whom elected to redeem despite being informed by a registered exempt market dealer of its reasonable opinion that the investment is unsuitable.

B. THE RESPONDENTS

6. MCOCI is a non-reporting issuer that was incorporated in Ontario on August 8, 2013. MCOCI is a mortgage investment corporation, as such term is defined in the *Income Tax Act*, R.S.C., 1985, c. 1, providing residential and commercial mortgages. As at December 31, 2014, MCOCI held mortgage loans valued at approximately \$34.5 million invested in two hundred and sixty one (261) mortgages, secured by a mix of first and non-first residential mortgages, and one commercial mortgage. Although MCOCI’s

credit policy limits the loan-to-value ratio on its single family properties to 80% , the loan-to-value ratio of MCOCI's portfolio has averaged less than 70% since inception. MCOCI typically makes investments in mortgages with a term of 12 months. MCOCI's mortgage loans typically have interest rates ranging from approximately 8% to 13%.

7. Babber is the President, Chief Executive Officer and a director of MCOCI, MCC and MCCMH. He is a resident of Richmond Hill.
8. Goutis is the Chief Financial Officer and a director of MCOCI, Chief Financial Officer of MCC and a director of MCCMH. He is a resident of Toronto.
9. MCC was incorporated in Ontario on February 17, 2009 under the name "The Mortgage Company of Canada Inc." MCC is registered as a mortgage administrator under the *Mortgage Brokerages, Lenders and Administrators Act, 2006*, S.O. 2006, c.29, and operates under the jurisdiction of the Financial Services Commission of Ontario. MCC has been in good standing under that legislation since it commenced operation in 2009. MCC changed its name to MCC Asset Management Inc. by articles of amendment dated August 8, 2013 to allow MCOCI to use its original name. MCC is engaged by MCOCI under a management services agreement.
10. MCCMH was incorporated in Ontario on August 8, 2013. MCCMH is retained by MCOCI to act as custodian in respect of the mortgages in MCOCI's portfolio, serving as bare trustee of the mortgages registered on title.
11. MCC and MCCMH are referred to collectively as the "**Other MCC Entities**".
12. None of the Respondents has ever been registered to trade in securities in Ontario and none was registered with the Commission in any capacity during the Material Time or at any other time.

C. CONDUCT AT ISSUE

13. Prior to the Material Time, MCC arranged direct investments in mortgages on behalf of its clients and administered these mortgages. During the Material Time, the Respondents distributed shares with a value of \$32,231,040 to 147 investors, as follows:
 - a. Effective November 1, 2013, MCOCI entered into mortgage purchase agreements with various direct mortgage investors and existing clients of MCC whereby such parties transferred to MCOCI the mortgage interests they held in exchange for redeemable common shares in the capital of MCOCI (“**Common Shares**”). The aggregate value of Common Shares issued by MCOCI on its incorporation and later, pursuant to these exchanges, was \$12,940,480.
 - b. Between November 1, 2013 and December 1, 2014, MCOCI issued Common Shares having an aggregate value of \$19,290,560, of which \$724,040 were issued under a dividend reinvestment plan.
14. Effective December 15, 2014, in cooperation with Staff, the Respondents voluntarily ceased distributing Common Shares pending the outcome of the review that resulted in this Settlement Agreement.
15. The sales of Common Shares were trades in securities not previously issued and were, therefore, distributions. The Respondents never filed a preliminary prospectus or a prospectus with the Commission and no prospectus receipt has ever been issued to qualify the sales of the Common Shares.
16. Not all of the MCOCI investors met, or could be demonstrated to have met, applicable exemptions from the prospectus requirement contained in National Instrument 45-106 *Prospectus Exemptions* (“**NI 45-106**”).
17. In addition, the Respondents failed to meet their suitability obligations. The Respondents failed to make appropriate enquiries relating to their investors’ financial circumstances and their investment needs and objectives to ensure the investments in

Common Shares were suitable. For approximately half of the investors, some or all of their investments were not suitable.

18. MCOCI did not file exempt distribution reports for the distributions within the required time period.

D. OUTSTANDING INVESTMENTS

19. The Common Shares are redeemable at a redemption price of \$10 per Common Share. Since inception, investors have redeemed Common Shares, which MCOCI has reported as having an aggregate value of \$3,886,640 comprising aggregate redemptions of \$2,253,460 to December 31, 2014 and \$1,633,180 in 2015. Throughout, the Respondents have redeemed Common Shares, in full, when requested.
20. As set out on MCOCI's audited financial statements for the year ended December 31, 2014, MCOCI had net assets of \$28,830,081 attributable to holders of Common Shares.

E. COOPERATION WITH STAFF AND OTHER MITIGATING FACTORS

21. The Respondents were relatively inexperienced in the securities industry and were not aware that their conduct was contrary to securities law. Since being put on notice of Staff's investigation, the Respondents have, at all times, cooperated fully with Staff and have voluntarily provided information about their shareholders and distributions during the Material Time.
22. Upon being made aware by Staff of their filing obligations, MCOCI promptly filed exempt distribution reports claiming exemptions for the distributions and paying the outstanding filing fees of \$17,000.
23. MCOCI has represented to Staff that since December 2014, upon being put on notice of Staff's investigation, it has not issued any securities and has undertaken a review of its outstanding investors. MCOCI has continued to redeem Common Shares, in full, on request.

24. As set out more fully below, the Respondents have agreed to redeem all investments from investors who did not or do not qualify for a prospectus exemption. The Respondents also offered to redeem the investment of any investor for whom the investment is not suitable. To assist with this process, MCOCI retained an exempt market dealer (“**EMD**”) registered under the Act to determine whether the trades in MCOCI qualified for a prospectus exemption and, if so, whether the investment would pass a suitability analysis.
25. As part of this process, the EMD attempted to contact all MCOCI investors. In its discussions with investors, the EMD conducted a “know your client” review of each investor in accordance with section 13.2 of National Instrument 31-103 – *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (“**NI 31-103**”) and explained that in the event that the investment was not suitable, MCOCI was offering full redemption of the investors’ investment. In cases where the EMD has been unable to contact the investor, MCOCI has agreed to redeem the shares of that investor.
26. After analysing whether the trades were eligible for exemptions from the prospectus requirement, and conducting a suitability assessment for all of MCOCI’s exempt shareholders, the EMD has represented that most of the trades made by MCOCI qualify for prospectus exemptions that were available at the time of the trades, or are currently available.
27. In particular, the EMD has reported to Staff that as at December 31, 2014:
 - a. 52 of the existing shareholders with investments in the aggregate amount of \$13,296,300 would qualify as accredited investors and the investment was suitable for these investors (“**Exempt Investors**”);
 - b. 39 of the existing shareholders with investments in the aggregate amount of \$10,513,190 would have qualified for the accredited investor exemption, but these investments were not suitable for those investors (“**AI Unsuitable Investors**”);
 - c. 28 of the existing shareholders with investments in the aggregate amount of \$4,474,790 each had a sufficient total investment to qualify for the minimum

amount exemption that was in effect until May 2015. However, these investments were not suitable for all but one (1) of those investors who had invested \$241,250 (“**MAE Unsuitable Investors**”);

- d. 14 of the existing shareholders with investments in the aggregate amount of \$551,460 did not qualify for exemptions at the time of the trades, but now qualify for the friends family, and business associate exemption that came into force in Ontario as a result of amendments to NI 45-106 (“**Newly Exempt Investors**”); and
 - e. 2 of the existing shareholders with investments in the aggregate amount of \$127,220 qualified for the employee, executive officer, director or consultant exemption, but these investments were not suitable for those investors (“**Employee Investors**”).
28. Of MCOCI’s total of 147 investors, three (3) had redeemed their entire shareholdings as at December 31, 2014 and MCOCI’s existing 144 shareholders are comprised of the 135 investors referred to in paragraph 27 above together with the nine (9) investors referred to in paragraph 32 below. MCOCI’s total issuance of \$32,231,040 in Common Shares can be calculated by adding (i) \$29,253,540, the aggregate value of the Common Shares held by current investors as at December 31, 2014 referred to in paragraph 27 above and paragraph 32 below plus (ii) \$724,040 in Common Shares issued under a dividend reinvestment plan referred to in subparagraph 13(b) plus (iii) aggregate redemptions of \$2,253,460 to December 31, 2014 referred to in paragraph 19.
29. The EMD met with all of the AI Unsuitable Investors, the MAE Unsuitable Investors and the Employee Investors and advised each of them of the reasons for its conclusion that the MCOCI investment is not suitable for them. In almost all cases where an investment was determined to be unsuitable for the investor, the EMD determined this was due to the investor’s over-exposure to the mortgage / real estate asset class. The EMD advised each investor that MCOCI was prepared to redeem their investment in Common Shares. In all cases, these investors acknowledged the unsuitability of the Common Shares and declined the opportunity to redeem their Common Shares. All of the AI Unsuitable Investors and MAE Unsuitable Investors, with investments in the aggregate amount of \$14,873,950, have signed acknowledgements indicating that:

- a. they have had a meaningful discussion with the EMD about the unsuitability of the investment;
 - b. they have been specifically advised of the reasons for the EMD's conclusion; and
 - c. they are instructing the EMD, in accordance with subsection 13.3(2) of NI 31-103 that they nonetheless wish to remain invested.
30. The EMD also met all of the Newly Exempt Investors discussed in paragraph 27(d) above and conducted a suitability analysis of the MCOCI investment. The EMD advised these Newly Exempt Investors that MCOCI issued these securities in non-compliance with securities laws and it was offering full redemption of this investment, together with the EMD's conclusion on suitability. The Newly Exempt Investors instructed the EMD that they also wished to remain invested and both the investor and MCOCI's representatives have completed and signed Forms 45-106F12 *Risk Acknowledgement Form for Family, Friend and Business Associate Investors*.
31. MCOCI has provided signed acknowledgments of the redemption offer by each affected investor to Staff.
32. The EMD has determined, and MCOCI agrees, that as at December 31, 2014, nine (9) investors holding Common Shares acquired for an aggregate amount of \$290,580 either (i) would not or do not meet applicable exemptions from the prospectus requirement available at the time of the trade, or currently available, or (ii) have not been available for the EMD to conduct a know your client and suitability assessment and, for expediency in resolving this matter, have been presumed to have had no available exemption. These investors are referred to, collectively, as "**Non-Exempt Investors**". The investments of the Non-Exempt Investors represent less than 1% of the aggregate capital raised by MCOCI.
33. The Respondents have given a joint and several undertaking to the Commission, in the form attached as Schedule "B" to this Settlement Agreement (the "**Undertaking**"), that if this Settlement Agreement is approved, they will redeem all remaining Common Shares held by Non-Exempt Investors at the same time, and within thirty (30) days of

the date of the Commission's order approving this Settlement Agreement. \$130,000 of the aggregate \$290,580 of Common Shares held by Non-Exempt Investors have already been redeemed.

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

34. By engaging in the conduct described above, the Respondents admit and acknowledge that they have breached Ontario securities law and engaged in conduct contrary to the public interest. In particular:
- a. MCOCI failed to file the requisite exempt distribution reports and pay the associated fees for over a year;
 - b. 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 in circumstances in which no exemption was available, contrary to subsection 25(1) of the Act;
 - c. The Respondents distributed securities where no preliminary prospectus and prospectus were issued or receipted by the Director under the Act, and where exemptions were not available, contrary to section 53 of the Act; and
 - d. Babber and Goutis, as directors and officers of MCOCI and the Other MCC Entities, authorized, permitted or acquiesced in the breaches by MCOCI and the Other MCC Entities of sections 25 and 53 of the Act, as set out above, and, in so doing, are deemed to have not complied with Ontario securities laws, pursuant to section 129.2 of the Act.

PART V - TERMS OF SETTLEMENT

35. The Respondents agree to the following terms of settlement listed below and to the order in the form attached as Schedule "A" to this Settlement Agreement, to be made by the Commission pursuant to subsection 127(1) and section 127.1 of the Act:
- a. The approval of this Settlement Agreement;

- b. the Respondents shall each be reprimanded, pursuant to paragraph 6 of subsection 127(1) of the Act;
- c. Babber and Goutis shall each successfully complete the Canadian Securities Course Exam, Exempt Market Products Exam and the PDO Exam (“**Required Courses**”) as those terms are defined in section 3.1 of NI 31-103, before applying to become a registrant with the Commission;
- d. pending the successful completion of the Required Courses, pursuant to paragraphs 8, 8.2, 8.4 of subsection 127(1) of the Act, Babber and Goutis will each be prohibited from becoming or acting as a director or officer of any reporting issuer, registrant, or investment fund manager, and pursuant to paragraph 8.5 of subsection 127(1) of the Act, Babber and Goutis will each be prohibited from becoming or acting as a registrant, investment fund manager, or promoter;
- e. the Respondents shall execute and deliver the Undertaking to the Commission, whereby the Respondents jointly and severally undertake to redeem, at the same time, and within thirty (30) days of the date of the Commission’s order approving this Settlement Agreement, all remaining Common Shares held by Non-Exempt Investors (in the amount of \$160,580), subject, in the case of MCOCI, to compliance with the solvency provisions under applicable law;
- f. the voluntary cease trade in respect of securities of MCOCI shall terminate on the date of the Commission’s order approving this Settlement Agreement, and any subsequent trades of securities of MCOCI in Ontario will be made through or to a dealer registered under the Act in a category that permits such trade, or by the Respondents directly only if and when registered to conduct such trades;
- g. in the event that the Respondents do not fully comply with the Undertaking, the Respondents shall, pursuant to paragraph 10 of subsection 127(1) of the Act, immediately disgorge to the Commission the unpaid balance arising from the Undertaking, up to the amount of \$160,580. The amount of up to \$160,580 to be

disgorged to the Commission pursuant to this subparagraph 35(g) shall be reduced by the same amount as any funds paid back to the Non-Exempt Investors in accordance with the Undertaking, provided that satisfactory supporting evidence of such payments is provided by the Respondents to Staff. The disgorgement amount shall be designated for allocation or for use by the Commission in accordance with subparagraphs (b)(i) or (ii) of subsection 3.4(2) of the Act;

- h. pursuant to paragraph 9 of subsection 127(1) of the Act, the Respondents, jointly and severally, shall be ordered to pay to the Commission an administrative penalty in the amount of \$75,000, payable within sixty (60) days from the date of the Commission's order approving this Settlement Agreement, for their failure to comply with Ontario securities law. The administrative penalty shall be designated for allocation or for use by the Commission pursuant to subparagraphs (b)(i) or (ii) of subsection 3.4(2) of the Act;
- i. the Respondents shall, jointly and severally, pay costs in the amount of \$25,000 within sixty (60) days of the date of the Commission's order approving this Settlement Agreement, pursuant to section 127.1 of the Act;
- j. in the event that any of the amounts are not paid when due in accordance with the Undertaking, or subparagraphs 35 (g), (h,) and (i) above:
 - i. pursuant to paragraph 2 of subsection 127(1) of the Act, trading in any securities by or of any of the Respondents shall cease until such amounts are paid to the Commission;
 - ii. pursuant to paragraph 2.1 of subsection 127(1) of the Act, acquisition of any securities by any of the Respondents shall be prohibited until such amounts are paid to the Commission; and
 - iii. any exemptions contained in Ontario securities law shall not apply to any of the Respondents until such amounts are paid to the Commission;

- k. until the entire amount of the payments set out in subparagraphs 35(e), (g), (h,) and (i) above, is paid in full, pursuant to paragraph 8.5 of subsection 127(1) of the Act, MCOCI and the Other MCC Entities shall each be prohibited from becoming or acting as a registrant, investment fund manager or promoter, and the provisions of subparagraphs 35(d) and (j) above, shall continue in force without any limitation as to time period.
36. The Respondents hereby 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 subparagraphs 35(b), (c), (d), (j) and (k) above. These prohibitions and orders may be modified to reflect the provisions of the relevant provincial or territorial securities law.
37. Babber and Goutis agree to attend in person, on their own behalf and on behalf of the other Respondents, at the hearing before the Commission to consider this Settlement Agreement.
38. The Respondents acknowledge that failure to pay in full any monetary sanctions and/or costs ordered will result in the Respondents' names being added to the list of "Respondents Delinquent in Payment of Commission Orders" published on the OSC website.
39. The Respondents acknowledge that this Settlement Agreement and proposed Order may form the basis for parallel orders in other jurisdictions in Canada. The securities laws of some other Canadian jurisdictions may allow orders made in this matter to take effect in those other jurisdictions automatically, without further notice to the Respondents. The Respondents should contact the securities regulator of any other jurisdiction in which he/it may intend to engage in any securities related activities, prior to undertaking such activities.

PART VI - STAFF COMMITMENT

40. If the Commission approves this Settlement Agreement, Staff will not commence or continue any proceeding against the Respondents under Ontario securities law in

relation to the facts set out in Part III of this Settlement Agreement, subject to the provisions of paragraph 41 below.

41. If the Commission approves this Settlement Agreement and the Respondents fail to comply with any of the terms of this Settlement Agreement, Staff may bring proceedings under Ontario securities law against the Respondents. These proceedings may be based on, but will not be limited to, the facts set out in Part III of this Settlement Agreement as well as the breach of this Settlement Agreement. In addition, if this Settlement Agreement is approved by the Commission, and the Respondents fail to comply with its terms, the Commission is entitled to bring any proceedings necessary to recover the amounts set out in subparagraphs 35(e), (g), (h), and (i) above.

PART VII - PROCEDURE FOR APPROVAL OF SETTLEMENT

42. The parties will seek approval of this Settlement Agreement at a public hearing before the Commission scheduled for Monday, August 17, 2015, or on another date agreed to by Staff and the Respondents, according to the procedures set out in this Settlement Agreement and the Commission's Rules of Procedure.
43. This Settlement Agreement will form all of the agreed facts that will be submitted at the settlement hearing on the Respondents' conduct, unless the parties agree that additional facts should be submitted at the settlement hearing.
44. If the Commission approves this Settlement Agreement, the Respondents irrevocably waive all right to a full hearing, judicial review or appeal of this matter under the Act.
45. If the Commission approves this Settlement Agreement, neither Staff nor the Respondents will make any public statement that is inconsistent with this Settlement Agreement or with any additional agreed facts submitted at the settlement hearing.
46. Whether or not the Commission approves this Settlement Agreement, the Respondents will not use, in any proceeding, this Settlement Agreement or the negotiation or process of approval of this Settlement 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 X - DISCLOSURE OF SETTLEMENT AGREEMENT

47. If the Commission does not approve this Settlement Agreement or does not make an order in the form attached as Schedule "A" to this Settlement Agreement:
 - a. This Settlement Agreement and all discussions and negotiations between Staff and the Respondents before the settlement hearing takes place will be without prejudice to Staff and the Respondents; and
 - b. Staff and the Respondents will each be entitled to all available proceedings, remedies and challenges, including proceeding to a hearing on the merits of the allegations contained in the Statement of Allegations of Staff dated August 13, 2015. Any such proceedings, remedies and challenges will not be affected by this Settlement Agreement, or by any discussions or negotiations relating to this Settlement Agreement.
48. Both Staff and the Respondents will keep the terms of this Settlement Agreement confidential until the Commission approves this Settlement Agreement. Any obligations of confidentiality shall terminate upon the commencement of the public settlement hearing. If, for whatever reason, the Commission does not approve this Settlement Agreement, the terms of this Settlement Agreement shall remain confidential indefinitely, unless Staff and the Respondents otherwise agree or except as may be required by law.

PART X - EXECUTION OF SETTLEMENT AGREEMENT

49. This Settlement Agreement may be signed in one or more counterparts which, together, constitute a binding agreement.
50. A facsimile copy or other electronic copy of any signature will be as effective as an original signature.

Dated this 14th day of August, 2015.

Tom Atkinson

Director, Enforcement Branch

Dated this 14th day of August, 2015.

MORTGAGE COMPANY OF CANADA INC.

Raj Babber

Raj Babber, President

Dated this 14th day of August, 2015.

MCC ASSET MANAGEMENT INC.

Raj Babber

Raj Babber, President

Dated this 14th day of August, 2015.

MCC MORTGAGE HOLDINGS INC.

Raj Babber

Raj Babber, President

Dated this 14th day of August, 2015.

Raj Babber

Raj Babber

Ajay Kaith

[Name] Ajay Kaith

Witness

Dated this 14th day of August, 2015.

Greg Goutis

Greg Goutis

Ajay Kaith

[Name] Ajay Kaith

Witness