



Ontario
Securities
Commission

Commission des
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de l'Ontario

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Citation: Clifton Blake Asset Management Ltd. (Re), 2019 ONSEC 12

Date: 2019-03-28

File No. 2019-4

**IN THE MATTER OF
CLIFTON BLAKE ASSET MANAGEMENT LTD.,
CLIFTON BLAKE MORTGAGE FUND TRUST,
QASIM (KC) DAYA, VICTOR HSU, and WESLEY MYLES**

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

Hearing: March 28, 2019

Decision: March 28, 2019

Panel: D. Grant Vingoe Vice-Chair and Chair of the Panel

Appearances: Christina Galbraith For Staff of the Commission

Laura Paglia For the Respondents

ORAL REASONS FOR APPROVAL OF A SETTLEMENT

The following reasons have been prepared for publication in the Ontario Securities Commission Bulletin, based on the reasons delivered orally at the hearing, and as edited and approved by the Panel, to provide a public record.

- [1] These are the oral reasons for the approval of a settlement in the matter of Clifton Blake Asset Management Ltd. (**CBAM**), Clifton Blake Mortgage Fund Trust (**CBMF Trust**), Qasim (KC) Daya, Victor Hsu, and Wesley Myles (collectively, the **Respondents**). Staff and the Respondents have submitted a Joint Application for a Settlement Hearing, dated March 22, 2019.
- [2] I previously conducted a confidential settlement conference related to this matter, and the Settlement Agreement included in the Joint Application reflects the matters discussed at that conference.
- [3] The Agreed Facts section in the Settlement Agreement states that, from July 2015 to December 2016 (the **Relevant Period**), the Respondents were in the business of trading in the securities of CBMF Trust, a mortgage investment entity (**MIE**). The Respondents sold approximately \$25 million worth of these securities to approximately 144 investors, mainly in Ontario. The agreed facts further state that the Respondents were not registered with the Commission and that no registration exemptions were available.
- [4] The agreed facts also state that the Respondents failed to comply with the requirements for prospectus exemptions on certain occasions. They also engaged in conduct contrary to the public interest by failing in their 'Know Your Client' responsibilities, and thereby failing in ensuring that the investments were suitable for their investors.
- [5] CBAM and the individual respondents established CBMF Trust as an MIE, with a wholly-owned subsidiary of CBAM originating and administering mortgage loans to be funded by CBMF Trust, with the portfolio of loans held by a related limited partnership, as described in the agreed facts. The individual respondents were each approximately 1/3 indirect owners of and partners in CBAM. Mr. Daya was also the President of CBAM and a licensed mortgage broker with the Financial Services Commission of Ontario. It is agreed that each of these individuals was either an actual or *de facto* officer and/or director of CBAM and the CBMF Trust. Each of them authorized, permitted or acquiesced in the non-compliance detailed in the Settlement Agreement.
- [6] During the Relevant Period, investors in CBMF Trust executed subscription agreements to implement their investment. Investors executing subscription agreements from October 2016 onward were required to meet capital calls if mortgages were selected to be made available to fund. Each investor confirmed that the investor was an accredited investor or alternatively, family, friends and business associates in relation to the issuer. These subscription agreements resulted in substantial sales of securities, as I have noted.
- [7] It is also agreed that the units in CBMF Trust are securities and not the type of mortgage interests for which the *Securities Act*, RSO 1990, c S.5 provides registration or prospectus exemptions.

- [8] These improper sales came to light when a CBAM subsidiary applied to be registered with the Commission as an exempt market dealer. The application was withdrawn pending the resolution of the enforcement proceeding underlying the Settlement Agreement under consideration.
- [9] During the period the application for registration was pending, CBAM was examined on a voluntary basis by Staff in the OSC's Compliance and Registration Branch. As a result of discussions with Staff, CBAM voluntarily ceased trading in securities of CBMF Trust, among others.
- [10] CBAM also retained an exempt market dealer to conduct a suitability analysis in respect of the sales that had occurred, determining that 12 investors made unsuitable investments in the CBMF Trust. Each of these investors were offered to opportunity to redeem their investments, but decided to retain their investments and signed a waiver and risk acknowledgement form.
- [11] By way of additional mitigating factors, it is requested that this Panel consider that:
- a. The Respondents have fully cooperated with Staff's investigation;
 - b. The Respondents have never been registered with the Commission and have had no experience in securities registration matters until the present occurrence;
 - c. The actions outlined in paragraph 10;
 - d. CBAM agreed to cease trading in CBMF Trust securities during Staff's inquiries and not to resume without prior notice to Staff. Staff subsequently consented to the resumption of sales through the EMD; and
 - e. Staff found no evidence of any dishonest or deceptive conduct by the Respondents.
- [12] I agree that the Respondents have taken responsibility for their actions and have sought to rectify the effects of non-compliance on affected investors in CBMF Trust securities.
- [13] Staff and the Respondents have jointly proposed terms of settlement that include, among other terms and conditions:
- a. Each Respondent shall be reprimanded;
 - b. If any of the investors for whom a prospectus exemption was not available and who declined the offer to rescind shall seek to redeem their securities, CBAM and the individual respondents shall honour any subsequent request to redeem made by them;
 - c. CBAM and the individual respondents shall also honour requests to redeem from those investors where meaningful discussions on suitability and exemption status did not occur with the EMD;
 - d. CBAM and the individual respondents shall pay, and I've been advised they have paid, an administrative penalty of \$100,000 on a joint and several basis; and
 - e. For a period of two years following the approval of the Settlement Agreement, a copy of the Settlement Agreement and the Order resulting

from this proceeding shall be delivered to any dealer registered in Ontario engaged by the Respondents.

- [14] The Respondents are present today at this hearing. I am advised that the payment of the administrative penalty has been satisfied.
- [15] In light of the agreed facts and mitigating factors, I find that it is in the public interest to approve the Settlement Agreement. An Order will be issued in substantially the form append to the Joint Application.
- [16] Each of the Respondents is hereby reprimanded for their conduct.

Dated at Toronto this 28th day of March, 2019.

"D. Grant Vingoe"

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