



Ontario  
Securities  
Commission  
3S8

Commission des  
valeurs mobilières  
de l'Ontario

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

**STATEMENT OF ALLEGATIONS**

(Subsection 127(1)  
of the *Securities Act*, RSO 1990, c S.5)

**A. ORDER SOUGHT**

1. Staff of the Enforcement Branch (**Enforcement Staff**) of the Ontario Securities Commission (the **Commission**) request that the Commission make an order pursuant to subsection 127(1) of the *Securities Act*, RSO 1990, c S.5 (the **Act**) to approve the settlement agreement dated March 22, 2019 between Clifton Blake Asset Management Ltd. (**CBAM**), Clifton Blake Mortgage Fund Trust (**CBMF Trust**), Qasim (KC) Daya (**Mr. Daya**), Victor Hsu (**Mr. Hsu**), and Wesley Myles (**Mr. Myles**) (collectively, the **Respondents**) and Enforcement Staff.

**B. FACTS**

Enforcement Staff make the following allegations of fact:

**OVERVIEW**

2. Registration requirements under Ontario securities law are set out in the Act and National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations*. Mortgage investment entities (**MIEs**) that invest all or substantially all of their

assets in mortgages and are in the business of trading securities, which include the distribution of the securities of MIEs, require registration.

3. CSA Staff Notice 31-323 *Guidance Relating to the Registration Obligations of Mortgage Investment Entities*, which was published in February 2011, re-iterates that MIEs, or any other person or company trading in the securities of an MIE, is required to register with the Commission if it is in the business of trading securities. Staff Notice 81-722 *Mortgage Investment Entities and Investment Funds*, which was published in September 2013, provides further guidance on the distinction between MIEs and investments funds and their respective registration requirements. This information is reiterated to market participants in OSC Staff Notice 33-738 *2012 OSC Annual Summary Report for Dealers, Advisers and Investment Fund Managers*. This information was publicly available during the Relevant Period (defined below).
4. From July 2015 to December 2016 (the **Relevant Period**), the Respondents were in the business of trading in the securities of the CBMF Trust in Ontario. The Respondents sold approximately \$25 million worth of units in CBMF Trust, an MIE, to approximately 144 investors, most of whom live in Ontario. The Respondents were not registered with the Commission and no registration exemption was available.
5. During the Relevant Period, trades in the units of CBMF Trust were made in reliance on prospectus exemptions since no prospectus or preliminary prospectus had been filed with the Commission. While the Respondents sought to rely on prospectus exemptions, they failed to comply with the applicable requirements on certain occasions and in those cases an exemption was therefore not available.
6. The Respondents engaged in conduct contrary to the public interest by failing to adequately know their clients and ensure “Know Your Client” (**KYC**) information was collected and assessed for each investor in the CBMF Trust, and thereby failed to ensure the investments were suitable for each of the investors.

## THE RESPONDENTS

7. CBAM operates a broad-based Ontario real estate business including development, asset management, property management, and mortgage lending and administration. CBAM also raises capital through the sale of partnership units in real estate private equity funds (the **CB Funds**) and the sale of units in the CBMF Trust. All of the CB Funds are Ontario limited partnerships of which CBAM is the general partner. CBAM manages the CB Funds and the CBMF Trust.
8. In June 2015, CBAM and the Principals (as defined below) established the CBMF Trust, an MIE with a pooled mortgage fund structure, with Clifton Blake Capital Corp. (**CBCC**) as the originator and administrator of the mortgage loans funded by CBMF Trust. Clifton Blake Mortgage Fund LP (**CBMF LP**) is an Ontario limited partnership wholly owned by CBMF Trust which holds the portfolio of first and second mortgages funded by the CBMF Trust.
9. CBMF Trust is a mutual fund trust for tax purposes that carries on a mortgage origination and lending business. The CBMF Trust is managed by CBAM. The Trustee is Caledon Trust, which also has a limited management role. The units of CBMF Trust are redeemable in accordance with the terms of CBMF Trust's Trust Agreement dated June 26, 2015, which governs the CBMF Trust.
10. CBMF LP is an Ontario limited partnership of which the sole limited partner is the CBMF Trust. The CBMF LP does not conduct any activities other than holding the mortgage portfolio of the Trust.
11. Clifton Blake Mortgage Fund (GP) Inc. is a wholly owned subsidiary of CBAM, and is the general partner of the LP.
12. Mr. Daya is a resident of Toronto, Ontario. Mr. Daya is a partner in CBAM, the President and an indirect 33% owner of CBAM. Mr. Daya is licensed as a mortgage broker with FSCO and is the principal broker of CBCC.

13. Mr. Hsu is a resident of Toronto, Ontario. Mr. Hsu is a partner of CBAM and an indirect 33% owner of CBAM.
14. Mr. Myles is a resident of Toronto, Ontario. Mr. Myles is a partner in CBAM and an indirect 33% owner of CBAM.

### **UNREGISTERED TRADING**

15. CBAM is owned indirectly by Messrs Daya, Hsu, and Myles (collectively, the **Principals**). CBAM began the business of trading in securities in July 2015 when CBAM began selling units in the CBMF Trust.
16. During the Relevant Period, investors in the CBMF Trust subscribed by executing a subscription agreement confirming they were accredited investors, or alternatively, family, friends and business associates. Investors who invested during the period from October 2016 onward made a capital commitment contingent upon the CBMF Trust finding suitable mortgages to fund in order to increase the CBMF Trust portfolio. Investors only contributed their capital when the CBMF Trust identified a mortgage and then “called” for the capital. Investors received CBMF Trust units once the capital was contributed.
17. Initially CBAM raised \$6.45 million from 15 investors through the sale of units in the CBMF Trust. However, by December 2016, CBAM had raised \$25 million through the sale of units in the CBMF Trust from approximately 144 investors.
18. No sales commissions or referral fees were charged or paid in respect of these sales.
19. The units of the CBMF Trust are securities as that term is defined in subsection 1(1) of the Act. However, they are not of the nature to permit reliance upon the licensed mortgage broker dealer registration or prospectus exemptions available pursuant to subsections 35(4) and 73.2(3) of the Act. During the Relevant Period, none of the Respondents were registered in any capacity with the Commission.

20. During the Relevant Period, the Respondents engaged in the business of trading in securities by selling units of the CBMF Trust to the public. As such, the Respondents required dealer registration, yet failed to register under the Act despite there being no exemptions to the registration requirement available to the Respondents under Ontario securities law, contrary to subsection 25(1) of the Act.

### **ILLEGAL DISTRIBUTIONS OF CBMF TRUST SECURITIES**

21. The units of the CBMF Trust had not been previously issued. No prospectus or preliminary prospectus was filed with the Commission and no receipt for them has ever been issued by the Director as required by subsection 53(1) of the Act with respect to the trades of the units of the CBMF Trust.
22. Certain of the distributions in the CBMF Trust were made in reliance on the family, friends and business associates exemption. In certain circumstances, the Respondents failed to comply with the applicable requirements of the friends, family and business associates exemption, and in those cases an exemption was therefore not available.

### **FAILURE TO MEET OBLIGATIONS AS A DEALER**

23. During the Relevant Period, the Respondents acted as a securities dealer that sold only securities of related issuers.
24. The Respondents did not adequately collect or consider KYC information from investors and did not examine investors' portfolios to ensure that investments in the CBMF Trust were suitable for them.
25. Investors in the CBMF Trust completed subscription agreements and received certificates evidencing their investment. The subscription agreements included forms by which investors could indicate upon which prospectus exemption they were relying. However, aside from checking to see that these forms had been completed, there was no formal KYC

review conducted with prospective investors to see if they qualified for the prospectus exemption.

## **LIABILITY OF DIRECTORS AND OFFICERS**

26. During the Relevant Period, the Principals as directors and/or officers CBAM and *de facto* directors and/or officers of CBMF Trust, authorized, permitted or acquiesced in the corporate Respondents' non-compliance with Ontario securities law.

### **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:

27. CBAM engaged in the business of, or held themselves out as engaging in the business of, trading in securities of the CBMF Trust, without being registered in accordance with Ontario securities law as a dealer, contrary to subsection 25(1) of the Act, and where there were no exemptions available.
28. Certain of the distributions in the CBMF Trust were made in reliance on the family, friends and business associates exemption. In certain circumstances, the Respondents failed to comply with the applicable requirements of the friends, family and business associates exemption, and in those cases an exemption was therefore not available. These distributions constituted distributions of securities in circumstances where: (1) no preliminary prospectus and prospectus were filed and receipts had not been issued for them by the Director; and, (2) where there were no exemptions available under Ontario securities law, contrary to section 53 of the Act.
29. The Respondents engaged in conduct contrary to the public interest by failing to adequately know their clients and ensure sufficient KYC information was collected for each investor

in the CBMF Trust in order to ensure the investments were suitable for each of the investors.

30. The Principals as directors and/or officers of CBAM and *de facto* directors and/or officers of the CBMF Trust authorized, permitted or acquiesced in CBAM's and CBMF Trust's non-compliance with Ontario securities law as set out above, and accordingly, failed to comply with Ontario securities law contrary to section 129.2 of the Act.

**DATED** this 22<sup>nd</sup> day of March, 2019.

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