CHARTERED PROFESSIONAL ACCOUNTANTS OF ONTARIO

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CHARTERED PROFESSIONAL ACCOUNTANTS OF ONTARIO ACT, 2017

TO: ROBERT L. MORTON, CPA, CMA

AND TO: The Discipline Committee of CPA Ontario

The Professional Conduct Committee of CPA Ontario hereby makes the following Allegation of professional misconduct against Robert L. Morton, CPA, CMA, a member of CPA Ontario:

1. THAT the said Robert L. Morton, in or about the period May 1, 2015 through July 31, 2015, while employed as Chief Financial Officer of Home Capital Group Inc., failed to maintain the good reputation of the profession and its ability to serve the public interest, contrary to Rule 201.1 of the Rules of Professional Conduct, in that he conducted himself in a fashion which contravened the *Securities Act*, R.S.O. 1990, c. S.5 as described in the Settlement Agreement attached as Schedule "A".

Dated at Collingwood, Ontario, this 23rd day of May, 2018.

Janet Currie

J.E. CURRIE, FCPA, FCA, FCMA
DEPUTY CHAIR
PROFESSIONAL CONDUCT COMMITTEE

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

IN THE MATTER OF
HOME CAPITAL GROUP INC., GERALD SOLOWAY,
ROBERT MORTON and MARTIN REID

SETTLEMENT AGREEMENT

PART I - INTRODUCTION

1. Disclosure is a cornerstone principle of securities regulation. Everyone investing in securities should have equal access to information that may affect their investment decisions. From May 2015 until July 2015 (the "Material Time"), the Respondents engaged in the conduct described below, including failing to provide information to investors.

2. The Ontario Securities Commission (the "Commission") will issue a Notice of Hearing (the "Notice of Hearing") to announce that it will hold a hearing ("Settlement 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 make certain orders against Home Capital Group Inc. ("HCG"), Gerald Soloway ("Soloway"), Robert Morton ("Morton") and Martin Reid ("Reid") (collectively, the "Respondents") in respect of the conduct described herein.

PART II - JOINT SETTLEMENT RECOMMENDATION

3. Staff of the Commission ("Staff") recommend settlement of the proceeding (the "Proceeding") against the Respondents commenced by the Notice of Hearing dated April 19, 2017, in accordance with the terms and conditions set out in Part V of this Settlement Agreement. The Respondents consent to the making of an order (the "Order") in the form attached as Schedule "A" to this Settlement Agreement based on the facts set out herein.

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

PART III - AGREED FACTS

A. OVERVIEW

5. On July 10, 2015, HCG announced that an ongoing review of its business partners had led it to terminate certain brokerages and brokers, causing an immediate drop in the number of new mortgages originated ("Originations"). The next trading day, HCG's stock price fell 18.9%.

6. Prior to this announcement, from May 2015 until July 2015, HCG misled its shareholders as to the immediate and ongoing causes of the decline in Originations. Internally, HCG knew it had terminated three underwriters, two brokerages and thirty brokers because it had discovered falsified loan applications in its broker channels. The terminated brokerages and brokers had a cumulative total of $881.4 million in Originations in 2014, representing approximately 10% of HCG's total 2014 Originations. The termination of brokerages and brokers caused an immediate drop in Originations because certain of these brokers had historically referred significant volumes of business to HCG.

7. HCG also knew that additional changes to its internal control structure would be required largely because falsified loan applications had been discovered. By December 2014, HCG knew that the resulting changes that were being implemented led to some brokers moving their business to other lenders because of increased processing times at HCG. As of May 2015, Reid and Morton both stated in internal documents that the brokerage and broker terminations and remedial process changes had a negative effect on Q1 2015 Originations. Instead of including this material information in its Q1 2015 interim management discussion and analysis ("MD&A") (together with the Q1 2015 interim financial statements, the "Q1 2015 Interim Filing"), HCG made materially misleading statements by attributing the decline in Originations to other factors such as seasonality, harsh winter, macroeconomic conditions and an "on-going review of its business partners ensuring that quality is within the Company's risk appetite."

8. HCG also made materially misleading statements concerning the causes of the drop in Originations on its May 7, 2015 earnings call, again attributing the drop to other factors that affected Originations such as cold weather, macroeconomic conditions and a cautious approach to lending.

9. In July 2015, HCG disclosed additional reasons for the drop in Originations, by way of a news release issued on July 10, 2015 (the "July 10th NR") and material change report filed on July 17, 2015 (the "July 17th MCR"). Many of the facts disclosed in the July 10th NR were known to HCG by May 6, 2015. HCG had also been aware by May 6, 2015 that significant changes to its internal control structure were required and were being implemented. All of the foregoing constituted a material change in the business or operations of HCG. HCG failed to issue a news release forthwith and a material change report within 10 days of the material change, contrary to subsections 75(1) and (2) of the Act and Part 7 of National Instrument 51-102 - *Continuous Disclosure Obligations* ("NI 51-102").

10. The disclosures made in the July 10th NR and July 17th MCR were not sufficient to enable a reader to fully appreciate the significance and impact of the material change and therefore did not comply with Form 51-102F3 *Material Change Report* ("51-102F3") of NI 51-102.

B. BACKGROUND

The Respondents

11. HCG is a reporting issuer in the province of Ontario, as well as all of the other provinces in Canada. Its registered and principal office is located in Toronto, Ontario. The common shares of HCG are listed on the Toronto Stock Exchange. HCG is a holding company the principal business of which is conducted through its wholly owned subsidiary, Home Trust Company, a federally regulated financial institution.

12. Soloway is the founder of HCG and is 79 years old. During the Material Time, Soloway was the Chief Executive Officer ("CEO") and a director of HCG. Morton was HCG's Chief Financial Officer ("CFO") during the Material Time and is 57 years old. Reid was HCG's President during the Material Time and is 57 years old.

C. DETAILED FACTS

The Importance of Originations to the Business of HCG

13. HCG is in the residential and commercial lending business. HCG's residential mortgage portfolio constitutes approximately 90% of HCG's business. HCG's residential mortgage business consists predominantly of two portfolios: (a) lower margin, prime mortgages ("Accelerator"), which are mostly insured by Canada Mortgage and Housing Corporation; and (b) higher margin, non-prime mortgages ("Classic"), which are not insured. As a lending business whose primary product is non-prime residential mortgages, HCG's growth and performance are measured in part by the number of Originations in any given quarter.

14. HCG had traditionally positioned itself as a growth company and continued to do so through 2014 and into 2015. Analysts and investors considered the number of Originations to be a material metric of HCG's continued growth. HCG itself normally reported on Originations each quarter. In HCG's 2014 Annual Report, Originations are specifically highlighted under the heading "Growing Our Core Business", and again under "Building Our Asset Base" where HCG stated:

> Over the course of 2014, we renewed focus on Accelerator, our insured residential mortgage product. As a result of our efforts, originations for this component of our portfolio increased by 76.4% in 2014. This business segment continues to be one of our key offerings and helps to fulfill our mandate to offer a full line of products that meets the needs of borrowers and brokers.

15. Analysts consistently asked questions about Originations and HCG's disclosure regarding Originations on earnings calls.

16. HCG sources borrowers for its lending products through its broker channels and referral channels. HCG's relationships with brokers are integral to Originations and to HCG's business.

Project Trillium and HCG's Internal Understanding of the Findings

17. In June 2014, HCG became aware of irregularities associated with Accelerator applications handled by one of its underwriters. As a result, in August 2014, HCG launched an internal investigation known as Project Trillium to determine the scope, extent and cause of the

issue. HCG discovered that members of its Accelerator underwriting team, including one of its highest volume underwriters, were falsely documenting that they had completed income verification steps when they had not actually done so ("Phantom Ticking") for a large proportion of mortgages underwritten by those underwriters, and further that employment/income information used to support the mortgage applications had been falsified.

18. Project Trillium revealed that HCG's lines of defence had failed to detect that its underwriting department was processing fraudulent documentation. It further revealed that HCG's underwriting policy was being circumvented because of the practice of Phantom Ticking, which was a "learned" or systemic practice by certain members of HCG's Accelerator underwriting group.

19. As a result of interim findings of Project Trillium, in mid-November 2014, HCG terminated three underwriters and another underwriter resigned.

20. HCG also terminated its relationship with certain brokers and brokerages, which occurred mainly from November 2014 through January 2015. By February 10, 2015, HCG had terminated brokers and brokerages that had generated a cumulative total of $881.4 million in Originations in 2014, representing approximately 10% of HCG's total 2014 Originations. The termination of brokerages and brokers caused an immediate drop in Originations because certain of those brokerages and brokers had historically referred significant volumes of business to HCG. Remediation of internal controls also had a negative effect on Originations as they caused HCG's processing time for mortgage applications to increase, resulting in some brokers sending applications to other lenders. In January 2015, management reported to the Board of Directors ("Board") that, effective January 1, 2015, insured Originations would undergo a reduction in volume targets of $100 million per month during the period of remediation of lines of defence (a 50% reduction of original targets). Further, in a presentation by Reid entitled *Project Trillium: Management Remediation Planning*, management of HCG confirmed its understanding of the way ahead by writing, "slower business growth over the next quarter will give us the opportunity to develop and implement fundamental strategic changes to the business."

21. By February 2015, the following investigative findings, remediation planning and action from Project Trillium were known by the Respondents:

- The Accelerator business was down by 32.5% compared to Q3 2014;
- Effective January 1, 2015, Accelerator volume targets had been temporarily reduced by 50% to $100 million per month;
- HCG had terminated three underwriters, two brokerages (out of more than 100) and 30 brokers (out of more than 4,000);
- The terminated brokerages and brokers had a cumulative total of $881.4 million in Originations in 2014, representing approximately 10% of HCG's total 2014 Originations;
- Significant process changes were required to increase the accountability of the front line business, including separating sales from underwriting and implementing an employment income verification team;
- While testing was complete on the Accelerator side of the business, there was a concern that if brokers had supplied falsified employment and income documentation on the insured side of the business, they might be doing the same thing for Classic mortgages. Work continued on the exposure assessment related to the Classic mortgage portfolio. The Corporate Compliance group was re-verifying employment and income information with employers for a sample of mortgages to salaried borrowers;
- Some brokers were moving their business to other lenders because of increased processing times at HCG; and
- Executive compensation was deferred in conjunction with Project Trillium findings, including the compensation of Soloway and Reid.

Particulars of HCG's Public Disclosure

(a) Misleading Disclosure in May 2015

(i) Q1 2015 Interim Filing

22. HCG filed its Q1 2015 Interim Filing on May 6, 2015. The Q1 2015 Interim Filing stated that "the first quarter was characterized by a traditionally slow real estate market, exacerbated by very harsh winter conditions. The Company has remained cautious in light of continued macroeconomic conditions and continues to perform ongoing reviews of its business partners ensuring that quality is within the Company's risk appetite."

23. One week before HCG filed its Q1 2015 Interim Filing, HCG had knowledge of the negative impact of the termination of brokerages and brokers and remedial actions on Originations. In his "1st Quarter 2015" Report ("President's Report") dated April 29, 2015, Reid

stated that the decrease in Originations for Q1 2015 was mainly due to Project Trillium remedial actions. The President's Report further stated that HCG's "share of the broker channel has deteriorated, mainly as a result of Trillium remediation."

24. HCG was also aware that the terminations and remedial process changes could have a negative effect on Originations beyond Q1 2015. In a memo dated May 4, 2015 (the "May 4 Memo") to the Audit Committee of the Board ("Audit Committee"), Morton advised that a decision had been made to add disclosure in HCG's filings in respect of "the recent impact the de-listing of brokers has had and may have on the results of the Company." Morton advised that the reduction in Originations for Q1 2015 could not be attributed to weather and seasonality alone and that the reduction had the potential to affect more than first quarter Originations numbers. Morton raised a concern about the need to publicly disclose the fact that brokerages and brokers had been terminated. Morton also advised that management had determined that, based on current forecasted information, HCG might not meet its annual financial targets in 2015.

25. HCG consulted its external professional advisors regarding and discussed with them the additional disclosures in the Q1 2015 Interim Filing.

26. In its Q1 2015 Interim Filing, HCG misled investors by attributing the first quarter Originations results to a traditionally slow real estate market, harsh winter, macroeconomics and an "on-going review of its business partners ensuring that quality is within the Company's risk appetite", without referring to the termination of brokers and brokerages. HCG also added a further two sentences to the Operational Risk section of the MD&A, which stated that HCG may encounter a financial loss as a result of an event with a third party service provider and that HCG may change relationships as appropriate. The disclosure was not sufficient to allow an investor to appreciate the reasons for the drop in Originations or the material risk to future growth of HCG that the termination of brokerages and brokers, process changes and remediation represented.

27. Soloway and Morton certified the Q1 2015 Interim Filing as CEO and CFO, respectively.

(ii) May 7, 2015 Earnings Call

28. Soloway, Morton and Reid participated in an earnings call with analysts held on May 7, 2015 following the filing of HCG's Q1 2015 Interim Filing.

29. Soloway was asked:

> Q: The first question I have is going back to originations, I totally get how, given what was going on with macro, well, you guys would be more kind of cautious on originations in the traditional business. I'm just trying to understand, I guess, from the prime insured side, are you guys saying that you were also kind of a bit careful there too, this being an insured product? Is that part of the reason why the originations kind of were where they were?

30. Soloway, simply responded - "Yes." The analyst asked further, "Okay. So it was –okay, so it was a little bit of teething pains. But were you guys being a little more cautious on underwriting? I'm just trying to get a sense of, has it been because maybe brokers have been losing some market share, whether or not it's been small competition within the broker channel or to...". Soloway replied, "None of that has changed. I think it's very similar to what it was last year. There isn't a dramatic one quarter change. There's been no new competitor. There's been no new change in brokers. Brokers are exactly the same in my estimate."

31. Specifically, when asked about the decline in Originations for Q1 2015, Soloway attributed the continuing decline in Originations to a range of factors including cold weather, macroeconomic conditions and a cautious approach to lending. Given the information known to Soloway, including as contained in the President's Report and the May 4 Memo, his statements were misleading in a material respect by not identifying all factors contributing to the decline in Originations.

32. On May 7, 2015, HCG and Soloway made statements contrary to subsection 126.2(1) of the Act.

(b) Untimely Disclosure of the Material Change in July 2015

33. The termination of brokerages and brokers and the subsequent remediation arising out of the Project Trillium findings, including changes to HCG's underwriting controls and procedures, constituted a material change in HCG's business or operations. HCG was required to issue and

file a news release with respect to the material change by no later than May 6, 2015. HCG did not issue a news release in relation to this material change until July 10, 2015.

34. On July 13, 2015, the next trading day, HCG's stock price fell 18.9%.

35. On July 17, 2015, HCG filed the July 17 MCR.

36. HCG breached subsections 75(1) and (2) of the Act and Part 7 of NI 51-102 by failing to issue a news release forthwith, and by failing to file a material change report within 10 days.

37. In addition, the July 10th NR and July 17th MCR disclosures were not sufficient for a reader to understand the actual nature of the material change, nor the significance of its impact on immediate and future quarters, and, as such, did not comply with Part 7 of NI 51-102, Item 5 of 51-102F3 and subsection 122(1)(b) of the Act.

Soloway

38. As CEO of HCG, Soloway shared responsibility for HCG's public disclosure and ensuring that investors were provided with the important information about the causes of the decline in Originations they needed in order to make a decision to buy, sell or hold HCG's securities.

39. As the founder and CEO, Soloway had a significant role and influence in managing HCG. He also had experience, expertise and background in relation to the capital markets. Soloway had knowledge of the principal investigative findings, remediation planning and action from Project Trillium and the causes of the decline in Originations as set out in the May 4 Memo and the President's Report.

40. Soloway failed to ensure that HCG properly met its continuous disclosure obligations with respect to the Q1 2015 Interim Filing and instead authorized, permitted or acquiesced in the statements made by HCG in the Q1 2015 Interim Filing that were misleading in a material respect at the time and in light of the circumstances under which they were made.

41. Soloway also made statements on the May 7, 2015 earnings call that were misleading in a material respect by not identifying all factors contributing to the decline in Originations.

42. In addition, Soloway, as one of the certifying officers for HCG, failed to take reasonable steps in his review of the Q1 2015 Interim Filing before certifying that the Q1 2015 Interim Filing contained no misrepresentations.

43. Soloway also failed to ensure that HCG disclosed the material change to its business or operations arising from the findings of Project Trillium forthwith.

Morton

44. As the CFO, Morton was responsible for the oversight of all financial aspects of the affairs of HCG and had responsibility for drafting HCG's Q1 2015 Interim Filing. He was also Chair of HCG's Disclosure Committee.

45. Morton had knowledge of the principal investigative findings, remediation planning and action from Project Trillium. In the May 4 Memo, Morton advised the Audit Committee that a decision had been made to add disclosure in HCG's filings in respect of "the recent impact the de-listing of brokers has had and that have on the results of the Company." Among the reasons provided, Morton advised the Audit Committee that the reduction in Originations for Q1 2015 could not be attributed to weather and seasonality alone and that the reduction had the potential to extend beyond Q1 2015.

46. Morton failed to ensure statements that were made by HCG in its Q1 2015 Interim Filing were not misleading in a material respect at the time and in light of the circumstances under which they were made.

47. In addition, Morton, as one of the certifying officers for HCG, failed to take reasonable steps in his review of the Q1 2015 Interim Filing before certifying that the Q1 2015 Interim Filing contained no misrepresentations.

48. Morton also failed to ensure that HCG disclosed the material change to its business or operations arising from the findings of Project Trillium forthwith.

Reid

49. As President, Reid had a significant role in managing HCG. He was also a member of HCG's Disclosure Committee.

50. With respect to Project Trillium, Reid had knowledge of the principal investigative findings, remediation planning and action items. Further, by the end of April 2015, Reid also had knowledge of the impact of the termination of brokerages and brokers and remedial actions on Originations. The President's Report stated that HCG's "share of broker channel has deteriorated, mainly as a result of Trillium remediation."

51. In addition, Reid failed to ensure that statements made by HCG in its Q1 2015 Interim Filing were not misleading in a material respect at the time and in light of the circumstances under which they were made.

52. Reid also failed to ensure that HCG disclosed the material change to its business or operations arising from the findings of Project Trillium forthwith.

D. MITIGATING FACTORS

53. The Respondents request that the settlement hearing panel consider the following mitigating circumstances. Staff do not object to the mitigating circumstances set out by the Respondents below.

HCG Investigation and Remediation Efforts

54. When HCG and its directors and officers became aware of the irregularities associated with the Accelerator mortgage applications, they took steps to investigate the issue to ensure that the full extent of any wrongdoing was uncovered. HCG conducted an internal investigation, struck an independent committee of the Board, chaired by a former Chair of the Commission, to oversee the investigation and appointed a third party accounting firm to assist with the investigation. HCG consulted its external professional advisors throughout the investigation.

55. HCG also reported the identified irregularities to Canada Mortgage and Housing Corporation, Genworth Canada, as well as the Office of the Superintendent of Financial Institutions and its external auditor and continued to keep them apprised as the investigation continued in a timely manner.

56. As the results of the Project Trillium investigation became clear, HCG remediated the areas of concern identified by the investigation and otherwise. HCG improved its existing processes by reallocating internal resources to ensure that underwriters verified income. HCG completed the segregation of Originations and underwriting in May of 2015 as part of a pilot program which was rolled out throughout the residential lending business thereafter. The company also initiated a review of underwriter compensation to put more of an emphasis on risk mitigation, including an assessment of quality of the loans being originated.

Disclosure Decisions

57. In coming to decisions on disclosure and materiality, HCG's Board acted in good faith by relying on its external professional advisors. HCG's auditor was aware of the Project Trillium investigation, tested Originations and reviewed HCG's processes as part of their audit, and did not raise any concerns about the financial statement disclosure.

58. Throughout the Material Time, Soloway, Reid and Morton provided all relevant information bearing on Originations to HCG's Board as it became known.

59. HCG and its directors and officers believed that lost Originations could be replaced from other sources in time.

60. Following the May 7, 2015 earnings call, HCG sought advice from its external professional advisors to determine whether a clarifying public statement was required. In the result, no clarifying statement was issued.

Cooperation of HCG

61. Within days of June 1, 2015, HCG voluntarily reported to the Commission the receipt of a whistleblower memorandum from a Vice President at HCG dated June 1, 2015 entitled, "*Failure to Comply with Timely and Continuous Disclosure Obligations and Related Concerns – Fraudulent Mortgages*". HCG, Soloway, Reid and Morton subsequently cooperated with Staff's information requests and investigation.

Significant Governance and Leadership Renewal at HCG

62. In recent months, HCG has taken significant steps to renew its leadership and governance.

63. On March 27, 2017, HCG announced that it had terminated the employment of Reid as President and CEO, effective immediately and removed him from the Board of HCG's subsidiaries, including Home Trust Company.

64. On May 5, 2017, HCG announced that Alan Hibben ("Hibben") had been appointed to the Board effective immediately, replacing Soloway, who had previously announced his pending retirement. Hibben is an experienced director and financial executive.

65. On May 5, 2017, HCG also announced that Robert Blowes would be assuming the role of interim CFO following HCG's Q1 2017 interim filing, at which time Morton would assume responsibilities for special projects outside the financial reporting group.

66. On May 8, 2017, HCG announced that three leading Canadian businesspeople, Claude Lamoureux, Paul Haggis and Sharon Sallows, had agreed to join the Board immediately. HCG also announced the appointment of Brenda Eprile ("Eprile"), who joined the Board in 2016, to the role of the Chair of the Board and that William Falk would be stepping down from the Board. Eprile has extensive regulatory and compliance experience. The new directors are well known for their track records as executives and in the boardroom, and they bring a wide range of applicable knowledge and experience.

67. On May 18, 2017, HCG announced that James Lisson had been appointed to the Board, bringing extensive experience in financial services law, operational issues, governance, stakeholder relations, and risk and reputation management. HCG also announced that John Marsh was stepping down from the Board.

68. At its Annual Meeting of Shareholders, which will be held on June 29, 2017, shareholders will be asked to support the election of nine directors, six of whom joined the Board subsequent to the Material Time.

69. HCG is currently actively searching for a CEO and a CFO.

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

70. During the Material Time:

(a) HCG acknowledges and admits that it:

(i) did not satisfy its continuous disclosure obligations by making statements in its Q1 2015 Interim Filing that in a material respect and at the time and in light of the circumstances under which they were made, were misleading or untrue or did not state a fact that was required to be stated or

that was necessary to make the statement not misleading, contrary to subsection 122(1)(b) of the Act and the requirements of NI 51-102;

(ii) made statements on the May 7, 2015 earnings call that were misleading in a material respect by not identifying all factors contributing to the decline in Originations and by failing to state facts that were required to be stated or that were necessary to make the statements not misleading, contrary to subsection 126.2(1) of the Act. These statements would reasonably be expected to have a significant effect on the market price or value of HCG's securities;

(iii) did not satisfy its continuous disclosure obligations by failing to file a news release forthwith and to file a material change report within 10 days of a material change in the business or operations of HCG, contrary to subsections 75(1) and (2) of the Act and Part 7 of NI 51-102;

(iv) made statements in the July 10th NR and the July 17th MCR, which did not contain sufficient disclosure for a reader to appreciate the significance and impact of the material change and were misleading in a material respect, contrary to subsection 122(1)(b) of the Act and Item 5 of 51-102F3 of NI 51-102; and

(v) breached the Act and NI 51-102 and acted in a manner contrary to the public interest.

(b) Soloway acknowledges and admits that he:

(i) made statements on the May 7, 2015 earnings call that were misleading in a material respect by not identifying all factors contributing to the decline in Originations and by failing to state facts that were required to be stated or that were necessary to make the statements not misleading, contrary to subsection 126.2(1) of the Act. These statements would reasonably be expected to have a significant effect on the market price or value of HCG's securities;

(ii) improperly certified the Q1 2015 Interim Filing by stating that the filing did not contain any untrue statement of a material fact or omit to state a material fact required to be stated or that was necessary to make a statement not misleading in light of the circumstances under which it was made, contrary to subsection 122(1)(b) of the Act and National Instrument 52-109 - *Certification of Disclosure in Issuers' Annual and Interim Filings* ("NI 52-109");

(iii) authorized, permitted or acquiesced in the above contraventions of the Act by HCG and is deemed to have not complied with Ontario securities law pursuant to section 129.2 of the Act; and

(iv) acted in a manner contrary to the public interest.

(c) Morton acknowledges and admits that he:

(i) improperly certified the Q1 2015 Interim Filing by stating that the filing did not contain any untrue statement of a material fact or omit to state a material fact required to be stated or that was necessary to make a statement not misleading in light of the circumstances under which it was made, contrary to subsection 122(1)(b) of the Act and NI 52-109;

(ii) authorized, permitted or acquiesced in the above contraventions of the Act by HCG (except those referred to in paragraph 70(a)(ii)) and is deemed to have not complied with Ontario securities law pursuant to section 129.2 of the Act; and

(iii) acted in a manner contrary to the public interest.

(d) Reid acknowledges and admits that he:

(i) authorized, permitted or acquiesced in the above contraventions of the Act by HCG (except those referred to in paragraph 70(a)(ii)) and is deemed to have not complied with Ontario securities law pursuant to section 129.2 of the Act; and

(ii) acted in a manner contrary to the public interest.

PART V - TERMS OF SETTLEMENT

71. The Respondents agree to the terms of settlement set forth below.

72. HCG has given an undertaking (the "Undertaking") to the Commission in the form attached as Schedule "B" to this Settlement Agreement, which includes an undertaking to make a payment, before the commencement of the Settlement Hearing, of $10,000,000 to Stikeman Elliott LLP in trust for the benefit of the proposed class, other than Excluded Persons[1] (the "Class") in the putative class action commenced on February 13, 2017 as London, Ontario Court File No. 349/17CP (the "Class Action").

73. The Respondents consent to the Order, pursuant to which it is ordered that:

(a) this Settlement Agreement be approved;

(b) HCG shall:

(i) within one year of the date of the Order, conduct a review of and deliver a report to the Board and Staff on its continuous disclosure practices and any changes proposed and/or implemented as a result of its review, pursuant to subsection 127(2) of the Act; and

(ii) pay costs in the amount of $500,000 by wire transfer to the Commission before the commencement of the Settlement Hearing, pursuant to section 127.1 of the Act;

(c) Soloway shall:

(i) be reprimanded, pursuant to paragraph 6 of subsection 127(1) of the Act;

[1] "Excluded Persons" means HCG, the individual defendants in the Class Action ("Individual Defendants"), and the past or present subsidiaries or affiliates, officers, directors, partners, legal representatives, consultants, agents, successors and assigns of HCG, and any member of each of the Individual Defendants' families, their heirs, successors or assigns.

(ii) immediately resign any position that he holds as a director or officer of a reporting issuer, pursuant to paragraph 7 of subsection 127(1) of the Act;

(iii) be prohibited from becoming or acting as a director or officer of any reporting issuer for a period of 4 years commencing on the date of the Order, pursuant to paragraph 8 of subsection 127(1) of the Act; and

(iv) pay an administrative penalty in the amount of $1 million by wire transfer to the Commission before the commencement of the Settlement Hearing, pursuant to paragraph 9 of subsection 127(1) of the Act, which amount be designated for allocation or use by the Commission in accordance with subsection 3.4(2)(b)(i) or (ii) of the Act;

(d) Morton shall:

(i) be reprimanded, pursuant to paragraph 6 of subsection 127(1) of the Act;

(ii) immediately resign any position that he holds as a director or officer of a reporting issuer, pursuant to paragraph 7 of subsection 127(1) of the Act;

(iii) be prohibited from becoming or acting as a director or officer of any reporting issuer for a period of 2 years commencing on the date of the Order, pursuant to paragraph 8 of subsection 127(1) of the Act; and

(iv) pay an administrative penalty in the amount of $500,000 by wire transfer to the Commission before the commencement of the Settlement Hearing, pursuant to paragraph 9 of subsection 127(1) of the Act, which amount be designated for allocation or use by the Commission in accordance with subsection 3.4(2)(b)(i) or (ii) of the Act; and

(e) Reid shall:

(i) be reprimanded, pursuant to paragraph 6 of subsection 127(1) of the Act;

(ii) immediately resign any position that he holds as a director or officer of a reporting issuer, pursuant to paragraph 7 of subsection 127(1) of the Act;

(iii) be prohibited from becoming or acting as a director or officer of any reporting issuer for a period of 2 years commencing on the date of the Order, pursuant to paragraph 8 of subsection 127(1) of the Act; and

(iv) pay an administrative penalty in the amount of $500,000 by wire transfer to the Commission before the commencement of the Settlement Hearing, pursuant to paragraph 9 of subsection 127(1) of the Act, which amount be designated for allocation or use by the Commission in accordance with subsection 3.4(2)(b)(i) or (ii) of the Act.

74. The parties acknowledge that Staff will recommend to the Commission that the $2,000,000 designated for allocation or use under subsection 3.4(2)(b)(i) or (ii) of the Act above be allocated or used as follows: (a) $1,000,000 for the benefit of HCG investors who comprise the Class (in addition to the $10 million that will be paid to the Class as a result of this Settlement Agreement as set out in paragraph 72 above) in accordance with subsection 3.4(2)(b)(i) of the Act; and (b) the remaining $1,000,000 for use by the Commission in accordance with subsection 3.4(2)(b)(i) or (ii) of the Act.

75. The Respondents 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 73(c)(iii), (d)(iii), and (e)(iii). These prohibitions may be modified to reflect the provisions of the relevant provincial or territorial securities law.

76. The Respondents acknowledge that this Settlement Agreement and the Order may form the basis for orders of parallel effect in other jurisdictions in Canada. The securities laws of some other Canadian jurisdictions 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 the Respondents intend to engage in any securities- or derivatives-related activities, prior to undertaking such activities.

PART VI - FURTHER PROCEEDINGS

77. If the Commission approves this Settlement Agreement and the Respondents fail to comply with any of the terms of the Settlement Agreement or the Undertaking, Staff may bring proceedings against the Respondents. These proceedings may be based on, but need not be limited to, the facts set out in Part III of this Settlement Agreement as well as the breach of the Settlement Agreement or the Undertaking.

PART VII - PROCEDURE FOR APPROVAL OF SETTLEMENT

78. The parties will seek approval of this Settlement Agreement at the Settlement Hearing before the Commission, which shall be held on a date determined by the Secretary to the Commission in accordance with this Settlement Agreement and the Commission's *Rules of Procedure* (2014), 37 O.S.C.B. 4168.

79. The Respondents will attend the Settlement Hearing in person.

80. The parties confirm that this Settlement Agreement sets forth all of the agreed facts that will be submitted at the Settlement Hearing, unless the parties agree that additional facts should be submitted at the Settlement Hearing.

81. If the Commission approves this Settlement Agreement:

(a) the Respondents irrevocably waive all rights to a full hearing, judicial review or appeal of this matter under the Act; and

(b) the parties will not make any public statement that is inconsistent with this Settlement Agreement or with any additional agreed facts submitted at the Settlement Hearing.

82. 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 be available.

83. As set out elsewhere herein a portion of the amounts to be paid herein are to go to the Class, without any deduction for legal fees or expenses, including any expenses related to the distribution of the amounts, which is also being settled, subject to court approval contemporaneously with the execution of this Settlement Agreement. The parties hereto are only prepared to enter into this Settlement Agreement on the basis that the Class Action is also settled at the same time and therefore the orders obtained in the Class Action and from the Commission will reciprocally provide that neither is finally fully effective and binding unless and until the approval from both is obtained and is final. The parties hereto will work together on the timing and sequence of the approvals to ensure that the final approvals are obtained at the earliest practicable time. The rights and evidentiary protections described in paragraphs 4, 84 and 85 herein shall also be made part of the contingent approval order in the approval jurisdiction that proceeds first in the likely event that they are not finally approved at exactly the same time.

PART VIII - DISCLOSURE OF SETTLEMENT AGREEMENT

84. If the Commission does not make the Order:

(a) this Settlement Agreement and all discussions and negotiations between Staff and the Respondents before the Settlement Hearing 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 dated April 19, 2017 in respect of the Proceeding. 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.

85. The parties will keep the terms of this Settlement Agreement confidential until the Settlement Hearing, unless they agree in writing not to do so or unless otherwise required by law.

PART IX - EXECUTION OF SETTLEMENT AGREEMENT

86. This Settlement Agreement may be signed in one or more counterparts which together constitute a binding agreement.

87. A facsimile copy or other electronic copy of any signature will be as effective as an original signature.

DATED at Toronto, Ontario this day of June, 2017.

"Marion C. Soloway"	"Gerald Soloway"
Witness: Marion C. Soloway	**GERALD SOLOWAY**
"Margaret Kingerski"	"Robert Morton"
Witness: Margaret Kingerski	**ROBERT MORTON**
"David Hausman"	"Martin Reid"
Witness: David Hausman	**MARTIN REID**

HOME CAPITAL GROUP INC.

By: "Bonita Then"
Name: Bonita Then
Title: Interim President & CEO

DATED at Toronto, Ontario, this 14th day of June, 2017.

ONTARIO SECURITIES COMMISSION

By: "Jeff Kehoe"
Name: Jeff Kehoe
Title: Director, Enforcement Branch

SCHEDULE "A"

Ontario Securities Commission | Commission des valeurs mobilières de l'Ontario | P.O. Box 55, 22nd Floor 20 Queen Street West Toronto ON M5H 3S8 | CP 55, 22e étage 20, rue queen ouest Toronto ON M5H 3S8

IN THE MATTER OF
HOME CAPITAL GROUP INC., GERALD SOLOWAY, ROBERT MORTON and MARTIN REID

[INSERT COMMISSIONERS OF THE PANEL]

June ___, 2017

ORDER
Sections 127 and 127.1 of the
***Securities Act*, RSO 1990, c S.5**

THIS APPLICATION, made jointly by Home Capital Group Inc. ("HCG"), Gerald Soloway ("Soloway"), Robert Morton ("Morton") and Martin Reid ("Reid") (collectively, the "Respondents") and Staff of the Commission ("Staff") for approval of a settlement agreement dated June ___, 2017 (the "Settlement Agreement"), was heard on June ___, 2017 at the offices of the Commission located at 20 Queen Street West, 17th Floor, Toronto, Ontario;

ON READING the Statement of Allegations dated April 19, 2017, and the Settlement Agreement and on hearing the submissions of representatives of each of the parties, and on considering the Undertaking of HCG dated June ___, 2017 to make a payment of $10,000,000 to Stikeman Elliott LLP in trust for the benefit of the proposed class, other than Excluded Persons[2] (the "Class") in the putative class action commenced on February 13, 2017 as London, Ontario Court File No. 349/17CP, and on considering the acknowledgement of the parties that Staff will recommend to the commission that the $2,000,000 paid pursuant to this Settlement Agreement

[2] "Excluded Persons" means HCG, the individual defendants in the Class Action ("Individual Defendants"), and the past or present subsidiaries or affiliates, officers, directors, partners, legal representatives, consultants, agents, successors and assigns of HCG, and any member of each of the Individual Defendants' families, their heirs, successors or assigns.

and designated for allocation or use under subsection 3.4(2)(b)(i) or (ii) of the Act be allocated or used as follows: (a) $1,000,000 for the benefit of HCG investors who comprise the Class in accordance with subsection 3.4(2)(b)(i) of the Act; and (b) the remaining $1,000,000 for use by the Commission in accordance with subsection 3.4(2)(b)(i) or (ii) of the Act;

IT IS ORDERED THAT:

1. the Settlement Agreement is approved;

2. HCG shall:

   (i) within one year of the date of the Order, conduct a review of and deliver a report to the Board of Directors and Staff on its continuous disclosure practices and any changes proposed and/or implemented as a result of its review, pursuant to subsection 127(2) of the Act; and

   (ii) pay costs in the amount of $500,000 by wire transfer to the Commission, pursuant to section 127.1 of the Act; and

3. Soloway shall:

   (i) be reprimanded, pursuant to paragraph 6 of subsection 127(1) of the Act;

   (ii) immediately resign any position that he holds as a director or officer of a reporting issuer, pursuant to paragraph 7 of subsection 127(1) of the Act;

   (iii) be prohibited from becoming or acting as a director or officer of any reporting issuer for a period of 4 years commencing on the date of the Order, pursuant to paragraph 8 of subsection 127(1) of the Act; and

   (iv) pay an administrative penalty in the amount of $1,000,000 by wire transfer to the Commission, pursuant to paragraph 9 of subsection 127(1) of the Act, which amount be designated for allocation or use by the Commission in accordance with subsection 3.4(2)(b)(i) or (ii) of the Act; and

4. Morton shall:

   (i) be reprimanded, pursuant to paragraph 6 of subsection 127(1) of the Act;

   (ii) immediately resign any position that he holds as a director or officer of a reporting issuer, pursuant to paragraph 7 of subsection 127(1) of the Act;

   (iii) be prohibited from becoming or acting as a director or officer of any reporting issuer for a period of 2 years commencing on the date of the Order, pursuant to paragraph 8 of subsection 127(1) of the Act; and

   (iv) pay an administrative penalty in the amount of $500,000 by wire transfer to the Commission, pursuant to paragraph 9 of subsection 127(1) of the Act, which amount be designated for allocation or use by the Commission in accordance with subsection 3.4(2)(b)(i) or (ii) of the Act; and

5. Reid shall:

   (i) be reprimanded, pursuant to paragraph 6 of subsection 127(1) of the Act;

   (ii) immediately resign any position that he holds as a director or officer of a reporting issuer, pursuant to paragraph 7 of subsection 127(1) of the Act;

   (iii) be prohibited from becoming or acting as a director or officer of any reporting issuer for a period of 2 years commencing on the date of the Order, pursuant to paragraph 8 of subsection 127(1) of the Act; and

   (iv) pay an administrative penalty in the amount of $500,000 by wire transfer to the Commission, pursuant to paragraph 9 of subsection 127(1) of the Act, which amount be designated for allocation or use by the Commission in accordance with subsection 3.4(2)(b)(i) or (ii) of the Act.

Commissioner	Commissioner	Commissioner

SCHEDULE "B"

Ontario Securities Commission | Commission des valeurs mobilières de l'Ontario | P.O. Box 55, 22nd Floor 20 Queen Street West Toronto ON M5H 3S8 | CP 55, 22e étage 20, rue queen ouest Toronto ON M5H 3S8

IN THE MATTER OF
HOME CAPITAL GROUP INC., GERALD SOLOWAY,
ROBERT MORTON and MARTIN REID

UNDERTAKING TO THE ONTARIO SECURITIES COMMISSION

1. This Undertaking is given in connection with the settlement agreement dated June ___, 2017 between Home Capital Group Inc. ("HCG"), Gerald Soloway, Robert Morton, Martin Reid and Staff of the Commission.

2. HCG undertakes to the Commission to make a payment of $10,000,000 to Stikeman Elliott LLP in trust for the benefit of the proposed class, other than Excluded Persons[3] in the putative class action commenced on February 13, 2017 as London, Ontario Court File No. 349/17CP.

DATED at Toronto, this ___ day of June, 2017.

HOME CAPITAL GROUP INC.

Name:
Title:

[3] "Excluded Persons" means HCG, the individual defendants in the Class Action ("Individual Defendants"), and the past or present subsidiaries or affiliates, officers, directors, partners, legal representatives, consultants, agents, successors and assigns of HCG, and any member of each of the Individual Defendants' families, their heirs, successors or assigns.

Ontario Securities Commission | Commission des valeurs mobilières de l'Ontario | P.O. Box 55, 22nd Floor 20 Queen Street West Toronto ON M5H 3S8 | CP 55, 22e étage 20, rue queen ouest Toronto ON M5H 3S8

IN THE MATTER OF
HOME CAPITAL GROUP INC., GERALD SOLOWAY, ROBERT MORTON and MARTIN REID

UNDERTAKING TO THE ONTARIO SECURITIES COMMISSION

1. This Undertaking is given in connection with the settlement agreement dated June ___, 2017 between Home Capital Group Inc. ("HCG"), Gerald Soloway, Robert Morton, Martin Reid and Staff of the Commission.

2. HCG undertakes to the Commission to make a payment of $10,000,000 to Stikeman Elliott LLP in trust for the benefit of the proposed class, other than Excluded Persons[1] in the putative class action commenced on February 13, 2017 as London, Ontario Court File No. 349/17CP.

DATED at Toronto, this 14th day of June, 2017.

HOME CAPITAL GROUP INC.

"Bonita Then"
Name: Bonita Then
Title: Interim President & CEO

[1] "Excluded Persons" means HCG, the individual defendants in the Class Action ("Individual Defendants"), and the past or present subsidiaries or affiliates, officers, directors, partners, legal representatives, consultants, agents, successors and assigns of HCG, and any member of each of the Individual Defendants' families, their heirs, successors or assigns.

CHARTERED PROFESSIONAL ACCOUNTANTS OF ONTARIO
CHARTERED PROFESSIONAL ACCOUNTANTS OF ONTARIO ACT, 2017

DISCIPLINE COMMITTEE

IN THE MATTER OF: Allegations against **ROBERT MORTON, CPA, CMA**, a Member of CPA Ontario, under **Rule 201.1** of the Rules of Professional Conduct, as amended.

TO: Mr. Robert L. Morton, CPA, CMA

AND TO: The Professional Conduct Committee

DECISION AND ORDER MADE NOVEMBER 7, 2018

DECISION

The Tribunal was satisfied that the Allegation was proven and constituted a breach of Rule 201.1 of the CPA Rules of Professional Conduct. Having breached this Rule, the Tribunal determined that Robert Morton ("Mr. Morton") has committed professional misconduct.

ORDER

The Tribunal orders the following:

1. Mr. Morton be reprimanded in writing by the Chair of the hearing.

2. Mr. Morton shall pay a fine of $10,000 to be remitted to the Chartered Professional Accountants of Ontario ("CPA Ontario'') within 6 months from the date of this Order.

3. Mr. Morton's membership in CPA Ontario be and it is hereby suspended for a period of three (3) months from the date of this Order.

4. Notice of this Decision and Order, disclosing Mr. Morton's name, be given in the form and manner determined by the Discipline Committee:

   (a) to all members of CPA Ontario; and
   (b) to all provincial bodies;

   and shall be made available to the public.

5. Mr. Morton shall pay costs fixed at $75,000, to be remitted to CPA Ontario within 6 months from the date of this Order.

DATED at Toronto this 9th day of November, 2018

Stuart Douglas, FCPA, FCA
Discipline Committee – Deputy Chair

CHARTERED PROFESSIONAL ACCOUNTANTS OF ONTARIO
CHARTERED PROFESSIONAL ACCOUNTANTS OF ONTARIO ACT, 2017

DISCIPLINE COMMITTEE

IN THE MATTER OF: Allegations against **ROBERT L. MORTON, CPA, CMA,** a member of the Chartered Professional Accountants of Ontario, under **Rule 201.1** of the Rules of Professional Conduct, as amended.

BETWEEN:

Chartered Professional Accountants of Ontario
Professional Conduct Committee

-and-

Mr. Robert L. Morton

APPEARANCES:

For the Professional Conduct Committee:	Melissa MacKewn, Counsel Michael Byers, Counsel
For Mr. Morton:	Peter Griffin, Counsel Chris Yung, Counsel
Heard:	November 5, 6 and 7, 2018
Decision and Order effective:	November 7, 2018
Release of written reasons:	February 11, 2019

REASONS FOR THE DECISION AND ORDER MADE NOVEMBER 7, 2018

I. OVERVIEW

[1] This hearing was held to determine whether the allegation that Mr. Morton had failed to maintain the good reputation of the profession, as a result of having entered into a settlement agreement with the Ontario Securities Commission ("OSC"), was established and amounted to professional misconduct.

[2] Mr. Morton obtained his CMA designation in 1991, and he became a CPA upon unification of the accounting designations in 2014. After holding various positions with a large investment bank for twenty-one years, Mr. Morton became the Chief Financial Officer ("CFO") for Home Trust Company ("Home Trust") on September 8, 2014

replacing Mr. Robert Blowes. Mr. Blowes remained with Home Trust and used the period to December 31, 2014 to work with Mr. Morton. Mr. Morton then became the CFO for its parent, Home Capital Group Inc. ("HCG") on January 1, 2015 assuming this responsibility from Mr. Blowes when Mr. Blowes retired as of December 31, 2014. This was the first time that Mr. Morton had been the CFO of a public company and reporting issuer. He held that position until May 5, 2017, when he resigned to assist the company to move forward from the events that led to the allegations by the OSC.

[3] Home Trust is an operating company offering residential and non-residential mortgage lending, securitization of insured residential mortgage products, consumer lending and credit card services. Home Trust also offers deposits via brokers and financial planners directly under the entity name Oaken Financial. HCG is the parent of Home Trust and is a public company that trades on the Toronto Stock Exchange. The funds for the mortgages were primarily provided by depositors in the form of guaranteed investment certificates and high interest accounts. In the decade before Mr. Morton joined the company, HCG had undergone phenomenal growth.

[4] In October 2014, HCG undertook "Project Trillium", an internal investigation into concerns that had been raised regarding apparent fraudulent conduct by some of the mortgage brokers who brought new loan applications to the company. HCG promptly contacted the mortgage insurers and its external auditors, among others. HCG sought to identify problematic mortgages and assess whether these problems impacted on previous disclosures by the company. Certain mortgage brokers, amounting to approximately 1% of all of HCG's brokers, were suspended and/or dismissed. In addition, internal compliance reforms were implemented. Ultimately, it was determined that there was no loss suffered by HCG.

[5] Mr. Morton was responsible for drafting and certifying HCG's Interim Filing with the OSC for the first quarter of 2015 ("Q1 2015"). The number of new mortgages in Q1 2015 had declined. HCG submitted a Q1 2015 Interim Filing, dated May 6, 2015, which was certified by Mr. Morton ("Q1 2015 Filing"). The Q1 2015 Filing did not provide explicit details of the concerns raised by Project Trillium nor did it provide the potential long-term impact on the business operations of HCG.

[6] The Q1 2015 Filing had been approved by the Audit Committee and the Board before it was released. Mr. Morton provided a Memorandum, dated May 4, 2015, to the Audit Committee for its meeting regarding the Q1 2015 Filing. In that Memorandum, he noted that the reduced number of new mortgages in Q1 2015 was not due wholly to weather and that "additional disclosure should be made with respect to the impact recent de-listing of brokers has had and potentially may have on the results of the Company". His "Rationale" for this change was the following: "We have de-listed brokers and we need to disclose this as a matter of on-going business processes and be in a position to have addressed it in the event we are questioned". As stated in the eventual Settlement Agreement with the OSC, HCG had terminated three underwriters, two brokerages and thirty brokers as a result of it having discovered falsified loan applications within its broker channels.

[7] The Q1 2015 Filing did not include Mr. Morton's suggested disclosure regarding the situation concerning the de-listed brokers and the impact to operations. Mr. Morton, in his capacity as CFO of both HCG and Home Trust and a senior officer of both companies, certified the Q1 2015 Filing that did not disclose these factors which amounted to a Material Change that required disclosure. The lack of disclosure continued for the period May 2015 until July 2015.

[8] A whistleblower filed a confidential complaint regarding HCG's disclosure practices in early June 2015, and HCG voluntarily reported this to the OSC. HCG issued a news release on July 10, 2015, that disclosed for the first time that certain mortgage brokers had been terminated and remediation steps were being taken as a result of the internal investigation. HCG's stock price fell 19% the following trading day.

[9] On July 17, 2015, HCG filed a material change report. Both July 2015 filings were corrected by an amended material change report on July 29, 2015, issued at the request of OSC staff.

[10] In April 2017, the OSC issued allegations against HCG and three of its officers, including Mr. Morton, in relation to the inadequacy of the disclosures in May and July 2015. This created liquidity problems for HCG as depositors rushed to withdraw their funds. HCG had to take on a number of high interest loans to service the run on deposits and to stabilize its position.

[11] In that context, Mr. Morton and the other respondents to the OSC allegations entered into a Settlement Agreement with the OSC on June 14, 2017 ("Settlement Agreement") (Exhibit 1).

[12] The Settlement Agreement made clear that the disclosures made by HCG and Mr. Morton in the Q1 2015 Filing, the news release of July 10, 2015, and the material change report of July 17, 2015, were not sufficient to make a reader "fully appreciate the significance and impact of the material change" and consequently did not satisfy the established standards for these documents (paragraph 10).

[13] At paragraph 70(c) of the Settlement Agreement, Mr. Morton admitted that he had "authorized, permitted or acquiesced" (reflecting the language of the *Securities Act)* in the making of these inadequate disclosures, and also that he had improperly certified the Q1 2015 Interim Filing by saying that it did not misstate or omit to state a material fact. He also admitted that he had "acted in a manner contrary to the public interest".

[14] Rule 201.2 of the Chartered Professional Accountants of Ontario ("CPA Ontario") Rules of Professional Conduct (the "*Rules*") creates a rebuttable presumption that a member "has failed to maintain the good reputation of the profession or serve the public interest", contrary to Rule 201.1, when there is an allegation against the member based on one of the actions listed in Rule 102.1. Rule 102.1(d) includes "having entered into a settlement agreement" with respect to a violation of securities legislation.

[15] There had initially been a dispute between the parties as to whether the rebuttable presumption was engaged on the facts of this case. By the time of the hearing, there was no issue between the parties that the Settlement Agreement triggered the rebuttable presumption.

[16] A significant issue in this hearing was the scope of the rebuttable presumption and the nature of the evidence that could be presented by a member to rebut the presumption.

[17] The onus was on the Professional Conduct Committee ("PCC") to show, on a balance of probabilities, that Mr. Morton's conduct breached the *Rules* and constituted professional misconduct.

II. PRELIMINARY ISSUES

Motion by the PCC

[18] At the outset of the hearing, counsel for the PCC advised the Panel that the PCC was making a motion to be determined before the allegations were considered on their merits. The motion sought orders limiting the scope of the evidence that could be received by the Panel with respect to the events leading to the Settlement Agreement with the OSC. Counsel for the PCC conceded that evidentiary rulings were typically made during the course of hearing the evidence but submitted that the ruling needed to be made at the outset of the hearing in the circumstances of this case.

[19] The PCC submitted that the rebuttable presumption arose once there was evidence of a finding, conviction or settlement agreement listed in the terms of Rule 102.1 of the *Rules.* The presumption could be challenged and thereby rebutted; however, the facts surrounding the underlying Settlement Agreement could not be. The PCC further submitted that, in order to give the rebuttable presumption any effect, there had to be strict limits on the evidence that could be accepted, to ensure that the member did not attempt to, nor be permitted to, resile from the underlying findings or admissions. Evidence still had to be relevant and admissible to the issue in the proceeding.

[20] The PCC submitted that the concerns arose from the content of the will-say statements that had been provided by counsel for Mr. Morton. In accordance with the *Rules of Practice and Procedure,* these set out the anticipated evidence of several potential witnesses, but they were not signed or sworn.

[21] Three specific categories of evidence were identified by the PCC as problematic areas that should not be considered by the Panel. First, some evidence, such as evidence suggesting that Mr. Morton was forced to settle the OSC proceedings or evidence suggesting that he was acting in good faith, would amount to an abuse of process, because that evidence would attack the admissions that Mr. Morton had made. Second, one of the proposed witnesses was counsel to HCG, and the lawyer-client privilege would be waived if he testified. This would create an unfairness to the PCC unless the lawyer's communications were all disclosed to the PCC. Third, some of the proposed

evidence would amount to opinion evidence that could only be introduced by an expert.

[22] The PCC submitted that the Panel needed to make these orders at the outset so that the Panel could properly manage the evidence it received. Without these preliminary orders, there was a concern that the Panel would hear evidence that it then needed to exclude from its consideration. It was emphasized that the issue could be considered as it arose in the evidence if there were only one or two instances, but the will-say statements made clear that the concerns permeated all of the evidence.

[23] Counsel for Mr. Morton submitted that there was no precedent for the order sought by PCC and that, even if there was, such an order would be based only on will-say statements, which did not constitute evidence. Counsel further submitted that Mr. Morton only sought to present evidence that gave context to the admissions in the Settlement Agreement. Mr. Morton sought to go no further than the parameters of the Settlement Agreement, namely the limits in the language of the admissions and the specific mitigating factors identified in the Settlement Agreement. He was not seeking to rely on specific legal advice.

[24] Counsel for Mr. Morton submitted that witnesses were entitled to form opinions based on their expertise and direct observations. He rejected the notion that two accountants and a former chair of the OSC were not impartial.

[25] After considering the evidence presented on the motion, and the submissions of counsel, the Panel decided that it was appropriate to hear the evidence and dismissed the motion. The Panel confirmed that it would not consider the evidence presented on the motion, and particularly the will-say statements, in the course of the hearing of the allegations on their merits and would determine the allegations only on the evidence presented after the determination of the motion.

Reasons for Decision on PCC Motion

[26] The Panel concluded that it was not necessary for it to determine at the stage of a preliminary motion the substantive issues raised by the PCC with regard to the evidence that could or could not be presented by Mr. Morton in relation to the circumstances leading to the Settlement Agreement. The determinative issue on the preliminary motion was whether the Panel, prior to the commencement of the hearing on the merits, should make a decision not to hear certain evidence. The Panel was satisfied that it should not make such a decision.

[27] The Panel reached its conclusion for three reasons.

[28] First, the position of PCC was based on a reading of the will-say statements disclosed by Mr. Morton. Those statements did not amount to evidence themselves. They were intended to provide notice of the evidence that each witness was *anticipated* to give, *in general terms.* The actual evidence given by a witness could differ for a number of reasons from what was in the will-say. As counsel for Mr. Morton observed, the PCC

could object to particular areas of examination or cross-examine on these areas if their concerns arose on the actual evidence. But, he urged the Panel not to “bring down the portcullis” on this evidence before it reached the “gate” of the hearing. The Panel agreed that it needed to make its evidentiary rulings on the evidence that was actually presented to it.

[29] Second, the admissibility of particular evidence was a question that needed to take into account other evidence that was presented and the issues as framed by the parties. This could not happen on a preliminary motion. In the Panel’s view, issues regarding the scope of the evidence to be considered were properly determined on a full evidentiary record in the hearing of the allegations. This included issues with respect to privilege, the ability of witnesses to give opinion evidence, and whether the evidence contradicted the admissions in the Settlement Agreement.

[30] Third, there was no precedent directly on point that indicated that the Panel could make such a determination. There was only one case cited by the parties in which such a decision was, arguably, made: *Bolden (Re)*, 2013 LNICAO 11. However, the Panel was satisfied that, in that case (at paragraphs 9 and 10), the parties were in agreement on the issue, and the Panel was not required to reach its own decision.

[31] For these reasons, the Panel concluded that it was premature to make a decision about the admissibility of categories of evidence.

III. ISSUES

[32] The Panel identified the following issues arising from the allegations:

A. Did the evidence establish, on a balance of probabilities, the facts on which the particulars alleged by the PCC were based?

B. If the particulars alleged by the PCC were established on the evidence on a balance of probabilities, did those particulars constitute professional misconduct?

IV. DECISION ON FINDING

[33] The Panel found that the evidence established, on a balance of probabilities, the facts underlying the particular set out in the allegation of professional misconduct, specifically, that Mr. Morton had signed a Settlement Agreement with the OSC in which he made certain admissions relating to violations of the *Securities Act*. The Panel found the evidence pertaining to the allegation of professional misconduct to be clear, cogent and convincing.

[34] The Panel was satisfied that the particulars alleged constituted a breach of Rule 201.1, and, having breached this Rule, Mr. Morton had committed professional misconduct.

V. REASONS FOR THE DECISION ON FINDING

Findings Regarding Conduct of Mr. Morton

[35] The PCC relied wholly on the Settlement Agreement as evidence of the alleged misconduct by Mr. Morton. Although Mr. Morton asked the Panel to consider additional evidence to supplement the Settlement Agreement, he agreed that he was bound by the admissions in the Settlement Agreement. Accordingly, the Panel found that the fact of the Settlement Agreement and the facts admitted therein were proven on a balance of probabilities. The relevant portions of the Settlement Agreement (including paragraph numbers) are set out below:

> 22. HCG filed its Q1 2015 Interim Filing on May 6, 2015. The Q1 2015 Interim Filing stated that "the first quarter was characterized by a traditionally slow real estate market, exacerbated by very harsh winter conditions. The Company has remained cautious in light of continued macroeconomic conditions and continues to perform ongoing reviews of its business partners ensuring that quality is within the Company's risk appetite."
>
> 23. One week before HCG filed its Q1 2015 Interim Filing, HCG had knowledge of the negative impact of the termination of brokerages and brokers and remedial actions on Originations. In his "1st Quarter 2015" Report ("President's Report") dated April 29, 2015, Reid stated that the decrease in Originations for Q1 2015 was mainly due to Project Trillium remedial actions. The President's Report further stated that HCG's "share of the broker channel has deteriorated, mainly as a result of Trillium remediation."
>
> 24. HCG was also aware that the terminations and remedial process changes could have a negative effect on Originations beyond Q1 2015. In a memo dated May 4, 2015 (the "May 4 Memo") to the Audit Committee of the Board ("Audit Committee"), Morton advised that a decision had been made to add disclosure in HCG's filings in respect of "the recent impact the de-listing of brokers has had and may have on the results of the Company." Morton advised that the reduction in Originations for Q1 2015 could not be attributed to weather and seasonality alone and that the reduction had the potential to affect more than first quarter Originations numbers. Morton raised a concern about the need to publicly disclose the fact that brokerages and brokers had been terminated. Morton also advised that management had determined that, based on current forecasted information, HCG might not meet its annual financial targets in 2015.
>
> 25. HCG consulted its external professional advisors regarding and discussed with them the additional disclosures in the Q1 2015 Interim Filing.
>
> 26. In its Q1 2015 Interim Filing, HCG misled investors by attributing the first quarter Originations results to a traditionally slow real estate market, harsh winter, macroeconomics and an "on-going review of its business partners ensuring that quality is within the Company's risk appetite", without

referring to the termination of brokers and brokerages. HCG also added a further two sentences to the Operational Risk section of the MD&A, which stated that HCG may encounter a financial loss as a result of an event with a third party service provider and that HCG may change relationships as appropriate. The disclosure was not sufficient to allow an investor to appreciate the reasons for the drop in Originations or the material risk to future growth of HCG that the termination of brokerages and brokers, process changes and remediation represented.

27. Soloway and Morton certified the Q1 2015 Interim Filing as CEO and CFO, respectively.

. . .

33. The termination of brokerages and brokers and the subsequent remediation arising out of the Project Trillium findings, including changes to HCG's underwriting controls and procedures, constituted a material change in HCG's business or operations. HCG was required to issue and file a news release with respect to the material change by no later than May 6, 2015. HCG did not issue a news release in relation to this material change until July 10, 2015.

34. On July 13, 2015, the next trading day, HCG's stock price fell 18.9%.

35. On July 17, 2015, HCG filed the July 17 MCR.

. . .

37. In addition, the July 10th NR and July 17th MCR disclosures were not sufficient for a reader to understand the actual nature of the material change, nor the significance of its impact on immediate and future quarters, and, as such, did not comply with Part 7 of NI 51-102, Item 5 of 51-102F3 and subsection 122(1)(b) of the Act.

. . .

44. As the CFO, Morton was responsible for the oversight of all financial aspects of the affairs of HCG and had responsibility for drafting HCG's Q1 2015 Interim Filing. He was also Chair of HCG's Disclosure Committee.

45. Morton had knowledge of the principal investigative findings, remediation planning and action from Project Trillium. In the May 4 Memo, Morton advised the Audit Committee that a decision had been made to add disclosure in HCG's filings in respect of "the recent impact the de-listing of brokers has had and that have on the results of the Company." Among the reasons provided, Morton advised the Audit Committee that the reduction in Originations for Q1 2015 could not be attributed to weather and seasonality alone and that the reduction had the potential to extend beyond Q1 2015.

46. Morton failed to ensure statements that were made by HCG in its Q1 2015

Interim Filing were not misleading in a material respect at the time and in light of the circumstances under which they were made.

47. In addition, Morton, as one of the certifying officers for HCG, failed to take reasonable steps in his review of the Q1 2015 Interim Filing before certifying that the Q1 2015 Interim Filing contained no misrepresentations.

48. Morton also failed to ensure that HCG disclosed the material change to its business or operations arising from the findings of Project Trillium forthwith.

. . .

54. When HCG and its directors and officers became aware of the irregularities associated with the Accelerator mortgage applications, they took steps to investigate the issue to ensure that the full extent of any wrongdoing was uncovered. HCG conducted an internal investigation, struck an independent committee of the Board, chaired by a former Chair of the Commission, to oversee the investigation and appointed a third party accounting firm to assist with the investigation. HCG consulted its external professional advisors throughout the investigation.

55. HCG also reported the identified irregularities to Canada Mortgage and Housing Corporation, Genworth Canada, as well as the Office of the Superintendent of Financial Institutions and its external auditor and continued to keep them apprised as the investigation continued in a timely manner.

. . .

57. In coming to decisions on disclosure and materiality, HCG's Board acted in good faith by relying on its external professional advisors. HCG's auditor was aware of the Project Trillium investigation, tested Originations and reviewed HCG's processes as part of their audit, and did not raise any concerns about the financial statement disclosure.

58. Throughout the Material Time, Soloway, Reid and Morton provided all relevant information bearing on Originations to HCG's Board as it became known.

59. HCG and its directors and officers believed that lost Originations could be replaced from other sources in time.

. . .

61. Within days of June 1, 2015, HCG voluntarily reported to the Commission the receipt of a whistleblower memorandum from a Vice President at HCG dated June 1, 2015 entitled, "*Failure to Comply with Timely and Continuous Disclosure Obligations and Related Concerns -- Fraudulent Mortgages*". HCG, Soloway, Reid and Morton subsequently cooperated with Staff's information requests and investigation.

. . .

70.(c) Morton acknowledges and admits that he:

(i) improperly certified the Q1 2015 Interim Filing by stating that the filing did not contain any untrue statement of a material fact or omit to state a material fact required to be stated or that was necessary to make a statement not misleading in light of the circumstances under which it was made, contrary to subsection 122(1)(b) of the Act and NI 52-109;

(ii) authorized, permitted or acquiesced in the above contraventions of the Act by HCG (except those referred to in paragraph 70(a)(ii)) and is deemed to have not complied with Ontario securities law pursuant to section 129.2 of the Act; and

(iii) acted in a manner contrary to the public interest.

[36] The Settlement Agreement was accepted by a panel of the OSC on August 9, 2017 (Exhibit 8, Tab 23). In its Reasons and Decision, the panel of the OSC emphasized the importance of full disclosure of material information in capital markets. The panel also reiterated, at paragraph 10, a number of the mitigating factors set out in the Settlement Agreement.

[37] The PCC submitted that, while it was open to Mr. Morton to lead evidence regarding the context of the Settlement Agreement to rebut the presumption, Mr. Morton was bound by the language of the Settlement Agreement and he could not challenge or resile from the admissions in that document. The PCC emphasized that the Settlement Agreement was a highly negotiated document. For example, it was noted that some of the allegations by the OSC had been dropped through the negotiation process. Having negotiated that document through his counsel, Mr. Morton was bound to the admissions in the document. If there were factors that Mr. Morton wanted to have considered in this proceeding, he was obliged to have identified those in the Settlement Agreement.

[38] On the other hand, Mr. Morton asked the Panel to consider evidence regarding the circumstances giving rise to the Settlement Agreement. His counsel submitted that this was permissible to the extent that it did not contradict the Settlement Agreement. Moreover, it was submitted that the evidence being tendered only expanded on the considerations identified on the face of the Settlement Agreement.

[39] Counsel for Mr. Morton also submitted that the OSC used hindsight information to pursue HCG and Mr. Morton. He submitted that the Settlement Agreement was entered at a time when HCG was under great financial strain and that it was in the best interests of HCG to complete the Settlement Agreement. The PCC relied on paragraph 81(b) of the Settlement Agreement, which stated that the parties, including Mr. Morton, would not "make any public statement that is inconsistent with this Settlement Agreement". The PCC submitted that the evidence that Mr. Morton only made the admissions in the Settlement Agreement due to financial pressure on the company was contrary to the admissions made by Mr. Morton.

[40] Even if a hindsight perspective was used, or there were circumstances that pressed

HCG and Mr. Morton to resolve the situation, those factors did not detract from the fact that Mr. Morton admitted that he failed to use reasonable diligence in preparing the 2015 Q1 disclosures and that he had breached the *Securities Act* and acted contrary to the public interest. The Panel accepted the submission of the PCC that, if Mr. Morton's culpability was to be limited, it had to have been limited in the language of the Settlement Agreement. There was clear evidence of mitigating factors noted in the Settlement Agreement; Mr. Morton could not add to those factors in this proceeding, and to the extent that his evidence sought to do so, the Panel only considered the evidence that fell within the four corners of the Settlement Agreement. The Panel considered what Mr. Morton had admitted in the Settlement Agreement as it was these facts, and Mr. Morton's conduct and actions on which the Settlement Agreement was based, that were the foundation for the Allegations and this proceeding.

[41] However, the Panel did not accept that Mr. Morton was seeking to undermine the admissions that he made in the Settlement Agreement. Mr. Morton made clear in his evidence that he was not "running away" from the admissions in the Settlement Agreement. He accepted that the May and July 2015 disclosures had not been appropriate. However, he said that he believed at the time that he had taken reasonable steps. He maintained that he had not intended to mislead shareholders or the market.

[42] In cross-examination, Mr. Morton acknowledged that he understood his responsibility as CFO to certify the disclosures and he understood that the public relied on the accuracy of those documents. He was aware that, due to this reliance, there were very specific disclosure requirements. Mr. Morton accepted that the information that was not disclosed was material to the public and their decision-making regarding HCG. In cross examination, Mr. Morton conceded that the more detailed disclosure by HCG dated July 29, 2015 should have been made in its disclosure of May 6, 2015. He had been involved in both disclosures, and, he accepted that the fact that he signed the Q1 2015 Filing (Tab 7, Exhibit 8) meant that he was taking personal responsibility.

[43] Mr. Morton accepted that the first point in his memorandum of May 4, 2015 (Tab 3, Exhibit 8, p. 75) was not addressed in the disclosure. However, he maintained that he believed at the time that the disclosure made adequately reflected the suspension of brokers due to the fraud issues, although he realized in hindsight that the disclosure was not adequate. Similarly, he maintained that he thought at the time he had taken all reasonable steps, but he recognized in hindsight that was not the case.

[44] Mr. Morton also gave evidence that added to the facts that were set out in the Settlement Agreement. Despite the objections raised in the preliminary motion, the PCC did not object to any of the specific evidence of Mr. Morton, and only objected to the evidence of the other witnesses when they stated their opinions of the impact of Mr. Morton's conduct on the public perception of the profession.

[45] In his direct examination, Mr. Morton provided information regarding the process followed by himself, senior management, the Board, and the Disclosure Committee (which he chaired) relating to the fraud by the mortgage brokers, the impact to the first

Quarter results and how the matter was dealt with by HCG leading up to its disclosure issued on May 6, 2015, and the analysis of the situation he used. He also testified to his interaction with the Audit Committee regarding their decision on these issues. As reflected by its decision on the preliminary motion, it was important to the Panel that Mr. Morton have an opportunity to give this evidence and the Panel have an opportunity to hear it. The Panel listened to and considered this evidence, which could be characterized as either mitigating or explanatory facts or information that explored the rationale for the disclosure that was issued by HCG on May 6, 2015 for Q1 2015. However, the Panel found that these factors did not detract from the fact that Mr. Morton acknowledged in the Settlement Agreement that he did not properly report a Material Change in HCG's Q1 2015 reporting. Furthermore, he acknowledged that he was not backing away from that and that he should have disclosed in the May 6, 2015 disclosure the information that was disclosed on July 29, 2015.

[46] Ultimately, there was no issue taken before the Panel that Mr. Morton had entered into the Settlement Agreement, which had been approved by the OSC. In that Settlement Agreement, Mr. Morton admitted that he had breached certain provisions of the *Securities Act* and acted in a manner that was contrary to the public interest. The Panel found these undisputed facts to be established as set out in the particular.

Reasons for Finding of Professional Misconduct

[47] Where a member has made admissions that he violated provisions of the *Securities Act* in a Settlement Agreement with the OSC, and that Settlement Agreement is proven in evidence before the Panel, Rule 201.2 of the Rules of Professional Conduct creates a rebuttable presumption that the member has failed to maintain the good reputation of the profession contrary to Rule 201.1. Further evidence is not necessary to set out the details of the conduct giving rise to the conviction, although such evidence will often be brought forward, as it was in this case. The admissions in the Settlement Agreement having been established, the question for the Panel to determine was whether the rebuttable presumption had been rebutted.

[48] The position of the PCC was that moral turpitude was not required for the rebuttable presumption under Rule 201.2 to support the conclusion that the member had failed to maintain the good reputation of the profession. While some of the offences referenced in Rule 102.1 required fraud or moral turpitude to engage the presumption, there was no such requirement where securities laws had been violated. The rebuttable presumption was engaged as soon as there was an admitted violation of securities legislation. Counsel noted that the Settlement Agreement was the same as that in *Horsley (Re),* 20166 LNICAO 11, although it was acknowledged that HCG was not acting in a fraudulent manner as was the case of the corporation in *Horsley.*

[49] The PCC emphasized that they were not suggesting that Mr. Morton did nothing or that there were no mitigating circumstances. But, Mr. Morton had not done what he was required to do, and what was reasonable, and he admitted that. Mr. Morton admitted his guilt to a charge under s. 122(1)(b) of the *Securities Act.* In doing so, he acknowledged

that the defence under s. 122(2) – that he exercised due diligence – did not apply.

[50] With respect to the impact on the reputation of the profession, the PCC submitted that Mr. Morton was referred to in the financial statements, the decisions and the media coverage as a CMA, CPA. In a highly regulated setting, a CFO and senior officer of a publicly traded entity and a reporting issuer has significant disclosure obligations. A failure to meet those obligations impacted the public, and, where a CPA was involved, impacted the public reputation of the profession.

[51] Counsel for Mr. Morton submitted that the PCC was proposing a standard that stripped the rebuttable presumption of any meaning. The language of the Rule allowed for a *rebuttable* presumption, so the interpretation given to that provision had to allow for a realistic possibility that the presumption could be rebutted. In this case, this meant that the Panel needed to consider the nature of the breach of the *Securities Act.* Counsel for Mr. Morton argued that the offence under the *Securities Act* was a strict liability offence that did not require dishonesty or fraud, and that the essence of the rebuttable presumption was dishonest behaviour.

[52] Mr. Morton submitted that a breach of the *Securities Act,* under Rule 102.1(d) should only be presumed to impugn the reputation of the profession if there was a serious lapse of moral or professional judgment or involved a pattern of reckless conduct over a prolonged period. The admissions by Mr. Morton did not go this far. Mr. Morton said that he did not intend to mislead the public. Rather, he expressed his view on the disclosure issue and sought guidance from professional advisers, as referenced in paragraphs 24 and 25 of the Settlement Agreement.

[53] Improper or inappropriate conduct by a member of CPA Ontario does not have to involve dishonesty, fraud, or moral turpitude to constitute misconduct by the member. There is nothing in the language of Rule 201.2 that would impose different requirements for the scope of conduct that may tarnish the reputation of the profession. As was noted in the Settlement Agreement, and acknowledged and accepted by Mr. Morton, he failed to properly carry out his duties in his capacity as CFO for HCG, a reporting issuer, and his failure to properly disclose information to the public, in this capacity, led to him violating the *Securities Act* and acting contrary to the public interest. The breach of the *Securities Act* triggered the rebuttable presumption under 201.2 and Rule 102.1(d). In Mr. Morton's situation, Rule 201.2 defines the circumstance that be presumed to reflect failure to maintain the reputation of the profession by way of reference to Rule 102.1(d). Rule 102.1(d) makes no reference to conduct of a dishonest or fraudulent nature; there is nothing in the language of that section that requires these elements to be present for conduct to fall within this Rule. Rule 102.1(d) only refers to being guilty of a violation of the provisions of any securities legislation or having entered into a settlement agreement with respect to a violation of the provisions of any securities legislation. Those are the only facts required to trigger the rebuttable presumption.

[54] This conclusion was supported by a consideration of the conduct under Rule 201.1, without reliance on the rebuttable presumption. Even in the absence of dishonesty, Mr.

Morton's failure to abide by these obligations tied so closely to his professional status and acting contrary to the public interest constituted a failure on his part to maintain the good reputation of the profession as required by Rule 201.1.

[55] Mr. Morton testified that he acted in good faith in deciding not to make the disclosures that were ultimately found to be necessary. Counsel pointed out that the OSC panel that approved the settlement found that "HCG acted in good faith with regard to disclosure decisions in reliance on professional advisers." (Reasons and Decision of the OSC, Ex. 8, Tab 24, p. 292). The PCC submitted that the Settlement Agreement indicated that the Board of HCG acted in good faith – not specifically that Mr. Morton acted in good faith.

[56] Mr. Morton called three witnesses to speak to their knowledge of Mr. Morton's activity in his position as CFO of HCG and Home Trust. The witnesses called were Ms. Brenda Eprile, Ms. Helen Mitchell and Mr. Robert Blowes.

[57] Ms. Brenda Eprile joined the Board of HCG in May 2016, after the events in issue. In her cross-examination, Ms. Eprile was referred to a News Release issued by HCG dated June 14, 2017 (Exhibit 8, Tab 19, pg. 275). The document quoted her as saying, in her position as Chair of the Board of HCG: "Home Capital will accept full responsibility for failing to meet its disclosure obligations to the marketplace and appreciates the importance of the serious concerns raised by the Commission with respect to continuous and timely disclosure." The Panel accepted that the failure that she cited referred to the May 6, 2015 disclosure that Mr. Morton had signed in his capacity as CFO. The Panel also recognized that Ms. Eprile was not present and did not participate in the discussions regarding the disclosure by Mr. Morton and HCG in the May 2015 to July 2015 period.

[58] Ms. Helen Mitchell was audit partner for HCG commencing with the first quarter of 2015. Her role was to deal with the financial statements of HCG and to provide an audit opinion concerning the statements. The first quarter of 2015 was her first time as the audit partner for HCG. She acknowledged that she had no input into the 2014 results and that her quarterly reporting to the Audit Committee pertained to the Financial Statements. She stated that the July 2015 Material Change Reports were all performed at the Board level. With respect to the Management Discussion and Analysis (MD&A) document, the auditor's role was to look for consistency of financial information in relation to the Financial Statements. They did not audit the MD&A and would not have been involved in any material change disclosures. In Mr. Morton's cross examination, he stated that the auditors did not audit Q1 2015. The Panel determined that Ms. Mitchell was therefore not a participant in the material change matters of HCG in the May 2015 to July 2015 period. Helen Mitchell confirmed that Mr. Morton discussed his memorandum of May 4, 2015 with the Audit Committee on May 6, 2015, and explained to them why certain changes were made. After discussing the appropriateness of the disclosures, the very experienced Audit Committee ultimately approved the disclosures with which the OSC later took issue. In cross-examination, she acknowledged that only management had an obligation to ensure that the business was accurately described, and management, the Audit Committee and their advisors decided what was disclosed.

[59] Mr. Robert Blowes was the former CFO of HCG and Home Trust. He had retired from both positions by December 2014. He joined the Board of HCG in May 2015. He stated that he was not part of the reporting for Q1 2015.

[60] Given that none of the three witnesses were either present or participants in the disclosure issues for Q1 2015, the Panel gave little weight to their evidence regarding Mr. Morton's activity and his participation in the inadequate disclosure to the public by HCG in the period May 2015 to July 2015. As noted above, the Panel relied on the central fact that the required disclosures were not made, and that Mr. Morton was responsible for them. This was the essence of the Settlement Agreement. His good faith or the involvement of the Audit Committee of Board did not change that.

[61] Moreover, the Panel was aware that the OSC had considered many of the same factors that were advanced before this Panel on behalf of Mr. Morton. While the OSC found that these factors mitigated penalty, they did not detract from the fact that Mr. Morton admitted breaching the *Securities Act* and acting in a way that was not in the public interest. This Panel concluded that there was no basis to reach a different conclusion in this proceeding.

[62] As a result, the Panel found that Mr. Morton committed professional misconduct in that he impugned the good reputation of the profession and breached Rule 201.1 of the *Rules* as a result of the admissions in the Settlement Agreement he signed with the OSC.

VI. DECISION ON SANCTIONS

[63] After considering the evidence and the submissions of counsel, the Panel ordered a written reprimand, a $10,000 fine, and a suspension of Mr. Morton's licence for a period of three months. The Panel also ordered publication of the decision to all members and other provincial bodies and that the decision be available to the public.

VII. REASONS FOR DECISION ON SANCTIONS

[64] The purpose of sanctions in a professional discipline matter is to provide specific deterrence to the member and general deterrence to the members of the profession at large. The appropriate sanctions must also show the public that CPA Ontario is serious about disciplining its members for contravention of the *Rules* in order to protect the public and maintain public confidence in the profession.

[65] There was no issue between the parties that a written reprimand and a $10,000 fine were appropriate. The Panel agreed that the reprimand and fine were appropriate. The fine is to be paid within six months from the date of the decision.

[66] There was disagreement over two other terms. The PCC sought a suspension of six months; Mr. Morton submitted that a suspension was not appropriate. The PCC also

sought standard publicity as well as publication in two newspapers. Mr. Morton took the position that publicity should be to all members of CPA Ontario, but publicity to other provincial bodies, the public and newspapers was not necessary.

[67] In support of its request for a six-month suspension, the PCC submitted that the penalty imposed by the OSC demonstrated that the conduct was serious, and the sanction imposed by the Panel should be proportionate to that. Counsel for the PCC stressed two factors in this regard: the fact that this was a high-profile case, and the fact that Mr. Morton had certified financial information as a CFO, which was a senior office and a position of trust.

[68] The PCC submitted that exemplary behaviour is demanded of CPAs, and, as a result, harsh penalties may be appropriate, even if an individual member is sympathetic, to ensure specific and general deterrence. In this case, a suspension was necessary to convey to the public that CPAs could not sign financial statements or other documents relied on by the public or a regulatory body, whether as a CPA or in another official capacity for a reporting issuer, without taking reasonable steps to ensure that they are adequate. A significant suspension sends the message that the conduct fell well below the standard expected.

[69] Counsel for Mr. Morton urged the Panel not to impose a suspension given all of the mitigating factors. He submitted that suspension was not necessary because there was no dishonesty by Mr. Morton, he acted in good faith, he was of no risk to the profession and he would not be signing public documents in the future. Counsel also submitted that the conduct did not substantially reflect on Mr. Morton as a CPA and he had already been sanctioned by the OSC in his capacity as an officer of HCG. In this regard, Mr. Morton and the witnesses that he called to give evidence all testified that no one had ever said to them that Mr. Morton had not upheld the good name of the profession.

[70] In the Panel's view, most of the evidence presented on behalf of Mr. Morton was only relevant insofar as it demonstrated mitigating factors to be considered in determining the appropriate sanction in this case. Each of the witnesses called on behalf of Mr. Morton spoke of his competence as a CFO and his general good character. Ms. Eprile said that he was very open with the Audit Committee. Ms. Mitchell said that he was very attentive and professional and that he had brought in another large accounting firm to review processes. The witnesses all also maintained that Mr. Morton had acted in good faith when he certified the Q1 2015 Management Discussion & Analysis of HCG. As noted above, acting in good faith did not excuse Mr. Morton's failure to provide Material Change information in the Q1 2015 filing. That good faith was relevant to assessing penalty.

[71] Mr. Morton testified that a day had not gone by since these events on which he had not asked himself if he could have done something different. He indicated that he no longer had full-time employment and he questioned whether he would ever be able to find new employment in the industry.

[72] After carefully considering the submissions of counsel, the Panel concluded that a suspension was necessary in this case as a specific and general deterrent and to protect the interests of the public. Given that Mr. Morton did acknowledge in the Settlement Agreement that he "acted in a manner contrary to the public interest", it was important that CPA Ontario properly conveyed to the public that its members would be accountable for misconduct of this nature. The Panel also took into account that Mr. Morton admitted to six violations of the *Securities Act,* involving three separate incidents. Mr. Morton acted as both a CPA and an officer of a public company and reporting issuer during the events in question. Where a CPA acted contrary to the public interest in a professional capacity, this Panel would not be fulfilling its mandate to the public or to the membership if it did not impose a suspension. If no suspension were imposed, the objectives of specific and general deterrence would not be achieved and the appropriate message would not be conveyed to the public and the membership as to the seriousness of the misconduct.

[73] However, the Panel agreed that a shorter suspension than that sought by PCC was appropriate in the circumstances based on the numerous mitigating factors. The Panel accepted that Mr. Morton had accepted responsibility for the events leading to his Settlement Agreement with the OSC. Mr. Morton had no discipline history as a CPA and had no prior violations of the *Securities Act*. He had suffered a significant penalty through the OSC. He had suffered significant reputational harm, had resigned his position and had not had full-time employment since then. As emphasized by Mr. Morton's counsel, the admissions in the Settlement Agreement did not involve dishonesty or acts of moral turpitude, but a failure to act with due diligence.

[74] The Panel also considered the factors that the OSC had found to be mitigating, as set out in paragraph 10 of the Reasons and Decision of the OSC, dated August 9, 2017, approving the settlement (Tab 23, Exhibit 8). These included the fact that HCG, and, in turn, Mr. Morton, had obtained advice from professionals in making the decisions in issue. Mr. Morton made good faith judgments regarding the decisions and was candid with HCG's board, advisors and regulators.

[75] Based on a consideration of the significant mitigating factors identified by the parties, the Panel concluded that a three-month suspension, not six-month, was appropriate on the facts of this case.

[76] With respect to publication, the PCC, although it sought publication in two newspapers, acknowledged that such publication was not required under the language of Regulation 7-3 and that the Panel had discretion in this regard. The Panel could order this publication under the general authority conveyed by section 25 of Regulation 7-3. Counsel for Mr. Morton submitted that the publication should be consistent with what was required by the Regulation, but no more. Given the publicity to date surrounding the events involving HCG and Mr. Morton, the Panel was satisfied that further publication was not required.

[77] Section 26 of Regulation 7-3 provides that all decisions of the Discipline Committee shall

be posted on CPA Ontario and be available to the public upon request, unless a Panel orders otherwise. The Panel determined that through the investigation and process undertaken by the OSC and the various newspaper articles concerning HCG, most of which referred to Mr. Morton's conduct along with Orders issued by the OSC were sufficient external notices of Mr. Morton's involvement in the HCG matter. The Panel found that there was no reason to depart from the standard publication of the decision under section 22 of the Regulation, namely that it must be provided to all members of CPA Ontario and other provincial bodies and that the decision be available to the public.

VIII. COSTS

[78] The PCC sought an order requiring Mr. Morton to pay two-thirds of the cost of the investigation and prosecution of this matter. Mr. Morton did not contest that request, although counsel submitted that PCC had not been successful on the motion and usually there would be no costs to an unsuccessful party on a motion. The PCC maintained that the motion had been necessary to narrow the issues for the hearing but suggested that the costs of the motion fees be reduced in half.

[79] The costs outline submitted by the PCC (Exhibit 14) indicated that the total costs incurred for the hearing of both the motion and the application were $136,124.38, based on two counsel appearing and the hourly rates for counsel. This figure also reduced the costs of the motion by 50%. Counsel to the PCC proposed an order for $93,253.93, being two-thirds of that amount.

[80] The Panel expressed a concern to the parties that the costs were increased in this case due to outside counsel being retained to represent the PCC. Both parties took the position that there was no control over who was retained on a given prosecution, so the actual costs incurred had to be considered for the purpose of indemnification. The PCC submitted that the outside counsel rates were already discounted.

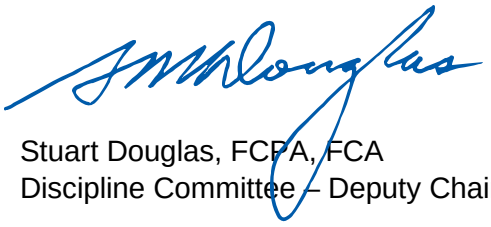
[81] Despite the position of the parties, the Panel was not satisfied that the costs sought were reasonable in all of the circumstances. The Panel, in its discretion, decided that it was appropriate to reduce the requested fees from $93,254 to $75,000 - a reduction of $18,254. This reduction reflected, in part, the added weight that the Panel placed on the fact that the motion presented by PCC was not successful. Although the Panel recognized that the PCC had reduced their costs of the motion by 50%, this did not adequately acknowledge that the PCC had not been successful on the motion, and, in other proceedings, would have been entitled to no costs of the motion. The Panel was also concerned about the rates being used by outside counsel compared to those that would have been charged had PCC used in house counsel.

[82] The Panel did not undertake a specific calculation of the costs to be paid after the allocation of their reduction to the motion costs and to a reduction for the rates charged by counsel for PCC. Rather, based on the view that Mr. Morton should not be charged the total amount sought by PCC, it sought to determine what would be reasonable,

taking into account these factors. The Panel was satisfied that an amount of $75,000 in costs to be paid by Mr. Morton was reasonable and appropriate in all of the circumstances.

[83] The Panel ordered that Mr. Morton pay costs fixed in the amount of $75,000 within six months of the date of the decision.

Dated at Toronto this 11th day of February, 2019



Stuart Douglas, FCPA, FCA
Discipline Committee – Deputy Chair

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Catherine Kenwell (Public Representative)
Jane Rivers, CPA, CGA
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