



**Court file No. S1710393  
Vancouver Registry**

**IN THE SUPREME COURT OF BRITISH COLUMBIA**

**IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,  
R.S.C. 1985, c. C-36, AS AMENDED**

**AND**

**IN THE MATTER OF THE *BUSINESS CORPORATIONS ACT*, S.B.C. 2002, c. 57**

**AND**

**IN THE MATTER OF ALL CANADIAN INVESTMENT CORPORATION**

**(the "Petitioner")**

**MONITOR'S TWENTY-EIGHTH REPORT TO COURT**

**MARCH 9, 2021**

**McEown and Associates Ltd.**

Monitor appointed in the  
Companies' Creditors Arrangement Act proceedings of  
All Canadian Investment Corporation

**Suite 110 – 744 West Hastings Street  
Vancouver, B.C. V6C 1A5**

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- A. Correspondence from Counsel for the Executive Director of the British Columbia Securities Commission**
- B. Agreed Statement of Facts Executed by Counsel for the Petitioner**

## A. INTRODUCTION

1. This report (the “**Twenty-Eighth Report**”) is filed by McEown and Associates Ltd. (“**McEown**”) in its capacity as monitor (the “**Monitor**”) appointed in a proceeding commenced on November 8, 2017 by All Canadian Investment Corporation (the “**Petitioner**” or “**ACIC**”) pursuant to the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c.-36, as amended (the “**CCA Proceedings**”).
2. The purpose of the Twenty-Eight Report is to provide the Court with the Monitor’s report on the British Columbia Securities Commission Settlement.

## **B. DISCLAIMER AND TERMS OF REFERENCE**

3. Except as specified, in preparing this report the Monitor has obtained and relied upon unaudited, draft and/or internal information which Management advises has been compiled from the Petitioner's books and records. Where available, the Monitor has reviewed external records and documentation including post-filing banking records, corporate searches and financial statements.
4. Except as otherwise described in this report:
  - a) the Monitor has not audited, reviewed or otherwise attempted to verify the accuracy or completeness of the information which has been provided in a manner that would wholly or partially comply with Generally Accepted Assurance Standards pursuant to the Chartered Professional Accountant Canada Handbook; and
  - b) the Monitor has not conducted an examination or review of any financial forecast and projections in a manner that would comply with the procedures described in the Chartered Professional Accountant Canada Handbook.
5. This Report has been prepared solely for the purpose described and readers are cautioned that it may not be appropriate for other purposes.

### **C. BRITISH COLUMBIA SECURITIES COMMISSION SETTLEMENT**

6. As previously reported to the court in the Monitor's 21<sup>st</sup> Report to Court dated May 15, 2020, the British Columbia Securities Commission (the "BCSC") issued a Notice of Hearing against ACIC and Mr. Bergman regarding certain contraventions of the *Securities Act*. A copy of the Notice of Hearing dated January 20, 2020 was attached as Appendix "A" to the Monitor's 21<sup>st</sup> Report.
7. Based on advice provided by counsel, the Monitor was of the view that the filing of the Notice of Hearing did not contravene the stay of proceedings made in the Initial Order.
8. The hearing was initially scheduled to proceed on November 12, 2020, however, it was adjourned until March 8, 2021.
9. Counsel for the Petitioner, on instructions from the Monitor, initiated discussions with counsel for the BCSC with a view to resolving the allegations advanced against the Petitioner. The Monitor's primary purpose for providing such instructions was to:
  - a. mitigate the risk of potentially adverse monetary sanctions in the event that a finding of liability was made against the Petitioner with respect to the Notice of Hearing; and
  - b. avoid financial resources of the Petitioner being expended in defending the Notice of Hearing contrary to the interests of stakeholders.

10. At the hearing on March 19, 2020 the Petitioner and the Monitor sought formal authorization to pursue those settlement negotiations and an order was made as follows:

The Monitor is hereby authorised to enter into settlement discussions, on behalf of the Petitioner, with respect to the Notice of Hearing issued by the British Columbia Securities Commission, Citation 2020 BCSCCOM 22. In the event that Monitor is able to negotiate a resolution which it believes is in the best interests of the stakeholders, the Monitor is hereby directed to seek approval from the Court.

11. Since March 19, 2020 counsel for the Petitioner has continued settlement negotiations, on the instructions of the Monitor, with the BCSC.

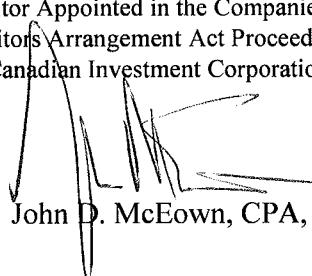
12. On or about March 3, 2021 ACIC, the Monitor and counsel for the BCSC reached an agreement, subject to Court approval, for resolution of the allegations contained in the Notice of Hearing pursuant to which:

- a. the parties would enter into an Agreed Statement of Facts in an agreed form;
- b. the Petitioner would not be required to attend the hearing; and
- c. in the event that a liability finding is made against the Petitioner, the Executive Director of the BCSC (the “**Executive Director**”) will not seek monetary sanctions and will restrict the relief sought against the Petitioner to orders pursuant to s.161(1) of the *Securities Act* permanently prohibiting ACIC from:
  - i. trading and purchasing in securities or derivatives;
  - ii. becoming or acting as a registrant or promoter; and
  - iii. engaging in promotional activities by or on behalf of an issuer, security holder or party to a derivative, or another person that it reasonably expected to benefit from the promotional activity.

13. The Petitioner has secured, from counsel for the Executive Director, written confirmation of the terms for resolving the allegations against the Petitioner. Attached and marked as Appendix “A” is a copy of e-mail correspondence from counsel for the Executive Director recording that agreement.
  
14. A directions conference was conducted March 4, 2021 at which time the Petitioner was authorized to agree to the resolution proposed by the Executive Director and execute the Agreed Statement of Facts in the proposed form. Attached and marked as Appendix “B” is a copy of the Agreed Statement of Facts executed by counsel for the Petitioner.
  
15. The Monitor was, and remains, of the view that the resolution negotiated to resolve the issues arising under the Notice of Hearing is in the best interests of the stakeholders in that it will avoid the expenditure of estate funds in defending the Notice of Hearing and reduce the likelihood of monetary sanctions against the Petitioner. While the BCSC Hearing Panel retains the ultimate discretion to determine whether monetary sanctions are imposed in the event that a contravention of the *Securities Act* is found, the Monitor is of the view that this is unlikely given the agreement reached with the Executive Director.

DATED at the City of Vancouver, British Columbia, this 9<sup>th</sup> day of March, 2021.

**McEown and Associates Ltd.**  
Monitor Appointed in the Companies'  
Creditors Arrangement Act Proceedings of  
All Canadian Investment Corporation



Per: John D. McEown, CPA, CA, CIRP, LIT

## APPENDIX A

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**From:** Deborah Flood <DFlood@bcsc.bc.ca>  
**Sent:** March 4, 2021 4:35 PM  
**To:** West, Jeremy  
**Subject:** ACIC: Statement of Agreed Facts

Dear Jeremy,

I confirm that I act as counsel for the executive director in the matter respecting ACIC and Donald Bergman.

In return for ACIC's agreement to the statement of agreed facts, the executive director, at a sanction hearing against ACIC, will recommend to the panel that:

- no monetary orders under sections 161(g) or 162 of the Act are issued against ACIC; and
- ACIC receive permanent market orders under s. 161(1) permanently prohibiting ACIC from:
  - (b)(ii) trading and purchasing in securities or derivatives;
  - (d)(iii) becoming or acting as a registrant or promoter; and
  - (d)(v) engaging in promotional activities by or on behalf of an issuer, security holder or party to a derivative, or another person that it reasonably expected to benefit from the promotional activity

Yours truly,

Deborah W. Flood



**BCSC**

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## APPENDIX B



British Columbia  
Securities Commission

### STATEMENT OF AGREED FACTS

#### All Canadian Investment Corporation

#### *Securities Act, RSBC 1996, c. 418*

The Executive Director of the British Columbia Securities Commission (the Executive Director) and All Canadian Investment Corporation (ACIC) agree on the following facts:

#### Statement of Agreed Facts

1. The relevant period in this Statement of Agreed Facts is January 2014 to December 2015.
2. ACIC is a non-reporting mortgage investment corporation, that was controlled and managed by Donald Bergman (Bergman) during the relevant time.
3. ACIC is incorporated in British Columbia, and operated its business in British Columbia.
4. ACIC's primary business was to provide loans (Mortgage Loans) to owners and developers of single and multi-family residential, commercial, office, and industrial real estate, which were secured by mortgages on those properties.
5. On November 10, 2017, the British Columbia Supreme Court made an order under the *Companies' Creditors Arrangement Act*, R.S.C, 1985, c. C-36 (CCAA), appointing Boale, Wood & Company Ltd., as the monitor (the CCAA Proceeding).
6. On November 9, 2018, Bergman's power and authority with respect to ACIC's property or business, whether by virtue of being an officer, director or the management of ACIC, was suspended by court order.
7. On November 25, 2019, the Court appointed McEown and Associates Ltd. as the monitor in the CCAA Proceeding in place of Boale, Wood & Company Ltd.
8. ACIC remains in the CCAA Proceeding.
9. Between February 2014 and December 2015, ACIC raised \$1.602 million from over 50 investors using three offering memoranda dated January 21, 2014, February 12, 2015 and June 22, 2015 (OMs).
10. ACIC provided investors with the OMs and filed the OMs with the Commission.



11. In the OMs, ACIC stated that:
  - (a) ACIC's Mortgage Loans would be secured by a mortgage and the mortgage "will be registered in the appropriate land title office as a charge against the real property subject to the Mortgage" (the Registration Representations); and
  - (b) ACIC's Mortgage Loans, as particularized in the mortgage portfolio schedule in the OMs, were secured by mortgages ranking first or second in priority (the Priority Representations).
  
12. The Registration Representations and Priority Representations were untrue because:
  - (a) Some of ACIC's Mortgage Loans (as particularized in schedule "A") were not secured by a mortgage registered in the Land Title and Survey Authority (LTSA) as a charge against the real property. ACIC cancelled some mortgage registrations, both before or after the date of the OMs<sup>1</sup>; and
  - (b) Some of ACIC's Mortgage Loans (as particularized in schedule "B") were secured by mortgages that ranked lower in priority than the priority stated in the OMs.<sup>2</sup>
  
13. As a result of ACIC:
  - a. not securing some of its Mortgage Loans (as particularized in schedule "A") by a registered mortgage in the LTSA as a charge against the real property to the mortgage; and
  - b. securing some of its Mortgage Loans (as particularized in schedule "B") in a mortgage that ranked lower in priority than the priority stated in the OMs,

ACIC's ability to recover under some of the Mortgage Loans was compromised ; and ACIC incurred costs to take steps to enforce some of its Mortgage Loans that were not secured by a mortgage in the LTSA as a charge against the real property.

14. By making the Registration Representations and the Priority Representations, ACIC made:

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<sup>1</sup> See schedule "A" for a chart outlining ACIC's Mortgage Loans not secured by a mortgage registered in the Land Title and Survey Authority as a charge against the real property to the mortgage

<sup>2</sup> See Schedule "B" for a chart outlining ACIC Mortgage Loans secured by mortgages that ranked lower in priority than the priority stated in the OMs.



- a. statements to its investors with the intention of effecting a trade in its securities that it knew, or ought reasonably to have known, were misrepresentations, contrary to section 50(1)(d) of the Act; and
- b. false or misleading statements in documents required to be filed under the Act, contrary to section 168.1(1)(b) of the Act.

15. Reference to contraventions under the Act refers to the Act prior to the March 2020 amendments.

March \_\_, 2021

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Deborah Flood  
Counsel for the Executive Director

March 5, 2021

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Jeremy West  
Counsel for ACIC



**Schedule "A"**

**ACIC's Mortgage Loans not secured by a mortgage registered in the Land Title and Survey Authority (LTSA) as a charge against the real property to the mortgage**

<b>Properties</b>	<b>Period not secured by a mortgage registered in the LTSA</b>
<b>Grant Manor</b>	
PID 002-408-333	<ul style="list-style-type: none"><li>• Feb 14, 2013 onwards</li></ul>
<b>Altezza</b>	
PID 028-874-382	<ul style="list-style-type: none"><li>• January 9, 2014-November 18, 2014</li><li>• November 23, 2015 onwards</li></ul>
PID 028-874-391	<ul style="list-style-type: none"><li>• January 9, 2014-November 18, 2014</li><li>• November 23, 2015 onwards</li></ul>
<b>Chisa</b>	
PID 025-161-342	<ul style="list-style-type: none"><li>• May 16, 2014-November 18, 2014</li><li>• February 12, 2016 onwards</li></ul>
<b>Beta</b>	
PID 029-125-626	<ul style="list-style-type: none"><li>• March 10, 2014 onwards</li></ul>
<b>Sperling</b>	
PID 003-279-821	<ul style="list-style-type: none"><li>• April 3, 2014-November 18, 2014</li><li>• November 20, 2014 to April 12, 2018</li></ul>
PID 003-279-839	<ul style="list-style-type: none"><li>• April 3, 2014-November 18, 2014</li><li>• November 20, 2014 to April 12, 2018</li></ul>
<b>Carleton</b>	
PID 003-329-232	<ul style="list-style-type: none"><li>• March 31, 2016 onwards</li></ul>
PID 002-645-068	<ul style="list-style-type: none"><li>• May 10, 2016 onwards</li></ul>



**Schedule "B"**

**ACIC's Mortgage Loans were secured by mortgages that ranked lower in priority than the priority stated in the Oms**

<b>Properties</b>	<b>Date of OM</b>	<b>Ranking in OM</b>	<b>Actual ranking</b>
<b>Grant Manor</b>	January 2014	2 <sup>nd</sup>	2 <sup>nd</sup> Unregistered mortgage
<b>Altezza</b>	January 2014	2 <sup>nd</sup>	3 <sup>rd</sup> Unregistered mortgage
	February 2015	2 <sup>nd</sup>	3 <sup>rd</sup> registered mortgage
	June 2015	2 <sup>nd</sup>	3 <sup>rd</sup> registered
<b>Sperling</b>	January 2014	2 <sup>nd</sup>	3 <sup>rd</sup> registered mortgage
<b>Carleton</b>	February 2015	2 <sup>nd</sup>	3 <sup>rd</sup> registered
	June 2015	2 <sup>nd</sup>	4 <sup>th</sup> registered
<b>Daniel Point</b>	February 2015	1 <sup>st</sup>	2 <sup>nd</sup> registered
	June 2015	1 <sup>st</sup>	2 <sup>nd</sup> registered