

Court File No.:

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

B E T W E E N:

ONTARIO SECURITIES COMMISSION

Applicant

- and -

BRIDGING FINANCE INC., BRIDGING INCOME FUND LP, BRIDGING MID-MARKET DEBT FUND LP, SB FUND GP INC., BRIDGING FINANCE GP INC., BRIDGING INCOME RSP FUND, BRIDGING MID-MARKET DEBT RSP FUND, BRIDGING PRIVATE DEBT INSTITUTIONAL LP, BRIDGING REAL ESTATE LENDING FUND LP, BRIDGING SMA 1 LP, BRIDGING INFRASTRUCTURE FUND LP, BRIDGING MJ GP INC., BRIDGING INDIGENOUS IMPACT FUND, and BRIDGING FERN ALTERNATIVE CREDIT FUND

Respondents

AFFIDAVIT OF DANIEL TOURANGEAU

(Sworn via Videoconference on April 29, 2021)

I, **Daniel Tourangeau**, of the Town of Oakville, in the Province of Ontario, **MAKE OATH AND SAY:**

1. I am a Senior Forensic Accountant with staff of the Enforcement Branch (**Enforcement Staff**) of the Ontario Securities Commission (the **Commission**). I joined the Commission as a Senior Forensic Accountant in March 2019.

2. I am a Chartered Professional Accountant (**CPA, CA**) and a member in good standing of the Institute of Chartered Professional Accountants of Ontario and the Ordre des comptables professionnels agréés du Québec. I obtained a bachelor's degree in accounting from Université du Québec à Montréal in 2000 and a master's degree in forensic accounting from the University of Toronto in 2018. I have been a CPA, CA since 2001. I am Certified in Financial Forensics (CFF) by CPA Canada and I am also a Certified Fraud Examiner (CFE) and member in good standing of the Association of Certified Fraud Examiners since 2007.

1. Introduction

3. Enforcement Staff are conducting a confidential investigation into Bridging Finance Inc. (**BFI**) and certain of its officers, directors and shareholders (the **Investigation**). The Investigation

is ongoing. I am the lead investigator and Senior Forensic Accountant assigned to the Investigation. As such, I have personal knowledge of the matters referred to in this affidavit, except where I am informed by others and I do believe this information to be true.

4. The statements in this affidavit are, to the best of my knowledge and belief, true and correct as of 9:00am on April 29, 2021. Enforcement Staff have scheduled further examinations with certain BFI witnesses on April 29, 2021. To the extent that anything arising from those examinations materially impacts any statements I make in this affidavit I will address them in a supplemental affidavit.

5. BFI is an investment management firm based in Toronto with a stated focus on alternative finance. BFI promotes and manages investment vehicles (the **BFI Funds**) that raise capital from investors for the purpose of making loans to corporate borrowers (the **Loan Counterparties**) or investing in other BFI Funds. BFI originates the loans and manages the operations of the BFI Funds. Outside investors participate through the purchase of units of the BFI Funds. The largest BFI Funds are the Bridging Income Fund LP (the **Income Fund**) and the Bridging Mid-market Debt Fund LP (the **MM Fund**). As of December 31, 2020, the Income Fund reported net assets attributable to unitholders of \$1,018,993,258 and the MM Fund reported net assets attributable to unitholders of \$505,633,598. In addition to the BFI Funds, BFI manages certain other investment vehicles including investment trusts, offshore funds and a registered investment fund.¹ As of December 2020, BFI reported approximately \$2 billion assets under management (**AUM**). The BFI Funds represent \$1,766,787,999² of BFI's reported AUM.

6. BFI is registered with securities regulators in all provinces and territories in Canada as a restricted portfolio manager and an exempt market dealer. BFI is also registered as an investment fund manager in Ontario, Quebec and Newfoundland & Labrador to manage the Bridging Fern Alternative Credit Fund (the **Fern Fund**).

7. BFI's current directors are Natasha Sharpe (**N Sharpe**), siblings Jenny Coco (**J Coco**) and Rock-Anthony Coco (**R Coco**) and Hugh O'Reilly (**O Reilly**). J Coco, R Coco and N Sharpe are BFI's indirect shareholders (the **BFI Shareholders**). BFI's Chief Executive Officer (**CEO**) and Ultimate Designated Person (**UDP**) is David Sharpe (**D Sharpe**), N Sharpe's husband, its Chief Compliance Officer (**CCO**) is Andrew Mushore (**Mushore**) and its president is Graham Marr (**Marr**).³

8. As CEO and UDP, D Sharpe is the most senior decision maker at BFI. D Sharpe told Enforcement Staff that he was involved in every aspect of BFI's business from hiring to fund creation to business development, that he wanted to know everything material that was happening in BFI and that not much happened at BFI without him and Mushore being involved.⁴

9. As described in Appendix A, BFI controls the BFI Funds through its role as portfolio manager. In addition, for those BFI Funds that are structured as limited partnerships, BFI exercises control through its 100% ownership of the general partners. N Sharpe is a director and officer of the general partner of all the BFI Funds structured as limited partnerships. D Sharpe is the president and secretary of the general partner of the Income Fund.

¹ Additional information relating to the BFI Funds and these other investment vehicles is set out in **Appendix A**.

² As set out in **Appendix A**.

³ For more information on BFI's directors, officers and shareholders see **Appendix B**.

⁴ Attached as **Exhibit 43** are relevant excerpts from the D Sharpe Transcript.

10. The Investigation has focused on potential conflicts of interest arising from the relationship between BFI and certain of its directors, officers and shareholders and the principals of certain Loan Counterparties. The transactions at issue involve companies connected to three individuals: Rishi Gautam (**Gautam**), Sean McCoshen (**McCoshen**) and Gary Ng (**Ng**). During the period between January 1, 2017 and April 30, 2020 (the **Relevant Period**), BFI loaned companies related to Gautam, McCoshen and Ng each over \$100 million from the BFI Funds. The Investigation has uncovered evidence that:

- BFI appropriated \$35 million from the BFI Funds to complete an acquisition for its own benefit. BFI used loans to and from companies related to Gautam to effect transactions that resulted in \$35 million being transferred from the BFI Funds through two law firm trust accounts to the vendor to complete the acquisition for BFI's benefit. At the time of these transactions, BFI had loaned over \$120 million from the BFI Funds to companies related to Gautam;
- D Sharpe received approximately \$19.5 million in undisclosed payments into his personal chequing account from a company controlled by McCoshen during the same period that BFI loaned over \$100 million from the BFI Funds to McCoshen's other companies; and
- During the same period that Ng was negotiating to acquire a 50% interest in BFI, BFI loaned almost \$100 million from the BFI Funds to companies related to Ng. This included a \$32 million advance two weeks before the acquisition closed and Ng transferred \$50 million to the BFI Shareholders.

2. **BFI Appropriated \$35,000,000 from the MM Fund**

A. **BFI Acquired Ninepoint's Management Interest in the Income Fund for \$45,000,000**

11. Prior to October 2018, BFI co-managed the Income Fund with Ninepoint Partners LP (**Ninepoint**). BFI performed investment management functions and Ninepoint performed administrative and marketing functions. As part of this arrangement, BFI and Ninepoint split the management fee attributable to the Income Fund and shared an annual performance/incentive fee.⁵

⁵ Attached as **Exhibit 44** is a copy of the Amended and Restated Management Agreement among BFI and SPR & Col. LP (which became Ninepoint) and others (the **Management Agreement**). Section 3(a) (on page 3) of the Management Agreement stipulated that BFI would have sole responsibility for all investment management decisions relating to the Income Fund. Schedule "B" to the Management Agreement provided that BFI and Ninepoint were each entitled to 50% of the net management fee attributable to the Income Fund and that they shared an annual performance/incentive fee on a 60% BFI / 40% Ninepoint basis.

12. In October 2018, BFI acquired Ninepoint's interest in the Income Fund (the **Management Interest**)⁶ for \$45 million (the **Ninepoint Transaction**).⁷ BFI paid Ninepoint \$35 million at closing and an additional \$10 million paid in two installments in October 2019 and April 2020.

13. BFI claimed it obtained \$35 million to close the Ninepoint Transaction from a loan (the **891 Loan**) from 3319891 Nova Scotia Company (**891 Nova Scotia**), a holding company owned and controlled by Gautam.⁸ At the time, Gautam was the CEO of Loan Counterparties (collectively, the **Mjardin Group**)⁹ with over \$100 million in outstanding loans from the BFI Funds.

14. As I will address in section 2G, BFI did not disclose to unitholders in the BFI Funds that it was taking a loan from 891 Nova Scotia or that it was borrowing funds from an individual related to one or more Loan Counterparties.

B. Explanation from BFI and its Directors and Officers

15. D Sharpe explained that Ninepoint was under financial pressure from lenders and approached BFI looking to sell the Management Interest.¹⁰ N Sharpe and Marr provided a similar explanation.¹¹ Mushore called the Ninepoint Transaction a business decision for BFI to become the sole manager of the Income Fund.¹²

16. According to D Sharpe, Gautam agreed to facilitate the financing for the Ninepoint Transaction. D Sharpe claims that he travelled to New York in August and September 2018¹³ to meet with contacts Gautam had from Goldman Sachs for the purpose of funding a loan to BFI. D

⁶ Ninepoint's Management Interest included 50% of the shares of the general partner of the Income Fund and Ninepoint's rights and obligations under the Management Agreement.

⁷ Attached as **Exhibit 45** is a copy of an Asset Purchase Agreement among BFI and Ninepoint dated as of August 15, 2018 (the **Asset Purchase Agreement**). Sections 2.2 and 2.3 of the Asset Purchase Agreement provide that BFI was to pay \$35,000,000 in cash at closing and pay the remaining \$10,000,000 in installments.

⁸ See the August 28 Letter attached as **Exhibit 22**. BFI refers to the 891 Loan in the last bullet point on page 2 of that letter and identifies Gautam as being the sole owner of 891 Nova Scotia.

⁹ Attached as **Exhibit 46** is a letter from BFI to Enforcement Staff dated September 30, 2020 (the **September 30 Letter**). The 5th and 8th bullets on page 4 of the letter identify Gautam as a director and CEO of MJAR Holdings Corp. (**MJAR Holdings**) and of Growforce Holdings Inc. (**Growforce**) while these firms borrowed monies from the BFI Funds. MJAR Holdings completed a merger (the **Merger**) with Sumtra Diversified Inc. on or around November 13, 2018 and became Mjardin Group Inc. (**Mjardin**), a company listed on the Canadian Securities Exchange. Attached as **Exhibit 47** is a copy of the Information Circular (the **Circular**) dated October 9, 2018 relating to the Merger. Page 18 of the Circular indicates that Gautam was a shareholder of MJAR Holdings and was nominated to be a director of Mjardin. After the Merger, Mjardin acquired Growforce pursuant to a Business Combination Agreement dated November 22, 2018 a copy of which is attached as **Exhibit 48**.

The Gautam & Ng Loan Schedule attached as **Exhibit 49** indicates that BFI loaned Mjardin Group ~\$166 million from the BFI Funds.

¹⁰ Attached as **Exhibit 50** are relevant excerpts from the D Sharpe Transcript.

¹¹ Attached as **Exhibit 51** are relevant excerpts from the N Sharpe Transcript and attached as **Exhibit 52** are relevant excerpts from the Marr Transcript.

¹² Attached as **Exhibit 53** are relevant excerpts from the Mushore Transcript.

¹³ Attached as **Exhibit 54** is a chart that D Sharpe's counsel provided containing D Sharpe's answers to undertakings (the **Undertakings Chart**) arising from his examination. See answer to undertaking no. 13 on page 2 of the Undertaking Chart.

Sharpe suggested that these individuals might have funded the 891 Loan.¹⁴ J Coco confirmed that D Sharpe provided a similar explanation to her at the time.¹⁵

17. BFI produced a loan agreement with respect to the 891 Loan dated October 14, 2018.¹⁶ Gautam signed the loan agreement on behalf of 891 Nova Scotia and J Coco and N Sharpe signed on behalf of BFI. As noted above, BFI claimed that the 891 Loan was the source of the \$35 million paid to close the Ninepoint Transaction, and that the funds were transferred from 891 Nova Scotia's legal counsel, Stikeman Elliott LLP (**Stikeman**), to Ninepoint.¹⁷

18. BFI later obtained a \$52.5 million loan from an affiliate of BlackRock Inc. (the **BlackRock Loan**) in November 2019¹⁸ and claims that it refinanced the 891 Loan with a portion of the BlackRock Loan and that this ended its relationship with Gautam.¹⁹

19. The Investigation has uncovered evidence that contradicts the explanations from BFI and the BFI witnesses about (i) the reasons for the Ninepoint Transaction, (ii) the source of the initial \$35 million paid to Ninepoint, and (iii) the use of the BlackRock Loan to repay the 891 Loan. As will be explained below, the Investigation has revealed evidence that BFI appropriated \$35 million from the MM Fund to fund the Ninepoint Transaction.

C. Interview with NinePoint's Co-CEO

20. Enforcement Staff interviewed John Wilson (**Wilson**), the co-CEO, CIO and managing partner at Ninepoint about the Ninepoint Transaction. Wilson denied that Ninepoint was under financial pressure and instead explained that BFI and Ninepoint entered into discussions to sever the co-management arrangement after Ninepoint threatened BFI with litigation over concerns it had with transactions in the Income Fund accounts.

21. According to Wilson, an operational review of the Income Fund revealed that BFI transferred \$20 million from the Income Fund to fund a loan and then reversed the transaction. However, the \$20 million that came back into the Income Fund came from accounts related to other BFI Funds rather than the law firm trust account that initially received the \$20 million. This concerned Ninepoint. Wilson and others at Ninepoint questioned D Sharpe and Mushore about

¹⁴ Attached as **Exhibit 55** are relevant excerpts from the D Sharpe Transcript. Other than a single individual named Roy who he described as "the founder of the wealth management business at Goldman Sachs", D Sharpe could not name a single other individual he met with during either trip including as part of an undertaking given during his examination as indicated in the answer to undertaking no. 14 on page 2 of the Undertaking Chart.

¹⁵ Attached as **Exhibit 56** are relevant excerpts from the J Coco Transcript.

¹⁶ Attached as **Exhibit 57** is a loan agreement between BFI as borrower and 891 Nova Scotia as lender, dated October 14, 2018 for \$35,000,000. BFI also produced an amendment to the 891 Nova Scotia Loan Agreement dated December 1, 2018 (the **Amended 891 Loan Agreement**). The Amended 891 Loan Agreement is attached as **Exhibit 58** and is signed by D Sharpe for BFI and by Gautam for 891 Nova Scotia.

¹⁷ Attached as **Exhibit 59** is a Summons dated September 23, 2020 (the **September 23 Summons**) that Staff sent to BFI. Item no. 3 of Schedule A to the September 23 Summons required BFI to provide the name of the financial institution and account numbers from which the 891 Loan funds originated. At item 3(a) on page 3 of the September 30 Letter attached as **Exhibit 46**, BFI advised that the funds originated from the trust account of 891 Nova Scotia at Stikeman and were deposited directly with Ninepoint.

¹⁸ Attached as **Exhibit 60** is a credit agreement dated as of November 13, 2019 among BFI and GLAS USA LLC as administrative agent. I understand from BFI's correspondence including the August 28 Letter at **Exhibit 22** and the September 30 Letter at **Exhibit 46** that this agreement represents the BlackRock Loan.

¹⁹ BFI states this in the only bulleted point on page 3 of the August 28 Letter attached as **Exhibit 22**.

these transactions but were not satisfied with their responses. After a back and forth, Ninepoint threatened BFI with litigation and BFI offered to purchase the Management Interest.²⁰ None of the BFI witnesses that Enforcement Staff interviewed during the Investigation mentioned this dispute with Ninepoint.²¹

D. Interview with Rishi Gautam

22. Enforcement Staff interviewed Gautam about the 891 Loan. According to Gautam, 891 Nova Scotia is a holding company setup for tax planning and has no physical presence, operations or bank accounts. Gautam explained that the 891 Loan came about as a result of a request from the Sharpes. According to Gautam, D Sharpe explained that BFI was having issues with its partner and needed a solution to buy that partner out. As a result, the Sharpes asked Gautam to accept a “back to back loan” (the **Back to Back Arrangement**) that involved Gautam receiving a \$35 million loan against his assets (the **First Loan**) and then loaning that \$35 million back to BFI (the **Second Loan**).²² Gautam stated that at the time Mjardin had borrowed more than \$80 million from BFI and was on the cusp of going public, and he “wasn’t really in a position to say no.” Gautam explained that the plan contemplated a gross-up of the First Loan to him so that he would receive a few million dollars as a back-end incentive.²³

23. According to Gautam, while most of his conversations surrounding this Back to Back Arrangement were with D Sharpe, N Sharpe also participated in some of the discussions including one in which the proposed arrangement was written down and explained to Gautam.²⁴

E. The River Cities Loan

24. According to Gautam’s evidence, the 891 Loan represented the Second Loan in the Back to Back Arrangement; however, Gautam did not identify the counterparties to the First Loan. As set out below, BFI did not disclose the Back to Back Arrangement between BFI and Gautam or the existence of the First Loan to Enforcement Staff.

25. In order to try to identify the First Loan, I compared the loan information included in the 2018 and 2019 audited financial statements for the MM Fund and Income Fund against the Loan

²⁰ Attached as **Exhibit 61** are relevant excerpts from the Wilson Transcript. After the Wilson interview, Enforcement Staff sent Ninepoint a summons dated February 10, 2021 requiring it to produce, among other things, correspondence relating to the dispute with BFI. The documents produced by Ninepoint in response (**Ninepoint’s Response**) are attached as **Exhibit 62** and included emails and letters between Ninepoint and BFI and their respective advisors. In these documents the dispute between BFI and Ninepoint escalates as Ninepoint suggests that BFI has acted contrary to the Management Agreement, its fiduciary and other obligations to the Income Fund and its obligations as a registrant, and BFI in turn accuses Ninepoint of making defamatory statements and harassing BFI. The suggestion that BFI purchase the Management Interest to avoid litigation is in the email from Wilson to D Sharpe dated May 17, 2018 at page 25 of Ninepoint’s Response.

²¹ As I noted above, when Enforcement Staff asked the BFI witnesses about the reasons for the Ninepoint Transaction D Sharpe, N Sharpe and Marr told Enforcement Staff that Ninepoint was in financial distress and approached BFI about selling the Management Interest. Mushore told Enforcement Staff it was a “business decision”.

²² Gautam confirmed that the 891 Loan represented the Second Loan of the Back to Back Arrangement but said that he needed to review his records to determine the counterparty to the First Loan. Enforcement Staff have made repeated attempts to obtain documents and additional testimony from Gautam to no avail.

²³ Attached as **Exhibit 63** are relevant excerpts from the Gautam Transcript.

²⁴ Attached as **Exhibit 64** are relevant excerpts from the Gautam Transcript.

Schedules and the loan documentation that BFI produced to Enforcement Staff that I describe in Appendix C to this affidavit.

26. Through that exercise, I identified a loan valued at approximately \$42.5 million in the MM Fund's financial statements for the year ended December 31, 2018²⁵ that I could not reconcile to any of the Loan Schedules produced by BFI.

27. To obtain further information about this loan, Enforcement Staff issued summonses to the auditors for the 2018 and 2019 audits of the MM Fund to obtain the list of loans used to support the audited financial statements for the MM Fund.²⁶ The documentation that EY and KPMG produced included a loan to River Cities Investments I, LLC (**River Cities**) and 891 Nova Scotia for approximately \$40.4 million dated September 12, 2018 (the **River Cities Loan**).²⁷ The commitment letter for the River Cities Loan is signed by Gautam on behalf of 891 Nova Scotia, N Sharpe on behalf of BFI and Art Brown on behalf of River Cities. I believe this River Cities Loan is the First Loan in the Back to Back Arrangement that Gautam described.

28. River Cities is a Delaware limited liability company formed on August 18, 2018.²⁸ Documents that Enforcement Staff obtained from River Cities' former agent indicate the contact person for River Cities is Art Brown and that he is associated with MJAR Holdings. Art Brown was the Chief Accounting Officer for the Mjardin Group at the same time that Gautam was Mjardin Group's CEO.²⁹

29. The fact that the River Cities Loan documentation states that funds were to be loaned from the BFI Funds to River Cities and 891 Nova Scotia and the connections between Art Brown and Gautam led me to believe that the River Cities Loan was the First Loan in the Back to Back Arrangement that Gautam described.

30. None of the BFI witnesses disclosed the existence of the Back to Back Arrangement or the River Cities Loan to Enforcement Staff. During their examinations, D Sharpe,³⁰ N Sharpe³¹ and Marr³² all denied there were any other transactions involving Gautam or companies connected to Gautam other than those discussed during the examination. BFI also failed to produce the River Cities Loan in any of the Loan Schedules it produced as described in Appendix C.

²⁵ Attached as **Exhibit 74** are the audited financial statements for the MM Fund for the year ended December 31, 2018. The loan that was not included in any of the Loan Schedules is the CAD Asset Based Loan Receivable #26, 12% maturing on September 12, 2021 with an average cost and carrying value of \$42,459,985 in the Schedule of Investments on page 7 of the financial statements.

²⁶ Prior to 2019, Ernst & Young LLP (**EY**) acted as auditor for BFI and the BFI Funds. Starting in 2019, KPMG LLP (**KPMG**) became auditor for the BFI Funds while EY continued as BFI's auditor.

²⁷ Attached as **Exhibit 75** is a copy of the River Cities Loan documentation including the commitment letter and a demand grid promissory note.

²⁸ Attached as **Exhibit 76** are documents that Enforcement Staff obtained about River Cities from its former registered agent in Delaware.

²⁹ I have reviewed the LinkedIn profile for an Arthur Brown which indicates that he was the Chief Accounting Officer for Mjardin from October 2017 to February 2019. Art Brown is also identified as the Chief Accounting Officer for the Mjardin Group of Companies in the financial statements included with the Circular attached as **Exhibit 47**. The financial statements begin on page 78 (out of 162) of the Circular.

³⁰ Attached as **Exhibit 77** are relevant excerpts from the D Sharpe Transcript.

³¹ Attached as **Exhibit 78** are relevant excerpts from the N Sharpe Transcript.

³² Attached as **Exhibit 79** are relevant excerpts from the Marr Transcript.

F. BFI Used \$35,000,000 from the MM Fund to Complete the Ninepoint Transaction

31. As I will describe below, the fund flows that I identified through bank records and law firm trust account records indicate that BFI used \$35,000,000 from the MM Fund to complete the Ninepoint Transaction. I believe that the purpose of the Back to Back Arrangement and the 891 Loan was to give the appearance that BFI borrowed funds from 891 Nova Scotia, rather than from the MM Fund, to complete the Ninepoint Transaction.

32. A visualization of the flow of funds that I describe below is presented in Appendix D.

33. The River Cities Loan agreement provided that BFI would advance \$38 million through Chaitons LLP (**Chaitons**) to Stikeman in trust and that Chaitons would retain \$1.75 million in trust until BFI directed that the funds be released to a recipient of its choosing.³³

34. On September 11, 2018, BFI transferred \$39.75 million from the MM Fund bank account at BMO (the **MM Fund Account**) to Chaitons and Chaitons, in turn, transferred \$35 million to the Stikeman Trust Account.³⁴ Upon receipt of these funds, Stikeman wrote a letter to Raymond James Ltd (**Raymond James**) to confirm that it held \$35 million in trust on behalf of River Cities representing the cash consideration for BFI to acquire the Management Interest.³⁵ I believe that Raymond James is the investment bank that was advising BFI in connection with the Ninepoint Transaction.³⁶

35. The next day, Chaitons transferred an additional \$3 million to the Stikeman Trust Account and, in turn, Stikeman transferred \$3 million to River Cities.³⁷ On October 15, 2018, Stikeman transferred the remaining \$35 million in the Stikeman Trust Account to Ninepoint to complete the Ninepoint Acquisition.³⁸

36. As I noted above in paragraph 18, BFI told Enforcement Staff that the source of the \$35,000,000 that Stikeman transferred to Ninepoint was the 891 Loan. The flow of funds appears to contradict this explanation. The only funds that were deposited in the Stikeman Trust Account were the \$38 million that Stikeman received from the MM Fund, through Chaitons, on September 11 and 12, 2018 pursuant to the River Cities Loan. After receiving these funds, Stikeman wrote

³³ BFI received a \$450,000 work fee in connection with the River Cities Loan and the remaining amounts were directed to legal fees: \$35,000 to Chaitons and \$150,000 to WeirFoulds LLP. All of this information is in the first page of the River Cities Loan commitment letter.

³⁴ In order to trace the flow of funds in connection with the River Cities Loan, I obtained the bank records for the MM Fund Account for the period ending September 28, 2018, which are attached as **Exhibit 80**, and the trust accounts records from Stikeman for its trust account for Gautam/River Cities/891 Nova Scotia (the **Stikeman Trust Account**), which are attached as **Exhibit 81**.

³⁵ This letter from Stikeman to Raymond James is the first tab in Ninepoint's Response attached as **Exhibit 62**.

³⁶ Attached as **Exhibit 82** are relevant excerpts to the Wilson Transcript. I also note that Raymond James advised BFI in connection with other transactions as set out in paragraph 64 below.

³⁷ Gautam told Enforcement Staff that he did not receive any incentive or benefit relating to the Back to Back Arrangement. Enforcement Staff have not yet determined what happened to the \$3 million transferred from Stikeman to River Cities.

³⁸ I understand from speaking with Wilson that BFI and Ninepoint required unitholder approval prior to completing the Ninepoint Transaction and that approval was not obtained until October 15, 2018. Attached as **Exhibit 83** are relevant excerpts from the Wilson Transcript.

to Raymond James informing it that Stikeman held funds in trust for BFI to complete the Ninepoint Transaction. Stikeman did not receive any funds from 891 Nova Scotia.

37. As I noted above BFI told Enforcement Staff that the 891 Loan was refinanced (and thus repaid) with the proceeds of the BlackRock Loan. BFI made this claim in correspondence with Enforcement Staff³⁹ and D Sharpe told Enforcement Staff this during his examination.⁴⁰ As I will set out below, information from BFI and bank records contradict this explanation and indicate that BFI used part of the BlackRock loan to repay the MM Fund, not 891 Nova Scotia.

38. In response to a request from Enforcement Staff, BFI produced a chart listing three transfers from BFI to the Chaitons trust account (the **Chaitons Trust Account**) that BFI claimed were repayments towards the 891 Loan.⁴¹ I compared these payments against the MM Fund Account records⁴² and identified a corresponding payment from Chaitons to the MM Fund Account the day after Chaitons received each of the three transfers, as follows:

- On May 2, 2019, BFI transferred \$3,233,294 to the Chaitons Trust Account. The next day, Chaitons transferred \$3,233,294 to the MM Fund Account.
- On July 30, 2019, BFI transferred \$2,119,419 to the Chaitons Trust Account. The next day, Chaitons transferred \$2,119,419 to the MM Fund Account.
- On November 14, 2019, BlackRock transferred \$33,038,079 to the Chaitons Trust Account. The next day, Chaitons transferred \$33,043,990 to the MM Fund Account.

39. These transfers suggest that the payments BFI represented as repayments of the 891 Loan were actually repayments to the MM Fund to reduce the balance of the River Cities Loan. This corroborates Gautam's evidence that there was a Back to Back Arrangement between BFI and Gautam. The transfers described in paragraphs 33, 34 and 37 show that funds flowed from the MM Fund through Chaitons and Stikeman to Ninepoint to close the Ninepoint Transaction, and that BFI used funds from the BlackRock Loan to repay the MM Fund. None of BFI, Stikeman or Ninepoint received any funds from 891 Nova Scotia and no funds were repaid to 891 Nova Scotia.

40. BFI provided a statement to BlackRock that purported to confirm that approximately \$35 million from the BlackRock Loan was paid to 891 Nova Scotia to repay the 891 Loan (the **Payout Statement**).⁴³ The Payout Statement includes a signature page with Gautam's signature for 891 Nova Scotia and D Sharpe's signature for BFI. I showed Gautam the Payout Statement during his interview and he denied signing the document. Gautam advised me that while it appeared to

³⁹ BFI states this in the only bulleted point on page 3 of the August 28 Letter attached as **Exhibit 22**.

⁴⁰ Attached as **Exhibit 84** are relevant excerpts from the D Sharpe Transcript.

⁴¹ Item 3(b) of Schedule A to the September 23 Summons attached as **Exhibit 59** required BFI to provide the name of the financial institution and account numbers to which BFI directed repayments of the 891 Loan. The chart BFI provided in response is located at item 3(b) of the September 30 Letter attached as **Exhibit 46**.

⁴² Attached as **Exhibit 85** are MM Fund Account records for the periods ending May 31, 2019, July 31, 2019, and November 29, 2019.

⁴³ Attached as **Exhibit 86** is a copy of the Payout Statement.

be his signature on the document, he believed the page had been removed from a separate contract and attached to the Payout Statement.⁴⁴

41. Following the Gautam interview, I reviewed the Amended 891 Loan Agreement dated December 1, 2018 between BFI and 891 and observed that the signature page from the Payout Statement appeared to be the same as the signature page from the Loan Amendment. I provided the two documents to Sandy McMurrich (**McMurrich**), a member of the e-Discovery and Analytics team within the Enforcement Branch of the Commission, and asked him to compare the two pages. I understand that McMurrich has prepared an affidavit setting out his comparison.

42. As set out above, the River Cities Loan was nearly \$5.4 million larger than the 891 Loan and this amount had increased to approximately \$6.8 million by February 2020 in part because of interest being capitalized on that balance. BFI would have needed to clear this balance to remove the River Cities Loan from the MM Fund balance sheet. According to the MM Fund Account records⁴⁵ and records obtained from KPMG,⁴⁶ the remaining balance on the River Cities Loan was cleared with a \$6,827,393.58 transfer from Chaitons to the MM Fund Account on February 28, 2020.

43. I have identified a loan agreement dated February 24, 2020 for a \$12,**827,393.58** loan from the Income Fund to a firm related to McCoshen.⁴⁷ This loan is exactly \$6 million larger than the \$6,**827,393.58** payment made to the MM Fund Account four days later. As will be discussed below, during the same period that BFI loaned over \$100 million from the BFI Funds to companies related to McCoshen, McCoshen transferred approximately \$19.5 million to D Sharpe's personal bank account. The relationship with McCoshen is discussed below in section 3.

G. Conflict of Interest Disclosure: Gautam

44. BFI did not make conflict of interest disclosure⁴⁸ to unitholders in the BFI Funds in connection with the 891 Loan, the River Cities Loan, or otherwise disclose the full extent of its relationship with Gautam.

⁴⁴ Attached as **Exhibit 87** are relevant excerpts from the Gautam Transcript.

⁴⁵ Attached as **Exhibit 88** are the MM Fund Account records for the period ending February 28, 2020.

⁴⁶ Attached as **Exhibit 89** is a KPMG Audit Working Paper for the period ended December 31, 2019. The remaining balance on the River Cities Loan, described as "Chaitons (River cities) is the last entry on the first page of the Audit Working Paper. Note 1 at the top of the second page states that the balance was paid by the borrower subsequent to the end of 2019.

⁴⁷ A copy of the letter agreement dated February 24, 2020 between the Income Fund and AARDC, a company connected to McCoshen, is included with all the agreements between the Income Fund and AARDC attached as **Exhibit 96**. BFI's relationship with AARDC is discussed further below in section 3 of the affidavit.

⁴⁸ BFI's Policies and Procedures Manual (the **PPM**) includes an approximately two-page section 5.2 entitled "Conflicts of Interest". Section 5.2.1, entitled "Managing Conflicts of Interest" states that "[BFI] will provide timely disclosure of a conflict of interest to a client when there is a reasonable likelihood that the client would consider the conflict important when entering into a proposed transaction." Attached as **Exhibit 90** is a copy of the PPM excerpt that BFI produced to Enforcement Staff. Section 5.4 of the PPM is entitled "Outside Business Activities". This section defines an outside business activity (an **OBA**) as any business activity for which direct or indirect payment or compensation is received in exchange for a service or employment, and notes that an OBA may create a conflict of interest and that employees of BFI may not undertake or engage in an OBA without with the written consent of their manager and the CCO.

45. Mushore and D Sharpe explained that the two of them met on October 8, 2018 and determined that the 891 Loan did not represent a conflict of interest because (i) the 891 Loan was made on commercially reasonable terms, (ii) Mjardin Group was not a related party, and (iii) Gautam had no decision making power over the investments of BFI or the BFI Funds. BFI produced a note dated October 8, 2018 that Mushore prepared in connection with the meeting (the **Mushore Note**).⁴⁹ The Mushore Note does not mention River Cities. As stated above, BFI has not disclosed the River Cities Loan to Enforcement Staff.

3. David Sharpe Received \$19,500,000 in Undisclosed Payments from an Owner of the BFI Funds' Largest Borrower

A. Gautam Raised Concerns Related to a Transaction Involving BFI and McCoshen

46. Following his examination, Gautam shared an additional concern with Enforcement Staff surrounding an aspect of the loans to Mjardin Group that he said was forced upon Mjardin Group and left him with “a bad taste [in his mouth]”.⁵⁰ Gautam explained that D Sharpe introduced him to an individual named Sean McCoshen in Winnipeg, Manitoba. Gautam recalled that when BFI loaned funds to an Mjardin Group company (Growforce), BFI required that Growforce include a personal guarantee (the **McCoshen Guarantee**) and D Sharpe offered up McCoshen to provide the guarantee.⁵¹ In exchange for providing the personal guarantee Growforce agreed to provide McCoshen with a fee (the **Guarantee Fee**). Gautam could not recall the amount of the Guarantee Fee. According to Gautam, when Mjardin was on the verge of going public, McCoshen demanded payment on the Guarantee Fee on rushed basis. The Mjardin board of directors was uncomfortable with the request but D Sharpe pushed Gautam to pay McCoshen and ended up extending a \$10 million loan to fund the payment to McCoshen.

47. Following the conversation with Gautam, I confirmed that BFI loaned Growforce \$10 million from the BFI Funds on November 6, 2018,⁵² a week before MJAR Holdings completed the Merger and “went public”.⁵³ The stated purpose of the \$10 million loan was for working capital and general corporate purposes.

B. Explanation from BFI and its Directors and Officers

48. Enforcement Staff requested that BFI provide information about its relationship with McCoshen. According to BFI, McCoshen owns and/or controls certain Loan Counterparties,

⁴⁹ Attached as **Exhibit 91** is a copy of the Mushore Note. Attached as **Exhibit 92** are relevant excerpts from the Mushore Transcript. Attached as **Exhibit 93** are relevant excerpts from the D Sharpe Transcript.

⁵⁰ Enforcement Staff asked Gautam to resume the examination so that his evidence could be transcribed; however, Gautam requested an opportunity to review his records before doing so. Gautam ceased cooperating with Enforcement Staff after his October 15, 2020 interview.

⁵¹ On April 23, 2018 BFI loaned approximately \$59,000,000 from the BFI Funds to Growforce (the **April 2018 Growforce Loan**). Attached as **Exhibit 94** is a copy of the April 2018 Growforce Loan. The “Security and other Requirements” section on page 18 references the McCoshen Guarantee. In addition, paragraph (xxv) of the “Representations and Warranties” section located on page 13 refers to “amounts owed to Sean F. McCoshen in respect of the guarantee fee charged or to be charged in respect of the delivery of his guarantee and security ...”

⁵² As reflected near the top of the second page of the Gautam & Ng Loan Schedule attached as **Exhibit 49**.

⁵³ As described above in footnote 9.

including 2665405 Ontario Inc (**405 Ontario**) and Alaska-Alberta Railway Development Corporation (**AARDC**).⁵⁴

49. BFI loaned AARDC approximately \$160 million between December 11, 2015 and September 1, 2020 (the **AARDC Loan**).⁵⁵ I understand from the materials I have reviewed that AARDC is a pre-construction phase railway project with a stated objective to build a 2,570km rail line linking northern Alberta to ports in Alaska (the **AARDC Railway Project**).⁵⁶ 405 Ontario acquired an ~\$80 million loan that BFI had extended to Bondfield Construction Company Limited (**Bondfield**) in July 2017 through an assignment in November 2018 for \$84,682,464.01.⁵⁷

50. According to BFI, through his involvement and engagement with various First Nations across Canada and tribes in the United States, McCoshen has also introduced BFI to numerous First Nations who were seeking alternative financing solutions. BFI also advised that McCoshen is one of many individuals who have made a donation to *The David Sharpe Professorship in Indigenous Law Campaign* at Queen's University, Faculty of Law.⁵⁸

51. D Sharpe said that he has known McCoshen for four or five years and came to know him through AARDC and his involvement in First Nations financing.⁵⁹ When questioned about the McCoshen Guarantee, D Sharpe explained that McCoshen had a relationship with the Peguis First Nation (**Peguis**) and suggested that McCoshen brought a transaction to Growforce that formed the basis for the April 2018 Growforce Loan and "there were some economics there". D Sharpe claimed he was not familiar with the Guarantee Fee but said it was his understanding that the McCoshen Guarantee was still in force.⁶⁰

C. McCoshen's Company Transferred \$19,500,000 to David Sharpe's Personal Chequing Account

52. During the Investigation, I obtained bank account records for D Sharpe's personal bank accounts at the Bank of Montreal. In one of D Sharpe's personal chequing accounts (the **D Sharpe Chequing Account**), I identified deposits totalling approximately \$19.5 million from a company owned and controlled by McCoshen.⁶¹

⁵⁴ Attached as **Exhibit 95** is a letter from BFI to Enforcement Staff dated February 3, 2021 (the **February 2021 Letter**). McCoshen's relationships with Loan Counterparties, including 405 Ontario and AARDC, are set out in item 2 on pages 2 and 3 of the February 2021 Letter.

⁵⁵ The amounts were loaned from the BFI Funds to AARDC through a series of 10 term sheets or letter agreements, all of which are attached as **Exhibit 96**.

⁵⁶ Attached as **Exhibit 97** is a copy of a project brief dated January 1, 2021 describing the AARDC Railway Project.

⁵⁷ Attached as **Exhibit 98** is a copy of an Assignment and Assumption Agreement dated as of November 15, 2018 between BFI as agent for the BFI Funds, BFI in its own capacity, and 405 Ontario. I believe that this \$84,682,464.01 balance referred to in the agreement includes capitalized interest owing on the original \$80 million loan made to Bondfield in 2017.

⁵⁸ Item 1 on pages 1 and 2 of the February 2021 Letter attached as **Exhibit 95**.

⁵⁹ D Sharpe explained that McCoshen has done a lot of First Nations financing deals in Canada but that none of those deals involved BFI.

⁶⁰ Attached as **Exhibit 99** are relevant excerpts from the D Sharpe Transcript. During his examination, Marr also stated that McCoshen did work with Peguis and that McCoshen connected Peguis with Growforce. Marr recalled a Guarantee Fee but did not know whether it had been paid or who paid it. Attached as **Exhibit 100** are relevant excerpts from the Marr Transcript.

⁶¹ Attached as **Exhibit 101** are records for the D Sharpe Chequing Account for the period from June 27, 2016 to November 3, 2020.

53. During the same period that BFI loaned over \$100 million from the BFI Funds to companies related to McCoshen, 7047747 Manitoba Ltd. (**747 Manitoba**) transferred approximately \$19.5 million (the **Undisclosed Payments**) to the D Sharpe Chequing Account between July 8, 2016 and June 28, 2019. McCoshen was the sole officer, director and shareholder of 747 Manitoba prior to it being dissolved on February 2, 2021,⁶² within two weeks of Enforcement Staff writing to BFI to ask about its relationship with McCoshen.⁶³

54. I compared the Undisclosed Payments against loans from the BFI Funds to AARDC and Peguis as well as the April 2018 Growforce Loan and identified that \$17.2 million was transferred from 747 Manitoba to the D Sharpe Chequing Account within five business days of BFI advancing funds to AARDC, Peguis and GrowForce as set out below and as set out visually in Appendix E:

- On August 1, 2017, BFI entered into two loan agreements with Peguis for loans totaling \$30.4 million from the BFI Funds. BFI advanced \$30.2 million to Peguis on August 17, 2017.⁶⁴ Five days later, on August 22, 2017, Peguis transferred \$1.91 million to 5321328 Manitoba Inc. (**328 Manitoba**) in two transfers.⁶⁵ 328 Manitoba is a company controlled by McCoshen.⁶⁶ The next day, on August 23, 2017, 747 Manitoba transferred \$420,000 to the D Sharpe Chequing Account.
- On November 1, 2017, BFI entered into a loan agreement with Peguis for a \$30.6 million loan from the BFI Funds. BFI advanced \$30.44 million to Peguis on November 1, 2017 and on November 7, 2017, Peguis transferred \$2,240,000 to 747 Manitoba.⁶⁷ The next day, November 8, 2017, 747 Manitoba transferred \$440,000 to the D Sharpe Chequing Account.
- As I described above, Gautam told Enforcement Staff that BFI extended a loan for Growforce to pay the McCoshen Guarantee near when Mjardin “went public” on November 13, 2018. On November 6, 2018, BFI entered into a loan agreement with Growforce for a \$10 million loan from the BFI Funds. However, rather than

⁶² Enforcement Staff obtained point-in-time reports from the Manitoba Companies Office relating to 747 Manitoba as of January 31, 2017, April 30, 2018, May 9, 2019, June 18, 2020, and obtained a report with information as of March 2, 2021 (the **747 Manitoba Reports**), all of which are attached as **Exhibit 102**. All the 747 Manitoba Reports list McCoshen as the sole officer, director and shareholder holding more than 10% of the issued voting shares of 747 Manitoba.

⁶³ Attached as **Exhibit 103** is a letter Enforcement Staff wrote to BFI requesting details about BFI’s relationship with McCoshen dated January 19, 2021. 747 Manitoba was dissolved on February 2, 2021, and BFI responded to Enforcement Staff’s letter the next day with the February 2021 Letter.

⁶⁴ Attached as **Exhibit 104** is a copy of a Peguis trust ledger (the **Peguis Ledger**) produced by BFI that shows Peguis receiving \$6.87 million and \$23,334,254.60 from BFI on August 17, 2017.

⁶⁵ The first transfer was for \$580,000 and the second was for \$1.33 million.

⁶⁶ Enforcement Staff obtained point-in-time reports from the Manitoba Companies Office relating to 328 Manitoba as of November 2, 2017, September 16, 2020 and February 2, 2021 (the **328 Manitoba Reports**) all of which are attached as **Exhibit 105**. All of the 328 Manitoba Reports list McCoshen as the sole director and officer of 328 Manitoba. The 328 Manitoba Reports as of November 2, 2017 and September 16, 2020 list 747 Manitoba as the only shareholder holding more than 10% of the issued voting shares of 328 Manitoba. The 328 Manitoba Report as of February 2, 2021 lists 12703131 Canada Inc (**131 Canada**) as the only shareholder holding more than 10% of the issued voting shares of 328 Manitoba. I noticed that the 328 Manitoba Report says, on page 2, that a change of shareholder was entered on February 2, 2021, the same day that 747 Manitoba was dissolved. I obtained a report from Corporations Canada on March 31, 2021 (the **131 Canada Report**) which lists McCoshen as the sole director of 131 Canada. Attached as **Exhibit 106** is a copy of the 131 Canada Report.

⁶⁷ Both payments are recorded in the Peguis Ledger.

advance funds to Growforce, BFI transferred \$10 million to **747 Manitoba** on November 6, 2018.⁶⁸ On November 8, 2018, 747 Manitoba transferred \$5 million to the D Sharpe Chequing Account.

- On March 20, 2018, BFI entered into a loan agreement with AARDC for a \$9 million loan from the BFI Funds. The loan agreement stipulated that \$3.9 million would be disbursed and the balance would be disbursed upon “approval and funding in the amount of \$5 million from the National Trade Corridors Fund to AARDC.”⁶⁹ BFI advanced ~\$3.9 million to Chaitons on March 23, 2018.⁷⁰ On March 26, 2018, 747 Manitoba transferred \$550,000 to the D Sharpe Chequing Account.
- On February 13, 2019, BFI entered into a loan agreement with AARDC for a \$29 million loan from the BFI Funds.⁷¹ On February 14, 2019, BFI transferred \$28,543,250 to Chaitons in two transfers: \$13,779,500 from the MM Fund⁷² and \$14,763,750 from the Income Fund.⁷³ On February 19, 2019, 747 Manitoba transferred \$2 million to the D Sharpe Chequing Account.
- On June 1, 2019, BFI entered into a loan agreement with AARDC for a \$30.6 million loan from the BFI Funds.⁷⁴ On June 25, 2019, BFI transferred \$30 million to Chaitons in two transfers: \$19,588,638.59 from the MM Fund⁷⁵ and \$10,411,361.41 from the Income Fund.⁷⁶ On June 28, 2019, 747 Manitoba transferred \$8.8 million to the D Sharpe Chequing Account.

55. In addition to the \$19.5 million received from 747 Manitoba, I identified two other notable transfers into the D Sharpe Chequing Account. Chaitons transferred \$1,150,000 in two tranches⁷⁷ and Ng transferred \$500,000 to the D Sharpe Chequing Account on November 14, 2019. I discuss BFI’s relationship with Ng in section 4 of the affidavit.

56. The fact that D Sharpe received \$19.5 million from 747 Manitoba, a company related to McCoshen, during the same period that companies related to McCoshen received over \$100 million from the BFI Funds was not disclosed to the unitholders in the BFI Funds.

⁶⁸ The Income Fund had a bank account at BMO (the **Income Fund Account**). Attached as **Exhibit 107** are records for the Income Fund Account for the period ending November 30, 2018. I note that this transfer to McCoshen took place one week prior to 405 Ontario acquiring the Bondfield Loan as set out in paragraph 48.

⁶⁹ A copy of the letter agreement dated March 20, 2018 between the Income Fund and AARDC is included with all the agreements between the Income Fund and AARDC attached as **Exhibit 96**. The stipulation regarding the disbursing of the funds is in item 6 on page 2 of the agreement

⁷⁰ Attached as **Exhibit 108** are records for the Income Fund Account for the period ending March 29, 2018.

⁷¹ A copy of the letter agreement dated February 13, 2019 between the Income Fund and AARDC is included with all the agreements between the Income Fund and AARDC attached as **Exhibit 96**.

⁷² Attached as **Exhibit 109** are records for the MM Fund Account for the period ending February 28, 2019.

⁷³ Attached as **Exhibit 110** are records for the Income Fund Account for the period ending February 28, 2019.

⁷⁴ A copy of the letter agreement dated June 1, 2019 between Income Fund and AARDC is included with all the agreements between Income Fund and AARDC attached as **Exhibit 96**.

⁷⁵ Attached as **Exhibit 111** are records for the MM Fund Account for the period ending June 28, 2019.

⁷⁶ Attached as **Exhibit 112** are records for the Income Fund Account for the period ending June 28, 2019.

⁷⁷ The D Sharpe Chequing Account records indicate receipts from Chaitons on June 15, 2020 and July 22, 2020.

57. I also reviewed the transactions in the D Sharpe Chequing Account to determine how the Undisclosed Payments were used. I have been unable to ascertain a legitimate business purpose for D Sharpe to have received the Undisclosed Payments. Instead, it appears that D Sharpe used the Undisclosed Payments for his personal benefit or enjoyment including transfers in the following approximate amounts:

- \$11.7 million to investment accounts at BMO Nesbitt Burns (**Nesbitt Burns**)⁷⁸ and Richardson GMP of which at least \$1.4 million appears to have been later transferred offshore⁷⁹
- \$228,000 for automobile expenses including \$127,880 to Tesla Motors and \$99,923 to Holand Leasing which I believe relates to the lease payments made in connection with the lease of a 2013 Bentley GTC Mulliner and a 2018 Bentley Bentayaga⁸⁰
- \$2 million was transferred to personal banking accounts D Sharpe maintains at TD
- \$1.9 million that appears related to construction and/or renovations⁸¹
- \$830,000 of donations or other transfers to Queen's University and other educational institutions or foundations
- \$670,000 in other withdrawals; and

⁷⁸ D Sharpe and a trust connected to the Sharpes (the **Sharpe Trust**) each have investment accounts at Nesbitt Burns. Approximately \$8,350,000 was transferred from the D Sharpe Chequing Account to these accounts at Nesbitt Burns. Attached as **Exhibit 113** is a statement dated September 30, 2020 for the Sharpe Trust account at Nesbitt Burns sent to the attention of D Sharpe and N Sharpe. D Sharpe indicated that his current mailing address, which matches the name of the Sharpe Trust in a background questionnaire that he provided to Enforcement Staff which is attached as **Exhibit 114**.

⁷⁹ ~\$1.4 million was transferred from a D Sharpe account at Nesbitt Burns to an account at First Caribbean International on August 20, 2020. Attached as **Exhibit 115** is a statement for a D Sharpe account at Nesbitt Burns dated August 31, 2020.

⁸⁰ Attached as **Exhibit 116** is a copy of a PPSA search conducted on June 2, 2020 relating to D Sharpe. Information on the two Bentleys is on pages 3 and 4 of the PPSA search.

⁸¹ Amounts were transferred from the D Sharpe Chequing Account to Bay Spirits Gallery; Target Construction; Wilcox Door Service Inc.; Strongcrete; Setless Architecture; Global Steel Buildings Corporation; Anderson Property Maintenance; Douglas, Cardinal Architect Inc.; JD Smit Custom Sheet Metal; Reid's Insulating; R&K Woodworking Specialists Inc.; Lloyd's Heating & Cooling; Grenville Stone Inc.; Catfish Design Build; Sound Solutions; Ruddy Electric Inc.; Carter Tile Contractors; R&J Machine; Eastern Overhead Doors Ltd; Boris Flooring; Prestige Renovation & Remodeling; Fireplace Specialties; and Alarm Systems.

- \$440,000 paid to other BFI employees including \$260,000 to Ian Baele, vice-president of sales⁸² and \$180,000 to Mushore in three transfers for \$100,000 on July 15, 2019, \$30,000 on December 18, 2019 and \$50,000 on August 26, 2020.⁸³

58. David Sharpe closed the D Sharpe Chequing Account on November 2, 2020,⁸⁴ four business days after Enforcement Staff asked him about the relationship with McCoshen during his compelled examination on October 27, 2020.

D. Conflict of Interest Disclosure: McCoshen

59. Neither BFI nor D Sharpe made disclosure to unitholders in the BFI Funds surrounding the Undisclosed Payments.

60. During the Investigation, Enforcement Staff required BFI to detail all business and personal relationships that BFI and its officers, directors and/or shareholders have with the Loan Counterparties or their officers, directors or shareholders that could be perceived as creating a potential conflict of interest. Enforcement Staff noted that BFI should include in its response all relationships between BFI and its officers, directors and shareholders that have resulted in compensation in any form to or from the Loan Counterparties and related companies or their officers, directors or shareholders.⁸⁵

61. In its response, BFI identified certain aspects of the relationship with Gautam and Ng and noted that D Sharpe served as a director of Growforce for a period and that Marr served as a director of Mjardin for a period,⁸⁶ but did not mention any relationships with McCoshen or related companies including 747 Manitoba.⁸⁷

62. During his examination, D Sharpe denied that there were any relationships that would have resulted in compensation flowing from directors, officers or shareholders of the Loan Counterparties or related companies to BFI or its directors, officers or shareholders. When asked about outside business activities (OBAs),⁸⁸ D Sharpe explained that he engaged in OBAs but that he did not receive any compensation for such activities. D Sharpe did not tell Enforcement Staff about the Undisclosed Payments.⁸⁹

⁸² Attached as **Exhibit 117** is a copy of a \$200,000 cheque written from the D Sharpe Chequing Account to Ian Baele dated June 22, 2019, one day after BFI approved a \$67,000,000 loan to a company connected to Ng. I discuss BFI's relationship with Ng in section 4.

⁸³ Attached as **Exhibit 118** are copies of three cheques written from the D Sharpe Chequing Account to Mushore. The cheque dated August 26, 2020 included a memo "God daughter's education fund". The first two cheques did not have a memo.

⁸⁴ Attached as **Exhibit 119** are records for the D Sharpe Chequing Account for the period ending November 3, 2020 indicating the remaining balance was transferred out and the account was closed on November 2, 2020.

⁸⁵ Item 4 on page 4 of the September 23 Summons attached as **Exhibit 59**.

⁸⁶ On page 5 of the September 30 Letter attached as **Exhibit 46**, BFI noted that Marr received an annual directors' fee of \$50,000 from Mjardin.

⁸⁷ BFI's response identifying aspects of the relationship with Gautam and Ng is in item 4 of page 3 of the September 30 Letter. BFI supplemented this answer in a letter sent to Enforcement Staff dated October 22, 2020 which is attached as **Exhibit 120**.

⁸⁸ Section 5.4 on page no. 33 of BFI's policies and procedures manual (**PPM**), which is attached as **Exhibit 90**, defines an OBA as "any business activity for which director or indirect payment or compensation is received in exchange for a service or employment.

⁸⁹ Attached as **Exhibit 121** are relevant excerpts from the D Sharpe Transcript.

4. **BFI Loaned Approximately \$100,000,000 from the BFI Funds to Ng During Negotiations for Ng To Become the BFI's Majority Shareholder**

A. **BFI and Ng Begin Negotiating an Acquisition After Ng Obtained a \$21,000,000 Loan from the BFI Funds**

63. During the Relevant Period, BFI loaned approximately \$119 million (the **Ng Loans**) from the BFI Funds to three companies owned by Ng⁹⁰ in the following approximate amounts: \$21 million to Chippingham Capital Corp. (**Chippingham**), \$31 million to 10029947 Manitoba Ltd. (**947 Manitoba**), and \$67 million to 10034889 Manitoba Ltd. (**889 Manitoba** and, together with Chippingham and 947 Manitoba, the **Ng Companies**).

64. BFI extended the ~\$21 million loan from the BFI Funds to Chippingham in March 2018.⁹¹ Then in November 2018, BFI and its shareholders entered into negotiations to sell Ng a 50% interest in BFI (the **Ng Acquisition**).⁹² According to D Sharpe, the BFI Shareholders retained Raymond James in 2018 to explore a business combination and/or outside investment into BFI and Ng expressed an interest in discussing a potential deal.⁹³

65. Between December 14, 2018 and May 13, 2019, while negotiations between Ng and the BFI Shareholders were ongoing, BFI loaned \$31 million from the BFI Funds to 947 Manitoba.⁹⁴ As I will address below, BFI did not disclose to unitholders in the BFI Funds that it was engaged in discussions for Ng to acquire a significant interest in BFI.

B. **BFI Loaned \$67,000,000 to an Ng Company After the BFI Shareholders Agreed to Sell 50% of BFI to Ng for \$50,000,000**

66. The BFI Shareholders and Ng signed a share purchase agreement for the Ng Acquisition on or about May 16, 2019 (the **Ng Acquisition Agreement**).⁹⁵ The Ng Acquisition Agreement

⁹⁰ Ng is a resident of Manitoba. At various times since 2008, Ng has been registered as a dealing representative with the Investment Industry Regulatory Organization of Canada (**IIROC**), the Commission, and other provincial securities regulators. Attached as **Exhibit 122** is a Form 33-109F4 setting out Ng's registrations with the Commission and other provincial securities regulators at various points in time.

⁹¹ Attached as **Exhibit 123** is a copy of BFI's credit committee approval for the Chippingham loan. The approval notes that Chippingham was a special purpose company wholly owned by Ng that was formed for the purpose of acquiring the Rothenberg Group of Companies (**Rothenberg**).

⁹² At item no. 5(b) on page 4 of the August 28 Letter attached as **Exhibit 22**, BFI produced a timeline for the Ng Acquisition (the **Ng Acquisition Timeline**). According to the Ng Acquisition Timeline, discussions with Ng commenced in November 2018. It appears that D Sharpe led those discussions on behalf of the BFI Shareholders. N Sharpe told Staff that "the CEO", referring to her husband D Sharpe, was "spearheading" the process during her examination, the relevant excerpts of which are attached as **Exhibit 124**. J Coco and R Coco explained that they met with Ng once in January 2019 for dinner and did not meet him again until the Acquisition closed in or around July 2019. Attached as **Exhibit 125** are relevant excerpts from the J Coco Transcript and attached as **Exhibit 126** are relevant excerpts from the R Coco Transcript.

⁹³ Attached as **Exhibit 127** are relevant excerpts from the D Sharpe Transcript.

⁹⁴ BFI made three loans from the BFI funds to 947 totaling \$31 million: ~\$6 million on or around December 14, 2018, \$15 million on or around January 7, 2019, and \$10 million on or around May 13, 2019. Attached as **Exhibit 128** are copies of the three BFI credit committee approvals (the **947 Approval Documents**) for the loans to 947 Manitoba. The 947 Approval Documents note that Ng provided personal guarantees in respect of the loans to 947 Manitoba, which is described as a shell company. The second and third 947 Approval Documents refer to the previous 947 Manitoba loans as loans made to Gary.

⁹⁵ Attached as **Exhibit 129** is a copy of the Ng Acquisition Agreement.

provided for the \$50 million purchase price to be satisfied in cash on the “closing date”, which was not set out in the agreement.

67. Before the Ng Acquisition closed, on June 21, 2019, BFI authorized a \$67 million loan from the BFI Funds to 889 Manitoba (the **889 Manitoba Loan**). Ng was the president, sole director and sole shareholder of 889 Manitoba.⁹⁶

68. As I will address in the section 4D, BFI did not disclose Ng’s pending purchase of BFI shares to unitholders in the BFI Funds at the time the Ng Acquisition Agreement was signed or prior to BFI authorizing or advancing the 889 Manitoba Loan.

69. According to BFI, Ng obtained the 889 Manitoba Loan for the purpose of acquiring commercial real estate in Hong Kong.⁹⁷

70. I reviewed the 889 Approval Document⁹⁸ and compared it to the 947 Approval Documents. The 947 Approval Documents all mention Ng and refer to his experience and personal net worth while the 889 Approval Document does not mention Ng at all, even though it was Ng’s Investment Account that was being used as collateral for the 889 Manitoba Loan.⁹⁹

71. The loan file for the 889 Manitoba Loan that BFI produced included a note dated June 18, 2019 relating to a meeting between D Sharpe, N Sharpe and Ng (the **June 18 Note**). The June 18 Note references potential real estate ventures in Hong Kong and the pending Ng Acquisition and states that Ng “advised he is still negotiating terms of his financing with Whitehorse & others ? re BFI share purchase.”¹⁰⁰

72. As I will describe below, bank records demonstrating the flow of funds indicate that Ng paid the BFI Shareholders for their BFI shares with the \$30 million that BFI advanced to 889 Manitoba on June 21, 2019. A visualization of the flow of funds that I describe below is presented in Appendix F.

73. The 889 Manitoba Loan included an initial \$31,658,982.50 tranche that was transferred to Chaitons on June 21, 2019 through \$15.8 million transfers from the Income Fund and the MM

⁹⁶ 889 Manitoba has a bank account at the Toronto Dominion bank (TD) (the **889 Manitoba Account**). Enforcement Staff obtained bank records for 889 Manitoba from TD. Included with the records obtained from TD was (i) a certificate of incorporation for 889 Manitoba (the **889 Manitoba Incorporation Certificate**) indicating that 889 Manitoba was incorporated on March 4, 2019, and (ii) a shareholders register, directors register and officers register for 889 Manitoba (the **889 Manitoba Registers**) indicating that Ng was the sole shareholder, director and officer of 889 Manitoba. Attached as **Exhibit 130** are copies of the 889 Manitoba Incorporation Certificate and the 889 Manitoba Registers.

⁹⁷ Attached as **Exhibit 131** is a copy of BFI’s credit committee approval for the 889 Manitoba Loan (the **889 Approval Document**).

⁹⁸ The 889 Approval Document notes that 889 Manitoba “was formed at the beginning of 2019 with the express purpose of making acquisitions in the Commercial Real Estate sector”. The security for the 889 Manitoba Loan is stated to be “[t]he Company’s securities investment account” (the **Investment Account**).

⁹⁹ The 889 Approval Document misidentifies the owner of the Investment Account as being 889 Manitoba.

¹⁰⁰ Attached as **Exhibit 132** is a copy of the June 18 Note. In addition to the June 18 Note, the loan file included the following documents: (i) a copy of an Account Summary in Ng’s name from PI Financial relating to the Investment Account (the **Ng Account Summary**), (ii) a note dated June 20, 2019 titled “Ng Investment Account” (the **June 20 Note**) (iv) a two page article from June 2017 that identified Ng as the Chairman and CEO of Ng Enterprise Holdings Ltd. and discussed that entity selling real estate (the **Two Page Article**) and (v) 24 pages of listings of properties (the **Listings**). Attached as **Exhibits 133, 134, and 135** are the Ng Account Summary, the Two Page Article and the Listings, respectively.

Fund.¹⁰¹ On June 25, 2019 Chaitons transferred \$31.7 million to the 889 Manitoba Account, which was only opened on June 21, 2019.¹⁰² This \$31.7 million is the only amount deposited in the 889 Manitoba Account prior to the closing of the Ng Acquisition.

74. A week after BFI advanced the first tranche of the 889 Manitoba Loan, on June 28, 2019, BFI and Ng amended the Ng Acquisition Agreement¹⁰³ to set July 8, 2019 as the closing date for the Ng Acquisition. The amended Ng Acquisition Agreement confirmed that Ng would complete his acquisition of 50% of BFI indirectly through 2693405 Ontario Inc. (**Acquireco**).

75. A week later, on the Friday before the closing date of the Ng Acquisition, July 5, 2019, 889 Manitoba transferred \$30 million that it received from the BFI Funds to an account at TD that Acquireco opened that same day (the **Acquireco Account**).¹⁰⁴ This \$30 million amount plus another \$20 million receipt¹⁰⁵ are the only funds that were deposited into the Acquireco Account prior to the closing of the Ng Acquisition. That same day, July 5, 2019, Acquireco transferred the \$50 million in the Acquireco Account to Borden Ladner Gervais' (**BLG**) trust account.¹⁰⁶ The following Monday, on July 8, 2019 BLG transferred \$50 million (minus closing costs) to the BFI Shareholders to complete the Ng Acquisition.

76. One month later, on August 8, 2019, Ng drew the remaining \$35 million from the 889 Manitoba Loan.

77. During his examination, D Sharpe acknowledged that BFI did not take any steps to verify the source of the \$50 million that Ng paid to acquire his interest in BFI. Asked if there were any mechanisms put in place to prevent Ng from using the 889 Manitoba Loan to fund the Ng Acquisition, D Sharpe stated that N Sharpe would have "checked on the purchase of the real estate" and was "pushing [Ng] on reporting on the how that process is going with the Hong Kong real estate...". D Sharpe stated that he was not concerned that Ng might use funds loaned to him by BFI to purchase the Ng BFI Shares because Ng was a high net-worth individual.¹⁰⁷

78. During her examination, N Sharpe told Enforcement Staff that she did not know how Ng ultimately spent the proceeds of the 889 Manitoba Loan. N Sharpe claimed that after the 889 Manitoba Loan was advanced she regularly asked Ng for updates on his Hong Kong properties and that Ng gave her multiple reasons for not acquiring any Hong Kong properties.¹⁰⁸

¹⁰¹ Attached as **Exhibit 136** are records for the Income Fund Account for the period ending June 28, 2019. Attached as **Exhibit 137** are records for the MM Fund for the period ending June 28, 2019.

¹⁰² Attached as **Exhibit 138** are records for the 889 Manitoba Account for the period from June 1, 2019 to July 31, 2019.

¹⁰³ Attached as **Exhibit 139** is a copy of the amended Ng Acquisition Agreement dated June 28, 2019.

¹⁰⁴ The Acquireco Account records are included with the 889 Manitoba Account records attached as **Exhibit 138**. The Acquireco Account records are on page 2.

¹⁰⁵ I understand the other \$20 million deposited into the Acquireco Account were funds that Ng had borrowed from RC Morris & Company (**RC Morris**) to complete the Ng Acquisition.

¹⁰⁶ BLG was Ng's counsel with respect to the Ng Acquisition.

¹⁰⁷ Attached as **Exhibit 140** are relevant excerpts from the D Sharpe Transcript.

¹⁰⁸ Attached as **Exhibit 141** are relevant excerpts from the N Sharpe Transcript. BFI also produced the June 20 Note, a copy of which is attached as **Exhibit 142**, which states "Natasha verified account and holdings independently with PI through PI executive ... (Exec Vice-Chair) who confirmed account exists and holdings are accurate." I understand this refers to the Investment Account. During her examination N Sharpe told Enforcement Staff that she periodically contacted the executive at PI Financial to verify the balance in the Investment Account but did not keep records of these subsequent conversations.

C. Unexplained Transfers To and From Ng

79. During the Investigation, I identified additional transfers between Ng, the MM Fund and D Sharpe and N Sharpe through a review of their accounts. These additional transfers were not disclosed to Enforcement Staff by BFI or the individual witnesses I interviewed from BFI.

80. As I mentioned in paragraph 55 above, during my review of the D Sharpe Chequing Account, in addition to the transfers from 747 Manitoba, I also identified a \$500,000 transfer from Ng. The transfer was made on November 14, 2019 from an account at TD Bank (the **Ng TD Account**). When I reviewed the statements for the Ng TD Account, I identified a second transfer made on November 14, 2019 for \$500,000 to one of N Sharpe's personal chequing accounts (the **N Sharpe Chequing Account**).¹⁰⁹

81. I have reviewed all the transactions between BFI and Ng that BFI has disclosed to Enforcement Staff. I have seen nothing in the documented agreements for those transactions to explain these transfers.

82. In addition, during my review of the records of the MM Fund Account, I identified a \$9,895,000 transfer from the MM Fund Account to 947 Manitoba on February 12, 2020.¹¹⁰ I have reviewed all the transactions between BFI and Ng that BFI has disclosed to Enforcement Staff. I have seen nothing in the documented agreements for those transactions to explain the transfer from the MM Fund Account to 947 Manitoba.¹¹¹ At the time of this transfer to 947 Manitoba, Ng owned 50% of BFI.

83. None of the BFI witnesses disclosed the payments from Ng to D Sharpe or N Sharpe or the February 12, 2020 transfer from the MM Fund Account to 947 Manitoba to Enforcement Staff. During their compelled examinations, D Sharpe,¹¹² N Sharpe¹¹³ and Marr¹¹⁴ all denied there were any other transactions involving Ng or companies connected to Ng other than those discussed during the examination.¹¹⁵

84. According to BFI, on February 26, 2020, D Sharpe and N Sharpe learned that Ng had lied about the collateral he provided for the 889 Manitoba Loan and that the collateral offered did not exist. BFI reported this fact to Enforcement Staff two days later on February 28, 2020.¹¹⁶

¹⁰⁹ Attached as **Exhibit 143** are records for the Ng TD Account for the period from June 6, 2018 to April 30, 2020.

¹¹⁰ Attached as **Exhibit 144** are records for the MM Fund Account for the period ending February 28, 2020.

¹¹¹ The records for the MM Fund Account for the period ending February 28, 2020 indicate that on February 7, 2020 947 Manitoba transferred \$10,135,207.87 to the MM Fund Account. The Fourth BFI Loan Schedule attached as **Exhibit 72** indicates that this transfer was a repayment of the third 947 Manitoba Loan.

¹¹² Attached as **Exhibit 145** are relevant excerpts from the D Sharpe Transcript.

¹¹³ Attached as **Exhibit 146** are relevant excerpts from the N Sharpe Transcript.

¹¹⁴ Attached as **Exhibit 147** are relevant excerpts from the Marr Transcript.

¹¹⁵ During their compelled examinations, Enforcement Staff asked D Sharpe, N Sharpe and Marr if the Ng Loans and the Ng Acquisition were the extent of the relationship between BFI and Ng and they all confirmed this to be the case and confirmed it was their understanding that BFI and its directors, officers and shareholders (i) had no other dealings with Ng, (ii) did not receive any other payments from Ng or companies relating to Ng, and (iii) did not engage in any other transactions with Ng.

¹¹⁶ Attached as **Exhibit 148** is a letter from from BFI to Enforcement Staff dated February 28, 2020.

85. Since that time, BFI and the BFI Shareholders have taken various steps to reacquire Ng's BFI shares, realize on collateral Ng provided in connection with the Ng Loans and otherwise reduce the exposure of the BFI Funds to the Ng Loans. I discuss these steps in section 4D below.

86. I am aware that the Investment Industry Regulatory Organization of Canada (**IIROC**) commenced a proceeding against Ng in November 2020 in connection with allegations that Ng defrauded various lenders.¹¹⁷ The statement of allegations in that proceeding (the **IIROC Allegations**) alleges that Ng defrauded a Canadian asset management firm described in the document as "Lender Two" in connection with a loan for \$20 million made to Ng and companies controlled by Ng for the purpose of acquiring a 50% interest in a private company based in Canada that is described in the document as "B Corp". I believe that the "B Corp" described in the IIROC Allegations is BFI and that "Lender Two" is a reference to RC Morris. The statement of allegations also includes allegations that Ng defrauded B Corp in connection with a \$32 million loan extended on June 21, 2019. I believe this allegation relates to the 889 Manitoba Loan that BFI extended to 889 Manitoba on June 21, 2019 as set out above.

D. Conflict of Interest Disclosure: Ng

87. BFI did not make timely disclosure to unitholders in the BFI Funds of the full extent of its and the BFI Shareholders' relationship with Ng. As I noted above, BFI did not disclose to unitholders that it was engaged in discussions for Ng to acquire a significant interest in BFI, and BFI did not disclose Ng's pending purchase of BFI shares at the time the Ng Acquisition Agreement was signed or prior to BFI authorizing or advancing the 889 Manitoba Loan.

88. In the audited financial statements for the year ended December 31 2019 for the MM Fund (the **2019 MM Fund Financial Statements**) and the Income Fund (the **2019 Income Fund Financial Statements**) dated April 1, 2020,¹¹⁸ BFI disclosed to investors that loans were made to "certain entities related to a shareholder of the Manager (who became a shareholder on July 8, 2019)...".¹¹⁹ I am not aware of BFI making any other disclosure to unitholders in the BFI Funds surrounding the relationship with Ng. D Sharpe told Enforcement Staff that BFI provides financial statements to dealers or investors on request.¹²⁰

89. In March 2019, D Sharpe, N Sharpe, Mushore and BFI's general counsel met to discuss whether Ng's potential acquisition of BFI shares created a conflict of interest. A note was prepared that reflected those discussions (the **D Sharpe Note**).¹²¹

90. The D Sharpe Note states that BFI did not consider Ng's acquisition of 50% of BFI's outstanding shares at the same time BFI was making the Ng Loans to engage BFI's conflict of interest policy because (i) Ng will not be an officer, employee, or director of BFI and will not sit on BFI's credit committee, (ii) Ng will have no active role in BFI or decision making authority in BFI,

¹¹⁷ https://www.iiroc.ca/documents/2020/2ac97b90-79ed-43c2-881e-d68fef55747d_en.pdf

¹¹⁸ I note that these financial statements were prepared after BFI learned that Ng lied about the collateral he provided for 889 Manitoba Loan.

¹¹⁹ Note 11 to the 2019 Income Fund Financial Statements attached as **Exhibit 149** states that during 2019 the Income Fund made loans totalling \$60,847,029 to "certain entities related to a shareholder of the Manager (who became a shareholder on July 8, 2019)...". Note 8 to the 2019 MM Fund Financial Statements attached as **Exhibit 150** states that during 2019 the MM Fund made loans totalling \$58,275,123 to "certain entities related to a shareholder of the Advisor (who became a shareholder on July 8, 2019)...".

¹²⁰ Attached as **Exhibit 151** are relevant excerpts from the D Sharpe Transcript.

¹²¹ Attached as **Exhibit 152** is a copy of the D Sharpe Note.

(iii) all loans to Ng Cos were “pre-ownership”, and (iv) the Ng Co loans were commercially reasonable and typical of BFI transactions and were approved by the credit committee.

91. D Sharpe confirmed that the D Sharpe Note reflected BFI’s thinking, at all material times, on whether the relationship with Ng represented a conflict of interest.¹²² N Sharpe and Mushore also confirmed there was a meeting in or around March 2019¹²³ and that BFI felt the relationship with Ng was not a conflict of interest for the reasons set out in the D Sharpe Note.¹²⁴

92. BLG, Ng’s counsel for the Ng Acquisition, filed a notice in connection with the Ng Acquisition with the Manitoba Securities Commission and the Commission, pursuant to section 11.9 of National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (the **Section 11.9 Notice**) on or about April 29, 2019. The Section 11.9 Notice included a verification (the **Verification**) from BFI, signed by D Sharpe, that confirmed the truth of the facts in the Section 11.9 Notice. The Section 11.9 Notice was submitted to the Commission as BFI’s principal regulator.¹²⁵

93. The Section 11.9 Notice states that the Ng Acquisition would not give rise to any material conflicts of interest. Neither the Section 11.9 Notice nor the Verification disclosed that, at that time, Ng Companies owed approximately \$42 million to the BFI Funds.

94. In later correspondence with Enforcement Staff, BFI stated that with the benefit of hindsight the Section 11.9 Notice and the Verification should have provided additional information about the Ng Loans to the Commission.¹²⁶ Despite this, during his examination D Sharpe suggested to Enforcement Staff that it was not material for securities regulators to be informed about the outstanding loans to Ng Companies because Ng was not going to be an officer or director of BFI and was not going to have anything to do with credit or investments.¹²⁷

E. Current Status of the Ng Loans

95. BFI claims that it and the BFI Shareholders have taken various steps to limit the exposure of the BFI Funds to the Ng Loans since learning that Ng falsified the collateral for the 889 Manitoba Loan.

¹²² Attached as **Exhibit 153** are relevant excerpts from the D Sharpe Transcript.

¹²³ Attached as **Exhibit 154** are relevant excerpts from the N Sharpe Transcript and attached as **Exhibit 155** are relevant excerpts from the Mushore Transcript.

¹²⁴ BFI produced a Unanimous Shareholders Agreement dated July 8, 2019 (the **USA**) signed by Ng and the BFI Shareholders, and by D Sharpe for BFI, which is attached as **Exhibit 156**. I note that while the D Sharpe Note claims that Ng would have no active role at BFI or decision making authority at BFI, section 2.1(1)(a) of the USA provided that Ng would have the right to nominate two out of a maximum of four directors of BFI and section 2.1 of the USA stated that Ng’s nominees for the BFI board of directors were Lexovsky and Wong. In addition, section 2.1(8) of the USA, titled **Deadlock**, provided that Ng in his sole discretion was empowered to break any ties on matters before the board of directors other than for matters that required unanimous approval of the board of directors.

¹²⁵ Attached as **Exhibit 157** is a copy of the Section 11.9 Notice and the Verification.

¹²⁶ Attached as **Exhibit 158** is a letter from BFI to Enforcement Staff dated April 3, 2020. BFI’s statement that additional information should have been provided is on pages 1 and 2.

¹²⁷ Attached as **Exhibit 159** are relevant excerpts from the D Sharpe Transcript.

96. The exposure of the BFI Funds to the Ng Loans was approximately \$100,000,000 as of March 5, 2020. To reduce this exposure, the BFI Shareholders reacquired Ng's BFI shares for \$5, and BFI acquired Chippingham's and others' interest in Rothenberg for \$5.¹²⁸

97. Ng pledged his shares in BFI to BlackRock as security for a loan that Ng obtained (the **Ng BlackRock Loan**). Therefore, to reacquire those shares the BFI Shareholders were required to assume and service the \$19,830,654 Ng BlackRock Loan.¹²⁹ BFI stated that the BFI Shareholders have pledged that all dividend proceeds relating to the Ng's BFI shares that remained after servicing the Ng BlackRock Loan would be directed to the BFI Funds until Ng's BFI shares were sold to a third party or until the BFI Funds' had no exposure to the Ng loans.¹³⁰

98. BFI provided additional information to Enforcement Staff on January 8, 2021 about its efforts to clear the BFI Funds' exposure to Ng Loans.¹³¹ BFI stated that (i) the BFI Shareholders paid \$39 million to the BFI Funds, (ii) BFI would forgo profit and incentive fees owing to it with respect to 2020, and that (iii) it would sell the remaining approximately \$43 million in unpaid Ng Loans to a third party. This sale involved BFI selling the remaining Ng Loans to a special purpose vehicle (**SPV**) established by RC Morris. The SPV would pay the BFI Funds for the Ng Loans by issuing a promissory note to the BFI Funds. BFI advised that under the terms of the "agreement", any amounts recovered in respect of the Ng Loans by the issuer would be used to repay this promissory note. BFI also entered into an agreement with the BFI Shareholders that noted that BFI intended for the BFI Funds to be held harmless from any losses arising from the Ng Loans and directed BFI to transfer to the BFI Funds any available profits of BFI to the extent that previous efforts to ensure the BFI Funds were held harmless were insufficient.¹³²

99. I believe the only disclosure that BFI has made about these efforts to unitholders in the BFI Funds is in note 20 the 2020 BFI Financial Statements,¹³³ where BFI states it "became aware that certain loans made by certain [BFI Funds] were made under false representations and may not be realizable." BFI also noted that that BFI Shareholders contributed amounts to BFI that were paid to certain BFI Funds, that BFI would waive the right to incentive fees, and that the [Ng Loans] were sold to an arm's-length third party. The note in the 2020 BFI Financial Statements does not mention Ng.

¹²⁸ Attached as **Exhibit 160** is a letter from BFI dated March 5, 2020 including attachments. The letter states that Acquireco sold Ng's BFI shares to companies controlled by J Coco and R Coco, and N Sharpe, respectively, for \$5 pursuant to an Agreement of Purchase and Sale of Shares dated March 3, 2020, (iii) Chippingham sold its shares in Rothenberg to BFI, as agent for the BFI Funds, for \$5 pursuant to an Agreement of Purchase and Sale of Shares dated March 3, 2020 (the **Chippingham Disposition Agreement**), and (iv) a Rothenberg entity controlled by Ng sold certain shares of other Rothenberg entities to BFI, as agent for the BFI Funds, for \$5, pursuant to an Agreement of Purchase and Sale of Shares dated March 3, 2020 (the **Rothenberg Disposition Agreement**).

¹²⁹ In order to complete this, BFI's agreement with BlackRock relating to the BlackRock Loan required amendments. Attached as **Exhibit 161** is a copy of the revised credit agreement with BlackRock.

¹³⁰ Attached as **Exhibit 162** are letters from BFI dated May 14, 2020, June 17, 2020 and August 7, 2020 that describe BFI's dealings with Ng and BlackRock relating to Ng's BFI shares and the Ng BlackRock Loan. In the May 14 letter, BFI also claimed to have retained a financial advisory firm to market the Ng BFI shares and/or obtain financing to refinance the BlackRock Loan and the Ng BlackRock Loan to provide additional liquidity and flexibility.

¹³¹ Attached as **Exhibit 163** is a copy of a letter from BFI dated January 8, 2021 (the **January 2021 Letter**).

¹³² Attached at **Exhibit 164** is a copy of the closing book that BFI included with the January 2021 Letter which included the legal instruments relating to the sale of the Ng Company loans to the SPV.

¹³³ The 2020 BFI Financial Statements are attached as **Exhibit 32**. Note 20 is on the last page of the Financial Statements.

5. Corporate Governance Changes at BFI

A. Board of Directors

100. BFI recently added an independent director to its board of directors. O'Reilly became a director and chair of the board on or about December 14, 2020.¹³⁴ BFI has represented that it and the BFI Shareholders are in discussions concerning the addition of a second independent director.¹³⁵

101. David Russell Allgood (**Allgood**) also briefly joined the board as an independent director on or about December 14, 2020¹³⁶ but resigned on December 27, 2020.¹³⁷ In correspondence, BFI represented that Allgood “concluded, after exploring the degree of time commitment for the role as an independent Board member of BFI, that he would not be able to commit to the time required to fulfill this role given his current circumstances.”¹³⁸

B. Engagement of AUM Law and Formation of an Independent Review Committee

102. D Sharpe told Enforcement Staff that BFI has retained AUM Law to assess BFI’s conflict of interest policies and that BFI would form an independent review committee (**IRC**) that would review issues relating to conflicts of interest and potential conflicts of interest including the allocation of loans to BFI Funds.¹³⁹ N Sharpe told Enforcement Staff that the IRC was being formed as a result of Enforcement Staff’s investigation.¹⁴⁰

103. BFI’s counsel has advised Enforcement Staff that: (i) the BFI board of directors increased its meeting schedule to at least quarterly, (ii) BFI’s directors and the BFI Shareholders are in discussions about adding another independent director, (iii) BFI was in the process of retaining a governance expert, and (iv) the IRC was established with Hugh Corbett,¹⁴¹ John Walsh¹⁴² and Ben Eggers¹⁴³ as members, with Mr. Corbett acting as chair, and that the IRC had its first meeting in March 2021 and would be providing an annual update to unitholders.¹⁴⁴

¹³⁴ See **Exhibit 40**.

¹³⁵ Attached as **Exhibit 165** is an email from BFI’s counsel dated April 16, 2021. The representation about adding a second independent director is in point no. 3.

¹³⁶ See **Exhibit 40**.

¹³⁷ See **Exhibit 39**.

¹³⁸ See the January 2021 Letter attached as **Exhibit 163** at page 2.

¹³⁹ Attached as **Exhibit 166** are relevant excerpts from the D Sharpe Transcript.

¹⁴⁰ Attached as **Exhibit 167** are relevant excerpts from the N Sharpe Transcript.

¹⁴¹ According to his public LinkedIn profile, Hugh Corbett is the Associate General Counsel at Edward Jones (Canada), has had senior roles at the Mutual Fund Dealers Association, and was litigation counsel at the Commission from 1999 to 2003.

¹⁴² Enforcement Staff understand that John Walsh is the Chief Innovation Officer at OPTrust and has previously served in other senior roles at OP Trust and is a lawyer who has worked at “seven sister” law firms.

¹⁴³ According to his public LinkedIn profile, Ben Eggers is a lawyer in Toronto and has previously held senior compliance roles at TD Bank Group. He was also investigation counsel at the Commission between 1999 and 2001.

¹⁴⁴ See the email from BFI’s counsel dated April 16, 2021 attached as **Exhibit 165**.

6. Loans to the Mjardin Group, McCoshen Companies and Ng Companies

A. The Ng Loans

104. As set out in paragraph 98, the SPV acquired the Ng Loans for approximately \$43 million on December 31, 2020. The SPV provided the BFI Funds with a promissory note for the full amount. BFI has advised Enforcement Staff that it “understands that RC Morris is confident in its ability to recover amounts owing on the Loans”.¹⁴⁵ However, BFI has not volunteered additional information to support this fact and I am not aware of the basis upon which RC Morris or BFI have determined that there are amounts that can be collected from Ng.

B. The Mjardin Group Loans

105. BFI loaned approximately \$166 million¹⁴⁶ to Mjardin Group during the Relevant Period. According to Mjardin Group’s interim financial statements for the period ended September 30, 2020 (the **Mjardin Interim Financial Statements**), approximately \$149 million remained outstanding as of September 30, 2020.¹⁴⁷

106. Mjardin Group’s financial statements have included a going concern note since 2019. The disclosure notes that Mjardin Group’s management has acknowledged that there is significant uncertainty over its ability to meet its funding requirements as they fall due and it is reliant on additional financing to continue normal operations. As of September 30, 2020, Mjardin Group had an accumulated deficit of \$362 million.¹⁴⁸

107. According to the Mjardin Interim Financial Statements, during the nine-month period from January 1 to September 30, 2020, Mjardin Group’s interest expense (\$16.1 million) exceeded its total revenues (~\$9.2 million) by approximately \$7 million. In those same Interim Financial Statements, Mjardin Group disclosed that it was in breach of its financial covenants under the loan agreements in-force as at September 30, 2020, but that it received a signed waiver from its senior lender,¹⁴⁹ which I believe to be BFI. According to the Interim Financial Statements, Mjardin Group’s total assets of ~\$117 million are less than the approximately \$149 million amount owing to BFI.

C. McCoshen Company Loans

i. 405 Ontario

108. As set out at paragraph 49, according to BFI, 405 Ontario acquired an \$80 million loan that BFI extended to Bondfield from the BFI Funds (the **Bondfield Loan**) through an assignment

¹⁴⁵ See the January 2021 Letter attached as **Exhibit 163** at page 2.

¹⁴⁶ See the Fourth BFI Loan Schedule attached as **Exhibit 72**. The Schedule lists loans to Growforce of \$106,052,868 and MJAR Holdings of \$60,206,271.

¹⁴⁷ Mjardin’s Interim Financial Statements are attached as **Exhibit 168**. See Note 14.

¹⁴⁸ Attached as **Exhibit 169** are Mjardin Group’s audited financial statements for the year ended December 31, 2019 (the **2019 Mjardin Financial Statements**) and the Mjardin Interim Financial Statements are attached as **Exhibit 168**. The going concern note is in Note 1 of both Financial Statements.

¹⁴⁹ Note 14 of Mjardin’s Interim Financial Statements.

in November 2018 for \$84,682,464.01.¹⁵⁰ BFI informed Enforcement Staff that McCoshen is a director, officer and shareholder of 405 Ontario and is a guarantor of the loan to 405 Ontario.¹⁵¹

109. 405 Ontario acquired the Bondfield Loan four months prior to Bondfield entering CCAA proceedings in April 2019.¹⁵² Prior to assigning the Bondfield Loan to 405 Ontario on November 15, 2018, BFI issued demand letters and section 244¹⁵³ notices under the *Bankruptcy and Insolvency Act* to Bondfield on October 1, 2018. Further, on November 15, 2018, the same date as the assignment to 405 Ontario, BFI filed an application to appoint a receiver over all of the assets, undertakings and properties of Bondfield.¹⁵⁴

110. BFI has represented that it has received a partial repayment of \$59 million in connection with this loan.¹⁵⁵

ii. AARDC

111. As set out at paragraph 49, BFI loaned AARDC approximately \$160 million between December 11, 2015 and September 1, 2020 in connection with the AARDC Railway Project.

112. BFI produced a McKinsey & Company AARDC valuation update dated November 25, 2020 (the **McKinsey Report**).¹⁵⁶ The McKinsey Report provides an updated valuation for the AARDC Railway Project of \$4 billion based on certain input assumptions (the **Input Assumptions**). The Input Assumptions include both operational and financing assumptions. I understand the financing assumptions to assume that construction financing in the amount of \$14.9 billion will be contributed through certain government milestone payments from the Alberta,

¹⁵⁰ 405 Ontario acquired the Bonfield loan for the full amount outstanding under the loan plus accrued interest. McCoshen provided a personal guarantee on this loan at the time 405 Ontario acquired it. BFI represented in the February 2021 Letter attached as **Exhibit 95** that it considers the assignment as “back stop collateral to the original loan investment extended to [Bondfield] as all of the original collateral extended by [Bondfield] has remained in place to secure the obligations of [405 Ontario].” During his compelled examination, D Sharpe stated he did not know the “exact economics” for the transaction but that he believed McCoshen “was interested in a litigation claim that Bondfield has against the City of Toronto and the TCC that could be upwards of \$150 million”. Attached as **Exhibit 170** are relevant excerpts from the D Sharpe Transcript.

¹⁵¹ See the chart on page 2 of the February 2021 Letter attached as **Exhibit 95**.

¹⁵² I understand that EY is court-appointed monitor of Bondfield pursuant to an Order of the Ontario Superior Court of Justice dated April 2, 2019. EY maintains a publicly available website (the **EY Website**) related to its role as monitor that includes a number of documents related to the Bondfield CCAA proceedings, including the April 2, 2019 Order. The web address for the EY Website is <https://documentcentre.ey.com/#/detail-engmt?eid=347>

¹⁵³ **244 (1)** A secured creditor who intends to enforce a security on all or substantially all of

- (a) the inventory,
- (b) the accounts receivable, or
- (c) the other property

of an insolvent person that was acquired for, or is used in relation to, a business carried on by the insolvent person shall send to that insolvent person, in the prescribed form and manner, a notice of that intention.

¹⁵⁴ I accessed the EY Website and reviewed the section titled *Background of the Current Situation and the Decision to Commence Insolvency Proceedings* from the Report of the Proposed Monitor dated March 5, 2019.

¹⁵⁵ See the chart on page 2 of the February 2021 Letter attached as **Exhibit 95**.

¹⁵⁶ The McKinsey Report is attached as **Exhibit 171**.

Yukon, Northwest Territories and Alaska governments. I am not aware of any commitments from these governments to provide the referenced financing.¹⁵⁷

113. I understand that AARDC obtained a Presidential Permit signed by President Trump on September 28, 2020 (the **Presidential Permit**).¹⁵⁸ I am not aware of the impact that the subsequent inauguration of President Biden may have on the Presidential Permit and am not aware of any other governmental approvals (US or Canadian) for the AARDC Railway Project.

114. The collateral for the AARDC Loan is a guarantee from a Manitoba company that appears to be controlled by McCoshen,¹⁵⁹ and a personal guarantee from McCoshen.¹⁶⁰

115. The AARDC Loan includes a \$30.6 million convertible debenture advanced in June 2019.¹⁶¹ BFI revalued this portion of the AARDC Loan at the end of fiscal 2020 and increased the valuation from \$38 million¹⁶² (including interest capitalized since June 2019) to \$145.4 million.¹⁶³ This revaluation represented 97%¹⁶⁴ of the increase in net assets attributable to unitholders for the MM Fund and 67%¹⁶⁵ of the increase in net assets attributable to unitholders for the Income

¹⁵⁷ The loan file that BFI produced does include a series of letters from prominent persons in the United States including the Governor of Alaska, Members of Congress, Senators and others expressing support for the AARDC Railway Project.

¹⁵⁸ Attached as **Exhibit 172** is a copy of the Presidential Permit.

¹⁵⁹ Enforcement Staff are unable to determine precisely which Manitoba company has provided a guarantee on the AARDC Loan. In the letter agreements between the Income Fund and AARDC dated February 24, 2020 and September 1, 2020, both of which are included in **Exhibit 96**, the guarantor is indicated on page 1 to be 5321326 Manitoba Inc., but the signature pages refer to the guarantor being 532138 Manitoba Inc. When I attempted to obtain a report about 5321326 Manitoba Inc. from the Manitoba Companies Office I learned that 5321326 Manitoba Inc. did not exist. I believe the true guarantor on the AARDC Loan is 328 Manitoba which is owned and controlled by McCoshen as set out in footnote 54.

¹⁶⁰ Attached as **Exhibit 173** is a copy of the McCoshen Net Worth Statement that BFI provided to Enforcement Staff. The McCoshen Net Worth Statement includes the \$4 billion valuation of the AARDC Railway Project as an asset of McCoshen's. Removing this amount from McCoshen's assets and accepting the other figures on the McCoshen Net Worth Statement, I calculate McCoshen's net worth to be negative \$96,017,596.

¹⁶¹ A copy of the loan agreement dated June 1, 2019 between the Income Fund and AARDC is included with all the agreements between the Income Fund and AARDC attached as **Exhibit 96**.

¹⁶² The 2020 Income Fund Financial Statements are attached as **Exhibit 13**, and the 2020 MM Fund Financial Statements are attached as **Exhibit 15**. These indicate that \$15.8 million was allocated to the MM Fund and \$22.2 million was allocated to the Income Fund.

¹⁶³ BFI produced a spreadsheet which contained a tab supporting the increase in the carrying value of the Convertible Debenture in 2020 (the **Tab**). The Tab indicates that the increase in the carrying value of the Convertible Debenture was based on a valuation of the AARDC Railway Project from Management/McKinsey of \$3.6 billion. Attached as **Exhibit 174** is a copy of the Tab.

¹⁶⁴ The 2020 MM Fund's Financial Statements attached as **Exhibit 15** record an increase in value of the convertible debenture of ~\$44.7 million and the total increase in net assets attributable to unitholders in 2020 is ~45.9 million.

¹⁶⁵ The 2020 Income Fund's Financial Statements attached as **Exhibit 13** record an increase in the value of the convertible debenture of ~ \$62.7 million and the total increase in net assets attributable to unitholders in 2020 is ~\$93.2 million.

Fund for 2020. In total, the AARDC Loan represented 18.6%¹⁶⁶ of the total AUM of the MM Fund and Income Fund at December 31, 2020.

7. Conclusion

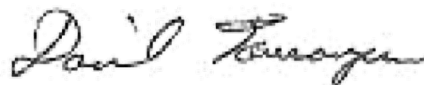
116. I make this affidavit in furtherance of the Investigation and the enforcement of Ontario securities laws and for no other purpose.

Sworn remotely by Daniel Tourangeau stated as being located at the Town of Oakville in the Province of Ontario, before me at the City of Mississauga in the Province of Ontario, on April 29, 2021, in accordance with O. Reg 431/20, Administering Oath or Declaration Remotely



Commissioner for taking affidavits

**Michelle Spain, a Commissioner, etc.,
Province of Ontario, for the Government of Ontario,
Ontario Securities Commission.
Expires March 22, 2024.**



Daniel Tourangeau

¹⁶⁶ The AARDC Loans held by the MM Fund and Income Fund are ~\$129 million and ~\$155 million for total AARDC Loans held by the two funds of ~ \$284 million. The total net assets attributable to unitholders for the MM Fund and the Income Fund as at December 31, 2020 are ~\$1,525,000,000.

This is Appendix "A" referred to
in the Affidavit of Daniel Tourangeau
sworn before me, this
29th day of April, 2021

A handwritten signature in black ink, appearing to read "Michelle Spain", with a long horizontal flourish extending to the right.

A COMMISSIONER FOR TAKING AFFIDAVITS

**Michelle Spain, a Commissioner, etc.,
Province of Ontario, for the Government of Ontario,
Ontario Securities Commission.
Expires March 22, 2024.**

Appendix A to Affidavit of Daniel Tourangeau dated April 29, 2021

Information about the BFI Funds

1. The BFI Funds are generally structured as limited partnerships, other than the Bridging Indigenous Impact Fund and the Bridging Fern Alternative Credit Fund, which are both structured as trusts.
2. The general partner of all the BFI Funds other than the Income Fund¹ is Bridging Finance GP Inc. (**BFI GP**). BFI GP is wholly owned by BFI.² The general partner of the Income Fund is SB Fund GP Inc. (**SB GP**), which is wholly owned by BFI.³
3. BFI GP is an Ontario corporation incorporated on May 12, 2015. The directors of BFI GP are J Coco, N Sharpe, James Lexovsky and Sepoy Wong. N Sharpe is the president of BFI GP and J Coco is the vice-president of BFI GP.⁴
4. SB GP is an Ontario corporation incorporated on July 28, 2017. The directors of SB GP are J Coco, N Sharpe, James Lexovsky and Sepoy Wong. D Sharpe is the president and secretary of SB GP.⁵
5. BFI is the manager or advisor to all of the BFI Funds and provides investment management services for each of the BFI Funds and BFI's other investment vehicles. N Sharpe told Enforcement Staff that BFI's loan approval process for each of the BFI Funds was the same and generally consisted of the following:
 - A potential borrower that cannot obtain bank financing would be referred to BFI and introduce themselves to the "credit team" which does an initial review of the potential borrower's business
 - Then a loan would be reviewed by the investment committee, which N Sharpe sat on. This is a "high-level" review of the potential loan and is really focused on assets that will be the collateral or security for the loan and the likelihood and timeframe of the BFI Funds being repaid. To continue through the process, a potential loan must be unanimously approved by the investment committee
 - If approved by the investment committee, additional work is done and loan terms are negotiated and constructed
 - Then the potential loan would be reviewed by a BFI credit committee

¹ And Bridging Infrastructure Fund LP.

² Attached as **Exhibit 1** is an offering memorandum (**OM**) for the MM Fund dated January 1, 2021. The Summary section of the OM states that BFI GP is wholly-owned by the Manager which is identified as BFI.

³ Attached as **Exhibit 2** is an OM for the Income Fund dated January 1, 2021. Page 1 of the OM after the summary section states that SB GP is wholly-owned by the Manager which is identified in the summary section as BFI.

⁴ Attached as **Exhibit 3** is a Corporation Profile Report for BFI GP from the Ontario Ministry of Government Services produced on March 26, 2021.

⁵ Attached as **Exhibit 4** is a Corporation Profile Report for SB GP from the Ontario Ministry of Government Services produced on March 26, 2021.

- The credit committee gives a “go or no-go” decision on a potential loan; and
- If the credit committee votes to approves a loan, then the allocation committee determines which BFI Fund(s) will fund the loan.⁶

6. N Sharpe was a member of BFI's investment committee throughout her tenure at BFI. BFI's investment committee included N Sharpe and one other person.⁷

7. N Sharpe told Enforcement Staff that the members of BFI's credit committee which approves loans from the BFI funds included herself, the CEO (D Sharpe), the CIO, an EVP (J Coco), the CCO (Mushore), a portfolio manager and two senior credit people.⁸

8. N Sharpe told Enforcement Staff that the members of BFI's allocation committee which allocates approved loans to the BFI Funds for funding were herself, the CEO (D Sharpe), the CCO (Mushore), and a portfolio manager.⁹

9. Mushore told Enforcement Staff that he was a member of the credit committee. His role was to ensure each loan made by the BFI Funds met the investment objectives and restrictions for the BFI Funds, which he signified by voting in favour of BFI making the loan.¹⁰

10. D Sharpe and N Sharpe both told Enforcement Staff that no minutes were kept of the meetings of BFI's credit committee or its allocation committee. D Sharpe said that minutes were not kept for potential liability reasons.¹¹

11. Particular information about the BFI Funds is contained in the table below.

Bridging Income Fund LP (the Income Fund)¹²	General Partner	SB GP is the general partner of the Income Fund and is wholly owned by BFI
	Directors and Officers	The directors of SB GP are J Coco, N Sharpe, James Lexovsky and Sepoy Wong; D Sharpe is the president and secretary of SB GP
	Net Assets December 31, 2020¹³	\$1,018,993,258

⁶ Attached as **Exhibit 5** are relevant excerpts from the N Sharpe Transcript.

⁷ Attached as **Exhibit 6** are relevant excerpts from the N Sharpe Transcript.

⁸ Attached as **Exhibit 7** are relevant excerpts from the N Sharpe Transcript.

⁹ Attached as **Exhibit 8** are relevant excerpts from the N Sharpe Transcript.

¹⁰ Attached as **Exhibit 9** are relevant excerpts from the Mushore Transcript.

¹¹ Attached as **Exhibit 10** are relevant excerpts from the D Sharpe Transcript, and attached as **Exhibit 11** are relevant excerpts from the N Sharpe Transcript.

¹² The OM for the Income Fund dated January 1, 2021 is attached as **Exhibit 2**.

Bridging Income RSP Fund is an investment vehicle associated with the Income Fund that is an open-ended unincorporated investment trust established under the laws of Ontario pursuant to an amended and restated trust agreement as of January 1, 2021. The trustee of Bridging Income RSP Fund is Odyssey Trust Company. BFI is the manager of Bridging Income RSP Fund whose investment mandate is to indirectly invest in units of the Income Fund. Attached as **Exhibit 12** is the OM for Bridging Income RSP Fund dated January 1, 2021.

¹³ Attached as **Exhibit 13** are the Income Fund's audited financial statements for the year ended December 31, 2020 (the **2020 Income Fund Financial Statements**).

	Inception Date	The Income Fund is a limited partnership formed in the province of Ontario governed by an amended and restated limited partnership agreement dated January 1, 2021
	Investment Strategy	The investment strategy for the Income Fund is to invest in an actively managed portfolio comprised of loans primarily to Canadian and US mid-market companies that typically borrow against the value of their inventory and account receivables or other identifiable assets
Bridging Mid-Market Debt Fund LP (the MM Fund)¹⁴	General Partner	BFI GP is the general partner of the MM Fund and is wholly owned by BFI
	Directors and Officers	The directors of BFI GP are J Coco, N Sharpe, James Lexovsky and Sepoy Wong; N Sharpe is the president of BFI GP and J Coco is the vice-president of BFI GP
	Net Assets December 31, 2020¹⁵	\$505,633,598
	Inception Date	The MM Fund is a limited partnership formed in the province of Ontario governed by an amended and restated limited partnership agreement dated November 1, 2017
	Investment Strategy	The investment strategy for the Income Fund is to invest in an actively managed portfolio comprised of loans primarily to Canadian and US mid-market companies that typically borrow against the value of their inventory and account receivables or other identifiable assets
Bridging Private Debt Institutional LP¹⁶	General Partner	BFI GP is the general partner of Bridging Private Debt Institutional LP
	Directors and Officers	The directors of BFI GP are J Coco, N Sharpe, James Lexovsky and Sepoy Wong; N Sharpe is the president of BFI GP and J Coco is the vice-president of BFI GP
	Net Assets December 31, 2020¹⁷	\$71,055,010

¹⁴ The OM for the MM Fund dated January 1, 2021 is attached as **Exhibit 1**.

Bridging Mid-Market Debt RSP Fund in an investment vehicle associated with the MM Fund that is an open-ended unincorporated investment trust established under the laws of Ontario pursuant to an amended and restated trust agreement as of January 1, 2021. The trustee of Bridging Mid-Market Debt RSP Fund is Odyssey Trust Company. Bridging is the manager of Bridging Mid-Market Debt RSP Fund whose investment mandate is to invest in units of the MM Fund. Attached as **Exhibit 14** is a copy of the OM for Bridging Mid-Market Debt RSP Fund dated January 1, 2021.

¹⁵ Attached as **Exhibit 15** are the MM Fund's audited financial statements for the year ended December 31, 2020 (the **2020 MM Fund Financial Statements**).

¹⁶ Attached as **Exhibit 16** is the OM for Bridging Private Debt Institutional LP dated November 1, 2018. Bridging Private Debt Institutional RSP Fund is an investment vehicle associated with Bridging Private Debt Institutional LP that is an open-ended investment trust established under the laws of Ontario by a Declaration of Trust dated December 1, 2017. The trustee of Private Debt Institutional RSP Fund is Odyssey Trust Company. BFI is the manager of Bridging Private Debt Institutional RSP Fund, whose investment mandate is to invest in units of Bridging Private Debt Institutional LP. Attached as **Exhibit 17** are audited financial statements for Bridging Private Debt Institutional RSP for the year ended December 31, 2019.

¹⁷ Attached as **Exhibit 18** are Bridging Private Debt Institutional LP audited financial statements for the year ended December 31, 2020.

	Inception Date	Bridging Private Debt Institutional LP is a limited partnership formed in the province of Ontario governed by limited partnership agreement dated June 30, 2015 as amended July 15, 2017
	Investment Strategy	The investment strategy for Bridging Private Debt Institutional LP is to invest in an actively managed portfolio comprised of (i) loans primarily to Canadian and U.S. companies that are supported by good quality collateral or free cash flow or well defined exits, (ii) factored accounts receivable and inventory financing primarily to Canadian and U.S. based companies and (iii) Canadian federal and provincial tax credit financing
Bridging SMA 1 LP¹⁸	General Partner	BFI GP is the general partner of Bridging SMA 1 LP
	Directors and Officers	The directors of BFI GP are J Coco, N Sharpe, James Lexovsky and Sepoy Wong; N Sharpe is the president of BFI GP and J Coco is the vice-president of BFI GP
	Net Assets June 30, 2019	\$110,434,890
	Inception Date	Bridging SMA 1 LP is a limited partnership formed and organized under the laws of the province of Ontario pursuant to a limited partnership agreement dated October 31, 2016
	Investment Strategy	The investment strategy of the Partnership will be to invest in an actively managed portfolio composed of (i) loans to Canadian and U.S. based companies that are supported by good quality collateral or free cash flow or well defined exits, (ii) factored accounts receivable and inventory financing primarily to Canadian and U.S. based companies, and (iii) Canadian federal and provincial tax credit financing
Bridging Infrastructure Fund LP¹⁹	General Partner	Bridging MJ GP Inc. is the general partner of Bridging Infrastructure Fund LP and is a subsidiary of BFI
	Directors and Officers	The directors of Bridging MJ GP Inc are J Coco, N Sharpe, Gautam and John Travaglini; J Coco and N Sharpe are also both listed as vice-president of Bridging MJ GP Inc. ²⁰
	Net Assets December 31, 2020	nil ²¹
	Inception Date	Bridging Infrastructure Fund LP is a limited partnership formed in the province of Ontario governed by a limited partnership agreement dated as of January 9, 2018 as amended on March 1, 2018
	Investment Strategy	The portfolio shall be comprised of Private Debt Loans to companies within different industries, however the Portfolio

¹⁸ Attached as **Exhibit 19** are Bridging SMA 1 LP audited financial statements for the year ended June 30, 2019.

¹⁹ Attached as **Exhibit 20** is the OM for Bridging Infrastructure Fund LP dated March 1, 2018.

²⁰ Attached as **Exhibit 21** is a Corporate Profile Report for Bridging MJ GP Inc. as of July 9, 2020.

²¹ In a letter to Enforcement Staff dated August 28, 2020 (the **August 28 Letter**) attached as **Exhibit 22**, BFI advised that it commenced an orderly redemption of all investors in Bridging Infrastructure Fund LP and dissolution of that Fund. See page 7 of the August 28 Letter.

		will have an emphasis on Private Debt Loans made to Canadian companies having activities relating to the production and distribution of legal cannabis. As of the date of this Offering Memorandum, the Partnership does not intend to make private debt loans to U.S. companies having activities relating to the production and distribution of legal cannabis
Bridging Real Estate Lending Fund LP²²	General Partner	BFI GP is the general partner of Bridging SMA 1 LP
	Directors and Officers	The directors of BFI GP are J Coco, N Sharpe, James Lexovsky and Sepoy Wong; N Sharpe is the president of BFI GP and J Coco is the vice-president of BFI GP
	Net Assets December 31, 2020²³	Nil
	Inception Date	Bridging Real Estate Lending Fund LP is a limited partnership formed in the province of Ontario governed by a limited partnership agreement dated as of dated as of March 1, 2018
	Investment Strategy	The investment strategy of the Bridging Real Estate Lending Fund LP is to invest in an actively managed portfolio comprised of first and second ranked mortgage loans secured by real property in Canada that are used for commercial purposes, including but not limited to, retail, office, multifamily residential and industrial properties, developable land and secured construction and land financing
Bridging Indigenous Impact Fund²⁴	General Partner	Odyssey Trust Company is the trustee of Bridging Indigenous Impact Fund
	Directors and Officers	N/A
	Net Assets December 31, 2020²⁵	\$60,671,243
	Inception Date	Bridging Indigenous Impact Fund is an open-ended unincorporated investment trust established under the laws of Ontario pursuant to a supplement dated April 2, 2019 to the trust agreement dated as of January 1, 2018 as amended and restated on November 1, 2018
	Investment Strategy	The investment strategy of Bridging Indigenous Impact Fund is to invest in an actively managed portfolio comprised of loans for projects which are linked, either through ownership or geographic proximity, to an Indigenous group or community that typically borrow

²² Attached as **Exhibit 23** is an OM for Bridging Real Estate Lending Fund LP dated March 1, 2018.

²³ BFI's counsel advised Staff on August 27, 2020 that Bridging Real Estate Lending Fund LP never had any outside investors and therefore never had audited financial statements. Attached as **Exhibit 24** is a copy of the BFI's counsel's email to Staff dated August 27, 2020.

²⁴ Attached as **Exhibit 25** is an OM for for Bridging Indigenous Impact Fund dated April 2, 2019.

²⁵ Attached as **Exhibit 26** are Bridging Indigenous Impact Fund audited financial statements for the year ended December 31, 2020.

		against the value of their inventory and account receivables or other identifiable assets
Bridging Fern Alternative Credit Fund²⁶	General Partner	Odyssey Trust Company is the trustee of Bridging Indigenous Impact Fund
	Directors and Officers	N/A
	Net Assets December 31, 2020²⁷	\$39,294,384
	Inception Date	Bridging Fern Alternative Credit Fund is an open-ended unincorporated investment trust established under the laws of Ontario pursuant to a supplement dated June 1, 2019 to a trust agreement dated as of January 1, 2018 as amended and restated on November 1, 2018
	Investment Strategy	Substantially all of the assets of Bridging Fern Alternative Credit Fund will be invested in a portfolio of securities of other investment funds and alternative credit vehicles (Underlying Funds). Approximately 50% of the assets of Bridging Fern Alternative Credit Fund are expected to be invested in securities of Underlying Funds employing liquid credit strategies and the remainder of the assets of Bridging Fern Alternative Credit Fund will be invested in private debt funds, both of which could include other BFI Funds.

12. In addition to the BFI Funds, BFI is the manager of Bridging Feeder Fund I, LTD,²⁸ Bridging Feeder Fund I LLC,²⁹ and Bridging Private Debt Lending Master Fund I, LP,³⁰ which are all entities formed or organized under the laws of the Cayman Islands.

13. In its audited financial statements for the year ending December 31, 2020,³¹ BFI lists another investment vehicle, Bridging SMA 2 LP. Enforcement Staff have not been provided with any information relating to Bridging SMA 2 LP. I believe this investment vehicle originated during 2020.

²⁶ Attached as **Exhibit 27** is the OM for Bridging Fern Alternative Credit Fund dated June 1, 2019.

²⁷ Attached as **Exhibit 28** are Bridging Fern Alternative Credit Fund audited financial statements for the year ended December 31, 2020.

²⁸ Attached as **Exhibit 29** are audited financial statements for Bridging Feeder Fund I, LTD for the period from October 1, 2018 to December 31, 2019.

²⁹ Attached as **Exhibit 30** are audited financial statements for Bridging Feeder Fund I LLC for the period from January 2, 2019 to December 31, 2019.

³⁰ Attached as **Exhibit 31** are audited financial statements for Bridging Private Debt Lending Master Fund I, LP for the period from October 1, 2018 to December 31, 2019.

³¹ Attached as **Exhibit 32** are BFI's audited financial statements for the year ended December 31, 2020 (the **2020 BFI Financial Statements**). See note 1 on page 8.

This is Appendix "B" referred to
in the Affidavit of Daniel Tourangeau
sworn before me, this
29th day of April, 2021

A handwritten signature in black ink, appearing to read "Michelle Spain", with a long horizontal flourish extending to the right.

A COMMISSIONER FOR TAKING AFFIDAVITS

**Michelle Spain, a Commissioner, etc.,
Province of Ontario, for the Government of Ontario,
Ontario Securities Commission.
Expires March 22, 2024.**

Appendix B to Affidavit of Daniel Tourangeau dated April 29, 2020

Information about BFI's Shareholders, Officers and Directors

The BFI Shareholders

1. BFI's current shareholders are J Coco, R Coco and N Sharpe. J Coco and R Coco own 58.3% of BFI's outstanding shares through 2693600 Ontario Inc. and N Sharpe owns 41.7% of BFI's outstanding shares through 2693602 Ontario Inc.¹

2. Ng owned 50% of BFI's outstanding shares from July 8, 2019 to March 3, 2020. The relationship between Ng and BFI and the BFI Shareholders' is discussed in the body of the affidavit.

BFI's Directors & Officers

3. D Sharpe is BFI's CEO and UDP. D Sharpe became CEO of BFI in 2016 and was BFI's president and chief operating officer (**CCO**) prior to assuming that role.² D Sharpe is a lawyer and has been a member of the Law Society of Ontario since 1997. He has an LLB from Queen's University, an LLM in Securities Law from Osgoode Hall Law School and a Masters of Business Administration from the Richard Ivey School of Business, University of Western Ontario.³ As UDP of BFI, D Sharpe must supervise the activities of BFI that are directed towards ensuring compliance with securities legislation by BFI and each individual acting on BFI's behalf.

4. N Sharpe is currently BFI's executive chairman and Chief Investment Officer (**CIO**).⁴ She was the firm's CEO prior to D Sharpe assuming that role in 2016. N Sharpe was previously the Chief Credit Officer for Sun Life Canada and spent over 10 years at BMO Financial Group. She holds a PhD and an MBA from the University of Toronto.⁵

5. J Coco is an executive vice-president and director of BFI. She is also the CEO of the Coco Group, which includes Coco Paving Inc. She has an MBA (1985) and an Honorary Doctorate of Law (2012) from the University of Windsor. J Coco is a member of BFI's credit committee, however other than serving on the credit committee she has had no day-to-day role at BFI since approximately 2014.⁶

6. R Coco was a director of BFI from when BFI was founded until the Ng Acquisition was completed on July 8, 2019. R Coco rejoined BFI's board of directors on or around December 27,

¹ Attached as **Exhibit 33** is a BFI ownership chart as of March 3, 2020 that BFI filed with the Commission.

² Attached as **Exhibit 34** are relevant excerpts from the D Sharpe Transcript.

³ Attached as **Exhibit 35** is a CV that D Sharpe provided to Enforcement Staff.

⁴ Attached as **Exhibit 36** is a Form 33109-F5 – Change of Registration Information, effective August 17, 2020.

⁵ Attached as **Exhibit 37** is a background questionnaire and CV that N Sharpe provided to Enforcement Staff.

⁶ Attached as **Exhibit 38** are relevant excerpts from the D Sharpe Transcript.

2020.⁷ D Sharpe told Enforcement Staff that R Coco has never been a member of BFI's credit committee and has no day-to-day role at BFI.⁸

7. O'Reilly joined the BFI board of directors on or around December 14, 2020⁹ and is BFI's only independent director. O'Reilly is a former partner of Torys LLP and Cavalluzzo Hayes. He was the president and CEO of OPTrust from January 2015 to March 2019 and obtained his LLB from the University of Calgary in 1990.¹⁰

8. Mushore is the CCO of BFI and became BFI's CCO effective August 17, 2020.¹¹ Prior to joining BFI, Mushore was a Senior Compliance Officer at CI Financial and later became a Senior Manager, Compliance at ROI Capital. Mushore holds a Masters in Business Law from the University of Toronto.

9. Marr was a senior managing director and portfolio manager at BFI prior to being promoted to president in August 2020.¹² He has been registered with the Commission as an advising representative and dealing representative since 2013 and 2017, respectively. Prior to joining BFI in 2012 he was a manager at KPMG. Marr obtained his Chartered Accountant (CPA) designation in June 2009 and his Chartered Financial Analyst (CFA) designation in January 2011.¹³

10. Michael Garofalo joined BFI as chief financial officer (**CFO**) on August 17, 2020.¹⁴ According to a press release from BFI announcing his hiring, Garofalo is a Chartered Professional Accountant, a Certified Public Accountant and a CFA charterholder. He has a Bachelor of Administrative Studies from York University and previously worked for KPMG. Garofalo was previously the President of the CFA Society – Cayman Islands.¹⁵

⁷ Attached as **Exhibit 39** is Form 33109-F5 – Change of Registration Schedule B – as of December 27, 2020.

⁸ Attached as **Exhibit 38** are relevant excerpts from the D Sharpe Transcript.

⁹ Attached as **Exhibit 40** is Form 33109-F5 – Change of Registration Schedule B – as of December 14, 2020.

¹⁰ All background information on Hugh O'Reilly is from his LinkedIn public profile account.

¹¹ Attached as **Exhibit 41** is Form 33109-F5 – Change of Registration Information.

¹² See **Exhibit 41**.

¹³ Attached as **Exhibit 42** is a CV that Marr provided to Enforcement Staff.

¹⁴ See **Exhibit 41**.

¹⁵ BFI Press Release dated August 18, 2020: <https://www.bridgingfinance.ca/bridging-finance-inc-announces-the-hire-of-michael-garofalo-chief-financial-officer/>

This is Appendix "C" referred to
in the Affidavit of Daniel Tourangeau
sworn before me, this
29th day of April, 2021

A handwritten signature in black ink, appearing to read "Michelle Spain", written over a horizontal line.

A COMMISSIONER FOR TAKING AFFIDAVITS

**Michelle Spain, a Commissioner, etc.,
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Ontario Securities Commission.
Expires March 22, 2024.**

Appendix C to Affidavit of Daniel Tourangeau dated April 29, 2021

**Chronology of Requirements/Requests for BFI to Produce
Loans and Related Documentation**

1. On February 12, 2020 Enforcement Staff sent a Direction pursuant to s. 19(3) of the Act (the **First Direction**) to BFI requiring it to produce certain documents and information, including item 3(c) which required BFI produce a list of loan investments held by each fund and item 3(d) which required BFI to produce loan documentation for each loan identified in item (a).¹
2. In preparing this Affidavit I noticed a typographical error in item 3(d) of the First Direction which erroneously refers to item (a). I believe that item 3(d) should have referred to item (c).
3. In response to the First Direction BFI produced a loan schedule displaying 74 loans on an Excel Spreadsheet (the **First BFI Loan Schedule**) and provided supporting documents for the loans listed in the First BFI Loan Schedule.²
4. On April 30, 2020 Enforcement Staff sent a second Direction pursuant to s. 19(3) of the Act (the **Second Direction**) to BFI requiring it to produce, among other things, copies of loan agreements and related documentation for all loans made by the Income Fund and the MM Fund during the period from January 1, 2017 to April 30, 2020.³
5. In response to the Second Direction, BFI produced a new loan schedule displaying 69 loans in a .pdf document (the **Second BFI Loan Schedule**) along with supporting documentation.⁴
6. Enforcement Staff asked BFI a number of questions about the Second BFI Loan Schedule, including why the Second BFI Loan Schedule listed fewer loans than the First BFI Loan Schedule. In its response, BFI told Enforcement Staff that it had mistakenly omitted two loans on the Second BFI Loan Schedule⁵ and provided Enforcement Staff with a new a loan schedule displaying a total of 71 loans in a .pdf document (the **Third BFI Loan Schedule**).⁶
7. On June 3, 2020, Enforcement Staff asked BFI why a loan listed in the First BFI Loan Schedule did not appear in the Third BFI Loan Schedule, asked BFI to update the Third BFI Loan

¹ Attached as **Exhibit 65** is a copy of the First Direction

² Attached as **Exhibit 66** are a letter from BFI to Enforcement Staff dated February 26, 2020 and a copy of the First BFI Loan Schedule

³ Attached as **Exhibit 67** is a copy of the Second Direction

⁴ Attached as **Exhibit 68** are a letter from BFI to Enforcement Staff dated May 14, 2020 and a copy of the Second BFI Loan Schedule

⁵ Attached as **Exhibit 69** is a letter from BFI to Enforcement Staff dated May 22, 2020. BFI refers to the loans it "inadvertently excluded" from the Second BFI Loan Schedule in the second paragraph at page 3 of the letter

⁶ Attached as **Exhibit 70** is a copy of the Third BFI Loan Schedule

Schedule so that it indicated which BFI Fund issued each loan and asked BFI to confirm that all the loans would be included in the updated schedule that BFI was to produce.⁷

8. BFI responded to Enforcement Staff on June 17, 2020 and produced a new loan schedule displaying 72 loans in a six-page .pdf document (the **Fourth BFI Loan Schedule**).⁸ In its response, BFI stated “BFI advises that to the best of its knowledge, no other loans should be included in the Loan Schedule...”.⁹ I believe that the Loan Schedule referred to is the Fourth BFI Loan Schedule.

9. Prior to conducting compelled examinations of BFI witnesses, Enforcement Staff wrote to BFI’s counsel to request that BFI produce a schedule listing the loans made by the BFI Funds to companies connected to Gautam and Ng and BFI produced a summary schedule listing the loans to companies connected to Gautam and Ng (the **Gautam & Ng Loan Schedule**).¹⁰

⁷ Attached as **Exhibit 71** is a letter from Enforcement Staff to BFI dated June 3, 2020

⁸ Attached as **Exhibit 72** is a copy of the Fourth BFI Loan Schedule

⁹ Attached as **Exhibit 73** is the letter from BFI to Enforcement Staff dated June 17, 2020. BFI’s statement that no other loans should be included in the Fourth BFI Loan Schedule is in the second last bullet on the first page of the letter

¹⁰ Attached as **Exhibit 49** is a copy of the Gautam & Ng Loan Schedule

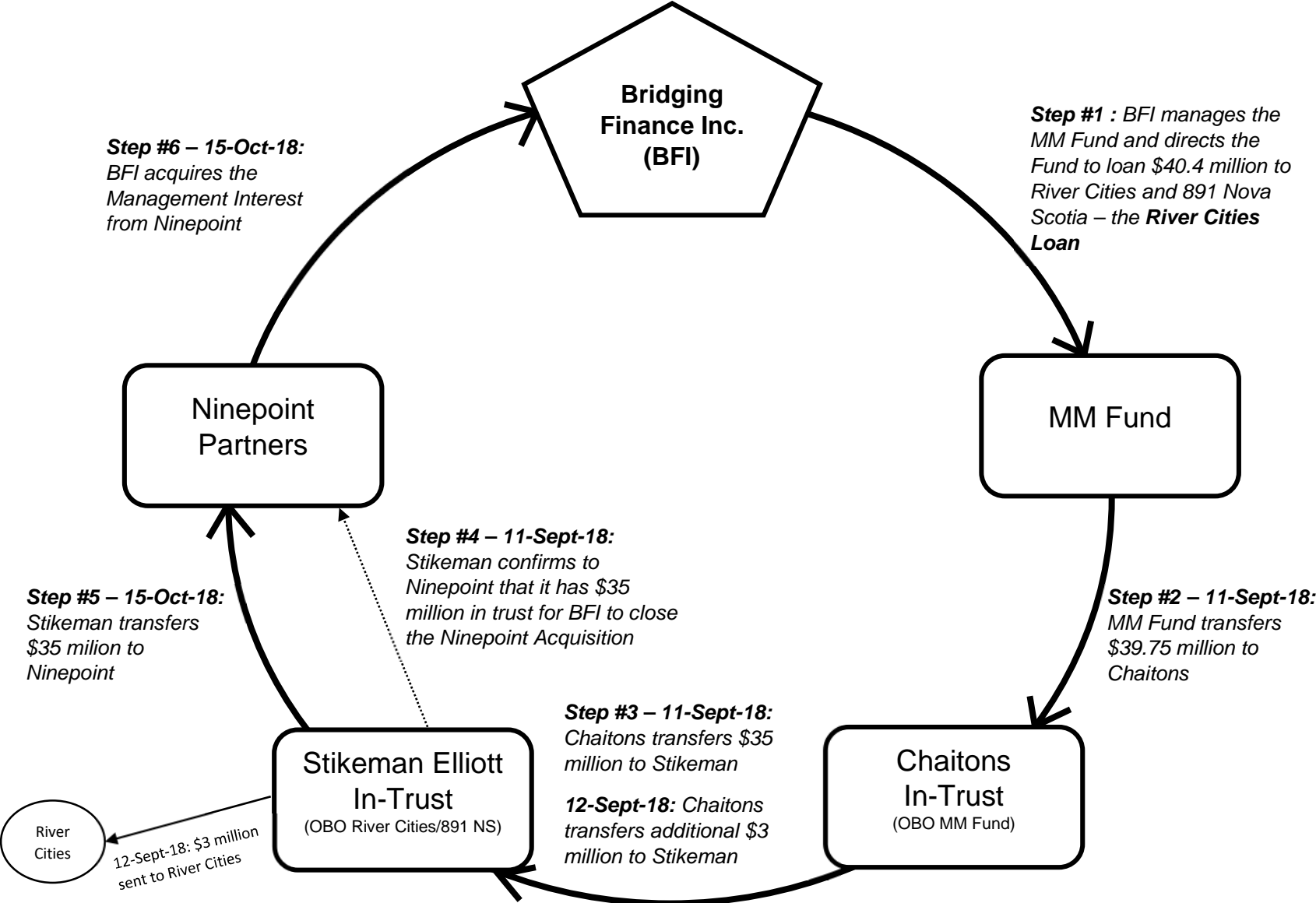
This is Appendix "D" referred to
in the Affidavit of Daniel Tourangeau
sworn before me, this
29th day of April, 2021

A handwritten signature in black ink, appearing to read "Michelle Spain", with a long horizontal flourish extending to the right.

A COMMISSIONER FOR TAKING AFFIDAVITS

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Province of Ontario, for the Government of Ontario,
Ontario Securities Commission.
Expires March 22, 2024.**

**Appendix D to Affidavit of Daniel Tourangeau dated April 29, 2021
Flow of Funds for the Ninepoint Transaction**



This is Appendix "E" referred to
in the Affidavit of Daniel Tourangeau
sworn before me, this
29th day of April, 2021

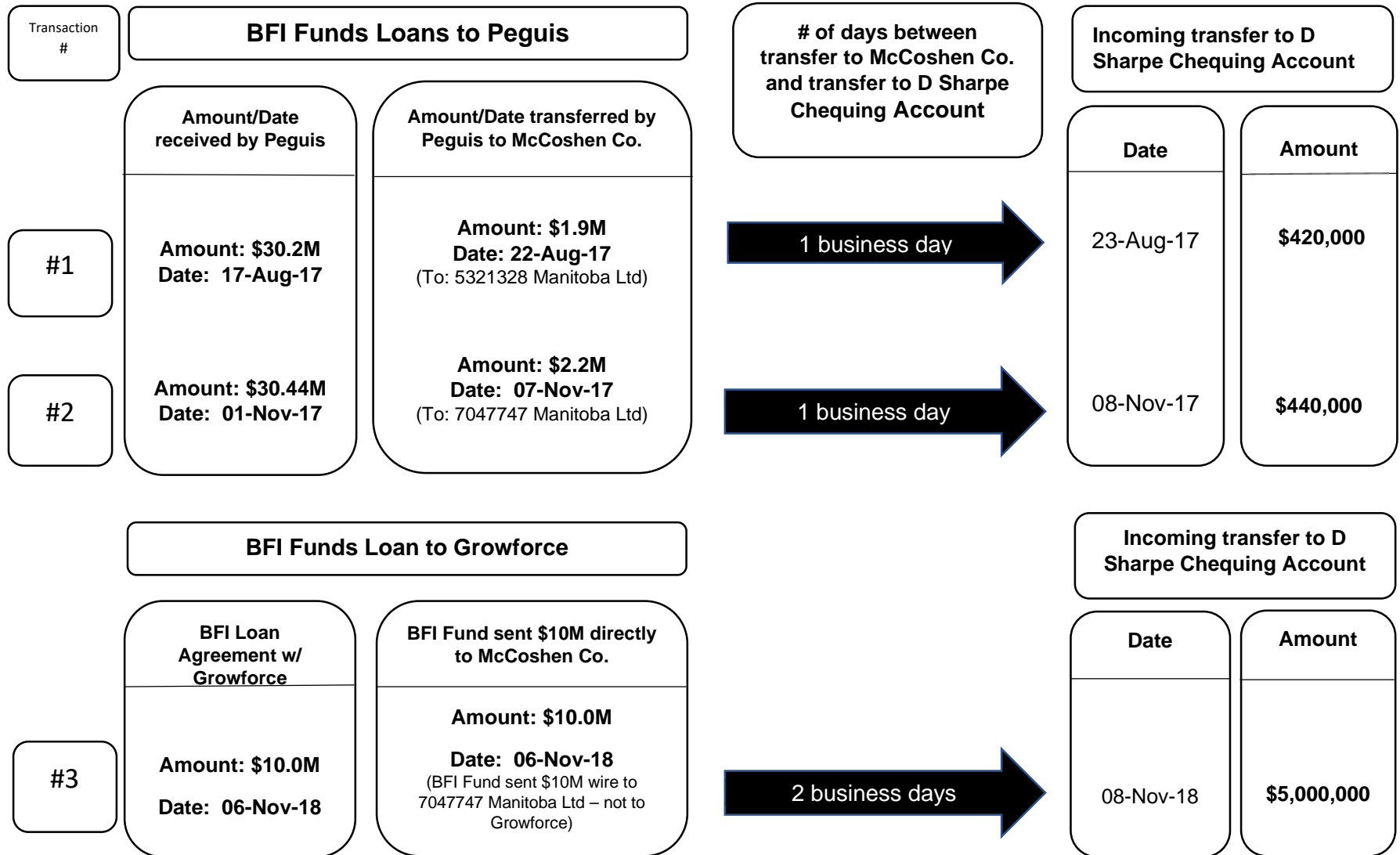
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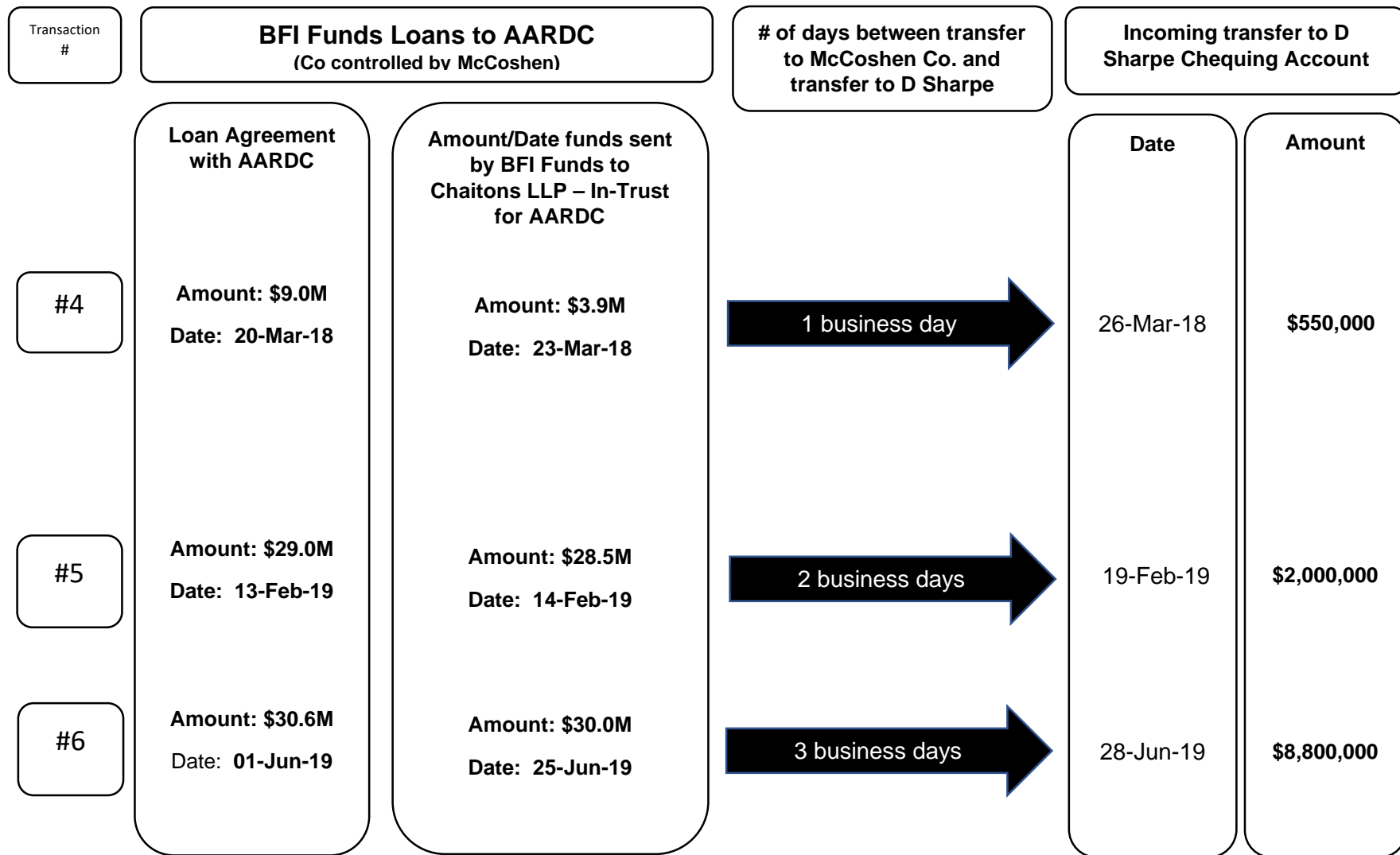
A COMMISSIONER FOR TAKING AFFIDAVITS

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Ontario Securities Commission.
Expires March 22, 2024.**

Appendix E to Affidavit of Daniel Tourangeau dated April 29, 2021

**Links Between Loans Connected to McCoshen and Undisclosed Payments
from McCoshen to the D Sharpe Chequing Account**





This is Appendix "F" referred to
in the Affidavit of Daniel Tourangeau
sworn before me, this
29th day of April, 2021

A handwritten signature in black ink, appearing to read "Michelle Spain", with a long horizontal flourish extending to the right.

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Expires March 22, 2024.**

**Appendix F to Affidavit of Daniel Tourangeau dated April 29, 2021
Flow of Funds – Acquisition by Ng of 50% of BFI on July 5, 2019**

