

Court File No. CV-21-00661458-00CL



**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE

CHIEF JUSTICE MORAWETZ

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THURSDAY, THE 6th

DAY OF OCTOBER, 2022

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, BRIDGING FERN ALTERNATIVE
CREDIT FUND, BRIDGING SMA 2 LP, BRIDGING SMA 2 GP INC., and
BRIDGING PRIVATE DEBT INSTITUTIONAL RSP FUND.**

Respondents

**IN THE MATTER OF AN APPLICATION UNDER SECTION 129 OF THE SECURITIES
ACT (ONTARIO), R.S.O. 1990, C. S. 5, AS AMENDED**

**AMENDED AND RESTATED REPRESENTATIVE
COUNSEL APPOINTMENT ORDER
(Re: Unitholder Priority Motion)**

THIS MOTION made by PricewaterhouseCoopers Inc. ("PwC"), in its capacity as receiver and manager, without security, of all of the assets, undertakings, and properties (collectively, the "Property") of each of the Respondents (in such capacity, the "Receiver") for an order appointing representative counsel for certain groups of Unitholders (as defined below) for the Unitholder Priority Motion (as defined below), was heard this day in writing.

ON READING the Eleventh Report of the Receiver dated April 12, 2022 (the "Eleventh Report"), the Memorandum of The Honourable Todd L. Archibald dated May 4, 2022, and the Case Conference Memorandum of the Receiver dated October 5, 2022:

DEFINITIONS

1. All capitalized terms used herein and not otherwise defined in this Order shall have the meaning ascribed to them in the Eleventh Report. The balance of the capitalized terms in this Order shall have the following meanings ascribed thereto:

- (a) **“Appointment Date”** means May 18, 2022;
- (b) **“Bridging Funds”** means Bridging Income Fund LP, Bridging Mid-Market Debt Fund LP, 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 Indigenous Impact Fund, Bridging Fern Alternative Credit Fund, Bridging SMA 2 LP, and Bridging Private Debt Institutional RSP Fund;
- (c) **“Court”** means the Ontario Superior Court of Justice (Commercial List);
- (d) **“General Unitholder Representative Counsel”** means Bennett Jones LLP in its capacity as Court-appointed representative counsel of Unitholders pursuant to the Amended and Restated Representative Counsel Appointment Order of The Honourable Chief Justice Morawetz dated December 22, 2021;
- (e) **“Misrepresentation Claimants”** means, notwithstanding the Eleventh Report, those Unitholders located outside of Quebec with Potential Statutory Rescission Claims;
- (f) **“Potential Redemption Claims”** means the claim of a Unitholder in connection with a validly exercised request to redeem units in one or more of the Bridging Funds prior to the Appointment Date, which was not completed;
- (g) **“Potential Statutory Rescission Claims”** means the claim of a Unitholder against the relevant Bridging Fund pursuant to section 130.1(1)2 of the Securities Act and the corresponding securities legislation in other provinces and territories for amounts contributed by way of subscription into the Bridging Funds within the 180 day period (or 120 days, as applicable) prior to the Appointment Date, based on misrepresentations made in the offering memoranda of the applicable Bridging Fund, without regard to

whether a Unitholder relied on such misrepresentation, and includes the corresponding claims of Unitholders in British Columbia and Quebec, or Unitholders in Alberta who purchased units under an “accredited investor” exemption, who were granted contractual rights of rescission by the Bridging Funds that are the same as, or similar to, those provided for under section 130.1(1)2 of the Securities Act;

- (h) **“Quebec Claimants”** means those Unitholders located within Quebec with Potential Statutory Rescission Claims and/or Potential Redemption Claims;
- (i) **“Receivership Proceeding”** means this proceeding commenced by an application by the Ontario Securities Commission under section 129 of the Securities Act, and pursuant to Orders of the Court dated April 30, 2021, May 3, 2021 and May 14, 2021, pursuant to which PwC was appointed as the Receiver;
- (j) **“Redemption Claimants”** means those Unitholders located outside of Quebec with Potential Redemption Claims;
- (k) **“Securities Act”** means the *Securities Act* (Ontario) R.S.O. 1990, c. S.5, as amended;
- (l) **“Unitholder Priority Motion”** means the motion to be brought by the Receiver before the Court to determine whether the Potential Statutory Rescission Claims and/or the Potential Redemption Claims have any priority over the claims of Unitholders who do not have such claims. For greater certainty, the purpose of the Unitholder Priority Motion is not to determine whether the Potential Statutory Rescission Claims and/or the Potential Redemption Claims are entitled to any priority *inter se*; and
- (m) **“Unitholders”** means all persons (including their respective successors, heirs, assigns, litigation guardians and designated representatives under applicable law), who directly or indirectly hold a legal or beneficial interest in one or more units in one or more of the Bridging Funds, excluding individual investment advisors, any employee, director or officer of Bridging Finance Inc. and its subsidiaries or affiliates, and any employees, directors or officers of any corporation, partnership or other entity that marketed and/or sold units in any Bridging Fund.

REPRESENTATIVE COUNSEL

2. **THIS COURT ORDERS** that: (i) Miller Thomson LLP be and is hereby appointed as representative counsel for the Misrepresentation Claimants (in such capacity, “**Misrepresentation Representative Counsel**”); (ii) Aird & Berlis LLP be and is hereby appointed as representative counsel for the Redemption Claimants (in such capacity, “**Redemption Representative Counsel**”); and (iii) Woods LLP be and is hereby appointed as representative counsel for the Quebec Claimants (in such capacity, “**Quebec Representative Counsel**”), in each case, solely as it relates to the Unitholder Priority Motion. The mandate of Misrepresentation Representative Counsel, Redemption Representative Counsel and Quebec Representative Counsel shall be to independently represent the interests of, and communicate with, the Misrepresentation Claimants, the Redemption Claimants, and the Quebec Claimants, respectively, solely in connection with the Unitholder Priority Motion and for no other purpose (the “**Mandate**”).

3. **THIS COURT ORDERS** that, in fulfilling its applicable Mandate, Misrepresentation Representative Counsel, Redemption Representative Counsel and Quebec Representative Counsel, as applicable, may communicate with or provide information to Misrepresentation Claimants, Redemption Claimants or Quebec Claimants, as applicable, by any means or medium determined appropriate by such counsel, including by email (if available) and the establishment of a claimant-specific website.

4. **THIS COURT ORDERS** that:

- (a) the Mandate of Misrepresentation Representative Counsel shall terminate upon a final decision being issued by the Court (or any appellate court, as applicable) regarding the issues to be determined on the Unitholder Priority Motion that are relevant to the Misrepresentation Claimants;
- (b) the Mandate of Redemption Representative Counsel shall terminate upon a final decision being issued by the Court (or any appellate court, as applicable) regarding the issues to be determined on the Unitholder Priority Motion that are relevant to the Redemption Claimants; and
- (c) the Mandate of Quebec Representative Counsel shall terminate upon a final decision being issued by the Court (or any appellate court, as applicable) regarding the issues to

be determined on the Unitholder Priority Motion that are relevant to the Quebec Claimants.

5. **THIS COURT ORDERS** that the Receiver shall provide (collectively, the “**Information**”):

- (a) Misrepresentation Representative Counsel with the names, last known addresses, and last known telephone numbers and email addresses (if any) of the Misrepresentation Claimants, together with such other documents and data as Misrepresentation Representative Counsel considers necessary or desirable in order to carry out its Mandate;
- (b) Redemption Representative Counsel with the names, last known addresses, and last known telephone numbers and email addresses (if any) of the Redemption Claimants, together with such other documents and data as Redemption Representative Counsel considers necessary or desirable in order to carry out its Mandate; and
- (c) Quebec Representative Counsel with the names, last known addresses, and last known telephone numbers and email addresses (if any) of the Quebec Claimants, together with such other documents and data as Quebec Representative Counsel considers necessary or desirable in order to carry out its Mandate,

in each case, to the extent such Information is available to the Receiver, as soon as possible after the granting of this Order for the purposes of enabling Misrepresentation Representative Counsel, Redemption Representative Counsel and Quebec Representative Counsel to carry out the Mandate and that, in doing so, the Receiver is not required to obtain consent from any Unitholders authorizing such disclosure. In accordance with section 7(3) of the *Personal Information Protection and Electronic Documents Act*, S.C. 2000, c. 5 (“**Personal Information Protection Act**”), this Order shall be sufficient to authorize the disclosure of the Information, without the knowledge or consent of any Unitholders.

6. **THIS COURT ORDERS** that, to the extent reasonably practical and only if such Information is not available to or in the possession of the Receiver, General Unitholder Representative Counsel is authorized to assist Misrepresentation Representative Counsel, Redemption Representative Counsel and Quebec Representative Counsel in communicating with their respective constituents by providing to Misrepresentation Representative Counsel, Redemption Representative Counsel and Quebec Representative Counsel, as applicable, such email addresses or contact information for

Misrepresentation Claimants, Redemption Claimants or Quebec Claimants, as applicable, that is in General Unitholder Representative Counsel's possession or control (if any). General Unitholder Representative Counsel is not required to obtain consent from any Unitholders authorizing the disclosure of any Information contemplated by this paragraph 6 and in accordance with section 7(3) of the Personal Information Protection Act, this Order shall be sufficient to authorize the disclosure of any Information contemplated by this paragraph 6 by General Unitholder Representative Counsel, without the knowledge or consent of any Unitholders.

7. **THIS COURT ORDERS** that pursuant to section 7(3)(c) of the Personal Information Protection Act, the Receiver and General Unitholder Representative Counsel are hereby authorized to disclose personal information of identifiable individuals ("**Personal Information**") to each of Misrepresentation Representative Counsel, Redemption Representative Counsel and Quebec Representative Counsel (each, a "**Recipient**"). Each Recipient to whom Personal Information is disclosed shall maintain and protect the privacy of such Personal Information and limit the use of such Personal Information to performance of its Mandate and, upon termination of its Mandate, such Recipient shall return all such Personal Information to the Receiver or General Unitholder Representative Counsel, as applicable, or alternatively, destroy such Personal Information and provide confirmation of its destruction if so requested by the Receiver or General Unitholder Representative Counsel, as applicable.

8. **THIS COURT ORDERS** all reasonable professional fees and disbursements that may be incurred on or after the Appointment Date by Misrepresentation Representative Counsel, Redemption Representative Counsel and Quebec Representative Counsel in connection with the Unitholder Priority Motion before this Court shall be paid by the Receiver forthwith upon the rendering of accounts to the Receiver and such fees and disbursements shall be secured by the Receiver's Charge (as such term is defined in the Order of this Court in the Receivership Proceeding dated April 30, 2021). In the event of any disagreement regarding such fees and disbursements, such disagreement may be remitted to this Court for determination.

9. **THIS COURT ORDERS** that each of Misrepresentation Representative Counsel, Redemption Representative Counsel and Quebec Representative Counsel be and is hereby authorized to take all steps and to do all acts necessary or desirable to carry out the terms of this Order, including dealing with any court, regulatory body and other government ministry, department or agency, and to take all such steps as are necessary or incidental thereto.

10. **THIS COURT ORDERS** that neither the appointment of Misrepresentation Representative Counsel, Redemption Representative Counsel or Quebec Representative Counsel nor any actions or steps taken by the foregoing shall be deemed to constitute Misrepresentation Representative Counsel, Redemption Representative Counsel, Quebec Representative Counsel or any Unitholder as having taken or maintained any control or possession of or over any of the Property or having assumed management or control of any of the Respondents or the Property.

PROTECTIONS AND AUTHORITY TO SEEK ADVICE AND DIRECTIONS

11. **THIS COURT ORDERS** that Misrepresentation Representative Counsel, Redemption Representative Counsel and Quebec Representative Counsel shall have no liability as a result of their appointment or retention, or the fulfilment of their duties in carrying out the provisions of this Order from and after the Appointment Date, save and except for any gross negligence or willful misconduct on their part, respectively.

12. **THIS COURT ORDERS** that Misrepresentation Representative Counsel, Redemption Representative Counsel and Quebec Representative Counsel shall be at liberty and are authorized at any time to apply to this Court on notice to the Receiver for advice and directions regarding the discharge or variation of their respective Mandate.

13. **THIS COURT ORDERS** that no action or other proceeding may be commenced against any of Misrepresentation Representative Counsel, Redemption Representative Counsel or Quebec Representative Counsel with respect to the performance of their respective Mandate without leave of the Court on seven days' notice to the service list in the Receivership Proceeding.

14. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States, to give effect to this Order and to assist the Receiver, Misrepresentation Representative Counsel, Redemption Representative Counsel, Quebec Representative Counsel, and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court and to Misrepresentation Representative Counsel, Redemption Representative Counsel, and Quebec

Representative Counsel, as may be necessary or desirable to give effect to this Order or to assist the foregoing and their respective agents in carrying out the terms of this Order.

15. **THIS COURT ORDERS** that the Receiver, its counsel, and Misrepresentation Representative Counsel, Redemption Representative Counsel, and Quebec Representative Counsel may serve or distribute this Order and any related materials by forwarding true copies thereof by email or regular mail to Unitholders and their advisors (if any). For greater certainty, any such distribution or service shall be deemed to be in satisfaction of a legal or juridical obligation, and the notice requirements within the meaning of clause 3(c) of the *Electronic Commerce Protection Regulations*, Reg. 81000-2-175 (SOR/DORS).



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IN THE MATTER OF AN APPLICATION UNDER SECTION 129 OF *THE SECURITIES ACT* (Ontario), R.S.O. 1990, c.S.5, AS AMENDED

ONTARIO SECURITIES COMMISSION
Applicant

- and -

BRIDGING FINANCE INC., et al.
Respondents

ONTARIO SUPERIOR COURT OF JUSTICE COMMERCIAL LIST Proceeding commenced at Toronto, Ontario	
AMENDED AND RESTATED REPRESENTATIVE COUNSEL APPOINTMENT ORDER (Re: Unitholder Priority Motion)	
THORNTON GROUT FINNIGAN LLP TD West Tower, Toronto-Dominion Centre 3200 – 100 Wellington Street West Toronto, ON M5K 1K7 John L. Finnigan (LSO# 24040L) Email: jfinnigan@tgf.ca Grant B. Moffat (LSO# 32380L) Email: gmoffat@tgf.ca Adam Driedger (LSO# 77296F) Email: adriedger@tgf.ca Tel: 416-304-1616 Lawyers for the Receiver	

