

**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, 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

**FACTUM OF THE RECEIVER
(Re: Unitholder Priority Motion)**

October 21, 2022

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PART I - OVERVIEW

1. This motion is to determine whether the holders of Potential Statutory Rescission Claims and/or Potential Redemption Claims (together, the “**Potential Priority Claims**”) are entitled to any priority over General Unitholder Claims on the distribution of proceeds of the Bridging Funds.¹

2. The Receiver is seeking an order (the “**Priority Motion Order**”) declaring that:
 - (a) neither the Potential Statutory Rescission Claims nor the Potential Redemption Claims are entitled to any priority over General Unitholder Claims; and
 - (b) all Unitholder Claims, including, without limitation, the Potential Priority Claims and the General Unitholder Claims, shall rank *pari passu* on the distribution of proceeds of the Bridging Funds, in accordance with a distribution methodology to be approved by the Court.

3. The Potential Statutory Rescission Claims are claims arising under provincial securities legislation (or by contract in three provinces), which provide Unitholders who purchased Units under an offering memorandum that contained a misrepresentation with a statutory right of rescission if they seek a remedy generally within 180 days (or 120 days, as applicable) from the date of purchase.

¹ All capitalized terms not expressly defined herein are defined, and have the meanings set forth, in the Agreed Statement of Facts for Unitholder Priority Motion (the “**Agreed Statement of Facts**”) located at Tab 2, Schedule “A” of the Receiver’s Motion Record dated October 12, 2022 (the “**Motion Record**”).

4. The Potential Redemption Claims are claims of Unitholders who sought to redeem their units in 2021 before the Receiver's appointment on April 30, 2021. The Appointment Order and the Temporary Order prohibited payment of these claims.
5. The Receiver estimates that the Potential Statutory Rescission Claims are in the amount of approximately \$202.4 million and the Potential Redemption Claims are in the amount of approximately \$218.8 million (and therefore estimates that the aggregate amount of all Potential Priority Claims is approximately \$421.3 million).
6. The answer to the priority question is controlled by the terms of the agreements which bind all Unitholders, and the governing legislation.
7. The Limited Partnership Agreements and the Trust Agreements (each as defined herein) governing the rights and obligations of Unitholders in each Bridging Fund expressly provide that all Unitholders are to participate equally, on a *pro rata* basis, with respect to any distributions from the Bridging Funds, whether in the ordinary course or in the context of a dissolution. The parties agreed by contract that no Unitholders would enjoy any priority over other Unitholders. There is no reason to depart from the bargain made by the parties.
8. In addition, the *Limited Partnerships Act* (Ontario) (the "**Limited Partnerships Act**") requires that limited partners must share rateably on any distribution. The Unitholders seeking priority here cannot overcome the contractual and statutory obstacles in their way.
9. None of the applicable securities legislation that gives rise to the Potential Statutory Rescission Claims provides those claims with priority over claims of other Unitholders.

10. There is no equitable justification to depart from the bargain made by the parties or the requirements of the governing legislation. All Unitholders invested on substantially the same terms. All Unitholders are innocent victims of the wrongdoing uncovered at Bridging. The Receiver has reported that Unitholders will suffer a significant shortfall on their advances to Bridging with recoveries projected at 34% to 41%. It is estimated that, if priority is granted to the Potential Redemption Claims and the Potential Statutory Rescission Claims, other Unitholder recoveries will decrease to 17% to 26%. This would give rise to the inequitable result where Unitholders who purchased within 180 days of the Receiver's appointment, or who happened to fortuitously submit an uncompleted request to redeem during 2021, would receive 100% recovery on their investment, while the vast majority of investors, who were equally misled and disadvantaged by Bridging, would receive 17% to 26%.
11. Further, the *pari passu* principle provides that stakeholders of the same class must share *pro rata* in any distributions in an insolvency or liquidation. The Unitholders all hold the same or similar Units in each Bridging Fund with substantially similar rights and obligations. The Units were purchased pursuant to the same or similar offering memoranda and the Unitholders agreed to have their rights vis-à-vis the applicable Bridging Fund and the other Unitholders within that fund determined in accordance with the same Limited Partnership Agreement or Trust Agreement, as applicable. The legal interest of each Unitholder is substantially similar in character and is derived from their beneficial ownership or other interest in Units in the Bridging Funds. The Unitholders must share equally in the proceeds of the Bridging Funds in accordance with the *pari passu* principle.

12. There is no legal or equitable basis to depart from the clear language of the applicable agreements, the governing statutes, and the *pari passu* principle.

PART II - THE FACTS

13. The facts relevant to this motion are set out in the Agreed Statement of Facts and are summarized below.

A. Background on Bridging

14. Bridging Finance Inc. (“**BFI**”) is a federally incorporated company, with its registered office address in Ontario. BFI was founded in 2013 as a privately held investment management firm that, prior to the appointment of the Receiver, offered alternative investment options to retail and institutional investors through its investment vehicles (referred to collectively herein as the “**Bridging Funds**”).²
15. Prior to the Receivership Proceeding, Bridging raised capital from investors for the purpose of making private debt loans to third-party borrowers.³
16. The Bridging Funds (other than BIIF, FERN, BIF RSP, MMF RSP, and BPDI RSP, which were organized as unincorporated investment trusts pursuant to Ontario law) originated loans through limited partnerships established pursuant to the Limited Partnerships Act, each of which is managed by an Ontario incorporated general partner owned by BFI.⁴

² Agreed Statement of Facts at para 7.

³ Agreed Statement of Facts at para 7.

⁴ Agreed Statement of Facts at para 7.

17. Investors participated through the purchase of Units of the Bridging Funds, being either limited partnership or trust units depending on the Bridging Fund invested into. Based upon information provided to the Receiver by Bridging management, there are an aggregate of approximately 25,900 Unitholders across the 13 Bridging Funds.⁵

B. Appointment of Receiver & Representative Counsel

18. Pursuant to the Appointment Orders, PwC was appointed as Receiver of the Property of each of the Respondents. By order of the Court dated May 14, 2021, the Receiver's appointment in respect of the Property of each of the Respondents in accordance with the terms of the Appointment Orders shall continue until further order of the Court.⁶
19. Pursuant to the direction of Chief Justice Morawetz dated September 27, 2021 and an order of the Court dated October 14, 2021, Bennett Jones LLP was appointed as Representative Counsel for the Unitholders. The terms of the appointment of Representative Counsel were amended pursuant to the amended and restated order of the Court dated December 22, 2021.⁷
20. Pursuant to the Amended and Restated Priority Motion Representative Counsel Order, Chief Justice Morawetz subsequently appointed:

⁵ Agreed Statement of Facts at para 8.

⁶ Agreed Statement of Facts at paras 9-11.

⁷ Agreed Statement of Facts at paras 12-13.

- (a) Miller Thomson LLP as representative counsel (in such capacity, “**Misrepresentation Representative Counsel**”) for those Unitholders located outside of Quebec with Potential Statutory Rescission Claims;
 - (b) Aird & Berlis LLP as representative counsel (in such capacity, “**Redemption Representative Counsel**”) for those Unitholders located outside of Quebec with Potential Redemption Claims; and
 - (c) Woods LLP as representative counsel (in such capacity, “**Quebec Representative Counsel**”) for those Unitholders located within Quebec with Potential Statutory Rescission Claims and/or Potential Redemption Claims.⁸
21. Each of Misrepresentation Representative Counsel, Redemption Representative Counsel and Quebec Representative Counsel was appointed solely with respect to the issues to be determined on the Unitholder Priority Motion and for no other purpose.⁹

C. Potential Statutory Rescission Claims

22. The Potential Statutory Rescission Claims are the claims of Unitholders against the relevant Bridging Funds pursuant to section 130.1(1)2 of the Ontario Securities Act, and the corresponding securities legislation in other provinces and territories, for amounts contributed by way of subscription into the Bridging Funds generally within the 180-day period (or 120 days, as applicable) prior to the Date of Appointment. These claims arise if there was a misrepresentation in the offering memorandum of the applicable Bridging Fund

⁸ Agreed Statement of Facts at para 14.

⁹ Agreed Statement of Facts at para 15.

when Unitholders made their purchases, without regard to whether the Unitholders relied on such misrepresentations, and include 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 Ontario Securities Act.¹⁰

23. More specifically, pursuant to the Ontario Securities Act and the securities legislation of certain other Canadian provinces and territories, where an offering memorandum contains a misrepresentation, a purchaser who purchases a security offered under such offering memorandum during the period of distribution, without regard to whether the purchaser relied on the misrepresentation, has a right of rescission with respect to the purchase of such security.¹¹
24. In addition, pursuant to the offering memoranda of the Bridging Funds, Unitholders in British Columbia and Quebec, or Unitholders in Alberta who purchased Units under an “accredited investor” exemption, are granted contractual rights of action for damages or rescission that are the same as, or similar to, the Statutory Misrepresentation Rights provided under the Ontario Securities Act.¹²
25. The statutory limitation period under the Ontario Securities Act and the corresponding securities legislation in other provinces and territories in respect of rescission rights is

¹⁰ Agreed Statement of Facts, Appendix “A”, definition of “Potential Statutory Rescission Claims”.

¹¹ Agreed Statement of Facts at para 59.

¹² Agreed Statement of Facts at para 61.

generally 180 days after the date of the transaction that gave rise to the cause of action, after which time such rights are statute-barred.¹³ The limitation periods applicable to the Potential Statutory Rescission Claims have been tolled during the Receivership Proceeding pursuant to the Tolling Order.¹⁴

26. The Receiver currently estimates that approximately \$202.4 million of Unitholder subscriptions were made within the 180-day period prior to the Date of Appointment. This reflects the total estimated amount of Potential Statutory Rescission Claims.¹⁵

D. Potential Redemption Claims

27. Certain Unitholders provided notice of their intention to redeem Units in the Bridging Funds prior to the Date of Appointment and the Temporary Order.¹⁶ However, due to, among other things, the Temporary Order and the Appointment Orders, such redemptions were not completed.¹⁷
28. The Potential Redemption Claims are the claims of Unitholders in connection with requests to redeem units in the Bridging Funds received by Bridging prior to the Date of

¹³ The statutory limitation period is 120 days under the securities legislation of Nova Scotia.

¹⁴ Agreed Statement of Facts at paras 63-64.

¹⁵ Agreed Statement of Facts at para 65.

¹⁶ Pursuant to paragraph 9 of the Appointment Order issued by the Court on April 30, 2021, Bridging was ordered not to issue any new Units in any of the Bridging Funds or to redeem any of the existing Units in any of the Bridging Funds. The [Temporary Order issued by the Ontario Securities Commission on April 30, 2021](#) (as extended from time to time) ceased trading of the securities in the Bridging Funds.

¹⁷ Agreed Statement of Facts at para 68.

Appointment, which were not completed or paid out.¹⁸ The validity of such claims is being assumed solely for the purposes of this motion.¹⁹

29. Based on information received from the Fund Administrator, the Receiver estimates that the Potential Redemption Claims are in the aggregate amount of approximately \$218.8 million.²⁰ Accordingly, the Receiver estimates that the aggregate amount of the Potential Priority Claims is approximately \$421.3 million.
30. It is assumed for the purposes of the Unitholder Priority Motion that Unitholders with Potential Priority Claims will be able to prove such claims and that no defences will apply.²¹

E. General Unitholder Claims

31. The General Unitholder Claims are the claims of Unitholders that are neither Potential Statutory Rescission Claims nor Potential Redemption Claims, including, without limitation, any common law or statutory claims of Unitholders against the Bridging Funds for damages or other relief as a result of any misrepresentations.²²

¹⁸ Agreed Statement of Facts, Appendix “A”, definition of “Potential Redemption Claims”.

¹⁹ Agreed Statement of Facts at para 5.

²⁰ Agreed Statement of Facts at para 68.

²¹ Agreed Statement of Facts at para 5.

²² Agreed Statement of Facts, Appendix “A”, definition of “General Unitholder Claims”.

F. Estimated Proceeds of Assets of Bridging Funds

32. Based on the Receiver’s liquidation model (the “**Liquidation Model**”), and information available as of June 30, 2022, the total realizations from Bridging’s assets are estimated to range between \$701 million and \$861 million before costs.²³
33. On July 19, 2022, the Court approved the Claims and Unitholdings Identification Procedure. While such process has not been completed, it is expected (and assumed for the purposes of the Unitholder Priority Motion) that the proceeds of the assets of the Bridging Funds will be less than the aggregate of Potential Statutory Rescission Claims, Potential Redemption Claims, General Unitholder Claims and any additional claims determined in accordance with the Claims and Unitholdings Identification Procedure or otherwise.²⁴
34. The Receiver estimates that the aggregate amount of the Potential Priority Claims is approximately \$421.3 million. Accordingly, if it is determined that Potential Statutory Rescission Claims and/or Potential Redemption Claims have priority over General Unitholder Claims, the impact on recoveries for Unitholders with General Unitholder Claims will be significant.²⁵
35. The following table sets out the potential impact on estimated recoveries if it is determined that Potential Statutory Rescission Claims and/or Potential Redemption Claims are entitled

²³ Agreed Statement of Facts at para 69.

²⁴ Agreed Statement of Facts at para 70.

²⁵ Agreed Statement of Facts at para 71.

to priority over General Unitholder Claims, based on both the “low recovery” and “high recovery” scenarios in the Liquidation Model:²⁶

	LOW		HIGH	
	\$	%	\$	%
Recovery Estimate per June 30 Reporting	701.0	34%	861.0	41%
Potential Statutory Rescission Claims	(202.4)		(202.4)	
Net Recovery Estimate	498.6	26%	658.6	35%
Potential Redemption Claims	(218.8)		(218.8)	
Net Recovery Estimate	482.2	26%	642.2	34%
Total Potential Stat. Resc. & Redemption Claims	(421.3)		(421.3)	
Net Recovery Estimate	279.7	17%	439.7	26%

36. As noted above, total projected realizations are estimated to be in the range of approximately \$701 million to \$861 million, representing a recovery range in the aggregate for all Bridging Funds of 34% to 41% of the March 31, 2021 NAV (being the last published NAV Bridging made available prior to the commencement of the Receivership Proceeding).²⁷
37. If it is determined that both Potential Statutory Rescission Claims and Potential Redemption Claims are entitled to priority, assuming that the Unitholders with such claims will be able to prove such claims and obtain a full recovery, and subject to any valid claims proven in accordance with the Claims and Unitholdings Identification Procedure, it is estimated that the total net recoveries available for Unitholders with General Unitholder Claims would be in the range of approximately \$279 million to \$440 million, representing

²⁶ Agreed Statement of Facts at para 72.

²⁷ Agreed Statement of Facts at para 73.

a recovery range in the aggregate for all Bridging Funds of 17% to 26% of the March 31, 2021 NAV attributable to such Unitholders.²⁸

PART III - THE ISSUE

38. The sole issue on this motion is whether the holders of Potential Statutory Rescission Claims and/or Potential Redemption Claims are entitled to any priority over General Unitholder Claims on the distribution of proceeds of the Bridging Funds.

PART IV - LAW & ANALYSIS

39. A priority claim may only arise pursuant to an agreement or by express operation of law. As detailed below, the Limited Partnership Agreements and the Trust Agreements (which are the applicable agreements setting out the rights and obligations of the Unitholders as between them) do not provide the Potential Priority Claims with any priority whatsoever. To the contrary, they expressly provide that no Unitholder shall be entitled to any priority in any circumstance and that all Unitholders are to participate equally, on a *pro rata* basis, with respect to any distributions from the Bridging Funds.
40. This is consistent with the provisions of the Limited Partnerships Act, which provides that limited partners are to share in the limited partnership's assets on a *pro rata* basis absent an agreement to the contrary. There is no other source of law applicable to the issues on this motion that provides, or purports to provide, any priority to the Potential Statutory Rescission Claims or the Potential Redemption Claims.

²⁸ Agreed Statement of Facts at para 74.

A. No Priority in the Limited Partnership Agreements or Trust Agreements

41. As described above, the Bridging Funds were either structured as limited partnerships or unincorporated investment trusts, in each case pursuant to Ontario law.²⁹

(i) Limited Partnership Agreements

42. Each Bridging Fund that is structured as a limited partnership is governed by a limited partnership agreement (each, a “**Limited Partnership Agreement**”).³⁰ Each Limited Partnership Agreement is an agreement among all partners of the applicable Bridging Fund governing the operation of the limited partnership and setting out the rights and obligations of the Unitholders and their Units.

43. Unitholders who subscribed for Units in the Bridging Funds structured as limited partnerships became limited partners and agreed to be bound by the applicable Limited Partnership Agreement. The rights and obligations of Unitholders under each Limited Partnership Agreement are governed by the laws of the Province of Ontario.

44. Each Limited Partnership Agreement substantially provides as follows:

Section 3.6 – Rights and Privileges of Unit Holders

(a) ... each Unit will entitle the holder to the same rights and obligations as the holder of any other Unit of the same Class or Series, and no Limited Partner shall, in respect of any Unit held by any such Limited Partner, be entitled to any preference, priority or right in any circumstance over any other Limited Partner in respect of any Unit of the same Class or Series held by the other Limited Partner (emphasis added).

(f) ... each Unit of each Series and Class is entitled to participate equally with the Units of the same Series and Class with respect to any and all

²⁹ Agreed Statement of Facts at para 7.

³⁰ Agreed Statement of Facts, Appendix “E”.

distributions made by the Partnership, including distributions of net income and net realized capital gains, if any (emphasis added).³¹

Section 10.1 – Dissolution Events

... (c) Prior to the termination of the Partnership: (i) the Manager, on behalf of the General Partner, will, in its discretion, take steps to convert all or any part of the assets of the Partnership to cash ... and thereafter, (iii) the net assets will be distributed to the Partners, as to 0.001% to the General Partner and as to 99.999% among the Limited Partners of Record on the date of dissolution, pro rata in proportion to each Limited Partner's Capital Contribution³²... (emphasis added).³³

(ii) Trust Agreements

45. Each Bridging Fund that is structured as an unincorporated investment trust is governed by a trust agreement (each, a “**Trust Agreement**”).³⁴ Each Trust Agreement is an agreement among BFI (as fund manager) and the applicable trustee governing the operation of the trust and setting out the rights and obligations of each Unitholder.
46. The rights and obligations of Unitholders under each Trust Agreement are governed by the laws of the Province of Ontario. Unitholders who subscribed for Units in the Bridging Funds structured as trusts are bound by the terms of the applicable Trust Agreement.
47. Each Trust Agreement substantially provides as follows:³⁵

³¹ See for example: Agreed Statement of Facts, Appendix “E”, Motion Record at p. 807.

³² “Capital Contribution” is defined in the BIF Limited Partnership Agreement to mean, with respect to each Partner, as of a specified date, the aggregate amount of cash received by the Partnership from such Partner, or a predecessor Partner, including, in the case of a Limited Partner, in respect of Units subscribed for by such Limited Partner, or a predecessor Limited Partner where subscriptions therefore have been accepted by the General Partner up to and including such specified date.

³³ See for example: Agreed Statement of Facts, Appendix “E”, Motion Record at p. 824.

³⁴ Agreed Statement of Facts, Appendix “E”.

³⁵ There are minor differences in the language between the BIF RSP Trust Agreement and the Master Trust Agreement applicable to the other Bridging Funds structured as trusts, which are irrelevant to this analysis.

3.1 – Attributes of Units

... each Unit of a particular series shall entitle the holder thereof to participate pro rata, in accordance with the provisions hereof, with respect to all distributions made to that series ... and, upon liquidation of the Fund, to participate pro rata with the other Unitholders of that same series... (emphasis added).³⁶

11.3 – Procedure on Termination

[o]n or about the effective date of termination of the Fund ... The Manager shall distribute from time to time to Unitholders of record as of the effective date of termination their Proportionate Share³⁷ of all property and assets of the Fund attributable to the applicable class or series of Units and available at that time for the purpose of such distribution.³⁸

48. The Unitholders with Potential Statutory Rescission Claims and Potential Redemption Claims remain Unitholders in the Bridging Funds notwithstanding any rights or remedies available to them (or any steps taken to try to redeem Units prior to the Receivership Proceeding) and therefore remain bound by the applicable Limited Partnership Agreements and/or Trust Agreements.
49. The Limited Partnership Agreement or Trust Agreement applicable to each Bridging Fund clearly provides that all Unitholders are to share *pro rata* in any distributions from the

³⁶ See for example: Agreed Statement of Facts, Appendix “E”, Motion Record at p. 967.

³⁷ “Proportionate Share” is defined in the Master Trust Agreement dated November 1, 2018 as follows: when used to describe (i) an amount to be allocated to any one series of a class of Units of the Fund, where there is one or more series designated for that class of Units, means the total amount to be allocated to all series of Units of the Fund multiplied by a fraction, the numerator of which is the Series Net Asset Value of such series and the denominator of which is the Class Net Asset Value of that class of Units of the Fund at such time... and (ii) a Unitholder’s interest in or share of any amount, means (A) after an allocation has been made to each series as provided in clause (i), the amount allocated to each series multiplied by a fraction, the numerator of which is the number of Units of that series registered in the name of that Unitholder and the denominator of which is the total number of Units of that series then outstanding (if such Unitholder holds Units of more than one series, then such calculation is made in respect of each series of Units of the Fund and aggregated), or (B) if no series have been designated for a class of Units, the amount allocated to the class multiplied by a fraction, the numerator of which is the number of Units of that class registered in the name of that Unitholder and the denominator of which is the total number of Units of that class then outstanding.

³⁸ See for example: Agreed Statement of Facts, Appendix “E”, Motion Record at p. 988.

Bridging Funds, both in the ordinary course and in the context of a dissolution. None of those agreements provide, or purport to provide, any priority to the Potential Statutory Rescission Claims or Potential Redemption Claims.

50. The offering memorandum for each Bridging Fund summarizes the terms of, and is consistent with, the applicable Limited Partnership Agreement or Trust Agreement and provides that all Unitholders are to participate equally, on a *pro rata* basis, with respect to any distributions. There is no basis in the offering memoranda for any priority being granted to certain groups of Unitholders over others. For example, the offering memorandum for Bridging Income Fund LP (the largest Bridging Fund, which is also subject to the largest amount of Potential Statutory Rescission Claims and Potential Redemption Claims) provides as follows:

[s]ubject to the Limited Partnership Agreement, each Unit of a particular class of the Partnership is equal to each other Unit of such class and has the same rights and obligations attaching to it as each other Unit of such class.³⁹

[s]ubject to the Limited Partnership Agreement, each Unit of a particular class has equal rights to each other Unit of the same class with respect to all matters, including voting, receipt of allocations and distributions from the Partnership, liquidation and other events in connection with the Partnership.⁴⁰

B. No Priority under the Limited Partnerships Act

51. The terms of the Limited Partnership Agreements and the Trust Agreements, all of which are stated to be governed by the laws of the Province of Ontario, as well as the offering memoranda, are consistent with the provisions of the Limited Partnerships Act.

³⁹ See for example: Agreed Statement of Facts, Appendix “D”, Motion Record at p. 666.

⁴⁰ See for example: Agreed Statement of Facts, Appendix “D”, Motion Record at p. 674.

52. The Limited Partnerships Act governs limited partnerships in Ontario (including all of the Bridging Funds that are structured as limited partnerships) and sets out certain rights and obligations of limited partners, subject to the provisions of any applicable limited partnership agreement.
53. Section 14 of the Limited Partnerships Act provides as follows:

Limited partners' rights as between themselves

14(1) Subject to subsection (2), limited partners, in relation to one another, share in the limited partnership assets, (a) for the return of contributions; and (b) for profits and other compensation by way of income on account of their contributions, in proportion to the respective amounts of money and other property actually contributed by the limited partners to the limited partnership (emphasis added).

Priority Agreement

(2) Where there are several limited partners, the partners may agree that one or more of the limited partners is to have priority over other limited partners, (a) as to the return of contributions; (b) as to profits or other compensation by way of income; or (c) as to any other matter, but the terms of this agreement shall be set out in the partnership agreement (emphasis added).

Idem

(3) Where the partnership agreement does not contain an agreement referred to in subsection (2), the shares of the limited partners in the partnership assets shall be determined in accordance with subsection (1).⁴¹

54. Section 24 of the Limited Partnerships Act sets out the following scheme of distribution for a limited partnership upon dissolution, subject to any agreement to the contrary:

Settling accounts on dissolution

24 In settling accounts after the dissolution of a limited partnership, the liabilities of the limited partnership to creditors, except to limited partners on account of their contributions and to general partners, shall be paid first,

⁴¹ *Limited Partnerships Act*, R.S.O. 1990, c. L. 16, [s. 14](#).

and then, unless the partnership agreement or a subsequent agreement provides otherwise, shall be paid in the following order:

1. To limited partners in respect of their share of the profits and other compensation by way of income on account of their contributions.
2. To limited partners in respect of their contributions.
3. To general partners other than for capital and profits.
4. To general partners in respect of profits.
5. To general partners in respect of capital.⁴²

55. Regardless of whether the Limited Partnerships Act or the Limited Partnership Agreements apply, there is no language that expressly or implicitly provides that the Potential Statutory Rescission Claims or the Potential Redemption Claims are intended to have any priority in any circumstance. To the contrary, the applicable agreements and the governing statute expressly provide that all Unitholders are to participate equally, on a *pro rata* basis, with respect to any distributions.

C. No Priority under Securities Legislation, Common Law, or Equity

56. There is no other source of law applicable to the issues on this motion that provides, or purports to provide, any priority to the Potential Statutory Rescission Claims or the Potential Redemption Claims.

57. There is nothing in the applicable securities legislation that expressly or implicitly provides that such claims are intended to have any priority. In particular, and in contrast to other circumstances in which priority has been expressly granted by provincial legislatures for public policy reasons,⁴³ there is no language in the applicable securities legislation (or any

⁴² *Ibid*, [s. 24](#).

⁴³ See for example: [section 57](#) of the *Pension Benefits Act*, R.S.O. 1990, c. P.8; [section 8](#) of the *Construction Act*, R.S.O. 1990, c. C.30; and [section 14](#) of the *Employment Standards Act, 2000*, S.O. 2000, c. 41.

other legislation) to suggest that priority of payment of such claims is intended to be protected, whether by a charge over Bridging's property, by way of a statutory deemed trust or otherwise.

58. Similarly, there is nothing at common law or equity that would override the clear terms of the Limited Partnership Agreements or the Trust Agreements, or otherwise suggest that the Potential Statutory Rescission Claims or Potential Redemption Claims are entitled to priority over the General Unitholder Claims.
59. In summary, the Limited Partnership Agreements and the Trust Agreements expressly provide that all Unitholders are to participate on an equal footing, on a *pro rata* basis, with respect to any distributions from the Bridging Funds. No priority is granted to any group of Unitholders under any circumstances. This is consistent with the Limited Partnerships Act. Further, the absence of anything to the contrary in the applicable securities legislation, or otherwise at common law or equity, supports the conclusion that all Unitholder Claims should rank *pari passu* with respect to the distribution of proceeds of the Bridging Funds.
60. There is no principled reason to depart from the foregoing, particularly in these circumstances where a finding of priority could result in full recoveries for the Unitholders with Potential Priority Claims while eroding recoveries for Unitholders with General Unitholder Claims (who are already facing a significant shortfall) by approximately \$421.3 million.⁴⁴

⁴⁴ In each case, subject to the Claims and Unitholdings Identification Procedure and a distribution methodology to be approved by the Court.

D. The *Pari Passu* Principle & No Express or Constructive Trust

61. The Receiver adopts the written submissions of Bennett Jones LLP in its capacity as Representative Counsel with respect to the application of the *pari passu* principle to the liquidation of the Bridging Funds, as set out in its Factum dated October 21, 2022 at paragraphs 29 to 52.
62. The Receiver also adopts the written submissions of Representative Counsel as set out in its Factum at paragraphs 53 to 64 that the holders of Potential Priority Claims do not have an express trust claim, nor can they demonstrate a constructive trust that is different from one that all Unitholders may have.

PART V - RELIEF REQUESTED

63. For all of the foregoing reasons, the Receiver requests that this Honourable Court grant the Priority Motion Order substantially in the form of the draft Order located at Tab 3 of the Motion Record.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 21st day of October, 2022.



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Lawyers for the Receiver

Application under Section 129 of the *Securities Act*, R.S.O. 1990, c. S. 5, as amended

ONTARIO SECURITIES COMMISSION
Applicant

- and -

BRIDGING FINANCE INC. *et al*
Respondents

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

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

Proceedings commenced at Toronto, Ontario

**FACTUM OF THE RECEIVER
(Re: Unitholder Priority Motion)**

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