

**IN THE MATTER OF BRIDGING FINANCE INC., DAVID SHARPE, 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, AND BRIDGING INDIGENOUS IMPACT FUND**

**AND IN THE MATTER OF AN ORDER ISSUED UNDER SUBSECTION 11(1)(A) OF
THE *SECURITIES ACT*, R.S.O. 1990, C. S.5, DATED SEPTEMBER 11, 2020**

**AND IN THE MATTER OF A SUMMONS ISSUED PURSUANT TO SECTION 13 OF
THE *SECURITIES ACT*, R.S.O. 1990, C. S.5, DATED SEPTEMBER 28, 2020**

**NOTICE OF MOTION AND CROSS-MOTION
OF STAFF OF THE ONTARIO SECURITIES COMMISSION**

A. ORDER SOUGHT

The Ontario Securities Commission Enforcement Staff (“**Staff**”) request that the Ontario Securities Commission (“**Commission**”) make the following order:

- a) An Order quashing the Applicant, David Sharpe’s (“**Sharpe**”) Revised Notice of Application, filed September 22, 2021, without prejudice to Sharpe seeking appropriate relief from the Commission in the event an order is obtained from the Superior Court of Justice determining that the filing of the Compelled Evidence (as defined below) was improper;
- b) An Order dismissing Sharpe’s Revised Notice of Motion, filed September 22, 2021, without prejudice to Sharpe seeking appropriate relief from the Commission in the event an order is obtained from the Superior Court of Justice determining that the filing of the Compelled Evidence (as defined below) was improper;
- c) An Order that this motion be heard separate from and in advance of the hearing of the Revised Notice of Application and Revised Notice of Motion; and

d) Such further relief as Staff may advise and the Commission may permit.

B. GROUND

The grounds for this motion are:

1. At the heart of both the Sharpe Applications and the Revised Sharpe Motion Application (as defined below) is the allegation that the Commission, by filing the Compelled Evidence as part of its record in the Superior Court for the appointment of a Receiver, engaged in an abuse of the Superior Court process. That allegation is properly the jurisdiction of the Superior Court.
2. Both the Commission and the Court are the masters of their own process. The Commission lacks the jurisdiction to adjudicate an alleged abuse of the Court's process.
3. In the alternative, it would be an abuse of the Commission's processes for it to adjudicate on the matter. The Court is the appropriate forum to adjudicate on the matter.
4. Sharpe is a former CEO, UDP and director of Bridging Finance Inc. ("**Bridging Finance**"), an alternative financing business that provided financing to middle-market companies through various funds that it manages. It is registered with the Commission as a restricted portfolio manager, an exempt market dealer, and an investment fund manager.
5. On September 11, 2020, the Commission issued an order (the "**Investigation Order**") pursuant to section 11 of Ontario *Securities Act*, R.S.O. 1990, c. S.5 (the "**OSA**"), authorizing Staff to conduct an investigation into Bridging Finance.
6. On April 30, 2021, the Commission filed at the Superior Court of Justice, Commercial List (the "**Court**"), a notice of application and application record (the "**Application Record**") in support of an *ex parte* application under Court File No. CV-21-00661458-00CL (the "**Receivership Application**"), for an Order pursuant to s. 129 of the OSA to appoint PricewaterhouseCoopers Inc. ("**PwC**" or the "**Receiver**") as receiver and

manager of all of the assets, undertakings and properties of Bridging Finance and associated entities.

7. The Application Record contained the Affidavit of Daniel Tourangeau, Senior Forensic Accountant at the Enforcement Branch of the Commission, sworn on April 29, 2021 (the “**Tourangeau Affidavit**”).
8. Later in the day on April 30, 2021, the Commission also filed with the Court the First Supplemental Affidavit of Daniel Tourangeau sworn on April 30, 2021 (the “**Supplemental Tourangeau Affidavit**”).
9. Attached to the Tourangeau Affidavit and Supplemental Tourangeau Affidavit were transcripts extracts and transcripts from Sharpe’s compelled interviews pursuant to summonses issued under s. 13 of the OSA (the “**Compelled Evidence**”).
10. The *ex parte* Receivership Application was heard by The Honourable Hainey J. on Friday, April 30, 2021. Hainey J. granted the requested order appointing the Receiver that evening (the “**Receivership Order**”).
11. At 9:42 pm on April 30, 2021, Staff advised Sharpe’s former counsel that the Commission obtained the Receivership Order.
12. On May 12, 2021, Sharpe’s new counsel wrote to Staff to express Sharpe’s concern about the public disclosure of the Compelled Evidence and to inquire as to whether the Commission made an Order under s. 17(1) of the OSA. Staff responded later that day that there was no s. 17 Order in connection with the Commission’s *ex parte* Receivership Application as “none was required”.
13. On May 14, 2021, Hainey J. granted an additional receivership order on notice to Sharpe (the “**Continuation Order**”). Sharpe did not oppose the Continuation Order.
14. Since the granting of the Continuation Order, there have been four Court attendances in relation to the receivership. Sharpe has not made any motion to the Court relating to the materials in the Court file, including the Compelled Evidence, nor has he asked that

the Court instruct the Receiver to remove any materials, including the Compelled Evidence, from the Receiver's website.

15. On July 7, 2021, Sharpe's counsel filed a pair of Notices of Application with the Commission. Both of the Notices of Application were substantially identical, relying on the same grounds and seeking the same relief. One of these Notices of Application was in connection with the Temporary Cease-Trade Order (the "**Sharpe CTO Application**") while the other was a stand-alone application (the "**Sharpe Application**") (collectively the "**Sharpe Applications**"). The Sharpe Applications alleged that the disclosure of the compelled Testimony was a breach of the Act and both undermined Staff's investigation and caused irreparable prejudice to Sharpe and Bridging Finance. The Sharpe Applications sought, *inter alia*:
 - a. A Declaration that Staff violated sections 16 and 17 of the Act by disclosing, the Compelled Testimony;
 - b. A Declaration that Staff's breach of the Act constituted an abuse of process;
 - c. An Order quashing the September 11, 2020 Section 11 investigation;
 - d. A Declaration that the Compelled Testimony could not be used in future proceedings, both before the Commission and in any other forum;
 - e. An Order directing Staff to request that the Court seal the Receivership Application's court file or remove all of the Compelled Testimony from the court file;
 - f. An Order directing Staff to request that PwC remove the Compelled Testimony from its website; and
 - g. An Order that the CTO Application Record be marked confidential and restricted from public view.
16. On September 22, 2021, Sharpe's counsel filed revised version of the Notices of Application. The Sharpe CTO Application was revised by the filing of the Notice of

Motion of David Sharpe (the “**Revised Sharpe Motion**”). The Sharpe Application was revised by the filing of the Notice of Application of David Sharpe (the “**Revised Sharpe Application**”) (collectively the “**Revised Sharpe Motion and Application**”).

17. The relief sought in the Revised Sharpe Motion and Application was significantly reduced from the relief sought in the Sharpe Applications. The Revised Sharpe Motion sought the following relief:

- a. An Order that the CTO Application Record be marked confidential and restricted from public view; and
- b. An Order that any portion of the adjudicative record in the motion which contained or referred to the Compelled Testimony be marked confidential and restricted from public view.

18. The Revised Sharpe Application sought the following relief:

- a. An Order revoking or varying the September 11, 2020 Order authorizing Staff’s Section 11 investigation;
- b. An Order that any portion of the adjudicative record in the motion which contained or referred to the Compelled Testimony be marked confidential and restricted from public view.

19. The Revised Sharpe Motion and Application rely on substantially similar grounds as the Sharpe Applications. The Revised Sharpe Motion and Application allege, among other things, that the disclosure of the Compelled Testimony in the Superior Court file was a breach of the OSA and both undermined Staff’s investigation and caused irreparable prejudice to Sharpe and Bridging Finance.

20. Rules 1, 3, 28 of the OSC Rules.

21. Sections 2.1, 12, 13, 16, 17, 129, and 144 of the *Securities Act*, R.S.O. 1990, Ch. S.5.

22. Sections 2, 3, 5.4, 23, 25.0.1, and 25.1 of the *Statutory Powers Procedure Act*, R.S.O. 1990, c. S.22.

23. Such further and other grounds as Staff may advise and the Commission may permit.

C. EVIDENCE

Staff intends to rely on the following evidence at the hearing:

- a. An Agreed Statement of Facts or an affidavit;
- b. The Notice of Application of David Sharpe, dated July 7, 2021, OSC File #2021-15;
- c. The Notice of Application of David Sharpe, dated July 7, 2021, OSC File #2021-26;
- d. The Notice of Motion of David Sharpe, dated September 22, 2021, OSC File #2021-15;
- e. The Notice of Application of David Sharpe, dated September 22, 2021, OSC File #2021-26; and
- f. Such further and other evidence as Staff may advise and the Commission may permit.

October 6, 2021

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