



**Court file No. S1710393
Vancouver Registry**

IN THE SUPREME COURT OF BRITISH COLUMBIA

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

AND

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

AND

IN THE MATTER OF ALL CANADIAN INVESTMENT CORPORATION

(the "Petitioner")

MONITOR'S TWENTY-NINTH REPORT TO COURT

AUGUST 23, 2021

McEown and Associates Ltd.

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

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

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A. INTRODUCTION

1. This report (the “**Twenty-Ninth Report**”) is filed by McEown and Associate Ltd. (“**McEown**”) in its capacity as monitor (the “**Monitor**”) appointed in a proceeding commenced on November 8, 2017 by All Canadian Investment Corporation (the “**Petitioner**”) pursuant to the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c.-36, as amended (the “**CCAA Proceedings**”).
2. The purpose of the Twenty-Ninth Report is to provide the Court and stakeholders with an update on the CCAA Proceedings since the Monitor’s 25th Report dated November 27, 2020 (the last comprehensive report prepared by the Monitor).
3. This report will cover the following:
 - a) Court Orders granted;
 - b) Actual Cash Flow Statement from November 27, 2017 to August 15, 2021;
 - c) Progress made with respect to the realization on the remaining assets of the Petitioner;
 - d) Litigation commenced by the British Columbia Security Commission (“**BCSC**”) against ACIC and Don Bergman and BCSC’s request that the Monitor provide evidence at the hearing;
 - e) Update on Plan of Arrangement; and
 - f) the Monitor’s conclusions and recommendations.

B. DISCLAIMER AND TERMS OF REFERENCE

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

C. COURT APPLICATIONS AND ORDERS GRANTED SINCE NOVEMBER 2020

7. On January 8, 2021, a Notice of Application was filed by the Petitioner seeking an Order extending the stay of proceedings from January 22, 2021 to the Stay Termination Date, sanctioning and approving the Plan following the Meeting of Creditors. The Court Application was heard via teleconference on Wednesday, January 13, 2021 at 9:00am.
8. On January 13, 2021, the Court granted an Order in the CCAA proceedings extending the stay of proceedings to January 21, 2022.
9. On February 5, 2021 the amended Plan of Arrangement which had been presented was approved and the Sanction Order granted.
10. On March 4, 2021 the court approved the form of an Agreed Statement of Facts and an Agreement reached between the Petitioner and the Executive Director of the British Columbia Securities Commission.
11. Counsel for the Petitioner has advised that there have been administrative issues with respect to the entry of the orders made February 5, 2021 and March 4, 2021 which are presently in the process of being resolved.
12. Copies of the Notices of Application and Orders granted are available on the Monitor's website at <https://www.mceownassociates.com/all-canadian-investment-corporation> or upon request.

D. ACTUAL CASH RECEIPTS AND DISBURSEMENTS

13. The Actual Cash Flow from November 27, 2017 to August 15, 2021 can be summarized as follows:

Actual Cash Inflows

Interest Payments	\$ 204,600
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Recovery from Mortgagees

Mendes	75,000	
Otter	425,000	
Chisa Holdings	35,000	
Grant Manor	600,000	
Wayne Blair	16,318	
Karl Buchmann	155,082	
Stonewater Motel	1,317,897	
Altezza	1,241,194	3,865,492

Recovery from Sale of Real Properties

Sale of Lee Road Property	375,891	
Sale of Lot 5	679,638	
Sale of Lot 137 Lee Road	69,209	
Sale of 4153 Packalen	781,447	
Sale of Lot 4	579,971	2,486,156

DIP Financing Proceeds	1,500,000
Accounts Receivable (AFDI)	91,796
Miscellaneous Refund	<u>10,000</u>

Total Cash Inflows \$ 8,158,043

Actual Cash Outflows

Operations

Management Fees	\$ 443,226
Bank Charges	2,330
Bond Premiums	6,000
Auditor Fees	30,017
Environmental Consultant Fees	22,000
Monitor's Fees/Disbursements	620,923
Legal Fees/Disbursements (Monitor's counsel)	228,661
Legal Fees/Disbursements (Petitioner's counsel)	870,248
Appraisal Fees	14,866
DIP Loan Fees & Expenses	211,200
DIP Loan Interest	137,370
Property Taxes & Utilities	23,462
Other Miscellaneous Expense	<u>7,602</u>
	2,617,905

Secured Debt Repayments

DIP Loan	1,613,304
Van Maren Financial	554,512
Fisgard Capital	<u>1,386,575</u>
	3,554,391

Unsecured Debt Repayments

Interim Dividend Creditors	1,684,207
Interim Dividend BDO (Held in Trust by Monitor)	<u>15,793</u>
	1,700,000

Total Cash Inflows	8,158,043
Total Cash Outflows	<u>7,872,296</u>
Net Cash Inflows (outflows)	285,747
Opening Cash Position	<u>69,134</u>
Closing Cash Position	<u>\$ 354,881</u>

E. PETITIONER'S ORDERLY WIND-DOWN OF THE BUSINESS

14. The Monitor provides the following update on progress made with respect the recovery on the Petitioner's loan portfolio since the date of the Monitor's 25th Report. The Monitor will not be reporting on loans where no significant progress has been made.

Sperling Loan (Censorio company)

15. In January 2021 the Monitor requested that the brokers at Cushman Wakefield prepare a listing agreement for signature by the borrower, represented by Mr. Censorio. Mr. Censorio would not initially agree to sign the listing agreement based on a proposed list price that he considered to be too high.
16. In early February 2021 the Monitor was advised by the brokers that Mr. Censorio had accepted a conditional offer with a 20-day subject period and a closing date 20 days thereafter. The Monitor advised Mr. Censorio, through his counsel, that the proposed price was too low and that the Monitor would not be in a position to support a sale on those terms, in particular that the property had not yet been listed for sale. As had previously been requested by the Monitor, the offer contained a condition in favour of the borrower requiring it to satisfy itself that it would be able to discharge the mortgage securities (which had been registered by the Monitor in favour of ACIC) which effectively provided the Monitor with a veto power.
17. Mr. Censorio continued to negotiate with the initial offeror and agreed to extensions of the buyer's subject removal deadline. At the request of the Monitor Mr. Censorio also subsequently agreed to enter into an exclusive listing agreement with Cushman Wakefield without a specified list price.

18. As a result of the brokers' marketing efforts two more offers were received, both for amounts higher than the initial offer accepted by Mr. Censorio. However, initially Mr. Censorio was not prepared to consider the other offers while the property was under contract with the initial offeror.
19. With 3 offers and several other interested parties, discussions were ongoing between the Monitor, the brokers and Mr. Censorio regarding how best to solicit the highest offer from these prospective purchasers.
20. In April 2021 the Monitor was advised by the brokers that they had discovered that the property had previously been the site of a service station and drycleaner and that a Phase I environmental study had been conducted in 2012 that required updating. The Monitor believes the party that Mr. Censorio was originally negotiating with let their offer lapse when they became aware of the environmental study conducted in 2012.
21. Following a discussion with the brokers, the Monitor determined that Phase II environmental assessment would be required by any prospective purchaser and, therefore, should be conducted immediately. The Monitor has engaged an environmental consultant to prepare a Phase II assessment. The estimated cost is between \$30,000 and \$40,000 and the Monitor anticipates receiving the report within the next week.
22. The Monitor is of the view that conducting its own environmental assessment and making the results available to all the prospective purchasers will result in a more fair bidding process as compared to entering into a binding contract with a purchaser that will be subject to them conducting their own environmental assessment.

23. The Sperling loan, and other outstanding loan advances made to related companies in the Censorio Group, have been guaranteed by Mr. Censorio. The present indebtedness under those guarantees is in excess of \$16 million. On or about June 28, 2021 Mr. Censorio filed a notice of intention to file a proposal pursuant to s. 50.4(1) of the *Bankruptcy and Insolvency Act* (the “**Censorio NOI**”). Crowe McKay & Company Ltd. is the proposal trustee. As a result of the Censorio NOI (and by operation of the *Bankruptcy and Insolvency Act*) there is a stay of proceedings in respect to any claims against Mr. Censorio, including claims that ACIC has against Mr. Censorio.
24. On July 27, 2021 a proposal was filed by Mr. Censorio (the “**Censorio Proposal**”). The proposal of Mr. Censorio and the Trustee’s report on the Proposal is attached as **Appendix “A”** to this report.
25. The Monitor has reviewed the terms of the Proposal and the report of the Trustee and has also spoken to a few of the other significant creditors. The Monitor is not satisfied that sufficient information has been provided to properly evaluate the Proposal, and in particular would like a better understanding of the Censorio Trusts that appear to hold all of the assets of Mr. Censorio and his numerous property development companies. The Monitor will not be voting in favour of the Proposal based on the information currently available.

26. In order to control the sale process for the Sperling property, and in light of the uncertainty regarding Mr. Censorio's ability to continue as a director, the Monitor has instructed counsel for the petitioner to commence foreclosure proceedings with respect to the Sperling properties. Notices of intention to enforce security have been delivered and, on expiry, foreclosure proceedings will be commenced seeking, amongst other things, an order for immediate conduct of sale. As with other proceedings related to ACIC's restructuring, an order will be sought for the supervising Judge to be seized of the foreclosure proceedings.

Other Loans

Buchmann Loan

27. The Buchmann loan was made just prior to the commencement of the CCAA proceedings to finance the acquisition of a mortgage interest over certain lands and premises in Salmon Arm. The amount currently owed to the Petitioner is approximately \$425,000.
28. The Monitor instructed the Petitioner's counsel to proceed with a notice of intention to enforce security (which has been delivered) and, if necessary, commencement of proceedings to assume conduct of the foreclosure proceedings and seek an order for sale of the property.
29. The Monitor was also contacted by counsel for a neighbouring landowner who expressed a desire to make an offer to purchase the Petitioner's interest. Despite that advice, no offer has been forthcoming.
30. The Petitioner's materials for orders allowing it to assume conduct of the foreclosure proceedings are prepared and are in the process of being filed.

31. The Monitor expects full recovery on the Buchmann Loan, and the timeframe for recovery will be determined by proceedings and the real estate market in Salmon Arm where the development property (which the mortgage is registered against) is located.

ACIC Financial Development Inc. Loan (“AFDI Loan”)

32. The AFDI Loan is a result of a debt restructuring described in Don Bergman’s 6th Affidavit dated June 7, 2018. AFDI is a company controlled by Mr. Bergman.
33. The security that the Petitioner received as part of the restructuring of the AFDI Loan, was a 37.5% beneficial interest in a real estate joint venture with Seamount Investments Ltd. The joint venture owns five rental complexes in Alberta.
34. The restructuring involved the transfer to AFDI of two promissory notes due to the Petitioner from individuals. The Monitor was previously advised by Mr. Bergman that the transfers were necessary so that the Petitioner continued to be in compliance with the lending requirements of a mortgage investment corporation. Under the term of the restructuring AFDI became contractually responsible for the amount due and owing.
35. Although Mr. Bergman has advised the Monitor that the joint venture was looking at refinancing and/or a sale of real property to provide funds to repay the loan, there has been no progress to date.

36. The Monitor commenced proceedings (in the name of the Petitioner) against AFDI in which it advanced a variety of claims including recovery of the monies owed to the Petitioner under the AFDI Loan. Default judgment has been granted for an amount totaling approximately \$2.4 million, being the amount due and owing under the AFDI Loan. The Monitor conducted an examination in aid of execution of Mr. Bergman as a representative of AFDI, on April 16, 2021. Numerous requests for documents and information were made at the examination but Mr. Bergman has not responded. The Monitor has applied for an Order for production of the documents and information and the application is scheduled for September 1, 2021.

Claim against Mr. Bergman/AFDI

37. In addition to pursuing recovery of the AFDI Loan, the proceedings commenced by the Monitor (in the name of the Petitioner) also include claims in negligence and for breach of the management contract between the Petitioner and AFDI. Default judgment has been entered against AFDI for those claims with damages to be assessed.
38. Mr. Bergman, through his then counsel, has filed a response to civil claim denying the allegations made against them in his personal capacity. As at the date of this report Mr. Bergman no longer has counsel and is acting on his own behalf.

39. During the course of the examination in aid of execution of AFDI certain information regarding AFDI's assets and the joint venture was secured. The Monitor proposes to report to the court on that evidence but before doing so wishes to draw the court's attention to a preliminary issue relating to the implied undertaking rule. In *Branconnier (Re)*, 2017 BCSC 1896 Mr. Justice Voith considered whether the implied undertaking of confidentiality applied to evidence and documents obtained at an examination in aid of execution. Mr. Justice Voith determined that the implied undertaking rule *did* apply and that it precluded the use of evidence secured in the examination in aid (in subsequent bankruptcy proceedings of the debtor) without leave of the court. The Monitor proposes bringing an application in the proceedings (of which the supervising Judge is seized) to waive the implied undertaking of confidentiality so as to allow it to report to the court on the examination in aid.

Michael Lensen Loan

40. The Michael Lensen loan is a personal loan which was advanced by the Petitioner in 2010. The amount currently owed to the Petitioner is approximately \$775,000.
41. The Petitioner has advised the Monitor that Michael Lensen owns a home in Surrey jointly with his spouse, however the Petitioner does not have mortgage security registered against that property.
42. At the request of the Monitor the Petitioner's counsel commenced proceedings against Michael Lensen.

43. A Notice of Civil Claim was served on Michael Lensen on October 9, 2019. At the request of Michael Lensen, the Petitioner's counsel granted a 7-day extension for the filing of the Response to Civil Claim to November 6, 2019 and a Response to Civil Claim was served November 4, 2019. Mr. Lensen was initially self represented but subsequently retained counsel.
44. After production of its documents, on April 21, 2020 the Petitioner filed a summary trial application seeking judgment against Mr. Lensen for the sum of \$663,617.56 together with interest and costs (the "**Lensen Application**"). The Lensen Application was initially scheduled for hearing on May 19, 2020 before Mr. Justice Walker. As a result of the interruption to court proceedings brought about by the COVID-19 pandemic, a judicial management conference was scheduled for the purposes setting down the Lensen Application for hearing. Mr. Lensen subsequently retained counsel who produced documents on Mr. Lensen's behalf, together with an affidavit responding to the Lensen Application.
45. Mr. Lensen has produced evidence suggesting that the loan was repaid in full. Counsel for the Petitioner has reviewed documents produced by Mr. Lensen and with the Monitor's assistance, conducted a further review of the Petitioner's records to locate documents responsive to that issue. Documentation has been located which is responsive to Mr. Lensen's allegation that the loan was repaid in full which the Monitor is of the view confirms that the payments referenced by Mr. Lensen related to a different loan advance. A supplementary list of documents and a supplementary affidavit have been prepared responding to Mr. Lensen's evidence and a Request to Appear before the supervising judge for a continuation of the Lensen Application will be made shortly.

Ron Weninger Loan

46. The Ron Weninger Loan is a personal loan advanced by the Petitioner in 2013. Ron and his wife Elfrieda Weninger entered into a written loan restructuring agreement in 2014 regarding the Ron Weninger Loan. The amount currently owed to the Petitioner is \$150,000 together with interest. Ron Weninger has never made a payment on this loan.
47. Ron Weninger is also a preferred shareholder of the Petitioner who invested \$200,000.
48. At the request of the Monitor the Petitioner's counsel commenced proceedings against Ron and Elfrieda Weninger (the "**Weningers**").
49. The Weningers have filed a Response to Civil Claim in which they deny being indebted to the Petitioner and essentially claim that they were misled by ACIC and are entitled to set off their preferred shareholding investment against the loan. The Weningers are self represented.
50. The Petitioner has prepared summary trial materials and has advised the Weningers that ACIC will be proceeding with a summary trial application. Counsel is attempting to find a date acceptable to the Weningers at which time a Request to Appear before the supervising judge for the summary trial application will be filed.

Wayne Blair Loan

51. The Wayne Blair Loan is a personal loan advanced by the Petitioner in 2016.

52. The Petitioner advanced a total of \$35,000 to Wayne and Barb Blair in 2016. Wayne and Barb Blair have repaid approximately \$20,000 of this sum. The loan amount currently due is approximately \$7,000.
53. At the request of the Monitor the Petitioner's counsel has commenced proceedings against Wayne and Barb Blair.

Frederick Loan

54. The Frederick Loan is a personal loan advanced by the Petitioner in December 2014. The original loan advance was \$10,000 and the amount currently owed to the Petitioner is approximately \$20,000.
55. The borrower had initially advised the Petitioner that he was trying to refinance or sell his property to provide funds to pay back the loan, however this has not happened.
56. At the request of the Monitor the Petitioner's counsel commenced proceedings against Robert and Katherine Frederick. The Petitioner has been advised that Mr. Frederick is deceased. Given the amount in issue in these proceedings the Monitor is of the view that it is not economically feasible to pursue these proceedings.

Meridian Resource Accommodations Inc. loan

57. On December 29, 2014, ACIC entered into a loan agreement with Meridian Resource Accommodations Inc. (“**Meridian**”). As a term of the loan agreement, Meridian executed a mortgage to ACIC over certain property located in Saskatchewan.
58. The loan agreement located in ACIC’s records purports to attach a copy of a mortgage dated December 16, 2014 as Schedule A however the Monitor and counsel for the Petitioner have been unable to locate a copy of the loan agreement which has that schedule.
59. A mortgage was drafted by Saskatchewan counsel apparently retained by Meridian and registered against title to the Saskatchewan property on December 22, 2014. Funds were advanced to Meridian as follows:
- a) October 30, 2014: \$40,000.00;
 - b) November 28, 2014: \$100,000.00;
 - c) December 2, 2014: \$100,000.00;
 - d) March 26, 2015: \$120,000.00;
 - e) November 25, 2015: \$50,000.00;
 - f) December 7, 2017: \$50,000.00; and
 - g) August 25, 2017: \$250,000.00.
60. On instructions from the Monitor proceedings were commenced by counsel for the Petitioner. Meridian has defended the proceedings on the basis that the mortgage registered against title is a “no recourse mortgage” as a result of which, ACIC’s recovery and recourse will be limited to Meridian’s right, title and interest in the mortgaged property.

61. The Monitor has undertaken inquiries with Mr. Bergman regarding why a no recourse mortgage was registered but has been unable to determine the basis for doing so. Counsel for the Petitioner has made inquiries with a realtor in Saskatchewan which suggest that the value of the property against which the mortgage is registered is significantly less than the outstanding indebtedness.
62. The Monitor intends to pursue settlement negotiations with Meridian and will seek court approval in advance of a group formally agreeing to any resolution.

Censorio Development Ltd. Loan

63. The Censorio Development Ltd. Loan is a loan with no real property/mortgage attached to it. The amount currently owed to the Petitioner is approximately \$8,200,000. During the course of these proceedings the Monitor was able to negotiate the execution and registration of a mortgage securing this debt against the Sperling property. As set out previously, the Monitor has instructed counsel for the Petitioner to institute foreclosure proceedings in respect to the property. While it does not appear that there will be sufficient funds realized to pay the Sperling loan and the entirety of the Censorio Development loan, the Monitor remains of the view that significant funds will be realized from the Sperling property.

Agnes & Elliot foreclosure proceedings

64. The Petitioner commenced foreclosure proceedings with respect to certain strata lots secured by way of mortgage. An *order nisi* was granted against the borrower company and the Petitioner was granted conduct of sale.
65. The properties which were subject to the mortgage have now been sold by court order, and the funds realized from the sales (\$2,082,753.03) have been paid into court (the “**Sale Proceeds**”).

66. The Petitioner's ability to recover the Sale Proceeds is subject to the determination of a priority dispute between the petitioner and the CRA which claims an interest in those monies as a result of an outstanding GST liability of the borrower company.
67. The Monitor has instructed Petitioner's counsel to prepare application materials and a proposal for resolving the priority dispute.

F. BRITISH COLUMBIA SECURITIES COMMISSION

68. On March 8-14, 2021 the Notice of Hearing issued by the BCSC proceeded to hearing. In accordance with the directions made March 4, 2021 the Petitioner submitted the Agreed Statement of Facts to the Panel at which time counsel was granted leave by the Panel to leave the hearing.
69. Written submissions were delivered by the BCSC and Mr. Bergman and on July 28, 2021 the Panel issued its Findings, a copy of which is attached as **Appendix “B”**.
70. In the Findings the Panel determined that:
- a) ACIC made misrepresentations contrary to s.50(1)(d) of the *Securities Act* and made false or misleading statements in documents required to be filed under the Act, contrary to s.168.1(1)(b); and
 - b) Mr. Bergman authorized or permitted and acquiesced in ACIC’s contraventions of the Act and, by operation of s.168.2(1), contravened the same provisions as ACIC.
71. The matter will now proceed to a Sanctions Hearing and the Panel has made the following timetable orders:
- a) September 7, 2020: Executive Director delivers submissions to the Respondents and the Hearing Office.
 - b) October 5, 2021: Respondents deliver submission to the executive director and the Hearing Office.

c) October 5, 2021: Any Party seeking an oral hearing on the issue of sanctions advises the Hearing Office and all other parties.

d) October 19, 2021: Executive director delivers reply submissions, if any, to the respondents and the Hearing Office.

72. In accordance with the agreement reached and approved by the court, in return for ACIC entering into the Agreed Statement of Facts the Executive Director has agreed not to seek a monetary sanction or penalty against ACIC.

G. UPDATE ON PLAN OF ARRANGEMENT

73. A meeting to vote on the plan was held at 10:00 a.m. (Vancouver time) Monday, December 21, 2020 (the “**Meeting**”) by video conference as permitted by the May 19, 2020 amendment made to the Meeting Order.
74. The plan was approved by simple majority in number of those Creditors who actually voted upon the Plan (in person or by proxy) at the Meeting and by two-thirds majority in value of Proven Claims of Creditors who actually vote upon the Plan (in person or by proxy) at the Meeting.
75. As mentioned earlier in this report, on January 8, 2021 the Petitioner filed a Notice of Application seeking an Order approving and sanctioning the Plan which was approved February 5, 2021.
76. On March 18, 2021 the Monitor made a first distribution to the creditors in the aggregate amount of \$1,700,000.

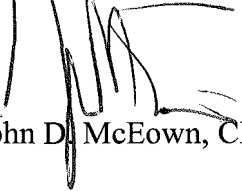
H. CONCLUSIONS AND RECOMMENDATIONS

77. The Petitioner continues to make progress in liquidating the assets of the Petitioner under the management and direction of the Monitor.
78. The Petitioner has completed the Claims Process and the Plan has been approved by the creditors, sanctioned by the Court and a first distribution has been made to the creditors.

DATED at the City of Vancouver, British Columbia, this 23rd day of August, 2021.

McEown and Associates Ltd.

Monitor Appointed in the Companies'
Creditors Arrangement Act Proceedings of
All Canadian Investment Corporation

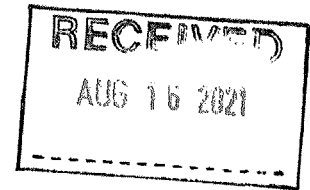


Per: John D. McEown, CPA, CA, CIRP, LIT

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APPENDIX A

District of: British Columbia
Division No. 03 - Vancouver
Court No.
Estate No. 11-2748492



FORM 92
Notice of Proposal to Creditors
(Section 51 of the Act)

In the Matter of the Proposal of
Peter Anthoney Censorio
of the City of Burnaby, in the Province of British Columbia
Crowe MacKay & Company Ltd., Trustee

Take notice that Peter Anthoney Censorio of the City of Burnaby in the Province of British Columbia has lodged with me a proposal under the *Bankruptcy and Insolvency Act*.

A copy of the proposal, a condensed statement of the debtor's assets, and liabilities, and a list of the creditors affected by the proposal and whose claims amount to \$250 or more are enclosed.

A general meeting of the creditors will be held on the 24th day of August 2021 at 10:00 AM at 1100 - 1177 West Hastings Street, Vancouver, BC or By Teleconference (For an invitation, contact Nelson Allan: nelson.allan@crowemackay.ca).

The creditors or any class of creditors qualified to vote at the meeting may by resolution accept the proposal either as made or as altered or modified at the meeting. If so accepted and if approved by the court the proposal is binding on all the creditors or the class of creditors affected.

Proofs of claim must be lodged with me prior to the commencement of the meeting.

Proxies and voting letters intended to be used at the meeting may be filed at any time up until the moment a vote is called.

Dated at the City of Vancouver in the Province of British Columbia, this 10th day of August 2021.

Crowe MacKay & Company Ltd. - Licensed Insolvency Trustee

For: *S. Begong*

1100 - 1177 West Hastings Street
Vancouver BC V6E 4T5
Phone: (604) 689-3928 Fax: (604) 687-5617

(A form of proof of claim, a form of proxy and a voting letter should be enclosed with each notice.)

FORM 92 --- Concluded

List of Creditors with claims of \$250 or more.			
Creditor	Address	Account#	Claim Amount
0943659 BC Ltd (Ballan)	208 - 1899 Willingdon Avenue Burnaby BC V5C 5T1		1,500,000.00
All Canadian Investment Corp.	C/O John McEowen 1140 - 800 West Pender Street Vancouver BC V6C 2V6	Censorio Group (Agnes & Elliot)	6,703,922.65
All Canadian Investment Corp.	C/O John McEowen 1140 - 800 West Pender Street Vancouver BC V6C 2V6	Censorio Group (Hastings & Sperl)	3,000,000.00
Bancorp Growth Mortgage Fund II LTD.	1420 - 1090 West Georgia Street Vancouver BC V6E 3V7		1,800,000.00
CRA - Tax - Pacific	Surrey National Verification and Collection Centre 9755 King George Blvd Surrey BC V3T 5E1		16,834.10
Honda Canada Finance Inc c/o BankruptcyHighway.com Mike Timko	PO Box 57100 Etobicoke ON M8Y 3Y2		25,000.00
HSBC Bank Canada c/o BankruptcyHighway.com	PO Box 57100 Etobicoke ON M8Y 3Y2	730-309460	34,000.00
Joe Gentile		Censorio Group (Agnes & Elliot)	750,000.00
PK Capital	142 - 1020 Mainland Street Vancouver BC V6B 2T5		750,000.00
RBC Royal Bank Visa c/o BankruptcyHighway.com Razel Bowen	PO Box 57100 Etobicoke ON M8Y 3Y2	4514 0118 0964 7207	24,564.11
Shares Adventures Ltd.	1488 - 1188 West Georgia Street Vancouver BC V6E 4A2		1,500,000.00
Sure Mortgage Capital Inc.			500,000.00
Vancity Credit Union Special Accounts	PO Box 2120, Station Terminal Vancouver BC V6B 5R8	3643130	35,000.00
Total			16,639,320.86

District of British Columbia
 Division No. 03 - Vancouver
 Court No.
 Estate No. 11-2748492

-- FORM 79 --
 Statement of Affairs (Proposal made by an individual)
 (Subsection 49(2) and 158(d) of the Act / Subsections 50(2) and 62(1) and Paragraph 66.13(2)(d) of the Act)

☒ Original ☐ Amended

In the Matter of the Proposal of
 Peter Anthony Censorio
 of the City of Burnaby, in the Province of British Columbia
 Crowe MacKay & Company Ltd., Trustee

ASSETS						
Type of assets	Description (Provide details)	Estimated Dollar Value	Exempt Property		Secured Amount/ Liens	Estimated net realizable dollar value
			Yes	No		
1. Cash on Hand						
2. Furniture						
3. Personal Effects	Jewellery	2,500.00		x	0.00	0.00
	Clothing	3,000.00	x		0.00	0.00
4. Policies & RRSPs	Manulife Critical Illness Insurance - 8686783	1.00	x		0.00	0.00
	Cannacord RRSP - 279-973S-0	34,075.15	x		0.00	0.00
5. Securities						
6. Real Property or Immovable	House					
	Cottage					
	Land					
7. Motor Vehicles	Automobile	2020 - 50% Interest - Honda - Civic LX - 2HGFC4B6XLH400840	22,470.00	x	22,470.00	0.00
	Motorcycle					
	Snowmobile					
	Other					
8. Recreational Equipment						
9. Taxes						
TOTAL		62,046.15			22,470.00	0.00

27-Jul-2021

Date

Peter Anthony Censorio
 Debtor

(4)

District of British Columbia
 Division No. 03 - Vancouver
 Court No.
 Estate No. 11-2748492

FORM 79 -- Continued

LIABILITIES						
Liabilities type code (LTC): 1 Real Property or Immovable Mortgage or Hypothec 2 Bank Loans (except real property mortgage) 3 Finance Company Loans 4 Credit Cards Bank/Trust Companies Issuers 5 Credit Cards Other Issuers 6 Taxes Federal/Provincial/Municipal 7 Student Loans 8 Loans from Individuals 9 Other						
Creditor	Address including postal code	Account No.	Amount of debt			Enter LTC
			Unsecured	Secured	Preferred	
0771437 BC Ltd.	10646 Glenwood Crescent East Surrey BC V4X 2M9		0.00	0.00	0.00	9
0943659 BC Ltd (Ballan)	208 - 1899 Willingdon Avenue Burnaby BC V5C 5T1		1,500,000.00	0.00	0.00	9
All Canadian Investment Corp.	C/O John McEowen 1140 - 800 West Pender Street Vancouver BC V6C 2V6	Censorio Group (Agnes & Elliot)	6,703,922.65	0.00	0.00	9
All Canadian Investment Corp.	C/O John McEowen 1140 - 800 West Pender Street Vancouver BC V6C 2V6	Censorio Group (Hastings & Sperl)	3,000,000.00	0.00	0.00	9
Bancorp Growth Fund Contingent \$ = 4,950,000.00	1420 - 1188 West Georgia Street Vancouver BC V1E 3V7	Ischia (1310 Nanaimo) LP	0.00	0.00	0.00	2
Bancorp Growth Mortgage Fund II LTD.	1420 - 1090 West Georgia Street Vancouver BC V6E 3V7		1,800,000.00	0.00	0.00	9
Blueshore Financial Credit Union Contingent \$ = 8,300,000.00	1250 Lonsdale Avenue North Vancouver BC V7M 2H6	Censorio Pacific (Queensbury)	0.00	0.00	0.00	2
Coopers Pacific Contingent \$ = 1,400,000.00	700 - 1175 Douglas Street Victoria BC	Censorio Pacific(Queensbury)	0.00	0.00	0.00	2
CRA - GST/HST - Vancouver Attn: Pacific Insolvency Intake Centre Contingent \$ = 2,200,000.00	Surrey National Verification and Collection Centre 9755 King George Blvd Surrey BC V3T 5E1	Censorio Group	0.00	0.00	0.00	6
CRA - Tax - Pacific	Surrey National Verification and Collection Centre 9755 King George Blvd Surrey BC V3T 5E1		16,834.10	0.00	0.00	6
Durham Capital Management Inc.	401 Queens Quay West, Until 709 Toronto ON M5V 2Y2		0.00	0.00	0.00	9
Goldentop Financial Services Ltd. Contingent \$ = 4,350,000.00	#3474 - 1055 Dunsmuir Street Vancouver BC V7X 1L2	Hammond Road	0.00	0.00	0.00	2
Honda Canada Finance Inc c/o BankruptcyHighway.com Attn: Mike Timko	PO Box 57100 Etobicoke ON M8Y 3Y2		2,530.00	22,470.00	0.00	9
HSBC Bank Canada c/o BankruptcyHighway.com	PO Box 57100 Etobicoke ON M8Y 3Y2	730-309460	34,000.00	0.00	0.00	2
Joe Gentile		Censorio Group (Agnes & Elliot)	750,000.00	0.00	0.00	9

27-Jul-2021

Date

Peter Anthony Censorio
Debtor

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District of British Columbia
Division No. 03 - Vancouver
Court No. *
Estate No. 11-2748492

FORM 79 -- Continued

LIABILITIES						
Creditor	Address including postal code	Account No.	Amount of debt			Enter LTC
			Unsecured	Secured	Preferred	
Mandate Management Inc. Contingent \$ = 4,150,000.00	505 - 1195 West Broadway Vancouver BC V6H 3X5	Censorio Pacific (Hastings & Mad	0.00	0.00	0.00	2
Parsum Financial Corp.	24410 26th Avenue Langley BC V2Z 3A6		0.00	0.00	0.00	9
Peoples Trust Company	14th Floor - 888 Dunsmuir Street Vancouver BC V6C 3K4		0.00	0.00	0.00	9
PK Capital	142 - 1020 Mainland Street Vancouver BC V6B 2T5		750,000.00	0.00	0.00	9
RBC Royal Bank / Banque Royale Attn: c/o BankruptcyHighway.com Contingent \$ = 1,185,857.37	PO Box 57100 Etobicoke ON M8Y 3Y2	4484010-001	0.00	0.00	0.00	2
RBC Royal Bank Visa c/o BankruptcyHighway.com Attn: Razel Bowen	PO Box 57100 Etobicoke ON M8Y 3Y2	4514 0118 0964 7207	24,564.11	0.00	0.00	4
Shares Adventures Ltd.	1488 - 1188 West Georgia Street Vancouver BC V6E 4A2		1,500,000.00	0.00	0.00	9
Suntec Holdings Corp.	2008 - 5511 Hollybridge Way Richmond BC V7C 4B3		0.00	0.00	0.00	9
Sure Mortgage Capital Inc.			500,000.00	0.00	0.00	2
Vancity Credit Union Attn: Special Accounts	PO Box 2120, Station Terminal Vancouver BC V6B 5R8	3643130	35,000.00	0.00	0.00	2
Varsity Capital Corp.	3579 West 47th Avenue Vancouver BC V6N 3N9		0.00	0.00	0.00	9
Wescap Financial Corp Contingent \$ = 2,300,000.00	2045 Frames Court North Vancouver BC V7G 2M7	Hastings & Madison	0.00	0.00	0.00	2
	TOTAL	Unsecured	16,616,850.86			
	TOTAL	Secured		22,470.00		
	TOTAL	Preferred			0.00	
	TOTAL				16,639,320.86	

Pledged Assets		
Creditor	Rank	Asset
Honda Canada Finance Inc c/o BankruptcyHighway.com	1	Motor Vehicles - Automobile - 2020 - 50% Interest - Honda - Civic LX - 2HGFC4B6XLH400840

27-Jul-2021

Date

Peter Anthony Censorio
Debtor

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District of British Columbia
Division No. 03 - Vancouver
Court No. •
Estate No. 11-2748492

FORM 79 -- Continued

INFORMATION RELATING TO THE AFFAIRS OF THE DEBTOR			
A. PERSONAL DATA			
1. Family name: Censorio	Given names: Peter Anthony Gender: Male	Date of birth: YYYY / MM / DD 1969/05/12	
2. Also known as:			
3. Complete address, including postal code: 186 MacDonald Avenue Burnaby BC V5C 4M5			
4. Marital status: Married (Specify month and year of event if it occurred in the last five years)			
5. Full name of spouse or common-law partner: Carrie-Anne Kim Censorio			
6. Name of present employer:		Occupation: Businessman (Self-employed)	
7A. Number of persons in household family unit, including debtor: 4			
7B. Number of persons 17 years of age or less: 0			
8. Have you operated a business within the last five years? Yes			
Business Name		Business Type	From To
Censorio Development Group Ltd.		Real Estate Development	14-Sep-2017
B. WITHIN THE 12 MONTHS PRIOR TO THE DATE OF THE INITIAL BANKRUPTCY EVENT, HAVE YOU, EITHER IN CANADA OR ELSEWHERE:			
9A. Sold or disposed of any of your property?		No	
9B. Made payments in excess of the regular payments to creditors?		No	
9C. Had any property seized by a creditor?		No	
C. WITHIN FIVE YEARS PRIOR TO THE DATE OF THE INITIAL BANKRUPTCY EVENT, HAVE YOU, EITHER IN CANADA OR ELSEWHERE:			
10A. Sold or disposed of any property?		Yes	
10B. Made any gifts to relatives or others in excess of \$500?		No	
D. BUDGET INFORMATION: Attach Form 65 to this Form.			
11A. Have you ever made a proposal under the Bankruptcy and Insolvency Act? No			
11B. Have you ever been bankrupt before in Canada? No			
12. Do you expect to receive any sums of money which are not related to your normal income, or any other property within the next 12 months? No			
13. If you answered Yes to any of questions 9, 10 and 12, provide details: 10A: In approximately 2016/2017, I transferred my 50% interest in a vacant lot in La Quinta, California to my wife as part of US Tax planning.			
14. Give reasons for your financial difficulties: Censorio Group (Agnes & Elliot) Holdings was a residential project that was plagued by cost over runs. This brought on financial hardship as one lender All Canadian Investment was still owed monies. We worked directly with them cooperatively and signed			

27-Jul-2021

Date

Peter Anthony Censorio
Debtor

District of British Columbia
Division No. 03 - Vancouver
Court No. •
Estate No. 11-2748492

FORM 79 -- Concluded


over the remaining units for their proceeds but there was still a shortfall.

The following project Censorio Group (Hastings & Carleton) Holdings Ltd. was again behind schedule and cost over runs and was turned over to receivership prior to completion. The lender Peoples Trust chose to pursue receivership instead of working with me directly to resolve. Unfortunately, the costs involved paid out the first lender but again there was a shortfall to the 2nd and 3rd lender parties.

The cost over runs of these two projects has proven disastrous.

I, Peter Anthony Censorio of the City of Burnaby in the Province of British Columbia, do swear (or solemnly declare) that this statement is, to the best of my knowledge, a full, true and complete statement of my affairs on the 27th day of July 2021, and fully discloses all property and transactions of every description that is or was in my possession or that may devolve on me in accordance with the Bankruptcy and Insolvency Act.

SWORN (or SOLEMNLY DECLARED)
before me at the City of Vancouver in the Province of British
Columbia, on this 27th day of July 2021.


Jonathan McNair, Commissioner for Taking Affidavits
For the Province of British Columbia
Expires June 30, 2024

27-Jul-2021

Date



Peter Anthony Censorio
Debtor

Estate No. 11-2748492
Court No. N/A
Vancouver Registry

IN THE MATTER OF THE PROPOSAL OF
PETER ANTHONY CENSORIO
OF THE CITY OF BURNABY, PROVINCE OF BRITISH COLUMBIA
CROWE MACKAY & COMPANY LTD., TRUSTEE
REPORT OF PROPOSAL TRUSTEE TO CREDITORS

Date of Proposal: July 27, 2021

INTRODUCTION AND TERMS OF REFERENCE®

This report (the "**Proposal Report**") has been prepared to provide the creditors of Mr. Peter Anthony Censorio (the "**Debtor**") with information in order to evaluate the Debtor's proposal (the "**Proposal**") filed on July 27, 2021.

In preparing this Proposal Report, Crowe MacKay & Company Ltd. (the "**Proposal Trustee**") has necessarily relied upon unaudited financial and other information obtained from the Debtor, the Debtor's books and records as well as discussions and advice provided by the Debtor (collectively, the "**Information**").

The Proposal Trustee has not audited, reviewed or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would wholly or partially comply with Generally Accepted Auditing Standards pursuant to the Chartered Professional Accountants Handbook. Accordingly, the Proposal Trustee expresses no opinion and does not provide any other form of assurance on the accuracy and/or completeness of any information used to prepare this Proposal Report.

Certain of the Information referred to in this Proposal Report consists of financial forecasts and/or projections provided by the Debtor. An examination or review of the financial forecasts/projections and procedures as outlined by the Chartered Professional Accountants of Canada has not been performed by the Proposal Trustee. Readers are cautioned that since financial forecasts and/or projections are based upon assumptions of future events and conditions that are not ascertainable, actual results may vary and the variations could be material.

BACKGROUND AND CAUSES OF INSOLVENCY

On June 28, 2021, the Debtor signed a Notice of Intention to Make a Proposal ("**NOI**") with the Proposal Trustee which was filed with the Office of the Superintendent in Bankruptcy.

The Debtor advises that he filed the NOI as a result of real estate development projects that incurred cost overruns. The secured creditors of these developments took steps to enforce their security but the funds realized therefrom were insufficient to repay the advances made by the secured creditors in full. The amounts remaining due to the secured creditors after realization on their security were recoverable from the Debtor pursuant to personal guarantees that he granted in connection with the loans. These lenders sought to enforce the personal guarantees provided by the Debtor in an effort to recover the aforesaid shortfalls, which resulted in the Debtor's insolvency.

Subsequent to the NOI, on July 27, 2021, the Debtor filed a Proposal to his creditors a copy of which is attached as Schedule "A".

Please note, capitalized terms not defined herein are defined in the Proposal.

ASSETS

The Statement of Affairs ("**SOA**") indicates that the Debtor has minimal personal assets. The SOA lists clothing and RRSP's as exempt. The Debtor disclosed some jewelry which is not exempt but the value of the jewelry is not estimated to produce a material realization.

The Debtor has a 50% interest in a motor vehicle which is fully encumbered by a Purchase Money Security Interest (PMSI) registered in *Personal Property Registry* in favour of Honda Canada.

BUSINESS AFFAIRS

The Debtor has prepared a chart showing the organizational structure of his operations and undertakings (the "**Org Chart**") which is attached as Schedule "**B**". Based on the Org Chart and discussions with the Debtor, the Proposal Trustee provides the following summary:

The Debtor is the sole director of the following operating entities (the "**OpCo's**"):

- Censorio Development Group Ltd.
- Censorio Construction Inc.
- Censorio Realty Group Ltd.

The OpCo's are hired by the various Censorio Group general partners ("**GP's**") to provide services to the various real estate development limited partnerships ("**LP's**"), reviewed below.

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The Debtor advises that the OpCo's earn consulting fees related to the ongoing activities in the LP's such as permitting process, construction management, real estate rental and property management. The Debtor advises that the OpCo's do not own any assets of any material value.

The Debtor further advises that there are four ongoing real estate development LP's involving Censorio Group GP's. In each case, only the LP's participate in any profit from the development, the GP does not. As reviewed below, the Debtor advises that his only interest in these LP's is through a trust, the Strada 39 Trust.

These are:

- ***Censorio Pacific (Hastings & Madison) Limited Partnership*** – This development presently consists of bare land. Building permit applications have been submitted and are in process. The OpCo's are presently managing the application process for which they are receiving fees.
- ***Censorio Pacific (Kelowna) Limited Partnership*** – This development is complete. One of the OpCo's is managing real estate rentals for which it receives ongoing fees. The Debtor advises there has not been any profit on this development.
- ***Censorio Pacific (Hammond Road) Limited Partnership*** – The Debtor advises that this is presently a "land hold" consisting of bare land. The OpCo's are presently managing the re-zoning process for which they are receiving fees.
- ***Censorio Pacific (Queensbury) Limited Partnership*** – The Debtor advises that this development involves eight (8) townhomes in North Vancouver which are nearing completion and have recently been listed for sale. The Debtor is uncertain as to the potential profit but has estimated the potential profit payable to be in the range of \$100K to \$200K, of which 50% would ultimately be payable to Strada 39 Trust

The Debtor advises that he is also involved with a fifth real estate LP, the Ischia Investments (1310 Nanaimo) LP, but only as a contractor providing management services to the GP, Ischia Investments (1310) G.P. Inc. The Debtor advises that there is an existing building and the LP initially intended to hold the property for future development, but the GP decided to sell as the ongoing costs are too high.

In addition to the above there are three (3) other developments that are complete. These are:

- ***Censorio Group (Hastings & Sperling) Holdings Ltd.*** – The Debtor advises that this is an existing commercial building with tenants, presently listed for sale. The Debtor advises that there are mortgages on the property to North Shore Credit Union (now

Blueshore Financial) and to All Canadian Investment Corp. ("ACIC") and that any sale will leave a substantial shortfall remaining owing to ACIC.

- Censorio Group (Agnes & Elliot) Holdings Ltd. – The Debtor advises that this development has been sold and a significant shortfall remains owing to the last mortgagee, ACIC. The Debtor advises that about \$2.1 million is being held in court from the sale of units in this development, but these funds are the subject of a priority dispute between ACIC and Canada Revenue Agency for GST owing on the sales. No profits are expected to flow from this development.
- Censorio Group (Hastings & Carleton) Holdings Ltd. – The Debtor advises that this project went into receivership and has recently completed with a significant shortfall remaining owing to the second and third mortgagees.

The Debtor advises that Chisa Holdings Ltd. was set up as a holding company for Chisa Properties and has no assets or income.

According to the Debtor, all of the entities shown in red on the Org Chart have either been sold and closed or simply closed outright and none hold any assets.

The Debtor advises that Censorio Group (Capital) Ventures Inc. is set up to hold Strada's interest in Pacific Rim (PC AG) Real estate Holdings Corp. related to the various LP's discussed above.

TRUSTS

The Debtor advises that he established two family trusts for estate and tax planning purposes on the recommendation of his accountant. The trusts were established with the assistance of Legacy Tax & Trust Lawyers. The Debtor has provided the Proposal Trustee with copies of the deeds of settlement and other documents relating to these two trusts.

- **Strada 39 Trust**

Censorio Family Trust No. 1 was created on February 24, 2006 and has subsequently changed its name to Strada Trust ("**Strada 39 Trust**"). The Debtor advises that Strada 39 Trust was established to hold interests in various real estate development projects such that any profits would flow to Strada 39 Trust to be distributed to the beneficiaries as part of plan to split income and reduce income taxes. The current trustee of the Strada 39 Trust is the Debtor's sister.

The Debtor advises that, for each of the Censorio Pacific LP real estate developments referred to above, Strada 39 Trust holds all shares in a company, Censorio Group (Capital)

enture Inc. ("CGCVI"), which is entitled to 50% of any profit payable to the LP Pacific Rim (PC AG) Real Estate Holdings Corp. ("Pacific Rim").

The Debtor advises that Strada 39 Trust is the ultimate shareholder of all of the Censorio companies.

Ultimately, the Debtor advises that Strada 39 Trust holds interests in these entities and development projects on behalf of its beneficiaries who are: Peter Anthony Censorio (Debtor), Chiara Censorio (Debtor's daughter) and Chisa Holdings Ltd. Accordingly, the Debtor and his legal counsel advise that any assets related thereto are not available to the Debtor to settle his outstanding obligations to his creditors.

- **PR Trust**

The Censorio Principal Residence Trust No. 1 ("PR Trust") was created on July 30, 2006, and on that day the interests of the Debtor and his spouse in the property located at 186 MacDonald Avenue in Burnaby, BC ("Principal Residence"), which they acquired in or around 2001 as their principal residence and in which they continue to reside, were transferred to the PR Trust. The current trustee of the PR Trust is the Debtor's spouse.

The Principal Residence has an assessed value of \$2,020,000 as at July 1, 2020. Royal Bank of Canada (RBC) has a first mortgage registered against this property. The SOA shows an outstanding mortgage balance of approximately \$1,185,657 owing to RBC. There is a second mortgage registered against this property by Sure Mortgage Capital Inc. The Debtor advises that there is approximately \$500,000 outstanding on the second mortgage. Accordingly, there is estimated to be approximately \$334,343 equity (\$2,020,000 less \$1,685,657) in the Principal Residence.

The Debtor and his legal counsel advise that any equity in the Principal Residence belongs to the PR Trust for its beneficiaries who are Peter Anthony Censorio (Debtor) and Carrie-Anne Censorio (Debtor's wife) and, absent this Proposal, is not otherwise available to the Debtor to settle his outstanding obligations to his creditors.

The Proposal Trustee does not have sufficient funds to obtain an independent legal opinion on the validity and enforceability of the above noted trusts. Accordingly, the Proposal Trustee is not in a position to comment further at this time. However, assuming that the Strada 39 Trust and PR Trust (collectively the "Trusts") are valid and enforceable as against a trustee in bankruptcy, the Proposal Trustee does not anticipate any funds being realized by the estate from the Trusts in the event of bankruptcy.

LIABILITIES

Secured Creditors

The SOA lists Honda Canada Finance Inc. as a secured creditor pursuant to a leased vehicle. There does not appear to be any equity in this lease available to the estate.

There are no other secured creditors listed on the SOA. A Personal Property Security ("PPR") search under the Debtors name list numerous creditors who have registered security interests against the Debtor. Based on discussions with the Debtor and his legal counsel, the Proposal Trustee is advised that, to the best knowledge of the Debtor, he has not given a charge or security interest over any property or assets; rather he appears on the PPR as a result of various personal guarantees that he provided.

The Proposal Trustee further notes from the PPR that certain registrations list Strada 39 Trust as a debtor. The Proposal Trustee has not obtained an independent legal opinion as to the validity and enforceability of the claims in the PPR and whether the security registrations are effective as against a trustee in bankruptcy. The Proposal Trustee is, accordingly, uncertain as to the priority, if any, of these creditors' claims. However, as set out above, the Proposal Trustee's interest in the assets Stada is also uncertain and therefore the validity and enforceability of these creditors' security against those assets may be moot.

Unsecured Creditors:

The SOA discloses unsecured debts totaling \$16,616,850.86. However, the Proposal Trustee understands that Honda Canada is in fact a secured creditor. As well, the Proposal Trustee understands that Sure Mortgage holds security granted by a third party, the PR Trust, for the full amount owing to it. Therefore the Proposal Trustee has excluded debts owing to these creditors in calculating an estimated dividend to the unsecured creditors. Accordingly, the unsecured creditor amount for dividend purposes is estimated to be \$16,114,320.86.

Contingent Creditors

In addition to the unsecured debts noted above (\$16,114,320.86), there are eight (8) claims totaling \$28,835,657.37 which the Debtor advises are potentially contingent creditors.

Contingent claims are claims that may or may not ever ripen into a debt depending on whether some future event does or does not happen.

Included in contingent claims is \$1,185,657 owing to RBC in relation to the Principal Residence which is a registered mortgage interest. This is included as a contingent claim

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**In the Matter of the Proposal of
Peter Anthony Censorio
Report of Proposal Trustee to Creditors**

Page 7

because the Debtor is a covenantor under the mortgage. Based on the assessed value of the Principal Residence RBC appears to be fully secured

The Proposal Trustee understands that the balance of the contingent claims relate to current real estate development projects that are still in process. Accordingly, the realization from the developments is not complete and therefore it is uncertain if these creditors will attempt to prove claims against the Debtor.

Following receipt of any proofs of claim from contingent creditors, the Proposal Trustee will determine whether any contingent or unliquidated claim is a provable claim, and, if a provable claim, the Trustee shall value it and / or otherwise process the claim in accordance with S. 135 of the Bankruptcy and Insolvency Act ("**BIA**").

Preferred Creditors

There are no known Preferred Creditors.

SUMMARY OF PROPOSAL

Please refer to the Proposal for a more detailed description.

The Debtor filed the Proposal on July 27, 2021.

Under the Proposal there shall be one class of creditors, being the Affected Creditor Class.

The PR Trust has agreed to pay a lump sum of \$250,000 towards his Proposal, which is referred to in the Proposal as the "Third Party Payment", provided the Proposal is approved.

The implementation of the Proposal on the Implementation Date is subject to satisfaction of certain Conditions Precedent as noted in the Proposal, being the approval of the required majority of the Debtor's creditors, approval by the court, and payment of the Third-Party Payment.

As soon as practicable after the Implementation Date and final taxation of the Proposal Trustee's Costs, the Proposal Trustee shall pay each Affected Creditor, in full and final satisfaction of their Proven Claim, their pro rata share of the Distribution Amount, based on the amount of their Proven Claim.

For greater clarity, the Proposal Trustee draws the creditors' attention to paragraph 2.5 of the Proposal "*Release of Debtor*" which provides for, among other items, a release of the Debtor from "*all Claims that arose before the Filing Date or that relate to the obligations of the Debtor prior to the Filing Date, regardless of the date of discovery or crystallization of such Claims...*". Accordingly, should creditors accept this

Proposal, it will be binding on all Affected Creditors regardless of whether they voted for or against the Proposal. The Debtor will be fully and irrevocably released and discharged from any and all claims arising in connection with this Proposal or these proceedings.

Dividend Distribution Under Proposal

A dividend will only be distributed under the Proposal if the Conditions Precedent are met. If they are, then following the Implementation Date, the Third-Party Payment will be available for payment of:

- a) the Proposal Trustee's Costs; and
- b) the Superintendent's Levy

with the balance of the Third-Party Payment (the "Distribution Amount") being available for distribution as a dividend to the creditors.

The Proposal calls for one dividend payment to Affected Creditors with proven claims, payable on a pro rata basis from the Distribution Amount after taxation of the Proposal Trustee's Costs

The total amount of claims from Affected Creditors is not certain at this time.

Based on the claims as listed in the SOA, **and excluding the contingent claims**, the expectation is that the Affected Creditors will recover value estimated to be approximately 1 cent for every \$1.00 of their Proven Claim. This will be discussed in greater detail below.

CASH FLOW PROJECTION

The Debtor filed a Cash Flow Projection with the NOI which was not updated with the filing of the Proposal. Nothing has come to the attention of the Proposal Trustee that indicates a material adverse change between the Cash Flow Projection and actual cash flows.

CONDUCT OF DEBTOR

The conduct of the Debtor during the NOI period is not, in the Proposal Trustee's view, subject to censure.

The Debtor has advised that in February of 2014 he and his wife bought a vacant lot in Palm Springs (the "La Quinta Property"). In March or April of 2015 they transferred the lot to Chisa Holdings Ltd. as part of the development of the property as a construction project, to facilitate financing and limit potential liability. Following completion of the construction, the decision was made to put the property out for rental, and in order to lower the taxes on the rental

income the property was transferred from Chisa Holdings Ltd. back to the Debtor's wife in April of 2019.

The Debtor advises that the La Quinta property was sold in March of 2021. After allowing for costs and expenses relating to acquiring and holding the property and constructing the house on the property and selling the property, and after crediting the rental income and the sale proceeds, the Debtor advises that the net profit on the ownership of the La Quinta Property is approximately \$89,000.00USD.

In reviewing the financial statements of Censorio Development Group Ltd. ("CDGL") as at September 30, 2020, the Proposal Trustee notes that CDGL paid a \$325,000 dividend which is presumed to have been paid to Strada 39 Trust for distribution to beneficiaries. The Debtor advises that this dividend was not paid in a single lump sum, but rather was paid on a monthly basis over 26 months starting in January of 2018 until February of 2020, in lieu of salary payments to the Debtor. After this date the Debtor's remuneration switched to monthly payroll payments. The Proposal Trustee notes that CDGL incurred a loss of \$250K for the period ended September 30, 2020 resulting in a \$575K deficit as at September 30, 2020.

STATEMENT OF ESTIMATED REALIZATION

Attached as Appendix "C" is a Statement of Estimated Realization comparing the estimated recovery for the unsecured creditors under this Proposal with that in a bankruptcy of the Debtor.

The Debtor advised the Proposal Trustee that his current stream of income depends on his ability to continue his engagements as GP of the various real estate development projects. The Debtor has further advised that, in the event of his bankruptcy, the LP's would have the ability to terminate his engagement as GP which could negatively impact his current income.

If the Proposal is rejected by the creditors or by the Court, the Debtor will be deemed to have made an assignment in bankruptcy as of the date of such rejection.

In a bankruptcy scenario, based on the above facts, the estimated distribution to the unsecured creditors would be 0.003 cents on the dollar. This is on the basis that the Debtor is able to sustain work and generate net income of about \$12,072 per month.

In the event that the Debtor is unable to sustain work and has no surplus income, the estimated distribution to the unsecured creditors would be NIL.

The estimated realization in bankruptcy assumes that the Trusts are valid and enforceable against a trustee in bankruptcy. Should the Trusts not in fact be valid and enforceable against a trustee in bankruptcy, and pursuant to additional investigation by a trustee in bankruptcy, additional assets could potentially be available that could

increase the realization in bankruptcy beyond the estimated 0.003 cents on the dollar. This potential upside, if any, is unknown.

In a bankruptcy scenario where there is a presumption that a Debtor who has no surplus income and has shown good conduct, the Debtor will be discharged from bankruptcy after 9 months. Where there is surplus income, there is an obligation on the Trustee to extend the period to 21 months. An opposition from creditors may result in the Court ordering a longer period.

OTHER MATTERS

The Proposal Trustee was provided with a 30,000 retainer (the "**Retainer**") in advance of the NOI filing in order to protect the Proposal Trustee for its reasonable fees and disbursements in the Proposal and/or bankruptcy proceeding. The Debtor advised that these funds were provided by a third party and did not come from funds otherwise available to the creditors. Provided that the Proposal Trustee is able to recover its reasonable fees and disbursements from the Proposal / bankruptcy, the Retainer will be returned to that third party.

RECOMMENDATION OF THE TRUSTEE

As discussed above, the Debtor and his legal counsel advise that the Trusts hold interests in the various LP's and corporate entities as well as the Principal Residence for the benefit of the Trusts' beneficiaries. Accordingly, the Proposal Trustee is advised that there are no realizable assets that are available to creditors in a bankruptcy.

The Proposal Trustee notes that the Debtor's organizational structure, which involves the Trusts, corporations and various partnerships is rather complex. The Proposal Trustee does not have sufficient funds to conduct an in-depth investigation of the Debtor, the Trusts, the Censorio group of entities and partnerships or to obtain an independent legal opinion as to the validity and enforceability of the Trusts as against a trustee in bankruptcy.

Should the creditors be willing to fund the Proposal Trustee to conduct a further investigation and / or obtain an independent legal opinion, it may be possible to adjourn consideration of the Proposal pending arrangements related to the same.

For clarity, a trustee in bankruptcy is also able to carry out an investigation and / or obtain an independent legal opinion however it will still require funding from creditors in order to do so.

Based on the Statement of Estimated Realization, the estimated recoveries for the unsecured creditors after payment of the Proposal Trustee's fees and disbursements are as follows:

Bankruptcy	\$ 48,436	.03% to unknown
Proposal	\$192,613	1%

Should the Proposal be rejected by the creditors, the Debtor would be deemed to have made an assignment in bankruptcy. The bankruptcy would be classified as an Ordinary administration. The Trustee fees in an Ordinary administration are calculated based on hourly rates and the recovery for the creditors is estimated to be 0.003%. This is again on the assumption that the Debtor is able to sustain work and generate net income of \$12,072 per month.

Based on the above, and assuming that the Trusts are valid and enforceable as against a Trustee in Bankruptcy, it appears that the Proposal provides for a greater return to creditors than bankruptcy. The Proposal Trustee further notes that the Third-Party Payment (\$250,000) is required to be contributed within 21 days following issuance of the Approval Order, whereas in a bankruptcy funds would be realized through ongoing surplus income contributions over 21 months and potentially through litigation in an effort to recover funds from the Trusts, both of which are subject to contingencies and are therefore difficult to value.

Given the existence of various assumptions and contingencies as noted above, the Proposal Trustee is unable to make a clear recommendation to creditors as to whether or not they should accept or reject the Proposal.

VOTING PROCEDURES AND OTHER INFORMATION

The Proposal is deemed to be accepted by the creditors if, and only if, all classes of unsecured creditors vote for the acceptance of the Proposal by a majority in number and two thirds in value of the unsecured creditors of each class present, personally or by proxy, at the meeting and voting on the resolution.

Should the motion in support of the Proposal not gain the required statutory majority, the debtor will then be deemed to have made an assignment in bankruptcy. The creditors may elect to continue with the Trustee of the Proposal to administer the Estate or may substitute a new Trustee.

The Proposal Trustee requests that all creditors who wish to vote on this Proposal forthwith submit a completed proof of claim, including a Statement of Account attached as Schedule "A", to the Trustee to allow for timely processing. Those creditors who do not plan to attend the creditors meeting, or be represented by proxy, may register their vote on the Proposal by use of the **voting letter** enclosed with this package. Note that creditors voting by voting letter

**In the Matter of the Proposal of
Peter Anthoney Censorio
Report of Proposal Trustee to Creditors**

Page 12

must also submit a completed proof of claim with a Statement of Account attached as Schedule "A" prior to the time set for the meeting.

As the meeting of creditors will be held virtually it is the request of the Proposal Trustee, and is strongly recommended, that creditors submit their proof of claim with attached Schedule "A", proxy and voting letter as far in advance of the meeting as reasonably possible.

In any event, the proof of claim and proxy or voting letter must be lodged with the Trustee before the time scheduled for the meeting of creditors if creditors wish to vote on the Proposal. Creditors that submit proofs of claim and proxies or voting letter close in time to the meeting may not have their claims processed in advance of the meeting, and, in such an event, they will be ineligible to vote at the meeting


Electronic submission is acceptable. You may fax the above documents to the attention of Ms. Susan De Jong at Crowe MacKay & Company Ltd. (facsimile 604-687-5617) or by e-mail (susan.dejong@crowemackay.ca). It is not necessary to mail original copies to the Trustee.

If accepted by the creditors and approved by the Court, the Proposal becomes binding on all creditors whether they voted for or against the Proposal.

DATED AT the City of Vancouver, in the Province of British Columbia, this 10th day of August, 2021.

Crowe MacKay & Company Ltd.
in its capacity as Licensed Insolvency Trustee of the Proposal of
Mr. Peter Anthoney Censorio

Per:


Jonathan McNair, CPA, CA, CIRP, LIT
(Chartered Insolvency & Restructuring Professional)

Encl.

Province: British Columbia
Division No. 03- Vancouver
Court No. 11-2748492
Estate No. 11-2748492

**IN THE MATTER OF THE PROPOSAL OF
PETER ANTHONY CENSORIO**

PROPOSAL

JULY 27, 2021

ARTICLE 1 DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Proposal, unless otherwise stated or unless the context otherwise requires:

- (a) **"Affected Creditor"** means any Creditor having a Proven Claim except to the extent such Creditor is an Unaffected Creditor.
- (b) **"Affected Creditor Class"** means the class comprising all Affected Creditors.
- (c) **"Approval Order"** means an order of the Court which, among other things, approves and directs the implementation of this Proposal and all actions and transactions set out herein, effective as at the Implementation Date in accordance with the terms of this Proposal.
- (d) **"BIA"** means the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended.
- (e) **"Business Day"** means any day which is not a Saturday or Sunday, or a provincial or federal holiday in the province of British Columbia.
- (f) **"Claim"** means any right or claim of any Person against the Debtor whether or not asserted in connection with any indebtedness, liability or obligation of any kind whatsoever owed to such Person, in each case which indebtedness, liability or obligation was in existence at the Filing Date and any interest that may accrue thereon, including any indebtedness, liability or obligation owed by the Debtor to such person as a result of any breach of duty (including, without limitation, any legal, statutory, equitable or fiduciary duty), any right of ownership of or title to, or to a trust or deemed trust against, any of the property or assets of the Debtor, whether or not such right or claim is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, unsecured, perfected, unperfected, present, future, known or unknown, by guarantee, surety or otherwise, and whether or not such right is executory or anticipatory in nature, including the right or ability of any Person to advance a claim for contribution or indemnity or otherwise with respect to any matter, action, cause or chose of action, whether existing at present or commenced in the future, which indebtedness, liability or obligation is based in whole or in part on facts which existed prior to the Filing Date and, for certainty, includes Priority Claims.
- (g) **"Claims Bar Date"** has the meaning ascribed to it in Article 4.1(a) of this Proposal.
- (h) **"Claims Process"** has the meaning ascribed to it in Article 4.1 of this Proposal.
- (i) **"Conditions Precedent"** has the meaning ascribed to it in Article 5.1 of this Proposal.
- (j) **"Court"** means the Supreme Court of British Columbia, in Bankruptcy and Insolvency.

- (k) **“Creditor”** means any Person having a Claim.
- (l) **“Crown”** means Her Majesty the Queen in right of Canada or a province.
- (m) **“Crown Claim”** means a Claim of the Crown for amounts that are outstanding as at the Filing Date and that are or could be subject to a demand under:
 - (i) subsection 224(1.2) of the *Income Tax Act*;
 - (ii) any provision of the *Canada Pension Plan* or of the *Employment Insurance Act* that refers to subsection 224(1.2) of the *Income Tax Act* and provides for the collection of a contribution, as defined in the *Canada Pension Plan*, an employee’s premium, or employer’s premium, as defined in the *Employment Insurance Act*, or a premium under Part VII.1 of that Act, and of any related interest, penalties or other amounts; or
 - (iii) any provision of provincial legislation that has a similar purpose to subsection 224(1.2) of the *Income Tax Act*, or that refers to that subsection, to the extent that it provides for the collection of a sum, and of any related interest, penalties or other amounts, where the sum:
 - (A) has been withheld or deducted by a Person from a payment to another Person and is in respect of a tax similar in nature to the income tax imposed on individuals under the *Income Tax Act*; or
 - (B) is of the same nature as a contribution under the *Canada Pension Plan* if the province is a “province providing a comprehensive pension plan” as defined in subsection 3(1) of the *Canada Pension Plan* and the provincial legislation establishes a “provincial pension plan” as defined in that subsection.
- (n) **“Debtor”** means Peter Anthony Censorio.
- (o) **“Distribution Amount”** has the meaning ascribed to it in Article 2.4 of this Proposal.
- (p) **“Filing Date”** means June 28, 2021, being the date that the Debtor filed the NOI.
- (q) **“Funding Agreement”** means the third party funding agreement entered into by the Debtor and the Residence Trust, pursuant to which the Residence Trust agreed to make the Third Party Payment, provided the Approval Order is granted.
- (r) **“Implementation Date”** means the date on which all Conditions Precedent have been satisfied.
- (s) **“Inspectors”** has the meaning ascribed to it in Article 4.7 of this Proposal.
- (t) **“Meeting”** means the meeting of the Affected Creditors held in accordance with section 51(1) of the BIA for the purpose of considering and, if thought fit, voting

to approve this Proposal and agreeing to the compromise and arrangement constituted hereby, and includes any subsequent reconvened meeting should any meeting be adjourned.

- (u) **"OI"** means the notice of intention to file a proposal which was filed with the Office of the Superintendent of Bankruptcy by the Debtor on June 28, 2021 in accordance with section 50.4(1) of the BIA.
- (v) **"Person"** means any individual, partnership, joint venture, trust, corporation, unincorporated organization, government or any agency or instrumentality thereof, or any other juridical entity howsoever designated or constituted.
- (w) **"Post- ilin Claim"** means a Claim arising from the supply of goods or services to the Debtor after the Filing Date or a claim for sales or excise taxes, source deductions or assessments and premiums arising in relation to such Claims, but does not include claims in respect of an obligation incurred prior to the Filing Date but which is payable after the Filing Date.
- (x) **"Post- ilin Creditor"** means a Creditor to the extent such Creditor has a Post-Filing Claim.
- (y) **"Priority Claims"** means all Claims, including Crown Claims, that are Proven Claims and which, in accordance with the BIA, must be paid in priority to other unsecured Claims.
- (z) **"Priority Creditor"** means a Creditor to the extent such Creditor has a Priority Claim.
- (aa) **"Proof of Claim"** means the form of document prescribed by the BIA to be filed with the Trustee to prove the Claim of a Creditor.
- (bb) **"Proposal"** means this proposal among the Debtor and the Affected Creditors, as from time to time amended, modified or supplemented pursuant to an order of the Court, or pursuant to an agreement among the Debtor and the Affected Creditors as provided for herein, or at any Meeting.
- (cc) **"Proven Claim"** means a Claim which, after delivery of a Proof of Claim to the Trustee, has been:
 - (i) admitted by the Trustee in whole or in part; or
 - (ii) disallowed by the Trustee and such disallowance has subsequently been set aside in whole or in part by the Court,

provided that a Proven Claim shall not include:

 - (iii) any amount due to a Post-Filing Creditor in respect of a Post-Filing Claim; nor

- (iv) any amount for interest for the period subsequent to the Filing Date.
- (dd) “ **Required Majority**” means a majority in number and two-thirds in value of the Voting Creditors who vote on this Proposal in accordance with the voting procedures established hereby and under the BIA.
- (ee) “ **Residence Trust**” means the trustee of that trust relationship created by a deed of settlement made July 30, 2006 and commonly known and referred to as the “ **Consolidated Residence Trust Co. 1**”.
- (ff) “ **Secured Creditor**” means a Creditor to the extent that its claim is secured by a registered or otherwise valid security interest, mortgage, charge or encumbrance in or on the assets or property of the Debtor as at the Implementation Date.
- (gg) “ **Superintendent Levy**” means the levy payable to the Superintendent of Bankruptcy from all amounts distributed to creditors pursuant to section 60(4) of the BIA;
- (hh) “ **Third Party Payment**” means funds in the amount of \$250,000 to be paid by the Residence Trust to the Trustee pursuant to the Funding Agreement for the purposes of funding this proposal, including the Trustee’s costs, upon issuance of the Approval Order and expiry of the applicable appeal period.
- (ii) “ **Trustee**” means Crowe MacKay & Company Ltd. in its capacity as proposal trustee of the Debtor.
- (jj) “ **Trustee’s Costs**” means all proper fees, expenses and legal costs of the Trustee arising in any way in relation to this Proposal or the NOI.
- (kk) “ **Unaffected Creditor**” means the Post-Filing Creditors, the Priority Creditors and the Secured Creditors.
- (ll) “ **Voting Creditors**” means all Affected Creditors in attendance at the Meeting in person or by proxy and who are entitled to vote at the Meeting.

ARTICLE 2 PURPOSE AND EFFECT OF PROPOSAL

2.1 Purpose and Overview of this Proposal

The purpose of this Proposal is to allow the Debtor to compromise his indebtedness on a fair and equitable basis and make a distribution to his Affected Creditors that is greater than what they would receive in a bankruptcy, in full and final satisfaction of their Claims against the Debtor.

The key element of this Proposal is the Third Party Payment of \$250,000 by a third party, the Residence Trust, for distribution to the Affected Creditors as provided for herein, provided this Proposal is approved by the Affected Creditors and the Court.

If this Proposal is not accepted by the Affected Creditors in the Required Majority and approved by the Court, the Third Party Payment will not be made, and the Debtor will automatically become bankrupt.

2.2 Trustee Under this Proposal

Subject to the provisions of the BIA, the Trustee shall act as the administrator for certain purposes connected with this Proposal, including administration of the Proof of Claim process and the Meeting, as well as the distribution of dividends in respect of Proven Claims, all in accordance with this Proposal.

2.3 Persons Affected

This Proposal provides for, among other things, the compromise, discharge, and release of all Claims of Affected Creditors against the Debtor, and on the Implementation Date this Proposal will become effective and shall be binding on the Debtor and his Affected Creditors.

The Unaffected Creditors will not be affected by this Proposal, and on the Implementation Date will be free to pursue and rights they hold against the Debtor or his property.

2.4 Funding of the Proposal

If the Proposal is accepted by the Affected Creditors and approved by the Court, then the Third Party Payment will be available for payment of:

- (a) the Trustee's Costs; and
- (b) the Superintendent's Levy

with the balance of the Third Party Payment (the "**Distribution Amount**") available for distribution to the Affected Creditors.

2.5 Release of Debtor

On the Implementation Date, each Affected Creditor hereby, and without the need for any further action, releases:

- (a) the Debtor from all Claims that arose before the Filing Date or that relate to the obligations of the Debtor prior to the Filing Date, regardless of the date of discovery or crystallization of such Claims; and
- (b) no Affected Creditor shall have any right, remedy or claim against the Trustee or the Debtor, or each of their respective past and present directors and officers, employees, financial advisors, legal counsel, representatives and agents, (each a "**Released Party**", and collectively, the "**Released Parties**") for anything arising in connection with this Proposal or these proceedings. The Released Parties shall be fully and irrevocably released and discharged from any and all demands, claims, actions, causes of action, counterclaims, suits, debts, sums of money, accounts,

covenants, damages, judgments, orders, including for injunctive relief or specific performance and compliance orders, expenses, executions, encumbrances and other recoveries on account of any liability, obligation, demand or cause of action of whatever nature which any Affected Creditor may be entitled to assert, whether known or unknown, matured or unmatured, foreseen or unforeseen, existing or hereafter arising, based in whole or in part on any omission, transaction, agreement, guarantee, surety, duty, responsibility, indebtedness, liability, obligation, dealing or other occurrence existing or taking place on or prior to the Implementation Date that are in any way relating to, arising out of or in connection with the Claims, as applicable, or in any way relating to the Debtor, all to the full extent permitted by applicable law, provided that nothing herein shall release or discharge a Released Party for gross negligence, criminal, fraudulent or other wilful misconduct, if any such party is found liable or guilty, as the case may be, for such misconduct by the express terms of a judgment rendered on a final determination on the merits.

ARTICLE 3 TREATMENT OF CREDITORS

3.1 Classes of Creditors

For the purposes of considering and voting upon this Proposal, there shall be one class of creditors, being the Affected Creditors Class.

3.2 Distribution to Affected Creditors Class

As soon as practicable after the Implementation Date and final taxation of the Trustee's Costs, the Trustee shall pay each Affected Creditor, in full and final satisfaction of their Proven Claim, their *pro rata* share of the Distribution Amount, based on the amount of their Proven Claim, by way of cheque sent by pre-paid ordinary mail.

3.3 Crown Claims and Priority Claims

Crown Claims that are Proven Claims shall be paid in their entirety, without interest, within six (6) months after the granting of the Approval Order. Any other Priority Claims will be paid in accordance with the BIA.

It is anticipated that there will be no Crown Claims or Priority Claims.

3.4 Trustee's Costs

The Trustee's Costs shall be paid from the amounts received by the Trustee from the Third Party Payment after taxation of the Trustee's Costs before the Court, and the Trustee shall proceed with such taxation following satisfaction of the Conditions Precedent and completion of the Claims Process in accordance with Article 4.1.

3.5 No Other Entitlements

Following the implementation of the Proposal in accordance herewith, no Creditor shall be entitled to any payment on or with respect to their Claims other than as provided pursuant to this Proposal.

ARTICLE 4 CLAIMS PROCESS AND THE MEETING OF CREDITORS

4.1 Claims Process

The procedure for dealing with the allowance, disallowance, and resolution of Proof of Claims will be as set out in Section 135 of the BIA (the “**Claims Process**”), and shall be complete at such time as:

- (a) the Trustee has received Proofs of Claims from all Affected Creditors which submit Proofs of Claim before the date set by the Trustee as the deadline for submitting Proofs of Claim (the “**Claims Bar Date**”) and
- (b) all Proofs of Claim received by the Trustee before the Claims Bar Date have been:
 - i. accepted by the Trustee, in whole or in part, and not subjected to review by the Court in accordance with section 135(5) of the BIA;
 - ii. accepted by the Trustee, in whole or in part, and subjected to review by the Court in accordance with section 135(5) of the BIA and finally resolved by the Court or the British Columbia Court of Appeal, if applicable;
 - iii. disallowed by the Trustee, in whole or in part, and thereafter not subjected to an appeal to the Court in accordance with section 135(4) of the BIA; or
 - iv. disallowed by the Trustee, in whole or in part, and thereafter subjected to an appeal to the Court in accordance with section 135(4) of the BIA and finally resolved by the Court or the British Columbia Court of Appeal, if applicable.

4.2 Meeting

The Meeting shall be conducted in accordance with Division 1 - General Scheme for Proposals of the BIA.

4.3 Conduct of Meeting

The Meeting shall be held by the Trustee and chaired by the Trustee or a nominee thereof, and shall be conducted in accordance with Part III, Division I of the BIA and any applicable Directives or Protocols issued by the Office of the Superintendent of Bankruptcy.

The only Persons entitled to attend the Meeting are the Affected Creditors, including the holders of proxies, and their legal counsel, if any, and the advisors and legal counsel of the Debtor, together

with such representatives of the Trustee as the Trustee may appoint in its discretion, and such scrutineers as may be duly appointed by the chair of the Meeting. Any other person may be admitted only on invitation of the chair of the Meeting.

4.4 Adjournment of the Meeting

The Meeting may be adjourned in accordance with section 52 of the BIA. If the Meeting is adjourned, no further Proof of Claims nor proxies shall be filed with or accepted by the Trustee or the Debtor for the purpose of voting at any reconvening of the Meeting.

4.5 Voting at the Meeting

Each Voting Creditor will be entitled to vote the full amount of its Proven Claim at the Meeting. Each Voting Creditor shall have one (1) vote for the purposes of determining a majority in number, and each Voting Creditor shall be entitled to one vote for every \$1.00 of its Proven Claim for the purposes of determining a majority in value.

4.6 Proxies and Voting Letters

Affected Creditors will be entitled to vote at the applicable Meeting by proxy or voting letter. The particulars with respect to voting by proxy or voting letter will be detailed in the Proof of Claim package and will be binding upon all Affected Creditors.

4.7 Inspectors

At the Meeting, the Voting Creditors may appoint one or more, but not more than five, inspectors (the "**Inspectors**"). The inspectors shall have only the following powers

- (a) the power to extend the dates of payments provided for under this Proposal;
- (b) the power to waive any default in the performance of any provision of this Proposal;
- (c) the power to approve interim and final statements of receipts and disbursements of the Trustee, including the power to approve proposed dividends and reasonable fees and disbursements of the Trustee;
- (d) the power to advise the Trustee in respect of such matters as may be referred to the Inspectors by the Trustee; and
- (e) the power to advise the Trustee concerning any dispute that may arise as to the validity of a Proof of Claim filed by a Creditor.

In the event no Inspectors are appointed under this Proposal, the Trustee shall be entitled to be paid the Trustee's Costs, provided that the Trustee's Costs shall at all times be subject to taxation by the Court upon completion of this Proposal.

ARTICLE 5 CONDITIONS PRECEDENT

5.1 Conditions Precedent to the Implementation Date

The implementation of this Proposal by the Debtor on the Implementation Date is subject to the satisfaction of the following conditions precedent (collectively, the “**Conditions Precedent**”)

- (a) this Proposal shall have been approved by the Affected Creditor Class by the Required Majority and in accordance with the provisions of the BIA;
- (b) the Approval Order sanctioning this Proposal shall have been made, and the effect of the Approval Order shall not have been stayed, revised, modified, reversed or amended whether by appeal or otherwise;
- (c) on or before the Implementation Date, the Residence Trust shall have released the Third Party Payment to the Trustee to be distributed to the Affected Creditors; and
- (d) all other actions, documents and agreements necessary to implement this Proposal as required herein shall have been effected and executed.

5.2 Default

It shall be a default under this Proposal if all Conditions Precedent are not satisfied and performed by no later than 21 days following the issuance of the Approval Order.

ARTICLE 6 AMENDMENTS AND MODIFICATIONS

6.1 Amendment of Proposal before or at Meeting

The Debtor reserves the right, with the consent of the Trustee, to amend, modify, supplement or restate, but not withdraw, this Proposal at any time prior to the Meeting, or at the Meeting, in which case the amended, modified, supplemented or restated proposal will be put before the Affected Creditor Class for approval at the Meeting.

6.2 Modification of Proposal after Meeting

After the Meeting, this Proposal may be modified from time to time:

- (a) by the Debtor if the amendment is considered by the Trustee and the Inspectors (if any) to be non-substantive in nature, and with the approval of the Trustee, and the majority of the Inspectors (if any); and
- (b) by the Court on application of the Debtor or the Trustee and upon notice to those determined by the applicant to be directly affected by the proposed modification.

ARTICLE 7 APPLICATION FOR COURT APPROVAL

7.1 Application for Court Approval

Upon the conclusion of the Meeting, if this Proposal has been approved by the Affected Creditor Class by the Required Majority, the Trustee will apply to the Court for the Approval Order. Subject only to the Approval Order being granted and the satisfaction of the Conditions Precedent, this Proposal will be implemented by the Debtor and will be binding upon all the Affected Creditors and all other Persons affected by this Proposal in accordance with its terms.

ARTICLE 8 NOTICE, UNDELIVERABLE DISTRIBUTIONS AND THE LEVY

8.1 Notices and Payments to Affected Creditors

Any notices, correspondence and distributions to Affected Creditors under or in relation to this Proposal shall be delivered to the address provided by each Affected Creditor unless the Debtor and the Trustee are notified by an Affected Creditor in writing of an alternative address for delivery.

8.2 Undeliverable Distributions

If any distribution, delivery or correspondence to an Affected Creditor under this Proposal is returned to the sender as undeliverable, no further distributions, deliveries or correspondence shall be made to that Affected Creditor unless and until the sender is notified by such Affected Creditor, in writing, of their current address, at which time any missed deliveries, distributions (without interest) and correspondence shall be delivered to such Affected Creditor at such address. Undeliverable distributions shall be retained by the Trustee until they are claimed. Before proceeding to discharge, the Trustee shall forward to the Superintendent any unclaimed dividends and undistributed funds that the Trustee possesses, other than those exempted by the General Rules, and shall provide a list of the names and addresses of the creditors entitled to the unclaimed dividends, showing the amount payable to each creditor.

8.3 Superintendent's Levy and Taxes

All distributions to the Affected Creditors under this Proposal shall be made net of the Superintendent's Levy.

Notwithstanding any other provision of this Proposal, each Affected Creditor that receives a distribution pursuant to this Proposal shall have the sole and exclusive responsibility for the satisfaction and payment of any taxes or tax obligations imposed by any governmental entity (including income, withholding and other tax obligations on account of such distribution).

ARTICLE 9 GENERAL

9.1 Interpretation

For the purposes of this Proposal:

- (a) all Proofs of Claim submitted by Creditors in any other currency will be converted to Canadian dollar currency at the Bank of Canada daily average exchange rate for exchanging currency to Canadian dollars on the Filing Date; and
- (b) when the context requires, a word or words importing the singular shall include the plural and vice versa and a word or words importing one gender shall include all genders.

9.2 Date for Any Action

In the event that any date on which any action is required to be taken under this Proposal is not a Business Day, that action shall be required to be taken on the next succeeding date that is a Business Day.

9.3 Interest

Interest shall not accrue or be paid on any Claims after the Filing Date, and no Claims shall be entitled to interest accruing on or after the Filing Date.

9.4 Capacity of Trustee

Crowe MacKay & Company Ltd. is acting in its capacity as Trustee and not in its personal capacity, and shall not incur any liabilities or obligations for any acts in connection with this Proposal or in respect of the business or obligations of the Debtor, whether existing as at the Filing Date or incurred subsequent thereto and no Person shall have any Claim against Crowe MacKay & Company Ltd. in respect thereof unless such acts have been carried out in bad faith and are a willful or wrongful act of default. The foregoing is in addition to, and not substitution for, and in no way limits any protections afforded to Crowe MacKay & Company Ltd. under the BIA or elsewhere.

9.5 Certificate of Completion

As soon as practicable after the Implementation Date, upon the Trustee making the last distributions by and to the Affected Creditors as contemplated by this Proposal, the terms of this Proposal shall be deemed to be fully performed and the Trustee shall provide to the Official Receiver a certificate pursuant to Section 65.3 of the BIA and the Trustee shall thereupon be entitled to be discharged.

9.6 No Default

Each Affected Creditor will be deemed to have waived any default by the Debtor in any provision, expressed or implied or in any agreement existing between the Affected Creditor and the Debtor

that occurred on or prior to the Implementation Date. Each Affected Creditor will be deemed to have agreed that, to the extent there is any conflict between the provisions of any such agreement and the provisions of this Proposal, the provisions of this Proposal takes precedence and the provisions of any such agreement are amended accordingly.

9.7 Further Assurances

Each of the Persons named or referred to in, or subject to, this Proposal will execute and deliver all such documents and instruments and do all such acts and things as may be necessary or desirable to carry out the full intent and meaning of this Proposal and to give effect to the transactions contemplated herein.

9.8 Governing Law

This Proposal will be governed by and construed in accordance with the laws of the Province of British Columbia and the laws of Canada applicable therein.

9.9 Notice to Debtor or Trustee

All notices, Proofs of Claim, and other correspondence relating to this Proposal and to be delivered to the Debtor or the Trustee shall be in writing and shall be delivered either personally, by email, by regular mail, by registered mail or by certified mail, return receipt requested, at the following address:

Crowe MacKay & Company Ltd.

In its capacity as Trustee under the Proposal of Peter Anthony Censorio

#1100 - 1177 West Hastings Street
Vancouver BC V6E 4T5

Attention: Jonathan McNair

Email: jonathan.mcnaire@crowemackay.ca

9.10 Successors and Assigns

This Proposal is binding upon the Debtor, the Affected Creditors and their respective heirs, executors, administrators, successors and assigns.

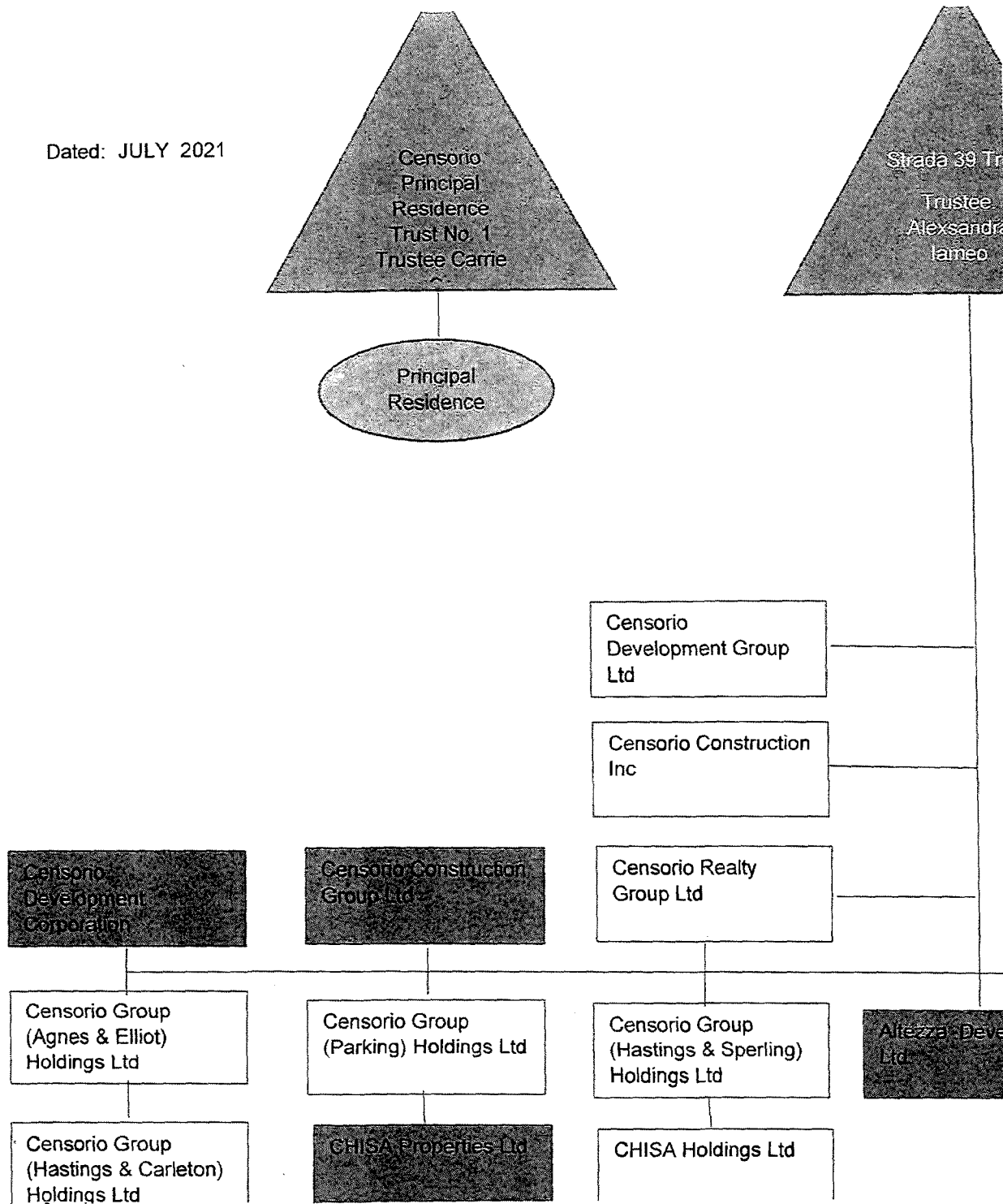
9.11 Date and Reference

This Proposal may be referred to as being the Proposal of the Debtor dated for reference the 27th day of July, 2021.

PETER ANTHONY CENSORIO



Dated: JULY 2021



**ESTIMATED RETURN FOR UNSECURED CREDITORS
BANKRUPTCY VS CONSUMER PROPOSAL
PETER ANTHONY CENSORIO**

SCHEDULE "C"

BANKRUPTCY				PROPOSAL			
Receipts:				Receipts:			
Payments to Trustee:	0	0.00	0.00	Proposal Payments:	0	0.00	0.00
Surplus Income:	21	4,558.82	95,735.22	Lump Sum Payment:			250,000.00
Cash on Hand:			0.00	Other Terms:			0.00
Asset Realization:			2,500.00	Asset Realization:			0.00
Other Assets:			0.00	Other Assets:			0.00
Total:			98,235.22	Total:			250,000.00
Disbursements:				Disbursements:			
Est. Trustee Fees			45,000.00	Est. Trustee Fees			45,000.00
100% of \$975:			0.00	20% of Moneys Distributed:			0.00
35% of \$1025:			0.00	Expenses (Counselling\OR):			0.00
50% over \$2000:			0.00	Tax:			2,250.00
Expenses (Counselling\OR):			0.00				
Tax:			2,250.00				
Total:			47,250.00	Total:			47,250.00
Amount Available for Distribution:			50,985.22	Amount Available for Distribution:			202,750.00
Superintendent Levy:			2,549.26	Superintendent Levy:			10,137.50
Amount Available to Creditors:			48,435.96	Amount Available to Creditors:			192,612.50
Unsecured:			16,114,320.86	Unsecured:			16,114,320.86
Estimated Return (%):			0.0030	Estimated Return (%):			0.0120
Creditor Name				Amount	Bankruptcy		Proposal
0943659 BC Ltd (Ballan) (U)				1,500,000.00	4,508.66		17,929.32
All Canadian Investment Corp. (U)				3,000,000.00	9,017.31		35,858.63
All Canadian Investment Corp. (U)				6,703,922.65	20,150.46		80,131.16
Bancorp Growth Mortgage Fund II LTD. (U)				1,800,000.00	5,410.39		21,515.18
CRA - Tax - Pacific (U)				16,834.10	50.60		201.22
Honda Canada Finance Inc c/o BankruptcyHighway.com (S)				2,530.00	0.00		0.00
HSBC Bank Canada c/o BankruptcyHighway.com (U)				34,000.00	102.20		406.40
Joe Gentile (U)				750,000.00	2,254.33		8,964.66
PK Capital (U)				750,000.00	2,254.33		8,964.66
RBC Royal Bank Visa c/o BankruptcyHighway.com (U)				24,564.11	73.83		293.61
Shares Adventures Ltd. (U)				1,500,000.00	4,508.66		17,929.32
Sure Mortgage Capital Inc. (S)				500,000.00	0.00		0.00
Vancity Credit Union (U)				35,000.00	105.20		418.35
Total:				16,616,850.86	48,435.96		192,612.50

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Crowe MacKay & Company Ltd.
1100 - 1177 West Hastings Street
Vancouver BC V6E 4T5
Phone: (604) 689-3928 Fax: (604) 687-5617
E-mail: trustee@crowemackay.ca

District of: British Columbia
Division No. 03 - Vancouver
Court No.
Estate No. 11-2748492

FORM 31
Proof of Claim
(Sections 50.1, 81.5, 81.6, Subsections 65.2(4), 81.2(1), 81.3(8), 81.4(8), 102(2), 124(2), 128(1),
and Paragraphs 51(1)(e) and 66.14(b) of the Act)

In the Matter of the Proposal of
Peter Anthony Censorio
of the City of Burnaby, in the Province of British Columbia
Crowe MacKay & Company Ltd., Trustee

All notices or correspondence regarding this claim must be forwarded to the following address:

In the matter of the proposal of Peter Anthony Censorio of the City of Burnaby in the Province of British Columbia and the claim of _____, creditor.
I, _____ (name of creditor or representative of the creditor), of the city of _____ in the province of _____, do hereby certify:

1. That I am a creditor of the above named debtor (or I am _____ (position/title) of _____, creditor).

2. That I have knowledge of all the circumstances connected with the claim referred to below.

3. That the debtor was, at the date of proposal, namely the 28th day of June 2021, and still is, indebted to the creditor in the sum of \$_____, as specified in the statement of account (or affidavit) attached and marked Schedule "A", after deducting any counterclaims to which the debtor is entitled. (The attached statement of account or affidavit must specify the vouchers or other evidence in support of the claim.)

4. (Check and complete appropriate category.)

☐ A. UNSECURED CLAIM OF \$_____ (other than as a customer contemplated by Section 262 of the Act)

That in respect of this debt, I do not hold any assets of the debtor as security and
(Check appropriate description.)

☐ Regarding the amount of \$_____, I claim a right to a priority under section 136 of the Act.

☐ Regarding the amount of \$_____, I do not claim a right to a priority.
(Set out on an attached sheet details to support priority claim.)

☐ B. CLAIM OF LESSOR FOR DISCLAIMER OF A LEASE \$_____

That I hereby make a claim under subsection 65.2(4) of the Act, particulars of which are as follows:
(Give full particulars of the claim, including the calculations upon which the claim is based.)

☐ C. SECURED CLAIM OF \$_____

That in respect of this debt, I hold assets of the debtor valued at \$_____ as security, particulars of which are as follows:
(Give full particulars of the security, including the date on which the security was given and the value at which you assess the security, and attach a copy of the security documents.)

☐ D. CLAIM BY FARMER, FISHERMAN OR AQUACULTURIST OF \$_____

That I hereby make a claim under subsection 81.2(1) of the Act for the unpaid amount of \$_____
(Attach a copy of sales agreement and delivery receipts.)

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FORM 31 --- Concluded

- ☐ E. CLAIM BY WAGE EARNER OF \$ _____
- ☐ That I hereby make a claim under subsection 81.3(8) of the Act in the amount of \$ _____.
- ☐ That I hereby make a claim under subsection 81.4(8) of the Act in the amount of \$ _____.
- ☐ F. CLAIM BY EMPLOYEE FOR UNPAID AMOUNT REGARDING PENSION PLAN OF \$ _____
- ☐ That I hereby make a claim under subsection 81.5 of the Act in the amount of \$ _____.
- ☐ That I hereby make a claim under subsection 81.6 of the Act in the amount of \$ _____.

- ☐ G. CLAIM AGAINST DIRECTOR \$ _____

(To be completed when a proposal provides for the compromise of claims against directors.)

That I hereby make a claim under subsection 50(13) of the Act, particulars of which are as follows:
(Give full particulars of the claim, including the calculations upon which the claim is based.)

- ☐ H. CLAIM OF A CUSTOMER OF A BANKRUPT SECURITIES FIRM \$ _____

That I hereby make a claim as a customer for net equity as contemplated by section 262 of the Act, particulars of which are as follows:
(Give full particulars of the claim, including the calculations upon which the claim is based.)

5. That, to the best of my knowledge, I _____ (am/am not) (or the above-named creditor _____ (is/is not)) related to the debtor within the meaning of section 4 of the Act, and _____ (have/has/have not/has not) dealt with the debtor in a non-arm's-length manner.

6. That the following are the payments that I have received from, and the credits that I have allowed to, and the transfers at undervalue within the meaning of subsection 2(1) of the Act that I have been privy to or a party to with the debtor within the three months (or, if the creditor and the debtor are related within the meaning of section 4 of the Act or were not dealing with each other at arm's length, within the 12 months) immediately before the date of the initial bankruptcy event within the meaning of Section 2 of the Act: (Provide details of payments, credits and transfers at undervalue.)

7. (Applicable only in the case of the bankruptcy of an individual.)

- ☐ Whenever the trustee reviews the financial situation of a bankrupt to redetermine whether or not the bankrupt is required to make payments under section 68 of the Act, I request to be informed, pursuant to paragraph 68(4) of the Act, of the new fixed amount or of the fact that there is no longer surplus income.
- ☐ I request that a copy of the report filed by the trustee regarding the bankrupt's application for discharge pursuant to subsection 170(1) of the Act be sent to the above address.

Dated at _____, this _____ day of _____.

Witness

Creditor

Phone Number: _____
Fax Number : _____
E-mail Address : _____

NOTE: If an affidavit is attached, it must have been made before a person qualified to take affidavits.

WARNINGS: A trustee may, pursuant to subsection 128(3) of the Act, redeem a security on payment to the secured creditor of the debt or the value of the security as assessed, in a proof of security, by the secured creditor.

Subsection 20(1) of the Act provides severe penalties for making any false claim, proof, declaration or statement of account.

District of: British Columbia
Division No. 03 - Vancouver
Court No.
Estate No. 11-2748492

FORM 36
Proxy
(Subsection 102(2) and paragraphs 51(1)(e) and 66.15(3)(b) of the Act)

In the Matter of the Proposal of
Peter Anthoney Censorio
of the City of Burnaby, in the Province of British Columbia
Crowe MacKay & Company Ltd., Trustee

I, _____, of _____, a creditor in the above matter, hereby
appoint _____, of _____, to be
my proxyholder in the above matter, except as to the receipt of dividends, _____ (with or without)
power to appoint another proxyholder in his or her place.

Dated at _____, this _____ day of _____.

Witness

Individual Creditor

Witness

Name of Corporate Creditor

Per _____
Name and Title of Signing Officer

Return To:
Crowe MacKay & Company Ltd. - Licensed Insolvency Trustee

1100 - 1177 West Hastings Street
Vancouver BC V6E 4T5
Fax: (604) 687-5617
E-mail: trustee@crowemackay.ca

District of: British Columbia
 Division No. 03 - Vancouver
 Court No.
 Estate No. 11-2748492

FORM 37

Voting Letter
 (Paragraph 51(1)(f) of the Act)

In the Matter of the Proposal of
 Peter Anthoney Censorio
 of the City of Burnaby, in the Province of British Columbia
 Crowe MacKay & Company Ltd., Trustee

I, _____, creditor (or I, _____, representative
 of _____, creditor), of _____, a creditor in the above matter
 for the sum of \$ _____, hereby request the trustee acting with respect to the proposal of Peter
 Anthoney Censorio, to record my vote _____ (for or against) the acceptance of the proposal as
 made on the 28th day of July 2021.

Dated at _____, this _____ day of _____.

 Witness

 Individual Creditor

 Witness

 Name of Corporate Creditor

Per _____
 Name and Title of Signing Officer

Return To:
 Crowe MacKay & Company Ltd. - Licensed Insolvency Trustee
 Per:

 Jonathan McNair - Licensed Insolvency Trustee
 1100 - 1177 West Hastings Street
 Vancouver BC V6E 4T5
 Fax: (604) 687-5617
 E-mail: trustee@crowemackay.ca

APPENDIX B

BRITISH COLUMBIA SECURITIES COMMISSION

Securities Act, RSBC 1996, c. 418

Citation: Re Donald Bergman and others, 2021 BCSECCOM 302 Date: 20210728

All Canadian Investment Corporation and Donald Bergman

Panel	Judith Downes Gordon Johnson Deborah Abbey	Commissioner Vice Chair Commissioner
Hearing dates	March 8, 9, 10, 11, 12 and May 14, 2021	
Submissions Completed	May 14, 2021	
Date of Findings	July 28, 2021	
Appearing		
Deborah W. Flood Beverly Ma	For the Executive Director	
Donald Bergman	For himself	
Jeremy West	For All Canadian Investment Corporation	

Findings

I. Introduction

- [1] This is the liability portion of a hearing under sections 161, 162 and 174 of the *Securities Act*, RSBC1996, c. 418 (Act).
- [2] In this proceeding the executive director alleges that All Canadian Investment Corporation (ACIC) contravened section 168.1(1)(b) of the Act by making false or misleading statements in documents required to be filed under the Act and section 50(1)(d) of the Act by making misrepresentations in an Offering Memorandum dated January 2014, a second Offering Memorandum dated February 2015 and a third Offering Memorandum dated June 2015 (collectively, the OMs). The executive director also alleges that Donald Bergman is liable under section 168.2(1) of the Act for authorizing, permitting or acquiescing in ACIC's contraventions.

II. Factual Background

- [3] ACIC was a mortgage investment company that was in the business of providing loans to owners and developers of single- and multi-family residential, commercial, office and industrial real estate properties secured by mortgages of the property. It is undisputed that Bergman was its founder, sole director, president and the individual with sole authority for all decisions of ACIC which are relevant to this proceeding.

- [4] From January 2014 to December 2015, ACIC raised over \$1.602 million from 56 investors in reliance on the offering memorandum exemption in section 2.0 of National Instrument 45-106 – *Prospectus Exemptions*. It is a condition of this exemption that offering memorandums are filed with the Commission.
- [5] Bergman prepared the OMs. He also approved the OMs in his capacity as ACIC's director and signed the required certificates in the OMs that they did not contain a misrepresentation. He was responsible for filing the OMs on behalf of ACIC with the Commission.
- [6] Pursuant to the OMs, ACIC offered investors units (Units) comprising one preferred share and one warrant. The preferred shareholders were to receive quarterly dividends on their investment. ACIC filed all of the OMs with the Commission.
- [7] ACIC promoted its offering to investors by word of mouth and newspaper ads. ACIC sales representatives met with investors on behalf of ACIC. Investors received the relevant offering memorandum and other documents from sales representatives and some investors also received an executive summary.
- [8] In the OMs, ACIC described its loan portfolio as consisting of mortgage loans and unsecured investments. Each of the OMs contained the following representation (the Registration Representation) about ACIC's mortgage loans:

Investment Guidelines – Mortgage Loans

All Mortgage Loans will be made pursuant to the following investment guidelines that have been established by the Company:

- (a) the Company will make loans so as to maintain its status as a "mortgage investment corporation" under the Tax Act;
 - (b) all Mortgage Loans will be secured in favour of the Company or its agent, either as sole mortgagee or co-mortgagee, and each Mortgage will be registered in the appropriate land title office as a charge against the real property subject to the Mortgage...
- [9] Item (i) of the investment guidelines made it clear that the Registration Representation in item (b) of the investment guidelines was not one of the guidelines that could be waived or deviated from by ACIC management:
 - (i) the Company's director may waive the provisions of paragraphs (e), (f) or (g) above in relation to any Mortgage Loan, but will not otherwise deviate from the investment guidelines set out above.
 - [10] Each OM contained schedules summarizing ACIC's mortgage portfolio as of the date of each OM. The mortgage portfolio schedules were included under the heading "2.7

Material Agreements.” The schedules included a priority ranking of each of ACIC’s mortgages. The schedules ranked all of ACIC’s mortgages in either first or second priority (the Priority Representation).

[11] These tables state:

[12] From the January 21, 2014 OM:

2.7 Material Agreements

a) *Mortgage Portfolio Schedule as at January 21, 2014*

Property Type	Location	Priority Ranking	Interest Rate	Payment Terms	Due Date	Balance	Property Value	LTV
Residential	Sunshine Coast, BC	1st	12%	IO	On demand	\$ 2,700,000	\$ 3,590,000	76.0%
Hotel/Motel	Sunshine Coast, BC	1st	6%	IO	1-June-14	\$1,159,155	\$1,540,000	75.3%
Residential	Lower Mainland, BC	2nd	12%	IO	30-Apr-14	\$1,403,972	\$2 550,000	63.8%
Commercial	Lower Mainland, BC	1st	10%	IO	On demand	\$400,000	\$5,700,000	35.1%
Residential	Vancouver Island, BC	2nd	12%	IO	30-Nov-14	\$600,000	\$2,324,000	77.8%
Residential	Lower Mainland, BC	2nd	12%	IO	31-May-15	\$2,819,543	\$9,450,000	73.2%
Residential	Sunshine Coast, BC	1st	12%	IO	On demand	\$936,786	\$2,835,000	33.0%
Hotel/Motel	Northern AB	1st	12%	IO	10-Aug-14	\$290,000	\$575,000	54.1%
Residential	Lower Mainland, BC	2nd	12%	IO	On demand	\$6,846,494	\$10,100,000	87.1%
Commercial	Lower Mainland, BC	2nd	65%	IO	1-June-14	\$1,232,180	\$2,487,000	85.7%
Residential	Lower Mainland, BC	2nd	12%	IO	30-Apr-14	\$1,074,773	\$4,044,000	81.0%
Residential	Lower Mainland, BC	2nd	12%	IO	30-Mar-14	\$1,650,180	\$9,050,000	86.8%
Total Balance						\$ 21,113,083		

[13] From the February 12, 2015 OM:

2.7 Material Agreements

a) *Mortgage Portfolio Schedule as at February 12, 2015*

Property Type	Location	Priority Ranking	Interest Rate	Payment Terms	Due Date	Balance	Property Value	LTV
Residential	Sunshine Coast, BC	1st	12%	IO	On demand	\$ 2,700,000	\$ 3,364,000	80.0%
Hotel/Motel	Sunshine Coast, BC	1st	6%	IO	1-June-15	\$1,159,155	\$1,540,000	75.3%

Residential	Lower Mainland, BC	2nd	12%	IO	On demand	\$933,267	\$2 550,000	67.9%
Residential	Vancouver Island, BC	2nd	12%	IO	30-Nov-16	\$600,000	\$2,190,000	82.2%
Residential	Lower Mainland, BC	2nd	12%	IO	31-May-15	\$8,628,863	\$47,000,000	80.3%
Hotel/Motel	Northern AB	1st	12%	IO	10-Aug-16	\$290,000	\$575,000	54.1%
Residential	Lower Mainland, BC	2nd	12%	IO	On demand	\$5,690,892	\$18,900,000	75.8%
Commercial	Lower Mainland, BC	2nd	12%	IO	1-June-15	\$798,000	\$2,700,000	74.0%
Residential	Lower Mainland, BC	2nd	12%	IO	30-Apr-16	\$946,000	\$3,730,000	89.7%
Residential	Lower Mainland, BC	2nd	12%	IO	30-Mar-15	\$2,010,037	\$9,850,000	87.4%
Total Balance						\$ 23,996,214		

[14] From the June 22, 2015 OM:

2.7 Material Agreements

a) Mortgage Portfolio Schedule as at June 1, 2015

Property Type	Location	Priority Ranking	Interest Rate	Payment Terms	Due Date	Balance	Property Value	LTV
Residential	Sunshine Coast, BC	1st	12%	IO	On demand	\$ 2,700,000	\$ 3,364,000	80.0%
Hotel/Motel	Sunshine Coast, BC	1st	6%	IO	On Demand	\$1,159,155	\$1,540,000	75.3%
Residential	Lower Mainland, BC	2nd	12%	IO	On Demand	\$973,000	\$2 550,000	67.9%
Residential	Vancouver Island, BC	2nd	12%	IO	30-Nov-16	\$600,000	\$2,190,000	82.2%
Residential	Lower Mainland, BC	2nd	12%	IO	31-Mar-17	\$8,813,863	\$47,000,000	80.3%
Residential	Estevan, Sask	1st	12%	IO	30-Sept-16	\$360,000	\$480,000	75%
Hotel/Motel	Northern AB	1st	12%	IO	10-Aug-16	\$290,000	\$575,000	54.1%
Residential	Lower Mainland, BC	2nd	12%	IO	On demand	\$5,690,892	\$18,900,000	75.8%
Commercial	Lower Mainland, BC	2nd	12%	IO	1-June-6	\$708,000	\$2,700,000	74.0%
Residential	Lower Mainland, BC	2nd	12%	IO	30-Apr-16	\$946,000	\$3,730,000	89.7%
Residential	Lower Mainland, BC	2nd	12%	IO	30-Mar-16	\$2,140,037	\$9,850,000	87.4%
Total Balance						\$ 24,380,947		

- [15] Starting in 2015, dividends to ACIC investors dwindled. Since the start of 2017, ACIC has not paid any dividends. As a result, the majority of investors sent redemption notices to ACIC. ACIC was unable to meet the demands of its creditors or satisfy the redemption requests.
- [16] In November 2017, ACIC petitioned the Supreme Court of British Columbia seeking a stay of proceedings to implement a wind down of the company and develop a plan of arrangement under the *Companies' Creditors Arrangement Act*, RSC, 1985, c C-36 (CCAA). The court consented and appointed a monitor to assist ACIC in the liquidation of ACIC's assets and the winding up of ACIC's business. ACIC remains under the protection of the CCAA and is in the final stages of liquidating its assets.
- [17] By court order in the CCAA proceedings dated November 9, 2018, Bergman's power and authority with respect to ACIC's business and property, by virtue of being a director, officer or in management, was suspended and ACIC became a company under the direction of the monitor.
- [18] As ACIC's financial difficulties deepened it became apparent that there were questions about the accuracy of some of the statements in the OMs. It emerged that some of the mortgages had lower priorities than had been identified in the schedules to the OMs and that some of the mortgages were not registered at all.
- [19] The monitor, acting under the supervision of the British Columbia Supreme Court, has conducted an orderly wind up of the business of ACIC. The final net recovery to preferred shareholders was not clear as of the date of the hearing in this matter because one final property remained unsold at that time. The monitor provided an affidavit estimating that total recoveries for preferred shareholders would fall in the range of 3.88% and 18.05%. This implies that losses for preferred shareholders will fall into the range of 81.95% and 96.12%.
- [20] The Notice of Hearing in this proceeding was issued January 20, 2020 (2020 BCSECCOM 22). ACIC, acting with the approval of the British Columbia Supreme Court which had been applied for by ACIC's monitor, entered into an agreed statement of facts with the executive director dated March 21, 2021. Bergman did not enter into an agreed statement of facts.
- [21] Bergman represented himself at the evidentiary hearing and during the presentation of submissions regarding liability. After confirming the admission into evidence of the agreed statement of facts, counsel for ACIC left the hearing room with leave of the panel. ACIC did not participate further in this proceeding.
- [22] The executive director called seven witnesses: a staff investigator, four investor witnesses and a former ACIC employee who was a sales representative for ACIC. The executive director also tendered an expert witness. The panel accepted the expert's qualifications. The executive director also provided an affidavit from ACIC's court-appointed monitor.

- [23] We need not summarize the evidence of these witnesses except to note that the executive director's expert witness explained why it is industry practice for managers of mortgage investment companies to register all mortgages at the time of funding and to maintain and enforce that registration because the fact of registration provides significant benefits and protections to mortgage lenders.

III. Applicable Law

A. Standard of Proof

- [24] The standard of proof is proof on a balance of probabilities. In *F.H. v. McDougall*, 2008 SCC 53 (CanLII), the Supreme Court of Canada held, at paragraph 49:

In the result, I would reaffirm that in civil cases there is only one standard of proof and that is proof on a balance of probabilities. In all civil cases, the trial judge must scrutinize the relevant evidence with care to determine whether it is more likely than not that an alleged event occurred.

- [25] The Court also held that the evidence "must always be sufficiently clear, convincing and cogent" to satisfy the balance of probabilities test. The executive director does not have to prove each evidentiary element on a balance of probabilities. The totality of the evidence must establish that the events at issue are more likely than not to have occurred in order to satisfy the balance of probabilities test.

B. Contraventions Alleged and Materiality

(i) False or Misleading Statements Prohibited

- [26] All references are to statutory provisions in effect at the time the Notice of Hearing was issued.
- [27] Section 168.1(1)(b) of the Act states:

A person must not

(b) make a statement or provide information in any record required to be filed, provided, delivered or sent under this Act that in a material respect and at the time and in light of circumstances under which it is made, is false or misleading, or omit facts from the statement or information necessary to make that statement or information not false or misleading.

- [28] Section 168.1(2) provides that a person does not contravene subsection (1) if the person:

- a) did not know, and
- b) in the exercise of reasonable diligence, could not have known that the statement or information was false or misleading.

- [29] Whether a statement is material involves two aspects. First, it requires an assessment of how far the statement departs from the truth. This requires a comparison of the information that was given, to the facts that were known to the person giving the

information at the time the person gave it. Second, it measures the significance of the information that is false or misleading.

(ii) Misrepresentation

[30] Section 50(1)(d) of the Act stated, in part:

A person, while engaging in investor relations activities or with the intention of effecting a trade in a security, must not do any of the following:

(d) make a statement that the person knows, or ought reasonably to know, is a misrepresentation.

[31] Section 1 of the Act defines “security” to include:

- (a) a document, instrument or writing commonly known as a security,
- ...
- (c) a document evidencing an option, subscription or other interest in or to a security,
- (d) a bond, debenture, note or other evidence of indebtedness, share, stock, unit, unit certificate, participation certificate, certificate of share or interest, preorganization certificate or subscription other than
 - (i) a contract of insurance issued by an insurer, and
 - (ii) an evidence of deposit issued by a savings institution,
- ...

[32] Section 1 of the Act defines “trade” to include “a disposition of a security for valuable consideration” and “any act, advertisement, solicitation, conduct or negotiation directly or indirectly in furtherance of” a disposition of a security for valuable consideration.

[33] Section 1 of the Act defines “misrepresentation” as:

- a) an untrue statement of a material fact, or
- b) an omission to state a material fact that is
 - (i) required to be stated, or
 - (ii) necessary to prevent a statement that is made from being false or misleading in the circumstances in which it was made.

[34] “Material fact” is defined in section 1 of the Act as follows:

When used in relation to securities issued or proposed to be issued, a fact that would reasonably be expected to have a significant effect on the market price or value of the securities.

[35] The test for materiality under section 50(1)(d) is an objective market impact test. In *Re Canaco Resources Inc.*, 2013 BCSECCOM 310, this Commission held at paragraphs 84 and 92:

The reasonableness of market impact is assessed from the point of view of the reasonable investor, that is, would a reasonable investor expect that the market

price or value of the securities would be affected by the fact or event?... The definitions of material fact and material change measure the impact on the “market price or value” of the issuer's securities. The implication is that “market price” and “value” can be affected differently by a given fact or event.

(iii) Materiality

- [36] As is explained below, the test for materiality in the context of the “material fact” analysis under section 50(1)(d) is very different from the test for materiality in the context of the “in a material respect” analysis under section 168.1(1).

(iv) Personal liability under section 168.2

- [37] Section 168.2(1) of the Act states that if a corporate respondent contravenes a provision of the Act, an individual who is an employee, officer, director or agent of the company also contravenes the same provision of the Act, if the individual “authorizes, permits, or acquiesces in the contravention.”
- [38] There have been numerous decisions that have considered the meaning of the terms “authorize, permit or acquiesce.” In sum, these decisions require that the respondent have the requisite knowledge of the corporate contraventions and the ability to influence the actions of the corporate entity through action or inaction.
- [39] In *Re Momentas Corp.*, 2006 ONSC 15, the Ontario Securities Commission considered the meaning of “authorized, permitted or acquiesced” for a director or officer’s liability for the issuer’s non-compliance with the Act, and stated at paragraph 118:

Although these terms have been interpreted to include some form of knowledge or intention, the threshold for liability under section 122 and 129.2 is a low one as merely acquiescing the conduct or activity in question will satisfy the requirement of liability. The degree of knowledge of intention found in each of the terms “authorize”, “permit” and “acquiesce” varies significantly. “Acquiesce” means to agree or consent quietly without protest. “Permit” means to allow, consent, tolerate, given permission, particularly in writing. “Authorize” means to give official approval or permission, to give power or authority or to give justification.

IV. Positions of the Parties

- [40] The executive director takes the position that the key elements of its allegations are established by the agreed statement of facts, by certain admissions of Bergman and also by the documentary evidence and the testimony of witnesses who appeared during the hearing.
- [41] The executive director submits that both the Registration Representation and the Priority Representation are false.
- [42] The executive director submits that section 168.1(1)(b) applies to each representation because:

- a) ACIC made the representations in the OMs;
- b) the OMs were required to be filed under the Act; and
- c) the representations were, in a material respect and at the time and in light of the circumstances under which they were made, false or misleading.

[43] The executive director submits that section 50(1)(d) applies to each representation because:

- a) shares in ACIC were “securities” as defined under the Act;
- b) ACIC intended to effect trades in its securities when it relied upon the OMs to solicit investors, and entered into trades with investors; and
- c) the representations were untrue statements of material fact that would reasonably be expected to have a significant effect on the market price or value of the securities.

[44] The executive director submits that the representations were material to both of the breaches alleged because:

- a) with respect to the section 50(1)(d) allegation, the representations meet the relevant objective market impact test; and
- b) with respect to the section 168.1(1)(b) allegation, the representations deviated significantly from the truth and were significant information.

[45] The executive director submits that Bergman is personally liable under section 168.2 for ACIC’s contravention of section 50(1)(d) because he:

- a) was the only decision maker of ACIC;
- b) controlled ACIC and its activities with respect to mortgage loan registration, priority, and cancellation; and
- c) was responsible for preparation, execution, filing and dissemination of the OMs containing the misrepresentations.

[46] The executive director submits that Bergman is personally liable under section 168.2 for ACIC’s contravention of section 168.1(1)(b) because:

- a) the directors and officers of a reporting issuer are ultimately responsible for ensuring the accuracy of records filed under the Act;

- b) as president and a director of ACIC, Bergman bore a high degree of responsibility for ensuring that the company filed its OMs and for ensuring the OMs did not contain false or misleading statements; and
- c) because Bergman was responsible for preparing and filing the OMs, and signed the certificate for each of the OMs, he had the required involvement necessary to ground a finding of liability under section 168.2.

- [47] The executive director submits that the agreed statement of facts accepted by ACIC applies to Bergman because it forms the evidentiary basis for the first of two required findings for liability under section 168.2(1)(b) of the Act, contraventions of the Act by a corporate respondent. The second finding required to ground liability under section 168.2(1)(b), discussed below, is that Bergman authorized, permitted, or acquiesced in the alleged contraventions.
- [48] Bergman disputes that the agreed statement of facts should apply to him. He notes that he challenges many of the facts which ACIC agreed to and he notes that ACIC's current representatives were not involved in the events in question.
- [49] Regarding the accuracy of the Registration Representation and the Priority Representation, Bergman points to language in the OMs which makes it clear that ACIC was operating an active, ongoing mortgage investment business. Bergman notes that mortgage borrowers sometimes have issues, particularly during construction financing, and in such circumstances it is often in the financial interests of a lender to make special arrangements with borrowers. Those special arrangements can include allowing another mortgage to be registered ahead of ACIC's or even cancelling the registration of one of ACIC's mortgages. Bergman says that he agreed to special arrangements of these types from time to time because, based on his 30 years of experience in the mortgage lending business, that was in the best interests of ACIC at the time. Bergman says it was consistent with the OMs for him to take this approach because the OMs say that "each Mortgage will be registered", meaning initially registered at the time of loan underwriting, not that "each Mortgage will be registered and will be kept registered".
- [50] Bergman also notes that in a small number of cases he made errors in the OMs in describing the priority of certain mortgages. Bergman seeks to explain those errors away as unintended oversights which are not material.

V. Analysis and Conclusions

- [51] We find that the documentary and oral evidence presented on behalf of the executive director was sufficient to meet the standard of proof required. ACIC's formal admissions in the agreed statement of facts might be relied on to support a liability finding against ACIC regarding the allegations in the Notice of Hearing of contraventions of sections 50(1)(d) and 168.1(1)(b) but we find that such reliance is not necessary because the evidence tendered by the executive director independently supports the liability finding.

A. Materiality Generally

- [52] As noted above, the test for materiality in the “material fact” analysis under section 50(1)(d) is different from the test for materiality in the “in a material respect” analysis under section 168.1(1). We find that the executive director has met the required standard for materiality for each of ACIC’s two alleged breaches of the Act.
- [53] Under section 50(1)(d) the test for materiality is an objective market impact test. The question to be determined is whether the definition of a material fact as set out in section 1 of the Act has been met. That definition turns on whether the facts stated by ACIC would reasonably be expected to have a significant effect on the market price or value of ACIC’s preferred shares.
- [54] Under section 168.1(1)(b) the test for materiality has two parts. As stated in *Re Nuttall*, 2011 BCSECCOM 521 materiality is established based on the degree to which the information given is false or misleading in the sense of how far it departs from the truth. As noted in *Re CAAS*, 2017 BCSECCOM 296 there is another arm to the test which is focused on the significance of the information given.

B. Findings on Section 50(1)(d)

(i) *Were the Units “securities”?*

- [55] There was no dispute the Units are securities. We find they fall squarely within the definition of “security” as set out in section 1 of the Act.

(ii) *Did ACIC intend to effect a trade in securities?*

- [56] We find that the Registration Representation and the Priority Representation were made with the intent of effecting trades in the Units. Soliciting such trades was, without doubt, the primary purpose of the delivery of the OMs to investors.

(iii) *Were the Registration Representation and the Priority Representation untrue?*

- [57] We find that the Registration Representation and the Priority Representation were untrue statements.
- [58] The Registration Representation in the OMs stated that all mortgages “will be registered in the appropriate land title office...”. Many of ACIC’s mortgages were not registered as of the dates of the OMs or subsequently during the period of distribution of the Units. In particular, mortgages on the following properties were not registered at the dates indicated below:

Properties	Period not secured by a registered mortgage
Grant Manor	
PID 002-408-333	<ul style="list-style-type: none"> February 14, 2013 onwards
Altezza	
PID 028-874-382	<ul style="list-style-type: none"> January 9, 2014-November 18, 2014 November 23, 2015 onwards

PID 028-874-391	<ul style="list-style-type: none"> January 9, 2014-November 18, 2014 November 23, 2015 onwards
Chisa	
PID 025-161-342	<ul style="list-style-type: none"> May 16, 2014-November 18, 2014 February 12, 2016 onwards
Beta	
PID 029-125-626	<ul style="list-style-type: none"> March 10, 2014 onwards
Sperling	
PID 003-279-821	<ul style="list-style-type: none"> April 3, 2014-November 18, 2014 November 20, 2015 to April 12, 2018
PID 003-279-839	<ul style="list-style-type: none"> April 3, 2014-November 18, 2014 November 20, 2015 to April 12, 2018
Carleton	
PID 003-329-232	<ul style="list-style-type: none"> March 31, 2016 onwards
PID 002-645-068	<ul style="list-style-type: none"> May 10, 2016 onwards

- [59] With respect to the Priority Representation, certain of the mortgages were lower in priority than stated in the OMs as of the date of the OMs and, in some cases, subsequently during the period of distribution of the Units. ACIC cancelled registration of six of the mortgage loans listed in the OMs and entered into priority agreements with other mortgagors. The result was loans that were unregistered or in lower priority than stated in the OMs.

(iv) Were the Registration Representation and the Priority Representation “material facts”?

- [60] We find that the Registration Representation and the Priority Representation were “material facts”.
- [61] There is no issue that the Registration Representation and the Priority Representation were material statements.
- [62] The mortgage loans, which were the subject of these representations, were stated in the OMs to be material agreements.
- [63] The two representations presented the mortgage loans to investors as investments secured by a registered interest against title to the properties subject to the loans to be held in first or second positions only. This would be material to an investor as the fact of registration provides the mortgage holder a level of security that an unregistered mortgage does not.
- [64] Additionally, in practice, mortgages in first or second priority have a higher probability of being satisfied over mortgages in lower priority positions in foreclosure and sale situations.

- [65] The significance of the Registration Representation was highlighted by how ACIC treated this investment guideline. It was not included in the OMs in the list of investment guidelines which could be waived by management.
- [66] The significance of the Priority Representation was highlighted by the fact that ACIC included the priority ranking of its mortgage loans in the OMs which went to all investors and in its executive summary which went to some investors.
- [67] The only remaining issue is whether the fact that the Registration Representation and the Priority Representation were untrue had a significant effect on the value of the Units. We find that it did.
- [68] ACIC was a private issuer and there was no liquidity for its securities. As a result, the value of the ACIC preferred shares was primarily tied to dividends payable on those shares which was paid from ACIC's net income. By failing to register mortgage loans or entering into agreements to forgo registration priority, ACIC increased the risk that its net income would not be sufficient to pay dividends on or redeem the preferred shares.
- [69] The Registration Representation and the Priority Representation went to the heart of what a conservative investor was seeking, namely an investment with significant returns secured by registered interest in land in first or second priority. The falsity of these representations would affect the value an investor would attribute to the Units and the decision to invest.
- [70] We find that the respondents knew the Registration Representation and the Priority Representation were false. ACIC acted through Bergman as its president and sole director during the relevant period. Bergman's knowledge of the falsity of these representations was clear. He was responsible for preparing the OMs and signing off on them. He authorized the mortgage terms and registration and cancellation of the mortgage loans in issue.
- [71] Bergman's response to the allegations in the Notice of Hearing focuses on what he describes as the intent of the OM. Bergman argues that the circumstances of a mortgage borrower can change and sometimes it can be in the interest of a mortgage lender to take a flexible approach with a borrower. Sometimes the best strategy might be, as one example, to de-register a mortgage in order to allow a borrower to use the security of its property to obtain new funds in order to fund its operations. Bergman also references his significant experience in the mortgage lending business and the skill he has accumulated in that time.
- [72] Implicitly, Bergman is suggesting that investors are, in part, investing in his judgment in the management of ACIC's loan portfolio rather than an expectation that ACIC would take a strict approach in relying on the security and priority provided by registration. Bergman also notes that although the OMs reference the fact that ACIC would register its mortgages, the OMs do not say that ACIC would continue the registrations for any particular period of time. In the course of making this argument Bergman criticized the

executive director for not considering the language in question in the context of the entire OM.

- [73] Bergman suggests that there is little difference in the value of a registered mortgage and an unregistered mortgage as long as the managers of the mortgagor keep a close eye on the situation and are confident that the borrower will not allow other lenders to register charges against the mortgaged property.
- [74] There are several reasons why Bergman's arguments are without merit. First, a consideration of the larger context for the "each mortgage will be registered" language supports the position of the executive director and not the position of Bergman. The larger context in each of the OMs includes a listing of each of the mortgages held by ACIC and in each case the listing suggests that every one of ACIC's mortgages had been and remained registered. This would not send a message to any reasonable reader of the OMs that any registration of a mortgage might be transient. Second, item (i) of the investment guidelines set out in the OMs lists which elements of the investment guidelines might be waived by management. Item (b) is not listed, and this would not send a message to a reasonable reader of the OMs that the registrations ACIC committed to might be transient.
- [75] Further, although Bergman's belief was that investors were to some extent relying on his judgment in which mortgage registrations to cancel instead of relying on the registrations themselves to protect investment returns, an investment made on such a basis would be a fundamentally different type of investment from one offered in the OMs. Bergman's reading of the OMs and his interpretation of the expectations of investors reflects his own subjective beliefs and not a fair, objective reading of the relevant clause in the OMs in the context of those documents as a whole and in the context of the normal expectations of investors in a mortgage investment company. For this latter inference we rely in part on the evidence of the expert as described above.
- [76] We have also considered Bergman's submissions regarding the materiality of the misrepresentations as it relates to the value of ACIC's preferred shares and particularly his suggestion that his skill and experience managing a mortgage portfolio over time, together with the flexibility he needed to make special arrangements with mortgagors from time to time was valuable to investors. We recognize that Bergman's position should be assessed based upon the information which existed at the time and not by reference to the economic losses that preferred shareholders subsequently suffered. We find Bergman's arguments completely unconvincing. Bergman might have found some investors for the business of ACIC had he disclosed how he intended to run it. However, we find that the expert evidence tendered regarding the value of registering mortgages and retaining the priority created by registration is consistent with common sense and sound business practice. Investors in ACIC were led to believe that its affairs would be conducted in accordance with standard expectations and practices in the mortgage investment field. Any suggestion that they would have placed a similar value on ACIC preferred shares had they known otherwise is completely unconvincing.

[77] We conclude that all elements of the alleged contraventions related to section 50(1)(d) have been established on the required standard.

C. Findings on Section 168.1(1)

[78] With respect to section 168.1(1), there is no issue that the Registration Representation and the Priority Representation were statements contained in the OM's which were required to be filed under the Act pursuant to section 2.9 of National Instrument 45-106.

[79] The only issue is whether the Registration Representation and the Priority Representation were, in a material respect and at the time and in light of the circumstances under which they were made, false and misleading.

[80] We find the Registration Representation was false and misleading. This representation stated the mortgage loans would be registered in the appropriate land title office as a charge against the real property subject to the mortgage. As outlined above, the evidence establishes that six of ACIC's mortgages were not so registered on various dates including the dates of the OM's or the dates of distributions of the Units.

[81] We also find the Priority Representation was false and misleading. This representation was that the ACIC mortgage loans would be registered against properties subject to the mortgage loans in first or second priority. The land title records, the evidence of the investigator who assembled those records and the admissions of Bergman all establish that the ACIC mortgages on the Altezza, Sperling, Carleton and Daniel Point properties had priorities lower than those listed in the OM's. This was a misrepresentation which for the Altezza property existed in all three OM's, for the Sperling property existed in the January 2014 OM and for the Carleton and Daniel Point properties existed in the February 2015 and June 2015 OM's. The ACIC mortgage on Grant Manor was cancelled prior to the January 2014 OM and we have found that there was a misrepresentation made about the registration status of that property. However we do not have determinative evidence that there were intervening charges such that the priority had a lower priority than was represented in any of the OM's. As a result we do not make a finding that a false Priority Representation was made regarding the Grant Manor property.

[82] Of the four properties which did not have first or second mortgages, Bergman explains three as errors. For the others Bergman has rather complicated arguments which essentially amount to his assertion that although the land title office records indicate that ACIC's mortgages were not in first or second position, there are good explanations in that in the course of the relevant transactions ACIC was either voluntarily giving up some priority in return for a loan from a lender to ACIC or more than one of the loans in priority to ACIC's loans was from the same lender. None of those arguments are compelling. We are not inquiring into the motivation for ACIC's decisions for changing priority, we are inquiring into the accuracy of ACIC's statements in the OM's.

[83] The degree of divergence between how ACIC described in the Registration Representation and the Priority Representation whether mortgages would be registered,

were registered and had priority and the reality was substantial. This divergence between what was stated in the OMs and the truth related to a subject of fundamental importance to investors in making their investment decision as these representations went to the safety and security of their investment. Further, ACIC was fully aware of how it diverged from the statements set out in the OMs as Bergman, as its sole director and president, filed and cancelled the registration of the ACIC mortgages and drafted and signed the OMs.

[84] We find that all of the alleged contraventions related to section 168.1(1)(b) have been established on the required standard.

D. Personal Liability of Bergman

[85] Liability under section 168.2 of the Act will be established where the executive director proves:

- a) that a corporate respondent has breached the Act; and
- b) that an individual who is an employee, officer, director or agent of the corporate respondent “authorizes, permits or acquiesces in the contravention.”

[86] We have found that ACIC breached both section 50(1)(d) and section 168.1(1) of the Act. The remaining question is whether Bergman authorized, permitted or acquiesced in those contraventions. We find that he did.

[87] Bergman was ACIC’s decision maker. The evidence has established clearly that he controlled ACIC and its activities with respect to mortgage loan registration, priority, and cancellation. The evidence is also clear that Bergman was responsible for the preparation, execution, filing and dissemination of the OMs which contained the two misrepresentations. Bergman signed the required certificate for each of the OMs that they did not contain a misrepresentation.

[88] Having considered the totality of the evidence, we conclude that Bergman authorized ACIC’s contraventions of the Act. In the alternative, we find that Bergman permitted and acquiesced in ACIC’s contraventions of the Act.

VI. Conclusions and Orders

[89] In conclusion, we find that:

- a) ACIC made misrepresentations contrary to section 50(1)(d) of the Act and made false or misleading statements in documents required to be filed under the Act, contrary to section 168.1(1)(b); and
- b) Bergman authorized or permitted and acquiesced in ACIC’s contraventions of the Act and, by operation of section 168.2(1), contravened the same provisions as did ACIC.

VII. Submissions on Sanction

[90] We direct the executive director and the respondents to make their submissions on sanction as follows:

By August 30, 2021

The executive director delivers submissions to the respondents and to the Commission Hearing Office.

By September 27, 2021

The respondents deliver response submissions to the executive director and the Commission Hearing Office.

Any party seeking an oral hearing of the issue of sanctions so advises the Commission Hearing Office. The hearing officer will contact the parties to schedule the hearing as soon as practicable after the executive director delivers reply submissions (if any).

By October 12, 2021

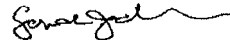
The executive director delivers reply submissions (if any) to the respondents and to the Commission Hearing Office.

July 28, 2021

For the Commission



Judith Downes
Commissioner



Gordon Johnson
Vice Chair



Deborah Abbey
Commissioner