

ORDER NUMBER 98

IN THE MATTER OF THE *SECURITIES ACT* ("the *Act*")
R.S.N.L. 1990 CHAPTER S-13, AS AMENDED

AND

IN THE MATTER OF
BROOKFIELD INVESTMENTS CORPORATION (THE FILER)

ORDER
(Sections 142.1 of the *Act*)

Definitions

1. Terms defined in National Instrument 14-101 *Definitions* and Multilateral Instrument 11-102 *Passport System* have the same meaning if used in this decision, unless otherwise defined.

Background

2. The Superintendent of Securities (the **Decision Maker**) of Newfoundland and Labrador (the **Jurisdiction**) has received an application from the Filer for a decision under the securities legislation of the Jurisdiction (the **Legislation**) that the Filer is not a mutual fund under the Legislation (the **Exemptive Relief Sought**).

Representations

3. This decision is based on the following facts represented by the Filer:
 - a) The Filer was formed on January 1, 2007 pursuant to an amalgamation of Brascade Corporation (**Old Brascade**) with Diversified Canadian Financial II Corp. and Diversified Canadian Holdings Inc. under the *Business Corporations Act* (Ontario). The amalgamated corporation, named Brascade Corporation, became a reporting issuer in each of the provinces of Canada, including the Jurisdiction.
 - b) On November 26, 2007, Brascade Corporation changed its name to Brookfield Investments Corporation.
 - c) The Filer is an investment holding company, holding investments in the property and forest products sectors. As of September 30, 2015, the Filer's principal investments included: (a) an approximate 9% interest in Brookfield Property Partners L.P., (b) an approximate 21% interest in Brookfield Residential Properties Inc. and (c) an approximate 6% interest in Norbord Inc. Brookfield Asset Management Inc. (Brookfield), which owns all of the Filer's common shares (the

Common Shares), owns directly or indirectly an additional approximate 52% interest (on a fully diluted basis) in Brookfield Property Partners L.P., the remaining approximate 79% interest in Brookfield Residential Properties Inc. and an additional approximate 47% in Norbord Inc.

- d) Prior to the amalgamation, Old Brascade had only been a reporting issuer in Ontario, Quebec and British Columbia. On September 24, 2004, Old Brascade obtained exemptive relief that it is not a mutual fund for purposes of the *Securities Act* (British Columbia) and the regulations.
- e) The authorized share capital of the Filer currently consists of: (i) an unlimited number of Common Shares, (ii) an unlimited number of Class 1 Senior Preferred Shares, of which 25,000,000 Series A senior preferred shares have been authorized for issuance (the **Senior Preferred Shares**), (iii) an unlimited number of Class 1 Junior Preferred Shares, of which 18,001,739 Series A and 18,000,000 Series B junior preferred shares have been authorized for issuance (collectively, the **Junior Preferred Shares**) and (iv) an unlimited number of Class 1 Special Preferred Shares, of which 2,646,400 Series A, 100 Series B and 8,000,000 special preferred shares have been authorized for issuance (the **Special Preferred Shares**).
- f) The Common Shares are the only voting shares of the Filer. Brookfield is the sole holder of all the Common Shares. Brookfield also holds directly or indirectly all of the Junior Preferred Shares. There are no Special Preferred Shares issued and outstanding.
- g) There are approximately 5.98 million Senior Preferred Shares outstanding, of which approximately 63% are held indirectly by Brookfield (the balance of which are held by the public). The Senior Preferred Shares are listed and trading on the TSX Venture Exchange under the symbol BRN.PR.A.
- h) All outstanding shares of the Filer are redeemable at the option of the holder (such redemption rights of the holder, the **Retraction Rights**).
- i) In the case of the Senior Preferred Shares, the Retraction Rights are based upon a fixed price (equal to the value at which the Filer may redeem such shares) and not by reference to the whole or part of the net assets of the Filer. The Retraction Rights are exercisable by the holder at any time upon delivery of a retraction notice and the certificate(s) representing such Senior Preferred Shares. Retraction payments will be made on or before the 15th day of each month provided the Senior Preferred Shares have been surrendered for retraction at least one business day before the 30th day of the preceding month (or, in the case of February, the last day of such month). At the time of redemption, the holder will be entitled to receive, for each Senior Preferred Shares to be redeemed, a redemption price equal to C\$25.00 per share plus accrued and unpaid dividends thereon.
- j) In the case of the Junior Preferred Shares, all of which are currently directly or indirectly owned by Brookfield, the Retraction Rights are based upon a fixed price (equal to the value at which the Filer may redeem such shares) and not by reference to the whole or part of the net assets of the Filer. The Retraction Rights are exercisable by the holder at any time upon delivery of a retraction notice and the certificate(s) representing such Junior Preferred Shares. Retraction payments will be made on or before the 15th day of each month provided the Junior Preferred Shares have been surrendered for retraction and notice of the retraction has been delivered to all holders of the Senior Preferred Shares at least one business day before the 15th day of the preceding month. At the time of redemption, the holder will be entitled to receive, for each Class 1 Junior Preferred Share, Series A and Class 1 Junior Preferred Share, Series B to be redeemed, a redemption price equal to US\$31.00 and C\$25.00, respectively, per share plus accrued and unpaid dividends thereon.

- k) The Common Shares, all of which are currently owned by Brookfield, have a retraction price equal to 95% of the Net Asset Value (defined below) of the Filer, calculated as at the business day following receipt of the notice of retraction, divided by the number of Common Shares then outstanding. **Net Asset Value** is defined to be the amount, at any time, by which the value of the assets of the Filer exceed (or are less than): (i) the liabilities of the Filer as of the 30th day of the immediately preceding month (or, in the case of February, the last day of the month) and (ii) the aggregate of the redemption value of the then outstanding preferred shares of the Filer at that time. The Retraction Rights are exercisable by the holder at any time upon delivery of a retraction notice and the certificate(s) representing such Common Shares. Retraction payments for the Common Shares will be made on or before the 15th day of each month provided the Common Shares have been surrendered for retraction and notice of the retraction has been delivered to all holders of the Senior Preferred Shares at least one business day before the 15th day of the preceding month.
- l) The Filer technically falls within the definition of “mutual fund” under the Act.
- m) The Filer is considered a “mutual fund” under the Act because the Common Shares are retractable at any time, at the option of the holder, for a retraction price equal to 95% of the Net Asset Value of the Filer divided by the number of Common Shares then outstanding.
- n) The Filer does not carry on business as a conventional mutual fund subject to the investment restrictions and practices and other rules specifically applicable to mutual funds under securities laws. While not an exhaustive list, the Filer engages in a number of practices that are prohibited by National Instrument 81-102 – *Investment Funds* (NI 81-102). For example, it holds significant portions in some of the companies in which it invests, which is in contravention of the restrictions under subsection 2.2(1) of NI 81-102; it also has borrowings outstanding from Brookfield, which is in contravention of the restrictions on borrowing under subsection 2.6(a) of NI 81-102; and the Filer engages in related party transactions, which is in contravention of the “self-dealing” rules under section 4.2 of NI 81-102.

Order

- 4. The superintendent, considering that to do so would not be contrary to the public interest to extend the exemptive relief sought.
- 5. The Decision Maker is satisfied that the decision meets the test set out in the Legislation for the Decision Maker to make the decision.
- 6. The decision of the Decision Maker under the Legislation is that the Exemptive Relief Sought is granted, provided that:
 - a. at all times only the Common Shares (and no other securities of the Filer) are redeemable at the option of the holder or the Filer for a price determined by reference to the Net Asset Value of the Filer; and
 - b. at all times only Brookfield, or one or more direct or indirect subsidiaries of it, is the beneficial owner of all outstanding Common Shares.

Dated at St. John's, Newfoundland and Labrador this 26th day of January 2016.


John O'Brien, FCPA, FCA, CISA
 Superintendent of Securities