

October 2, 2019

VIA E-FILING

BEFORE THE SURFACE TRANSPORTATION BOARD
FD 36326

Re: Docket No. ~~FD3626~~

PETITION FOR LEAVE TO REPLY, AND REPLY TO APPLICANTS' RESPONSE

Dear STB Leadership:

In my initial comment filing on August 20, 2019, I noted that Brookfield is a pyramid control structure. The point was made to provide the board with an important element of the acquirer that influences how it operates its businesses.

Corporate pyramid structures have long been known to be problematic. Severe governance issues often result in excess leverage and myriad minority and stake-holder abuses. Pyramid control corporations were eliminated from the U.S. financial system largely via a punitive taxation regime. Many other countries followed suit, though the structure still exists in Canada.

In its September 5, 2019 reply to my comments, Brookfield's vociferously denies being a corporate pyramid by stating "Brookfield is not a pyramid of any sort". Brookfield's statement contradicts its own filings with the Securities and Exchange Commission as well as its well-known corporate history.

I. Disclosures of Pyramid Control Structure Risks by Brookfield

In 2013, Brookfield spun-out its real estate holdings into a publicly traded limited partnership known as Brookfield Property Partners, or BPY. Brookfield Asset Management retains a 50% ownership stake and complete control via the management agreement.

BPY filed an annual report with a series of amendments with the SEC as part of the process of going public. Brookfield Asset Management prepares and submits all BPY documentation to the SEC.

On 1/10/13, the SEC questioned Brookfield on BPY's structure, noting its similarity to pyramid control companies. Brookfield responded to the SEC's comments by revising its documentation, making the following disclosure in its amended 20-F filed on 2/1/13.

BPY Pyramid Structure Disclosure to the SEC

Our ownership and organizational structure may cause us to be subject to the risks commonly associated with pyramid control companies.

Our ownership and organizational structure may subject us to the risks commonly associated with pyramid control companies, whereby one company controls another company which in turn holds controlling interests in other companies; thereby, the company at the top of the chain may control the company at the bottom of the chain even if its effective equity position in the bottom company is less than such controlling interest. Brookfield is the sole shareholder of the BPY General Partner and, as a result of such ownership of the BPY General Partner, Brookfield will be able to control the appointment and removal of the BPY General Partner's directors and, accordingly, will exercise substantial influence over us. In turn, we often have a majority controlling interest or a significant influence in our investments. Even though Brookfield will initially have an effective economic interest in our business of approximately [90]% as a result of its ownership of our units and the Redemption-Exchange Units, over time Brookfield may reduce this economic interest while still maintaining its controlling interest, and

therefore Brookfield may use its control rights in a manner that conflicts with the economic interests of our other unitholders. For example, despite the fact that our company has a conflicts policy in place which addresses the approval and other requirements for transactions in which there is greater potential for a conflict of interest to arise, including transactions with affiliates of Brookfield, because Brookfield will be able to exert substantial influence over us, and, in turn, over our investments, there is a greater risk of transfer of assets of our investments at non-arm's length values to Brookfield and its affiliates. In addition, debt incurred at multiple levels within the chain of control could exacerbate the separation of economic interest from controlling interest at such levels, thereby creating an incentive to leverage our company and our investments. Any such increase in debt would also make us more sensitive to declines in revenues, increases in expenses and interest rates, and adverse market conditions. The servicing of any such debt would also reduce the amount of funds available to pay distributions to our company and ultimately to our unitholders.

Source: Brookfield Property Partners.

Brookfield's statements in the SEC disclosure clearly indicate that BPY contains risks associated with pyramid control structures. Management quickly made an important revision to the disclosure. On February 19th 2013, three weeks after the first disclosure was published Brookfield filed another amended 20-F for BPY which included the following language.

BPY's Second Pyramid Disclosure

We may be subject to the risks commonly associated with a separation of economic interest from control or the incurrence of debt at multiple levels within an organizational structure.

Our ownership and organizational structure is similar to structures whereby one company controls another company which in turn holds controlling interests in other companies; thereby, the company at the top of the chain may control the company at the bottom of the chain even if its effective equity position in the bottom company is less than a controlling interest. Brookfield is the sole shareholder of the BPY General Partner and, as a result of such ownership of the BPY General Partner, Brookfield will be able to control the appointment and removal of the BPY General Partner's directors and, accordingly, will exercise substantial influence over us. In turn, we often have a majority controlling interest or a significant influence in our investments. Even though Brookfield will initially have an effective economic interest in our business of approximately 92.5% as a result of its ownership of our units and the Redemption-Exchange Units, over time Brookfield may reduce this economic interest while still maintaining its controlling interest, and therefore Brookfield may use its control rights in a manner that conflicts with the economic interests of our other unitholders. For example, despite the fact that our company has a conflicts policy in place which addresses the requirement for independent approval and other requirements for transactions in which there is greater potential for a conflict of interest to arise, including transactions with affiliates of Brookfield, because Brookfield will be able to exert substantial influence over us, and, in turn, over our investments, there is a greater risk of transfer of assets of our investments at non-arm's length values to Brookfield and its affiliates. In addition, debt incurred at multiple levels within the chain of control could exacerbate the separation of economic interest from controlling interest at such levels, thereby creating an incentive to leverage our company and our investments. Any such increase in debt would also make us more sensitive to declines in revenues, increases in expenses and interest rates, and adverse market conditions. The servicing of any such debt would also reduce the amount of funds available to pay distributions to our company and ultimately to our unitholders.

Source: Brookfield Property Partners

The chief difference between the first and second disclosures is the elimination of the word "pyramid". The first version openly states the similarity with pyramid control companies, while the second eliminates the formal term and relies on a description of the structure.

Each of Brookfield's four publicly traded limited partnerships contain disclosure of risks associated with pyramid control structures similar to the revised version shown above. The GWR acquisition specifically

involves Brookfield Infrastructure Partners, BIP, along with Brookfield managed private equity fund and the Singapore Sovereign Wealth Fund, GIC. The exhibit provides the pyramid control disclosure from BIP's most recent annual 20-F filed with the SEC on February 28, 2019.

Pyramid Control Disclosure from Brookfield Infrastructure Partners 2/28/19

We may be subject to the risks commonly associated with a separation of economic interest from control or the incurrence of debt at multiple levels within an organizational structure.

Our ownership and organizational structure is similar to structures whereby one company controls another company which in turn holds controlling interests in other companies; thereby, the company at the top of the chain may control the company at the bottom of the chain even if its effective equity position in the bottom company is less than a controlling interest. Brookfield controls the sole shareholder of our General Partner and, as a result of such ownership of our General Partner, Brookfield is able to control the appointment and removal of our General Partner's directors and, accordingly, exercises substantial influence over us. In turn, we often have a majority controlling interest or a significant influence in our investments. Even though Brookfield currently has an effective economic interest in our partnership of approximately 29.5% as a result of ownership of our units and the Redeemable Partnership Units, over time Brookfield may reduce this economic interest while still maintaining its controlling interest, and, therefore, Brookfield may use its control rights in a manner that conflicts with the economic interests of our other unitholders and preferred unitholders. For example, despite the fact that we have a conflicts protocol in place, which addresses the requirement for independent approval and other requirements for transactions in which there is greater potential for a conflict of interest to arise, including transactions with affiliates of Brookfield, because Brookfield will be able to exert substantial influence over us, and, in turn, over our investments, there is a greater risk of transfer of assets of our investments at non-arm's length values to Brookfield and its affiliates. In addition, debt incurred at multiple levels within the chain of control could exacerbate the separation of economic interest from controlling interest at such levels, thereby creating an incentive to leverage us and our investments. Any such increase in debt would also make us more sensitive to declines in revenues, increases in expenses and interest rates, and adverse market conditions. The servicing of any such debt would also reduce the amount of funds available to pay distributions to us and ultimately to our unitholders and preferred unitholders.

Source: Brookfield Infrastructure Filings.

Currently, only limited partnerships controlled by Brookfield Asset Management disclose pyramid risks, but that was not always the case. In 2016, Brookfield Asset Management included a pyramid risk disclosure in a press release and 6-K filed with the SEC announcing a spin-off, as shown below.

Excerpt from Brookfield Asset Management 5/16/16 Press Release

Brookfield Asset Management

PRESS RELEASE

Brookfield Asset Management

Brookfield Asset Management Inc. is a global alternative asset manager with \$240 billion in assets under management. The company has more than a 100-year history of owning and operating assets with a focus on property, renewable power, infrastructure and private equity. Brookfield offers a range of public and private investment products and services, and is co-listed on the New York, Toronto and Euronext stock exchanges under the symbol BAM, BAM.A and BAMA, respectively.

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Factors that could cause actual results to differ materially from those contemplated or implied by forward-looking statements include: changes in the general economy; general economic and business conditions that could impact our ability to access capital markets and credit markets; the cyclical nature of most of our operations; exploration and development may not result in commercially productive assets; actions of competitors; foreign currency risk; our ability to derive fully anticipated benefits from future or existing acquisitions, joint ventures or co-tenants; risks commonly associated with a separation of economic interest from control; failure to maintain effective internal controls; actions or potential actions that could be taken from Brookfield; the departure of some or all of Brookfield's key professionals; the threat of litigation; changes to legislation and regulations; possible environmental liabilities and other possible liabilities; our ability to obtain adequate insurance at commercially reasonable rates; our financial condition and liquidity; volatility in oil and gas prices; capital expenditures required in connection with finding, developing or acquiring additional reserves; downgrading of credit ratings and adverse conditions in the credit markets; changes in financial markets, foreign currency exchange rates, interest rates or political conditions; the general volatility of the capital markets and the market price of our units; and other risks and factors detailed in BBP's Form F-1 filed with the Securities and Exchange Commission as well as other documents filed from time to time by BBP with the securities regulators in Canada and the United States.

Source: Brookfield Asset Management press release.

II. Relevance of Brookfield pyramid structure to the GWR transaction

The separation of control from economic ownership presents multiple problems especially when different investors in separate investment structures (public and private, onshore and offshore) are amalgamated together in a pool of capital controlled by a single manager. The risks associated with conglomerate structures, such as tunneling and selective consolidation practices, are present within the Brookfield complex.

The three main issues resulting from the pyramid structure as disclosed in SEC filing are:

- 1) Excessive leverage – multiple levels of companies, combined with selective consolidation and IFRS fair value accounting standards result in very aggressive leverage levels.
- 2) Conflicts of interest – different entities within the structure can have conflicting interests regarding the management and financing of operating companies. However, absent transparent disclosure of those interests as well as management's own incentives within the context of particular transactions, it is often impossible to ascertain the true beneficiaries and enforce shareholder rights for the respective parties. Most often than not, the result is uneconomically justified risk taking by engaging in high-risk projects.

- 3) Non-arm length transactions – transferring of asset ownership (full or partial and in certain cases cash payments) in non-arm's length transactions within the pyramid structure often using multi-level offshore companies often results in arbitrary assignment of valuations, and distributions and cashflow claims (via intercompany loans or derivatives) that disproportionately benefit some stakeholders to the detriment of others.

There are clear examples of how these three risks are present in the context of the GWR transaction through their manifestation in Brookfield's management of assets. **A detailed analysis will be presented shortly.**

The Class I railroads' need for seamless execution, the importance of solid rail service to the GWR customers and communities as well as government support for the short rail industry operation in the United States is incompatible with the acquirer's structure and its characteristics.

III. Conclusion

Brookfield's categorical denial in STB filings of the group's corporate pyramid structure is perplexing given the ease with which it can be documented. Current SEC filings generated by Brookfield explicitly identify pyramid control risks, even if they have formally eliminated the word. Further, Brookfield and its predecessor company, Edper Enterprises, have long been associated with the structure.

The Edper group of companies was a pyramid structure that collapsed in the real estate recession of the 1990s only to be restructured, revived and renamed Brookfield Asset Management. I have attached two articles from the time discussing Edper's problems as they unfolded. Jack Cockwell, current Brookfield board member, features prominently in the first article where he is identified the creator and ultimate power behind the Edper pyramid. The second quotes then CEO and current board member Robert Harding on the need to simplify the structure.



INDEPENDENT

Legacy of a bootlegger: Canada's giant Edper conglomerate, created by the outcast cousins of the Bronfman drinks dynasty, is in trouble and may be slipping into unfamiliar hands. Adam Corelli reports

- **ADAM CORELLI**

- Sunday 14 February 1993 01:02

To an outsider, the scene would have seemed unreal. It was a board meeting several months ago of a company within Edper, one of the largest corporations in Canada and the world.

Into the room sauntered the chairman and controlling shareholder, Peter Bronfman - a nephew of Sam Bronfman, the one-time bootlegger who built Seagram into a global drinks conglomerate. Peter, a self-made tycoon in his own right, did not look the part, his casual dress and running shoes reflecting, perhaps, a lack of interest in the affairs of the moment. The meeting began.

The chairman neither asked nor answered questions. That task fell instead to a sharp-featured man sitting in a darkened corner, an accountant named Jack Cockwell who barked questions and statements from the gloom and was clearly the guiding force of the proceedings. It struck one of those present as an apt and eerie reflection of Edper itself, where the real power lurks in the shadows. 'Peter seemed to be alert, but he didn't seem to know what was going on,' said the boardroom witness.

Months later, Mr Bronfman, now 63, seemed to have regained his interest. He was spending time with friends but was preoccupied, fretting about his company, fretting about Mr Cockwell. According to Mr Bronfman's acquaintances he was concerned above all that he was making a lot of people like Mr Cockwell rich, while his own wealth - he and his brother Edward were once dollar billionaires - had practically disappeared, on paper at least. Belatedly, the chairman was beginning to realise that he was on the brink of disaster.

Edper, the Bronfmans' holding company for their vast interests in North America, is in deep trouble from loan losses created by the meltdown in the Canadian commercial property market. Since 1989 the value of Edper-related stocks has fallen by between a half and 98 per cent, and the slide has accelerated in the last few weeks. A recent signal of its distress was the attempt to sell off one of its largest subsidiaries, Royal Trust, which is Canada's second biggest trust bank.

Edper is little known in Britain only because - unlike Canada's other big property empire, Olympia & York, owned by the Reichmann brothers - it has no major investments here. It directly or indirectly controls assets worth maybe Cdollars 100bn (pounds 57.5bn), and at its peak it was three times the value achieved by O&Y. On its own, Edper makes up about 5 per cent of the total market value of the Toronto Stock Exchange.

All told, the companies of Edper Enterprises now employ more than 110,000 Canadians. The Bronfman empire controls a panoply of Canada's once finest blue-chip companies, including Trizec (North America's largest publicly traded developer), Royal Trust, Royal LePage (Canada's largest real-estate brokerage), John Labatt (Canada's second largest brewer), Noranda (a Cdollars 10bn natural resources giant), Noranda Forest and MacMillan Bloedel (leaders in paper products), and London Life (Canada's largest insurer). Edper also controls hundreds of other companies.

But it has an Achilles heel. Its debts are estimated by analysts to be anywhere between Cdollars 30bn and Cdollars 50bn (compared with Cdollars 22bn at O&Y). If it goes under it will send shock waves through the Canadian and US financial system that will make the demise of O&Y seem small by comparison, and it would devastate the profits of several leading international banks which have lent millions to the group.

This is a story of dynastic ambition within one of Canada's wealthiest and most powerful families. Edper was built from a base of Cdollars 100m by Peter and Edward Bronfman - the 'poor cousins' to Charles Bronfman of Montreal and Edgar Bronfman of New York, czars of the Seagram liquor empire.

Three decades ago Peter and Edward were the unlikeliest of candidates for ownership of such a huge corporation. They bore the surname which in Canada is enveloped in the aura of the super-rich. For decades the name Bronfman has been synonymous with invincible wealth, and

long before Canadians had heard of the Reichmanns they had heard of the Bronfmans - yet it once seemed certain the two poor cousins would not share in that glory.

Peter and Edward began their working lives as outcasts from the family empire. The pair had spent their youth sequestered at American prep schools while their father, Allan, remained at home in Montreal.

His brother Sam was the domineering hardballer who had built Seagram from its Depression-era bootlegging roots into the world's largest distiller. Seagram, which is now 38 per cent owned by Charles and Edgar Bronfman, sells its range of famous brands including Crown Royal, Chivas Regal, Mumms and Martell in some 150 countries worldwide.

Yet in the early years the Seagram success hung over the family like a curse. Sam Bronfman was the presiding genius. A short, fat man with thinning hair, he had a bellicose personality and a raging temper. During business meetings he would sometimes erupt into language that would make a longshoreman proud.

During the 1960s, his tyranny extended to trying to get Peter - by then a well-known businessman - to stop using the Bronfman name.

In 1952 Sam shut out his brother's side of the family from Seagram. He made it clear to Allan that his sons, Peter and Edward, would have no future there.

In such a poisoned atmosphere, the poor cousins were forced to walk on egg shells at extended family gatherings.

A few years later Sam obliged Peter and Edward to sell half their Seagram shares at below market prices - shares that he needed to keep control of the company. The sons only agreed in order to preserve their father's job at Seagram.

A severance from their Seagram roots might have led Peter and Edward into a leisurely life of low-risk investing with their Cdollars 100m nest egg. Peter, after all, is a quiet, almost timid man with a deceptively passive air.

He is slim and now balding, and hates to wear formal clothes. He has been quoted as saying that he does not like to wear ties because they cut off the blood to the brain. On the face of it, he is not obvious tycoon material, more the kind who might have faded into the background.

But that is not what happened. In the early 1960s Peter and Edward were young, and their expulsion from the family business left them yearning for success of their own. With a chip on the shoulder and Cdollars 100m in their pockets, they set out to leave their own imprint.

The Bronfmans, like the Reichmanns, bet heavily on real estate and natural resources at the tail of the 1980s boom, shortly before the economy was hit with a painful burst of commodity deflation and a meltdown in commercial real estate. Already, the calamity has hit countless investors from Canada and abroad who have watched the market value of their equity investments in Edper-controlled companies collapse in just a few years. But this is not entirely the fault of the Bronfman brothers, for the story is more complicated than that, and things are often not as they appear. What frustrates Peter Bronfman most is the complexity of it all. He may control Cdollars 100bn in assets on paper; but his grip on the company's day-to-day activities seems to be slipping. And the reason seems to be Jack Cockwell.

For Mr Cockwell built Edper. He was hired by the Bronfmans in the 1960s; at the time he was a 27-year-old accountant with Touche Ross in Montreal. He had moved to Canada in 1966 from South Africa.

It is hard to find people who like Mr Cockwell. He is an intense, compact and wiry little man, with steely eyes and a contempt for the 'provincial' approach to business in Canada. He was educated at a British-style boys' school in South Africa. Although he is described as many things by his contemporaries, they all agree on at least one thing: he has an insatiable appetite for gruelling work and he seems to be a master of labyrinthine accounting.

Mr Cockwell's driven work ethic and brilliance with finance is acknowledged even by his enemies. It is often said that Mr Cockwell is Edper, that he makes all decisions, that he contemplates a strategy so complex and forward-looking that few others can understand it.

Mr Cockwell also brought a knowledge of the pyramidal control mechanisms used by South African conglomerates, and thereby the formula for Edper's magical success. Securities and tax

laws preclude such structures in many countries, but not in Canada. The limitations of Canada's federal and provincial disclosure requirements, combined with a timid taxation structure, enabled Cockwell to build Edper.

The result is an empire which is tied together in a Gordian knot of intercorporate control mechanisms. When you cut through its maze of 32 public companies, hundreds of private companies and various holding companies, it is an empire which is essentially focused on real estate, natural resources, financial services and consumer products. And the only person who fully understands it all, it seems, is Jack Cockwell.

In a nutshell, Edper aims to control companies, not own them. The process is remarkably simple but amazingly effective at enabling the Bronfman empire to raise billions for the corporations at the bottom of the pyramid without having to use much of its own money.

What is remarkable is that Bronfman maintained control down the corporate chain despite the minimal cash used at the top, thanks to cascading, leveraged equity.

The process worked along these lines: Hees International, the group's Toronto-based merchant banker, would handle the issue of Cdollars 100m worth of shares in an Edper company, half of which would be bought by Edper and the other half sold to the public. Hees would then take the dollars 100m proceeds and invest it in a dollars 200m share issue of a subsidiary of the first company, with the public again picking up half. That process, repeated five times, turns Cdollars 50m into Cdollars 1.2bn. In other words, a Bronfman-controlled company picks up Cdollars 1.2bn and yet Edper puts up only 3.125 per cent of it.

So while Edper maintains control of its subsidiaries, its effective equity interest in those at the bottom of the pyramid is small. According to the 1991 Hees annual report, Edper's equity interest in a range of large subsidiaries does not exceed 13 per cent.

This is how Bronfman-connected companies issued more securities than anyone else in Canada during the Eighties boom. They raised more than Cdollars 30bn in equity. This results in the labyrinth of private holding companies and interwoven public companies that make up the Hees-Edper corporate chart. The multi-tentacled corporate tree takes several pages to chart: no wonder they say Mr Cockwell is brilliant; no wonder Mr Bronfman is said to be confused. In Mr

Cockwell's elaborate corporate architecture, all this equity enabled the group to raise vast amounts of debt. Companies within the Edper group raised capital using their assets as collateral. But many of their assets are 'soft' - nothing more than the equity of other Edper companies. Since these instruments are already secured on Edper's 'hard' assets (such as property), the hard assets are often leveraged by equity more than once. This makes it difficult to judge the true debt-equity composition of the empire, and therefore its true financial health.

No wonder investors are spooked by the Bronfman empire. Stephen Jarislowsky, a manager of dollars 15bn in pension funds for Jarislowsky Fraser of Montreal, said: 'I stay away. I feel I don't know what's going to happen next in any of the companies - who will be favoured and what the machinations are. I find it very difficult to understand the statements: what they are doing or going to do next.'

A growing number of investors have become equally wary. They have been dumping Bronfman-connected stocks, resulting in huge losses. The total market value of various Edper group stocks has dropped by more than dollars 21bn since their 1989 highs (which also suggests that the market value of the investments Edper companies have made in each other has dropped dramatically).

Yet the carnage does not end there. Scores of Edper-connected debt issues have also taken a bath on bond markets. Worse, the meltdown in commercial real estate has left the Bronfmans and their bankers tremendously weakened.

'The commercial real estate sector within the Hees-Edper group nevertheless remains one of the fundamental building blocks, one of the fundamental pillars of the group,' said Alain Tuchmaier, a financial services analyst at McLean McCarthy of Toronto. 'Clearly, given the outlook for commercial real estate, we are facing a long-term problem here. And those problems have spilled into the financial services side of the group through Royal Trust.'

It is not possible to determine how much debt has been piled on to Edper's leveraged equity. As was once the case with O&Y, not even Edper's bankers know how much debt is tied to the empire.

All they can be certain of is that the group's net asset value is substantially less than the dollars 100bn that Edper is able to claim officially thanks to some complex double accounting.

So how much debt is piled on to Edper's overly leveraged equity? No one will say publicly. One source recently said that Canada's banks and its federal government, worried about the ramifications of an Edper collapse, only learned the true figures three months ago. 'The bankers fell out of their chairs in shock,' the source said.

The banks, Edper's main lenders, are alarmed because a holding company of public companies is only worth as much as the equity of the public companies it owns.

'As a bank, if you have made a loan to a holding company, what collateral do you really have?' asks Tuchmaier. 'A classic holding company has no real assets of its own. So the banks are changing their credit policies vis-a-vis the holding companies.'

This explains, perhaps, why controlling appearances has been as important to Mr Cockwell as controlling companies. Incredible as it seems, Edper companies have raised billions of dollars from investors without having to provide basic information on the group's composition.

'I've always said the problem in understanding this group is not one of complexity but one of disclosure,' Mr Tuchmaier said. 'Our securities laws, in terms of disclosure, are not that tight. Why do you think some companies go to great lengths to avoid filing US disclosure documents?' Because of Canada's poor disclosure requirements, obtaining the figures means asking Edper itself. But the group clearly resents being asked.

'Their response to questions they don't like is to try to turn it around and ask questions about the motive of the reporter,' said Kimberley Noble, an award-winning business journalist for the Toronto Globe and Mail. 'It is an unusual response to see in a company of this size.'

The very structure of the empire is stacked against the shareholders of the operating companies. The reason is that no matter how efficiently Edper runs things, the dividends shrink as they ripple up the corporate chain.

'A Cdollars 100m dividend at MacMillan Bloedel will leave barely enough to buy coffee by the time it ripples up to Edper,' says a former Edper insider.

Yet those dividends have been vital for the empire to pay for the obligations created by its various equity and debt issues. No wonder the Bronfman companies were big on dividend payouts. While earnings have not been that healthy, the dividends have been.

According to calculations by Mr Tuchmaier, companies in the Edper-Hees universe have paid out more than Cdollars 7.25bn in dividends on preferred and common shares since 1987, on operating earnings of just over dollars 10bn.

The payout ratio, at more than 70 per cent, is unusually large. The average payout ratio for common and preferreds of the top 35 companies on the Toronto Stock Exchange, excluding the Hees-Edper companies, was just over 50 per cent during the same period. Some Bronfman companies have paid out more in dividends than they registered in earnings.

Yet the empire is still raising lots of cash. It has raised more than Cdollars 9bn in the last 20 months through share issues, asset sales and debt financings.

Lately, most activity is coming from asset sales. Various subsidiaries have sold Cdollars 2bn of assets. Several billion more in sales is expected in the next few months. But while such sales raise cash, they diminish the asset base supporting the leveraged equity.

Ironically, shareholders are not the only losers. Mr Cockwell's staff are not highly paid, and the collapse in share prices has made it difficult for them to leave their jobs. In return for hard work and long hours, the companies have granted them more than Cdollars 550m in loans to buy Edper group stocks.

Mr Cockwell and the managers have virtually assured their ability to wrest control of the empire away from Peter Bronfman, however, through the use of structured partnerships which split ownership and enable cash to move around. So the huge loans they have outstanding to the various companies may soon be owed to companies they control themselves.

Incredibly, Mr Cockwell seems to have all but finalised what could become history's largest takeover without anyone - including Peter Bronfman - noticing. So why delay?

According to one Edper insider, the answer is simple: 'He is in a position now to squeeze Peter out, so why do it?' Edper Holdings is the key. It owns 74 per cent of Edper Enterprises, the main

public company within the entire group. It went public in 1989 to provide an orderly method for Edward to begin selling his shares: he wanted out of the empire. But Peter wanted to remain in control.

Now Edper Investments, which is Peter, holds 50.1 per cent of Edper Holdings. The Pagurian Corporation holds the other 49.9 per cent of Edper Holdings. Pagurian is controlled by Mr Cockwell and the senior managers within the group - including many of those with the outstanding loans.

This holding is likely to increase because Peter Bronfman must cover the shortfall in any dividend payments from Edper subsidiaries to Pagurian. As the dividend flow dries up, Mr Bronfman will find that obligation increasingly hard to meet. For some reason Peter Bronfman agreed to partnership arrangements just before the recession hit, and these are likely to cost him control of the company.

'Peter's not that swift,' says a disgruntled Edper insider. 'He may see it. He may not. But if you trust Jack Cockwell, and he is your employee and your agent, then you control everything because he acts for you - until one day, when he says, 'Sorry Peter, I don't think I can do as you request'.'

There are those who suggest that if Mr Cockwell does take control, he will be taking over a ship caught in a financial hurricane. But if it sinks, he could be one of the lucky ones. It will be the international banking system and the Canadian government which are left with the wreckage. And that could prove one of the costliest salvage operations in history.

Bronfmans' Two Top Firms Will Merge Into Simpler Entity

By Larry M. Greenberg Staff Reporter of *The Wall Street Journal*

Updated April 30, 1997 12 32 am ET

TORONTO -- The Bronfman family corporate empire's two top holding companies plan to merge, ending years of restructuring to simplify the once labyrinthine structure.

The latest move would combine Edper Group Ltd., which sits at the top of the corporate pyramid, with its 47%-owned subsidiary Brascan Ltd. The merged company would control some 50 billion Canadian dollars (US\$36 billion) of assets, including natural resources concern Noranda Inc., New York real-estate company World Financial Properties Inc., and life insurer London Insurance Group Inc.

Control of the combined company, to be called Edper Brascan Corp., would remain with a tight-knit group of two dozen managers of Edper companies, known as Partners Ltd. The late Peter Bronfman, who died in December, ceded voting control to the managers in late 1995 as part of a succession plan.

"The more you can simplify the structure the better it is for investors," said Robert Harding, Edper Group's president and chief executive officer. Mr. Harding, who would become chairman of Edper Brascan, said the merger would provide investors with greater stock liquidity and an easier corporate structure to understand. Jack Cockwell, president and chief executive of Brascan, will continue in the same roles at the combined company. The merger is conditional on shareholder and regulatory approvals.

Under terms of the agreement, current shareholders would receive one share of Edper Brascan for each Edper Group share held, and 1.5 shares of the combined company for each Brascan share held.

Brascan and Edper Group shares were halted before the merger announcement, and didn't resume trading Tuesday. Brascan Class A shares closed on the American Stock Exchange at \$21.875, up 62.5 cents. Edper Group shares closed on the Toronto Stock Exchange at C\$23.05, up five Canadian cents. Toronto's Bronfman family is related to the Montreal Bronfmans, who control Seagram Co. , but the families have no business dealings in common.

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Surface Transportation Board

October 2, 2019

I certify that I have this day served copies of the comment letter submitted to the STB regarding FD 36326_0 to Peter Denton, attorney for Brookfield Asset Management via email at pdenton@steptoe.com as well as all parties of record below.

/s/ Victoria Dalrymple

Docket #: **FD_36326_0**

Case Title: **BROOKFIELD ASSET MANAGEMENT, INC. AND DJP XX, LLC —CONTROL EXEMPTION— GENESEE & WYOMING INC., ET AL.**
19 Service List entries found.

<u>Code Desc</u>	<u>Filed By</u>	<u>Address</u>	<u>Email</u>	<u>Filed For</u>
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