

File No. ~~1~~812-15426

U.S. SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20459

FIRST AMENDED AND RESTATED APPLICATION FOR AN ORDER PURSUANT TO SECTION 6(c)
OF THE
INVESTMENT COMPANY ACT OF 1940, AS AMENDED (THE “ACT”), FOR AN ORDER GRANTING
CERTAIN EXEMPTIONS FROM SECTIONS 18(a)(2), 18(c) AND 18(i) OF THE ACT AND PURSUANT
TO SECTION 17(d) OF THE ACT AND RULE 17d-1 THEREUNDER

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This Application (including Exhibits) contains 16 pages

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UNITED STATES OF AMERICA
BEFORE THE
SECURITIES AND EXCHANGE COMMISSION

In the Matter of:

**BROOKFIELD INFRASTRUCTURE
INCOME FUND, INC.**

AND

**BROOKFIELD ASSET
MANAGEMENT PRIVATE
INSTITUTIONAL CAPITAL ADVISER
(CANADA), L.P.**

File No. ~~H~~[812-15426](#)

**FIRST AMENDED AND RESTATED APPLICATION
PURSUANT TO SECTION 6(c) OF THE INVESTMENT
COMPANY ACT OF 1940, AS AMENDED (THE “ACT”),
FOR AN ORDER GRANTING EXEMPTIONS FROM
SECTIONS 18(a)(2), 18(c) AND 18(i) OF THE ACT AND
PURSUANT TO SECTION 17(d) OF THE ACT AND RULE
17d-1 THEREUNDER**

I. THE PROPOSAL

Brookfield Infrastructure Income Fund, Inc. (the “**Fund**”) is a newly organized Maryland corporation that plans to be registered under the Act and will operate as a non-diversified, closed-end management investment company. Brookfield Asset Management Private Institutional Capital Adviser (Canada), L.P. (the “**Adviser**”), a Manitoba limited partnership, will serve as the Fund’s investment adviser.¹ The Fund and the Adviser are referred to herein as the “Applicants.”

The Applicants hereby seek an order (the “**Order**”) from the U.S. Securities and Exchange Commission (the “**Commission**”) (i) pursuant to Section 6(c) of the Act for an exemption from Sections 18(a)(2), 18(c) and 18(i) of the Act and (ii) pursuant to Section 17(d) of the Act and Rule 17d-1 under the Act to permit the Fund to issue multiple classes of common shares (“**Shares**”)² with varying sales loads and/or ongoing asset-based distribution and/or service fees with respect to certain classes.

Applicants request that the Order also apply to any other continuously offered registered closed-end management investment company that has previously been organized or that may be organized in the future for which the Adviser or any entity controlling, controlled by, or under common control with the Adviser (as that term is defined in Section 2(a)(9) of the Act), or any successor in interest to any such entity,³ acts as investment adviser and which provides periodic liquidity with respect to its shares pursuant to Rule 13e-4 under the Securities Exchange Act of 1934 (the “**Exchange Act**”) (each, a “**Future Fund**,” and together with the Fund, the “**Funds**”). Any of the Funds relying on this relief in the future will do so in compliance with the terms and conditions of this Application (the “**Application**”). Applicants represent that each entity presently intending to rely on the requested relief is listed as an Applicant.

The Fund intends to make a continuous public offering of its Shares. The ~~Fund plans to file an~~[Fund’s initial Registration Statement \(the “**Initial Registration Statement**”\) filed on Form N-2](#)~~seeking, which has not been declared effective by the Commission, seeks~~ to register shares of common stock (“**Common Shares**”) under the Act and the Securities Act of 1933, as amended (“**Securities Act**”). Additional offerings by any Fund relying on the

¹ The term “investment adviser” is defined in Section 2(a)(20) of the 1940 Act.

² As used in this Application, “**Shares**” includes any other equivalent designation of a proportionate ownership interest (such as interests or units) of a Fund (or any other registered closed-end management investment company relying on the requested order).

³ A successor in interest is limited to an entity that results from a reorganization into another jurisdiction or a change in the type of business organization.

Order may be on a private placement or public offering basis. If the Fund receives the requested relief, it may seek to register one or more additional share classes, each with its own fee and expense structure.

Shares will not be listed on any securities exchange, nor quoted on any quotation medium, and the Funds do not expect there to be a secondary trading market for their Shares.

It is currently contemplated that the Fund's Common Shares will retain their current sales charge structure. The Funds may in the future offer additional classes of Shares and/or another sales charge structure.

Applicants represent that any asset-based service and/or distribution fees for each class of Shares of the Funds will comply with the provisions of the Financial Industry Regulatory Authority ("*FINRA*") Rule 2341(d) (the "*FINRA Sales Charge Rule*").⁴

II. STATEMENT OF FACTS

A. Brookfield Infrastructure Income Fund Inc.

The Fund ~~plans to file~~ filed a Notification of Registration pursuant to Section 8(a) of the Act on Form N-8A on April 5, 2023, and also filed the Initial Registration Statement on Form N-2 on June 12, 2023 seeking to register the Common Shares under the Act and the Securities Act. As of the date of the filing of this Application, the Fund's ~~Form N-8A and the~~ Initial Registration Statement ~~have~~ has not yet been ~~filed~~ declared effective with the Commission. The Fund is a Maryland corporation. The Fund is a non-diversified, closed-end management investment company that intends to provide periodic liquidity with respect to its Shares through periodic repurchase offers pursuant to Rule 13e-4 under the Exchange Act. The Fund's investment objective is to maximize total returns through growth of capital and current income. The Fund expects to be able to provide investments with lower valuation volatility than would be experienced through investing in the traditional public equity markets, as well as greater liquidity than is typical for private investing. The Fund seeks to achieve its investment objective by investing primarily in infrastructure assets, including renewables, and companies as well as related securities of companies that own infrastructure assets.

B. Brookfield Asset Management Private Institutional Capital Adviser (Canada), L.P.

Brookfield Asset Management Private Institutional Capital Adviser (Canada) LP is a Manitoba limited partnership registered as an investment adviser with the Commission under the Investment Advisers Act of 1940, as amended (the "*Advisers Act*"). The Adviser, or an investment adviser that is under common control with the Adviser and registered under the Advisers Act, will serve as the Fund's investment adviser pursuant to an advisory agreement (the "*Advisory Agreement*"). The Advisory Agreement is subject to approval by the Fund's Board of Directors (the "*Board*"), including a majority of the directors who are not "interested persons" (as defined in Section 2(a)(19) of the Act) of the Fund and by the Fund's original sole stockholder, in the manner required by Sections 15(a) and (c) of the Act. In a companion application for an order from the Commission, the Applicants also seek an exemption from the provisions of Section 23(a)(1) of the Act pursuant to Section 6(c) of the Act to permit the Adviser to elect to receive some or all of its earned "Advisory Fees" in shares of common stock pursuant to the terms and subject to the conditions of the Advisory Agreement.⁵

⁴ Any reference in the Application to the FINRA Sales Charge Rule include any Financial Industry Regulatory Authority successor or replacement rule to the FINRA Sales Charge Rule.

⁵ The term "*Advisory Fees*" means the compensation a Fund agrees to pay its Adviser pursuant to the Advisory Agreement. Such compensation may include base management fees, income-based incentive fees, and/or capital gains-based incentive fees, as applicable and permissible under the Advisers Act. The Applicants do not differentiate among the various forms of Advisory Fees because, in each case, an Adviser will receive shares in lieu of a dollar amount of Advisory Fees.

C. Other Provisions

From time to time, the Fund may create additional classes of shares, the terms of which may differ between Common Shares, pursuant to and in compliance with Rule 18f-3 under the Act.

Shares may be subject to an early repurchase fee at a rate not to exceed 2.00 percent of the stockholder's repurchase proceeds ("**Early Repurchase Fee**") if the interval between the date of purchase of the Shares and the valuation date with respect to the repurchase of those Shares is less than one year.⁶ Any Early Repurchase Fee imposed by a Fund will equally apply to new classes of Shares and to all classes of Shares of the Fund, in compliance with Section 18 of the Act and Rule 18f-3 thereunder. To the extent a Fund determines to waive, impose scheduled variations of, or eliminate any Early Repurchase Fee, it will do so in compliance with the requirements of Rule 22d-1 under the Act as if the Early Repurchase Fee were a CDSL and as if the Fund were an open-end investment company and the Fund's waiver of, scheduled variation in, or elimination of, any such Early Repurchase Fee will apply uniformly to all stockholders of the Fund regardless of class.

III. EXEMPTION REQUESTED

A. The Multi-Class System

Applicants request exemptive relief to the extent that a Fund's issuance and sale of multiple classes of Shares might be deemed to result in the issuance of a class of "senior security"⁷ within the meaning of Section 18(g) of the Act that would violate the provisions of Section 18(a)(2) of the Act, violate the equal voting provisions of Section 18(i) of the Act, and if more than one class of senior security were issued, violate Section 18(c) of the Act.

B. Asset-Based Distribution and/or Service Fees

Applicants request an order pursuant to Section 17(d) of the Act and Rule 17d-1 thereunder to the extent necessary for a Fund to pay asset-based distribution and/or service fees.

IV. COMMISSION AUTHORITY

Pursuant to Section 6(c) of the Act, the Commission may, by order on application, conditionally or unconditionally, exempt any person, security or transaction, or any class or classes of persons, securities or transactions from any provision or provisions of the Act or from any rule or regulation under the Act, if and to the extent that the exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Pursuant to Section 17(d) of the Act and Rule 17d-1 thereunder, the Commission may issue an order permitting an affiliated person of or a principal underwriter for a registered investment company or an affiliated person of such person, acting as principal, from participating in or effecting a transaction in connection with a joint enterprise or other joint arrangement or profit sharing plan in which the investment company participates unless the Commission issues an order permitting the transaction. In reviewing applications submitted under Section 17(d) and Rule 17d-1, the Commission considers whether the participation of the investment company in a joint enterprise or

⁶ An Early Repurchase Fee charged by a Fund is not the same as a contingent deferred sales load ("**CDSL**") assessed by an open-end fund pursuant to rule 6c-10 under the Act, as CDSLs are distribution-related charges payable to a distributor, whereas the Early Repurchase Fee is payable to the Fund to compensate long-term stockholders for the expenses related to shorter term investors, in light of the Fund's generally longer-term investment horizons and investment operations.

⁷ Section 18(g) defines senior security to include any stock of a class having a priority over any other class as to distribution of assets or payment of dividends. Share classes that have different asset-based service or distribution charges have different total expenses and, thus, different net incomes. As a result, each class will have a different net asset value ("**NAV**"), receive a different distribution amount or both. A class with a higher NAV may be considered to have a priority as to the distribution of assets. A class receiving a higher dividend may be considered to have a priority over classes with lower dividends.

joint arrangement is consistent with the provisions, policies and purposes of the Act, and the extent to which the participation is on a basis different from or less advantageous than that of other participants.

V. DISCUSSION

A. Background

In its 1992 study entitled *Protecting Investors: A Half Century of Investment Company Regulation* (“**Protecting Investors**”), the Commission’s Division of Investment Management recognized that the Act imposes a rigid classification system that dictates many important regulatory consequences.⁸ For example, the characterization of a management company as “open-end” or “closed-end” has historically been crucial to the determination of the degree of liquidity the fund’s shareholders will have, and thus the liquidity required of the fund’s investments.

Historically, except as noted below, there has been no middle ground between the two extremes of the open-end and the closed-end forms. Open-end funds have offered complete liquidity to their shareholders and thus required a high degree of liquidity of the underlying investment portfolio, while closed-end funds have been subject to requirements that in fact restrict the liquidity they are permitted to offer their investors. Under this system of regulation, neither form has provided the best vehicle for offering portfolios that have significant, but not complete, liquidity. The one exception to the liquid/illiquid dichotomy has been the so called “prime-rate funds.” These funds, first introduced in 1988, invest primarily in loans and provide shareholders liquidity through periodic tender offers (“**Closed-end Tender Offer Funds**”) or, more recently, periodic repurchases under Rule 23c-3.

In *Protecting Investors*, the staff of the Commission determined that, given the changes in the securities market since 1940 — in particular the emergence of semi-liquid investment opportunities — it was appropriate to re-examine the classification system and its regulatory requirements and that it would be appropriate to provide the opportunity for investment companies to “chart new territory” between the two extremes of the open-end and the closed-end forms, consistent with investor protection.⁹ *Protecting Investors* recognized that the rigidity of the Act’s classification system had become a limitation on sponsors’ ability to offer innovative products that would take advantage of the vast array of semi-liquid portfolio securities currently existing. The report also noted the pioneering efforts of the prime rate funds and the market success they had experienced.¹⁰ The report thus concluded that it would be appropriate to provide the opportunity for investment companies to “chart new territory” between the two extremes of the open-end and closed-end forms, consistent with the goals of investor protection.¹¹ The Division of Investment Management thus recommended giving the industry the ability to employ new redemption and repurchasing procedures, subject to Commission rulemaking and oversight.

In accordance with this recommendation, and shortly after *Protecting Investors* was published, the Commission proposed for comment a new rule designed to assist the industry in this endeavor.¹² The Commission proposed Rule 23c-3, which began from the closed-end, illiquid perspective under Section 23(c), and provided flexibility to increase shareholder liquidity through periodic repurchase offers under simplified procedures. Rule 23c-3 was adopted in April 1993.¹³

⁸ SEC Staff Report, *Protecting Investors: A Half Century of Investment Company Regulation* 421 (May 1992), at 421.

⁹ *Id.* at 424.

¹⁰ *Id.* at 439-40.

¹¹ *Id.* at 424.

¹² Investment Co. Act Rel. No. 18869 (July 28, 1992) (the “**Proposing Release**”).

¹³ Investment Co. Act Rel. No. 19399 (April 7, 1993) (the “**Adopting Release**”). The Commission also had proposed Rule 22e-3, which began from the open-end, complete liquidity perspective under Section 22 of the Act, and permitted periodic or delayed, rather than constant liquidity. The Commission neither adopted nor withdrew proposed Rule 22e-3. To the Applicants’ knowledge, the Commission has taken no further action with respect to Rule 22e-3.

The prime rate funds were cited in both *Protecting Investors* and the Proposing Release as the prototype for the interval concept.¹⁴ Nonetheless, while the prime rate funds broke the path for innovation in this area, developments since the origin of these funds make further innovation appropriate. Many funds either cannot or choose not to rely on Rule 23c-3. Therefore, there exist a large number of Closed-end Tender Offer Funds, which fall between open-end and closed-end designations in regard to their operations, but are not interval funds. Moreover, a number of precedents exist for the implementation of a multiple-class system and the imposition of asset-based service and/or distribution fees substantially similar to that for which Applicants seek relief.¹⁵

B. Multiple Classes of Shares – Exemptions from Section 18(a)(2), 18(c) and 18(i) of the Act

Applicants request exemptive relief to the extent that a Fund's issuance and sale of multiple classes of common stock might be deemed to result in the issuance of a class of "senior security" within the meaning of Section 18(g) of the Act that would violate the provisions of Section 18(a)(2) of the Act, violate the equal voting provisions of Section 18(i) of the Act, and if more than one class of senior security were issued, violate Section 18(c) of the Act.

A registered closed-end investment company may have only one class of senior security representing indebtedness and only one class of stock that is a senior security. With respect to the class of stock that is a senior security, *i.e.*, preferred stock, the preferred stock must have certain rights as described in Section 18(a)(2). Section 18(a)(2)(A) and (B) makes it unlawful for a registered closed-end investment company to issue a senior security that is a stock unless (a) immediately after such issuance it will have an asset coverage of at least 200% and (b) provision is made to prohibit the declaration of any distribution, upon its common stock, or the purchase of any such common stock, unless in every such case such senior security has at the time of the declaration of any such distribution, or at the time of any such purchase, an asset coverage of at least 200% after deducting the amount of such distribution or purchase price, as the case may be. Section 18(a)(2)(C) and (D) makes it unlawful for a registered closed-end investment company to issue a senior security that is a stock unless, stockholders have the right, voting separately as a class, to: (i) elect at least two directors at all times; (ii) elect a majority of the directors if at any time dividends on such class of securities have been unpaid in an amount equal to two full years' dividends on such securities; and (iii) approve any plan of reorganization adversely affecting their securities or any action requiring a vote of security holders as set forth in section 13(a).¹⁶ Section 18(a)(2)(E) requires that such class of stock will have "complete priority over any other class as to distribution of assets and payment of dividends, which dividends shall be cumulative."

Section 18(i) provides:

Except as provided in subsection (a) of this section, or as otherwise required by law, every share of stock hereafter issued by a registered management company . . . shall be voting stock and have equal voting rights with every other outstanding voting stock: *Provided*, That this subsection shall not apply . . . to

¹⁴ *Protecting Investors* at 439-40; Proposing Release at 27.

¹⁵ See, e.g., *John Hancock Asset-Based Lending Fund and John Hancock Investment Management LLC, Inv. Co. Act Rel. Nos 34491* (January 31, 2022) (Notice) and 34524 (March 3, 2022) (Order); *The Optima Dynamic Alternatives Fund, Et Al, Inv. Co. Act. Rel. Nos 34381* (September 24, 2021) (Notice) and 34409 (October 21, 2021) (Order); *MVP Private Markets Fund and Portfolio Advisors, LLC, Inv. Co. Act. Rel. Nos 34334* (July 16, 2021) (Notice) and 34356 (August 11, 2021) (Order); *Hamilton Lane Private Assets Fund and Hamilton Lane Advisors, L.L.C., Inv. Co. Act. Rel. Nos 33896* (June 17, 2020) (Notice) and 33926 (July 14, 2020) (Order); *Cresset Private Markets Opportunity Fund and Cresset SPG, LLC, Inv. Co. Act. Rel. Nos. 33497* (May 31, 2019) (Notice) and 33536 (June 27, 2019) (Order); *Triloma EIG Energy Income Fund, et al., Inv. Co. Act. Rel. Nos. 32679* (June 13, 2017) (Notice) and 32730 (July 11, 2017) (Order); *NorthStar/Townsend Institutional Real Estate Fund Inc., et al., Inv. Co. Act. Rel. Nos. 32472* (February 7, 2017) (Notice) and 32524 (March 7, 2017) (Order); and *FS Global Credit Opportunities Fund, et al., Inv. Co. Act. Rel. Nos. 32221* (August 17, 2016) (Notice) and 32257 (September 12, 2016) (Order).

¹⁶ Section 13(a) requires, among other things, that a majority of the fund's outstanding voting securities must approve converting to a mutual fund format.

shares issued in accordance with any rules, regulations, or orders which the Commission may make permitting such issue.

Finally, Section 18(c) of the Act provides that “it shall be unlawful for any registered closed-end investment company . . . to issue or sell any senior security which is a stock if immediately thereafter such company will have outstanding more than one class of senior security which is a stock,” except that “any such class of . . . stock may be issued in one or more series: provided, that no such series shall have a preference or priority over any other series upon the distribution of the assets of such registered closed-end company or in respect of the payment of interest or dividends . . .”

The multi-class system proposed herein (the “*Multi-Class System*”) may result in Shares of a class having priority over another class as to payment of dividends and having unequal voting rights, because under the proposed Multi-Class System (i) shareholders of different classes may pay different distribution and/or service fees (and related costs as described above), different administrative fees and any other incremental expenses that should be properly allocated to a particular class, and (ii) each class would be entitled to exclusive voting rights with respect to matters solely related to that class.

Applicants believe that the implementation of the Multi-Class System will enhance stockholder options. Under a multi-class system, an investor can choose the method of purchasing shares that is most beneficial given the amount of his or her purchase, the length of time the investor expects to hold his or her Shares, the use of a financial intermediary through which the Shares will be purchased and other relevant circumstances. The proposed arrangements would permit a Fund to facilitate both the distribution of its securities and provide investors with a broader choice of shareholder services.

By contrast, if a Fund were required to organize new, separate investment portfolios for each class of Shares, the success of the new portfolios might be limited. Unless each new portfolio grew at a sufficient rate and to a sufficient size, it could be faced with liquidity and diversification problems that would prevent the portfolio from producing a favorable return.

Under the proposed Multi-Class System, owners of each class of Shares may be relieved of a portion of the fixed costs normally associated with investing in investment companies because these costs potentially would be spread over a greater number of Shares than they would be if the classes were separate funds or portfolios. As a Fund grows in volume of assets, it is expected that the investors will derive benefits from economies of scale that would not be available at smaller volumes.

The Commission has long recognized that multiple class arrangements can be structured so that the concerns underlying the Act’s “senior security” provisions are satisfied. After having granted numerous exemptive orders (“multiple class exemptive orders”) to open-end investment companies permitting those funds to issue two or more classes of shares representing interests in the same portfolio,¹⁷ the Commission adopted Rule 18f-3 under the Act in 1995, which now permits open-end funds to maintain or create multiple classes without seeking individual exemptive orders, as long as certain conditions are met.¹⁸

¹⁷ See *Sierra Trust Funds, et al., Investment Co. Act Rel. No. 20093* (February 23, 1994) (Notice) and *Investment Co. Act Rel. No. 20153* (March 22, 1994) (Order); see also *Exemption for Open-End Management Investment Companies Issuing Multiple Classes of Shares; Disclosure by Multiple Class and Master-Feeder Funds, Investment Co. Act Rel. No. 19955* (December 15, 1993).

¹⁸ See *Investment Co. Act Rel. No. 20915* (February 23, 1995). As adopted, Rule 18f-3 creates an exemption for mutual funds that issue multiple classes of shares with varying arrangements for the distribution of securities and the provision of services to shareholders. In connection with the adoption of Rule 18f-3, the Commission also amended Rule 12b-1 under the Act to clarify that each class of shares must have separate 12b-1 plan provisions. Moreover, any action on the 12b-1 plan (*i.e.*, trustee or shareholder approval) must take place separately for each class. The Commission has adopted amendments to Rule 18f-3 that expand and clarify the methods by which a multiple class fund may allocate income, gains, losses and expenses and that clarify the shareholder voting provisions of the rule.

Applicants believe that the proposed closed-end investment company multiple class structure does not raise concerns underlying Section 18 of the Act to any greater degree than open-end investment companies' multiple class structures. The proposed multiple class structure does not relate to borrowings and will not adversely affect a Fund's assets. In addition, the proposed structure will not increase the speculative character of each Fund's shares. Applicants also believe that the proposed allocation of expenses relating to distribution and voting rights is equitable and will not discriminate against any group or class of stockholders.

Applicants believe that the rationale for, and conditions contained in, Rule 18f-3 are as applicable to a closed-end investment company seeking to offer multiple classes of common shares with varying distribution and/or service arrangements in a single portfolio as they are to open-end funds. Each Fund will comply with the provisions of Rule 18f-3 as if it were an open-end investment company, including, among others, its provisions relating to differences in expenses, special allocations of other expenses, voting rights, conversions and exchanges and disclosures. In fact, each Fund is expected in many ways to resemble an open-end fund in its manner of operation and in the distribution of its Common Shares.

In particular, the Funds will offer their Shares continuously at a price based on net asset value, plus any applicable front-end sales charge. Differences among classes will, as detailed above, relate largely to differences in distribution and/or service arrangements. Applicants note that open-end and closed-end funds are subject to different technical provisions governing the issuance of senior securities. However, those technical differences do not appear relevant here. Although closed-end funds may not issue multiple classes of common shares without exemptive relief, the Commission has granted specific exemptive relief to similarly situated closed-end funds.¹⁹ Provisions regulating the issuance by closed-end funds of debt or preferred stock should have no bearing on an application by a closed-end fund for an exemptive order permitting the issuance of multiple classes of common stock. Therefore, Applicants propose to base the conditions under which the Funds would issue multiple classes of common stock on those contained in Rule 18f-3.

Applicants believe that any allocation of expenses and voting rights relating to the asset-based distribution and/or service fees applicable to the different classes of shares of each Fund in the manner described above is equitable and would not discriminate against any group of stockholders. Each Applicant is aware of the need for full disclosure of the proposed multi-class system in each Fund's prospectus and of the differences among the various classes and the different expenses of each class of shares offered. Each Fund will include in its prospectus disclosure of the fees, expenses and other characteristics of each class of shares offered for sale by the prospectus, as is required for open-end multi-class funds under Form N-1A.²⁰ Applicants also note that the Commission has adopted rule and form amendments to require registered open-end management investment companies to disclose fund expenses borne by shareholders during the reporting period in shareholder reports²¹ and to describe in their prospectuses any arrangements that result in breakpoints in, or elimination of, sales loads.²² Each Fund will include these disclosures in its shareholder reports and prospectus.

Each Fund will comply with any requirements that the Commission or FINRA may adopt regarding disclosure at the point of sale and in transaction confirmations about the costs and conflicts of interest arising out of the distribution of open-end investment company shares, and regarding prospectus disclosure of sales loads and revenue sharing arrangements, as if those requirements applied to each Fund. In addition, each Fund will

¹⁹ See John Hancock Asset-Based Lending Fund, *supra* note 15; The Optima Dynamic Alternatives Fund, *supra* note 15; MVP Private Markets Fund, *supra* note 15; Hamilton Lane Private Assets Fund, *supra* note 15; Cresset Private Markets Opportunity Fund, *supra* note 15; Triloma EIG Energy Income Fund, *supra* note 15; NorthStar/Townsend Institutional Real Estate Fund, Inc., *supra* note 15; and FS Global Credit Opportunities Fund, *supra* note 15.

²⁰ In all respects other than class-by-class disclosure, each Fund will comply with the requirements of Form N-2.

²¹ Shareholder Reports and Quarterly Portfolio Disclosure of Registered Management Investment Companies, Investment Company Act Rel. No. 26372 (Feb. 27, 2004) (adopting release).

²² Disclosure of Breakpoint Discounts by Mutual Funds, Investment Company Act Rel. No. 26464 (June 7, 2004) (adopting release).

contractually require that any distributor of the Fund's shares comply with such requirements in connection with the distribution of such Fund's shares.

In June 2006, the Commission adopted enhanced fee disclosure requirements for funds of funds including registered funds of hedge funds.²³ Applicants will comply with all such applicable disclosure requirements.

The requested relief is similar to the exemptions discussed above granted by the Commission to John Hancock Asset-Based Lending Fund, The Optima Dynamic Alternatives Fund, MVP Private Markets Fund, Hamilton Lane Private Assets Fund, Cresset Private Markets Opportunity Fund, Triloma EIG Energy Income Fund, NorthStar/Townsend Institutional Real Estate Fund, Inc., FS Global Credit Opportunities Fund, Altegris KKR Commitments Master Fund, Resource Real Estate Diversified Income Fund and Resource Real Estate, Inc., and Partners Group Private Equity (Master Fund), LLC.²⁴ Accordingly, Applicants believe there is ample precedent for the implementation of a multi-class system.

C. Asset-Based Distribution and/or Service Fees

Applicants request relief from the provisions of Section 17(d) of the Act and Rule 17d-1 thereunder, to the extent necessary to permit the Funds to impose asset-based distribution and/or service fees (in a manner analogous to Rule 12b-1 fees for an open-end investment company). Section 12(b) of the Act and Rule 12b-1 thereunder do not apply to closed-end investment companies. Accordingly, no provisions of the Act or the rules thereunder explicitly limits the ability of a closed-end fund to impose a distribution and/or service fee.²⁵

Section 17(d) of the Act prohibits an affiliated person of a registered investment company or an affiliated person of such person, acting as principal, from effecting any transaction in which such registered company is a joint, or a joint and several, participant, in contravention of Commission regulations. Rule 17d-1 provides that no joint transaction covered by the rule may be consummated unless the Commission issues an order upon application.

In reviewing applications pursuant to Section 17(d) and Rule 17d-1, the Commission considers whether an investment company's participation in a joint enterprise or joint arrangement is consistent with the provisions, policies and purposes of the Act, and the extent to which the participation is on a basis different from or less advantageous than that of other participants. Section 17(d) of the Act is intended to prevent or limit abuses arising from conflicts of interest; however, Section 17(d) itself does not prohibit any specific activities, but instead, authorizes the Commission to approve rules to limit or prevent an investment company from being a joint participant on a different or less advantageous basis than other participants. Under Rule 17d-1, it is unlawful for an affiliated person, acting as principal, to participate in or effect any transaction in connection with a joint enterprise or other joint arrangement in which the investment company is a participant, without prior Commission approval. The protections provided for in Section 17(d) essentially allow the Commission to set standards for all transactions concerning an investment company and an affiliate which could be construed as self-dealing or involve overreaching by the affiliate to the detriment of the investment company.

²³ Fund of Funds Investments, Investment Company Act Rel. Nos. 26198 (Oct. 1, 2003) (proposing release) and 27399 (Jun. 20, 2006) (adopting release). See also Rules 12d1-1, et seq. of the Act.

²⁴ See John Hancock Asset-Based Lending Fund, *supra* note 15; The Optima Dynamic Alternatives Fund, *supra* note 15; MVP Private Markets Fund, *supra* note 15; Hamilton Lane Private Assets Fund, *supra* note 15; Cresset Private Markets Opportunity Fund, *supra* note 15; Triloma EIG Energy Income Fund, *supra* note 15; NorthStar/Townsend Institutional Real Estate Fund, Inc., *supra* note 15; FS Global Credit Opportunities Fund, *supra* note 15; *Altegris KKR Commitments Master Fund, et al.*, Inv. Co. Act. Rel. Nos. 31944 (December 17, 2015) (Notice) and 31955 (January 12, 2016) (Order); *Resource Real Estate Diversified Income Fund and Resource Real Estate, Inc.*, Inv. Co. Act. Rel. Nos. 31093 (June 23, 2014) (Notice) and 31162 (July 22, 2014) (Order); and *Partners Group Private Equity (Master Fund), LLC and Partners Group (USA) Inc.*, Inv. Co. Act. Rel. Nos. 31046 (May 13, 2014) (Notice) and 31075 (June 10, 2014) (Order).

²⁵ Applicants do not concede that Section 17(d) applies to the asset-based distribution and/or service fees discussed herein, but requests this exemption to eliminate any uncertainty.

Each Fund will comply with the protections for open-end investment companies developed and approved by the Commission in Rule 12b-1 in connection with its Distribution and Service Plan(s), if any, with respect to each class of Shares as if the Fund were an open-end management investment company.

Therefore, the Funds will participate in substantially the same way and under substantially the same conditions as would be the case with an open-end investment company imposing distribution and/or service fees under Rule 12b-1. Applicants note that, at the same time the Commission adopted Rule 12b-1,²⁶ it also adopted Rule 17d-3 to provide an exemption from Section 17(d) and Rule 17d-1 to the extent necessary for arrangements between open-end funds and their affiliated persons or principal underwriters (or affiliated persons of such persons or principal underwriters) whereby payments are made by the open-end fund with respect to distribution, if such agreements are entered into in compliance with Rule 12b-1. In its adopting release, the Commission stated as follows:

The Commission wishes to emphasize that it has no intention of categorizing certain transactions as raising the applicability of Section 17(d) and Rule 17d-3 of the Act. The Commission's only comment is that to the extent that arrangements in which a fund pays for its distribution costs could involve the fund in a 'joint enterprise' with an affiliated person, and if such arrangements were entered into in compliance with Rule 12b-1, the Commission sees no need for prior Commission review and approval of the arrangements.²⁷

As closed-end management investment companies, the Funds may not rely on Rule 17d-3. However, in light of the foregoing, Applicants believe any Section 17(d) concerns the Commission might have in connection with a Fund's financing the distribution of its shares should be resolved by the Fund's undertaking to comply with the provisions of Rules 12b-1 and 17d-3 as if those rules applied to closed-end investment companies. Accordingly, the Funds will comply with Rules 12b-1 and 17d-3 as if those rules applied to closed-end investment companies. The Funds represent that the Funds' imposition of asset-based distribution and/or service fees is consistent with factors considered by the Commission in reviewing applications for relief from Section 17(d) of the Act and Rule 17d-1 thereunder (*i.e.*, that the imposition of such fees as described is consistent with the provisions, policies and purposes of the Act and does not involve participation on a basis different from or less advantageous than that of other participants).

VI. APPLICANTS' CONDITION

Applicants agree that any order granting the requested relief will be subject to the following condition:

Each Fund relying on the Order will comply with the provisions of Rules 6c-10, 12b-1, 17d-3, 18f-3, 22d-1, and, where applicable, 11a-3 under the Act, as amended from time to time, as if those rules applied to closed-end management investment companies, and will comply with the FINRA Sales Charge Rule, as amended from time to time, as if that rule applied to all closed-end management investment companies.

VII. CORPORATE ACTION

The Fund's Articles of Incorporation empowers the Board of the Fund to establish different classes of Shares and to take any other action necessary to accomplish the establishment and creation of such classes of Shares. The Board has adopted resolutions, attached as Exhibit A, authorizing the Fund's officers to file the Application with the Commission.

VIII. CONCLUSION

For the reasons stated above, Applicants submit that the exemptions requested are necessary and appropriate in the public interest and are consistent with the protection of investors and the purposes fairly intended

²⁶ See Bearing of Distribution Expenses by Mutual Funds, Investment Co. Act Rel. No. 11414 (October 28, 1980).

²⁷ *Id.*

by the policy and provisions of the Act. Applicants desire that the Commission issue the requested Order pursuant to Rule 0-5 under the Act without conducting a hearing.

Applicants submit that the exemptions requested conform substantially to the precedent cited herein.²⁸

As required by Rule 0-2(c)(1) under the Act, each Applicant hereby states that all of the requirements for execution and filing of this Application on behalf of the Applicants have been complied with in accordance with the organizational documents of the Applicants, as applicable, and the undersigned officers of the Applicants are fully authorized to execute this Application. The resolutions of the Fund's Board are attached as Exhibit A to this Application in accordance with the requirements of Rule 0-2(c)(1) under the Act and the verifications required by Rule 0-2(d) under the Act are attached as Exhibit B to this Application.

Pursuant to Rule 0-2(f) under the Act, each Applicant states that its address is as indicated below:

Brian F. Hurley, Esq.
c/o Brookfield Public Securities Group LLC
Brookfield Place
250 Vesey Street
New York, NY 10281-1023

Applicants further state that all written or oral communications concerning this Application should be directed to:

Michael R. Rosella, Esq.
Thomas D. Peeney, Esq.
Paul Hastings LLP
200 Park Avenue
New York, NY 10166
MikeRosella@paulhastings.com
thomaspeeney@paulhastings.com
(212) 318-6800

Signature Page Follows

²⁸ See John Hancock Asset-Based Lending Fund, *supra* note 15; The Optima Dynamic Alternatives Fund, *supra* note 15; MVP Private Markets Fund, *supra* note 15; Hamilton Lane Private Assets Fund, *supra* note 15; Cresset Private Markets Opportunity Fund, *supra* note 15; Triloma EIG Energy Income Fund, *supra* note 15; NorthStar/Townsend Institutional Real Estate Fund, Inc., *supra* note 15; and FS Global Credit Opportunities Fund, *supra* note 15.

The Applicants have caused this Application to be duly signed on their behalf on the ~~January~~23rd day of June, 2023.

Brookfield Infrastructure Income Fund, Inc.

Name: Brian F. Hurley
Title: President

**Brookfield Asset Management Private Institutional
Capital Adviser (Canada), L.P.**

By: Brookfield Private Funds Holdings Inc., its general
partner

Name: Carl Ching
Title: Managing Director

EXHIBIT A

Resolutions of the Sole Director of Brookfield Infrastructure Income Fund, Inc.

The undersigned hereby certifies that he is the duly elected President of *Brookfield Infrastructure Income Fund, Inc.* (“*BII*” or the “*Fund*”) and that, with respect to the attached application for an exemption from the provisions of Sections 18(a)(2), 18(c) and 18(i) of the Investment Company Act of 1940, as amended (the “*Act*”), and pursuant to Section 17(d) of the Act and Rule 17d-1 under the Act, and any amendments thereto (such application along with any amendments, the “*Application*”), all actions necessary to authorize the execution and filing of the Application under the organizational documents of BII have been taken and the person signing and filing the Application on behalf of BII is fully authorized to do so; and that the sole director of BII adopted the following resolutions by written consent on the ~~19th~~ 20th day of January, 2023 in accordance with the organizational documents of BII:

WHEREAS, the sole director on the board of directors (the “*Board*”) of BII believes it to be in the best interests of BII to make an exemptive application to the Securities and Exchange Commission (the “*SEC*”) for an order pursuant to Section 6(c) of the Act, for an exemption from the provisions of Sections 18(a)(2), 18(c) and 18(i) of the Act, and pursuant to Section 17(d) of the Act and Rule 17d-1 under the Act, to permit the Fund, among other things, to offer multiple classes of shares to the public.

NOW THEREFORE, BE IT RESOLVED, that the respective Authorized Officers of BII be, and each hereby is, authorized to prepare, execute and submit, on behalf of BII, an exemptive application to the SEC for an order pursuant to Section 6(c) of the Act, for an exemption from the provisions of Sections 18(a)(2), 18(c) and 18(i) of the Act, and (ii) pursuant to Section 17(d) of the Act and Rule 17d-1 under the Act, to permit the Fund, among other things, to offer multiple classes of shares to the public; and it is

FURTHER RESOLVED, that any Authorized Officer of BII be, and each of them hereby is, authorized, empowered and directed on behalf of BII to do and perform or cause to be done and performed, in the name of BII, such acts, including filing any necessary documents with the SEC and preparing, executing and filing on behalf of BII any such other documents or instruments, as they deem appropriate or advisable in furtherance of the above resolution, and to pay or cause to be paid by BII such costs and expenses, and to prepare or cause to be prepared, negotiate or cause to be negotiated and execute and deliver or cause to be executed and delivered by or on behalf of BII such notices, requests, demands, directions, consents, approvals, orders, applications, certificates, agreements, amendments, further assurances or other instruments or communications, under the corporate seal of BII, as they may deem necessary or advisable in order to carry into effect the intent of the foregoing resolutions, or to consummate the transactions contemplated thereby, or to comply with the requirements, to implement the terms or satisfy the conditions of any filings and documents approved and authorized by the foregoing (including, without limitation, the obtaining of any necessary or appropriate consents and/or approvals of other persons or agencies or authorities); and it is

FURTHER RESOLVED, that all actions, transactions, events and practices regarding BII (or the operation thereof), implemented or to be implemented by BII, or taken or to be taken by BII, that are described in the foregoing resolutions be, and hereby are, authorized, confirmed, ratified and approved in all respects; and it is

FURTHER RESOLVED, that any and all prior lawful actions taken by any Authorized Officer of BII or any person or persons designated and authorized to act by a director or Authorized Officer of BII in connection with the execution, delivery and performance of any documents or certificates related thereto or contemplated by the foregoing resolutions which would have been authorized by the foregoing resolutions except that such actions were taken prior to the adoption of the foregoing resolutions are severally authorized, ratified, confirmed, approved and adopted as being actions of BII; and it is

FURTHER RESOLVED, that the Authorized Officers of BII be, and each of them hereby is, authorized, empowered and directed to certify and deliver copies of these resolutions to such government bodies, agencies, persons, firms or corporations as the Authorized Officers of BII may deem necessary and to identify by his or her signature or certificate, or in such form as may be required, the documents and instruments presented to and

approved herein and to furnish evidence of the approval, by an Authorized Officer authorized to give such approval, of any document, instrument or provision or any addition, deletion or change in any document or instrument; and it is

FURTHER RESOLVED, that in every instance in the foregoing resolutions where an Authorized Officer is authorized to take such actions or make such changes to a document as he or she determines to be necessary, desirable or appropriate, then the taking of the action or the execution of such document with such changes shall evidence conclusively his or her determination that such actions or changes to such documents are necessary, desirable or appropriate (as applicable); and it is

FURTHER RESOLVED, that for purposes of the foregoing resolutions, the Authorized Officers of BII shall be the Chief Executive Officer, President, Treasurer, Secretary and any Vice President of BII (collectively, the “*Authorized Officers*”).

Brookfield Infrastructure Income Fund, Inc.

Name: Brian F. Hurley

Title: President

Date: ~~January~~ June 23, 2023

EXHIBIT B

**Verifications of Brookfield Infrastructure Income Fund, Inc. and
Brookfield Asset Management Private Institutional Capital Adviser (Canada), L.P.**

The undersigned states that he has duly executed the attached Application dated ~~January~~ June 23, 2023 for and on behalf of **Brookfield Infrastructure Income Fund, Inc.** in his capacity as President of such entity and that all actions necessary to authorize the undersigned to execute and file such instrument have been taken. The undersigned further states that he is familiar with such instrument, and the contents thereof, and that the facts therein set forth are true to the best of his knowledge, information and belief.

Brookfield Infrastructure Income Fund, Inc.

Name: Brian F. Hurley
Title: President

The undersigned states that he has duly executed the attached Application dated ~~January~~ June 23, 2023 for and on behalf of **Brookfield Asset Management Private Institutional Capital Adviser (Canada), L.P.** in his capacity as General Counsel of such entity and that all actions necessary to authorize the undersigned to execute and file such instrument have been taken. The undersigned further states that he is familiar with such instrument, and the contents thereof, and that the facts therein set forth are true to the best of his knowledge, information and belief.

**Brookfield Asset Management Private Institutional
Capital Adviser (Canada), L.P.**

By: Brookfield Private Funds Holdings Inc., its general
partner

Name: Carl Ching
Title: Managing Director