

CAPITAL MARKETS TRIBUNAL

RIOT PLATFORMS, INC.

Applicant

-and-

BITFARMS LTD. & ONTARIO SECURITIES COMMISSION

Respondents

APPLICATION OF RIOT PLATFORMS, INC.

(In connection with the Shareholder Rights Plan adopted by Bitfarms Ltd. on June 10, 2024 and under section 127 of the *Securities Act*, R.S.O. 1990, c. S.5)

A. ORDERS SOUGHT

1. The Applicant, Riot Platforms, Inc. ("**Riot**"), requests that the Tribunal make the following Orders:

- (a) an interim, interlocutory and/or permanent Order pursuant to section 127(1)(2) of the *Securities Act*, R.S.O. 1990, c. S.5 (the "**Act**") cease trading with immediate effect all securities issued, or that may be issued, pursuant to the shareholder rights plan adopted by the board of directors of Bitfarms Ltd. ("**Bitfarms**" or the "**Company**") on June 10, 2024 (the "**15% Rights Plan**"), in accordance with the Tribunal's public interest jurisdiction;
- (b) to the extent necessary, a temporary Order cease trading with immediate effect all securities issued, or that may be issued, by operation of the 15%

Rights Plan pursuant to section 127(5) of the Act, and to the extent necessary, extension Orders pursuant to sections 127(6), 127(7) and 127(8) of the Act;

- (c) to the extent necessary, an interim, temporary, interlocutory and/or permanent Order pursuant to sections 127(1)(2) and 127(5) of the Act, and to the extent necessary, extension Orders pursuant to sections 127(6), 127(7) and 127(8) of the Act, and in accordance with the Tribunal's public interest jurisdiction cease trading with immediate effect all securities issued, or that may be issued, pursuant to or in connection with one or more private placements or other similar dilutive transactions ("**Dilutive Transaction**") by or concerning Bitfarms, and that restrain the exercise of any voting rights acquired thereunder, from the date of this Application until at least 15 business days after the date on which this Application is determined;
- (d) to the extent necessary, an Order pursuant to section 127(1)(5) of the Act prohibiting the circulation of any release, report, preliminary prospectus, prospectus, information circular, take-over bid circular, issuer bid circular, offering memorandum, proxy solicitation or any other document that may be issued by Bitfarms or another person or company in relation to any transaction or series of transactions providing for the acquisition of beneficial ownership or control over a majority of the outstanding voting or equity securities of Bitfarms by any person or company (whether by way of

amalgamation, arrangement or other business combination) or any Dilutive Transaction;

- (e) to the extent necessary, an Order pursuant to section 127 of the Act prohibiting Bitfarms, its directors and its officers from fixing a date as the record date for the purpose of determining shareholders entitled to receive notice of and to vote at any meeting of holders of common shares of Bitfarms (“**Bitfarms Shares**”) to a date that is less than 30 business days following the date on which this Application is determined, or such other period as the Tribunal may determine;
- (f) to the extent necessary, an Order requiring Bitfarms to schedule the Requisitioned Meeting (as defined below) no later than September 20, 2024, and to conduct that Meeting on a fair, proper and even-handed basis that respects properly any relief that the Tribunal may grant in respect of this Application;
- (g) to the extent necessary or appropriate, an Order that directs the Ontario Securities Commission (“**Commission**”) to issue one or more of the Orders described above;
- (h) to the extent necessary, an Order seizing the Panel of the Tribunal that hears and determines this Application with authority to issue one or more ancillary Orders to ensure that any relief the Tribunal may grant is fully respected and implemented;

- (i) to the extent necessary, an Order granting Riot standing to pursue this Application;
- (j) an Order for an expedited hearing; and
- (k) such further and other relief as this Tribunal may deem appropriate.

B. GROUNDS FOR THE ORDERS SOUGHT

(i) Overview

2. This Application arises in the context of a shareholder rights plan—often referred to as a “poison pill”—adopted by the Board of Directors of Bitfarms (the “**Bitfarms Board**”) on June 10, 2024. The clear purpose and effect of the 15% Rights Plan is to prevent Riot, the single largest shareholder of Bitfarms, from exercising its fundamental legal rights to acquire up to 19.9% of the issued and outstanding Bitfarms Shares in the open market as permitted by applicable securities laws and to vote those Bitfarms Shares at a special meeting of Bitfarms shareholders (the “**Requisitioned Meeting**”) requisitioned by Riot to add new, well-qualified and independent directors to the Bitfarms Board.

3. The 15% Rights Plan in question contains an atypical and off-market 15% trigger, which is well below the customary 20% threshold. Unlike a typical rights plan which simply requires a party making a take-over bid to abide by additional constraints, the 15% Rights Plan has the effect of imposing the entirety of the bid regime on a party who would otherwise be free to buy shares in the open market.

4. Accordingly, the 15% trigger stipulated in the 15% Rights Plan is *prima facie* contrary to the public interest, and substitutes the conflicted and private preferences of

the Bitfarms Board in place for the carefully calibrated, predictable and even-handed take-over bid regime enacted by the Commission and other Canadian securities Commissions in 2016 after years of careful study and analysis. The 15% Rights Plan infringes on fundamental shareholder rights and flagrantly disregards the policy underlying the Canadian take-over bid regime, as well as recent decisions of the Commission and other Canadian securities Commissions.

5. As the single largest shareholder of Bitfarms, Riot has acquired an ownership interest of approximately 14.9% of the outstanding Bitfarms Shares as of the date of filing this Application for an aggregate acquisition cost of approximately US\$132 million. Riot has grave concerns, however, with the poor corporate governance practices, lack of independence and entrenchment of the Bitfarms Board. It is this track record that has culminated in Bitfarms' summary dismissals of Riot's attempts in the period since May 2023 to engage in constructive discussions concerning refreshment of the Bitfarms Board, and with respect to a potential mutually beneficial combination of Bitfarms and Riot. Instead of engaging in good faith discussions with Riot, Bitfarms has responded to Riot's approaches by implementing the 15% Rights Plan without advance notice or shareholder approval. The questionable conduct of the Bitfarms Board is in direct conflict with established legal and governance standards.

6. While the purported rationale for the 15% Rights Plan is to facilitate a Strategic Review (defined below) that the Bitfarms Board announced only after Riot went public with its proposal for a combination with Bitfarms and its intention proceed with the Requisitioned Meeting, the 15% Rights Plan is clearly, directly and improperly aimed Riot,

and seeks to prevent its lawful and ordinary course acquisitions of Bitfarms Shares in the open market in accordance with applicable securities laws.

7. Bitfarms has publicly claimed that the 15% Rights Plan is required since Riot's lawful acquisition of Bitfarms Shares in the open market of 15% or more of the outstanding Bitfarms Shares is "likely to inhibit" the Bitfarms' Strategic Review Process. Riot disagrees with this characterization of the impact of its shareholding on the Strategic Review process and such a rationale for a shareholder rights plan with a 15% trigger was expressly dismissed when the *Bureau de décision et de révision en valeurs mobilières* (now Financial Markets Administrative Tribunal), in the case of *Northern Financial Corporation v. Jaguar Nickel Inc.*, 2007 QCBDRVM 15, cease-traded a shareholder rights plan with a 15% trigger on facts strikingly similar to those in the present case.

8. Riot also understood that the operation of the Canadian take-over bid regime would allow for its accumulation of shares and was not willing to agree to the unreasonable and off-market terms that Bitfarms required of Riot as a precondition to granting due diligence access to Bitfarms' confidential information, for all of the sound reasons set out below, recognizing that such a decision comes with both costs and benefits: Riot is not party to a confidentiality agreement with Bitfarms so it is unable to review Bitfarms' confidential information to conduct its due diligence; however, Riot is also not subject to a standstill which is a customary feature of any confidentiality agreement entered into in this context, so Riot is otherwise free to acquire shares in the open market and exercise its fundamental rights as a shareholder. By adopting the 15% Rights Plan, Bitfarms has effectively and unilaterally imposed a standstill on Riot, thereby denying Riot

the key benefit of its legitimate decision not to agree to Bitfarms' off-market demands while conferring none of the benefits of access to Bitfarms' confidential information.

9. An even more troubling element of the 15% Rights Plan is that the 15% threshold is temporary, lasting for three months, or about half of the shelf-life of the 15% Rights Plan (which will expire in six months if not approved by Bitfarms' shareholders). This forces a shareholder in Riot's position to make a troubling choice:

- (a) seek to increase its stake now, by commencing a formal 105-day take-over bid which will only expire well after the 15% Rights Plan flips back to the traditional 20% threshold, all while another party could accumulate up to 19.9% of the outstanding Bitfarms Shares prior to the bid's expiry on the open market or participate in a private placement sanctioned by the Bitfarms Board to acquire a 20% interest in Bitfarms; or
- (b) stay on the sidelines and challenge the 15% Rights Plan before this Tribunal.

10. The 20% threshold stipulated in virtually all Canadian shareholder rights plans is the only logical and appropriate threshold that is consistent with the 20% threshold under the Canadian take-over bid regime, at which point an offeror is required to make a formal take-over bid and the additional regulatory protections for security holders begin to apply. This 20% threshold was first proposed in the Kimber Report of 1965 and has remained untouched since then, despite periodic consideration by regulatory authorities. The Bitfarms Board has rewritten the Canadian take-over bid regime by way of the 15% Rights

Plan to require any market participant, including Riot, to assume the obligations of launching a formal take-over bid in order to acquire Bitfarms Shares in excess of its 15% threshold in circumstances where a take-over bid is not legally required. Riot has not formally commenced a take-over bid to acquire any Bitfarms Shares or announced an intention to do so.

11. The 15% Rights Plan also yields another substantial benefit to incumbent members of the Bitfarms Board. By placing this substantial roadblock in the path of its largest shareholder, the Bitfarms Board has effectively capped the voting power of Riot at the Requisitioned Meeting to 14.9%. At the same time, it has also crafted an exception in the 15% Rights Plan which allows the Bitfarms Board unfettered discretion to create a new, friendly 20% block holder while at the same time diluting the ownership interests of Riot from 14.9% down to 11.9%.

12. Both the right to acquire shares in the open market up to 19.9% and the right to vote those shares are fundamental rights of critical importance to shareholders, and particularly to Riot as the single largest shareholder of Bitfarms.

13. If permitted to remain in place, the 15% Rights Plan will significantly prejudice Riot, other Bitfarms shareholders and the capital markets generally. The 15% Rights Plan may also place the Tribunal in the invidious position of having to conduct rights plan hearing after rights plan hearing, even though the Commission sought to avoid that very result when it adopted the current take-over bid regime some eight years ago in 2016.

14. Among other things, if the 15% Rights Plan is permitted to stand it will almost certainly embolden other issuers to take similarly aggressive steps and adopt sub-20% shareholders rights plans in contested situations, particularly if they perceive the Tribunal to be unwilling to intervene in egregious circumstances such as those in the present case, substantially upending the fairness and certainty of the bid regime and introducing inefficiencies into the market.

15. For these reasons, and those set out in more detail below, Riot has five primary concerns with the Rights Plan:

- (a) *first*, the Rights Plan operates to prevent Bitfarms from its exercising its right to acquire up to 19.9% of the outstanding Bitfarms Shares, should it determine to do so, and voting those Bitfarms Shares at the Requisitioned Meeting;
- (b) *second*, it is manifestly unfair for the Bitfarms Board to have adopted a 15% Rights Plan that precludes Riot and other market participants from acquiring 15% or more of the outstanding Bitfarms Shares while reserving for itself the right to create a 20% block holder hand-picked by the Bitfarms Board;
- (c) *third*, even if the 15% Rights Plan is cease-traded, Riot has been prejudiced by its inability to acquire Bitfarms Shares on the open market since June 19, 2024 (the date on which it acquired 14.9% of the outstanding Bitfarms Shares), despite suitable market conditions, all of which has provided the

Bitfarms Board with an unfair timing advantage (including with respect to the Requisitioned Meeting);

- (d) *fourth*, the 15% Rights Plan unfairly prevents Riot from participating in any future success of Bitfarms to the degree it would otherwise be entitled to but for the existence of the 15% Rights Plan; and
- (e) *fifth*, as is well-understood by market participants, the acquisition of a toehold interest can typically serve to lower a potential buyer's acquisition costs, and it is unfair that Bitfarms has sought to prevent this benefit's availability to Riot pursuant to the 15% Rights Plan.

16. As set out in more detail below, the 15% Rights Plan is *prima facie* contrary to the public interest. Accordingly, Riot requests that the Tribunal issue an Order with immediate effect cease trading all securities issued or that may be issued pursuant to the 15% Rights Plan.

(ii) The Parties and the Bitcoin Mining Industry

17. Bitfarms is a corporation continued under the *Business Corporations Act*, R.S.O. 1990, c. B.16. Bitfarms is a global Bitcoin mining company that develops, owns and operates vertically integrated mining farms. Bitfarms is a reporting issuer in all provinces and territories of Canada. The principal regulator of Bitfarms is the Commission.

18. Riot is a Nevada corporation. Riot is a leading Bitcoin mining and digital infrastructure company focussed on a vertically integrated strategy. Riot operates the world's largest Bitcoin mining sites, which are located in Texas. Riot's vision is to be the

world's leading Bitcoin-driven infrastructure platform. Riot is not a reporting issuer in any province or territory of Canada.

19. Both Bitfarms and Riot are participants in the Bitcoin mining industry. Bitcoin is a decentralized digital currency (also known as a “**cryptocurrency**”). Transactions are verified by network nodes¹ through cryptography,² and are recorded on a publicly distributed ledger known as a “**blockchain**”.

20. The Bitcoin protocol is a set of rules that govern the operation of the Bitcoin network. When a user initiates a transaction, it is broadcast to the network and grouped with other transactions into a “**block**”. Computers (known as “**miners**”) designed for the purposes of performing proof of work on the Bitcoin blockchain compete to solve a cryptographic puzzle to add this block to the Bitcoin blockchain. Once verified by the majority of nodes in the Bitcoin network, the block is added to the blockchain, and the miner receives a “block reward” in the form of newly minted bitcoins and transaction fees.

21. This process is known as Bitcoin mining, and is the means by which new Bitcoins enter into circulation.

22. The Bitcoin protocol has a built-in process designed to control the overall supply and reduce the risk of inflation in Bitcoin known as “**halving**”. Every 210,000 blocks

¹ Network nodes are network stakeholders whose devices (e.g., computers) are authorized to keep track of the distributed ledger and serve as communication hubs for various network tasks. A network node's primary job is to confirm the legality of each subsequent batch of network transactions, known as blocks.

² Cryptography is math that can involve encrypting and decrypting data into and from incomprehensible code.

(approximately every four years), a **“Bitcoin Halving”** event occurs which results in the block reward for Bitcoin mining being reduced by half (hence the term halving), significantly impacting revenues for Bitcoin mining companies.

23. A Bitcoin Halving event and the period surrounding it is a critical juncture for the Bitcoin industry, and tends to result in significant industry and price volatility. Bitcoin mining companies in particular must navigate such increased market volatility by optimizing costs and potentially diversifying operations to mitigate financial strain and capitalize on potential price increases following a Bitcoin Halving event.

24. Most recently, in April 2024, the fourth “Bitcoin Halving” event occurred. It resulted in the Bitcoin block reward decreasing from 6.25 bitcoin per block to 3.125 bitcoin per block. Previous Halving events occurred in May 2020 (when the block reward decreased from 12.5 to 6.25 bitcoin per block), July 2016 (when the block reward decreased from 25 to 12.5 bitcoin per block) and November 2012 (when the block reward decreased from 50 to 25 bitcoin per block).

(iii) Factual Background

(a) Riot’s Interest in a Negotiated Combination with Bitfarms

25. In early 2023, Riot developed an interest in exploring a potential strategic transaction with Bitfarms in view of the strategic merits, financial benefits and synergies that would result from a potential combination of Riot and Bitfarms. Such a transaction would give rise to the following benefits to Bitfarms and its shareholders, among others:

- (a) the opportunity to participate in a vertically-integrated world leading Bitcoin mining company with significant current power capacity and current self-mining capacity, with increased capacity by year-end, on a scale that Riot believes would be substantially larger than any other publicly-listed Bitcoin mining company globally;
- (b) exposure to a more geographically diverse set of sites well-positioned for expansion and long-term growth through 16 highly-differentiated sites to allow for continued expansion into operating environments with favourable energy arrangements; and
- (c) access to Riot's strong balance sheet, with *de minimis* corporate debt, and Riot's significant public equity markets profile, which would enable Riot to fully finance Bitfarms' current and future growth plans.

(b) Riot's Initial Engagement with Bitfarms

26. Given its interest in Bitfarms, Riot resolved to begin building a constructive relationship with key Bitfarms personnel in order to explore a potential strategic combination. Between March 2023 and September 2023, members of senior management of Riot engaged in several meetings and discussions with senior management of Bitfarms. In November 2023, Riot provided Bitfarms with a formal analysis requested by Bitfarms management that illustrated the potential value creation to Bitfarms shareholders that would arise from a combination of the Company with Riot based on public filings.

27. During these meetings and discussions, members of management of Riot came to understand that, while Bitfarms management acknowledged the strategic merits of a potential combination of Riot and Bitfarms, the Bitfarms Board was not prepared to consider a transaction at that time. Following the delivery of the formal analysis requested by Bitfarms management in November 2023, management of Riot decided not to push continued discussions regarding a transaction too aggressively and run the risk of undermining the goodwill that Riot had cultivated during the preceding months.

(c) Bitfarms Terminates its CEO

28. During the initial months of 2024, Riot management continued to monitor its industry peers, including Bitfarms, in accordance with its usual practice. Riot also continued to evaluate the prospect of a potential combination with Bitfarms and considered whether to reengage in discussions with Bitfarms.

29. This process accelerated on March 25, 2024 when Bitfarms announced that its then-CEO, Mr. Morphy, would be departing from Bitfarms. Given Mr. Morphy's departure, Riot believed that the Bitfarms Board may have been more receptive to a proposed combination at the time. Such a transaction could have assisted in maintaining stability at the Company and alleviating the impacts that Mr. Morphy's departure and the recent Bitcoin Halving event in April 2024 would have on Bitfarms and its shareholders. In addition, Riot was made aware that the termination by the Bitfarms Board of Mr. Morphy was contentious within the senior executive ranks of Bitfarms.

(d) Riot's Proposal for a Negotiated Combination with Bitfarms

30. To further its efforts to recommence engagement with Bitfarms, on April 22, 2024, Riot delivered to the Bitfarms Board a written non-binding proposal to combine with Bitfarms in a negotiated transaction that implied an equity value for Bitfarms of approximately US\$950 million (the "**April Proposal**").

31. The April Proposal was deliberately structured to demonstrate Riot's commitment to delivering significant value to Bitfarms and its shareholders. Among other things, the April Proposal was not subject to any financing contingency and was subject only to a limited period of customary due diligence, final approval from Riot and Bitfarms' respective boards of directors and the negotiation of terms and execution of definitive agreements.

32. Later in the day on April 22, 2024, Bitfarms advised that the April Proposal would be referred to a meeting of a Special Committee of the Bitfarms Board (the "**Special Committee**") that would be convened the following day.

(e) Negotiation of a Non-Disclosure Agreement and Standstill

33. In order to facilitate the limited period of customary due diligence contemplated in the April Proposal, the April Proposal suggested that Riot and Bitfarms sign a mutually agreeable non-disclosure agreement. Accordingly, on April 24, 2024, Riot's counsel delivered an initial draft non-disclosure agreement to Bitfarms' counsel.

34. Bitfarms' counsel sent a markup of the non-disclosure agreement to Riot and its outside advisors on April 26, 2024. Riot was extremely troubled by Bitfarms' request for

a standstill provision with a three-year term. Under the terms of the standstill provision proposed by Bitfarms, Riot would have been restricted from acquiring more than 4.9% of the outstanding Bitfarms Shares and taking certain other prohibited actions for a period of three years following the termination of the non-disclosure agreement.

35. The request for a standstill provision with a three-year term was extraordinary, obviously excessive and a serious red flag to Riot. At the time of the April Proposal, Riot was prepared to agree to an appropriate standstill period in exchange for access to due diligence information and the opportunity to engage in constructive discussions with Bitfarms regarding a potential combination. A three-year standstill term, however, would have ceded control and leverage over any future engagement to the Bitfarms Board by eliminating the opportunity for Riot to make any offer directly to Bitfarms shareholders. Three years is a lifetime in the context of the Bitcoin mining industry.

36. In light of Riot's understanding of the governance dynamics within the Bitfarms Board, Bitfarms' proposal for a standstill provision with a three-year term caused Riot to question the sincerity of Bitfarms' openness to consider a potential combination in good faith.

(f) Discussions with the Bitfarms' Lead Independent Director

37. As Riot and Bitfarms' respective external advisors continued to negotiate the non-disclosure agreement, including the term of the standstill provision, on May 1, 2024, Brian Howlett, the Lead Independent Director of Bitfarms, contacted Benjamin Yi, the Executive

Chairman of Riot. In this discussion, Mr. Howlett made the startling revelation that Bitfarms was “not for sale”.

38. The following day, Mr. Howlett followed up and asserted that he misspoke the day before when he said that Bitfarms “is not for sale.” He stated that he had allegedly intended to say that “Bitfarms does not need to sell.”

39. This shift in position was remarkable. It was also entirely tactical. Mr. Howlett was presumably advised to go back to Riot and adopt a new position concerning whether Bitfarms was “for sale” to preserve its ability to announce on short notice a strategic review and the 15% Rights Plan as defensive measures should Riot continue to pursue a combination of Riot and Bitfarms. In fact, that is precisely what happened, as explained below.

40. After Riot delivered the April Proposal, the Bitfarms Board failed to provide any meaningful response for two weeks, except when Mr. Howlett once again raised the issue of a standstill during a call on May 7, 2024 with Riot’s Executive Chairman, Benjamin Yi. In response, Mr. Yi clarified that Riot was looking for feedback on its written proposal in writing prior to signing a non-disclosure agreement with a standstill.

41. The very next day, on May 8, 2024, Mr. Howlett sent Riot executives a brief email rejecting the April Proposal. He also noted that Bitfarms would be interested in having meaningful discussions with respect to a potential combination, but only if Bitfarms agreed to a non-disclosure agreement that rejected several key changes in the most recent version and contained a standstill provision with a one-year term.

42. This series of events indicates that the position of Riot on the standstill may have contributed to the rejection by the Bitfarms Board of the April Proposal. The request for Riot to enter into a non-disclosure agreement with a standstill provision as a condition to engaging in discussions regarding a potential combination was intended to sideline Riot from proceeding with an offer directly to shareholders and would have represented a significant victory for a Bitfarms Board that had not put Bitfarms up for sale. It is not uncommon for parties to discuss potential deal terms in the absence of a confidentiality agreement and only enter into such an agreement with a standstill once the due diligence process commences.

43. In addition, to Riot's knowledge, Bitfarms had not by this point engaged a financial advisor in relation to the April Proposal, as would be customary. This demonstrated to Riot that Bitfarms was not serious about the April Proposal and had not given it due consideration, because the April Proposal was apparently rejected without input from a financial advisor.

(g) Riot's Concerns with Bitfarms' Conflicted Board

(i) The Conflicted Composition of the Bitfarms Board

44. The Bitfarms Board is currently comprised of Nicolas Bonta, Brian Howlett, Andrés Finkielsztain, and Edie Hofmeister. There is one vacancy on the Board. Until recently, Emiliano Grodzki, one of the founders and a former CEO of Bitfarms, was also a director of Bitfarms. However, shareholders voted overwhelmingly against his candidacy during an uncontested election of directors at the most recent annual general and special

meeting of Bitfarms on May 31, 2024. He failed to receive a majority of the votes cast and was therefore forced to tender his resignation pursuant to Bitfarms' majority voting policy.

45. Mr. Bonta and Mr. Grodzki are two of the founders of Bitfarms. They are not independent and together own approximately 4.3% of the outstanding Bitfarms Shares. Mr. Howlett, Mr. Finkielsztain and Ms. Hofmeister are the purported independent directors of the Bitfarms Board (though as explained below, Riot has serious doubts about Mr. Finkielsztain's purported independence).

(ii) Founder Control

46. It is widely-known in the Bitcoin mining industry that two of Bitfarms' founders, Nicolas Bonta and Emiliano Grodzki, exert an outsized level of control and influence over Bitfarms and the Bitfarms Board, relative to their owning approximately 2.42% and 1.88% of the outstanding Bitfarms Shares, respectively, as of May 3, 2024.

47. Messrs. Bonta and Grodzki have been able to exert such an outsized level of control and influence, in part, due to their close relationship with Andrés Finkielsztain. Although Mr. Finkielsztain is a purported "independent" director of Bitfarms (and serves on the Special Committee, which is supposed to consist only of independent directors), he has previously been advertised by Bitfarms as a "Co-Founder" and on his own LinkedIn page Mr. Finkielsztain describes himself as a "Co-Founder" of Bitfarms. Mr. Finkielsztain also played an instrumental role in Bitfarms' early development. He is the furthest thing from independent. His membership on the Special Committee raises serious doubts about its independence.

48. Perhaps as a result of this dynamic, Bitfarms has had a revolving door of CEOs during its time as a public company. In particular:

- (a) in March 2018, Mr. Grodzki stepped aside as CEO, and Wes Fulford assumed the position of CEO;
- (b) after just two years in the position, Mr. Fulford resigned as director and CEO in March 2020, ceding the position once again to Mr. Grodzki;
- (c) in December 2022, Mr. Grodzki again stepped aside as CEO, and Mr. Morphy was appointed to the position; and
- (d) after a tenure of less than approximately 18 months, Mr. Morphy was terminated in May 2024, and Mr. Bonta, another founder of Bitfarms, assumed the role of interim President and CEO, a position he continues to hold today.

49. Messrs. Bonta and Grodzki also have received outsized compensation relative to the other directors of Bitfarms. During 2023, Messrs. Bonta and Grodzki served as non-independent directors of Bitfarms. Neither Mr. Bonta nor Mr. Grodzki served as a member of management during that period. However, each of Messrs. Bonta and Grodzki received total compensation of US\$1,399,370 for 2023, while Bitfarms' other directors received compensation of between US\$401,968 and US\$743,223.

(iii) Bitfarms is Sued By its Former CEO, Who is Replaced by Mr. Bonta

50. On May 10, 2024 (three days before Bitfarms elected to publicly announce Mr. Morphy's departure), Mr. Morphy issued a Statement of Claim against Bitfarms seeking damages for wrongful dismissal. In his Statement of Claim, Mr. Morphy alleged that:

- (a) Bitfarms' CFO and Chief Mining Officer stated that "an outright dismissal [of Mr. Morphy] would have a catastrophic impact on market perception and stock price of" Bitfarms;
- (b) the Bitfarms Board "often demanded unrealistic compensation";
- (c) two of Bitfarms' founders and Board members (presumably Mr. Bonta and Mr. Grodzki) "requested egregious adjustments to their compensation which was two times higher than peer companies";
- (d) since Mr. Morphy's termination on March 22, 2024, "money has been extravagantly paid to directors" of Bitfarms; and
- (e) Mr. Morphy's termination was "motivated at least in part due to his objection to unreasonable expenditure of Company funds purely to the benefit of a handful of directors."

51. On May 13, 2024, Bitfarms issued a press release announcing that it had terminated the employment of Mr. Morphy, and that he no longer served as a Director. Bitfarms also announced that it had appointed Mr. Bonta as CEO on an interim basis.

52. As noted above, this was not the first time that a CEO left Bitfarms to be replaced by an insider. Although Bitfarms claimed that the search for a new CEO was nearing completion and that a new CEO would be appointed “in the next several weeks”, as of June 21, 2024 (almost six weeks after its press release) Bitfarms had not appointed a new permanent CEO.

53. Mr. Bonta is a founder of Bitfarms and is not independent. As Chairman of the Bitfarms Board since 2018, Mr. Bonta is directly responsible for the poor corporate governance described in this Application.

54. Mr. Bonta’s new role as interim CEO will solve none of these issues. Instead, it will better enable Mr. Bonta to continue to entrench himself and frustrate the efforts of Riot to improve Bitfarms. In effect, Mr. Morphy’s departure means that Mr. Bonta has further consolidated his grip over Bitfarms, to the severe detriment of Bitfarms’ shareholders. That is precisely why Riot has always asked, as a term of resolving its dispute with Bitfarms, that Mr. Bonta be required to leave the board and management of Bitfarms and why he is targeted for removal at the Requisitioned Meeting.

(iv) The Concerns of Riot Regarding Bitfarms Board are Not New

55. The concerns of Riot regarding the Bitfarms Board are not new or unique to Riot.

56. Most members of the Bitfarms Board have faced declining voting support from shareholders in recent years, which culminated in Mr. Grodzki being voted off the Bitfarms Board in May 2024.

57. In addition, the world's two most reputable proxy advisory firms, Glass Lewis and Institutional Shareholder Services (“ISS”), have expressed similar concerns for several years. Since 2022, each has issued on an annual basis reports that describe a concerning lack of proper corporate governance at Bitfarms. These reports were published in advance of Bitfarms' annual shareholder meetings and provided voting recommendations to shareholders. For example:

- (a) in 2022, Glass Lewis recommended that Bitfarms shareholders withhold their votes for two of the five directors up for re-election—Mr. Grodzki and Mr. Finkielsztain. ISS also recommended against the re-election of Mr. Grodzki;
- (b) in 2023, Glass Lewis again recommended against the re-election of Mr. Grodzki. Glass Lewis recommended that the Bitfarms Board take notice of the “significant level of shareholder disapproval” of Mr. Grodzki and Mr. Finkielsztain that was expressed by shareholders at Bitfarms' 2022 Annual Meeting, during which those directors received shareholder support of just 51.67% and 60.32% respectively;
- (c) in addition to once again recommending against the re-election of Grodzki, ISS also recommended in 2023 against the re-election of Mr. Bonta and Mr. Morphy as directors;

- (d) in 2024, Glass Lewis and ISS both recommended against the re-election of Mr. Grodzki (and Glass Lewis also recommended against voting for Ms. Hofmeister); and
- (e) in a report issued in May 2024, ISS assigned Bitfarms a Governance QualityScore of 9 out of 10, placing Bitfarms near the bottom in the 9th decile of governance risk in its index or region.

(h) Riot Goes Public With its Concerns

58. Riot continued to acquire Bitfarms Shares in May 2024. As of May 28, 2024, Riot reported that it had acquired beneficial ownership of approximately 10% of the outstanding Bitfarms Shares. Since then, Riot has been Bitfarms' single largest shareholder. As a result, Riot has a significant interest in the proper management of the Company and the appropriate constitution of the Board.

59. After the numerous unsuccessful attempts to engage constructively with Bitfarms set out above and in light of its concerns regarding entrenchment of the Bitfarms Board, on May 28, 2024, Riot sent to the Bitfarms Board a letter in which Riot expressed its profound disappointment arising from the swift rejection by the Board of Riot's proposal without a thorough and informed evaluation, and the lack of meaningful engagement from the Bitfarms Board. Riot also explained its significant concern that two of Bitfarms' founders—Mr. Bonta and Mr. Grodzki—were entrenching themselves on the Bitfarms Board, rather than acting in the best interests of Bitfarms shareholders.

60. In its letter of May 28, 2024, Riot also provided Bitfarms with notice that it intended to disclose the April Proposal to the public. Later that morning, Riot issued a press release announcing that it had made the April Proposal to Bitfarms on April 22, 2024. Riot also announced that it intended to requisition a special meeting of Bitfarms' shareholders (defined above as the Requisitioned Meeting) for the purpose of bringing much needed change to the Bitfarms Board, as discussed in greater detail below.

(i) Bitfarms' 2024 Annual General Meeting

61. Bitfarms' 2024 Annual General and Special Meeting (the "**2024 AGM**") took place on May 31, 2024, just three days after Riot's announcement. The director election at the 2024 AGM was unopposed, but Bitfarms shareholders nevertheless took the extraordinary step of voting out Mr. Grodzki—one of Bitfarms' founders—from the Bitfarms Board.

62. It is unsurprising that Mr. Grodzki was not re-elected to the Bitfarms Board. As noted above, Mr. Grodzki has faced consistent criticism in reporting from ISS and Glass Lewis, and has experienced declining shareholder support in the past several years. There can be no doubt that the ouster of Mr. Grodzki as a member of the Bitfarms Board is also a direct result of the serious corporate governance failures of the Bitfarms Board discussed throughout this Application. It appears that a large proportion of other Bitfarms shareholders hold views similar to those of Riot concerning governance at Bitfarms.

63. As of June 21, 2024, Bitfarms has not yet filled the vacancy on its Board left by the ouster of Mr. Grodzki.

(j) **Bitfarms' Response to Riot's May 28, 2024 Press Release**

64. Bitfarms did not respond fairly or properly to Riot's proposal or its May 28, 2024 letter and Press Release. Instead, on May 29, 2024, Bitfarms issued a press release announcing that it had formed a Special Committee of unspecified "independent" directors to consider the April Proposal, and that the Special Committee had determined that it undervalued Bitfarms and its growth prospects.

65. Bitfarms also announced that it had received additional unsolicited expressions of interest and would be conducting a review of strategic alternatives (defined above as the "**Strategic Review**") that could include a continuation of Bitfarms' existing business plan, a strategic business combination or other strategic transaction or sale of Bitfarms.

66. Riot executives were surprised that Bitfarms had supposedly undertaken the Strategic Review, given that Mr. Howlett had as recently as May 1, 2024 informed Riot that Bitfarms was "not for sale". While he later followed up and purported to correct himself to say that Bitfarms "does not need to sell", it is clear that the Bitfarms Board never had any genuine intention of participating in a strategic transaction with Riot, and Mr. Howlett's correction was entirely tactical in nature.

67. It is clear that Bitfarms hastily commenced its Strategic Review only after its conduct was disclosed publicly by Riot, Bitfarms' largest shareholder. The Strategic Review is nothing more than a pretense for Bitfarms' true objectives, which are to frustrate Riot's proposal, further entrench the Board, and as discussed below, purport to justify the 15% Rights Plan. It is clear that Bitfarms is not pursuing the Strategic Review in good

faith based on its summary dismissal of the April Proposal and previous unsuccessful attempts by Riot to engage constructively with representatives of Bitfarms, including members of the Bitfarms Board.

68. Any credible strategic review would include Riot as a participant given its position in the market and interest in Bitfarms. In that regard, the Bitcoin mining industry features only a handful of large-scale Bitcoin miners and other participants. Riot is one of the leading publicly-traded Bitcoin miners in the world. In a proper Strategic Review process, a first-tier counterparty offering a premium transaction with limited conditionality would be a natural and obvious counterparty to engage with. Instead, as recently as April 28, 2024, Bitfarms insisted that Riot agree to an off-market standstill in order to receive due diligence access—a request so unreasonable it could not plausibly have been made in good faith.

69. There is accordingly a serious question as to whether the existing Bitfarms Board will properly oversee the Strategic Review. Its true intention appears to be to frustrate a potential strategic combination with Riot or another third party and further entrench members of the Bitfarms Board. Given this concern, additional independent Directors are necessary to oversee the Strategic Review. That is why Riot has requisitioned the Requisitioned Meeting to nominate and vote for new independent Directors.

(k) Riot's Attempts to Engage are Rebuffed Again

70. In light of the voting results from the 2024 AGM, Riot's previous interactions with Bitfarms, and the corporate governance concerns raised by ISS, Glass Lewis and in Mr.

Morphy's Statement of Claim, Riot had developed serious concerns regarding the Bitfarms Board in late May and early June of 2024.

71. For that reason, on June 1, 2024, the day after Mr. Grodzki was voted off the Bitfarms Board, Riot sent a letter to Bitfarms in an attempt to discuss potential approaches to improve Bitfarms' corporate governance practices and board composition for the benefit of all shareholders, including the appointment of at least two new directors who are fully independent of both Riot and Bitfarms. Riot also expressed its desire to work constructively with Bitfarms to select new directors.

72. Bitfarms responded by letter dated June 3, 2024 and again insisted on engaging in dialogue only on terms that would inappropriately limit Riot's strategic options. Bitfarms also baselessly characterized Riot's legitimate corporate governance concerns as "surreptitious cover for [Riot's] opportunistic actions". Bitfarms also purported to change its tune by offering a three month standstill. However, Riot viewed this as a disingenuous offer from a counterparty that had by that point lost credibility and wished to sideline Riot and limit its strategic options. Riot was not willing to re-engage with the Bitfarms Board concerning its proposal unless and until the Bitfarms Board was reconstituted with credible, independent directors who would fairly consider Riot's proposal.

73. On June 4, 2024, Riot responded to Bitfarms' letter of June 3, 2024. In that letter, Riot explained that it was deeply disappointed that Bitfarms continued to ignore the serious corporate governance issues plaguing the Bitfarms Board, which could not be

rectified until one of the principal architects of those issues—Mr. Bonta, the Chairman of the Board since 2018—resigned from his position on the Board and as CEO.

74. Riot accordingly proposed a resolution that would address its serious governance concerns and improve the composition of the Bitfarms Board for the benefit of all Bitfarms shareholders. The proposal included the following terms: (i) Mr. Bonta would leave the Bitfarms Board and resign as interim CEO; and (ii) Bitfarms would add at least two directors who are independent from both Riot and Bitfarms. Riot also provided further notice to Bitfarms that it intended to requisition a special meeting of the shareholders to elect new independent directors.

(l) Bitfarms Adopts the 15% Rights Plan

75. Regrettably, Bitfarms did not respond to Riot’s letter of June 4, 2024. Instead, on June 10, 2024, Bitfarms unilaterally announced the adoption by its Board of the 15% Rights Plan by way of a press release.

76. Under the terms of the 15% Rights Plan, a “Flip-In Event” occurs and triggers the 15% Rights Plan upon any person (together with its affiliates, associates and persons acting jointly or in concert with such person) acquiring beneficial ownership over the “Stipulated Percentage” or more of the outstanding Bitfarms Shares, other than by way of a “Permitted Bid” and certain other exceptions. For purposes of the 15% Rights Plan, the “Stipulated Percentage” means “from the Effective Date to and including September 10, 2024, 15%, and thereafter, 20%”.

77. Accordingly, at any time prior to September 11, 2024, the acquisition by any person (together with its affiliates, associates and persons acting jointly or in concert with such person) of beneficial ownership of 15% or more of the outstanding Bitfarms Shares will result in the triggering of the 15% Rights Plan (subject to certain exceptions).

78. Remarkably, one of those exceptions applies to any private placement approved by the Bitfarms Board of up to 25% of the outstanding Bitfarms Shares. In other words, the Bitfarms Board is satisfied for a new 20% block holder to exist, so long as that block holder is friendly to the existing Bitfarms Board. Importantly, any such private placement would also dilute Riot's holdings down to 11.9%.

79. As noted throughout this Application and in greater detail below, the 15% Rights Plan will cause significant prejudice to Riot. In effect, the 15% Rights Plan caps Riot's ability to acquire Bitfarms Shares to 14.9% despite the customary 20% trigger that would usually apply. This limits the ability of Riot to acquire further voting power in advance of the Requisitioned Meeting and to vote in favour of the Independent Nominees to bring much-needed change to Bitfarms. And the 15% Rights Plan also provides to the Bitfarms Board the ability to conduct a private placement of new Bitfarms Shares in an amount equal to up to 25% of the existing Bitfarms Shares to a friendly third party, which would create a new 20% block holder while diluting Riot from its current 14.9% position to 11.9% (with a corresponding dilution of 20% to other shareholders as well).

80. In its June 10, 2024 press release, Bitfarms publicly claimed that Riot's accumulation of Bitfarms Shares is an attempt to undermine the integrity of the Strategic

Review and thwart the interest of third parties. Bitfarms asserted that the adoption of the 15% Rights Plan is “necessary...to ensure...that the Board has sufficient opportunity to identify, develop and negotiate alternatives, if considered appropriate, pursuant to the [Strategic Review]...to deliver the best value for Bitfarms’ shareholders”. Bitfarms also asserted that “the continuing accumulation of common shares of the Company by Riot (or economic interests therein) above a 15% threshold in the short term is likely to inhibit” the Strategic Review.

81. These statements are simply false. The 15% Rights Plan is tactical in nature and has not been approved by Bitfarms shareholders. Prior to the adoption of the 15% Rights Plan, Bitfarms did not have in place a standing shareholder rights plan. At no time has Riot sought to undermine the integrity of the Strategic Review. Moreover, Bitfarms has never properly explained how Riot’s acquisition of Bitfarms Shares could possibly inhibit the Strategic Review.

82. Rather than inhibit it, Riot intends to enhance the integrity of the Strategic Review by adding new independent Directors to the Bitfarms Board to ensure that the Strategic Review does not result in further entrenchment of Mr. Bonta and other members of the Bitfarms Board. Riot has made numerous attempts to participate on certain conditions that have not been accepted by Bitfarms.

83. In addition, the 15% Rights Plan provides:

WHEREAS the Board of Directors, on the recommendation of the special committee of independent directors, has determined that it is in the best interests of the Corporation to adopt a shareholder protection rights plan

(the “**Rights Plan**”) to ensure, to the extent possible, that the **Board of Directors has sufficient opportunity to identify, develop and negotiate value-enhancing alternatives, if considered appropriate, to any unsolicited Offer to Acquire** (as hereinafter defined) the outstanding Voting Shares, including pursuant to the Board of Directors’ current comprehensive review of strategic alternatives to maximize shareholder value; [emphasis added]

84. Bitfarms’ true intentions, including of minimizing Riot’s voting power at the Requisitioned Meeting, are flatly inconsistent with this preamble. Riot has not announced any intention of launching a formal take-over bid for the shares of Bitfarms it does not already own. Riot sought to engage with the Bitfarms Board in order to attempt to reach a negotiated transaction with the Bitfarms Board, rather than to launch an unsolicited take-over bid made directly to the Company’s shareholders.

85. Bitfarms has asserted that it adopted the 15% Rights Plan at the request of an interested party. This is an obvious statement of self-interest by the party in question and further shows that the 15% Rights Plan is improper.

86. Bitfarms has asserted that it followed the advice of its advisors in adopting the 15% Rights Plan. Riot seriously questions the veracity of this assertion, given that the 15% Rights Plan is *prima facie* contrary to industry custom, stated guidance and previous rulings of Canadian securities regulators. To the extent the 15% Rights Plan was adopted by Bitfarms on the advice of its advisors, that advice was unreasonable and inappropriate in the circumstances, particularly in light of decisions of the Commission since the 2016 amendments (the “**2016 Amendments**”) to National Instrument 62-104 - *Take-Over Bids and Issuer Bids* (“**NI 62-104**”) that such advisors were, or ought to have been, fully aware of.

(m) Press Releases of Riot and Bitfarms in Mid-June 2024

87. On June 12, 2024, Riot issued a press release in response to the implementation by Bitfarms of the 15% Rights Plan, noting that, among other things, the 15% Rights Plan is in direct conflict with prevailing corporate governance standards, including the proxy voting guidelines of both ISS and Glass Lewis, which view shareholder rights plans with triggers below 20% as contrary to the best interests of shareholders.

88. Later on June 12, Bitfarms issued a press release in response. Among other things, Bitfarms falsely asserted in this press release:

- (a) Riot is acquiring Bitfarms Shares “in an attempt to undermine the integrity of the [Strategic Review] process and harm the interests of the Company”;
- (b) “Riot is attacking Bitfarms’ Board and corporate governance in an effort to push its low-ball bid and disrupt the [Strategic Review]”;
- (c) the purpose of the 15% Rights Plan is to preserve “the integrity of the [Strategic Review] so the Special Committee can continue working towards value maximization for all shareholders”;
- (d) “Riot’s comments make clear their frustration lies in no longer being able to tilt the scale towards their opportunistic nonbinding offer, cloaked in vague concerns about corporate governance”; and

- (e) “Attacking Bitfarms’ governance is not only hypocritical, but it is a thinly veiled ploy to achieve Riot’s own self-serving agenda and attempt to acquire Bitfarms at a discounted price.”

89. These comments are unfortunate. They are also entirely inaccurate:

- (a) Riot has no interest in undermining the Strategic Review. In any event, and as explained above, the Strategic Review is nothing more than a pretense to enable the Bitfarms Board to forestall an independent, fair and proper consideration of a combination of Riot and Bitfarms.
- (b) Riot has never made a “low-ball” offer to acquire Bitfarms and has no desire to pay any sort of “discounted price”. When it made its April Proposal, Riot offered a significant premium to Bitfarms’ then-current market share price. Further, under any normal circumstance, such an offer would presumably have been subject to some reasonable negotiation between the parties. Riot has since withdrawn the April Proposal. Riot will continue to assess the appropriateness of this offer based on current market conditions. It is now, however, focussed on remedying the corporate governance issues described in this Application at the Requisitioned Meeting.
- (c) The 15% Rights Plan—and in particular, the 15% trigger—simply has no reasonable connection whatsoever with furthering the Strategic Review. To the extent that Bitfarms justifies the 15% Rights Plan as somehow being

“auction enhancing”, that could apply in any case, and there are no unique circumstances here that warrant special treatment of this 15% Rights Plan.

(n) Riot’s June 13, 2024 With Prejudice Settlement Offer

90. Riot’s sincere hope was that a satisfactory resolution with Bitfarms could be achieved quickly without regulatory intervention. In furtherance of that objective, Riot submitted a settlement proposal to Bitfarms on June 13, 2024 that would have provided for a resolution of the issues raised herein.

91. Among other things, consistent with its position in prior proposals, that proposal provided that Mr. Bonta would resign from the Bitfarms Board and as interim CEO; three new independent Board members would be appointed (two selected by Bitfarms from a list of independent directors provided by Riot and one selected by Riot from a list of independent directors provided by Bitfarms); and the 15% Rights Plan would be terminated. If all of those conditions were satisfied, Riot would also enter into a non-disclosure agreement with a three month standstill since Riot would have the confidence that it would have a fair dealing counterparty to engage with on any proposal.

92. On June 17, 2024, Bitfarms responded to Riot’s letter of June 13, 2024. In that letter, Bitfarms repeated several of its false assertions, all of which are completely wrong. Among other things, it incorrectly characterized Riot’s engagement with Bitfarms as being “neither constructive nor made in good faith”. Bitfarms also inaccurately characterized Riot’s entirely appropriate concerns with the Bitfarms Board as being a “surreptitious cover for your opportunistic actions in seeking to acquire Bitfarms at a price which

significantly undervalues the Company and its growth prospects”. Even though Bitfarms rejected all of the other important and essential elements of Riot’s Settlement Proposal, Bitfarms also curiously attached a signed copy of the confidentiality and standstill agreement that was appended to Riot’s June 13, 2024.

93. These comments are unfortunate and misplaced. Riot has at all times sought to engage constructively and in good faith with the Bitfarms Board. It has never proposed to acquire Bitfarms at a price that undervalues Bitfarms. Instead, at all times, Riot has sought to pursue a transaction that would realize value for all parties, including Bitfarms and its shareholders. Unfortunately, as is clear from its response, Bitfarms has not properly acknowledged Riot’s significant concerns with the Bitfarms Board’s governance or Riot’s concern over Mr. Bonta’s outsized influence on the Board. Until the Bitfarms Board does so, there is no possibility of a negotiated resolution and Riot has no alternative but to seek relief from the Tribunal.

(o) Riot’s Letter to the Commission of June 18, 2024

94. On June 18, 2024 Riot’s Canadian counsel sent a complaint letter to the Commission to formally inform them of Bitfarms’ conduct, including the 15% Rights Plan, and to request intervention by the Commission. Later on June 18, 2024, Bitfarms’ Canadian counsel responded in a brief and cursory letter that launched further baseless accusations against Riot.

(p) Call with the Special Committee on June 23, 2024

95. On June 23, 2024, senior Riot personnel spoke with the Special Committee. Riot explained that its goal was to make governance changes and address the founder-led

culture at Bitfarms. Riot clarified that it was not concerned with the “truly independent members of the Board” (Mr. Howlett and Ms. Hofmeister). Mr. Finkielsztain asked whether Riot would agree to it and Bitfarms each appointing one Director, such that two new Directors would be added to the Bitfarms Board. Mr. Les advised that Riot required a response in writing to its proposal of June 13, 2024. Ms. Hofmeister volunteered that the Bitfarms Board took issue with Riot’s approach and that the 15% Rights Plan was a defensive measure to protect the integrity of Bitfarms. However, she also noted that it was not unusual for Riot, being a large shareholder, of “15% to 20%”, to ask for changes to the Board. To date, Riot has not received any response in writing from Bitfarms despite Mr. Les’ request.

(q) The Requisitioned Meeting

96. As noted above, Riot provided notice to Bitfarms on May 28, 2024 and several times thereafter that it intended to requisition a special meeting of shareholders. Riot requisitioned that meeting on June 24, 2024.

97. The purpose of the Requisitioned Meeting is to add new, well-qualified Directors to the Bitfarms Board who are independent of both Riot and Bitfarms. It will give shareholders a chance to bring needed change to the Bitfarms Board and make repairing Bitfarms’ broken corporate governance and maximizing value for all Bitfarms’ shareholders their top priorities. It will also give shareholders the opportunity to vote on the removal of the entrenched Directors or their replacements, and any individual who fills the current vacancy created by the departure of Mr. Grodzki. That is the sole and exclusive right of the Bitfarms shareholders, not a decision for the Bitfarms Board to make.

98. As Bitfarms' largest shareholder by a wide margin, Riot has significant exposure to Bitfarms' corporate governance standards and practices. The track record set out in this Application concerning Bitfarms reflects poor corporate governance, entrenchment and a lack of Board independence. That track record has culminated in Bitfarms' summarily dismissing Riot's numerous attempts to engage constructively.

99. That is precisely why the Requisitioned Meeting is necessary. It is Riot's response to months of unproductive, frustrating and troubling interactions with Bitfarms that have arisen in response to Riot's efforts to engage constructively with the Bitfarms Board regarding a potential friendly combination of Riot and Bitfarms.

100. Riot intends to exercise its right as a shareholder of Bitfarms and vote all of its Bitfarms Shares at the Requisitioned Meeting. Riot has proposed three nominees for election to the Bitfarms Board at the Requisitioned Meeting: John Delaney, Ralph Goehring and Amy Freedman. Each is an eminently qualified and well-respected individual who would bring foundational and much-needed change to the Bitfarms Board.

(iv) Why Riot has Brought this Application

101. For the reasons set out above, Riot has serious concerns with the Bitfarms Board that it believes have resulted in and facilitated an untenable situation. However, the purpose of this Application is not to address those issues. Instead, Riot aims to do nothing more than: (i) ensure it is treated like any other participant in public markets and be permitted to exercise its right to acquire up to 19.9% of the outstanding Bitfarms Shares should it determine to do so, without triggering an unreasonable and punitive dilutive

event; and (ii) maximize its chance of success at the Requisitioned Meeting. To do so, any securities that have been or will be issued pursuant to the 15% Rights Plan must be cease traded since Bitfarms has adopted an off-market 15% Rights Plan with an ownership trigger of 15% rather than the customary 20% trigger.

102. The 15% Rights Plan is directed squarely at frustrating Riot's entirely appropriate and lawful acquisition of Bitfarms Shares in the open market. It is intended to, and without immediate relief from the Tribunal will, improperly prevent Riot from acquiring additional Bitfarms Shares. An arbitrary and privately-ordered limitation on Riot's ability to acquire up to 19.9% of the outstanding Bitfarms Shares in the period prior to the Requisitioned Meeting—or at all—is materially harmful and prejudicial to Riot.

103. Riot has five primary concerns regarding the purpose and effects of the 15% Rights Plan.

104. *First*, the purpose and effect of the 15% Rights Plan is to prevent Bitfarms from exercising its right to acquire up to 19.9% of the outstanding Bitfarms Shares and voting those Bitfarms Shares at the Requisitioned Meeting. As noted above, Riot has requisitioned the Requisitioned Meeting in order to propose three new and highly-qualified director candidates who are independent of both Riot and Bitfarms. If elected at the Requisitioned Meeting, Riot's Director nominees will bring much needed corporate governance improvements and business expertise to the Bitfarms Board, including by helping to objectively oversee the strategic alternatives review process at Bitfarms and by guiding Bitfarms forward if the Bitfarms Board ultimately determines that continuing to

execute on Bitfarms' standalone business plan is the optimal direction for all Bitfarms shareholders.

105. In order to ensure it has the best possible chance of success, Riot would like to preserve the right to acquire as many Bitfarms Shares as it is legally permitted to acquire without the obligation of launching a formal take-over bid before the record date of the Requisitioned Meeting. As a matter of law, that threshold is 19.9% of the outstanding Bitfarms Shares. Riot has not announced that it intends to commence a take-over bid to acquire Bitfarms Shares it does not already own. In a perverse way, under the terms of the 15% Rights Plan, the sole means for Riot to acquire any further Bitfarms Shares is to make a formal take-over bid that complies with the "Permitted Bid" provisions of the 15% Rights Plan—a significant obligation that is completely impractical in circumstances where Riot merely wishes to preserve its right to acquire an additional 5.0% of the outstanding Bitfarms Shares over what it currently owns should it determine to do so.

106. *Second*, as noted above, Riot believes that Bitfarms intends to pursue a private placement or other dilutive issuance of securities to a friendly third party while Riot is precluded from acquiring Bitfarms Shares on the open market by virtue of the 15% Rights Plan. This intention is apparent from the terms of the 15% Rights Plan itself. Any such issuance would dilute Riot's ownership interest to as low as 11.9% and create a new shareholder holding up to 20% of the Bitfarms Shares that would presumably exercise its voting rights at the Requisitioned Meeting in concert with the 4.3% of Bitfarms Shares held by two of Bitfarms' founders, Mr. Bonta and Mr. Grodzki. It is manifestly unfair for the Bitfarms Board to have adopted a 15% Rights Plan that precludes market participants

such as Riot from acquiring 15% or more of the Bitfarms Shares while reserving for itself the right to issue 25% of those shares to a third party hand-picked by the Bitfarms Board.

107. *Third*, even if the 15% Rights Plan is cease-traded, Riot has been prejudiced by its inability to acquire Bitfarms Shares on the open market without triggering the 15% Rights Plan since June 19, 2024, the date on which it acquired 14.9% of the outstanding Bitfarms Shares. Since that time, Riot has not been able to avail itself of the suitable market conditions that have existed for the acquisition of additional Bitfarms Shares. As such, the 15% Rights Plan has provided the Bitfarms Board with an unfair timing advantage.

108. Riot is concerned that the Bitfarms Board will leverage this timing advantage to call a record date for the Requisitioned Meeting or other meeting of shareholders to consider a significant transaction that is prior to, or shortly following, the issuance of an order to cease-trade the 15% Rights Plan by the Tribunal. In such circumstances, Riot's potential voting power at the Requisitioned Meeting or such other meeting of shareholders will have been unfairly limited by an unlawful 15% Rights Plan that will have restricted Riot's ability to acquire additional Bitfarms Shares in the open market, should it have chosen to do so, with the result that the Bitfarms Board will have been permitted to benefit from a tactical ploy.

109. *Fourth*, the 15% Rights Plan unfairly prevents Riot from participating in the future success of Bitfarms to the degree it would otherwise be entitled to but for the 15% Rights Plan. As has been recognized by the Commission, the involvement of significant

shareholders in governance and strategic matters can facilitate enhanced shareholder value. If Riot is successful in changing the composition of the Bitfarms Board, improving Bitfarms' corporate governance and enhancing value for all of Bitfarms shareholders, Riot should not be precluded from increasing its pro rata participation in the significant benefits it believes will accrue to all Bitfarms shareholders should it decide to increase the size of its investment.

110. The substantial investment of time and capital made by Riot to monitor and discipline the Bitfarms Board and its management through the Requisitioned Meeting will be borne solely by Riot, but any benefits will be shared on a *pro rata* basis with all Bitfarms shareholders. Riot has invested approximately US\$132 million in its acquisition of Bitfarms Shares to date, in addition to significant advisory and transaction expenses and opportunity costs. Commensurate with its investment, Riot should be entitled to avail itself of the attendant benefits, including strengthening its position in any potential auction scenario that may arise. In this scenario, ownership of a block of Bitfarms Shares would potentially benefit Riot as a buyer by potentially lowering its average cost of acquisition per share and by potentially strengthening its bargaining position (all of which would be subject to the minority protections afforded to minority shareholders under Canadian securities laws) or as a seller, since a buyer of Bitfarms will be likely to seek a transaction that Riot as a shareholder views favourably.

111. There is nothing improper about Riot's stake-building strategy yielding these benefits to offset the substantial costs it has incurred in its investment in Bitfarms and in monitoring and disciplining the Bitfarms Board and management. Should a third party

wish to obtain the same benefits, it would have the option to make a corresponding investment in Bitfarms. To date, however, no such other party has done so. As Bitfarms has conceded, instead of making this investment, another interested party requested that Bitfarms adopt the 15% Rights Plan.

112. *Fifth*, as is well-understood by market participants and as alluded to above, the acquisition of a toehold interest can typically serve to lower the average acquisition cost per share to a potential buyer in the context of a corporate-level transaction. Should Riot decide to pursue an acquisition of all of the outstanding Bitfarms Shares, this benefit should be available to it. It is manifestly unfair that Bitfarms should seek to prevent it.

113. Despite the materially harmful and prejudicial effects of the 15% Rights Plan, Bitfarms has claimed that it is unable to amend or rescind the 15% Rights Plan and has steadfastly refused to engage constructively with Riot in seeking a viable and legally permissible means of rescinding the 15% Rights Plan. These could include supporting Riot in its application to cease-trade the 15% Rights Plan and instead adopting a market-standard shareholder rights plan that complies with appropriate corporate governance standards and proxy voting guidelines. In the circumstances, Riot has had no choice but to ask the Tribunal for relief.

(v) The 15% Rights Plan is Contrary to the Public Interest

114. Section 127 of the Act confers upon the Tribunal broad public interest jurisdiction to intervene in Ontario capital markets where actions are abusive of shareholders or the

capital markets or inconsistent with the principles animating securities legislation, even where no breach of securities law has been found.

115. The public interest is animated by the purposes of the Act, which are set out in section 1.1 as follows:

- (a) to provide protection to investors from unfair, improper or fraudulent practices;
- (b) to foster fair, efficient and competitive capital markets and confidence in capital markets;
- (b.1) to foster capital formation; and
- (c) to contribute to the stability of the financial system and the reduction of systemic risk.

116. A consideration of the public interest is also informed by the objectives underlying Canada's take-over bid regime, which is the "protection of the bona fide interests of the shareholders of the target company. A secondary objective is to provide a regulatory framework within which take-over bids may proceed in an open and even-handed environment." Commission decisions have also recognized the importance of predictability of the regime.

117. One of the principal regulatory objectives of this Tribunal is to prevent future conduct that may be detrimental to investors or the integrity of the capital markets. In

addition, specific and general deterrence are also appropriate regulatory objectives in issuing an order under section 127 of the Act.

118. A shareholder rights plan with a 15% trigger is *prima facie* contrary to the public interest, and no exceptional circumstances exist in this context to justify the decision of the Bitfarms Board to adopt the 15% Rights Plan, for at least five reasons.

119. *First*, the stipulated threshold of 15% limits Riot's ability to acquire Bitfarms Shares on the open market as permitted by applicable securities laws, as well as its potential voting power at the Requisitioned Meeting. The right to acquire shares in the open market and exercise the voting power connected to those shares has been recognized by securities regulators as fundamental. The Bitfarms Board has undermined these fundamental rights to its own benefit.

120. It is especially notable that Riot has not formally commenced a take-over bid or announced an intention to do so. As such, the purpose and effect of the 15% Rights Plan is to minimize Riot's voting power at the Requisitioned Meeting. Not only is this apparent from the right the Bitfarms Board built into the 15% Rights Plan that permits it to issue by way of private placement up to 25% of the outstanding Bitfarms Shares to a friendly third party, it is contrary to the terms of the 15% Rights Plan itself, which provide that the 15% Rights Plan is intended to "ensure, to the extent possible, that the Board of Directors has sufficient opportunity to identify, develop and negotiate value-enhancing alternatives, if considered appropriate, to any unsolicited Offer to Acquire (as hereinafter defined) the outstanding Voting Shares, including pursuant to the Board of Director's current

comprehensive review of strategic alternatives to maximize shareholder value” [emphasis added].

121. *Second*, the 15% Rights Plan undermines carefully-calibrated bid dynamics. The 2016 Amendments reflect the principal regulatory objective of the fair treatment of target security holders in an open and even-handed environment governed by rules that are well-understood by market participants. The 2016 Amendments reflect a deliberate legislative and policy decision with respect to the balance of the playing field between target companies and potential acquirors, including the right for potential acquirors to acquire up to 19.9% of the outstanding voting or equity securities of a target company. This right is counterbalanced by other aspects of the Canadian take-over regime, such as the early warning reporting requirements and related moratoriums and the statutory minimum tender condition, which excludes the securities beneficially owned or controlled by an offeror.

122. *Third*, the 15% Rights Plan undermines the predictability of the Canadian take-over bid regime. NI 62-104 features a bright-line 20% acquisition threshold at which point regulatory protections for target security holders begin to apply. By instituting a 15% Rights Plan with a 15% threshold, Bitfarms has substituted this predictable carefully-calibrated regime with the self-serving preferences of the Bitfarms Board, undermining a clear and unambiguous statutory framework that has been consistently enforced by securities regulators across Canada since the 2016 Amendments.

123. *Fourth*, the 15% Rights Plan prejudices Bitfarms shareholders and investors generally. The 15% Rights Plan will not only prevent Riot from acquiring more Bitfarms Shares, but will also discourage any other potential buyers that wish to acquire in excess of 15% of the outstanding Bitfarms Shares, to the detriment of Bitfarms shareholders that wish to exit their investments and require liquidity to do so. Additionally, to the extent that Riot determines to acquire additional Bitfarms Shares in order to establish a sufficient toehold before determining to make a formal take-over bid, any attempts to disrupt that strategy pursuant to the 15% Rights Plan will potentially deprive Bitfarms shareholders of the opportunity to consider and respond to a take-over bid.

124. *Fifth*, the 15% Rights Plan, if allowed to stand, sets a damaging precedent and will put Canadian securities commissions “back in the business” of rights plan hearings. In 2013, the Canadian Securities Administrators proposed a comprehensive framework for regulating shareholder rights plans in Canada. Part of the rationale for this proposal was to reduce the number of hearings concerning shareholder rights plans, and the proposal was not ultimately adopted as the issues it intended to address were instead addressed through the 2016 Amendments. If this 15% Rights Plan is allowed to stand for even a short period of time, the use of shareholder rights plans with sub-20% triggers will become widespread, resulting in a steep increase in the number of cease-trade hearings that Canadian securities commissions or their tribunals will be required to preside over.

125. Prior to the 2016 Amendments, a large body of Commission decisions developed to address the circumstances and timing in which a shareholder rights plan “must go.” As the Commission has acknowledged, the 2016 Amendments largely achieve the historical

objectives of shareholder rights plans in Canada, such that these past decisions are of limited utility.

126. Just as importantly, virtually all of these past decisions evaluated the shareholder rights plan in question in the face of a formal take-over bid. Here, however, the Bitfarms Board has adopted a tactical 15% Rights Plan in the absence of any actual or imminent take-over bid. In fact, as described above, Riot has called the Requisitioned Meeting precisely because it wishes to deal with a Bitfarms Board with new directors that will be able to objectively help oversee the Strategic Review.

127. Instead, the purpose and effect of the 15% Rights Plan is to prevent further acquisitions of Bitfarms Shares by Riot. There is no take-over bid for the Tribunal to consider in its evaluation of the propriety of the 15% Rights Plan, which makes this case different from the body of past regulatory decisions concerning shareholder rights plans.

128. In fact, in a perverse way, the sole means for Riot to acquire additional Bitfarms Shares is to make a formal take-over bid that complies with the "Permitted Bid" provisions of the 15% Rights Plan. Riot does not intend or desire to incur the cost and expense of seeking to acquire a majority of the Bitfarms Shares at this time pursuant to a take-over bid. Nor does it wish to (or should it have to) wait for the 105-day minimum bid period to expire before it can exercise its rights to acquire additional Bitfarms Shares. By that time, the record date for the Requisitioned Meeting could have come and gone and the 15% Rights Plan, even if cease-traded by the Tribunal, will have achieved its purpose.

(vi) Grounds for a Temporary Order

129. There are ample grounds for the Tribunal to issue (and extend, if necessary) the temporary orders sought by Riot, to the extent necessary: (i) the allegations are serious; (ii) Riot will adduce *prima facie* evidence supporting its allegations, and sufficient evidence of conduct that is harmful to the public interest; and (iii) the public interest supports granting such a temporary order, as set out above.

(vii) Riot has Standing Before this Tribunal

130. Riot has standing to bring this Application to the Tribunal. The Application was timely and Riot has a *prima facie* case. Riot has a direct interest in the outcome of this Application as a substantial shareholder of Bitfarms, and will be directly affected by the outcome of this Application.

131. In addition, this Application concerns transactions regulated by National Instruments and National Policies and the alleged breach of those Instruments and Policies, is not purely enforcement in nature, the relief sought is forward looking in nature, and the Commission has the authority but has declined to impose a remedy in the circumstances.

132. Moreover, the purpose of this Application is not to impose sanctions in respect of past breaches of the Act or past conduct alleged to be contrary to the public interest.

133. This Application also raises novel issues, including whether a shareholder rights plan with a 15% trigger is *prima facie* contrary to the public interest, particularly in light of the long-standing 20% threshold set forth in NI 62-104. As set out above, there is a strong

need for clear guidance from this Tribunal as to whether shareholder rights plans with sub-20% triggers are lawful.

134. The Application also concerns important matters involving shareholder democracy and the take-over bid regime, and raises serious public policy concerns that will materially affect Riot. It is in the public interest to hear the Application and Riot has public interest standing to bring this Application.

(viii) This Tribunal Has Jurisdiction

135. Section 26 of the *Securities Commission Act, 2021*, S.O. 2021, c. 8, Sched. 9, provides that the Tribunal has “exclusive jurisdiction to exercise the powers conferred on it under the *Securities Act* and the *Commodity Futures Act* and to determine all questions of fact or law in any proceeding before it under those Acts.”

136. Section 127 of the Act confers upon the Tribunal the power to make the various orders requested by Riot in this Application, as set out in paragraphs 1(a) to 1(k) above.

(ix) Statutes, Rules and Instruments:

137. Riot relies upon the following statutes, rules and instruments:

- (a) *Business Corporations Act*, R.S.O. 1990, c. B.16;
- (b) *Securities Act*, R.S.O. 1990, c. S.5;
- (c) *Statutory Powers Procedure Act*, R.S.O. 1990, c. S.22 (“**SPPA**”);
- (d) *Capital Markets Tribunal Rules of Procedure*, made under the *SPPA*;

- (e) *National Instrument 62-104 – Take-Over Bids and Issuer Bids;*
- (f) *National Policy 62-202 – Take-Over Bids – Defensive Tactics;*
- (g) *National Instrument 54-101 – Communication with Beneficial Owners of Securities of a Reporting Issuer;* and
- (h) such other statutes, rules and instruments as counsel may advise.

C. EVIDENCE

138. Riot intends to rely on the following documents and evidence at the hearing:

- (a) Affidavit of Jason Chung affirmed June 24, 2024;
- (b) Evidence given during the hearing of this Application;
- (c) The Written Submissions, Book of Authorities and Compendium of Riot for Oral Argument, to be filed in accordance with any schedule that may be agreed among by the parties and/or imposed by the Tribunal; and
- (d) Such other evidence (including expert evidence) and materials as counsel may advise and the Tribunal may permit.

June 24, 2024

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