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June 19, 2019 **Via Fax**

The Honourable Justice Darlene Jamieson
Supreme Court of Nova Scotia
The Law Courts
1815 Upper Water Street
Halifax, Nova Scotia

Dear Justice Jamieson:

Re: In the matter of the bankruptcy of 0984750 B.C. Ltd. d/b/a Quadriga CX and Quadriga Coin Exchange – Estate No. 51-2498986

Submissions for Motion returnable June 27, 2019 at 2:00 p.m.

We are counsel for Ernst & Young Inc. ("**EY**") in its capacity as the trustee in bankrtupcy (the "**Trustee**") of 0984750 B.C. Ltd. d/b/a Quadriga CX and Quadriga Coin Exchange ("**Quadriga**"). On February 5, 2019, Quadriga and related entities were granted protection from their creditors under the *Companies' Creditors Arrangement Act* (the "**CCAA**") pursuant to the Initial Order (the "**Initial Order**") of the Nova Scotia Supreme Court (the "**Court**"). Pursuant to an Order dated April 11, 2019 (the "**Termination Order**"), on April 15, 2019, Quadriga made an assignment in bankrtupcy under the *Bankruptcy and Insolvency Act* (Canada) ("**BIA**").

These submissions should be read in conjunction with the First Report of the Trustee dated June 19, 2019 (the "**First Report**") and the Fifth Report (the "**Fifth Report**") and Fourth Report of EY in its capacity as the Court-appointed monitor of Quadriga (in such capacity, the "**Monitor**").[1]

A. Issues

The submissions address the following issue before the Court:

(a) The proposed process for soliciting Affected User claims outlined in the First Report and the proof of claim forms proposed by the Trustee.

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[1] All capitalized terms used but not defined herein have the meaning ascribed to them in the First Report or the Fifth Report.

B. Background

In order to eventually distribute the net proceeds of any recovered assets, the Trustee will need to seek to solicit information about Users' claims against Quadriga. While a global proof of claim has been filed by Representative Counsel, in accordance with the Termination Order (see paragraph 21 of the attached Termination Order at Tab 1), on behalf of the Users of Quadriga other than those who have opted out in Quadriga's proceedings under the CCAA, the Trustee requires individual claim information to assess individual claims and effect distributions.

The Trustee has modified and supplemented the general BIA Proof of Claim in the form of an Instruction Letter and User Proof of Claim. The Trustee will post copies of the Instruction Letter and the User Proof of Claim substantially in the forms attached as Appendices to the First Report on: (i) the Trustee's Website; (ii) the Representative Counsel's website located at www.millerthomson.com/en/quadrigacx; and (iii) Quadriga's subreddit located at www.reddit.com/r/quadrigacx. The Trustee will also email a copy of the Instruction Letter and User Proof of Claim to each User at the email address recorded in the Platform. Service on Affected Users in a similar manner was previously approved by this Court in the Termination Order (see paragraph 18 of the attached Termination Order at Tab 1).

Users will be requested to complete and deliver their Proofs of Claim to the Trustee prior to 5:00 p.m. (Halifax time) on August 31, 2019 (the "**Claims Submission Date**").

The Trustee will review claims received by the Claims Submission Date and ensure claimants participate in any distributions made out of the estate to the extent of their valid accepted claim, if any. Users that do not file Proofs of Claim by the Claim Submission Date may not be eligible to participate in the initial distribution to creditors.

Users will be asked to verify their name, address, telephone number, Quadriga account number and email address, as well as to date and sign personally the Proof of Claim form in front of a witness. The Trustee may ask Users to provide additional information to verify their identity in order to prove their claim.

Users will be able to review their Quadriga account balances as recorded in Quadriga's books and records (the "**Recorded Balances**") as at April 15, 2019. If Users agree with the Recorded Balances, they can fill in those amounts by currency type in the Affected User Proof of Claim form and no supporting information will be required to prove the quantum of their claim. If Users disagree with the Recorded Balances, they may fill in different amounts and they must submit supporting documentation setting out the particulars of the discrepancies. Users can also specify if they believe their claim enjoys priority relative to other claims. This process was implemented by the Trustee in response to comments received by the Users that their access to earlier records and statements was no longer available as the Quadriga Platform had been taken offline since February 2019.

Due to concerns about disclosure of the Users' personal information expressed by Representative Counsel and this Court, the Trustee is also seeking a term in the draft Order allowing it to withhold identifying personal information and not disclose it to any creditor or User requesting to examine any proof of claim pursuant to section 126 of the BIA.

C. Submissions

1. Claims Process and Forms

The Trustee may apply to the Court for directions in relation to any manner affecting the administration of the estate of the bankrupt and the court shall give such directions as are proper in the circumstances (BIA s. 34(1)). A Trustee may ask for approval of things already done as well as things that it has not yet done (see *Re Salok Hotel Co.* (1969), 11 CBR (NS) 95, affirmed (1967), 11 CBR (NS) 158 (Man. C.A.) see Tab 2).

Section 124 of the BIA deals with proofs of claim and provides as follows:

(1) Every creditor shall prove his claim, and a creditor who does not prove his claim is not entitled to share in any distribution that may be made.

(2) A claim shall be proved by delivering to the Trustee a proof of claim in the prescribed form.

(3) The proof of claim may be made by the creditor himself or by a person authorized by him on behalf of the creditor, and, if made by a person so authorized, it shall state his authority and means of knowledge.

(4) The proof of claim shall contain or refer to a statement of account showing the particulars of the claim and any counter claim that the Bankrupt may have to the knowledge of the creditor and shall specify the vouchers or other evidence, if any, by which it may be substantiated.

The prescribed form of proof of claim is Form 31 (attached attached as Tab 3). In addition to the prescribed form, the Office of the Superintendent of Bankruptcy issued Directive 22R (attached as Tab 4) on May 7, 2010 dealing with proofs of claim and first meetings of creditors. Section 6 of the Directive speaks to the acceptability of the proofs of claim and provides as follows:

> In order for a proof of claim to be acceptable, it must be completed in the prescribed form and include all information required by sections 124-128 of the [BIA]. Related jurisprudence of this matter should also be considered when dealing with acceptability of the proof of claim.

While the proof of claim is prescribed and mandatory provisions of the BIA cannot be varied (see *Re G Totton Publishers Limited* (1975), 20 CBR (NS) (140) see Tab 5), the courts have indicated that variations in the proof of claim will be excused, including those arising from errors or omissions (see *Totton* at para 10 at Tab 5). The standards set forth in those cases is one of "reasonable compliance" while stricter standards are maintained with respect of mandatory provisions from the BIA (sections 124 – 128). This standard was affirmed by the Court of Appeal of British Columbia in *Re Port Chevrolet Oldsmobile Ltd.* (2004), 49 CBR (4th) 146 (BCCA) affirming (2002) 49 CBR (4th) 127 (see Tab 6).

In addition, Rule 2 under the BIA provide that documents must be used in the prescribed form except with "modifications that the circumstances require and subject to any deviations permitted by section 32 of the *Interpretation Act*". The *Interpretation Act* provides that "deviations from that form, not affecting the substance or calculated to mislead, do not invalidate the form used."

Canadian Court have permitted variations from statutory notice requirements and in the prescribed forms where appropriate (see *Re MF Global Canada Co.*, Claims Process Order of Justice Campbell dated January 21, 2012 (see Tab 7), Court File No. 31-OR207854 and *Re General Motors Nova Scotia Finance Company*, Order for Directions of Justice Chipman dated October 29, 2013 (see Tab 8)). This Court has modified statutory notice requirements in this proceeding in the Termination Order (see paragraph 18 at Tab 1).

The Trustee is of the view that the process for soliciting Affected User claims outlined in the First Report is reasonable and suitable for the circumstances of this case and the forms proposed by the Trustee are designed to solicit information required by the Trustee to assess the claims of the Users in a timely and cost-efficient manner. The Trustee is also of the view that soliciting information about amounts owed to the Users' in base currency, as opposed to requiring Users to convert such claims into Canadian dollars, will streamline the completion of the forms by the Users and review of same by the Trustee. The Trustee respectfully submits that the proposed forms deviate from Form 31 in form only and do not affect the substance and are not calculated to mislead.

The Trustee has worked with the Affected Users Committee and Representative Counsel in preparing these forms and understands that they are satisfied with the forms proposed.

Yours truly,

per

Elizabeth Pillon

EP/kl

cc. Service List

TAB 1

SUPREME COURT
OF NOVA SCOTIA

APR 1 1 2019

HALIFAX, N.S.

2019 Hfx No. 484742

IN THE SUPREME COURT OF NOVA SCOTIA

IN THE MATTER OF: Application by Quadriga Fintech Solutions Corp., Whiteside Capital Corporation and 0984750 B.C. Ltd. d/b/a Quadriga CX and Quadriga Coin Exchange (collectively referred to as the "**Companies**" and the "**Applicants**"), for relief under the *Companies' Creditors Arrangement Act*

ORDER
(Re Termination and Bankruptcy Assignment Order)

BEFORE THE HONOURABLE JUSTICE MICHAEL J. WOOD

UPON MOTION, in the proceedings of Quadriga Fintech Solutions Corp. ("**Fintech**"), Whiteside Capital Corporation ("**Whiteside**"), and 0984750 B.C. Ltd. dba Quadriga CX ("**Quadriga**") and Quadriga Coin Exchange ("**Exchange**") under the *Companies' Creditors Arrangement Act* (the "**CCAA Proceedings**"), by Ernst & Young Inc. ("**EY**"), in its capacity as Court-appointed Monitor of the Applicants (the "**Monitor**");

UPON READING the Fourth Report of the Monitor dated April 1, 2019;

AND UPON HEARING the submissions of counsel to the Applicants, counsel for the Monitor, Representative Counsel (as defined below), Grant Thornton Limited in its capacity as the Chief Restructuring Officer of the Applicants (the "**CRO**"), counsel to Jennifer Robertson, and such other individuals who appeared and were heard on the Motion;

IT IS HEREBY ORDERED AND DECLARED THAT:

1. If necessary, the service of the Notice of Motion, the Motion Record and supporting documents are hereby abridged and service is hereby deemed adequate notice so that the Motion is properly returnable today and further service thereof is hereby dispensed with.

Termination of the CCAA Proceedings

2. The Monitor shall establish a reserve (the "**Post-filing Reserve**") from the funds held in the Disbursement Account (as defined in the Initial Order dated February 5, 2019 (the "**Initial Order**")) to pay: (a) any outstanding fees and disbursements of the CRO, the Monitor, counsel to the Applicants, counsel to the Monitor and Representative Counsel

(collectively, the "**Professional Fees**"); and (b) any fees, expenses and disbursements properly incurred by the Monitor, Representative Counsel or the Applicants following the date of the Initial Order (the "**Post-filing Expenses**"). In the name and on behalf of the Applicants, the Monitor shall pay the Professional Fees and Post-filing Expenses in accordance with the procedures set out in prior orders of this Court in these CCAA proceedings in respect of payment thereof.

3. The Monitor, in the name of and on behalf of the Applicants, is authorized and directed to make a payment from the funds in the Disbursement Account to the Trustee (as defined below) appointed in respect of Whiteside in the amount of $25,000 to serve as a third party deposit to guarantee the costs of administration of the trustee, without any personal liability to the Monitor in connection therewith.

4. The Monitor shall have no personal liability to make any payments contemplated herein, and nothing in this Order shall be construed as obligating the Monitor to make any such payment, unless and until the Monitor is in receipt of funds adequate to effect any such payment in full.

5. Upon the filing of a certificate of the Monitor substantially in the form attached hereto as Schedule "A" (the "**Monitor's Discharge Certificate**") certifying that, to the best of the knowledge and belief of the Monitor, the Post-filing Expenses and the Professional Fees have been satisfied, the within CCAA Proceedings shall be dismissed without any other act or formality (the "**CCAA Termination Time**").

6. The Monitor shall, at least seven (7) days prior to the proposed CCAA Termination Time, provide notice to the E-Service List of the Monitor's intention to file the Monitor's Discharge Certificate.

7. The Administration Charge and Directors' Charge (as defined in the Initial Order) shall be terminated, released and discharged effective at the CCAA Termination Time.

8. Effective at the CCAA Termination Time, EY shall be discharged and relieved from any further obligations, liabilities, responsibilities or duties in its capacity as Monitor pursuant to the Initial Order and any other Orders of this Court in these CCAA proceedings.

9. Effective at the CCAA Termination Time, Grant Thornton Limited shall be discharged and relieved from any further obligations, liabilities, responsibilities or duties in its capacity as CRO in these CCAA proceedings.

10. Effective at the CCAA Termination Time, in addition to the protections in favour of the Monitor in any Order of this Court in these CCAA proceedings or the CCAA, EY, the Monitor, the Monitor's legal counsel, the CRO, and each of their respective affiliates and officers, directors, partners, employees and agents (collectively, the "**Released Parties**") are hereby released and discharged from any and all claims that any person may have or be entitled to assert against the Released Parties, whether known or unknown, matured or unmatured, foreseen or unforeseen, existing or hereafter arising, based in whole or in part on any act or omission, transaction, dealing or other occurrence existing or taking place on or prior to the CCAA Termination Date in any way relating to, arising out of or in respect

of the within CCAA Proceedings or with respect to their respective conduct in the within CCAA Proceedings (collectively, the "**Released Claims**"), and any such Released Claims are hereby released, stayed, extinguished and forever barred and the Released Parties shall have no liability in respect thereof, provided that the Released Claims shall not include any claim or liability arising out of any negligence or actionable misconduct on the part of the Released Parties.

Assignment in Bankruptcy

11. The stay of proceedings is lifted or amended insofar as may be necessary to allow the present motion to be brought and heard.

12. The CRO is authorized and directed to cause the Applicants to file assignments in bankruptcy pursuant to the *Bankruptcy and Insolvency Act* (Canada) (the "**BIA**") in the City of Halifax, Province of Nova Scotia naming EY as the trustee in bankruptcy (in such capacity, the "**Trustee**"), and in that regard to sign such documents in the names of the Applicants and take all such steps as are necessary to make the assignment in bankruptcy and commence proceedings under the BIA (the "**BIA Proceedings**"). For greater certainty, no resolutions or other authorizations from the directors, officers or shareholders of the Applicants will be required to commence the BIA Proceedings.

13. The Monitor shall transfer to the Trustee of Quadriga, Whiteside and Fintech, as applicable, the funds remaining in the Disbursement Account, the Wallet (as defined in the Initial Order), and the Separate Account following establishment of the Post-filing Reserve as soon as commercially possible after the commencement of the BIA Proceedings.

14. Following the payment of the Post-filing Expenses and the Professional Fees, the Monitor shall transfer to the Trustee of Quadriga, Whiteside and Fintech, as applicable, the funds remaining in the Post-filing Reserve.

15. The Applicants, their present and former officers, directors, solicitors, agents, servants, shareholders, contractors, any persons acting on their instructions and all other persons having notice of this Order are hereby restrained and enjoined from disturbing or interfering with the Trustee and with the exercise by the Trustee of its powers and the performance by the Trustee of its duties pursuant to the BIA and any order made in the BIA Proceedings.

Bankruptcy Proceedings Administration

16. The time periods for the Trustee to perform its statutory obligations prescribed by Sections 16 and 21 of the BIA are hereby extended until further Order of this Court, and until such Order is made, the Trustee shall be relieved from performing any such obligations.

17. Miller Thomson LLP, as lead counsel, and Cox & Palmer, as local counsel, shall continue to act as representative counsel (collectively, "**Representative Counsel**") to represent the interests of the Affected Users (as defined in the Order of this Court dated February 28, 2019 (as amended, the "**Rep Counsel Order**") in the BIA Proceedings on the same terms and conditions outlined in the Rep Counsel Order. The committee of Affected Users (the

"**Official Committee of Affected Users**") appointed to act as representatives of Affected Users pursuant to the terms of the Order appointing the Official Committee of Affected Users dated March 19, 2019 (the "**Official Committee Order**") shall continue to act and in accordance with its mandate and subject to the terms and conditions outlined in the Rep Counsel Order and the Official Committee Order. The reasonable legal fees and disbursements incurred by the Representative Counsel shall be paid by the Trustee on a periodic basis upon rendering of accounts by Representative Counsel (readacted to preserve any claim for privilege) to the Trustee and that, in the event of any disagreement regarding such fees and disbursements such matters may be remitted to this Court for determination. The Trustee shall have no personal liability to make any payments to Representative Counsel, and nothing in this Order shall be construed as obligating the Trustee to make any such payment, unless and until the Trustee is in receipt of funds adequate to effect any such payment in full.

18. The Trustee shall be deemed to satisfy its obligations under Section 102 of the BIA by, within 5 days of the commencement of the BIA Proceedings: (a) sending an electronic version of this Order to the Service List in the CCAA Proceedings, any Opt-out Individuals (as defined in the Rep Counsel Order as at the date of the Applicants' assignments in bankruptcy), and any other known creditors of the Applicants; (b) providing a copy of this Order to the Representative Counsel for circulation to the Affected Users; (c) posting a copy on the website of Quadriga (www.quadrigacx.com); (d) posting a copy on the Monitor's website for these proceedings (www.ey.com/quadriga); (e) posting a copy on www.reddit.com/r/quadrigacx; and (f) no later than 5 days before the first meeting of creditors, publishing a notice of this Order and the commencement of the BIA Proceedings in the Globe and Mail.

19. The passing of the accounts of the Trustee, the Trustee's counsel and Representative Counsel shall be directed to a Judge of this Court.

20. For purposes of satisfying its obligations under Section 102(2) of the BIA, the list of creditors prepared by the Trustee shall contain a single line noting the number of Affected Users and the aggregate amount of the Affected Users claims. For greater clarity, the Trustee shall keep the identity and any other personal or identifiable information of individual Affected Users confidential.

21. At the first meeting of creditors of the Applicants, the Representative Counsel shall be entitled to file an omnibus proof of claim on behalf of all of the Affected Users (other than the Opt-out Individuals) and vote the claims of the Affected Users (other than the Opt-out Individuals) pursuant to direction from the Official Committee of Affected Users without the need for individual proxies.

22. Pending further Order of the Court, the Trustee shall maintain the identities of any Affected Users that submit claims for the purposes of voting at the first meetings of creditors of the Applicants (by proxy or otherwise) confidential and shall not disclose them to any third party.

23. The Trustee is authorized and empowered, but not obligated, to continue the investigation

commenced as Monitor under the CCAA, obtain legal services, take or commence such Court proceedings, and/or conduct such examinations under section 163 of the BIA as it considers necessary for the recovery or preservation of the Applicants' property prior to the first meetings of creditors of the Applicants.

24. All of the terms of the Platform Access Order dated March 5, 2019 shall continue to apply in the BIA Proceedings *mutatis mutandis* and Amazon Web Services Inc. and any of its affiliates shall continue to be bound by the terms of the Platform Access Order pending further Order of the Court.

25. All of the terms of the Banking Arrangements Order dated February 22, 2019 shall continue to apply in the BIA Proceedings *mutatis mutandis*.

26. All of the terms of the Preservation Order dated April 8, 2019 shall continue to apply in the BIA Proceedings *mutatis mutandis*.

27. All of the terms of the Third Party Processor Order dated April 8, 2019 shall continue to apply in the BIA Proceedings *mutatis mutandis*.

General

28. Notwithstanding the discharge of EY as Monitor and the termination of the CCAA Proceedings, this Court shall remain seized of any matter arising from these CCAA Proceedings, and each of the Applicants, EY, Representative Counsel and any interested party that has served a Notice of Appearance in these CCAA Proceedings, shall have the authority from and after the date of this Order to apply to this Court to address matters ancillary or incidental to these CCAA Proceedings notwithstanding the termination thereof. EY is authorized to take such steps and actions as Monitor following date of this order until the CCAA Termination Time. In completing or addressing any such ancillary or incidental matters, EY shall continue to have the benefit of all Orders made in the CCAA Proceedings in relating to its capacity as Monitor, including approvals, protections, and stays of proceedings in favour of EY in its capacity as Monitor.

29. The aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction outside of Nova Scotia is requested to give effect to this Order and to assist the Applicants, the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Applicants and the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, or to assist the Applicants and the Monitor and their respective agents in carrying out the terms of this Order.

30. This Order and all of its provisions are effective as of 12:01 a.m. Atlantic Standard Time on the 8th day of April, 2019.

Issued at Halifax, Province of Nova Scotia, this 11th day of April, 2019.

AMANDA HAWBOLDT
Deputy Prothonotary

SCHEDULE "A"

2019 Hfx No. 484742

IN THE SUPREME COURT OF NOVA SCOTIA

IN THE MATTER OF: Application by Quadriga Fintech Solutions Corp., Whiteside Capital Corporation and 0984750 B.C. Ltd. d/b/a Quadriga CX and Quadriga Coin Exchange (collectively referred to as the "**Companies**" and the "**Applicants**"), for relief under the *Companies' Creditors Arrangement Act*

Monitor's Certificate
(Re Termination and Bankruptcy Assignment Order)

RECITALS

A. Pursuant to an Order of the Honourable Justice Michael J. Wood of the Nova Scotia Supreme Court (the "**Court**") dated February 5, 2019, Ernst & Young Inc. ("**EY**") was appointed as the monitor (the "**Monitor**") of Quadriga Fintech Solutions Corp., Whiteside Capital Corporation and 0984750 B.C. Ltd. ("**Quadriga**" or the "**Company**") (collectively, the "**Applicants**"). The proceedings commenced by the Applicants under the CCAA will be referred to herein as the "**CCAA Proceedings**".

B. The CCAA Proceedings have been completed in accordance with the Orders of this Court and under the supervision of the Monitor.

C. Pursuant to the Order of this Court dated April 8, 2019 (the "**Termination Order**"), the Monitor may be discharged and the CCAA Proceedings may be terminated upon filing of this Monitor's Certificate with the Court.

D. All capitalized terms used but not defined herein shall have the meaning ascribed to them in the Termination Order.

THE MONITOR CERTIFIES the following:

1. To the best of the knowledge and belief of the Monitor, the Post-filing Expenses and the Professional Fees have been satisfied.

DATED at Halifax, Nova Scotia this _____ day of ______________, 2019.

ERNST & YOUNG INC., solely in its capacity as Monitor of Quadriga Fintech Solutions Corp., Whiteside Capital Corporation and 0984750 B.C. Ltd.and not in its personal or corporate capacity

By: ______________________________________

Name: George C. Kinsman
Title: Partner, Senior Vice President

IN THE MATTER OF APPLICATION BY QUADRIGA FINTECH SOLUTIONS CORP., WHITESIDE CAPITAL CORPORATION AND 0984750 B.C. LTD. D/B/A QUADRIGA CX AND QUADRIGA COIN EXCHANGE UNDER THE COMPANIES' CREDITORS ARRANGEMENT ACT

Hfx No. 484742

IN THE SUPREME COURT OF NOVA SCOTIA

Proceeding commenced in Halifax

ORDER
RE: TERMINATION AND BANKRUPTCY ASSIGNMENT ORDER

STIKEMAN ELLIOTT LLP
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5300 Commerce Court West
199 Bay Street
Toronto, Canada M5L 1B9

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Lawyers for Ernst & Young Inc., Monitor

TAB 2

1967 CarswellMan 4
Manitoba Court of Queen's Bench

Salok Hotel Co., Re

1967 CarswellMan 4, 11 C.B.R. (N.S.) 95, 62 W.W.R. 268, 66 D.L.R. (2d) 5

Re Salok Hotel Co. Ltd.; Flintoft v. Lev et al.

Wilson J.

Judgment: November 20, 1967

Counsel: *A. J. Mercury*, for trustee.
R. B. Cantlie, for respondent Swystun.
J. F. O'Sullivan, for other respondents.

Subject: Corporate and Commercial; Insolvency
Related Abridgment Classifications
Bankruptcy and insolvency
X Priorities of claims
X.4 Claims by landlord
X.4.g Disclaimer and surrender of lease
Headnote
Bankruptcy --- Priorities of claims — Claims by landlord — Disclaimer and surrender of lease
Landlord and tenant — Trustee electing to disclaim lease — Personal liability on trustee to end of term if election to retain lease.
Application for directions — Application may be made to approve action already taken by trustee.
A long term lease of certain property was entered into by the debtor company prior to its bankruptcy. This lease was personally guaranteed by two individuals. The buildings on the premises were demolished by the debtor. Some three years after entering into the lease and when the property was still a vacant lot, the debtor made an assignment in bankruptcy. There were substantial arrears of rent at the time of the bankruptcy. The trustee wished to disclaim the lease. The lessor opposed the giving of the disclaimer on the ground that it would extinguish the liability of the guarantors and submitted an offer from D. Ltd. to purchase the trustee's interest in the lease for the sum of $200. The trustee delivered a notice of disclaimer to the landlord and applied to the Court for directions.
Held, the trustee should be permitted to disclaim the lease.
On an application for directions, the trustee may ask for the approval of the court of things already done as well as for the approval of acts as yet only in contemplation.
If a lease is disclaimed, all liability of the trustee and of the bankrupt estate is thereupon extinguished. The landlord cannot claim against the estate for breach of contract.
If a trustee elects to retain the lease, he becomes personally liable on the lease for the rent and will be unable to wind up the estate until the lease is out of the assets of the bankrupt estate. By electing to retain possession of the demised premises, which election is a condition to further assignment of the lease, the trustee renders himself personally liable for payment of the rent accruing due throughout the term and the winding-up of the estate cannot be completed until the term has expired.
Annotation

The point raised in this case has troubled lawyers engaged in bankruptcy practice for a long time. Prior to this case, there has been no authoritative decision on it: see Article in 7 C.B.R. (N.S.) 113 at 123. If this decision is correct, a lease is no longer an asset which can be effectively disposed of by a trustee in bankruptcy in provinces with legislation such as

Manitoba and Ontario. No trustee would dare to elect to retain a lease where he knew that it imposed personal liability on him until the term of the lease expired. As Wilson J. points out in the instant case, s. 52 of the Bankruptcy Act, 1919 (Can.), c. 36, was a much more comprehensive code than the present provincial statutes. It is to be hoped that something will be done shortly to overcome this legislative gap.

***Wilson J.*:**

1 The applicant trustee in bankruptcy of the subject Salok Hotel Co. Ltd. (herein called Salok) applies for an order to direct or to confirm his disclaimer of a certain lease of real estate executed by the respondent, Record Holdings Ltd., as lessor and Salok as lessee. Respondents Lev, Swystun and Birchard are the inspectors of the bankrupt Salok; respondent Swystun would support the disclaimer, while respondents Lev and Birchard favour acceptance of an offer to purchase the lease and would direct the applicant to assign the lease to the offeror accordingly. Subject to the liabilities incident to the terms of the lease contract, Salok's leasehold interest in the concerned lands is, of course, an asset of the estate in bankruptcy under administration by the applicant as trustee aforesaid.

2 Salok was incorporated 6th January 1964 with an authorized capital of $100,000 divided into 1,000 shares of par value $100 each of which only 30 shares were issued, 28 to Vsevelod John Swystun (since deceased) and one apiece to the respondent Nestor Swystun and to a William Kolas. The company's intended business was the operation of an hotel to be built in the city of Winnipeg; the announced cause of bankruptcy was inability to finance construction of such hotel.

3 Property owned by the respondent Record Holdings Ltd. appealed to Salok's directors as a site for their proposed hotel and on 31st July 1964 the lease herein above referred to was executed, providing for rental of such property over a term of 50 years from 15th August 1964 at a monthly rental of $1,000. Vsevolod John Swystun and William Kolas were joined as guarantors and the lease is expressed to have been executed in consideration of such guarantee.

4 At the time the lease was signed the demised lands were occupied by a four storey and basement, warehouse type building, erected about 1888. There were six shops on the main floor, with the upper storeys occupied for light manufacturing or warehouse use. Physical condition of the property and its rental income were not stated. In any event, with the lessor's consent, Salok caused this building to be demolished and the site cleared in preparation for the anticipated construction of the new hotel. And so, to the respondent lessor's distress by reason of non-payment of rent accruing due under its lease must be added the economic loss arising because of the disappearance of the building which formerly graced the site, a loss which, or so it was suggested, is offset by the cost of demolition, payable, of course, by Salok and not by the lessor. There was filed an appraisal which suggested the fair market value of the now vacant lot to be about $95,000.

5 Salok made its assignment in bankruptcy on 26th June 1967 when its statement of affairs showed liabilities of $329,728.34; of that amount $246,000 represents contingent liability under the lease, being the discounted value of rent for the remaining 47 years of the term. Assets are $3,500 only, being $3,000 due on subscription to shares of capital stock and an additional $500 for accounts receivable, value doubtful, leaving a deficiency of $326,228.34. Respondent Record Holdings Ltd., in its proof of claim, shows rental arrears to 1st July 1967 of $20,000, three months accelerated rent $3,000, and taxes settled by the lessor but payable by the lessee Salok pursuant to the lease agreement $6,722.95 making a total of $29,722.95.

6 On 20th September 1967 Dawson Investments Ltd. (a corporation whose nature and worth were not told to me) submitted an offer to purchase the lease for $200 cash, but without payment of arrears of rent or taxes, or any other existing liabilities of the applicant up to the date of the proposed assignment of lease. In answer to s. 46(2) of The Landlord and Tenant Act, R.S.M. 1954, c. 136, which bars assignment of lease unless all arrears of rent have been paid, on 25th September Dawson presented the written consent of the lessor, Record Holdings Ltd., to such assignment, with which consent was incorporated the lessor's waiver of s. 46(2).

7 In opposing disclaimer of the lease, counsel for the lessor urged that by such disclaimer the lease would be at an end, and therefore the liability of the guarantors would be extinguished; and it was strongly argued that in the interests of commercial morality, the estate of the bankrupt ought not to be administered in such manner as would destroy the rights of the lessor to pursue its remedy against the guarantors.

8 The case for the applicant trustee, stated very simply, is that in undertaking to administer the estate of the bankrupt he is not required to beggar himself, in that assignment of the lease would amount to confirmation of the same without at the same time extinguishing the liability of the estate of the bankrupt as lessee, which liability was assumed by the applicant when he entered upon administration of the estate as trustee, and which liability would therefore rest upon him until the lease has run its term or has otherwise been determined. To this, says the applicant, must be added the fact that until the contingent liability of the estate on account of the lease has been extinguished, the estate cannot be wound up and, minimal though it may be, the cash presently on hand may not be distributed to the other creditors, nor the applicant's own costs satisfied.

9 Bankruptcy, of itself, does not discharge a contract. The property of the bankrupt vests in the trustee in bankruptcy, and as to those executory contracts of the bankrupt which the trustee is able to perform (which of course would include an unexpired lease term) he may elect either to adopt or disclaim them: *Stead Lumber Company Limited v. Lewis* (1957), 37 C.B.R. 24 at 34, 3 Can. Abr. (2nd) 1001 and the Bankruptcy Act, R.S.C. 1952, c. 14, s. 41(5), (6). Whether the bankruptcy occurs by the voluntary act of the debtor or by compulsion makes no difference: *Re Clayton's Women's Wear Ltd.; Ex parte Louis K. Liggett Co. Ltd.*, [1933] O.R. 492, 14 C.B.R. 361 at 365, [1933] 2 D.L.R. 767, per Masten J.A.

10 Specifically, the lease contract of a bankrupt lessee is not voided, does not cease to operate, by virtue of the fact of bankruptcy: *Morrison v. Fee et al.*, [1934] O.W.N. 5, 15 C.B.R. 421 at 429, although (as provided by para. 7 of the lease before me) it may be open to the lessor to terminate the lease upon such event. The landlord in the instant case elected not to determine the lease, but rather seeks to continue the contract in favour of the proposed assignee; nor — significantly — does the respondent lessor offer to release the trustee from liability in the event the assignee should fail to pay rent or otherwise abide by the terms of the lease.

11 Prior to 1923 the position of the trustee in bankruptcy *vis-à-vis* a lessor of the bankrupt was as provided by s. 52 of the Bankruptcy Act, 1919 (Can.), c. 36. With *Re Stober; Ex parte Mark Workman Investment Corporation* (1923), 4 C.B.R. 34, 3 Can. Abr. (2nd) 1661, however, part of s. 52(5) [as re-enacted by 1921, c. 17, s. 41], was declared *ultra vires* and was promptly repealed and replaced by legislation, the history and effect of which is discussed in Duncan and Honsberger, Bankruptcy in Canada, 3rd ed., 1961, pp. 686 *et seq.* Unfortunately, the now defunct s. 52 provided a code more comprehensive in its terms than the legislation presently available to cover the situation.

12 Subject to exceptions not here material, by s. 105 of the present Bankruptcy Act the rights of landlords are to be determined according to the laws of the province in which the demised lands are situate. In Manitoba, by s. 46(2) of The Landlord and Tenant Act the trustee has the option exercisable at any time within three months of the date of bankruptcy to

> ... elect to retain the leased premises for the whole or any portion of the unexpired term and any renewal thereof, upon the terms of the lease and subject to the payment of the rent as provided by the lease or agreement; and he may upon payment to the landlord of all arrears of rent, assign the lease with rights of renewal, if any, to any person
>
> (*a*) who covenants to observe and perform its terms and agrees to conduct upon the demised premises a trade or business which is not reasonably of a more objectionable or hazardous nature than that which was thereon conducted by the debtor; and
>
> (*b*) who on application of the assignee, liquidator or trustees, is approved by a judge of the Court of Queen's Bench as a person fit and proper to be put in possession of the leased premises.

13 Alternatively, by s. 47 of that statute, the trustee has the further right, exercisable at any time before so electing to retain the lease as provided in s. 46(2), *supra*, to surrender possession or to disclaim the lease. The terms are not synonymous, and see Duncan and Honsberger, p. 135, although so far as the termination of liability under the lease is concerned the effect is the same, whether the lease is surrendered or disclaimed: Rose C.J.H.C. in *Re Mussens Ltd.; Ex parte Petrie Ltd.*, [1933] O.W.N. 459, 14 C.B.R. 479 at 482, 3 Can. Abr. (2nd) 1684.

14 Except for the equivocal statement in s. 47(1) of The Landland and Tenant Act that entry into possession of the leased premises by the trustee is not to be deemed evidence of his election to retain possession under s. 46, the Act is silent as to the position when the trustee fails to elect under either section. Prior to the repeal of s. 52 of The Bankruptcy Act in 1923, by c. 31, s. 31, in the absence of election, the trustee was deemed by s. 52(5) to have disclaimed the lease.

15 In *White v. Hunt* (1870), L.R. 6 Ex. 32 at 34, Channell B. expressed the opinion that notwithstanding there was no disclaimer, the trustee was not to be taken to have retained the lease unless he did some act which unequivocally testified his acceptance, while in *Wilson et al. v. Wallani et al.* (1880), 5 Ex. D. 155 at 160 Stephen J. appears to have decided just the reverse, as did Mellish L.J. in *Re Sneezum; Ex parte Davis* (1876), 3 Ch. D. 463 at 475. With *Re Walsh* (1924), 27 O.W.N. 8, 5 C.B.R. 27, 3 Can. Abr. (2nd) 1575, the Registrar in Ontario considered that until the trustee elects to retain the lease he incurs no liability except as to three months accelerated rent, an opinion repeated in *Re Soren Brothers (No. 2)* (1926), 30 O.W.N. 12, 7 C.B.R. 545, 3 Can. Abr. (2nd) 1608. This view was accepted by Houlden and Morawetz in Bankruptcy Law of Canada, 1960, p. 255, but considered by the learned authors of Duncan and Honsberger to be incorrect, p. 699, note 7. Indeed, the actual decision in the *Soren* case appears inconsistent with *Re Walsh*.

16 Certainly, if he means to disclaim, the trustee must do so within the statutory time allowed by The Landlord and Tenant Act; seemingly too, the act of disclaimer may only be done with the consent of the inspectors: the Bankruptcy Act, ss. 8(11) and 10(1)(*k*), or with the approval of the Court under s. 82(10), which approval may, in the result, revoke or vary the decision of the inspectors. At p. 135, Duncan and Honsberger cast doubt upon the efficacy of s. 10(1)(*k*) so far as this relates to a lease of real estate, in view of the restricted operation of the Bankruptcy Act imported by the language of s. 105 of that statute.

17 In the instant case, the opinion of the inspectors was had on 21st September, a Thursday, immediately upon receipt by the trustee of the offer for purchase of the lease. At that time one inspector was in favour of accepting the offer, the second would refuse it, and the third inspector suggested the trustee obtain counsel and then call another meeting. With an eye to the calendar, and no doubt because he did not himself favour acceptance of the offer, the trustee on that same day — 21st September — completed a written disclaimer of the lease. By 25th September, the Monday following, and on which day the three months time for disclaimer would expire, the trustee had consulted counsel, and the inspectors met again to vote two to one in favour of accepting the offer to purchase.

18 The law is quite clear that if the trustee wishes to invade the rights of the landlord by disclaimer or assignment of the lease, as to which his sole authority is the legislation on that behalf, the trustee must abide strictly by the procedure laid down in the statute: *Re York Beverages* (1922), 23 O.W.N. 421, 3 C.B.R. 531, 3 Can. Abr. (2nd) 1682; *Morrison v. Fee et al., supra; Re Surplus Merchandisers Limited*, [1950] O.W.N. 435, 31 C.B.R. 26, 3 Can. Abr. (2nd) 1674. I am satisfied that the trustee may avail himself of his right to apply for the direction of the court (under s. 12 of the Bankruptcy Act) as well for the approval of things already done by him under the pressure of circumstances as for the approval of acts as yet only in contemplation. It follows that, should I approve the action taken by the applicant in delivering his notice of disclaimer on 21st September, the lease will be effectively disclaimed.

19 Certainly, upon disclaimer of a lease by the trustee, all liability of the trustee and of the estate of the bankrupt lessee up to that time is thereupon extinguished: *Eastern Nut Krust Bakeries Limited v. Damphouse* (1922), 60 Que. S.C. 530, (sub nom. *Re Eastern Nut Krust Bakeries Limited)* 2 C.B.R. 215; *Re Mussens Ltd.; Ex parte Petrie Ltd., supra; Re Smith; Ex parte Geller* (1933), 14 C.B.R. 335; *Re Ted Weale Limited*, [1952] O.W.N. 560, 32 C.B.R. 206, [1952] 3 D.L.R. 839, 3 Can. Abr. (2nd) 1688. Nor, under our Act, may the landlord in the event of such disclaimer rank against

the estate of the bankrupt for breach of contract, as was allowed in *Re Sneezum; Ex parte Davis, supra. Cummer-Yonge Investments Ltd. v. Fagot et al.*, [1965] 2 O.R. 152, 8 C.B.R. (N.S.) 62, 50 D.L.R. (2d) 25 (to the same effect) held also, as was argued before me, that upon disclaimer of the lease, whereby all liability of the trustee or of the bankrupt lessee disappears, the liability of the guarantors is likewise at an end. Indeed, in the *Cummer-Yonge* case, Gale C.J.H.C. went further and considered that, quite apart from disclaimer, upon bankruptcy of the lessee, all of its rights and obligations under the lease, including liability to pay rent, irrevocably pass to the trustee in bankruptcy, that thereafter there could be no covenants in the lease which the lessee was required to perform, so that the liability of the guarantors for "the due performance by the lessee of all its covenants in the lease" was thereupon extinguished. An appeal from this decision was dismissed without written reasons, [1965] 2 O.R. 157n, 50 D.L.R. (2d) 30n. If the law here is the same, nothing can avail the respondent lessor in the instant case to preserve its remedy against the guarantors.

20 In the earlier case of *Olivier v. Solloway Mills & Company Limited*, 65 O.L.R. 356, 11 C.B.R. 356, [1930] 3 D.L.R. 851, 3 Can. Abr. (2nd) 1667, when the guarantee was given in terms which anticipated insolvency of an assignee of the tenant, which in fact occurred, the lessor recovered judgment against the guarantors. In that case, it was considered that so long as the trustee continues in possession he would pay his rent to the guarantors instead of to the lessors and that in the event of a disclaimer the guarantors would be permitted to enter into possession of the demised premises; it was nowhere suggested that the fact of bankruptcy extinguishes the liability of the guarantors of a lease.

21 What is the position should the trustee decide to assign the lease? If he wishes to do this, the trustee must first elect to retain the demised premises: *Re Bowman* (1927), 33 O.W.N. 243, 8 C.B.R. 562, 3 Can. Abr. (2nd) 1671, followed in *Re Surplus Merchandisers Limited*, [1950] O.W.N. 435, 31 C.B.R. 26, 3 Can. Abr. (2nd) 1674. In giving leave to appeal this last case, Ferguson J. (*Re Surplus Merchandisers Limited and Howard*, [1950] O.W.N. 677, 31 C.B.R. 30 at 31, 3 Can. Abr. (2nd) 1675) said:

> The interpretation placed on sec. 37(2) of *The Landlord and Tenant Act* by *In re Bowman* is that the right to assign cannot be exercised unless the trustee has elected to retain the lease. I am doubtful that that is the correct interpretation of the section because if that were so the trustee would become personally liable on the lease for the rent and he would be unable to wind up the estate until the lease had terminated.

22 The appeal was abandoned; later, with *Re Limestone Electrical and Supply Company Limited*, [1955] O.R. 291, 35 C.B.R. 20, [1955] 3 D.L.R. 104, 3 Can. Abr. (2nd) 1676, the Ontario Court of Appeal affirmed that if he wished to assign the lease, the trustee must first elect to retain possession. The position of the trustee in bankruptcy upon such election would, I believe, be as stated by Ferguson J. above. This, too, appears to have been the opinion of Armour C.J.O. in *Kennedy v. MacDonell* (1901), 1 O.L.R. 250 at 254, 3 Can. Abr. (2nd) 1652.

23 Denman J. in *Hopkinson v. Lovering* (1883), 11 Q.B.D. 92, considered that under the English legislation, the trustee could, by assigning the lease, destroy the privity of contract between himself and the lessor, and thereby relieve himself from all liability. Indeed, under the English legislation the trustee, it was thought, could utterly defeat the landlord by assigning the lease to a pauper, something not contemplated in this country in view of the inquiry to be made by the Court as to the merits of the proposed assignment, and see s. 46(2) of The Landlord and Tenant Act, quoted above.

24 In *North-West Theatre Company v. MacKinnon* (1916), 52 S.C.R. 588, 9 W.W.R. 1255, 28 D.L.R. 63, 3 Can. Abr. (2nd) 1654, the Court was not concerned with assignment of the lease by a trustee; indeed, the defendant in that case had given an express guarantee for payment of rent. And so, while the *obiter* comments of Anglin J. at p. 600 appear to adopt the "interrup tion of privity" notion (if I may put it that way) which appealed to Denman J. in *Hopkinson v. Lovering, supra*, the situation is different where, as here, if he wishes to assign, the trustee must first adopt the lease by electing to retain possession. By so electing, as Ferguson J. pointed out, *supra*, the trustee renders himself personally liable for payment of rent to the extent of the term thereby adopted, subject, of course, to his right to indemnity out of the estate of the bankrupt, in this case of no value whatsoever. Under s. 52(6) of the 1919 bankruptcy legislation [as re-enacted by 1921, c. 17, s. 42], repealed as earlier noted, it was expressly provided that if the trustee should elect to retain the premises and should thereafter assign the lease, the liability of the trustee, whether personal or as trustee, should be limited to the

payment of rent for the period of time during which the trustee is actually in possession of the leased premises for the purposes of the trust estate, which legislation made it clear beyond argument that upon assignment by the trustee, his further liability under the lease was ended. While it is not necessarily the case that every passage in an enactment is to be accepted as new law or an amendment of the old, certainly the existence of the passage referred to in the old s. 52(6) was a necessary and reasonable protection for the trustee should he wish to assign the lease, and in the absence of such legislation — and none exists now — the trustee enjoys no such protection. Rather, by electing to retain possession of the demised premises, which election is a condition to further assignment of the lease, the trustee must needs adopt the term as to which election is made, and renders himself personally liable for payment of rent accruing due throughout such term, from which it follows that, as stated by Ferguson J., *supra*, in *Re Surplus Merchandisers Limited and Howard*, winding-up of the estate cannot be completed until the term has expired.

25 On the facts of the instant case I consider it to be unreasonable for the trustee so to expose himself to liability, and improper to delay the creditors of the estate as would necessarily result if the lease were assigned. In the result, the action of the trustee in disclaiming the lease is approved. Costs may be spoken to.

TAB 3

FORM 31

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

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

In the matter of the bankruptcy (*or* the proposal *or* the receivership) of ____________________ (*name of debtor*) of ______________ (*city and province*) and the claim of __________________, creditor.

I, ________________________________ (*name of creditor or representative of the creditor*), of _____________________ (*city and province*), do hereby certify:

1. That I am a creditor of the above-named debtor (*or* that I am ________________ (*state position or title*) of _________________ (*name of creditor or representative of the creditor*)).

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

3. That the debtor was, at the date of bankruptcy (*or* the date of the receivership *or, in the case of a proposal,* the date of the notice of intention *or* of the proposal, *if no notice of intention was filed*), namely the _____ day of ___________ ____, and still is, indebted to the creditor in the sum of $___________, as specified in the statement of account (*or* affidavit) attached and marked Schedule "A," after deducting any counterclaims to which the debtor is entitled. (*The attached statement of account or affidavit must specify the vouchers or other evidence in support of the claim.*)

4. *Check and complete appropriate category*

☐ A. UNSECURED CLAIM OF $___________

(Other than as a customer contemplated by Section 262 of the Act)

That in respect of this debt, I do not hold any assets of the debtor as security and

(Check appropriate description)

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

☐ Regarding the amount of $ ______, I do not claim a right to a priority.

(Set out on an attached sheet details to support priority claim)

☐ B. CLAIM OF LESSOR FOR DISCLAIMER OF A LEASE $___________

That I hereby make a claim under subsection 65.2(4) of the Act, particulars of which are as follows:

(Give full particulars of the claim, including the calculations upon which the claim is based)

☐ C. SECURED CLAIM OF $____________

That in respect of this debt, I hold assets of the debtor valued at $______ as security, particulars of which are as follows:

(Give full particulars of the security, including the date on which the security was given and the value at which you assess the security, and attach a copy of the security documents)

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

That I hereby make a claim under subsection 81.2(1) of the Act for the unpaid amount of $_____

(Attach a copy of sales agreement and delivery receipts)

☐ E. CLAIM BY WAGE EARNER OF $_______________

☐ That I hereby make a claim under subsection 81.3(8) of the Act in the amount of $ ______
☐ That I hereby make a claim under subsection 81.4(8) of the Act in the amount of $ ______

☐ F. CLAIM BY EMPLOYEE FOR UNPAID AMOUNT REGARDING PENSION PLAN OF $____________

☐ That I hereby make a claim under subsection 81.5 of the Act in the amount of $ _______
☐ That I hereby make a claim under subsection 81.6 of the Act in the amount of $ ________

☐ G. CLAIM AGAINST DIRECTOR $____________

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

That I hereby make a claim under subsection 50(13) of the Act, particulars of which are as follows:

(Give full particulars of the claim, including the calculations upon which the claim is based)

☐ H. CLAIM OF A CUSTOMER OF A BANKRUPT SECURITIES FIRM $___________

That I hereby make a claim as a customer for net equity as contemplated by section 262 of the Act, particulars of which are as follows:

(Give full particulars of the claim, including the calculations upon which the claim is based)

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

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

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

☐ Whenever the trustee reviews the financial situation of a bankrupt to redetermine whether or not the bankrupt is required to make payments under section 68 of the Act, I request to be informed, pursuant to paragraph 68(4) of the Act, of the new fixed amount or of the fact that there is no longer surplus income.

☐ I request that a copy of the report filed by the trustee regarding the bankrupt's application for discharge pursuant to subsection 170(1) of the Act be sent to the above address.

Dated at ______________________, this ______________day of ________________.

________________________________ ________________________________

Witness Creditor

Telephone No.: ___________________
Fax No.: _________________________
Email address: ____________________

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

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

Subsection 201(1) of the Act provides severe penalties for making any false claim, proof, declaration or statement of account.

TAB 4

Directive / Instruction

Nº 22R

PROOFS OF CLAIM, PROXIES, QUORUMS AND VOTING AT MEETINGS OF CREDITORS

Issued: MAY 07 2010

(Due to a printing error, this version of Directive No. 22R supersedes Directive No. 22R issued on April 19, 2010, on the same topic)

Interpretation

1. In this Directive,

"Act" means the *Bankruptcy and Insolvency Act*;

"OSB" means the Office of the Superintendent of Bankruptcy;

"Rules" means the *Bankruptcy and Insolvency General Rules*.

PREUVES DE RÉCLAMATION, PROCURATIONS, QUORUM ET DROIT DE VOTE AUX ASSEMBLÉES DES CRÉANCIERS

Date d'émission : 07 MAI 2010

(En raison d'une erreur d'impression, la présente version de l'instruction nº 22R remplace et annule l'instruction nº 22R sur le même sujet émise le 19 avril 2010)

Interprétation

1. Les définitions qui suivent s'appliquent à la présente instruction :

« BSF » désigne le Bureau du surintendant des faillites;

« Loi » renvoie à la *Loi sur la faillite et l'insolvabilité*;

« Règles » s'entend des *Règles générales sur la faillite et l'insolvabilité*.

Authority and Purpose

2. This Directive is issued pursuant to paragraphs 5(4)(*b*), (*c*) and (*e*) of the Act.

3. The purpose of this Directive is to clarify the position of the Superintendent with regard to proofs of claim, proxies, quorums and voting at meetings of creditors.

Autorité et objet

2. La présente instruction est émise en vertu des alinéas 5(4)*b*), *c*) et *e*) de la Loi.

3. La présente instruction a pour objet de préciser la position du surintendant à l'égard des preuves de réclamation, des procurations, du quorum et du droit de vote lors des assemblées des créanciers.

Policy

4. The trustee shall supply to all creditors a proof of claim and a proxy in the prescribed form.

Information sheet to complete proofs of claim and a proxy form

5. Creditors may experience difficulty when completing a proof of claim and/or a proxy form. Where appropriate, instructions should be provided with each proof of claim form that explain in detail how to complete the proof of claim. A suggested format for the instructions is attached as Appendix A.

Acceptability of proof of claim

6. In order for a proof of claim to be acceptable, it must be completed in the prescribed form and include all information required by sections 124–128 of the Act. Related jurisprudence on the matter should

Politique

4. Le syndic doit fournir à tous les créanciers une preuve de réclamation et une procuration en la forme prescrite.

Feuille de renseignements pour preuve de réclamation et procuration

5. Les créanciers peuvent avoir de la difficulté à remplir une preuve de réclamation ou un formulaire de procuration. Le cas échéant, des consignes expliquant clairement comment remplir le document devraient être fournies avec chaque formulaire de preuve de réclamation. Une liste de consignes suggérées est jointe à l'annexe A.

Recevabilité des preuves de réclamation

6. Afin qu'une preuve de réclamation soit recevable, elle doit avoir été remplie en la forme prescrite et contenir toute l'information exigée aux articles 124 à 128 de la Loi. Il faut également tenir compte de la jurisprudence

also be considered when dealing with the acceptability of a proof of claim.

pour déterminer la recevabilité des preuves de réclamation.

Review of proofs of claim

Examen des preuves de réclamation

7. The chair, at the first meeting of creditors, has the power to admit or reject a proof of claim for the purpose of voting. Prior to the time appointed for the meeting, the trustee shall review all proofs of claim and advise the chair if they are acceptable for the purpose of voting at a meeting of creditors. Often, proofs of claim are filed just prior to the time appointed for the meeting. In this circumstance, it is recommended that the chair open the meeting and then adjourn it for a brief time for the purpose of reviewing the proofs of claim. A person who has filed a proof of claim after the time appointed for the meeting shall not be permitted to vote at that meeting.

7. À la première assemblée des créanciers, le président est habilité, aux fins du vote, à admettre ou à rejeter une preuve de réclamation. Avant le moment fixé pour l'assemblée, le syndic doit examiner les preuves de réclamation et indiquer au président si elles sont recevables pour les fins du vote à l'assemblée des créanciers. Les preuves de réclamation sont souvent déposées immédiatement avant le moment fixé pour l'assemblée. En l'occurrence, il est recommandé que le président appelle l'assemblée à l'ordre et l'ajourne pour quelque temps pour permettre l'examen des preuves de réclamation alors reçues. Toute personne qui dépose une preuve de réclamation après le moment fixé pour l'assemblée n'aura pas le droit de voter à cette assemblée.

Establishing a quorum at the first meeting of creditors

Établissement du quorum à la première assemblée des créanciers

8. (1) The establishment of the quorum is governed by section 106 of the Act. When applying this section, the term "creditor" does not refer to the number of creditors appearing on the Statement of Affairs. The quorum is established by considering the number of creditors who are present in person or represented by a proxyholder (or by voting letter in a proposal) and have filed and proven their claim in proper form with the trustee before the time appointed for the meeting.

8.(1) La constitution d'un quorum est régie par l'article 106 de la Loi. Pour les fins d'application de cet article, le mot « créancier » ne fait pas référence au nombre de créanciers figurant sur le bilan. Le quorum est fixé en fonction du nombre de créanciers qui sont présents en personne ou représentés par un fondé de pouvoir (ou par formulaire de votation dans une proposition) et qui ont déposé et prouvé leur réclamation en règle auprès du syndic, avant le moment fixé pour l'assemblée.

(2) Where a voting letter is filed in a proposal, supported by a proven claim, the letter is to be considered as if the creditor were present and is to be voted in accordance with the direction contained therein. A quorum under section 106 of the Act can be established in this manner.

(2) Lorsqu'un formulaire de votation est déposé dans une proposition, avec une réclamation prouvée en bonne et due forme, le formulaire doit être considéré au même titre que si le créancier était présent et être utilisé aux fins qui y sont prescrites. Le quorum prévu à l'article 106 de la Loi peut être constitué de cette façon.

Accepting proofs of claim to establish a quorum, to table motions and to vote

Recevabilité des preuves de réclamation, quorum, motions et droit de vote à l'assemblée

9. Providing that the proof of claim is in proper form and is filed with the trustee prior to the time appointed for the meeting, the types of claims presented in Appendix B will be dealt with in the manner shown as to whether or not they are to be considered for:

(a) establishing a quorum at a first meeting of creditors;

(b) tabling motions before the meeting;

(c) voting on an ordinary resolution;

(d) voting on a proposal; and

(e) voting on a special resolution.

9. Pourvu que la preuve de réclamation soit en règle et qu'elle soit dûment déposée auprès du syndic avant le moment fixé pour l'assemblée, les réclamations mentionnées à l'annexe B seront traitées de la façon indiquée pour déterminer si elles seront admissibles pour :

a) établir le quorum à la première assemblée des créanciers;

b) déposer une motion à l'assemblée;

c) voter sur une résolution ordinaire;

d) voter sur une proposition; et

e) voter sur une résolution spéciale.

Proxy

10. (1) It is not necessary that a proxy be filed with the trustee before the time fixed for the meeting as section 109 of the Act only applies to proofs of claim.

Procuration

10. (1) Il n'est pas nécessaire qu'une procuration soit déposée auprès du syndic avant le moment fixé pour l'assemblée puisque l'article 109 de la Loi ne s'applique qu'aux preuves de réclamation.

(2) A proxy may be filed in the form of a letter or any form of telecommunication at any time prior to a vote.

(2) Une procuration peut être déposée sous forme de lettre ou par tout moyen de télécommunication en tout temps avant le vote.

(3) The proxy does not have to be under the seal of the company unless the incorporating act or the bylaws of the company require it.

(3) Dans le cas d'une personne morale, il n'est pas nécessaire que la procuration soit marquée du sceau de la société, à moins que les statuts constitutifs ou les règlements administratifs de la personne morale ne l'exigent.

(4) The person designated in a proxy cannot be substituted unless the proxy provides for a power of substitution.

(4) La personne désignée sur la procuration ne peut être substituée, à moins que la procuration ne prévoie un pouvoir de substitution.

11. If a proxy is signed in blank and sent to the trustee, there is a tacit authority for the trustee to vote with the said proxy.

11. Si un formulaire de procuration est envoyé au syndic, signé en blanc, il y a autorisation tacite pour que le syndic puisse voter avec ladite procuration.

Objection to the proof of claim

Contestation de preuve de réclamation

12. (1) For the purpose of a quorum or voting, when ruling on the admissibility of a proof of claim, or any part thereof, the chair must ensure that the documents are in their prescribed form and available at that time.

12.(1) Pour décider si une preuve de réclamation, ou une partie de celle-ci, est recevable aux fins du quorum ou du vote, le président doit s'assurer que les documents sont en leur forme prescrite et disponibles à ce moment-là.

(2) Pursuant to subsection 108(3) of the Act, the proof of claim should only be marked as "objected to" when the chair is in doubt as to whether or not a proof of claim should be admitted or rejected. If a proof of claim is marked as "objected to," the creditor shall be allowed to vote subject to the vote being

(2) Aux fins du paragraphe 108(3) de la Loi, c'est seulement lorsque le président doute de l'admissibilité d'une preuve de réclamation qu'il doit noter la preuve de réclamation comme « contestée ». Lorsqu'une preuve de réclamation est notée comme « contestée », le créancier a le droit de voter, sous réserve

declared invalid in the event of the objection being sustained.

d'invalidation du vote au cas où la contestation serait maintenue.

Failure to establish a quorum at the first meeting of creditors

Absence de quorum à la première assemblée des créanciers

13. Subsection 106(2) of the Act establishes the procedure to be followed where there is no quorum at the first meeting of creditors. In this circumstance, the appointment of the trustee is deemed confirmed and the chair can either adjourn the meeting to a new time or place or may adjourn the meeting without fixing a time or place for a future meeting.

13. Le paragraphe 106(2) de la Loi énonce la procédure à suivre en cas de défaut de quorum à la première assemblée des créanciers. En l'occurrence, le syndic est réputé être confirmé dans ses fonctions et le président peut ajourner l'assemblée soit à une date ultérieure, soit à une date indéterminée.

14. In a Division I Proposal, subsection 54(2.2) of the Act provides that where there is no quorum of secured creditors in respect of a particular class, that class shall be deemed to have voted for the refusal of the proposal.

14. Pour les fins d'une proposition déposée aux termes de la section I, le paragraphe 54(2.2) de la Loi énonce qu'en cas de défaut de quorum des créanciers garantis dans le cas d'une des catégories de créances garanties, cette catégorie est réputée avoir voté en faveur du rejet de la proposition.

15. In a Division II Proposal, subsection 66.18(2) of the Act provides that where there is no quorum at a meeting of creditors, the consumer proposal shall be deemed to be accepted by the creditors.

15. Pour les fins d'une proposition déposée aux termes de la section II, le paragraphe 66.18(2) de la Loi énonce qu'en cas de défaut de quorum à l'assemblée des créanciers, la proposition de consommateur est réputée avoir été acceptée par les créanciers.

16. It would be considered proper for the trustee to contact creditors to encourage their participation or presence at any meeting of creditors.

16. Il est acceptable pour le syndic de communiquer avec les créanciers afin de les encourager à participer ou à être présents aux assemblées des créanciers.

Coming into Force

17. Directive 22R comes into force on May 10, 2010.

Entrée en vigueur

17. L'instruction n° 22R entre en vigueur le 10 mai 2010.

Enquiries

18. For any questions pertaining to this Directive, please contact your local OSB office.

Demandes de renseignements

18. Pour toute question se rapportant à la présente instruction, veuillez communiquer avec le bureau du BSF le plus proche.

James Callon
Superintendent of Bankruptcy / Surintendant des faillites

CHECKLIST FOR PROOF OF CLAIM

This checklist is provided to assist you in preparing the proof of claim form and, if appropriate, the proxy form in a complete and accurate manner. Please check each requirement.

GENERAL

- The signature of a witness is required.
- The document must be signed by the individual completing the declaration.
- Provide the complete address where all notices or correspondence are to be forwarded along with your phone number, fax number and email address where appropriate.

Notes:

- It is permissible to file a proof of claim by fax.
- A creditor may vote either in person or by proxy at any meeting of creditors if the proof of claim is filed with the trustee prior to the time appointed for the meeting.
- A quorum at any meeting of creditors is at least one creditor with a valid proof of claim in attendance in person or by proxy.
- A corporation may vote by an authorized agent or mandatary at meetings of creditors.
- In order for a duly authorized person to have a right to vote, they must be a creditor or be the holder of a properly executed proxy. The name of the creditor must appear in the proxy.
- A creditor who is participating in any distribution from an estate must have filed a proof of claim prior to the distribution being declared.
- In the case of an individual bankrupt, by checking the appropriate box or boxes at the bottom of the proof of claim form, you may request that the trustee advise you of any material change in the financial situation of the bankrupt or the amount the bankrupt is required to pay into the bankruptcy, and a copy of the trustee's report on the discharge of the bankrupt.

PARAGRAPH 1

- Creditor must state full and complete legal name of the individual, company or firm.
- If the individual completing the proof of claim is a representative of the creditor, the individual's position or title must be identified.

PARAGRAPH 3

- The amount owing must be set out in paragraph 3.
- A detailed statement of account must be attached to the proof of claim and marked "Schedule A" and must show the date, number and amount of all invoices or charges, together with the date, number and amount of all credits or payments. The amount on the statement of account must correspond to the amount indicated on the proof of claim.

PARAGRAPH 4

Notes:

- Paragraph A applies to *ordinary unsecured claims*. In addition to recording the amount of the claim, please indicate whether the claim has a priority pursuant to section 136 of the Act.
- Paragraph B applies to *lessor claims* in a commercial proposal. Please ensure that the claim applies to a commercial proposal and, if so, include the full particulars of the claim.
- Paragraph C applies to *secured claims*. Please indicate the dollar value of the security and attach copies of the security document. In addition, please attach copies of the security registration documents, where appropriate.
- Paragraph D applies to *inventory claims of farmers, fishermen and aquaculturists*. Please note that such claims apply only to inventory supplied from farmers, fishermen and aquaculturists within 15 (fifteen) days of the date of bankruptcy. In addition, please attach copies of any applicable sales agreements and delivery slips.
- Paragraph E applies to *claims by wage earners*. Please note that such claims apply only for unpaid wages owed upon the bankruptcy of an employer or when the employer becomes subject to a receivership.

- Paragraph F applies to *claims by employees for unpaid amounts regarding pension plans*. Please note that such claims apply only to unremitted pension contributions outstanding when the sponsoring employer becomes bankrupt or is subject to a receivership.

- Paragraph G applies to *claims against directors*. Please note that such claims apply only to directors of corporations that have filed a commercial proposal to creditors that includes a compromise of statutory claims against directors.

- Paragraph H applies to *claims of customers of a bankrupt securities firm*. Please ensure that the claim of the customer is for net equity and, if so, include the full particulars of the claim, including the calculations upon which the claim is based.

PARAGRAPH 5

- All claimants must indicate whether or not they are related to the debtor, as defined in section 4 of the Act, or dealt with the debtor in a non-arm's-length manner.

PARAGRAPH 6

- All claimants must attach a detailed list of all payments or credits received or granted, as follows:

  (a) within the three (3) months preceding the initial bankruptcy event (including the bankruptcy or the proposal);

  (b) within the twelve (12) months preceding the initial bankruptcy event (including the bankruptcy or the proposal) in the case where the claimant and the debtor were not dealing at arm's length.

- PROXYHOLDER -

NOTE

The Act permits a proof of claim to be made by a duly authorized representative of a creditor but, in the absence of a properly executed proxy, does not give such an individual the power to vote at the first meeting of creditors nor to act as the proxyholder of the creditors.

GENERAL

- In order for duly authorized persons to have a right to vote, they must themselves be creditors or be the holders of a properly executed proxy. The name of the creditor must appear in the proxy.

Notes:

- A creditor may vote either in person or by proxyholder.
- A proxy may be filed at any time prior to a vote at a meeting of creditors.
- A proxy can be filed with the trustee in person, by mail or by any form of telecommunication.
- A proxy does not have to be under the seal of a corporation unless required by its incorporating documents or its bylaws.
- The individual designated in a proxy cannot be substituted unless the proxy provides for a power of substitution.
- Bankrupts/debtors may not be appointed as proxyholders to vote at any meeting of their creditors.
- The trustee may be appointed as a proxyholder for any creditor.
- A corporation cannot be designated as a proxyholder.

ANNEXE A

LISTE DE CONTRÔLE POUR LES PREUVES DE RÉCLAMATION

La présente liste de contrôle vous aidera à remplir correctement la preuve de réclamation et, s'il y lieu, la procuration. Veuillez vérifier chacun des points mentionnés.

GÉNÉRALITÉS

- La signature d'un témoin est nécessaire.

- Le document doit être signé par la personne qui le remplit.

- Indiquez l'adresse complète à laquelle tous les avis ou toutes les lettres devront être envoyés (avec le numéro de téléphone, le numéro de télécopieur et, s'il y a lieu, l'adresse électronique).

Remarques :

- Une preuve de réclamation peut être déposée par télécopieur.

- Un créancier peut voter personnellement ou au moyen d'une procuration aux assemblées des créanciers, pourvu que la preuve de réclamation ait été dûment remise au syndic avant le moment fixé pour l'assemblée.

- Le quorum à une assemblée des créanciers est constitué lorsqu'un seul créancier ayant une réclamation prouvée est présent en personne ou par procuration.

- Une personne morale peut voter par un mandataire autorisé aux assemblées des créanciers.

- Pour qu'une personne dûment autorisée ait le droit de voter, elle doit elle-même être créancier ou détenir une procuration en règle. Le nom du créancier doit figurer sur le formulaire de procuration.

- Un créancier a le droit de partage dans la distribution d'un actif pourvu que la preuve de réclamation ait été déposée avant la déclaration de la distribution.

- Dans le cas de la faillite d'un particulier, en cochant la case ou les cases appropriée(s) à la fin du formulaire de la preuve de réclamation, vous pouvez demander au syndic de vous aviser de tout changement important quant à la situation financière du failli ou de toute modification au montant que le failli doit verser à l'actif de la faillite, ou demander une copie du rapport rempli par le syndic quant à la demande de libération du failli.

PARAGRAPHE 1

- Le créancier doit fournir le nom légal au complet du particulier, de la société ou de l'entreprise.

- Si la preuve de réclamation est faite par une personne autorisée à agir au nom du créancier, cette personne doit déclarer sa position ou son titre.

PARAGRAPHE 3

- Le montant à inscrire à titre de dette doit figurer au paragraphe 3.

- Un état de compte détaillé doit être joint à la preuve de réclamation et indiquer la date, le numéro et le montant de toutes les factures ou de tous les comptes ainsi que la date, le numéro et le montant de tous les crédits ou paiements. Le montant inscrit à l'état de compte doit correspondre au montant inscrit sur la preuve de réclamation.

PARAGRAPHE 4

Remarques :

- L'alinéa *a)* s'applique aux *réclamations non garanties.* En plus d'inscrire le montant de la réclamation, veuillez indiquer si la réclamation a un rang prioritaire en vertu de l'article 136 de la Loi.

- L'alinéa *b)* s'applique aux *réclamations des locateurs* dans le cadre d'une proposition commerciale. Veuillez vous assurer que la réclamation se rapporte à une proposition commerciale et, si tel est le cas, veuillez donner tous les détails de la réclamation.

- L'alinéa *c)* s'applique aux *réclamations garanties.* Veuillez indiquer la valeur attribuable à la garantie et joindre une copie des documents relatifs à la garantie. De plus, veuillez annexer une copie des documents relatifs à l'enregistrement de la garantie.

- L'alinéa *d)* s'applique aux *réclamations des agriculteurs, des pêcheurs ou des aquiculteurs.* Veuillez noter que la garantie n'est valable que si les produits d'un agriculteur, d'un pêcheur ou d'un aquiculteur ont été livrés dans les quinze (15) jours précédant la date de la faillite. Veuillez annexer, le cas échéant, une copie de la convention de vente et du bordereau de livraison.

- L'alinéa *e)* s'applique aux *réclamations des salariés.* Veuillez noter que de telles réclamations sont possibles uniquement en cas de faillite ou de mise sous séquestre de l'employeur, au bénéfice des employés pour le paiement des salaires non payés.

- L'alinéa *f)* s'applique aux *réclamations des employés relatives au régime de pension.* Veuillez noter que de telles réclamations concernent les cotisations au fonds de retraite non versées qui demeurent en souffrance au moment de la faillite ou d'une mise sous séquestre de l'employeur.

- L'alinéa *g)* s'applique aux *réclamations contre les administrateurs.* Veuillez noter que de telles réclamations sont possibles uniquement lorsqu'une proposition commerciale est déposée et qu'elle comporte, au profit des créanciers, des dispositions relatives à une transaction sur les réclamations contre les administrateurs.

- L'alinéa *h)* s'applique aux *réclamations des clients d'un courtier en valeurs mobilières failli.* Veuillez vous assurer que la réclamation se rapporte à une réclamation de client pour des capitaux nets et, si tel est le cas, veuillez donner tous les détails de la réclamation, y compris les calculs s'y repportant.

PARAGRAPHE 5

- En vertu de la définition de l'article 4 de la Loi, tous les demandeurs doivent indiquer s'ils sont liés ou non liés avec le débiteur, ou s'ils ont un lien de dépendance avec ce dernier.

PARAGRAPHE 6

- Tous les demandeurs doivent joindre une liste détaillée de tous les paiements ou crédits reçus ou consentis :

  a) dans les trois (3) mois précédant l'ouverture de la faillite ou la proposition;

  b) dans les douze (12) mois précédant l'ouverture de la faillite ou la proposition, si le débiteur et le créancier ont un lien de dépendance.

– PROCURATION –

REMARQUE

La Loi autorise qu'une preuve de réclamation soit préparée par le représentant dûment autorisé du créancier. Toutefois, en l'absence d'une procuration dûment remplie, cette personne n'a pas le droit de vote à la première assemblée des créanciers ni le droit d'agir à titre de fondé de pouvoir des créanciers.

GÉNÉRALITÉS

- Pour qu'une personne dûment autorisée ait le droit de voter, elle doit elle-même être créancier ou détenir une procuration en règle. Le nom du créancier doit figurer sur la procuration.

Remarques :

- Un créancier peut voter en personne ou par procuration.

- La procuration peut être déposée en tout temps avant le moment fixé pour le vote à l'assemblée des créanciers.

- Une procuration peut être déposée auprès du syndic, en personne, par courrier ou par tout moyen de télécommunication.

- Dans le cas d'une personne morale, il n'est pas nécessaire que la procuration soit marquée du sceau de la société, à moins que les statuts constitutifs ou les règlements administratifs de la personne morale ne l'exigent.

- La personne désignée sur la procuration ne peut être substituée, à moins que la procuration ne prévoie un pouvoir de substitution.

- Un failli ou un débiteur ne peut voter par procuration à aucune assemblée de ses créanciers.

- Le syndic peut être nommé fondé de pouvoir de tout créancier.

- Une personne morale ne peut être nommée fondé de pouvoir.

APPENDIX B

Type of Creditor	Quorum	Motion	Ordinary Vote	Proposal Vote	Special Resolution	Comments
Fully or partly secured creditor (secured balance)	Y[1]	N[2]	N	Y	N	In a <u>proposal</u>, can only vote and be included in the quorum in its class. In a <u>bankruptcy</u>, cannot vote and cannot be included in the quorum.
Unsecured creditor	Y	Y	Y	Y	Y	Includes the unsecured portion of a partly secured claim.
Creditor with an undischargeable debt (section 178 of the Act)	Y	Y	Y	Y	Y	

[1] Y = yes

[2] N = no

Type of Creditor	Quorum	Motion	Ordinary Vote	Proposal Vote	Special Resolution	Comments
Creditor with a contingent claim	N	N	N	N	N	Does not have a provable claim until it has been valued by the trustee (subsection 135(1.1) of the Act).
Creditor with an objected claim	Y	Y	Y	Y	Y	A creditor with an objected claim can vote subject to the vote being declared invalid by the Court (subsection 108(3) of the Act).
Creditor with a disallowed claim	N	N	N	N	N	
Creditor voting by voting letter in a proposal	Y	N	N	Y	N	

Type of Creditor	Quorum	Motion	Ordinary Vote	Proposal Vote	Special Resolution	Comments
Claim of related party	Y	Y	Y	Y*	Y	* May vote against but not for a proposal (subsection 54(3) of the Act). Cannot vote for the appointment of trustee but with Court permission can vote for the appointment of inspectors (subsection 113(3) of the Act).
Claim of employees and directors	Y	Y	Y	Y	Y	Cannot vote for the appointment of trustee or inspectors (subsection 113(3) of the Act).

Type of Creditor	Quorum	Motion	Ordinary Vote	Proposal Vote	Special Resolution	Comments
Trustee holding a proxy for a creditor	Y	Y	Y	Y	Y	Cannot vote on remuneration or conduct (subsection 113(2) of the Act).
Creditor not dealing at arm's length in the year prior to the initial bankruptcy event	Y	Y	Y	Y	Y	Permitted to vote, but if vote is determinative of outcome, chair redetermines outcome by excluding that vote. Redetermined outcome is the outcome unless an application is made and court determines another outcome (subsection 109(6) of the Act).

Type of Creditor	Quorum	Motion	Ordinary Vote	Proposal Vote	Special Resolution	Comments
Claims acquired after bankruptcy	Y	Y	Y	Y	Y	Can vote only if the entire claim is acquired (subsection 110(1) of the Act).
Creditor secured by bill or note	Y	Y	Y	Y	Y	Can vote on the amount owing after deducting amounts recoverable from antecedent makers (section 111 of the Act)[3].
Creditor with a proof of claim (property)	N	N	N	N	N	Not a creditor (section 81 of the Act).

3 If a creditor has a claim secured by a bill of exchange or promissory note, that creditor must deduct from the claim for voting purposes the amount(s) recoverable from all prior makers of the note. This has no application where a promissory note is joint and several.

ANNEXE B

Genre de créancier	Quorum	Motion	Résolution ordinaire Vote	Proposition Vote	Résolution spéciale	Commentaires
Créancier entièrement ou partiellement garanti (solde garanti)	O[1]	N[2]	N	O	N	Dans le cas d'une proposition, il vote par catégorie et ce vote est compté pour les fins du quorum de cette catégorie. Dans le cas d'une faillite, ce créancier n'a pas le droit de vote.
Créancier non garanti	O	O	O	O	O	Inclut le montant non garanti d'une créance partiellement garantie

[1] O = oui

[2] N = non

Genre de créancier	Quorum	Motion	Résolution ordinaire Vote	Proposition Vote	Résolution spéciale	Commentaires
Créancier ayant une réclamation pour dette non libérable (article 178 de la Loi)	O	O	O	O	O	
Créancier ayant une réclamation éventuelle	N	N	N	N	N	Cette réclamation n'est pas une réclamation prouvable avant que le syndic l'évalue (paragraphe 135 [1.1] de la Loi).
Créancier ayant une réclamation contestée	O	O	O	O	O	Un créancier ayant une réclamation contestée peut voter, sous réserve d'invalidation du vote par le tribunal (paragraphe 108[3] de la Loi).
Créancier ayant une créance rejetée	N	N	N	N	N	

Genre de créancier	Quorum	Motion	Résolution ordinaire Vote	Proposition Vote	Résolution spéciale	Commentaires
Créancier votant par formulaire de votation	O	N	N	O	N	
Réclamation d'un créancier lié	O	O	O	O*	O	* Le créancier lié peut voter contre, mais non pour l'acceptation de la proposition (paragraphe 54[3] de la Loi). Le créancier lié n'a pas le droit de voter pour la nomination d'un syndic mais, avec l'autorisation du tribunal, a le droit de voter pour la nomination d'inspecteurs (paragraphe 113 [3] de la Loi).

Genre de créancier	Quorum	Motion	Résolution ordinaire Vote	Proposition Vote	Résolution spéciale	Commentaires
Réclamation d'un employé ou d'un administrateur	O	O	O	O	O	L'employé ou l'administrateur n'a pas le droit de voter pour la nomination d'un syndic ou d'inspecteurs (paragraphe 113[3] de la Loi).
Syndic agissant à titre de fondé de pouvoir d'un créancier	O	O	O	O	O	Le syndic agissant à titre de fondé de pouvoir d'un créancier ne peut voter pour sa rémunération ou sa conduite (paragraphe 113 [2] de la Loi).

Genre de créancier	Quorum	Motion	Résolution ordinaire Vote	Proposition Vote	Résolution spéciale	Commentaires
Créancier ayant un lien de dépendance au cours de l'année précédant l'ouverture de la faillite	O	O	O	O	O	Ce créancier peut voter, mais si le vote a influé sur le résultat du vote, le président établit un nouveau résultat en excluant ce vote. Le nouveau résultat est définitif à moins que le tribunal ne détermine un autre résultat (paragraphe 109[6] de la Loi).
Créance obtenue après la faillite	O	O	O	O	O	Ce créancier peut voter seulement si la réclamation a été acquise en entier (paragraphe 110[1] de la Loi).

Genre de créancier	Quorum	Motion	Résolution ordinaire Vote	Proposition Vote	Résolution spéciale	Commentaires
Créancier garanti par lettre de change ou billet	O	O	O	O	O	Le créancier peut voter pour le montant qui lui est dû, déduction faite des montants reçus antérieurement (article 111 de la Loi)[3].
Personne réclamant des biens ou un intérêt dans des biens en possession d'un failli	N	N	N	N	N	Cette personne n'est pas un créancier (article 81 de la Loi).

[3] Si un créancier possède une réclamation garantie par une lettre de change courante ou un billet à ordre, ce créancier doit, pour les fins de la votation, évaluer sa garantie et déduire tous montants reçus antérieurement. Cette disposition ne s'applique pas si le billet à ordre est conjoint et individuel.

TAB 5

1975 CarswellOnt 86
Ontario Supreme Court, In Bankruptcy

G. Totton Publishers Ltd., Re

1975 CarswellOnt 86, 20 C.B.R. (N.S.) 140

Re G. Totton Publishers Limited

J. M. Ferron, Q.C., Registrar

Judgment: May 29, 1975

Counsel: *J. Berman* and *S. Rubin*, for debtor company.
M. Lipton, for trustee.
D. Shaw, for creditor.

Subject: Corporate and Commercial; Insolvency
Related Abridgment Classifications
Bankruptcy and insolvency
IX Proving claim
IX.4 Practice and procedure
IX.4.a Form of proof
Headnote
Bankruptcy --- Proving claim — Practice and procedure — Form of proof
Proof of claim — Contents — Necessity for indicating whether claimant is secured or preferred creditor — The Bankruptcy Act, R.S.C. 1970, c. B-3, s. 97(5) — Form 50.
Section 97(5) of the Act states that a proof of claim filed by a creditor shall state whether the creditor is or is not a secured or preferred creditor. Accordingly, a creditor, in completing Form 50, must strike out the inappropriate subparagraph of para. 4 and indicate positively whether or not he is a secured or a preferred creditor. The paragraph is not directional, but a mandatory provision of the Act. Not properly completing the proof of claim in this respect entails that the chairman at the meeting cannot, on the basis of the proof of claim, ascertain the status of the creditor for purposes of voting.
Where a creditor in his proof of claim did not state whether he was a preferred or secured creditor, *held*, the proof of claim did not meet the minimum requirements of the Act and accordingly the proof of claim was not a valid and subsisting proof of claim and the claimant was not entitled to vote at the meeting of creditors.
The Court further indicated that an omission by the claimant to state whether he and the debtor were related was also a significant omission in the proof of claim.
Table of Authorities
Cases considered:
Re D. W. McIntosh Ltd. (1939), 20 C.B.R. 267 at 274 (Ont.) — *applied*

***Ferron*, Registrar:**

1 This is an application brought by the trustee under the proposal of G. Totton Publishers Limited for direction pursuant to s. 16 of the Bankruptcy Act, R.S.C. 1970, c. B-3, as follows:

2 (1) Is the proof of claim filed on behalf of Gage Educational Publishing Limited, a creditor of G. Totton Publishers Limited, a valid and subsisting proof of claim?

3 (2) If the answer to (1) is "yes", is the said creditor entitled to vote on the proposal of G. Totton Publishers Limited?

4 Gage Educational Publishing Limited (referred to hereinafter as "Gage") filed a proof of claim with the trustee in the amount of $10,242. The proof of claim is executed by Dr. M. O. Edwardh who is described as the president of Gage.

5 Paragraph 3 of the proof of claim inserts the date of the proposal in the amount of the indebtedness claimed.

6 Paragraphs 4, 5, and 6 of the proof of claim present some difficulties.

7 Paragraph 4 of the prescribed proof of claim form (Form 50) requires the creditor to indicate whether he holds security or claims of priority. If he holds security, he is required to value the same and if he claims a preferred position, he must indicate this in a positive way.

8 Section 46(1) of the Act provides that all the provisions of the Act, so far as they are applicable, apply mutatis mutandis to proposals. Subsection (1) of s. 97 provides that every creditor shall prove his claim. Of course, a creditor need not prove a claim, but if he does not prove a claim then he is not entitled to share in any distribution of the estate. Once, however, the creditor files his claim, the provisions of the Act are mandatory and strictly construed. This is clear from *Re London Bridge Works Ltd.*, 31 O.W.N. 172, 8 C.B.R. 73, [1926] 4 D.L.R. 1121, where Fisher J. said at p. 78:

> The rule that a creditor must file a claim within a certain time is only directory, but when a creditor prepares a declaration of proof *The Bankruptcy Act* [1919 (Can.), c. 36] is mandatory and must be strictly complied with, and if the Act is not complied with the proof of claim cannot be admitted by the chairman.

9 Subsection (5) of s. 97 states that the proof of claim filed by a creditor shall state whether the creditor is or is not a secured or preferred creditor. Accordingly, a creditor, in completing Form 50, must strike out the inappropriate subparagraph of para. 4 and indicate positively whether or not he is a secured or a preferred creditor. The paragraph is not directional but a mandatory provision of the Act. When I turn to the proof of claim before me, I find that para. 4 has not been completed as required and that the creditor has ignored the plain, peremptory requirements of the Act. The chairman of the meeting held to consider the proposal could not, on the basis of the proof of claim, ascertain the status of the creditor for purposes of voting.

10 It was argued that the Bankruptcy Act is a businessman's Act, and accordingly, some considerable latitude must be given to creditors with respect to the proof of claim, inasmuch as creditors usually complete the proof of claim without legal assistance. Certainly, the Court should not be unduly technical, but should require nevertheless that creditors use a minimum of care in the completion of the proof. It seems to me to be manifest that unless para. 4 is completed, the proof of claim, insofar at least as voting is concerned, is useless. In *Re D. W. McIntosh Ltd.* (1939), 20 C.B.R. 267 (Ont.), Urquhart J., after commenting on the manner in which proofs of claims had been completed, said [p. 274]:

> If creditors expect to vote at meetings of creditors they must reasonably comply with the above requirements. If there is a typographical error or if a date or something else is left out, obviously through inadvertence, this may be overlooked.

11 In dealing with the completion of the proof of claim, as the same was then prescribed, the Court was most specific in requiring that a creditor indicate whether or not he held security. Urquhart J. in the case which I have mentioned above said at p. 274:

> A creditor therefore cannot leave the security clause entirely blank but if he fills in the name of the creditor and omits to strike out the words 'save and except the following' at the end, or if he adds the words 'nil' or 'no exceptions' or something of that sort, after the above words of exception in each case, the form would mean, in my opinion, that he has no security and that there is no exception and that would be a sufficient compliance with the subsection.

12 In *Re Corduroys Unlimited Inc.; Grobstein and Lawrence v. Can. Corduroys Ltd.* (1962), 4 C.B.R. (N.S.) 250 (Que.), Hannen J. sought to draw a distinction in the degree of precision in the preparation of proofs of claim, between those prepared by "a workman or a pure civilian" and "a trader". I am not entirely satisfied that I agree with that distinction

but I suppose it is reasonable to expect that a trader might, by reason of his business experience, have more familiarity with the Act and the requirements of those sections which would most affect him. It is to be noted that the current proof of claim is considerably simplified over the proof of claim declaration discussed in the *McIntosh* case, and it is to be noted that the proof of claim form contains marginal notes, which clearly set out what is required with respect to several paragraphs.

13 Section 87 of the Act provides that:

> 87. (1) A person is not entitled to vote as a creditor at any meeting of creditors unless he has duly proved a claim provable in bankruptcy and the proof of claim has been duly lodged with the trustee before the time appointed for the meeting.

14 The phrase "duly prove" means duly proved according to the Bankruptcy Act and the Rules. Accordingly, unless the proof of claim is in proper form, the creditor's claim is not duly proved, and he is not entitled to vote.

15 Paragraph 5 of the proof of claim requires the claimant to indicate to the best of his knowledge and belief, whether the creditor and the debtor are related, as s. 4 defines that term. It is most important that this provision be complied with, since a related person is entitled to vote against, but not in favour of a proposal as s. 35(3) provides. One can see the absolute necessity for the proper completion of that paragraph in connection with the voting on this proposal. The proof of claim before me does not indicate whether or not the creditor and the debtor are in any way related.

16 The creditor has, in accordance with para. 6 of the proof, attached a statement showing the dates of invoices, the invoice numbers, certain particulars, and the value of each invoice. The date of the proposal is 27th March 1975, and the first invoice date is shown as 20th September 1974. The creditor is required to provide particulars of payments and credits within the three-month period preceding the date of the proposal, but if the creditor and debtor are related, the period is extended to 12 months. Since para. 5, as I have indicated, had not been properly completed, it is not possible to know whether the statement provided is sufficient or not.

17 In the end result, I find that the proof of claim does not meet the minimum requirements of the Act, and accordingly, question (1), set out in the notice of motion, is answered in the negative. There is no need to deal with the second question.

End of Document

TAB 6

2004 BCCA 37
British Columbia Court of Appeal

Port Chevrolet Oldsmobile Ltd., Re

2004 CarswellBC 354, 2004 BCCA 37, [2004] G.S.T.C. 8, [2004] B.C.W.L.D. 369, [2004] B.C.J. No. 101, 128 A.C.W.S. (3d) 436, 193 B.C.A.C. 114, 23 B.C.L.R. (4th) 335, 316 W.A.C. 114, 49 C.B.R. (4th) 146

In the Matter of the Bankruptcy and Insolvency Act

In the Matter of the Proposal of Port Chevrolet Oldsmobile Ltd.

Ryan, Newbury, Levine JJ.A.

Heard: November 24, 2003
Judgment: January 26, 2004
Docket: Vancouver CA030337, CA030338

Proceedings: affirming (2002), 2002 BCSC 1874, 2002 CarswellBC 3602, [2003] G.S.T.C. 168 (B.C. S.C. [In Chambers]); and affirming (2002), 2002 CarswellBC 3661 (B.C. S.C. [In Chambers])

Counsel: D.G. Nygard for Appellant, Minister of National Revenue
J.F. Grieve for Respondent, Port Chevrolet Oldsmobile Ltd.
B.J. Ingram for Respondent, PricewaterhouseCoopers as Trustee

Subject: Insolvency; Goods and Services Tax (GST)
Related Abridgment Classifications
Bankruptcy and insolvency
IX Proving claim
IX.1 Provable debts
IX.1.c Contingent claims
Bankruptcy and insolvency
IX Proving claim
IX.4 Practice and procedure
IX.4.a Form of proof
Tax
III Goods and Services Tax
III.12 Special rules
III.12.c Bankruptcy
Headnote
Taxation --- Goods and services tax — Special rules — Bankruptcy
Canada Customs and Revenue Agency (CCRA) assessed car dealership on July 9, 2002 for $16,436,009.96 of unremitted GST based on allegations of fraud — Dealership filed notice of intention to make proposal under Bankruptcy and Insolvency Act (BIA) on July 10, 2002 to forestall CCRA's collection efforts — Dealership claimed it was not knowingly involved in fraud and filed notice of objection to assessment in September 2002 — CCRA filed proof of claim with trustee one day before first meeting of creditors for $15,864,279 — Trustee determined that CCRA's claim was contingent and disallowed it for voting purposes — Remaining creditors approved proposal by 98 percent — CCRA's appeal from disallowance of its proof of claim for voting purposes at meeting of creditors was dismissed — Dealership's proposal was approved by court — CCRA appealed from disallowance and from approval of proposal — Appeal dismissed — When advancing claim under BIA, CCRA was not exempt from complying with applicable provisions regarding proof

of claim — Parties agreed that appeal from trustee's decision was trial de novo, upon which chambers judge could consider further evidence — No doubt that chambers judge considered all evidence before her — Claim did not contain or refer to statement of accounting showing particulars — Claim did not refer to allegations of fraud, nor to evidence by which claim could be substantiated — Claim failed to explain discrepancy between amount in claim and amount in notice of assessment — Possibility existed that claim was inaccurate, and did not reflect payments made by dealership — Additional documents provided by CCRA were series of conclusory accounts which provided trustee no assistance in determining validity of claim — Chambers judge did not err by concluding that documents filed by CCRA did not comply with s. 124(4) of BIA — Excise Tax Act, R.S.C. 1985, c. E-15, ss. 299(3), (4), 313(1), 315(2).

Taxation --- Goods and services tax — Administration and enforcement — Collection remedies — General

Canada Customs and Revenue Agency (CCRA) assessed car dealership on July 9, 2002 for $16,436,009.96 of unremitted GST based on allegations of fraud — Dealership filed notice of intention to make proposal under Bankruptcy and Insolvency Act (BIA) on July 10, 2002 to forestall CCRA's collection efforts — Dealership claimed it was not knowingly involved in fraud and filed notice of objection to assessment in September 2002 — CCRA filed proof of claim with trustee one day before first meeting of creditors for $15,864,279 — Trustee determined that CCRA's claim was contingent and disallowed it for voting purposes — Remaining creditors approved proposal by 98 percent — CCRA's appeal from disallowance of its proof of claim for voting purposes at meeting of creditors was dismissed — Dealership's proposal was approved by court — CCRA appealed from disallowance and from approval of proposal — Appeal dismissed — When advancing claim under BIA, CCRA was not exempt from complying with applicable provisions regarding proof of claim — Parties agreed that appeal from trustee's decision was trial de novo, upon which chambers judge could consider further evidence — No doubt that chambers judge considered all evidence before her — Claim did not contain or refer to statement of accounting showing particulars — Claim did not refer to allegations of fraud, nor to evidence by which claim could be substantiated — Claim failed to explain discrepancy between amount in claim and amount in notice of assessment — Possibility existed that claim was inaccurate, and did not reflect payments made by dealership — Additional documents provided by CCRA were series of conclusory accounts which provided trustee no assistance in determining validity of claim — Chambers judge did not err by concluding that documents filed by CCRA did not comply with s. 124(4) of BIA — Excise Tax Act, R.S.C. 1985, c. E-15, ss. 299(3), (4), 313(1), 315(2).

Bankruptcy and insolvency --- Proving claim — Provable debts — Contingent claims

Canada Customs and Revenue Agency (CCRA) assessed car dealership on July 9, 2002 for $16,436,009.96 of unremitted GST based on allegations of fraud — Dealership filed notice of intention to make proposal under Bankruptcy and Insolvency Act (BIA) on July 10, 2002 to forestall CCRA's collection efforts — Dealership claimed it was not knowingly involved in fraud and filed notice of objection to assessment in September 2002 — CCRA filed proof of claim with trustee one day before first meeting of creditors for $15,864,279 — Trustee determined that CCRA's claim was contingent and disallowed it for voting purposes — Remaining creditors approved proposal by 98 percent — CCRA's appeal from disallowance of its proof of claim for voting purposes at meeting of creditors was dismissed — Debtor's proposal was approved by court — CCRA appealed from disallowance and from approval of proposal — Appeal dismissed — When advancing claim under BIA, CCRA was not exempt from complying with applicable provisions regarding proof of claim — Parties agreed that appeal from trustee's decision was trial de novo, upon which chambers judge could consider further evidence — No doubt that chambers judge considered all evidence before her — Claim did not contain or refer to statement of accounting showing particulars — Claim did not refer to allegations of fraud, nor to evidence by which claim could be substantiated — Claim failed to explain discrepancy between amount in claim and amount in notice of assessment — Possibility existed that claim was inaccurate, and did not reflect payments made by dealership — Additional documents provided by CCRA were series of conclusory accounts which provided trustee no assistance in determining validity of claim — Chambers judge did not err by concluding that documents filed by CCRA did not comply with s. 124(4) of BIA.

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s. 69 — referred to

s. 124 — considered

s. 124(1) — considered

s. 124(4) — considered

s. 135(1) — referred to

s. 135(2) — referred to

s. 135(4) — referred to

s. 136(1) — considered

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s. 124 — considered

Excise Tax Act, R.S.C. 1985, c. E-15

Pt. IX [en. 1990, c. 45, s. 12(1)] — considered

APPEALS by Canada Customs and Revenue Agency (CCRA) from judgments reported at *Port Chevrolet Oldsmobile Ltd., Re* (2002), 2002 BCSC 1874, 2002 CarswellBC 3602, [2003] G.S.T.C. 168 (B.C. S.C. [In Chambers]) and *Port Chevrolet Oldsmobile Ltd., Re* (2002), 2002 CarswellBC 3661, 49 C.B.R. (4th) 127 (B.C. S.C. [In Chambers]) upholding trustee's disallowance of proof of claim and approval of debtor's proposal.

***Newbury J.A.*:**

1 The respondent Port Chevrolet Oldsmobile Ltd. ("Port") has carried on business as an automobile dealership in the lower mainland of British Columbia for some years. On July 9, 2002, the appellant Canada Customs and Revenue Agency ("CCRA") issued a Notice of Assessment to Port under the *Excise Tax Act*, R.S.C. 1985, c. E-15, for the sum of $16,436,009.96 in respect of a 43-month period ending in October 1998. According to the Notice, the assessment represented "adjustments to input tax credits" of $8,651,572.86, a penalty of $3,201,994.73, interest of $2,419,549.16 and "other penalty" of $2,162,893.21.

2 Port denied liability for the amount assessed and began preparing a Notice of Objection to Assessment in the form required by the *Excise Tax Act*. The Objection stated in part:

> 2. The Taxpayer was fraudulently induced by Sameer Mapara to purchase vehicles that it believed existed (the "Vehicles") from one or more companies associated with Sameer Mapara ("Mapara's Companies").
>
> 3. The Vehicles were purchased during the reporting periods from April 1, 1995 to October 31, 1998 (the "Reporting Periods").
>
> 4. The Taxpayer paid goods and services tax ("GST") to Mapara's Companies on the purchase of the Vehicles and claimed input tax credits ("ITCs") in respect of that tax.
>
> 5. The Taxpayer was then fraudulently induced by Mapara to resell the Vehicles to Mapara's Companies for export.
>
> 6. The Taxpayer did not collect GST on the subsequent resale of Vehicles to Mapara's Companies as it understood that the Vehicles were being purchased for export.

. . .

> 11. The Taxpayer was defrauded by Mapara and Mapara's Companies into believing that the Vehicles existed and were owned [by] Mapara's Companies and were being acquired by Mapara's Companies for export.

Port also took the position that many of the amounts assessed were statute-barred, that it was entitled to certain rebates against the tax assessed, and that CCRA had incorrectly calculated various tax credits to which it was entitled. Further, Port contended that it had exercised due diligence in determining its net taxes and had not knowingly or under circumstances amounting to gross negligence, consented to or acquiesced in the making of a false statement or omission in a return, and was therefore not liable to pay penalties under s. 285 of the *Excise Tax Act*. The Notice of Objection was delivered to CCRA on or about September 12, 2002.

3 There was no evidence that CCRA invoked the procedure available under s. 316 of the *Excise Tax Act* and certified an amount payable by Port. (Where a certificate is registered in the Federal Court, it is said to have the same effect as if it were a judgment for a debt in the amount certified.) However, execution proceedings of some kind were evidently instituted by CCRA against Port, leading General Motors of Canada, Port's inventory supplier and financier, to express concern about the company's viability. Sensing that it could be out of business unless it took action, Port decided to make a proposal to its creditors under the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 as amended (the "*BIA*"). Port issued notice of its intention to do so on July 10, 2002, which had the effect of staying all proceedings against it pursuant to s. 69 of the *BIA*. Port's solicitors also began correspondence with its banker, with General Motors, and with CCRA in hopes of arriving at some arrangement whereby Port could remain in business and pursue its objection to the assessment.

4 The final form of Port's proposal to creditors (filed on October 4, 2002) was unusual, but reflected the fact that but for the CCRA assessment, Port was not experiencing any particular financial difficulty. The proposal contemplated that the company would create a "pool" of not less than $250,000 by depositing with the Trustee 50 percent of profits earned during the ensuing five years. From this pool the Trustee would pay the claims of CCRA for any outstanding source deductions under the *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp.), unsecured creditors with claims of $400 or less in full, and other unsecured creditors pro rata according to the amounts of their claims. Preferred creditors were to be paid in full in accordance with s. 136(1) of the *BIA* in priority to unsecured creditors, and secured creditors were to be paid in accordance with already existing arrangements, or as might be "arranged between the Company and each of those parties outside of the terms of this Proposal." The proposal also contemplated that if CCRA's assessment under the *Excise Tax Act* was eliminated or reduced "in accordance with the applicable process of appeal", CCRA would repay to the Trustee "any amount to which CCRA would not be entitled if its Proof of Claim either did not reflect the Assessment or reflected it in the reduced amount, as applicable, and the Trustee may adjust any subsequent dividends to CCRA accordingly." The proposal was silent about what would happen if Port's objection to the assessment was not ultimately successful.

5 The meeting of creditors to vote on the proposal was scheduled for October 25, 2002. With the notice of meeting, creditors received the Trustee's preliminary report on Port's affairs. It was prepared on the assumptions that (i) Port could either meet its obligations to the business creditors or negotiate compromises with them, (ii) it could "successfully deal with the impact" of the CCRA assessment, and (iii) it would be able to continue operating under the General Motors dealer's agreement. Based on these assumptions, and on its review of Port's assets, the Trustee reported that a forced liquidation in bankruptcy would not provide sufficient funds to make any payment on account of the claims of preferred or unsecured creditors. The Trustee therefore recommended that the creditors accept the proposal which, if the underlying assumptions were correct, would result in the payment in full of all preferred creditors, the continued employment of Port's 55 employees and, depending on its success in appealing the CCRA assessment, full or partial recovery to unsecured creditors.

6 Also accompanying the notice of meeting and the Trustee's report was a letter to creditors dated October 3, 2002 from Port's president, Mr. Michael Wolfe. He stated in part:

> Most of you know how we ended up in this situation. Canada Custom[s] and Revenue Agency ("CCRA") has assessed Port for an amount of some $16,000,000 in connection with GST related to [sic] transactions which took place several years ago. Port obviously does not have the money to make that kind of payment and we do not think that we are liable to pay it in the first place. We are appealing that CCRA assessment, but until that appeal is resolved, CCRA's claim is there.
>
> When CCRA issued its $16,000,000 assessment, they also took steps against some of Port's assets, namely accounts receivable. Had we done nothing, Port's cash flow would have been eliminated and we would have had to shut down.

7 In the weeks leading up to the creditors' meeting, solicitors for Port and CCRA discussed the proposal in correspondence, but CCRA declined to indicate ahead of time how it would vote at the meeting. The day before the

meeting, CCRA forwarded to the Trustee a proof of claim in "Form 31" (prescribed by the Superintendent under the *BIA*) in the amount of $15,864,279.83. The material portions of the Form 31 stated:

> 3. That the debtor was, at the date of the proposal namely July 10, 2002, and still is, indebted to the creditor in the sum of $15,864,279.83 as specified in the statement of account attached and marked Schedule "A", after deducting any counterclaims to which the debtor is entitled.
>
> 4. (X) UNSECURED CLAIM of $15,864,279.83.
>
> That in respect of this debt, I do not hold any assets of the debtor as security and
>
> (X) Regarding the amount of $15,864,279.83, I do not claim a right to priority.
>
> 5. That, to the best of my knowledge, the above-named creditor is not related to the debtor within the meaning of section 4 of the Bankruptcy and Insolvency Act.
>
> 6. That the following are the payments that I have received from, and the credits that I have allowed to the debtor within the three months immediately before the date of the initial bankruptcy event within the meaning of Section 2 of the Bankruptcy and Insolvency Act.
>
> NIL

Attached as Schedule "A" to the Form 31 was a statement of account consisting of columns of dates and a net tax amount, interest, penalty and a "period total" for each date. The total of "period totals" shown on Schedule "A" was $15,874,279.83.

8 The creditors' meeting was duly held on October 25. According to the minutes of the meeting, the Trustee advised those present that CCRA's claim was "not proven due to an unresolved appeal and Notice of Objection filed by the Company. Therefore, its claim had been disallowed and valued at nil for purposes of the meeting and . . . CCRA had been informed of this just prior to the meeting." After some discussion of the proposal and an adjournment, the chair of the meeting stated that for purposes of voting on the proposal, CCRA's claim would be valued at nil. The chair declined a request by CCRA for a further adjournment to seek the opinion of legal counsel. The proposal was approved by creditors representing 99 percent of the total claims in value and 98 percent of the creditors by number, excluding CCRA in both cases.

9 The Trustee's formal Notice of Disallowance was forwarded in due course to CCRA. It stated the following reasons for the disallowance:

> 1. Your Proof of Claim is unsupported by any evidence for an alleged debt of $15,864,279.83 owed by Port on account of Goods and Services Tax. Subsection 124(4) of the BIA requires a proof of claim to include not only a statement of account but also the evidence by which the statement of account can be substantiated.
>
> 2. Based on a review by the Trustee of the Notice of Objection filed with CCRA on behalf of Port and dated September 12, 2002, the Trustee is not persuaded that Port is in fact indebted to CCRA and the Trustee would require but is not aware of any adjudication in favour of CCRA resolving the claim it is asserting against Port.
>
> 3. In particular, based on the contents of the Notice of Objection, it appears that Port paid a significant amount of money to a third party in connection with what Port believed to be the purchase of vehicles owned by the third party and claimed an equivalent figure as an Input Tax Credit, thereby reducing the amount payable by Port to CCRA on account of collected Goods and Services Tax. Port alleges that it was fraudulently induced by a Sameer Mapara to purchase vehicles from him and his associated companies.

4. In its Notice of Objection Port raises several grounds of objection. First, Port claims that all assessment of reporting periods beginning April 30, 1996 and ending May 31, 1998 are statute-barred under subsection 298(1) of the Excise Tax Act. The total period covered by the CCRA assessment extends from April 30, 1996 to October 31, 1998. Second, Port claims that Input Tax Credits were claimed by it in respect of amounts paid as or on account of tax in circumstances where none was actually payable, and that Port is therefore entitled to have CCRA apply rebates for such payments against the net tax assessed against Port. Third, Port objects to the substantial penalties claimed by CCRA. Finally, Port takes issue with the calculations of the amount of Input Tax Credits claimed by Port. The CCRA Proof of Claim does not address any of these issues raised by Port.

5. Such other reasons as the Trustee may subsequently determine are applicable.

10 By the time CCRA received this notice, it had already applied to the Supreme Court of British Columbia to appeal the disallowance pursuant to s. 135(4) of the *BIA*. The Court's order dismissing that appeal is the first of the two orders now being appealed to this court.

The First Chambers Judgment

11 Madam Justice Neilson dealt in Chambers below with the first appeal. She noted in her Reasons (see (B.C. S.C. [In Chambers])) that the appeal raised two basic questions, the first of which I regard as one of statutory compliance and the second as more substantive:

1. Were the trustee and the Chair in error in disallowing the claim for non-compliance with s. 124 of the *Bankruptcy and Insolvency Act*?

2. Did the trustee and Chair err in categorizing CCRA's claim as contingent and of no value for the purpose of voting? [para. 18]

On the first question, she started with the proposition that the provisions of the *BIA* dictating the form of proofs of claim are "mandatory and to be strictly construed", and that a proof of claim must be sufficient to enable a trustee to make an informed decision on its merits. In this regard, she cited *G. Totton Publishers Ltd., Re* (1975), 20 C.B.R. (N.S.) 140 (Ont. Bktcy.) and *Riddler, Re* (1991), 3 C.B.R. (3d) 273 (B.C. S.C.). She then described the proof of claim filed by CCRA as follows:

> CCRA's proof of claim follows the format of Form 31, and attaches a statement of account that shows a debt occurring between 1995 and 1998 of $15,864,279.83. It includes no reference to the assessment, or to any other basis for this account. There is nothing in the proof of claim that could be construed as evidence in support of the claim. It makes no mention of the Notice of Objection. Nor does it set out any explanation for the discrepancy of almost $600,000 between the debt described in the proof of claim and the assessment that was delivered on July 9, 2002. In paragraph 6, where it is required to state payments from, or credits to, the debtor in the three months preceding the date of bankruptcy event, the response is "nil".
>
> In my view, these defects provided a lawful basis for the trustee to exercise his discretion in favour of disallowing the claim pursuant to s. 135(2). There was nothing in the proof of claim on which he could make an informed decision as to its merits. [paras. 24-5]

12 Further, Neilson J. noted, CCRA had provided no explanation for the discrepancy between the amount claimed in the Notice of Assessment and that in the proof of claim. She found nothing in the proof of claim itself or in the evidence on the appeal to permit her to infer that it arose from credits made to Port since July 10, 2002. CCRA's other arguments — that the Trustee should have required further evidence under s. 135(1), that CCRA had been led to expect that formalities would not be strictly observed, and that the Trustee should generally have extended greater "latitude" to the CCRA — were also rejected. The Chambers judge reasoned:

> I find it difficult to believe they would have led CCRA to expect any leniency with respect to the formalities required to permit it to vote against the proposal. Port had consistently and strenuously denied the basis for CCRA's debt. Its proposal was necessitated by CCRA's action in executing against its assets. Port was fighting for its economic survival. CCRA, as the largest potential unsecured creditor, carried effective veto power over the proposal, and would not advise Port if it was in favour of it prior to the meeting. In my view, CCRA would be naive to think it could deliver an inadequate proof of claim in these circumstances, the day before the meeting without it being challenged.
>
> I recognize that *Re Totton, supra*, suggests there should be some latitude given to creditors in filling out proofs of claim, as many are completed by creditors without the benefit of legal assistance. I find those comments have limited application, however, to sophisticated and experienced creditors such as CCRA. [paras. 30-1]

Considering also that trustees are experienced professionals who have a discretion to exercise, the Chambers judge concluded that the Trustee in this case was within its discretion in disallowing CCRA's Proof of Claim under s. 135(2). She stated she would dismiss the appeal on that ground alone.

13 Neilson J. went on, however, to examine CCRA's submission that the Trustee and the chair of the meeting had erred in categorizing CCRA's debt as contingent and of no value. On this issue, CCRA relied heavily on ss. 299(3), 299(4), 313(1) and 315(2) of the *Excise Tax Act*, which provide:

> **299 (3) Assessment valid and binding** — An assessment, subject to being vacated on an objection or appeal under this Part and subject to a reassessment, <u>shall be deemed to be valid and binding</u>.
>
> . . .
>
> **(4) Assessment deemed valid** — An assessment shall, subject to being reassessed or vacated as a result of an objection or appeal under this Part, be <u>deemed to be valid and binding, notwithstanding any error, defect or omission therein or in any proceeding under this Part relating thereto</u>.
>
> . . .
>
> **313. (1) Debts to Her Majesty** — All taxes, net taxes, interest, penalties, costs and other amounts payable under this Part are debts due to Her Majesty in right of Canada and are recoverable as such in the Federal Court or any other court of competent jurisdiction or in any other manner provided under this Part.
>
> . . .
>
> **315 (2) Payment of Remainder** — Where the Minister mails a notice of assessment to a person, any amount assessed then remaining unpaid is payable forthwith by the person to the Receiver General. [Emphasis added.]

14 As well, CCRA cited the decision of the Ontario Court of Appeal in *Norris, Re* (1989), 75 C.B.R. (N.S.) 97 (Ont. C.A.), in which a trustee in bankruptcy had disallowed a proof of claim filed by the Crown against an individual, Mr. Norris, on the basis of a notice of assessment issued against a corporation pursuant to s. 227(10) of the *Income Tax Act*. Mr. Norris was a director of the corporation and if the Crown's claim against the corporation was valid, would be jointly and severally liable for the assessed amount. He made an assignment in bankruptcy. The Crown issued a notice of assessment in the same amount against him personally. The trustee was not satisfied with the claim filed by the Crown and asked for more information. The Crown supplied the notice of assessment directed to Mr. Norris, but the trustee was still not satisfied and asked for Revenue Canada's working papers. Neither these papers nor any further details were supplied, leading the trustee to disallow Revenue Canada's entire claim.

15 The Ontario Court of Appeal ruled that although it had been "within the power" of the trustee to "call for evidence to support the proof of claim", the trustee's request had been "fully answered by the notice of assessment". After citing s.

152(8) of the *Income Tax Act* (the terms of which are similar to those of s. 299(4) of the *Excise Tax Act* quoted above), the Court stated:

> A taxpayer who objects to an assessment may file a notice of objection pursuant to s. 165(1) of the Income Tax Act and if necessary proceed to exercise rights of appeal to the Tax Court and to the Federal Court. When the trustee in bankruptcy wishes to question the validity of an assessment against a bankrupt he, like anyone else, must seek his remedy within the Income Tax Act: see *Re Carnat Const. Co.* and *Re Selkirk* (1972), 17 C.B.R. (N.S.) 302 (Ont. S.C.).
>
> To hold that the trustee in bankruptcy can disallow an assessment made pursuant to the *Income Tax Act* would be tantamount to clothing the trustee with the powers of the Tax Court. No interpretation of the Bankruptcy Act can support such a conclusion.
>
> In the result, the appeal is allowed and the disallowance is set aside and the trustee in bankruptcy is directed to allow the claim filed by the Crown. Such allowance of the claim is, however, without prejudice to the right of the trustee in bankruptcy to proceed with any right he may have under the Income Tax Act. [at 99]

16 However, the Chambers judge in the case at bar found *Norris, Re* (and *Bateman, Re* (1998), 10 C.B.R. (4th) 197 (N.S. S.C.)) to be distinguishable from this case. In her analysis:

> Those authorities deal with a trustee managing a bankrupt estate, in which the assets were vested in the trustee. There had evidently been no challenge to the assessment by the debtor prior to bankruptcy. Nor had the trustee filed a notice of objection.
>
> I find the circumstances here quite different. The debtor is not yet bankrupt. It was a profitable business with over 50 employees before the assessment and is now diligently pursuing a proposal under the *Bankruptcy and Insolvency Act*, which is the only course left open to it to avoid a bankruptcy and continue to operate, in the face of an assessment that it claims is invalid. Neither the debtor nor the trustee are seeking to avoid the appeal procedures outlined in the *Excise Tax Act*. Instead, the debtor is vigorously pursuing them. The problem is that those procedures could not be completed before the first creditors' meeting. Port has evidently convinced the trustee that there is merit to its objection. Even CCRA's representative, Mr. O'Connell, has conceded to the trustee that one possible outcome of Port's challenge may be a nil value to CCRA's claim. [paras. 40-1]

She also noted that the Court in *Norris, Re* had relied on *Carnat Construction Co., Re* (1958), 37 C.B.R. 47 (Ont. S.C.), where Smily J. had stated that although any challenge to an income tax assessment made by a trustee in bankruptcy must be pursued through the appeal process in the *Income Tax Act*, there was also

> . . . <u>no question that *The Bankruptcy Act* provisions must be complied with, by the filing of proof of claim by the Crown</u> with respect to income tax, and that this assessment may be disallowed by the Trustee, and that in such event the Crown is called upon to proceed under the provisions of *The Bankruptcy Act* and appeal from that disallowance. [at 48; emphasis added.]

17 Relying on this passage, Neilson J. accepted that the debtor or trustee is bound to follow the appeal process in the applicable taxing statute to ascertain the final amount of any debt owed to CCRA. On the other hand, if CCRA wished to "participate in concurrent proceedings under the *Bankruptcy and Insolvency Act*", it was bound to comply with that statute with respect to the proof of its claim and, she added, "that compliance includes recognition of the trustee's powers to determine a claim is contingent and value it accordingly." (para. 43.) She found additional support for this conclusion in s. 4.1 of the *BIA* — a provision not referred to in *Norris, Re* — which states that the *BIA* binds Her Majesty in Right of Canada, and in the fact that whereas the *Income Tax Act* expressly subordinates the *BIA* to its terms, the *Excise Tax Act* does not do so.

18 The Chambers judge also saw substantial practical reasons for permitting Port to continue operating pending resolution of the excise tax appeal. That appeal might take a year — during which the CCRA was to be entitled to receive

"the lion's share" of profits set aside for the unsecured creditors under the proposal. On the other hand, substantial prejudice would accrue to Port, its employees and its other creditors if it were prematurely forced into bankruptcy on the strength of an assessment that might be successfully challenged. In the result, she found that the Trustee had not erred in categorizing CCRA's claim as contingent and of no value. She dismissed the appeal on this ground as well.

The Second Chambers Judgment

19 The second order under appeal in this court was made five days later, on November 18, 2002, by Mr. Justice Groberman. After hearing counsel for Port, the Trustee and the Minister of National Revenue, he approved Port's proposal pursuant to s. 59 of the *BIA*, but postponed the coming into effect of his order until noon on November 21 in order to allow CCRA to seek leave to appeal the rejection of its claim, to appeal his order, and to seek a further stay. However, CCRA did not seek a further stay prior to November 21, so that Groberman J.'s order became effective as of that date.

20 On November 22, CCRA filed notices of appeal in this court in respect of the two orders.

On Appeal

21 In this court, much of CCRA's argument was taken up with the second branch of Neilson J.'s Reasons for Judgment — the conclusion that it lay within the discretion of the Trustee to rule that CCRA's claim was a contingent one and to assign it a nil value. The basis of CCRA's submission was again that because s. 299(4) of the *Excise Tax Act* provides that subject to being vacated on an objection or appeal, a notice of assessment shall be deemed to be "valid and binding", it was not open to the Trustee to rule that CCRA's claim was anything other than valid and provable in the amount stated. In response, the Trustee and Port contend that, to quote from Port's factum, the fact that the Crown has "conferred upon its collectors the right to assess an amount outstanding subject to objection or appeal cannot turn something which is clearly contingent into something which is not contingent." Counsel notes that even CCRA's representative at the creditors' meeting acknowledged that ultimately, CCRA's claim might amount to nothing.

22 The issue thus framed is a difficult one of principle. With all due respect to the Court in *Norris, Re*, it is not answered by a general statement to the effect that the process for challenging an assessment under the *Excise Tax Act* is the process prescribed by that statute. That principle is not in question here: unlike the corporate taxpayer or its director in *Norris, Re*, Port *is* proceeding under the *Excise Tax Act* with its objection to the assessment. The whole purpose of the proposal was apparently to secure time in which to carry out that process. In the meantime, the statutory validity of the assessment unless and until Port succeeds in having it set aside, does not necessarily mean that in *fact*, CCRA's claim may not be highly questionable or of doubtful "value". (I express no opinion on whether that is so in this case.) The real question is the nature of the determination made by a trustee in examining and assessing proofs of claim under the *BIA*. Does the trustee make a determination of *fact* concerning the validity of (all) the claims filed against the debtor, or is it bound to rule as a matter of *law* that an assessment under the *Excise Tax Act*, no matter how questionable it might be in fact, is valid and fully binding on the debtor for purposes of the *BIA*? CCRA contends that the answer is simple: s. 299 of the *Excise Tax Act* prevails notwithstanding the particular facts or equities surrounding the claim, and the trustee is obliged to accord it 'full faith and credit', even though the assessment may later be set aside. The other view, however, is that the *BIA* and *Excise Tax Act* may be reconciled by distinguishing the commercial judgements made in the "real" world by a trustee under the *BIA*, from the artificial "deeming" provisions of the *Excise Tax Act* which may be invoked by CCRA without regard for the objection and appeal process provided in the same statute.

23 Unfortunately, no appellate authority was brought to our attention considering this question, or considering how the two statutes relate to each other in this regard. In the absence of direct authority, I prefer to decide this case on a more technical basis — the Chambers judge's conclusion on the first branch of her reasons that CCRA's proof of claim did not comply with s. 124 of the *BIA*. For convenience, I set out s-ss. (1) and (4) thereof below:

> **124. (1) Creditors shall prove claims** — Every creditor shall prove his claim, and a creditor who does not prove his claim is not entitled to share in any distribution that may be made.
>
> . . .
>
> **(4) Shall refer to account** — The proof of claim shall contain or refer to a statement of account showing the particulars of the claim and any counter-claim that the bankrupt may have to the knowledge of the creditor and shall specify the vouchers or other evidence, if any, by which it can be substantiated. [Emphasis added.]

24 I did not understand CCRA to argue, and I do not read *Norris, Re* to suggest, that when advancing a claim (whether for taxes due or otherwise) under the *BIA*, CCRA need not comply with the applicable provisions regarding proofs of claim. (Indeed, I note that s. 124 was not mentioned by the Court in *Norris, Re*.) The ground of appeal stated by CCRA in its factum was whether CCRA's proof of claim had in fact been defective "such as to justify total disallowance of the claim." (With respect to the latter phrase, I am not aware of any authority for the proposition that a defective claim could result in only a *partial* disallowance of the claim.) This ground is inextricably tied to CCRA's argument that the Chambers judge failed to consider all the evidence before her — including evidence not before the Trustee — in deciding whether CCRA's proof of claim had met the requirements of s. 124.

25 All counsel seemed to be in agreement with CCRA's contention that its appeal of the Trustee's decision was a "trial *de novo*" such that CCRA could file further evidence in order to establish a provable claim in the court below. The only authority cited on this point was *Eskasoni Fisheries Ltd., Re* (2000), 16 C.B.R. (4th) 173 (N.S. S.C.), a decision of a registrar of the Nova Scotia Supreme Court. The Registrar stated:

> Where a creditor appeals to the court from the decision of a trustee to disallow a claim that appeal will proceed by way of trial *de novo*. While I have found no specific case or commentary that makes this point clear, it is clear from a review of the cases generally that a Judge or Registrar hearing an appeal from a trustee's decision is not required simply to proceed upon the information before the trustee. In other words, on such appeals the court is entitled to accept and consider all evidence relevant to the claim. [para. 17]

I note that the ability of the court to accept "new" evidence can operate in favour of either party: in *Eskasoni Fisheries Ltd.*, a trustee was permitted to advance a separate and distinct basis for disallowing a claim on the appeal in addition to the basis previously advanced at the meeting.

26 Since counsel did not challenge *Eskasoni Fisheries Ltd.*, I frame the question before us to be whether, on the basis of the material before the Trustee, "as amplified" by the further evidence filed in the court below, the proof of claim filed by CCRA complied with s. 124. Specifically, did the document "contain or refer to a statement of account showing the particulars" thereof, and did it specify the "vouchers or other evidence, if any, by which it could be substantiated"?

27 I agree with Neilson J. that the answer to these questions is "no". As I have already described, CCRA's proof of claim consisted of a covering letter, a Form 31 and a Schedule "A" listing a series of assessments, penalties and interest charges. I note that consistent with s. 124(4), the form prescribed for proofs of claim (presumably also prescribed by the Superintendent) is accompanied by an instruction that "The attached statement of account or affidavit must specify the vouchers or other evidence in support of the claim." CCRA's proof of claim simply stated at paragraph 3 that Port was indebted to CCRA as of July 10, 2002 in the amount of $15,864,279.83 "as specified in the statement of account attached and marked Schedule "A", after deducting any counterclaims to which the debtor is entitled." No reference was made to allegations regarding Port's sale of non-existent vehicles to a fraudulent party or parties, nor to any evidence by which the claim could be substantiated.

28 As noted earlier, CCRA's Form 31 also stated that CCRA had not received any amount from the debtor within the three months preceding the proposal. If this was correct, then even if the Notice of Assessment had been attached to the proof of claim, a discrepancy between the amount claimed ($15,864,279.83) and the amount stated in the Notice

of Assessment ($16,436,009.96) would have been apparent. On the other hand, there was affidavit evidence before the Chambers judge to the effect that Port *had* made payments in the usual course to CCRA within three months of making the proposal. If this was correct, the Form 31 may have been inaccurate. In either event, the Notice of Assessment would not have "fully answered" the question which no doubt arose in the Trustee's mind as to which amount was correct — unlike the situation in *Norris, Re, Supra*.

29 In its factum, CCRA suggests that these defects would have been cured had Neilson J. not "failed to consider the Assessment, the Statement of Audit Adjustments, the Notice of Objection, the Proof of Claim with Schedule "A" and the affidavit material in evidence before her." With respect, there is little doubt that the Chambers judge considered the Proof of Claim and Schedule "A" before her. There was also in evidence before her (but not before the Trustee) an affidavit of Mr. O'Connell, an employee of CCRA, who attached as exhibit "A" a copy of the Assessment dated July 9, 2002 and Port's Notice of Objection in turn dated September 12, 2002. The Notice of Objection had attached to it a "Statement of Facts and Reasons for Objection of Port Chevrolet Oldsmobile Ltd.", which had obviously been prepared by or on behalf of Port. This document set out in general terms the allegation that Port had been defrauded by Mr. Mapara and his companies into believing that various vehicles existed and were being acquired by his companies for export. It also advanced the other defences noted earlier in these Reasons. Clearly, the Chambers judge considered this document, since she referred at several places in her Reasons to Port's objection to the assessment. In any event, the Notice of Objection and the Statement of Facts and Reasons serve to cast doubt on CCRA's assessment — they do not support it.

30 The Statement of Audit Adjustments referred to in CCRA's factum was filed as an exhibit to the affidavit of Mr. Peerson, a member of the law firm acting for Port. This document, prepared by CCRA, is a list of "tax changes" for each month covered by the assessment, stating in each case an amount and that "ITCs on export vehicles disallowed as they pertained to the purchases of non-existent vehicles or vehicles that were not owned by the alleged vendors. Bills of lading (all fraudulent) were used to substantiate about 50% of these alleged exports." Again, CCRA did not provide copies of the bills of lading "or other evidence, if any" by which the claim could be substantiated. The Statement of Audit Adjustments is a series of conclusory accounts which could provide the Trustee with no assistance in carrying out his duty of determining the validity of the claim.

31 In these circumstances, I see no error in the Chambers judge's conclusions that the documents filed by CCRA in proof of its claim, as augmented by the documents described above, did not comply with s. 124(4) of the *BIA*. I would therefore dismiss the appeal from Neilson J.'s order on that basis. I would also dismiss the appeal from the order of Groberman J., which essentially followed upon Neilson J.'s order.

32 In view of my conclusion, it is unnecessary for me to deal with a fourth issue raised by the Trustee in its factum, namely whether, if CCRA had been successful on this appeal, the creditors' vote would be vacated or whether CCRA would simply have become entitled to share in any distribution under the existing proposal. I leave that interesting question, as well as that raised on the second branch of Neilson J.'s Reasons, for another day.

***Levine J.A.*:**

33 I have had the privilege of reading in draft form the reasons for judgment of my colleague, Madam Justice Newbury. I agree that the appeals should be dismissed on the ground that CCRA's proof of claim failed to comply with the requirements of s. 124 of the *BIA*. I also agree that the questions of whether a Trustee in Bankruptcy may determine that an assessment under the *Excise Tax Act* is "contingent" and how a successful appeal by CCRA would impact on the voting process for the proposal should be left for another day.

34 In my opinion, CCRA's failures to reconcile the amount claimed in its proof of claim with the amount claimed in its Notice of Assessment and to accurately record payments made by Port in the three months before the proposal were fatal to its claim. The additional evidence provided to Neilson J. did not remedy these defaults. For this reason, the Trustee was justified in rejecting CCRA's proof of claim.

35 While the factual circumstances in *Norris, Re* differed in that the Trustee there was administering a bankrupt estate and no notice of objection had been filed, I agree with the decision of the Ontario Court of Appeal insofar as it determined that Revenue Canada was not required to produce its working papers to the Trustee to substantiate its proof of claim. In this case, in my view, CCRA was not required to refer in its proof of claim to the allegations of fraud that formed the basis for the Assessment or to provide copies of the bills of lading referred to in the Assessment. Nor, in my opinion, was CCRA required to refer or append to its proof of claim the Notice of Objection that had been filed by Port.

36 The question of whether the Trustee may determine, as a factual matter, that a claim by CCRA that complies in form with s. 124 of the *BIA* is of doubtful validity or value, remains open.

37 I would dismiss the appeals.

***Ryan J.A.*:**

I agree.

Appeals dismissed.

TAB 7

Court File No. . 31-0R-207854-T

ONTARIO
SUPERIOR COURT OF JUSTICE
(IN BANKRUPTCY AND INSOLVENCY)

THE HONOURABLE MR.	)	TUESDAY, THE 8^{TH}
	)	
JUSTICE COLIN L. CAMPBELL	)	DAY OF NOVEMBER, 2011

IN THE MATTER OF THE BANKRUPTCY OF
MF GLOBAL CANADA CO.,
OF THE CITY OF TORONTO, IN THE PROVINCE OF ONTARIO

ORDER

(RE BANKRUPTCY ADMINISTRATION)

THIS MOTION made without notice by KPMG Inc., in its capacity as the trustee in bankruptcy (the "Trustee") of MF Global Canada Co. ("MF Global Canada") was heard on this day at 330 University Avenue, Toronto, Ontario.

ON READING the Affidavit of Richard M. Harris, sworn November 8, 2011 and on hearing the submissions of counsel for the Trustee, no one else appearing.

1. **THIS COURT ORDERS** that the five day period for sending the prescribed notice required by section 102(1) of the *Bankruptcy and Insolvency Act* (the "BIA") shall be extended to twenty one (21) days from the date of the Bankruptcy Order herein, namely to November 25, 2011.

2. **THIS COURT ORDERS** that MF Global, its present and former officers, directors, solicitors, agents, servants, shareholders, contractors, any persons acting on its instructions behalf and all other persons having notice of this Order are hereby restrained and enjoined from disturbing or interfering with the Trustee and with the exercise by the Trustee of its powers and the performance by the Trustee of its duties pursuant to the BIA and any order made in the within proceedings.

3. **THIS COURT ORDERS** that all parties and all other persons having notice of this order do forthwith provide access to the Trustee of all books, records, and documents, including but not limited to, all records and data whether stored electronically or magnetically or in any other form for use by a computer or audio or visual system, and all property of every nature and kind whatsoever, wheresoever situated, that is in their possession, power, or control related to or used in connection with any of the past, present and future undertaking, property and assets of whatsoever nature and kind, and wherever situate, of MF Global Canada, including those held by MF Global as trustee and agent, and including all legal and beneficial interests therein (the "Assets"), including but not limited to the following:

   (a) any and all cheques, cash, or other forms of payment, including post-dated cheques and other remittances relating to the obligations, present or future, of MF Global Canada;

   (b) all records and accounts of all bank accounts operated by or on behalf of MF Global Canada, or over which MF Global Canada has control;

   (c) all books, accounts, invoices, letters, papers and documents which may evidence or relate to any of the Assets, business or affairs of MF Global Canada; and

   (d) all access codes, user names and related passwords and any other information required by the Trustee to be able to access any of the IT systems, desktop and other computers, laptops, phone systems and all other electronics owned by, in the possession of or on the premises of MF Global Canada.

4. **THIS COURT ORDERS** that the Trustee shall be at liberty and is hereby authorized and empowered, if in its opinion it is necessary or desirable for the purposes of receiving, preserving and protecting the Assets or any part or parts thereof, to do any or all of the following, for, on behalf of, and in the name of MF Global, but without obligation:

(a) to take such steps for the preservation and protection of the Assets as the Trustee considers necessary or appropriate, including, without limitation, taking control of all cash, bank deposits and securities held by or in the name of MF Global;

(b) to confirm and reconcile all customer accounts and securities positions of MF Global Canada;

(c) to employ and retain such agents, assistants, experts, auditors and advisors as the Trustee may consider necessary or desirable for the purposes of receiving, managing, operating, preserving, developing and protecting the Assets or any part or parts thereof or generally exercising its powers and performing its duties hereunder;

(d) to establish a bank account or accounts in the name of the Trustee and to collect all monies now or hereafter owing to MF Global Canada;

(e) to take any steps, enter into any agreements or incur any obligations necessary or incidental to the exercise of the aforesaid powers;

(f) to authorize the completion or withhold approval of trades that might have been initiated by MF Global Canada prior to the suspension of its right to trade securities, as might be considered by the Trustee to be necessary or appropriate; and

(g) to provide any information regarding MF Global Canada that it deems appropriate to Investment Industry Regulatory Organization of Canada ("IIROC") and Canadian Investor Protection Fund ("CIPF").

5. **THIS COURT ORDERS** that without limiting the generality of any of the provisions hereof, all persons, firms or corporations be and they are hereby restrained and enjoined from terminating any contracts, licences or agreements or disturbing or interfering with same or any utility services, including but not limited to the furnishing of gas, heat electricity, water, telephone or any other utilities of like kind, furnished up to November 4, 2011 to MF Global Canada, and they are hereby restrained and enjoined from cutting off, discontinuing or altering any such utilities or services to the Trustee and all such contracting parties are hereby required to continue to provide such services as may be required under their contracts with MF Global Canada.

6. **THIS COURT ORDERS** that without limiting the generality of any of the provisions hereof, all persons, firms and corporations be and they are hereby restrained and enjoined from disturbing or interfering with the occupation, use or possession by the Trustee of any premises owned or leased by MF Global Canada.

7. **THIS COURT ORDERS** that the Trustee shall not be deemed to be a receiver under s.243 of the BIA.

8. **THIS COURT ORDERS** that liberty be reserved to any interested person or persons to apply to this Court for further or other orders, on at least seven days' notice to the Trustee.

9. **THIS COURT ORDERS** that the Trustee may from time to time apply to this Court for advice and directions in the discharge of the Trustee's powers and duties hereunder.

10. **THIS COURT ORDERS SEEKS AND REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States, to give effect to this Order and to assist the Trustee carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Trustee, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Trustee in any foreign proceeding, or to assist the Trustee in carrying out the terms of this Order.

Court File No. 31-0R-207854-T

IN THE MATTER OF THE BANKRUPTCY OF MF GLOBAL CANADA CO., OF THE CITY OF TORONTO, IN THE PROVINCE OF ONTARIO

ONTARIO
SUPERIOR COURT OF JUSTICE
(IN BANKRUPTCY AND INSOLVENCY)

PROCEEDINGS COMMENCED AT TORONTO

ORDER
(RE BANKRUPTCY ADMINISTRATION)

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in its capacity as trustee in bankruptcy of
MF Global Canada Co.

Court File No. 31-OR-207854-T

ONTARIO
SUPERIOR COURT OF JUSTICE
(IN BANKRUPTCY AND INSOLVENCY)

THE HONOURABLE MR.	)	FRIDAY, THE 27TH
	)	
JUSTICE COLIN CAMPBELL	)	DAY OF JANUARY, 2012

IN THE MATTER OF THE BANKRUPTCY OF
MF GLOBAL CANADA CO.,
OF THE CITY OF TORONTO, IN THE PROVINCE OF ONTARIO

CLAIMS PROCESS ORDER

THIS MOTION, made by KPMG Inc., in its capacity as trustee in bankruptcy of MF Global Canada Co. (the "**Trustee**") for an order approving a procedure for, *inter alia*, the determination and resolution of Revised Net Equity Claims and Creditor Claims was heard this day by conference call.

ON READING the Notice of Motion, the Fourth Report of the Trustee dated January 25, 2012 (the "**Fourth Report**") and the Schedules thereto, and the Supplement to the Fourth Report dated January 26, 2012 (the "**Supplementary Report**") and on hearing the submissions of counsel to the Trustee, Customer Representative Counsel, Canadian Investor Protection Fund, Friedberg Mercantile Group Inc. and James Giddens, the SIPA Trustee of MF Global Inc., no one else appearing although duly served as set out in the Affidavit of Service of Miriam Sinclair, dated January 26, 2012, to be filed.

SERVICE

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Motion Record herein is hereby abridged so that this Motion is properly returnable today and that any further service of the Notice of Motion and the Motion Record is hereby dispensed with.

DEFINITIONS

2. **THIS COURT ORDERS** that for purposes of this Claims Process Order the following terms shall have the following meanings:

(a) **"Authorized Activity"** has the meaning ascribed in paragraph 29 hereof;

(b) **"BIA"** means the *Bankruptcy and Insolvency Act,* R.S.C. 1985, c.B-3, as amended;

(c) **"Business Day"** means a day, other than a Saturday or a Sunday, on which banks are generally open for business in Toronto, Ontario;

(d) **"Cheque Issuing Process"** has the meaning ascribed in paragraph 29 hereof;

(e) **"CIPF"** means Canadian Investor Protection Fund;

(f) **"Claim"** means any right of a Person against MF Global Canada in connection with any indebtedness, liability or obligation of any kind whatsoever in existence on the Date of Bankruptcy and any interest accrued thereon or costs payable in respect thereof, whether liquidated, unliquidated, reduced to judgment, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, unsecured, by guarantee, surety, or otherwise, and whether or not such right is executory or anticipatory in nature, or any right or ability of any person to advance a claim for contribution or indemnity or otherwise with respect to any matter, action, cause or chose in action, together with any other claims of any kind that, if unsecured, would be a debt or liability provable in bankruptcy within the meaning of the BIA; For greater certainty, the foregoing definition of Claim is not intended to expand the definition of "claims provable" pursuant to section 121 of the BIA;

(g) **"Claimant"** means any Person that has filed a Revised Net Equity Claim or a Creditor Proof of Claim pursuant to this Claims Process;

(h) **"Claims Bar Date"** means 5:00 p.m. (Toronto Time) on May 10, 2012;

(i) **"Claims Process"** means the process for identifying, determining and/or barring Claims established by this Claims Process Order;

(j) **"Claims Process Order"** means this Order;

(k) **"Commodity Customer"** means any Person that appears on the books and records of MF Global Canada as a Customer of MF Global Canada with a commodities or futures account as at the Date of Bankruptcy;

(l) **"Corporate FX Customer"** has the meaning ascribed in paragraph 2(ee) hereof;

(m) **"Court"** means the Ontario Superior Court of Justice (Commercial List);

(n) **"Creditor"** means, in its capacity asserting such a claim, any Person with a Claim against MF Global Canada, other than a Claim for Net Equity;

(o) **"Creditor Claims Package"** means the package containing the Notice of Meeting of Creditors and Creditor Proof of Claim;

(p) **"Creditor Proof of Claim"** means the form to be completed and filed by a Creditor in accordance with this Claims Process Order, which shall be substantially in the form attached hereto as **Schedule "D"**;

(q) **"Customer"** has the meaning ascribed to it in section 253 of the BIA;

(r) **"Customer Account Statement"** means the account statement for a Customer produced by the Trustee from the books and records of MF Global Canada or Third Party Records as at the Date of Bankruptcy showing the Net Equity Calculation;

(s) **"Customer Claims Package"** means the package containing the Notice of Meeting of Creditors, Customer Account Statement and the applicable Customer Instruction Letter describing the Net Equity Calculation in respect of the applicable Customer and summarizing the Claims Process, and more particularly:

(i) for Commodity Customers (excluding most Excluded Customers) – the Commodity Customer Instruction Letter in the form attached as **Schedule "B-1"** hereto;

(ii) for Excluded Customers – the Excluded Customer Instruction Letter in the form attached as **Schedule "B-1x"** hereto;

(iii) for Equities Customers – the Equity Customer Instruction Letter in the form attached as **Schedule "B-2"** hereto;

(iv) for Retail/Online FX Customers – the Retail FX Customer Instruction Letter in the form attached as Schedule "**B-3**" hereto;

(v) for Corporate FX Customers – the Corporate FX Instruction Letter in the form attached as **Schedule "B-4"** hereto; and

(vi) for Unpaid Customers – the Unpaid Customer Letter in the form attached as **Schedule** "**B-5**" hereto;

(t) **"Customer Pool Fund"** has the meaning ascribed to it in section 261 of the BIA;

(u) **"Customer Representative Order"** means the order of the Honourable Mr. Justice Colin L. Campbell dated November 14, 2011, as it may be amended from time to time;

(v) **"Date of Bankruptcy"** mean November 4, 2011;

(w) **"Dispute Proceedings"** has the meaning ascribed to it in paragraph 17 hereof;

(x) **"Disputed Claimant"** means a Claimant that has received a Notice of Disallowance pursuant to paragraphs 15 or 16 hereof;

(y) **"Equities Customer"** means any Person that appears on the books and records of MF Global Canada as a Customer of MF Global Canada as at the Date of Bankruptcy whose account held cash and/or securities, excluding any Commodity Customers;

(z) **"Estate"** means the bankruptcy estate of MF Global Canada;

(aa) **"Excess Claim"** means the difference between the amount claimed by a Claimant in a Proof of Claim and the amount accepted or allowed by the Trustee as set out in a Notice of Disallowance;

(bb) **"Excluded Customer List"** has the meaning ascribed to it in the Transfer Agreement;

(cc) **"Excluded Customer"** means a Customer on the Excluded Customer List;

(dd) **"FX"** means foreign exchange;

(ee) **"FX Customer"** means any Person that appears on the books and records of MF Global Canada as a Customer of MF Global Canada as at the Date of Bankruptcy who dealt in online FX (a **"Retail FX Customer"**) or corporate FX (a **"Corporate FX Customer"**) trading through or with MF Global Canada;

(ff) **"General Fund"** has the meaning ascribed to it in section 261 of the BIA;

(gg) **"MF Global Canada"** means MF Global Canada Co.;

(hh) **"Net Equity"** means the amount of "net equity" (as that term is defined in section 253 of the BIA) of each Customer;

(ii) **"Net Equity Calculation"** means the amount of Net Equity of a Customer as calculated by the Trustee from the books and records of MF Global Canada or Third Party Records as at the Date of Bankruptcy;

(jj) **"Notice of Disallowance"** means the notice that may be delivered to a Claimant revising or rejecting such Claimant's Proof of Claim, which notice shall be substantially in the form attached as **Schedule "E"** hereto and delivered in accordance with paragraph 24 hereof;

(kk) **"Notice to Creditors"** means the notice to be published in accordance with paragraphs 3 and 4 hereof, substantially in the form of the notice attached hereto as **Schedule "A"**;

(ll) **"November Month End Statement"** means the account statement for a Customer produced by the Trustee from the books and records of MF Global Canada, or Third Party Records as at November 30, 2011;

(mm) **"Person"** means any individual, partnership, firm, joint venture, trust, entity, corporation, unincorporated organization, trade union, pension plan administrator, pension plan regulator, governmental authority or agency, employee or other association or similar entity, howsoever designated or constituted;

(nn) **"Proof of Claim"** means, as the circumstances apply, either a Creditor Proof of Claim or a Revised Net Equity Proof of Claim;

(oo) **"RBCDS"** means RBC Dominion Securities Inc.;

(pp) **"Residual Amount"** means, with respect to any Customer whose account was a Transferred Account, the total calculated by subtracting the Transferred Amount from the Net Equity Calculation, as determined by the Trustee;

(qq) **"Residual Amount Payment"** has the meaning ascribed in paragraph 22 hereof;

(rr) **"Retail FX Customer"** has the meaning ascribed in paragraph 2(ee) hereof;

(ss) **"Revised Net Equity Claim"** means any Claim asserted by a Customer disputing the Trustee's Net Equity Calculation for that Customer;

(tt) **"Revised Net Equity Proof of Claim"** means the form of Proof of Claim for Customers asserting a Revised Net Equity Claim in substantially the form attached as **Schedule "C"** hereto;

(uu) **"Third Party Records"** means the books and records of various contract counterparties providing clearing, back office and support arrangements to MF Global Canada in the ordinary course of business of MF Global Canada;

(vv) **"Transfer Agreement"** means the Account Transfer and Support Agreement dated November 17, 2011 between the Trustee and RBCDS;

(ww) **"Transferred Amount"** means the value of the cash and securities transferred to RBCDS in respect of a particular Transferred Account in accordance with the Transfer Agreement;

(xx) **"Transferred Account"** has the meaning ascribed to it in the Transfer Agreement;

(yy) **"Unpaid Customer"** means any Customer with a Transferred Account that has protection from CIPF in its capacity as a Customer and that, in the opinion of the Trustee, has a Claim for a Residual Amount.

PUBLICATION OF NOTICE

3. **THIS COURT ORDERS** that the Trustee shall cause the Notice to Creditors to be placed in The Globe and Mail (National Edition) and the French language translation thereof to be placed in La Presse on two different dates each prior to February 17, 2012.

4. **THIS COURT ORDERS** that the Trustee shall cause the Notice of Meeting of Creditors, Notice to Creditors, the Customer Claims Package and the Creditor Claims Package, and all other documents attached as Schedules hereto to be posted on the Trustee's website at www.kpmg.ca/mfglobalcanada commencing five Business Days after the date hereof until at least 60 days after the Claims Bar Date.

DIRECT NOTICE AND CLAIMS PACKAGES

5. **THIS COURT ORDERS** that the Trustee shall send a copy of the Customer Claims Package to each Customer to the last known address of such Customer as shown in the books and records of MF Global Canada or Third Party Records, by prepaid ordinary mail on or before February 17, 2012.

6. **THIS COURT ORDERS** that the Trustee shall send a copy of the Creditor Claims Package to each Creditor of which the Trustee is aware to the last known address of such Creditor as shown in the books and records of MF Global Canada or Third Party Records by prepaid ordinary mail on or before February 17, 2012.

7. **THIS COURT ORDERS** that, upon request of any Person, the Trustee shall provide a copy of the requested Customer Claims Package and/or the Creditor Claims Package to the Person by the delivery means requested by such Creditor in accordance with paragraph 25 hereof.

CLAIMS BAR DATE – REVISED NET EQUITY CLAIMS

8. **THIS COURT ORDERS** that any Customer asserting a Revised Net Equity Claim shall set out its Claim in a Revised Net Equity Proof of Claim and deliver the Revised Net Equity

Proof of Claim to the Trustee in accordance with paragraph 25 hereof so that it is received by the Trustee by no later than , the Claims Bar Date.

9. **THIS COURT ORDERS** that any Customer who does not deliver a Revised Net Equity Proof of Claim to the Trustee on or before the Claims Bar Date, in accordance with paragraph 8 hereof shall be deemed to accept the amount of the Net Equity Calculation, if any, set out in the Customer Account Statement delivered to such Customer by the Trustee pursuant to paragraph 5 hereof and any other Claim in respect of Net Equity shall be forever barred and extinguished.

CREDITOR PROOFS OF CLAIM

10. **THIS COURT ORDERS** that any Person asserting a Claim against MF Global Canada other than a Claim for Net Equity shall set out its Claim in a Creditor Proof of Claim and deliver the Creditor Proof of Claim to the Trustee in accordance with paragraph 25 hereof.

CURRENCY OF CLAIMS

11. **THIS COURT ORDERS** that if any Claim arose in a currency other than Canadian or US dollars, then the Claimant asserting such Claim shall complete its Proof of Claim indicating the amount of the Claim in Canadian dollars. For greater certainty, if the reference transactions relating to a Claim are in US dollars, the Proof of Claim may be filed indicating the amount of the Claim in US dollars and if the reference transactions relating to a Claim are in any other currency, the Proof of Claim must be filed indicating the amount of the Claim in Canadian dollars using the exchange rates referred to in paragraph 13 hereof.

12. **THIS COURT ORDERS** that: (a) the Trustee is authorized to pay any Net Equity Claim in U.S. dollars, if the reference transactions relate to U.S. dollars or if permitted pursuant to the account documents/agreements in place between the Customer and MF Global Canada; and (b) the Trustee is authorized to pay any Net Equity Claim in Canadian dollars, if the reference transactions are in any currency other than U.S. dollars, if the Trustee deems it necessary. The foregoing terms shall not affect the Trustee's rights pursuant to section 262(2.1) of the BIA.

13. **THIS COURT ORDERS** that the applicable currency conversion rates to be applied by the Trustee shall be

(a) with respect to the Claim for Net Equity of Commodity Customers, the conversion rates established by the GMI system used by MF Global Canada;

(b) with respect to the Claim for Net Equity of an Equities Customer, the rate published on the Customer Account Statements;

(c) with respect to FX Customers, the noon spot rate of the Bank of Canada on the Date of Bankruptcy; and

(d) with respect to the Claims of Creditors, the noon spot rate of the Bank of Canada on the Date of Bankruptcy,

a summary of which is to be posted on the Trustee's Website within five Business Days of the date of this Claims Process Order.

REVIEW PROCESS

14. **THIS COURT ORDERS** that the Trustee is hereby authorized and directed to use reasonable discretion as to the adequacy of compliance in the manner in which any Proof of Claim is completed or executed and the Trustee may, where it is satisfied that a Proof of Claim has been adequately described or proven, waive strict compliance with the requirements of this Claims Process Order as to completion and execution of the Proof of Claim.

DETERMINATION OF CLAIMS

15. **THIS COURT ORDERS** that the Trustee shall review each Revised Net Equity Proof of Claim received by the Claims Bar Date and shall either accept the Revised Net Equity Proof of Claim as filed or revise or reject the amount claimed by sending a Notice of Disallowance to such Customer.

16. **THIS COURT ORDERS** that the Trustee shall review each Creditor Proof of Claim and shall either accept the Creditor Proof of Claim as filed or revise or reject the amount claimed by sending a Notice of Disallowance to such Creditor.

APPEAL OF DISALLOWANCE

17. **THIS COURT ORDERS** that any Disputed Claimant who intends to dispute a Notice of Disallowance shall bring a motion to the Court to appeal the Notice of Disallowance in accordance with Section 135 of the BIA (the "**Dispute Proceedings**").

18. **THIS COURT ORDERS** that any Disputed Claimant that fails to commence Dispute Proceedings in accordance with the provisions of Section 135 of the BIA, including the 30-day deadline set forth in section 135, shall be deemed to accept the Notice of Disallowance as final and binding, and the Claimant shall be and is hereby forever barred from making or enforcing:

(a) the Claim, on any basis, if a Notice of Disallowance disputing the Claim in whole was issued; or

(b) the Excess Claim, if a Notice of Disallowance revising the Claim was issued;

and the Claim or Excess Claim shall be forever extinguished, barred and released, and the Claimant shall be deemed to have fully and finally released and discharged the Claim or Excess Claim.

19. **THIS COURT ORDERS** that, notwithstanding paragraphs 15 to18 hereof, the Trustee is authorized to apply to the Court at any time for the purpose of seeking the Court's determination of the validity of any Proof of Claim filed with the Trustee in the Claims Process.

PAYMENT OF FURTHER NET EQUITY AMOUNTS

20. **THIS COURT ORDERS** that the Trustee is authorized to send to each Unpaid Customer, in accordance with paragraph 25 hereof, a cheque payable to such Unpaid Customer in the amount of the Residual Amount of such Unpaid Customer along with the Unpaid Customer Letter (the "**Residual Amount Payment**").

21. **THIS COURT ORDERS** that, in the event that the Residual Amount Payment is deposited, endorsed or otherwise negotiated by or for the benefit of the Customer named thereon, such Customer's Net Equity shall be deemed to be credited by the amount of the Residual Amount Payment; provided that the deposit, endorsement or negotiation of the cheque by or for the benefit of the Customer shall be without prejudice to the ability of such Customer to assert a Revised Net Equity Claim or other Claim in accordance with the terms hereof.

22. **[intentionally deleted]**.

GENERAL PROVISIONS

23. **THIS COURT ORDERS** that the Trustee, in addition to its prescribed rights and obligations under the BIA and under the Bankruptcy Orders, is hereby directed and empowered to take such other actions and fulfill such other roles as are contemplated by this Claims Process Order.

24. **THIS COURT ORDERS** that the duties and responsibilities of the Customer Representative Counsel shall not include the representation of any Disputed Claimant in any Dispute Proceedings, provided that, for greater certainty, whether or not a Customer has opted-out in accordance with the Customer Representative order shall not affect its right to file a Proof of Claim or appeal a decision of the Trustee.

25. **THIS COURT ORDERS** that, except as otherwise set out herein, any notice or communication required to be delivered pursuant to the terms of this Claims Process Order shall be in writing and may be delivered by facsimile or electronic transmission, personal delivery, courier or, as necessary, by prepaid mail and, in the case of notices or communications to the Trustee, shall be addressed to the Trustee as follows:

> KPMG INC., in its capacity as Trustee in Bankruptcy
> of MF Global Canada Co.
> 333 Bay Street, Suite 4600
> Bay Adelaide Centre
> Toronto, Ontario
> Canada, M5H 2S5
>
> Attention: MF Global Canada – Claims
> Telephone: 416-777-3666
> Toll Free Number: 1-866-602-6743
> Fax: 416-777-3364
> Email: mfglobalcanada@kpmg.ca

26. **THIS COURT ORDERS** that, in the event that the day on which any notice or communication required to be delivered pursuant to the Claims Process is not a Business Day, then such notice or communication shall be required to be delivered on the next Business Day.

27. **THIS COURT ORDERS** that in the event of any strike, lock-out or other event which interrupts postal service in any part of Canada, all notices and communications during such

interruption may only be delivered by email, facsimile transmission, personal delivery or courier and any notice or other communication given or made by prepaid mail within the seven (7) day period immediately preceding the commencement of such interruption, unless actually received, shall be deemed not to have been delivered. All such notices and communications shall be deemed to have been received, in the case of notice by email, facsimile transmission, personal delivery or courier prior to 5:00 p.m. (local time) on a Business Day, when received, if received after 5:00 p.m. (local time) on a Business Day or at ay time on a non-Business Day, on the next following Business Day, and in the case of a notice mailed as aforesaid, on the fourth Business Day following the date on which such notice or other communication is mailed.

PROTECTIONS FOR THE TRUSTEE

28. **THIS COURT ORDERS** that: (a) in carrying out the terms of this Claims Process Order, the Trustee shall have all of the protections given to it by the BIA and as an officer of this Court, including the stay of proceedings in its favour; (b) the Trustee shall not incur any liability as a result of the carrying out of the provisions of this Claims Process Order, save and except for wilful misconduct and gross negligence; and (c) the Trustee shall be entitled to rely on the books and records of MF Global Canada and Third Party Records without independent investigation, and shall not be liable for any claims or damages resulting from any errors or omissions in such books, records or information.

PROTECTIONS FOR RBCDS

29. **THIS COURT ORDERS** that RBCDS, its affiliates, successors, and assigns shall not incur any liability or responsibility whatsoever, for or in connection with any claim by any former Customer of MF Global Canada arising from, relating to or in connection with the following activities in respect of Transferred Accounts wherein the account holder had not made satisfactory arrangements with RBCDS with respect to their Transferred Account (the "**Authorized Activity**"):

Type of Transferred Account	Authorized Activity
Non-Registered Accounts - cash only balances (corporate Customers)	In the event that a Transferred Account had a cash only balance, if RBCDS issued a cheque for the account balance to the account holder and sent the cheque to the client's last known

	address according to the books and records of MF Global Canada by ordinary mail (the "**Cheque Issuing Process**").
Transferred Accounts with cash only balances under $100,000 in the name of individuals (i.e. non-corporate Customers)	In the event that a Transferred Account had a cash only balance less than $100,000, if RBCDS followed the Cheque Issuing Process.
Transferred Accounts with cash only balances over $100,000 in the name of individuals (i.e. non-corporate Customers)	In the event that a Transferred Account had a cash only balance in excess of $100,000, if RBCDS followed the Cheque Issuing Process after satisfying the following protocol: (i) the Customers presented themselves at any branch of RBCDS or Royal Bank of Canada; (ii) the Customers were asked to show copies of their MF Global Canada account statements and their photo identification (eg. valid driver's license or passport in the name of the account holder); and (iii) the Customers completed a form confirming their name and address.
Transferred Accounts with equity and cash positions of $5,000 or less	In the event that the Transferred Account held marketable securities positions and the total value of the Customer's account was $5,000 or less, RBCDS liquidated the securities positions in the account and followed the Cheque Issuing Process.

EXTENSION OF TIME TO SEND NOTICE OF MEETING

30. **THIS COURT ORDERS** that the period for sending the prescribed notice required by section 102(1) of the BIA(the "**Bankruptcy Notice**") be further extended to February 17, 2012.

31. **THIS COURT ORDERS** that, notwithstanding paragraph 11(b) of the Customer Representative Counsel Order, a copy of the Customer Representative Counsel Order need only be sent by the Trustee to the Excluded Customers on Part A of the Excluded Customer List.

32. **THIS COURT ORDERS** that, notwithstanding paragraph 23(b) of the Account Transfer Support and Vesting Order dated November 14, 2012, a copy of the Account Transfer Support and Vesting Order need only be sent by the Trustee to Excluded Customers on Part A of the Excluded Customer List.

REPRESENTATIVE COUNSEL "OPT OUT" PERIOD

33. **THIS COURT ORDERS** that paragraph 4 of the Customer Representative Counsel Order dated November 14, 2011 be and the same is hereby amended, *nunc pro tunc*, to extend the deadline for notifying the Customer Representative Counsel and the Trustee to "opt out" of representation from January 31, 2012 to March 31, 2012 such that paragraph 4 of the Customer Representative Order shall be deemed to read:

> 4. **THIS COURT ORDERS** that any individual Customer who does not wish to be represented by the Customer Representative Counsel and to be bound by this Order and all other related orders which may subsequently be made in these proceedings shall by March 31, 2012, notify the Customer Representative Counsel and the Trustee in writing by facsimile, mail or delivery, in the form attached as **Schedule "A"** hereto, and shall thereafter not be so represented and shall represent themselves as an independent individual party to the extent they wish to appear in the Proceedings.

APPROVAL OF TRUSTEE'S ACTIVITIES AND TRUSTEE'S REPORT

34. **THIS COURT ORDERS** that the Fourth Report and the activities of the Trustee as detailed in the Fourth Report, are hereby approved.

DIRECTIONS

35. **THIS COURT ORDERS** that the Trustee may, at any time, and with such notice as this Court may require, seek directions from the Court with respect to this Claims Process Order and the Claims Process set out herein, including the forms attached as Schedules thereto.

36. **THIS COURT ORDERS** that the foregoing terms of this Claims Process Order shall not restrict or in any way affect the right of the Trustee to apply to the Court for directions and/or declaratory relief with respect to any Claim in the estate of MF Global Canada.

ENTERED AT / INSCRIT A TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO.:

JAN 27 2012

SCHEDULE "A"

NOTICE TO CUSTOMERS OF MF GLOBAL CANADA CO.

NOTICE OF CLAIMS BAR DATE FOR REVISED NET EQUITY CLAIMS AGAINST MF GLOBAL CANADA CO.

NOTICE IS HEREBY GIVEN that, pursuant to an Order of the Ontario Superior Court of Justice made on January 27, 2012 (the "**Claims Process Order**"), a Claims Process was approved for determination of "revised net equity" claims of customers and claims of ordinary creditors against MF Global Canada Co.

PROOFS OF CLAIM FOR REVISED NET EQUITY CLAIMS MUST BE FILED WITH THE TRUSTEE ON OR BEFORE 5:00 P.M. (TORONTO TIME) ON APRIL 10, 2012 (THE "CLAIMS BAR DATE"), FAILING WHICH ALL SUCH REVISED NET EQUITY CLAIMS WILL BE BARRED AND FOREVER EXTINGUISHED. THE CLAIMS BAR DATE ONLY APPLIES TO REVISED NET EQUITY CLAIMS, NOT TO ORDINARY CREDITOR CLAIMS.

The Trustee will send a Claims Package to all known Customers and Creditors in accordance with the Claims Process Order. A copy of the Trustee's Claims Process Order, and all forms relating to the Claims Process can be found on the Trustee's website at: www.kpmg.ca/mfglobalcanada. Persons requiring further information regarding the Claims Process or claim documentation may contact the Trustee at:

KPMG INC., in its capacity as Trustee in Bankruptcy
of MF Global Canada Co.
333 Bay Street, Suite 4600
Bay Adelaide Centre
Toronto, Ontario
Canada, M5H 2S5

Attention: MF Global Canada –Claims
Telephone: 416-777-3666
Toll Free Number: 1-866-602-6743
Fax: 416-777-3364
Email: mfglobalcanada@kpmg.ca

SCHEDULE "B-1"

TO: Commodities Customers of MF Global Canada Co.

KPMG Inc. was appointed as trustee in bankruptcy of MF Global Canada Co. pursuant to a Bankruptcy Order dated November 4, 2011 (the "**Date of Bankruptcy**").

Enclosed herewith is a copy of an account statement for your account at MF Global Canada Co. as at the Date of Bankruptcy (the "**Date of Bankruptcy Statement**") and November 30, 2011 (the "**November Month End Statement**").

In accordance with the *Bankruptcy and Insolvency Act*, claims against MF Global Canada Co. are to be determined as at the Date of Bankruptcy. As you are likely aware, the Trustee entered into arrangements with RBC Dominion Securities Inc. ("**RBCDS**") for the transfer of your account to RBCDS. The Trustee understands that, in connection with the transfer of your account, the value of the cash and securities shown on the Date of Bankruptcy Statement were transferred to RBCDS and allocated to your account (the "**Transfer Amount**"). Pursuant to an Order of the Ontario Superior Court of Justice (the "**Court**") dated November 14, 2011, the Transfer Amount is a credit against the net equity claim that you had against MF Global Canada Co. as at the Date of Bankruptcy. As a result, the books and records of MF Global Canada Co. indicate that your "net equity" claim has been fully paid and you do not have any further claim in the estate. This is confirmed in the November Month End Statement.

If you agree with the foregoing, no further action is required on your part. In the event that you believe that you have any additional claim(s) against MF Global Canada Co., you are required to file a Proof of Claim with the Trustee in accordance with the Claims Process Order issued by the Court on January 27, 2012. Any such Claim must be filed with the Trustee prior to the Claims Bar Date of May 10, 2012. As the Trustee does not anticipate that you will have a Claim, the Trustee has not included the Proof of Claim form or the Claims Process Order with this letter. Copies of the Claims Process Order and all applicable claims forms can be obtained from the Trustee upon request or by downloading the applicable claims form(s) from the Trustee's website: www.kpmg.ca/mfglobalcanada.

In the event that you have any questions in connection with the information contained in this letter or the Claims Process, you should first check the Trustee's Frequently Asked Questions posted on the Trustee's website or you can contact the Trustee directly at the contact particulars noted below.

Be advised that, in the event you intend to assert any additional claim against the estate, you must file a properly completed Proof of Claim with the Trustee prior to the Claims Bar Date or your claim will be forever barred and extinguished.

KPMG INC., in its capacity as Trustee in Bankruptcy
of MF Global Canada Co.
333 Bay Street, Suite 4600
Bay Adelaide Centre
Toronto, Ontario
Canada, M5H 2S5
Attention: MF Global Canada –Claims
Telephone: 416-777-3666
Toll Free Number: 1-866-602-6743
Fax: 416-777-3364
Email: mfglobalcanada@kpmg.ca

SCHEDULE "B-1x"

TO: Customers of MF Global Canada Co. that are Excluded Customers under the Account Transfer and Support Agreement dated November 17, 2011 between KPMG Inc., in its capacity as trustee in bankruptcy of MF Global Canada Co (the "Trustee") and RBC Dominion Securities Inc. ("RBCDS")

KPMG Inc. was appointed as Trustee pursuant to a Bankruptcy Order dated November 4, 2011 (the "**Date of Bankruptcy**"). Enclosed herewith are copies an account statement for your account at MF Global Canada Co. as at the Date of Bankruptcy (the "**Date of Bankruptcy Statement**") and November 30, 2011 (the "**November Month End Statement**").

[In accordance with the *Bankruptcy and Insolvency Act*, claims against MF Global Canada Co. are to be determined as at the Date of Bankruptcy. As you are aware, the Trustee has transferred certain accounts to RBC Dominion Securities Inc. The Trustee understands that, in connection with the transfer of your account, an interim balance of cash and securities with a value of $• were transferred to RBCDS and allocated to your account (the "**Transfer Amount**"). The Transfer Amount is a credit against the "net equity" claim that you had against MF Global Canada Co. as at the Date of Bankruptcy. The books and records of MF Global Canada Co. indicate that your net equity claim in the estate is $•. Of this amount, you continue to be owed the amount of $•, being the difference between the net equity showing on the Date of Bankruptcy Statement and the Transfer Amount. This balance is accepted by the Trustee. However, we caution you to review the enclosed statements carefully to determine if there are any transactions that have not been recorded or are incorrectly recorded]

OR

[In accordance with the *Bankruptcy and Insolvency Act*, claims against MF Global Canada Co. are to be determined as at the Date of Bankruptcy. As a result of the lack of information relating to certain transactions in your account on foreign exchanges, the Trustee has been unable to make a preliminary determination of the net equity claim in respect of your account at MF Global Canada Co. The Trustee will provide further information to you with respect to your net equity calculation as soon as information becomes available. In the interim, the Trustee acknowledges that you have a conditional claim for net equity in the Claims Process.]

If you agree with the foregoing, no further action is required on your part. In the event that you believe that you have any additional claim(s) against MF Global Canada Co., you are required to file a Proof of Claim with the Trustee in accordance with the Claims Process Order issued by the Court on January 27, 2012. Any such Claim must be filed with the Trustee prior to the Claims Bar Date of May 10, 2012. Copies of the Claims Process Order and all applicable claims forms can be obtained from the Trustee upon request or by downloading the applicable claims form(s) from the Trustee's website: www.kpmg.ca/mfglobalcanada.

In the event that you have any questions in connection with the information contained in this letter or the Claims Process, you should first check the Trustee's Frequently Asked Questions posted on the Trustee's website or you can contact the Trustee directly at the contact particulars noted below.

Be advised that, in the event you intend to assert any additional claim against the estate, you must file a properly completed Proof of Claim with the Trustee prior to the Claims Bar Date or your claim will be forever barred and extinguished.

KPMG INC., in its capacity as Trustee in Bankruptcy
of MF Global Canada Co.

333 Bay Street, Suite 4600
Bay Adelaide Centre
Toronto, Ontario
Canada, M5H 2S5
Attention: MF Global Canada –Claims
Telephone: 416-777-3666
Toll Free Number: 1-866-602-6743
Fax: 416-777-3364
Email: mfglobalcanada@kpmg.ca

SCHEDULE "B-2"

TO: Equities Customers of MF Global Canada Co.

KPMG Inc. was appointed as trustee in bankruptcy of MF Global Canada Co. pursuant to a Bankruptcy Order dated November 4, 2011 (the "**Date of Bankruptcy**").

Enclosed herewith is a copy of an account statement for your account at MF Global Canada Co. as at the Date of Bankruptcy (the "**Date of Bankruptcy Statement**") and November 30, 2011 (the **November Month End Statement**").

In accordance with the *Bankruptcy and Insolvency Act* ("**BIA**"), claims against MF Global Canada are to be determined as at the Date of Bankruptcy. As you are likely aware, the Trustee entered into arrangements with RBC Dominion Securities Inc. ("**RBCDS**") for the transfer of your account to RBCDS. The Trustee understands that, in connection with the transfer of your account, the value of the cash and securities shown on the Date of Bankruptcy Statement were transferred to RBCDS and allocated to your account (the "**Transfer Amount**"). Pursuant to an Order of the Ontario Superior Court of Justice (the "**Court**") dated November 14, 2011, the Transfer Amount is a credit against the net equity claim that you had against MF Global Canada Co. as at the Date of Bankruptcy. In addition, the BIA authorizes the Trustee to make distributions of securities in kind. The Trustee has confirmed that all cash and securities in your account as at the Date of Bankruptcy were transferred to RBCDS. As a result, the books and records of MF Global Canada Co. indicate that your "net equity" claim has been fully paid and you do not have any further claim in the estate. This is confirmed in the November Month End Statement.

If you agree with the foregoing, no further action is required on your part. In the event that you believe that you have any additional claim(s) against MF Global Canada Co., you are required to file a Proof of Claim with the Trustee in accordance with the Claims Process Order issued by the Court on January 27, 2012. Any such Claim must be filed with the Trustee prior to the Claims Bar Date of May 10, 2012. As the Trustee does not anticipate that you will have a Claim, the Trustee has not included the Proof of Claim form or the Claims Process Order with this letter. Copies of the Claims Process Order and all applicable claims forms can be obtained from the Trustee upon request or by downloading the applicable claims form(s) from the Trustee's website: www.kpmg.ca/mfglobalcanada.

In the event that you have any questions in connection with the information contained in this letter or the Claims Process, you should first check the Trustee's Frequently Asked Questions posted on the Trustee's website or you can contact the Trustee directly at the contact particulars noted below.

Be advised that, in the event you intend to assert any additional claim against the estate, you must file a properly completed Proof of Claim with the Trustee prior to the Claims Bar Date or your claim will be forever barred and extinguished.

KPMG INC., in its capacity as Trustee in Bankruptcy
of MF Global Canada Co.
333 Bay Street, Suite 4600
Bay Adelaide Centre
Toronto, Ontario
Canada, M5H 2S5
Attention: MF Global Canada –Claims
Telephone: 416-777-3666
Toll Free Number: 1-866-602-6743
Fax: 416-777-3364
Email: mfglobalcanada@kpmg.ca

SCHEDULE "B-3"

TO: Retail/Online FX Customers of MF Global Canada Co.

KPMG Inc. was appointed as trustee in bankruptcy of MF Global Canada Co. pursuant to a Bankruptcy Order dated November 4, 2011 (the "**Date of Bankruptcy**").

Pursuant to the FX Customer Payment Order of the Ontario Superior Court of Justice (the "**Court**") dated November 24, 2011, you were provided with a cheque in the amount of the Trustee's Net Equity Calculation for your FX account with MF Global Canada Co. (the "**Net Equity Payment**").

In accordance with the *Bankruptcy and Insolvency Act*, claims against MF Global Canada Co. are to be determined as at the Date of Bankruptcy. Pursuant to the FX Customer Payment Order, the Net Equity Payment is a credit against the net equity claim that you had against MF Global Canada Co. as at the Date of Bankruptcy. As a result, the books and records of MF Global Canada Co. indicate that your "net equity" claim has been fully paid and you do not have any further claim in the estate. This should be confirmed by viewing your online account statements and positions on the FXCM website.

If you agree with the foregoing, no further action is required on your part. In the event that you believe that you have any additional claim(s) against MF Global Canada Co., you are required to file a Proof of Claim with the Trustee in accordance with the Claims Process Order issued by the Court on January 27, 2012. Any such Claim must be filed with the Trustee prior to the Claims Bar Date of May 10, 2012. As the Trustee does not anticipate that you will have a Claim, the Trustee has not included the Proof of Claim form or the Claims Process Order with this letter. Copies of the Claims Process Order and all applicable claims forms can be obtained from the Trustee upon request or by downloading the applicable claims form(s) from the Trustee's website: www.kpmg.ca/mfglobalcanada.

In the event that you have any questions in connection with the information contained in this letter or the Claims Process, you should first check the Trustee's Frequently Asked Questions posted on the Trustee's website or you can contact the Trustee directly at the contact particulars noted below.

Be advised that, in the event you intend to assert any additional claim against the estate, you must file a properly completed Proof of Claim with the Trustee prior to the Claims Bar Date of May 10, 2012 or your claim will be forever barred and extinguished.

KPMG INC., in its capacity as Trustee in Bankruptcy
of MF Global Canada Co.
333 Bay Street, Suite 4600
Bay Adelaide Centre
Toronto, Ontario
Canada, M5H 2S5

Attention: MF Global Canada –Claims
Telephone: 416-777-3666
Toll Free Number: 1-866-602-6743
Fax: 416-777-3364
Email: mfglobalcanada@kpmg.ca

SCHEDULE "B-4"

TO: Corporate FX Customers of MF Global Canada Co.

KPMG Inc. was appointed as trustee in bankruptcy of MF Global Canada Co. pursuant to a Bankruptcy Order dated November 4, 2011 (the "**Date of Bankruptcy**").

Pursuant to the FX Customer Payment Order of the Ontario Superior Court of Justice (the "**Court**") dated November 24, 2011, you were provided with a cheque in the amount of the Trustee's Net Equity Calculation for your FX account with MF Global Canada (the "**Net Equity Payment**").

In accordance with the *Bankruptcy and Insolvency Act*, claims against MF Global Canada are to be determined as at the Date of Bankruptcy. Pursuant to the FX Customer Payment Order, the Net Equity Payment is a credit against the net equity claim that you had against MF Global Canada Co. as at the Date of Bankruptcy. As a result, the books and records of MF Global Canada Co. indicate that your "net equity" claim has been fully paid and you do not have any further claim in the estate. This is confirmed by the account statement for your account dated November 4, 2011, and the calculation of the Net Equity Payment in Canadian dollars, copies of which are attached.

If you agree with the foregoing, no further action is required on your part. In the event that you believe that you have any additional claim(s) against MF Global Canada Co., you are required to file a Proof of Claim with the Trustee in accordance with the Claims Process Order issued by the Court on January 27, 2012. Any such Claim must be filed with the Trustee prior to the Claims Bar Date of May 10, 2012. As the Trustee does not anticipate that you will have a Claim, the Trustee has not included the Proof of Claim form or the Claims Process Order with this letter. Copies of the Claims Process Order and all applicable claims forms can be obtained from the Trustee upon request or by downloading the applicable claims form(s) from the Trustee's website: www.kpmg.ca/mfglobalcanada.

In the event that you have any questions in connection with the information contained in this letter or the Claims Process, you should first check the Trustee's Frequently Asked Questions posted on the Trustee's website or you can contact the Trustee directly at the contact particulars noted below.

Be advised that, in the event you intend to assert any additional claim against the estate, you must file a properly completed Proof of Claim with the Trustee prior to the Claims Bar Date of May 10, 2012 or your claim will be forever barred and extinguished.

KPMG INC., in its capacity as Trustee in Bankruptcy
of MF Global Canada Co.
333 Bay Street, Suite 4600
Bay Adelaide Centre
Toronto, Ontario
Canada, M5H 2S5

Attention: MF Global Canada –Claims
Telephone: 416-777-3666
Toll Free Number: 1-866-602-6743
Fax: 416-777-3364
Email: mfglobalcanada@kpmg.ca

SCHEDULE "B-5"

TO: Specific "Unpaid" Customers of MF Global Canada Co. whose Accounts were transferred to RBC Dominion Securities Inc. ("RBCDS")

KPMG Inc. was appointed as trustee in bankruptcy of MF Global Canada Co. pursuant to a Bankruptcy Order dated November 4, 2011 (the "**Date of Bankruptcy**").

Enclosed herewith is a copy of an account statement for your account at MF Global Canada Co. as at the Date of Bankruptcy (the "**Date of Bankruptcy Statement**") and November 30, 2011 (the "**November Month End Statement**").

In accordance with the *Bankruptcy and Insolvency Act*, claims against MF Global Canada Co. are to be determined as at the Date of Bankruptcy. As you are likely aware, the Trustee entered into arrangements with RBCDS for the transfer of various accounts to RBCDS. The Trustee has confirmed that, in connection with the transfer of your account, cash and securities in an amount shown on the November Month End Statement were transferred to RBCDS and allocated to your account (the "**Transfer Amount**"). The Transfer Amount is a credit against the net equity claim that you had against MF Global Canada Co. as at the Date of Bankruptcy. The books and records of MF Global Canada Co. indicate that there is a residual amount of "net equity" due to you (the "**Residual Amount**"). Enclosed is a cheque for the Residual Amount due to you. The Residual Amount is equal to the difference between the value of your net equity and the Transfer Amount.

The value of your net equity as at the Date of Bankruptcy is indicated on the enclosed Date of Bankruptcy Statement (see the line for "Total Equity"). All post bankruptcy transactions are set out on the enclosed November Month End Statement.

The payment of the Residual Amount indicates to the Trustee that your "net equity" claim against the estate of MF Global Canada Co. has been fully satisfied and that you do not have any further claim in the estate.

If you agree with the foregoing, no further action is required on your part. In the event that you believe that you have any additional claim(s) against MF Global Canada Co., you are required to file a Proof of Claim with the Trustee in accordance with the Claims Process Order issued by the Court on January 27, 2012. Any Claim for a Revised Net Equity Amount must be filed with the Trustee prior to the Claims Bar Date of May 10, 2012. Copies of the Claims Process Order and all applicable claims forms can be obtained from the Trustee upon request or by downloading the applicable claims form(s) from the Trustee's website: www.kpmg.ca/mfglobalcanada.

In the event that you have any questions in connection with the information contained in this letter or the Claims Process, you should first check the Trustee's Frequently Asked Questions posted on the Trustee's website or you can contact the Trustee directly at the contact particulars noted below.

Be advised that, in the event you intend to assert a Revised Net Equity Claim against the estate, you must file a properly completed Revised Net Equity Proof of Claim with the Trustee prior to the Claims Bar Date of May 10, 2012 or your Revised Net Equity Proof of Claim will be forever barred and extinguished.

KPMG INC., in its capacity as Trustee in Bankruptcy
of MF Global Canada Co.
333 Bay Street, Suite 4600
Bay Adelaide Centre
Toronto, Ontario
Canada, M5H 2S5

Attention: MF Global Canada –Claims
Telephone: 416-777-3666
Toll Free Number: 1-866-602-6743
Fax: 416-777-3364
Email: mfglobalcanada@kpmg.ca

SCHEDULE "C"

Court File No. 31-0R-207854-T

ONTARIO
SUPERIOR COURT OF JUSTICE
(IN BANKRUPTCY AND INSOLVENCY)

IN THE MATTER OF THE BANKRUPTCY OF
MF GLOBAL CANADA CO.,
OF THE CITY OF TORONTO, IN THE PROVINCE OF ONTARIO

REVISED NET EQUITY PROOF OF CLAIM

Instructions

In order to have a valid Revised Net Equity Claim as a Customer of MF Global Canada Co., this Revised Net Equity Proof of Claim form must be properly completed and delivered to KPMG Inc. in its capacity as trustee in bankruptcy of MF Global Canada Co. (the "**Trustee**") prior to the Claims Bar Date (described below).

These instructions are provided to assist you in preparing the Revised Net Equity Proof of Claim form in a complete and accurate manner. DO NOT LEAVE ANY SECTIONS OF THE FORM BLANK.

General

- ☐ You must ensure that you include your complete name, address, telephone number and account number on the Revised Net Equity Proof of Claim form.
- ☐ The Revised Net Equity Proof of Claim form must be dated, signed personally by the individual completing it, and witnessed. The Revised Net Equity Proof of Claim form is incomplete UNLESS it has been signed and witnessed.
- ☐ If the individual completing the Revised Net Equity Proof of Claim form is not the Customer himself/herself, but is completing on behalf of a corporation, he/she must state his/her position or title.

Revised Net Equity Claims

"Net Equity" is defined in Section 253 of the *Bankruptcy and Insolvency Act* as:

"net equity" means, with respect to the securities account or accounts of a customer, maintained in one capacity, the net dollar value of the account or accounts, equal to the amount that would be owed by a securities firm to the customer as a result of the liquidation by sale or purchase at the close of business of the securities firm on the date of bankruptcy of the securities firm, of all security positions of the customer in each securities account, other than customer name securities reclaimed by the customer, including any amount in respect of a securities transaction not settled on the date of bankruptcy but settled thereafter, less any indebtedness of the customer to the securities firm on the date of bankruptcy including any amount owing in respect of a securities transaction not settled on the date of bankruptcy but settled thereafter, plus any payment of indebtedness made with the consent of the trustee after the date of bankruptcy;

In the event that you claim a net equity position that differs from the net equity amount which has been confirmed to you in the attached letter from the Trustee from the books and records of MF Global Canada Co. you must provide all of the particulars of your Revised Net Equity Claim and attach all supporting documentation giving rise to the Revised Net Equity Claim

The Revised Net Equity Proof of Claim form is incomplete unless you include a statement (marked as "Schedule "A") setting out particulars of the Revised Net Equity Claim. You must acknowledge receipt of and account for any Net Equity Payment provided to you by the Trustee or Transfer Amount (the value of the cash and securities transferred to RBC Dominion Securities Inc. with respect to your account) received prior to the date hereof as a credit against any Revised Net Equity Claim.

A. Particulars of Customer

1. Full Legal Name: ______________________________

2. Full Mailing Address:

____

____

3. Account Number: ____________________

4. Telephone Number: ____________________

5. Facsimile Number: ____________________

6. E-mail Address: ____________________

7. Attention (Contact Person): ____________________

B. Proof of Revised Net Equity Claim

I, ______________________________ [name of Customer or Representative of Customer], of ______________________________ (City, Province) do hereby certify:

(a) that I *[tick one]*

☐ am the Customer of MF Global Canada Co.; OR

☐ am ____________________________________ *(state position or title)*

of

________________________________ *(name of Customer)*

(b) that I have knowledge of all of the circumstances connected with the Revised Net Equity Claim referred to below;

(c) the Claimant asserts its claim against Mf Global Canada Co. for the following additional amount of "net equity":

$____________________________ [insert $ value of Revised Net Equity Claim]

(**Note:** Claims should be calculated in US dollars if the reference transactions relate to US dollars, and should be calculated in Canadian dollars if the reference transactions are in any other currency, including Canadian dollars. Currencies will be converted in accordance with the Claims Process Order.)

D. Particulars of Revised Net Equity Claim:

The Particulars of the undersigned's total Revised Net Equity Claim are set out in the attached Schedule "A".

E. Filing of Revised Net Equity Proof of Claim

This Revised Net Equity Proof of Claim must be received by the Trustee no later than 5:00 p.m. (Toronto time) on the Claims Bar Date of May 10, 2012, by facsimile transmission, personal delivery, courier or prepaid mail at the following address:

KPMG INC., in its capacity as Trustee in Bankruptcy
of MF Global Canada Co.
333 Bay Street, Suite 4600
Bay Adelaide Centre
Toronto, Ontario
Canada, M5H 2S5

Attention: MF Global Canada --Claims
Telephone: 416-777-3666
Toll Free Number: 1-866-602-6743
Fax: 416-777-3364
Email: mfglobalcanada@kpmg.ca

Failure to file your Revised Net Equity Proof of Claim as directed by 5:00 p.m. (Toronto time) on May 10, 2012 (the Claims Bar Date) will result in your Revised Net Equity Claim being barred and you will be prohibited from making or enforcing the Revised Net Equity Claim against the estate of MF Global Canada Co.

Dated at ____________________ this _________ day of ____________________, 2012.

Name and address of Witness:

____

____

Witness Signature

____

Name of Customer

Per: ___________________________

SCHEDULE "D"

Court File No. 31-0R-207854-T

ONTARIO
SUPERIOR COURT OF JUSTICE
(IN BANKRUPTCY AND INSOLVENCY)

IN THE MATTER OF THE BANKRUPTCY OF
MF GLOBAL CANADA CO.,
OF THE CITY OF TORONTO, IN THE PROVINCE OF ONTARIO

CREDITOR PROOF OF CLAIM

Instructions

In order to have a valid Claim as a Creditor of MF Global Canada Co., this Creditor Proof of Claim form must be properly completed and delivered to KPMG Inc. in its capacity as trustee in bankruptcy of MF Global Canada Co. (the "Trustee").

These instructions are provided to assist you in preparing the Creditor Proof of Claim form in a complete and accurate manner. DO NOT LEAVE ANY SECTIONS OF THE FORM BLANK.

General

- ☐ You must ensure that you include your complete name, address, telephone number and account number on the Creditor Proof of Claim form.
- ☐ The Creditor Proof of Claim form must be dated, signed personally by the individual completing it, and witnessed. The Creditor Proof of Claim form is incomplete UNLESS it has been signed and witnessed.
- ☐ If the individual completing the Creditor Proof of Claim form is not the Creditor himself/herself, but is completing on behalf of a corporation, he/she must state his/her position or title.

I. Particulars of Creditor

1. Full Legal Name:____

2. Full Mailing Address:

____

____

____

3. Account Number: ______________________________

4. Telephone Number: ______________________________

5. Facsimile Number: ______________________________

6. E-mail Address: ______________________________

7. Attention (Contact Person): ______________________________

II. Proof of Claim

THE UNDERSIGNED CERTIFIES AS FOLLOWS:

1. That I am a creditor of the above named debtor, *(or* That I am , of)).

2. That I have knowledge of all the circumstances connected with the claim referred to in this form.

3. That MF Global Canada Co. was, at the date of bankruptcy, namely the 4th day of November, 2011, and is still indebted to the above named creditor (referred to in this form as the "creditor") in the sum of $____________________, as shown by the statement of account attached hereto and marked Schedule "A", after deducting any counterclaims to which the debtor is entitled.

(**Note:** Claims should be calculated in Canadian dollars using the noon spot rate of the Bank of Canada as of November 4, 2011. Currencies will be converted in accordance with the Claims Process Order and a schedule of FX conversion rates is posted on the Trustee's website: www.kpmg.ca/mfglobalcanada)

4. *(Check and Complete appropriate category).*

A. UNSECURED CLAIM

That in respect of the said debt, I do not hold any assets of the debtor as security and

(check appropriate description)

( ) I do not claim a right to a priority

( ) I claim a right to a priority under Section 136 of the *Bankruptcy and Insolvency Act (Set out on an attached schedule details to support the priority claim).*

B. SECURED CLAIM

That in respect of the said debt, I hold assets of the debtor valued at $__________________ as security, particulars of which are as follows:

(Give full particulars of the security, including the date on which the security was given and the value at which the creditor assesses the security, and attach a copy of the security documents).

C. CLAIM BY FARMER, FISHERMAN OR AQUACULTURIST

That I hereby make a claim under subsection 81.2(1) of the *Bankruptcy and Insolvency Act* for the unpaid amount of $ *(Attach a copy of the sales agreement and delivery documents).*

D. CLAIM BY WAGE EARNER OF $ ______________

□ That I hereby make a claim under subsection 81.3(8) of the Act in the amount of $________

□ That I hereby make a claim under subsection 81.4(8) of the Act in the amount of $________

(Give full particulars of the claim, including the calculations upon which the claim is based.)

E. CLAIM BY EMPLOYEE FOR UNPAID AMOUNT REGARDING PENSION PLAN OF $___________

□ That I hereby make a claim under subsection 81.5 of the Act in the amount of $__________

□ That I hereby make a claim under subsection 81.6 of the Act in the amount of $__________

(Give full particulars of the claim, including the calculations upon which the claim is based.)

5. That to the best of my knowledge and belief, I am (*or* the above named creditor is) (*or* am not *or* is not) related to the debtor within the meaning of Section 4 of the *Bankruptcy and Insolvency Act*.

6. That the following are the payments that I have received from and the credits that I have allowed to the debtor within the three months (*or, if the creditor and the debtor are related within the meaning of Section 4 of the Bankruptcy and Insolvency Act,* within the 12 months) immediately preceding the date of bankruptcy:

(Provide details of payments and credits).

III. Filing of Claim

This Creditor Proof of Claim must be returned to and received by the Trustee at the following address:

KPMG INC., in its capacity as Trustee in Bankruptcy
of MF Global Canada Co.
333 Bay Street, Suite 4600
Bay Adelaide Centre
Toronto, Ontario
Canada, M5H 2S5

Attention: MF Global Canada –Claims
Telephone: 416-777-3666
Toll Free Number: 1-866-602-6743
Fax: 416-777-3364
Email: mfglobalcanada@kpmg.ca

Dated at __________ this __________ day of __________________, 2012.

Name and address of Witness:

____

____

Witness Signature

____

Name of Creditor

Per: ______________________________

SCHEDULE "E"

Court File No. 31-0R-207854-T

ONTARIO
SUPERIOR COURT OF JUSTICE
(IN BANKRUPTCY AND INSOLVENCY)

IN THE MATTER OF THE BANKRUPTCY OF
MF GLOBAL CANADA CO.,
OF THE CITY OF TORONTO, IN THE PROVINCE OF ONTARIO

NOTICE OF DISALLOWANCE (OR PARTIAL DISALLOWANCE)

Name of Claimant: ______________________________

Reference#: ______________________________

Pursuant to the Claims Process Order of the Honourable Justice Campbell, dated January ■, 2012, KPMG Inc., in its capacity as trustee in bankruptcy of MF Global Canada Co., hereby gives you notice that it has reviewed your Proof of Claim or Revised Net Equity Proof of Claim and has disallowed your Claim in full (or has partially disallowed your Claim for $■ and accepted your Claim in the amount of $■.

Reason for Disallowance (or Partial Disallowance)

____

____

____

____

____

AND TAKE FURTHER NOTICE that if you are dissatisfied with our decision in disallowing your claim, you may appeal to the Court within the 30-day period after the day on which this notice is served or sent, or within such period as the Court may, on application made within the

30-day period, allow, failing which, the above-referenced disallowance of your claim shall be final and conclusive.

A copy of the Claims Process Order and copies of all necessary forms can be found at: www.kpmg/ca/mfglobalcanada.

Address for Service:

KPMG INC., in its capacity as Trustee in Bankruptcy
of MF Global Canada Co.
333 Bay Street, Suite 4600
Bay Adelaide Centre
Toronto, Ontario
Canada, M5H 2S5

Attention: MF Global Canada –Claims
Telephone: 416-777-3666
Toll Free Number: 1-866-602-6743
Fax: 416-777-3364
Email: mfglobalcanada@kpmg.ca

Dated at ______________ this ________ day of ______________, 2012.

KPMG INC., in its capacity as Trustee in Bankruptcy
of MF Global Canada Co.

Per: ______________________________

Court File No. 31-0R-207854-T

IN THE MATTER OF THE BANKRUPTCY OF MF GLOBAL CANADA CO., OF THE CITY OF TORONTO, IN THE PROVINCE OF ONTARIO

ONTARIO
SUPERIOR COURT OF JUSTICE
(IN BANKRUPTCY AND INSOLVENCY)
PROCEEDINGS COMMENCED AT TORONTO

CLAIMS PROCESS ORDER

BORDEN LADNER GERVAIS LLP
Barristers and Solicitors
Scotia Plaza, 40 King Street West
Toronto, Ontario, M5H 3Y4

CRAIG J. HILL
Tel: (416) 367-6156
Fax: (416) 361-7301
(LSUC #31888K)

Lawyers for KPMG Inc., in its capacity as trustee in bankruptcy of MF Global Canada Co.

TOR01: 4821308: v3

.30 v2

TAB 8

Form 78.05

2009
District of Nova Scotia
Division No. 01-Halifax
Court No. 34181
Estate No. 51-125147

Hfx No. 318069

OCT 29 2013

SUPREME COURT OF NOVA SCOTIA
IN BANKRUPTCY AND INSOLVENCY

IN THE MATTER OF THE BANKRUPTCY OF
GENERAL MOTORS NOVA SCOTIA FINANCE COMPANY

ORDER FOR DIRECTIONS

Sgd. JLC, J.

BEFORE THE HONOURABLE Justice James L. Chipman **IN CHAMBERS:**

UPON READING the First Report of Grant Thornton Limited (which includes the former practice of Green Hunt Wedlake Inc. (the "**Trustee**") dated October 18, 2013 (the "**Trustee's Report**") and other material on file herein;

AND UPON IT APPEARING that the Trustee has entered into a settlement agreement with various parties that *inter alia* resolve certain claims pursued by the Trustee in the United States Bankruptcy Court – Southern District of New York (the "**US Court**") as part of the bankruptcy of Motors Liquidation Company (formerly known as General Motors Corporation) (the "**Settlement Agreement**");

AND UPON BEING SATISFIED that it is appropriate to order directions regarding a process for approval by the creditors of General Motors Nova Scotia Finance Company (the "**Bankrupt**") of the Settlement Agreement and recognition by this Honourable Court of an approval order of the US Court as well as certain other procedural matters;

UPON HEARING Gavin MacDonald, counsel to the Trustee, John Stringer, Q.C., counsel to General Motors of Canada Limited, together with such other counsel as were present;

ON THE MOTION of the Trustee;

IT IS HEREBY ORDERED THAT:

NOTICE AND SERVICE

1. The time and method for service of the motion materials be and is hereby abridged and validated such that this motion is properly returnable today and further service thereof is waived.

Form 78.05

GLOBAL PROOF OF CLAIM

2. Consistent with the Order for Directions of this Honourable Court issued November 27. 2009, the Trustee shall accept the global proof of claim (the "**Global Proof of Claim**") from the parties to the Settlement Agreement who hold beneficial interests in Series 8.375% Guaranteed Notes maturing December 7, 2015 or of Series 8.875% Guaranteed Notes maturing July 10, 2023 (collectively, the "**Notes**") issued in each case by the Bankrupt (the "**Representative Noteholders**") on behalf of all past, present and future beneficial or legal owners of the Notes (collectively, "**All Holders**") solely with respect to claims by All Holders against the Bankrupt in respect of the Notes (the "**Note Claims**") in the form attached as Appendix G to the Trustee's Report for distributions by the Trustee from the estate of the Bankrupt and, subject to Section 10 of this Order, for voting at a meeting of creditors of the Bankrupt to be held pursuant to the terms of this Order.

3. The Global Proof of Claim is deemed for the purposes of the administration of the affairs of this bankruptcy to be separate Proofs of Claim filed by each holder of Notes with respect to each of their respective Note Claims.

4. Dividends payable from the estate of the Bankrupt in respect of Note Claims shall be made to Deutsche Bank Luxembourg S.A. and Banque Générale du Luxembourg S.A. or their respective successors (collectively, the "**Fiscal and Paying Agent**") in accordance with the terms of the Fiscal and Paying Agency Agreement dated as of July 10, 2003 and governing the issuance of the Notes (the "**Fiscal and Paying Agency Agreement**").

5. Any proofs of claim filed with the Trustee with respect to Note Claims as of the date of this Order shall be deemed withdrawn by the applicable creditor, and no further proofs of claim in respect of the Note Claims may be filed with the Trustee subsequent to the date of this Order other than for voting purposes in accordance with Section 10 of this Order.

CREDITORS MEETING

6. The notice and service thereof of a meeting of creditors of the Bankrupt by the Trustee to be held October 31, 2013 beginning at 9:30am Eastern Standard Time pursuant to the *Bankruptcy and Insolvency Act* (the "**BIA**"), s. 103 or, if adjourned, at such other times and places as the Trustee may determine (the "**Creditors Meeting**") for consideration and approval of the Settlement Agreement be and is hereby approved, validated and confirmed as being effective as to form, service and delivery, and that no further notice or service is required on any person or party.

7. The holding of the Creditors Meeting at the offices of Akin Gump Strauss Hauer & Feld LLP, counsel to the Trustee, in the City of New York, State of New York, United States of America be and is hereby approved and confirmed.

8. Any creditor holding a Note Claim that is not a Representative Noteholder may vote at the Creditors Meeting by filing a proof of claim and proxy for voting purposes with the

Trustee prior to the Creditors Meeting substantially in the form prescribed by the BIA (an "**Individual Noteholder**").

9. The value of the Global Proof of Claim for voting purposes shall be reduced by the amount of all proofs of claim for voting purposes submitted to the Trustee by Individual Noteholders prior to the Creditors Meeting. For greater certainty, the Representative Noteholders shall be entitled to vote at the Creditors Meeting the full value of the Note Claims less the value of any proofs of claim filed by Individual Noteholders.

10. Notwithstanding any proofs of claim for voting purposes filed by Individual Noteholders, dividends by the Trustee from the estate of the Bankrupt to All Holders shall be made in accordance with Section 4 of this Order.

11. The Creditors Meeting shall be conducted in accordance with the provisions of the BIA.

RECOGNITION MOTION

12. A motion by the Trustee be and is hereby scheduled for 9:30 am in General Chambers, Law Courts, Halifax, Nova Scotia on November 12, 2013 (the "**Recognition Motion**") for the following relief:

    (a) Recognition of an Order of the US Court approving the Settlement Agreement and granting certain ancillary relief in connection with that Agreement:

    (b) Approval of the actions of the Trustee to the date of the hearing, including the execution of the Settlement Agreement;

    (c) Approval of the interim fees and expenses of the Trustee and its counsel to the date of the hearing;

    (d) Authorization for the Trustee to pay such approved fees and expenses (in part) from the assets of the estate of the Bankrupt;

    (e) Authorization for the GM Canada Payment (as defined in the Settlement Agreement) to be made and disbursed pursuant to the direction of the Trustee as provided in paragraph 5 of the Settlement Agreement; and

    (f) An injunction against All Holders from making any claims which would have the effect of nullifying or adversely modifying the releases contained in paragraphs 13 to 22 or the acknowledgements contained in paragraph 23 of the Settlement Agreement, and a further injunction giving effect to the bar order contained in paragraph 31 of the Settlement Agreement.

13. Notice of the Recognition Motion shall be given in accordance with the procedures set forth in Sections 15 to 21 of this Order.

Form 78.05

14. The Trustee shall file a notice of such motion with this Court with such additional materials as required by the BIA or the Civil Procedure Rules subsequent to the Creditors Meeting but no later than the close of business on November 6, 2013.

SERVICE PROTOCOL

15. The Trustee shall post of a copy of the Settlement Agreement, this Order, the Trustee's Report, and any other materials filed in connection with this Order on its website at http://www.grantthornton.ca/services/reorg/creditor_updates.

16. Notice of the Recognition Motion shall be given by the Trustee to All Holders with the assistance of the Fiscal and Paying Agent through the applicable clearinghouses in accordance with the terms of the Fiscal and Paying Agency Agreement and this Order. The form of such notice shall be substantially in the form attached hereto as Schedule "A". Delivery of such notice by the Trustee to the Fiscal and Paying Agent shall be sufficient notice and service to All Holders.

17. In accordance with section 1 of Schedule B of the Terms and Conditions of the Notes, at page 44 of the Fiscal and Paying Agency Agreement, the Trustee shall notify the Luxembourg Stock Exchange of the Recognition Motion in accordance with the rules of such exchange and the terms of the Fiscal and Paying Agency Agreement. The form of such notice shall be substantially in the form attached hereto as Schedule "A".

18. The Trustee shall give notice of the Recognition Motion by pre-paid private courier to all creditors of the Bankrupt who have filed proofs of claim with the Trustee. The Notice at Schedule "B" is approved for the purpose of such notification.

19. The Trustee shall give notice of the Recognition Motion to the parties to the Settlement Agreement in accordance with paragraph 28 of the Settlement Agreement.

20. The Trustee shall give notice of the Recognition Motion to the Office of the Superintendent of Bankruptcy in accordance with the provisions of the BIA.

21. The service and notice requirements outlined in this Order shall be considered valid and sufficient service and notice for the Recognition Motion pursuant to the BIA, the *Bankruptcy and Insolvency Act Rules*, and the *Civil Procedure Rules* (Nova Scotia).

Issued October 29, 2013.

Tanya Allan

Deputy Prothonotary

Tanya Allan

OCT 29 2013

Tanya Allan

Deputy Prothonotary

Tanya Allan

*10028913/00001/1434962/v4

Schedule "A"

Notice to All Holders

THIS NOTICE CONTAINS IMPORTANT INFORMATION OF INTEREST TO THE BENEFICIAL OWNERS OF THE NOTES. IF APPLICABLE, ALL DEPOSITARIES, CUSTODIANS AND OTHER INTERMEDIARIES RECEIVING THIS NOTICE ARE REQUESTED TO PASS THIS NOTICE TO SUCH BENEFICIAL OWNERS IN A TIMELY MANNER.

In accordance with normal practice, the Fiscal Agent (as defined below) expresses no view as to the truth, veracity, accuracy or completeness of the contents of this Notice. The Fiscal Agent does not make any representation that all relevant information has been disclosed to the Noteholders in or pursuant to this Notice. Accordingly, the Fiscal Agent recommends that Noteholders consider seeking their own financial, tax, accounting, investment and legal advice. No responsibility or liability is or will be accepted by the Fiscal Agent in relation to the accuracy or completeness of this Notice or any other written or oral information made available to any person receiving this notice or its advisors and any such liability is expressly disclaimed.

This notice is issued by the Nova Scotia Trustee (as defined below) in its capacity as trustee in bankruptcy for the Issuer (as defined below). None of the foregoing is intended or should be construed as investment, financial, legal or tax advice by or on behalf of the Issuer, the Nova Scotia Trustee or their respective directors, officers, agents, attorneys or employees. Each person receiving this notice should seek the advice of its own advisors in respect of the matters set forth herein. NOTHING IN THIS NOTICE CONSTITUTES ANY PROMOTION IN RESPECT OF OR ANY INVITATION, ENDORSEMENT OR OFFER TO INVEST OR DEAL IN THE LOAN (AS DEFINED IN THE OFFERING CIRCULAR) OR THE NOTES OR IN ANY OTHER ASSETS, SECURITIES OR FINANCIAL INSTRUMENTS IN ANY JURISDICTION.

Holders of the 2015 Notes and the 2023 Notes (as are both defined below) (collectively, the "Noteholders") are reminded that the Fiscal Agent acts solely as agent of the Issuer and has no obligations or relationships of agency or trust towards any Noteholder. The Fiscal Agent will not be filing any claims on behalf of the Noteholders. The Nova Scotia Trustee is appointed pursuant to the Bankruptcy and Insolvency Act (Canada) to represent the general interests of unsecured creditors of the Issuer. The Nova Scotia Trustee will not be filing any documentation on behalf of any particular Noteholder.

NOTICE

To the Holders of the

General Motors Nova Scotia Finance Company

£350,000,000
8.375 Percent Notes due 2015 (the "2015 Notes")

XS0171922643
and

£250,000,000
8.875 Percent Notes due 2023 (the "2023 Notes")
XS0171908063

Reference is made to the Fiscal and Paying Agency Agreement among General Motors Nova Scotia Finance Company (the "Issuer"), General Motors Corporation, now known as Motors Liquidation Company (the "Guarantor"), Deutsche Bank Luxembourg S.A. (the "Fiscal Agent") and Banque Générale du Luxembourg S.A. dated July 10, 2003 pursuant to which the 2015 Notes and the 2023 Notes were issued.

PLEASE TAKE NOTICE that Grant Thornton Limited (carrying on the practice of Green Hunt Wedlake Inc.) in its capacity as trustee in bankruptcy for the Issuer (the "Nova Scotia Trustee") has scheduled a motion to be heard by the Supreme Court of Nova Scotia in Bankruptcy and Insolvency (the "NS Court") seeking recognition of an Order of the United States Bankruptcy Court – Southern District of New York (the "US Court"), an injunction barring actions by all past, present and future Noteholders in accordance with the terms of the Settlement Agreement (as defined below) among other relief (the "Recognition Motion").

RECOGNITION MOTION

The Nova Scotia Trustee is bringing the Recognition Motion for an order:

1. recognising the order of the US Court approving the settlement agreement entered into by the Trustee (the "Settlement Agreement"), that resolves among other matters, (a) the Administrative Expense Claim filed by General Motors LLC ("New GM") (as defined in the motion filed by Motors Liquidation Company GUC Trust in the US Court on September 27, 2013 pursuant to Sections 105, 363 and 1142 of the Bankruptcy Code and Bankruptcy Rules 3020 and 9019 (the "US Motion"), subject to paragraph 10 of the Settlement Agreement), (b) the GUC Trust's objections to all claims asserted against Motors Liquidation Company f/k/a General Motors Corporation ("Old GM") based on its guarantee (the "Guarantee") of the obligations of the Issuer under the Notes, (c) the GUC Trust's objection to the claim of the Nova Scotia Trustee, and (d) all claims arising from or related to the Lock-Up Agreement, the Consent Fee, and the Intercompany Loans (all as defined in the US Motion), and granting certain ancillary relief in connection with that Agreement;

2. approving the actions of the Nova Scotia Trustee to the date of the hearing, including execution of the Settlement Agreement;

3. approving the interim fees and expenses of the Nova Scotia Trustee and its counsel to the date of the hearing;

4. authorizing the Nova Scotia Trustee to pay such approved fees and expenses from the assets of the estate of the Issuer authorizing the payment from General Motors of Canada Limited

contemplated by paragraph 5 of the Settlement Agreement to be made and disbursed pursuant to the direction of the Nova Scotia Trustee and in accordance with the Settlement Agreement; and

5. issuing an injunction against all past, present and future Noteholders from making any claims which would have the effect of nullifying or adversely modifying the releases contained in paragraphs 13 to 22 or the acknowledgements contained in paragraph 23 of the Settlement Agreement, and a further injunction giving effect to the bar order contained in paragraph 31 of the Settlement Agreement.

The Recognition Motion is scheduled to be heard by the NS Court on November 12, 2013 at 9:30 am Atlantic Standard Time at the Law Courts, 1815 Upper Water St., Halifax Regional Municipality, Province of Nova Scotia, Canada.

Any responses or objections to the Recognition Motion must be in writing, conform with the requirements of the *Bankruptcy and Insolvency Act* (Canada), *Bankruptcy and Insolvency Act Rules*, and *Civil Procedure Rules* (Nova Scotia), be filed with the NS Court and served on the Nova Scotia Trustee no later than November 8, 2013 at 4:30pm Atlantic Standard Time.

All materials filed by the Nova Scotia Trustee in respect of the Recognition Order are posted on its website: http://www.grantthornton.ca/services/reorg/creditor_updates.

If no responses are timely filed and served, the NS Court may make an order granting the relief requested in the Recognition Motion, which order may be entered with no further notice or opportunity to be heard offered to any party.

The principal terms of the proposed settlement include:

a. The allowance of a $1.073 billion general unsecured claim against the Old GM estate based upon the Guarantee in favor of the Noteholders;

b. reduction of the approximately $1.608 billion claim filed by the Nova Scotia Trustee to an allowed, general unsecured claim of $477 million;

c. payment by General Motors of Canada Limited of $50 million in cash to the Nova Scotia Trustee, to be applied in part to pay certain fees and expenses of certain parties involved in litigating and settling the disputes underlying the Settlement Agreement in the amount of $17.5 million (plus any additional amounts owed by Issuer to the Canadian Office of Superintendent of Bankruptcy pursuant to applicable bankruptcy laws in Canada), with the remainder to be distributed to the Noteholders allocated as follows: approximately 57.43% to the 2015 Notes and approximately 42.57% to the 2023 Notes;

d. various releases given by all past, present and future Noteholders and all other parties referenced within and released pursuant to the Settlement Agreement;

e. a special distribution (the "Initial Distribution") of common stock of General Motors Company (the "GM Common Stock"), warrants to purchase GM Common Stock and units of beneficial interest in the GUC Trust (the "GUC Trust Units"), pursuant to Sections 5.3 and 5.8 of the GUC Trust Agreement (copy of which may be found at https://www.mlcguctrust.com/KeyDocuments.aspx), to the holders of record of the Notes as of a date (the "Noteholder Record Date") following the expiration of applicable appeals periods for orders issued in respect of the US Motion and Recognition Motion, as the beneficial holders of the allowed portions of the Guarantee Claim and the Wind-Up Claim; and

f. a special distribution of excess distributable assets of the GUC Trust, pursuant to Sections 5.4 and 5.8 of the GUC Trust Agreement, to all holders of record of the GUC Trust Units (including the GUC Trust Units distributed in the Initial Distribution) as of a record date to be set after the date of the Initial Distribution.

The Initial Distribution will consist of, in the aggregate, (a) 6,174,015 shares of GM Common Stock, (b) 5,612,741 warrants to acquire GM Common Stock at an exercise price of $10.00, expiring July 10, 2016, (c) 5,612,741 warrants to acquire GM Common Stock at an exercise price of $18.33, expiring July 10, 2019, and (d) 1,550,000 GUC Trust Units. In addition, in the event that any assets become available for distribution to holders of general unsecured claims against the MLC estate in respect of the legal action styled as *Official Committee of Unsecured Creditors of Motors Liquidation Co. v. JPMorgan Chase Bank, N.A. et al.* (Adv. Pro. No. 09-00504 (Bankr. S.D.N.Y. July 31, 2009)) (the "Term Loan Avoidance Action"), such distributions will be made to the Noteholders as of the Noteholder Record Date, as the beneficial holders of the allowed portions of the Guarantee Claim and the Wind-Up Claim. For additional information regarding the Term Loan Avoidance Action, please see the disclosure in the GUC Trust's Form 10-K, filed on March 31, 2013, under the headings "Item 1. Business—Term Loan Avoidance Action" and "Item 3. Legal Proceedings—Term Loan Avoidance Action."

If the Noteholders have any questions, they should contact Peter Wedlake of Grant Thornton Limited (includes the former practice of Green Hunt Wedlake Inc.) by email: Peter.Wedlake@ca.gt.com or by telephone: 902.453.6600 (Halifax, Nova Scotia, Canada).

This notice is given by the Nova Scotia Trustee on behalf of the Issuer on [DATE]

Schedule "B"

Notice of Recognition Motion to Creditors

District of: Nova Scotia
Division No. 01 – Halifax
Court No. 34181
Estate No. 51-125147

Notice to Proven Creditors

In the matter of the bankruptcy of

GENERAL MOTORS NOVA SCOTIA FINANCE COMPANY

The Nova Scotia Trustee has scheduled a motion to be heard by the Supreme Court of Nova Scotia in Bankruptcy and Insolvency (the "NS Court") seeking recognition of an Order of the United States Bankruptcy Court – Southern District of New York (the "US Court"), an injunction barring actions by all past, present and future holders (collectively, the Noteholders") of Series 8.375% guaranteed notes maturing December 7, 2015 or of Series 8.875% guaranteed notes maturing July 10, 2023 (collectively, the "Notes") issued by General Motors Nova Scotia Finance Company (the "Issuer") in accordance with the terms of the Settlement Agreement (as defined below) among other relief (the "Recognition Motion").

RECOGNITION MOTION

The Nova Scotia Trustee is bringing the Recognition Motion for an order:

1. recognising the order of the US Court approving the settlement agreement entered into by the Trustee (the "Settlement Agreement"), that resolves among other matters, (a) the Administrative Expense Claim filed by General Motors LLC ("New GM") (as defined in the motion filed by Motors Liquidation Company GUC Trust in the US Court on September 27, 2013 pursuant to Sections 105, 363 and 1142 of the Bankruptcy Code and Bankruptcy Rules 3020 and 9019 (the "US Motion"), subject to paragraph 10 of the Settlement Agreement), (b) the GUC Trust's objections to all claims asserted against Motors Liquidation Company f/k/a General Motors Corporation ("Old GM") based on its guarantee (the "Guarantee") of the obligations of the Issuer under the Notes, (c) the GUC Trust's objection to the claim of the Nova Scotia Trustee, and (d) all claims arising from or related to the Lock-Up Agreement, the Consent Fee, and the Intercompany Loans (all as defined in the US Motion). and granting certain ancillary relief in connection with that Agreement;

2. approving the actions of the Nova Scotia Trustee to the date of the hearing, including execution of the Settlement Agreement:

3. approving the interim fees and expenses of the Nova Scotia Trustee and its counsel to the date of the hearing;

4. authorizing the Nova Scotia Trustee to pay such approved fees and expenses from the assets of the estate of the Issuer;

5. authorizing the payment from General Motors of Canada Limited contemplated by paragraph 5 of the Settlement Agreement to be made and disbursed pursuant to the direction of the Nova Scotia Trustee and in accordance with the Settlement Agreement; and

6. issuing an injunction against all past, present and future Noteholders from making any claims which would have the effect of nullifying or adversely modifying the releases contained in paragraphs 13 to 22 or the acknowledgements contained in paragraph 23 of the Settlement Agreement, and a further injunction giving effect to the bar order contained in paragraph 31 of the Settlement Agreement.

The Recognition Motion is scheduled to be heard by the NS Court on November 12, 2013 at 9:30 am Atlantic Standard Time at the Law Courts, 1815 Upper Water St., Halifax Regional Municipality, Province of Nova Scotia, Canada.

Any responses or objections to the Recognition Motion must be in writing, conform with the requirements of the *Bankruptcy and Insolvency Act* (Canada), *Bankruptcy and Insolvency Act Rules,* and *Civil Procedure Rules* (Nova Scotia), be filed with the NS Court and served on the Nova Scotia Trustee no later than November 8, 2013 at 4:30pm Atlantic Standard Time.

All materials filed by the Nova Scotia Trustee in respect of the Recognition Order are posted on its website: http://www.grantthornton.ca/services/reorg/creditor_updates.

If no responses are timely filed and served, the NS Court may make an order granting the relief requested in the Recognition Motion, which order may be entered with no further notice or opportunity to be heard offered to any party.

Please do not hesitate to contact the undersigned should you have further questions.

Grant Thornton Limited
(*includes the former practice of Green Hunt Wedlake Inc.*) – **Trustee**

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