

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 for relief under the *Companies' Creditors Arrangement Act*

SECOND REPORT OF THE MONITOR

February 20, 2019

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INTRODUCTION

1. On February 5, 2019 (the "**Filing Date**"), Quadriga Fintech Solutions Corp., Whiteside Capital Corporation and 0984750 B.C. Ltd. ("**Quadriga**" or the "**Company**") d/b/a Quadriga CX and Quadriga Coin Exchange (collectively, the "**Applicants**") were granted protection from their creditors by the Nova Scotia Supreme Court (the "**Court**") under the *Companies' Creditors Arrangement Act* (the "**CCAA**"). Pursuant to an Order of Justice Wood dated February 5, 2019 (the "**Initial Order**"), Ernst & Young Inc. ("**EY**") was appointed as the monitor (the "**Monitor**") of the Applicants in these CCAA proceedings.

PURPOSE

2. The purpose of this Second Report of the Monitor (the "**Second Report**") is to provide the Court with an update in respect of the following:
 - (a) Transfer of certain cryptocurrency in the Applicants' wallet to a wallet in the

possession of the Monitor;

- (b) Governance matters and the status of the interim financing arrangements with respect to the Applicants; and
- (c) The relief sought in the draft order (the “**Draft Order**”) requested by the Monitor with respect to the Applicants’ post-filing bank arrangements and the deposit of certain funds in the account of the Monitor for post-filing receipts and disbursements as set out in the Initial Order (the “**Disbursement Account**”).

TERMS OF REFERENCE

- 3. In preparing this First Report, the Monitor has relied upon unaudited financial information, the Company’s books and records, financial information prepared by the Company (the “**Information**”) and discussions with the Applicants’ directors, senior management team, consultants (“**Management**”) and legal advisors. The Monitor has not audited, reviewed or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would wholly or partially comply with Generally Accepted Assurance Standards (“**GAAS**”) pursuant to the *Chartered Professional Accountants Canada Handbook*, and accordingly the Monitor expresses no opinion or other form of assurance in respect of the Information.
- 4. The Monitor’s understanding of factual matters expressed in this Report concerning the Applicants and their business is based on the Information, and not independent factual determinations made by the Monitor.
- 5. Unless otherwise stated, all monetary amounts contained herein are expressed in Canadian

dollars.

TRANSFER OF CRYPTOCURRENCY

6. At the initial hearing on February 5, 2019 the Applicants sought an order authorizing the Applicants and/or the Monitor to maintain a cold wallet and hold any cryptocurrency held by Quadriga as at the Filing Date or located thereafter during the CCAA proceedings. During the hearing, the Court directed that the Monitor maintain the cold wallet. Immediately upon being appointed on the Filing Date the Monitor took steps to obtain a wallet for each of the cryptocurrency held by the Applicants that could be used as cold storage for the coins.

7. As reported in the First Report, on February 6, 2019, the day after the Initial Order was granted, Quadriga inadvertently transferred certain cryptocurrency into cold wallets that the Applicants are unable to access. The Monitor had initiated discussions with Management to determine the location and quantum of available cryptocurrency so that the arrangements could be made for Quadriga to initiate the transfers of the Applicants' cryptocurrency to the Monitor's cold wallets once the Monitor's cold wallets were established. The Monitor understands from Management that the inadvertent transfer occurred due to a platform setting error by the Applicants that resulted in bitcoin being automatically transferred to the Quadriga cold wallets. The Monitor has viewed the wallet addresses that received the cryptocurrency as a result of the setting change and has confirmed that the transfers occurred at the time noted by Management and that the Quadriga cold wallets continue to hold approximately 104 bitcoins as of the date of the Second Report.

8. As referenced in the First Report, the Monitor made arrangements for Quadriga to transfer the Applicants' remaining cryptocurrency into cold storage wallets under the control of the Monitor. On February 14, 2019, after testing the transfer arrangements, the Applicants successfully transferred the following cryptocurrency to the Monitor:
 - (a) Bitcoin: 51.12008035;
 - (b) Bitcoin Cash: 33.31348647;
 - (c) Bitcoin Gold: 2,032.65853677;
 - (d) Litecoin: 822.26686907; and
 - (e) Ether: 951.49917091.
9. The Monitor will hold the cryptocurrency in cold storage pending further order of the Court.

UPDATES WITH RESPECT TO THE APPLICANTS

Governance of the Applicants

10. The Monitor was advised that Jack Martel resigned as director from the boards of each of the Applicants on February 11, 2019 effective as of February 6, 2019. The remaining directors of the Applicants are Jennifer Robertson and Thomas Beazley.

Interim Financing

11. As indicated in the affidavit of Jennifer Robertson sworn January 30, 2019, Ms. Roberston provided interim financing to the Applicants. Ms. Roberston provided retainers of \$50,000

to both Stewart McKelvey and EY which were advanced prior to the Filing Date. On February 6, 2019, the Monitor received an additional \$150,000 from Ms. Robertson which has been deposited into the Disbursement Account. The Monitor understands the balance of the financing (\$50,000) was paid to Stewart McKelvey to fund legal costs incurred prior to Filing Date. The Monitor has requested copies of the latter invoices.

BANK ARRANGEMENTS AND BANK DRAFTS

12. As set out in the Pre-Filing Report of the Monitor dated January 31, 2019, there are three immediate sources of funds available to the Applicants to fund these CCAA proceedings and ultimately, for distribution to creditors: (a) bank drafts (the “**BMO Drafts**”) in the possession of Costodian Inc. (“**Costodian**”) representing the funds deposited by CIBC with the Ontario Superior Court of Justice (the “**Affected Funds**”); (b) bank drafts payable to 1009926 B.C. Ltd. and delivered to Stewart McKelvey prior to the commencement of the CCAA proceedings (the “**Bulk Drafts**”); and (c) amounts held by third party payment processors (the “**Third Party Processors**”) on behalf of Quadriga.
13. Since the Filing Date, the Applicants and the Monitor have been in discussions with Royal Bank of Canada (“**RBC**”) (the Monitor’s bank where the Disbursement Account is held), Bank of Montreal (“**BMO**”) (the issuing bank of the BMO Drafts), Costodian (who held the BMO Drafts prior to the Filing Date) and Stewart McKelvey who holds the Bulk Drafts in order to negotiate terms by which all parties would consent to have the BMO Drafts and the Bulk Drafts released and assigned to the Monitor and permit the Monitor to deposit the drafts into the Disbursement Account.
14. The Applicants and the Monitor have also written to nine (9) Third Party Processors to

confirm and reconcile amounts held by those parties and solicit the return of funds for the benefit of the Applicants' creditors.

15. On February 15, 2019, Costodian released four (4) of the BMO Drafts representing \$20,272,089.09 of the Affected Funds to the Monitor. Costodian has retained possession of one (1) of the BMO Drafts representing \$5,000,000 of the Affected Funds (the "**Remaining Bank Draft**") and another bank draft for approximately US\$70,000 (the "**U.S. Draft**"), which, as discussed below, it will not deliver to the Applicants or the Monitor without further order of the Court.
16. RBC has been cooperative and has assisted the Applicants and the Monitor with these proceedings to date. However, as a stranger to the CCAA proceedings, RBC has expressed hesitation to accept and disburse the BMO Drafts, Bulk Drafts and future amounts, without direction and relief from the Court. The Applicants and the Monitor have engaged in discussions with RBC to determine the necessary relief to allow the BMO Drafts and the Bulk Drafts to be deposited into the Disbursement Account. RBC has indicated that if the Draft Order attached hereto as **Appendix "A"** is granted by the Court, it will agree to permit the BMO Drafts, and future funds received from the Bulk Drafts and Third Party Processors to be deposited into the Disbursement Account. The Applicants and the Monitor support the terms of the Draft Order.
17. Costodian has indicated that they are willing to endorse the BMO Drafts (except for the Remaining Bank Draft and the U.S. Draft) to the Monitor or Quadriga in order to permit the funds to be deposited into the Disbursement Account.
18. With respect to the U.S. Draft, Costodian has claimed that the entire balance represents

personal funds and property of Jose Reyes, the principal of Costodian. In addition, with respect to the Remaining Bank Draft, Custodian has claimed that \$60,958.64 also represents personal funds and property of Mr. Reyes (the “**Personal Funds**”).

19. Costodian also claims to be entitled to \$778,213.94 of the BMO Drafts for unpaid processing fees owing by Quadriga (the “**Disputed Amount**”) to Costodian. Attached as **Appendix “B”** to the Second Report is a copy of correspondence received from Loopstra Nixon LLP, counsel to Costodian and Jose Reyes, outlining Costodian’s asserted claims against the Remaining Bank Draft. Based on information received during the course of the CIBC interpleader proceedings referenced in the Roberston Affidavit, the Applicants agree that the Personal Funds and the U.S. Draft are not property of Quadriga as contemplated in the Initial Order.
20. The Monitor understands that the Applicants dispute that fees are owing to Costodian under the arrangements between the parties. The Monitor understands that the issue of the Disputed Amount was not determined by the Ontario Superior Court of Justice during the course of the CIBC interpleader proceedings and as such a separate dispute resolution mechanism will be required during the course of these CCAA proceedings.
21. The Applicants and the Monitor will work with Costodian’s counsel to determine the process to have the Disputed Amounts determined and/or resolved, failing which they will return to this Court for advice and directions. Pending the determination of the parties’ respective rights, entitlements, claims and defences to the Disputed Amount, the Applicants, Monitor and Costodian’s counsel have agreed the funds will be held in accordance with an Order of the Court.

22. The Draft Order provides that the Remaining Bank Draft should be delivered to the Monitor on the following terms:

- (a) Custodian shall deliver the Remaining Bank Draft to the Monitor along with an endorsement to permit the BMO Drafts and the Remaining Bank Draft to be deposited in the Disbursement Account;
- (b) Following the receipt and deposit of the Remaining Bank Draft into the Disbursement Account, the Monitor will distribute \$60,958.64 to Mr. Reyes attributable to the Personal Funds from the Disbursement Account;
- (c) Custodian is entitled to maintain the U.S. Draft; and
- (d) The Monitor will deposit the Disputed Amount into a separate account which shall be distributed upon further order of the Court pending a determination or resolution of the parties' respective rights, entitlements, claims and defences with respect to the Disputed Amount.

23. With respect to the Bulk Drafts, Stewart McKelvey, counsel to the Applicants, has been in possession of the Bulk Drafts since shortly prior to the Filing Date. The Monitor understands that Stewart McKelvey has catalogued the Bulk Drafts which are comprised of 1,004 bank drafts totalling \$5,838,425.92 originating from multiple financial institutions. The Monitor understands that the Bulk Drafts were initially issued by a number of payors in favour of 1009926 B.C. Ltd., a company controlled by a former contractor of Quadriga, which acted as a Third Party Processor. The Monitor understands that there was a purported assignment of the Bulk Drafts by 1009926 B.C. Ltd. to 700964 N.B. Inc. by way

of a general assignment agreement. However, counsel to the Applicants has advised that a new assignment is necessary to address certain errors in the original including the amount of the Bulk Drafts contained in the assignment agreement was incorrect and there was no schedule detailing the specifics of each of the Bulk Drafts, among other things.

24. A corporate search of the British Columbia Corporate Registry has also confirmed that 1009926 B.C. Ltd. was dissolved for failure to file a corporate annual report. The Monitor understands that the Applicants have certain options available in order to restore the company to facilitate the execution of a new assignment agreement.
25. The Draft Order provides authorization to the Monitor and the Applicants to take additional steps and actions as may be necessary or desirable in order to deposit the Bulk Drafts and other funds into the Disbursement Account. If 1009926 B.C. Ltd. is cooperative in assigning and endorsing the Bulk Drafts to the Monitor in order for the funds to be deposited into the Disbursement Account, the Monitor does not anticipate that further relief from the Court will be necessary to deposit the Bulk Drafts.

CONCLUSION

26. The Applicants currently have no accessible funds to fund the CCAA proceedings, other than the interim financing provided by Ms. Robertson which will be exhausted in the near term. Currently, four (4) of the BMO Drafts and the Bulk Drafts are in the physical possession of the Applicants' counsel and/or the Monitor. It is important for the administration of the CCAA proceedings and the Applicants' creditors that the BMO Drafts and the Bulk Drafts be deposited in a timely manner such that they become

accessible to fund these CCAA proceedings and ultimately distributions to creditors.

27. Furthermore, in anticipation of the Monitor receiving funds from other Third Party Processors it is also important that satisfactory arrangements with RBC be established in order to permit the deposit of future recoveries into the Disbursement Account. The Monitor believes that the terms of the Draft Order provides the necessary structure and arrangements in order to permit the BMO Drafts, the Bulk Drafts and other funds to be deposited in a secure and accessible account and that it is appropriate for the Court to grant the requested relief in the Draft Order.

All of which is respectfully submitted this 20th day of February 2019.

ERNST & YOUNG INC.

In its capacity as the Court-appointed Monitor
in the matter of the proposed compromise and arrangement of
Quadriga Fintech Solutions Corp, Whiteside Capital Corporation and 0984750 B.C. Ltd.



George Kinsman, CPA, CA, CIRP, LIT
Senior Vice President

Appendix “A” – Draft Order

[Attached]

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**ORDER
(Banking Arrangements Order)**

BEFORE THE HONOURABLE JUSTICE MICHAEL J. WOOD

UPON MOTION, in the proceedings of Quadriga Fintech Solutions Corp., Whiteside Capital Corporation, and 0984750 B.C. Ltd. ("**Quadriga**") d/b/a Quadriga CX and Quadriga Coin Exchange (collectively, the "**Applicants**"), under the *Companies' Creditors Arrangement Act* (the "**CCAA Proceedings**"), by Ernst & Young Inc., in its capacity as Court-appointed Monitor of the Applicants (the "**Monitor**") for an order granting certain relief with respect to post-filing bank arrangements of the Applicants and the depositing of certain funds into an account of the Monitor;

UPON READING the Second Report of the Monitor;

AND UPON HEARING counsel to the Applicants, counsel for the Monitor, counsel to Royal Bank of Canada, counsel to Bank of Montreal, counsel to Costodian Inc. and Jose Reyes and such other individuals who appeared in person or via conference call 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.
2. Royal Bank of Canada (“**RBC**”) shall accept deposits of funds from the Applicants or the Monitor into the Disbursement Account (as defined by the Initial Order dated February 5, 2019 of this Court (the “**Initial Order**”) with the account number 100-851-5 or any replacement thereof, which constitute Property (as defined by the Initial Order) of the Applicants, including, amounts owing to Quadriga by third party payment processors, any of Quadriga’s cryptocurrency liquidated by the Monitor in accordance with an Order of the Court, bank drafts endorsed and/or assigned to the Monitor by 700964 N.B. Inc. or 10099226 B.C. Ltd. (the “**Bulk Drafts**”), the Bank Drafts (defined below), the Remaining Bank Draft (defined below), other bank drafts or similar financial instruments (collectively, “**Funds**”).
3. RBC shall be entitled to rely on the directions of the Monitor to determine whether the Funds shall be deposited into the Disbursement Account or the Separate Account (defined below) and having relied on such directions, the terms of the Initial Order and this Order, there shall be no right of action against RBC with respect to its acceptance of Funds into the Disbursement Account.
4. RBC shall be entitled to rely on directions from the Monitor in determining whether any Funds in the Disbursement Account or the Separate Account shall be disbursed and having relied upon such direction, the terms of the Initial Order and this Order, there shall be no right of action against RBC with respect to its disbursements of Funds from the Disbursement Account.
5. RBC shall have no liability or obligation as a result of the performance of their duties in carrying out the provisions of this Order, including any and all matters related to the acceptance into and payment of the Funds out of the Disbursement Account or the Separate Account, save and except for liability arising out of negligence or actionable misconduct.
6. The Monitor is hereby authorized and directed to enter into an assignment agreement, in a form acceptable to the Monitor, with 700964 N.B. Inc. or 10099226 B.C. Ltd., which endorses and assigns the Bulk Drafts to the Monitor in order to permit the Bulk Drafts to be deposited into the Disbursement Account. The Monitor and the Applicants are further authorized and empowered to take additional actions and steps or execute additional documents as may be necessary or desirable in order to deposit the Bank Drafts, Bulk Drafts or other Funds into the Disbursement Account.

7. Bank of Montreal (“**BMO**”) shall accept an endorsement in favour of the Monitor in respect of bank drafts issued by BMO numbered 083338, 083339, 083336 and 083340 (collectively, the “**Bank Drafts**”) and the remaining Canadian dollar bank draft issued by BMO currently made payable to Costodian Inc. (“**Costodian**”) numbered 083337 (the “**Remaining Bank Draft**”) and shall permit the Bank Drafts and the Remaining Bank Draft to be deposited into the Disbursement Account.
8. BMO shall have no liability or obligation as a result of the performance of their duties in carrying out the provisions of this Order, including accepting an endorsement in favour of the Monitor in respect of the Bank Drafts and the Remaining Bank Draft and permitting the Bank Drafts and the Remaining Bank Draft to be deposited into the Disbursement Account, save and except for liability arising out of negligence or actionable misconduct.
9. Within five (5) business days of this Order, Costodian shall deliver the Remaining Bank Draft and an endorsement in favour of the Monitor in respect of the Bank Drafts and the Remaining Bank Draft to the Monitor, in a form acceptable to the Monitor, which shall entitle the Monitor to deposit the Bank Drafts and the Remaining Bank Draft into the Disbursement Account.
10. Following the deposit of the Remaining Bank Draft in the Disbursement Account:
 - (a) the Monitor shall pay Jose Reyes \$60,958.64 on account of the personal funds of Mr. Reyes currently forming part of the Remaining Bank Draft; and
 - (b) deposit \$778,213.94 (the “**Disputed Amount**”), representing the amount of Remaining Bank Draft which Costodian has claimed for alleged outstanding fees (\$369,047.53 plus 5% HST for transaction fees and \$372,108.60 plus 5% HST for outbound transfer fees) in a separate account held by the Monitor (the “**Separate Account**”) with the account number 100-845-7 or any replacement thereof, pending a determination or resolution with respect to Quadriga’s and Costodian’s respective rights, entitlements and claims in respect of the Disputed Amount. Each of Quadriga’s and Costodian’s rights, entitlement, claims and defences shall not be affected by depositing the Disputed Amount in the Disbursement Account and the Separate Account and the parties’ respective rights, entitlements, claims and defences in respect of the Disputed Amount shall be determined as if Costodian continued holding possession of a bank draft for the Disputed Amount.

Issued at Halifax, Province of Nova Scotia, this ____ day of February, 2019.

Appendix “B” – Email from Loopstra Nixon

[Attached]

Keisha Lackpatiah-Sealy

From: Lee Nicholson
Sent: Wednesday, February 20, 2019 10:34 AM
To: Keisha Lackpatiah-Sealy
Subject: FW: QCX - Banking Order

From: Carey, Peter [<mailto:pcarey@loonix.com>]
Sent: Tuesday, February 19, 2019 3:03 PM
To: Lee Nicholson; Jaipargas, Roger; Cai, Elizabeth (Law) (elizabeth.cai@rbc.com)
Cc: Maurice Chiasson; Robbie MacKeigan; Elizabeth Pillon; Sharon Hamilton; George Kinsman
Subject: RE: QCX - Banking Order

Dear Counsel,

Further to my email yesterday I can now confirm the amounts that Mr. Reyes will be claiming from the remaining 5 million dollar bank draft and the amounts that Costodian will be claiming from the same bank draft.

Mr. Reyes personal funds included in the bank draft are: \$60,958.64. These monies should be paid to Mr. Reyes immediately.

Costodian's monies included in the bank draft are \$369,047.53 plus 5% HST for fees for transactions on behalf of Quadriga prior to the Costodian accounts at CIBC being frozen. In addition, Costodian will be claiming its fee, for transactions in which money was paid to the Monitor, in the amount of \$372,108.60 plus 5% HST.

I hope that this assists.

Regards

Peter Carey