COX & PALMER | coxandpalmerlaw.com

New Brunswick | Newfoundland and Labrador | Nova Scotia | Prince Edward Island

April 3, 2019

Hand Delivered

The Honourable Justice Michael J. Wood
Supreme Court of Nova Scotia
The Law Courts
1815 Upper Water St.
Halifax, NS B3J 1S7

My Lord:

Re: Application by Quadriga Fintech Solutions Corp., Whiteside Capital Corporation 0984750 B.C. Ltd. d.b.a. QuadrigaCX and Quadriga Coin Exchange (collectively, the "Applicants") for relief under the *Companies Creditors' Arrangement Act*
Hfx No. 484742
Motion – Monday, April 8, 2019 at 2 p.m.

We are local Representative Counsel (together with Miller Thomson, LLP, the "**Representative Counsel**) appointed by the Court pursuant to its Order dated February 28, 2019 (the "**Representative Counsel Order**"). Please accept this letter as submissions on behalf of Representative Counsel in respect of motions for an increase to the initial fee cap set in the Representative Counsel Order, and to propose a process for handling the fees and expenses of Representative Counsel for the period following the bankruptcy of the Applicants.

Notice of this Motion is being provided to the Service List by email consistent with past practice. An Affidavit in respect of Notice will be filed on or before the hearing of this matter.

The Representative Counsel Order at paragraph 24 provides that there may be a motion to increase the initial fee cap brought on seven calendar days' notice. Paragraph 23 provides that this motion may be brought by Representative Counsel or the Monitor. This motion if brought on shorter notice. We respectfully submit that this is an appropriate circumstance for the Court to exercise its discretion, pursuant to the Civil Procedure Rules, to abridge the time for the hearing of this matter. It is more efficient, we submit, for this matter to be determined at the same time as other matters scheduled to be heard in this proceeding than at a subsequently scheduled hearing. The motion brought by the Representative Counsel is supported by the Monitor and we do not expect any opposition from any member of the

Gavin D.F. MacDonald | Partner
Direct 902 491 4464 *Main* 902 421-6262 *Fax* 902 421-3130 *Email* gmacdonald@coxandpalmer.com
1100 Purdy's Wharf Tower One, 1959 Upper Water Street, Halifax, NS B3J 3N2
Correspondence PO Box 2380 Central Halifax NS B3J 3E5

Service List. The motion could not be filed prior to receipt of instructions and approval of the Official Committee of Affected Users following teleconference meetings on the nights of April 1 and 2.

With respect to this motion, we will be relying on the Affidavit of Asim Iqbal sworn April 2, 2019 (the "**Iqbal Affidavit**") and the Fourth Report of the Monitor dated April 1, 2019 (the "**Fourth Report**").

FEE CAP

The Representative Counsel Order provided for an initial fee cap on the fees and expenses of Representative Counsel and a mechanism to amend it at paragraphs 23 and 34:

> 23. Subject to funding being available in the Disbursement Account (as defined in the Initial Order of Justice Wood dated February 5, 2019 (the "**Initial Order**"), and without prejudice to any claim of Representative Counsel against the Applicants and their property for unpaid fees and disbursements, Representative Counsel shall be paid its reasonable and documented fees and disbursements (including disbursements relating to Advisors retained by Representative Counsel) by the Applicants to an aggregate maximum of $250,000, excluding disbursements (the "**Initial Fee Cap**"), which shall subject to adjustments in accordance with paragraph 24 of this Order. Representative Counsel shall be paid on a weekly or bi-weekly basis upon rendering its accounts to the Monitor for fulfilling its mandate in accordance with this Order, and subject to such redactions to the invoices as are necessary to maintain solicitor-client privilege between Representative Counsel and the Official Committee of Affected Users. Representative Counselor the Monitor are at liberty to bring another motion before the Court at any time to seek any amendment or modification to the funding arrangements set forth in this Order. In the event of any disagreement with respect to such fees and disbursements, such disagreement may be remitted to this Court for determination.
>
> 24. In consultation with the Monitor, Representative Counsel shall prepare a budget from time to time (or as requested by the Monitor or directed by this Court) for anticipated fees and disbursements (the "**Budget**"), and, as necessary or desirable,

> the Budget shall be provided to the Monitor and the Court for the purpose of determining whether the Initial Fee Cap or other funding arrangements should be amended or modified. A motion for the modification of the Initial Fee Cap may be conducted by way of teleconference on seven (7) calendar days' notice to the Service List.

We submit that an increase in the initial fee cap at this time is appropriate. The initial budget prepared by Representative Counsel and reviewed by the Monitor was for an initial 30 day period and the tasks set forth in that budget have been completed. The work undertaken to date, including unbudgeted work, has exhausted the initial fee cap. For reasons more particularly set out in the Iqbal Affidavit, the fees and expenses of Representative Counsel now exceed the initial fee cap. We submit that those fees and expenses are reasonable given the complex issues in this proceeding and the broad group of Affected Users. The proposed increase would deal with both the amount presently outstanding together with the amount needed to undertake the specific tasks of Representative Counsel, from the present time to the bankruptcy of the Applicants.

As noted, the increase to the initial fee cap is intended to cover the period to the bankruptcy of the Applicants. We submit that it is appropriate to have a change in the process for managing the fees and expenses of Representative Counsel post-bankruptcy as there will not be regular Court appearances as there are during a CCAA process. It is, we submit, not efficient to be regularly coming back to Court seeking only an increase in the fee cap where other mechanisms exist that provide a sufficient check on the work of professionals to make sure that they are both delivering value and acting in accordance with the Representative Counsel Order.

We propose that the fee cap be eliminated for the period subsequent to the bankruptcy of the Applicants. We note that, following the termination of the CCAA, there will be significantly fewer professionals involved in the file. Nevertheless, and as contemplated by the Transition Order sought by the Monitor, the work of Representative Counsel will continue post-bankruptcy. The Official Committee is now established and is the voice of the Affected Users (other than those who opt out). The Official Committee can act as a check and approval mechanism for the tasks and work undertaken by Representative Counsel, because it is the Official Committee to whom Representative Counsel reports and from whom Representative Counsel takes instruction. As previously discussed, the funds at issue are all ultimately those of the Affected Users, the bulk of whom are represented by the Official Committee. Ultimately, as contemplated by the Representative Counsel Order, the quantum of the fees of Representative Counsel will be subject further to Court approval. Finally, we note that this proposal is supported by the Monitor.

For the foregoing reasons, we submit that the initial fee cap should be increased to $400,000 for the period to the termination of the CCAA, and thereafter the fee cap should be eliminated in accordance with the proposed forms of order filed with these submissions.

All of which is respectfully submitted.

Yours very truly,

Gavin D.F. MacDonald
GDFM/lb