District of British Columbia
Division No. 3 – Vancouver
Court No. VLC-S-B-200204
Estate No.11-2634864

IN THE SUPREME COURT OF BRITISH COLUMBIA

AND

IN THE MATTER OF THE BANKRUPTCY OF ENCOREFX INC.

THIRD REPORT of

ERNST & YOUNG INC.,

TRUSTEE OF ENCOREFX INC.

EFFECTIVE AS AT OCTOBER 22, 2020

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THIRD REPORT OF
ERNST & YOUNG INC.,
TRUSTEE OF ENCOREFX INC.

Effective as at October 22, 2020

INTRODUCTION

1. EncoreFX Inc. ("**EncoreFX**" or the "**Company**") is a Victoria, British Columbia based financial services company providing foreign exchange ("**FX**") risk management services and cross-border payment solutions to predominantly small and medium enterprises ("**SME**") including foreign exchange spot transactions, foreign exchange derivative contracts (including forward contracts and options), and payment processing services. A further description of the background of the Company and reasons for its bankruptcy is described in further detail below.

2. On March 30, 2020 (the "**Bankruptcy Date**"), EncoreFX Inc. filed an assignment into bankruptcy. Ernst & Young Inc. consented to act as the licensed insolvency trustee in the estate (the "**Trustee**") of EncoreFX.

3. Pursuant to Section 69(1) of the *Bankruptcy and Insolvency Act* (Canada) (the "**BIA**"), a stay of proceedings (a "**Stay**") has been in effect with respect to the Company since the Bankruptcy Date. Specific statutory provisions of the BIA apply in respect of EFCs (as defined below), which provisions are considered further below.

4. The Trustee has retained the services of MLT Aikins LLP ("**MLT Aikins**") to represent it in the herein proceedings.

5. The Trustee has set up a website www.ey.com/ca/EncoreFX (the "**Website**"). The Trustee has posted copies of the certificate of filing, prescribed proof of claim forms and other relevant data to its Website and will continue to make timely updates to the Website

to ensure that all stakeholders have access to the most current information relating to these insolvency proceedings.

6. On April 22, 2020, the Trustee filed its "**First Report**" in which the Trustee provided this Honourable Court with, *inter alia*, background information pertaining to EncoreFX; and sought directions in respect of, a) the procedure (the "**FMOC Procedure**") for a First Meeting of Creditors (the "**FMOC**") given factors associated with the COVID-19 pandemic, b) a letter of intent (the "**US Subsidiary LOI**") for the sale of the US Subsidiary, and c) other matters pertaining to the EncoreFX Derivatives (defined in the First Report).

7. On April 28, 2020, this Honourable Court pronounced Order(s) which, a) approved a procedure for convening the FMOC and appointment of inspectors, b) approved the US Subsidiary LOI, and c) provided specific relief for the Trustee with respect to the ITM Positions (defined below) given that inspectors had not yet been appointed in the within bankruptcy proceedings.

8. On May 6, 2020, the Trustee filed its "**Second Report**" in which the Trustee provided this Honourable Court with, *inter alia*, information with respect to the Sales Process undertaken and the Global Reach APA (defined in the Second Report) for the sale of certain assets and infrastructure of the Company; and sought directions in respect of, the approval and vesting order with respect to the sale of the Canadian Business Infrastructure (defined in the Second Report).

9. On May 11, 2020, this Honourable Court pronounced an Order which approved the Global Reach APA.

10. The purpose of this third report of the Trustee (the "**Third Report**") is to provide this Honourable Court with an update in respect of the following:

    i) key activities of the Trustee since the First Report;

    ii) the OTM Positions and the Trustee's collection efforts thereon;

    iii) the ITM Positions;

iv) the Trustee's actions with respect to the secured creditor claim of Gustavson Capital Corporation ("**GCC**");

v) the Trustee's activities for collection of EFT Reversals (as herein defined);

vi) the property proof of claims filed to date and the Trustee's actions thereon;

vii) the estimated statement of receipts and disbursements as at October 19, 2020;

i) approving the return of the EFT Reversals identified as Double Dip Payments (as herein defined);

TERMS OF REFERENCE

11. In preparing this Third Report, the Trustee has been provided with, and in making the comments herein relied upon, unaudited financial information, the Companies' book and records, financial information prepared by the Companies, and discussions with management of the Companies. The Trustee has not audited, reviewed or otherwise attempted to verify the accuracy or completeness of such information and, accordingly, the Trustee expresses no opinion or other form of assurance in respect of such information contained in this Third Report.

12. Certain information referred to in this Third Report consists of forecasts and projections. The Trustee 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 pursuant to the Chartered Professional Accountants Canada Handbook and, accordingly, the Trustee expresses no opinion or other form of assurance in respect of the information.

13. This Third Report has been prepared for the use of this Honourable Court and the Companies' stakeholders as general information relating to the Companies and their operations. Accordingly, the reader is cautioned that this Third Report may not be appropriate for any other purpose. The Trustee assumes no responsibility or liability for

losses incurred by the reader as a result of the circulation, publication, reproduction or use of this Third Report contrary to the provisions of this paragraph.

14. Capitalized terms not defined in this Third Report are as defined in the First Report and Second Report.

15. All references to dollars are in Canadian currency unless otherwise noted.

CONDENSED BACKGROUND INFORMATION

History of EncoreFX

16. EncoreFX is a Federal Corporation incorporated under the *Canada Business Corporations Act*. EncoreFX Ltd., EncoreFX (Australia) Pty Ltd., and EncoreFX (NZ) Limited are wholly owned foreign subsidiaries of EncoreFX. The Trustee attached a copy of a corporate organization chart provided by management in its First Report.

17. EncoreFX was incorporated on September 15, 2014, and began operating with its head office in Victoria, British Columbia. Over the next few years, EncoreFX opened branch offices in the cities of Vancouver, Calgary, Edmonton, Saskatoon, Regina, Winnipeg, Toronto, Ottawa, Kitchener, and Mississauga. EncoreFX employed a workforce of approximately 150 personnel as at the Bankruptcy Date.

18. EncoreFX also established subsidiaries in Australia and New Zealand due to those countries having similar economic conditions to Canada and it carried on significant operations in those Countries.

19. EncoreFX further established EncoreFX Ltd. (the "**US Subsidiary**"), a United States subsidiary incorporated in Washington State in the United States. In recent years, the US Subsidiary underwent a lengthy process to obtain licenses

20. As discussed above, EncoreFX Inc. is in the business of providing FX risk management and cross-border payment services predominantly to SME clients that import or export products from/to foreign markets and base their pricing on foreign currencies. The

Company sold the following FX risk management services to its clients to mitigate their exposure to fluctuating FX rates: FX spot transactions and FX derivative contracts (including forward contracts and options) (the "**The EncoreFX Derivatives**"). It should be noted that to the best of the knowledge of EncoreFX, EncoreFX's primary client base entered into foreign exchange contracts with EncoreFX to manage the foreign exchange exposures in their business and not for speculation on the movement of FX rates.

The EncoreFX Derivatives

21. The EncoreFX Derivatives are referred to as "over-the-counter" derivatives, because they are not traded on a market or securities exchange, but rather negotiated with each counterparty (EncoreFX and its client) at the time they are consummated.

22. A very basic illustration of one of the EncoreFX Derivatives is a forward contract, which allows a client to lock in a specific exchange rate today for a currency to be purchased or sold in the future. A client may choose to lock in a specific rate today for many reasons including that it aligns with, a) their budget FX rate, or b) the FX rate that was utilized when it costed or priced the goods or services being imported or exported.

23. In the following example, Client A is importing goods from the United States for resale in Canada and must pay their supplier USD $1,000,000 on June 30, 2020. Client A based the ultimate pricing of goods being imported for resale on their budget rate of USD/CAD 1.40 which was the then current FX rate. In order to mitigate the risk that fluctuating FX rates could have on its gross margins, Client A enters into a forward contract with EncoreFX and commits to buying USD$1,000,000 on June 30, 2020 at an exchange rate of 1.40 (i.e. Client A will pay CAD $1,400,000 to purchase USD $1,000,000).

24. If the exchange rate on June 30, 2020 is 1.35, then the market value of USD being purchased is equal to CAD $1,350,000 and Client A would be paying $50,000 more to settle the contract as at June 30, 2020 and as a result of the forward contract booked have a "realized foreign exchange loss" of $50,000. Client A; however, is no worse off as a

result of booking the forward contract at 1.40 because they were able to convert funds at their budgeted rate and achieve their expected gross margins.

25. Conversely, if the exchange rate on June 30, 2020 is 1.45, then market value of the US being purchased is equal to CAD $1,450,000 and Client A would be paying $50,000 less than the market value as a result of the forward contract booked thereby resulting in a deemed "realized foreign exchange gain". Client A is better off having booked the forward contract as they were able to purchase the USD at a better than market rate and they were able to convert funds at their budgeted rate to achieve their expected gross margins.

26. The 'market value' of all of the EncoreFX Derivatives products sold to clients fluctuates every second of every day once entered into due to movements in underlying FX rates; and at any given time, the market value is out-the-money ("**OTM**"), in-the-money ("**ITM**") or at-the-money ("**ATM**"). In simplistic terms:

    i) an OTM position means that the FX rate and other factors moved against the client and if the contract were to be liquidated, the client would owe EncoreFX an amount equal to the dollar value of the OTM position;

    ii) an ITM position means that the FX rate and other factors moved in favour of the client and if the contract were to be liquidated, EncoreFX would owe the client an amount equal to the dollar value of the ITM position; and

    iii) an ATM position means there was little to no change in FX rates and neither party owes the other.

The Treasury Function

27. EncoreFX's Treasury Department was responsible for continually monitoring the aggregate FX exposure that arose from the sale of EncoreFX Derivatives to clients.

28. The Treasury Department used sophisticated trading platforms to monitor this exposure and assess overall netting of EncoreFX Derivatives bought and sold to clients. Netting was only allowed for if the currencies and contract tenures were the same.

29. Once netting was factored in and / or when currency exposures reached a predetermined threshold outlined in the Company policy, the Treasury Department would book hedging transactions (a simple example being a buy or sell position forward contract that moved in value the opposite way of the contracts being hedged) with one of its third-party banking counterparties (the "**Liquidity Providers**") to eliminate the Company's FX exposure.

30. EncoreFX had signed standard the International Swaps and Derivatives Association, Inc. ("**ISDA**") agreements (the "**ISDA Agreements**") with its Liquidity Providers that required the Company to post security or 'margin' to cover the credit and market risk that Liquidity Provider were taking on when entering into FX derivative contracts with EncoreFX.

31. The Company was required to post initial margin with its Liquidity Provider, which was generally a percentage of the notional value of the contract booked (i.e. if EncoreFX booked a contract to sell USD $1,000,000, the initial margin was calculated at say 1% of USD $1,000,000 then EncoreFX would have to pay a deposit of USD $10,000 to the Liquidity Provider).

32. EncoreFX was also required to post OTM margin with Liquidity Providers equal to the value of all OTM contracts. (i.e. if EncoreFX had various derivatives booked with a Liquidity Provider and on a net basis those derivatives were OTM USD $500,000, EncoreFX would have to pay USD $500,000 in OTM margin to the Liquidity Provider).

The Credit Function

33. In order to be competitive within its industry, EncoreFX offered credit to certain clients booking EncoreFX Derivatives. The credit terms offered included no initial margin and OTM limits up to a predetermined amount (i.e. the client's derivative contract would have to be OTM greater than say USD $500,000 before EncoreFX would require the client to pay margin).

34. Prior to granting credit to clients, EncoreFX's Credit Department would perform a detailed credit assessment and would extend terms that were in line with the client's financial strength.

35. Once the assessment was finalized, EncoreFX would issue and the client would sign a Credit Facility Letter that outlined the terms under which credit was granted.

36. Credit terms were reviewed by the Credit Department on a periodic basis (i.e. quarterly or annually) depending on the client's credit classification.

Reasons for Insolvency

37. Beginning in March 2020, global FX markets began to observe atypical levels of volatility mainly driven by the impact that COVID-19 was having on the global economy. In particular the US Dollar (USD) strengthened in a significant way against some of the world's most traded currencies, including against the Canadian, Australian and New Zealand dollars in which the majority of the EncoreFX Derivatives were booked.

38. Due to this extreme market volatility, a number of EncoreFX's clients (and its subsidiaries' clients) were OTM on their transactions; and as a consequence, EncoreFX was left OTM with its Liquidity Providers.

39. Under the terms of its ISDA Agreements, EncoreFX was required to pay significant additional margin to its Liquidity Providers to cover the value of OTM contracts.

40. Many of EncoreFX's clients had exceeded the OTM thresholds outlined in their Credit Facility Agreements and were subject to margin calls (the "**OTM Clients**"). The Trustee is advised that EncoreFX attempted to work with many of the OTM Clients to address margin calls owing. However, many clients' businesses had been negatively impacted by COVID-19 and they were unable to honour the terms of their Credit Facility Agreements.

41. In the days leading up to the bankruptcy, the Trustee is advised that management determined that even if all OTM amounts owing could be collected from clients over time, there was no short-term liquidity available to the Company to meet its obligations and

EncoreFX made the decision to suspend all trading activity as at Sunday, March 29, 2020 (prior to the opening of trading on Monday, March 30, 2020).

42. The Trustee notes that it was first approached by the Company with respect to the financial distress of the Company on March 26th, 2020; thereafter, in the days that followed, the Trustee entertained several discussions to consider various restructuring options available to EncoreFX both formally and informally. The decision to suspend trading (with respect to new transactions) and to file the assignment into bankruptcy was made on the eve of March 29th (as noted above, the day before markets resumed trading the following Monday).

43. The Australian and New Zealand subsidiaries were also placed into Voluntary Administration (formal insolvency proceedings in those countries). Ernst & Young Inc. is acting as the Administrator in insolvency proceedings of the Australia and New Zealand entities.

MEETING OF CREDITORS AND APPOINTMENT OF INSPECTORS

44. The Trustee held a FMOC in the bankruptcy of EncoreFX and in the manner outlined in the FMOC Procedure on May 7, 2020.

45. A total of 112 creditors attended the meeting(s). At the FMOC, the creditors of EncoreFX affirmed the appointment of the Trustee and appointed five (5) inspectors.

46. One (1) of the inspectors maintains a business relationship with a party that filed a Property Proof of Claim that was disallowed by the Trustee and is now in litigation. This individual resigned as an inspector given the relationship with the Property Claimant who is now a party to a contested action against the Estate. Accordingly, there are currently four (4) inspectors in the Estate of EncoreFX.

COMPLETION OF THE SALE OF SELECT ASSETS TO GLOBAL REACH

47. The Second Report describes a sale transaction (the "**Sale Transaction**") pursuant to an Asset Purchase Agreement ("**APA**") entered into between the Trustee and Global Reach, a United Kingdom ("**UK**") based company that provides similar FX backed risk management services and cross-border payment solutions to EncoreFX, agreed to acquire (or the option to acquire) the Company's infrastructure to continue its operation under new ownership.

48. The APA excluded all financial assets of EncoreFX including cash, accounts receivables, prepaid expenses, investment in subsidiaries and most notably all open EncoreFX Derivatives (the "**Excluded Assets**"). The "**Book Values**" of the Excluded Assets as described in the First Report are summarized below, although the Trustee previously noted that the true "**Realizable Values**" associated with the Excluded Assets may vary materially from the Book Values:

	Book Value (in CAD)
Cash balances	13,200,000
Collateral posted with Liquidity Providers	15,300,000
OTM Positions	77,000,000
Investment in subsidiaries	
Encore FX Ltd. (USA)	1,968,000
EncoreFX (Australia) Pty Ltd.	2,665,000
EncoreFX (NZ) Limited	1,715,000
	111,848,000

49. The Sale Transaction with Global Reach completed on May 14, 2020 (the "**Closing Date**"). The Trustee is advised that Global Reach (through a newly incorporated Canadian subsidiary) re-hired the approximately 70 former employees of EncoreFX (the "**Transitioned Employees**") the day following the Closing Date.

50. Since the Closing Date, the Trustee with the assistance of the Transitioned Employees has undertaken a number of procedures to administratively wind down EncoreFX, including:

   i) processing employee terminations and final pay,

   ii) the issuance of T4s and Records and Employment ("**ROE**"), and

   iii) numerous corporate administrative matters and the preservation and reconciliation of financial records of EncoreFX.

51. The Transition Employees have also assisted the Trustee in realization efforts associated with the Excluded Assets; particularly efforts to realize upon the OTM Positions.

CLOSE OUT OF ITM POSITIONS

52. In its First Report, the Trustee estimated that EncoreFX had mark-to-market obligations owing to approximately 180 clients (the "**ITM Clients**") with aggregate liquidation values from transaction(s) that were ITM (the "**ITM Positions**").

53. After the within bankruptcy proceedings commenced, approximately 80 of the ITM Clients with aggregate liquidation values of approximately CAD $7.6 million sought to:

   i) close-out their transaction(s) with Encore FX; and

   ii) file a proof of claim with the Trustee for the liquidation values from the transaction(s) that resulted in the ITM Positions.

54. After the within bankruptcy proceedings commenced, approximately 43 of the ITM Clients were subsequently closed out at no settlement or as an OTM Client.

55. With the approval of the inspectors, the Trustee, on June 1, 2020, wrote a letter (the "**ITM Close-Out Letter**") to the 57 ITM Clients who had not then requested a close-out of their transaction(s) of the following:

   i) EncoreFX would close-out the transaction(s) of the ITM Clients unless the ITM Client acknowledged, in writing by June 30, 2020 (the "**Deadline**"), that it did not want the ITM transaction(s) resulting in the ITM positions to be closed-out; and

ii) the ITM Client indemnified and held harmless the Trustee personally for any losses realized in connection with same.

56. A copy of the ITM Close-Out Letter is attached hereto as **Appendix "A"**. With respect to these letters:

i) 18 ITM Clients asked the Trustee to close-out the transaction(s) resulting in the ITM positions prior to the Deadline and Trustee processed the close-out requests accordingly; and

ii) no (0) ITM Clients acknowledged, in writing, prior to the Deadline, that the ITM Client wanted their ITM transaction(s) to continue and to not be closed out, and the Trustee closed-out the transaction(s) for those clients on June 30, 2020.

57. Based on the activities described above, the Trustee liquidated transaction(s) for ITM Clients resulting in total ITM Positions of approximately CAD $11 million (originally $17.9M).

THE OTM CLIENTS

Background

58. In its First Report, the Trustee described that in the days following the bankruptcy of EncoreFX, the Trustee determined that EncoreFX could no longer extend credit to the OTM Clients.In accordance with the Company's standard form of Credit Facility Letters between EncoreFX and its clients, the Trustee, on or around April 1 and 2, 2020, notified all clients with OTM positions (the "**OTM Clients**") in writing (the "**Credit Termination Letter**") of the following:

i) the then current quantum of their OTM position;

ii) the termination of the Credit Facility Letter (if applicable);

iii) in accordance with the Company's Credit Facility Letter and standard form of Master Terms and Conditions ("**MTCs**"), the then current quantum of the OTM position was due and owing as a margin call;

iv) the OTM Client had two (2) business days to pay the then current OTM position;

v) if the OTM Client failed pay the then current OTM position (the "**Margin Call Amount**"), EncoreFX, as permitted under the Credit Facility Letter and the MTCs would close out the client's account and terminate the contract(s) relating to the transaction(s)/contract(s) that resulted in the noted OTM position and any other transaction(s)/contract(s);

vi) any payments made in accordance with the Credit Termination Letter would be held in a separated trust account; and

vii) if the client made the Margin Call Amount, EncoreFX would carry out all existing transactions in accordance with the client's instructions and to the extent permitted by law.

59. A copy of the Credit Termination Letter was attached as Appendix "J" to the First Report.

60. In total, the Trustee preliminarily sent Credit Termination Letters to 248 of OTM Clients with aggregate liquidation values from transaction(s) that were OTM (the "**OTM Positions**") of approximately CAD $77 million (calculated as at the date of the Credit Termination Letters).

61. OTM Clients generally either disputed the contents of the Credit Termination Letter or did not contact the Trustee or EncoreFX with respect to same. In a few limited instances, the Trustee granted extensions to OTM Clients to pay the Margin Call Amount; although, in the end, no party paid the Margin Call Amount to preserve the transaction(s) that resulted in the an OTM Client's OTM Position.

62. The Trustee, in consultation with MLT Aikins, determined as a result of the failure by OTM Clients to pay the Margin Call Amount (in accordance with the Credit Termination Letter), the OTM Clients were in violation of the Company's standard form of Master Terms and Conditions (the "**MTCs**") and the Company, was permitted and authorized to terminate all transactions and to close out their account(s).

63. Following the appointment of inspectors, the Trustee, with the approval of the Inspectors, proceeded to continue to close out the OTM Client accounts. Generally speaking the transaction(s) resulting in the OTM Positions were closed out using the FX rates of April 6 or April 7, 2020 (the "**Close Out Rates**") representing the available FX rates of the day following the two (2) Business Days from the date the Trustee sent the Credit Termination Letters to the OTM Clients.

64. The Trustee, with the approval of the Inspectors, sent to each OTM Client, a letter along with a detailed statement of account (collectively, the "**OTM Close-Out Letter**") advising the OTM Client of following:

    i) the OTM Client was in violation of the MTCs;

    ii) the Company terminated all transactions of the OTM Client (as defined in the MTC including Forward Contract and Option Contracts, as applicable (the "**Transactions**"), in accordance with the terms of the Credit Termination Letter;

    iii) the total amount payable by the OTM Client to the Company (i.e. a receivable to EncoreFX) (the **Total Amount Outstanding**") as a result of the Company closing out the Transactions;

    iv) the foreign exchange rates used to calculate the Total Amount Outstanding;

    v) the net payable amount (the "**OTM Amount**") required to be paid by the OTM Client within two (2) business days.

65. A copy of the form of OTM Close-Out Letter is attached as Appendix "M" to the First Report.

66. Based on the activities described above, the Trustee liquidated transaction(s) with 288 OTM Clients resulting in OTM Positions of approximately $64 million.

Collection Efforts to Date

67. In a number of instances OTM Clients made payment or made arrangements to settle the OTM Position with the Trustee on receipt of the OTM Close-Out Letter; however, for the most part, OTM Clients either:

    i) did not respond to the OTM Close-Out Letter;

    ii) disputed the amount calculated as owing in the OTM Close-Out Letter; or

    iii) disputed that any amount was owing by the OTM Client altogether.

68. With the approval of the inspectors, the Trustee, on or around June 26, 2020, sent a demand letter to each of the OTM Clients who had not rendered payment to the Trustee (the "**First Demand Letter**"); a form copy of which is attached hereto as **Appendix "B"**.

69. The First Demand Letter resulted in a number of further settlements of the OTM Positions with OTM Clients.

70. Subsequent to sending the First Demand Letter, the Trustee divided the recovery against the OTM Clients into two main groups: (i) those OTM Clients whose respective OTM indebtedness was less than $150,000 ("**Below 150 OTM Clients**") and (ii) those OTM Clients whose respective OTM indebtedness was greater than $150,000 ("**Above 150 OTM Clients**").

71. On or around July 31, 2020, with the approval of the Inspectors, MLT Aikins sent a formal demand letter (the "**Second Demand Letter**") to each of the Below 150 OTM Clients who had not yet rendered payment to the Trustee. The Second Demand Letter notified the Below 150 OTM Client that the Trustee would file a legal claim against the Below 150 OTM Client if it did not render payment to the Trustee within five (5) Business Days. A

copy of the Second Demand Letter sent to the Below 150 OTM Clients is attached hereto as **Appendix C.**

72. Commencing in September of 2020, MLT Aikins sent a second demand letter to the Above 150 OTM Clients (the "**Above 150 OTM Second Demand Letters**"). A draft Notice of Civil Claim ("**NOCC**") was enclosed with each Above 150 OTM Second Demand Letter to the Above 150 OTM Clients. A copy of the Above 150 OTM Second Demand Letter sent to the Above $150 OTM Clients is attached hereto as **Appendix D.**

73. The Above 150 OTM Second Demand Letters resulted in a number of further settlements of the OTM Positions with OTM Clients.

74. With respect to the Below 150 OTM Clients who did not settle their OTM Positions after the Second Demand Letters, MLT Aikins sent a third demand letter (the "**Third Demand Letter**"). A draft Notice of Civil Claim ("**NOCC**") was enclosed with each Third Demand Letter to the Below 150 OTM Clients with Total Outstanding Amounts between $10,000.00 and $150,000.00. A copy of the Third Demand Letter sent to the Below 150 OTM Clients with: a) Total Outstanding Amounts between $10,000.00 and $150,000.00, and, b) below $10,000.00 are attached hereto as **Appendix E and F** respectively.

75. To date, the Trustee has settled and/or received payment with 130 or approximately 47% of the OTM Clients including a number of individual settlements in excess of CAD $1,000,000. To date, the Trustee has received total payments of approximately CAD $8.3 million from approximately 117 OTM Clients with additional amounts to be received pursuant to payment plans negotiated with the OTM Clients.

Litigation in Progress

76. As of the date of this Report, MLT Aikins has filed fifty-three (53) Notices of Civil Claim ("**NOCC**") against OTM Clients who have not paid or settled the OTM Positions with the Trustee. MLT Aikins has sent a number of additional NOCCs to OTM Clients in draft (but

has not yet filed same) in instances where the Trustee is in active settlement discussions with an OTM Client.

SECURED INDEBTEDNESS TO GCC

77. On May 6, 2020, Gustavson Capital Corporation ("**GCC**"), the only known creditor with a security registration against the Company, filed a secured proof of claim with the Trustee for the total approximate amount of CAD $35,900,000 (the "**GCC Secured Claim**").

78. With respect to the GCC Secured Claim, the Trustee notes the following:

   i) on September 22, 2015, the President of EncoreFX, signed a Grid Note (the "**Note**") as evidence of advances made by GCC to EncoreFX and outlining repayment of the subject advances. The Terms of the Note include, *inter alia*, payment of the principal amount and interest (if any) on January 1, 2018 and, if the amount is not paid in full on that date, the principal and interest are payable on demand. Interest was not to be charged on the outstanding balance until demand was made. Thereafter, interest was to be changed at the Bank of Montreal Prime Rate, plus 2 percent per annum.

   ii) in addition to the Note, on September 22, 2015, a resolution was passed by the sole Director of EncoreFX, authorizing a general security agreement be granted to GCC (the "**GSA**"). On March 31, 2016, the GSA was signed by the President. The GSA granted GCC a security interest in EncoreFX's present and after-acquired personal property to secure payment of all present and future obligations of EncoreFX to GCC. The GCC was perfected by way of registration in the British Columbia Personal Property Registry on April 7, 2016. The GSA was also registered in the Alberta, Saskatchewan, Manitoba and Ontario Personal Property Registries on March 19, 2020.

iii) between September of 2015 and March of 2020, multiple advances and repayments were made between EncoreFX and GCC in accordance with the Note. On March 20, 2020, GCC made demand of EncoreFX for all amounts outstanding under the Note. As this was the first demand made by GCC, no interest was paid on the amounts owed by EncoreFX to GCC.

79. On June 5, 2020, the Trustee sought and received the approval from the Inspectors to proceed with an investigation to determine if the GCC Secured Claim could be postponed or set aside, as a result of factors including, but not limited to, GCC not being an arm's length creditor (s. 137(1) of the BIA), and whether the GCC Secured Claim (or a portion thereof) could be characterized as an equity claim (s.140.1 of the BIA).

80. The Trustee and the Trustee's legal counsel commenced the investigation into the GCC Secured Claim. The investigation included, but was not limited to, (a) correspondence pursuant to s. 164(1) of the BIA being issued to Mr. Peter Gustavson (as CEO and sole director of GCC), Mr. Paul Lennox (President of EncoreFX) and Ms. Briony Bayer (CFO of GCC and the Company) (collectively, the "**Key Individuals**") requesting them to provide the Trustee with substantive documentation with regards to the GCC Secured Claim; and (b) pursuant to s. 163(1) of the BIA, the Trustee's legal counsel conducted examinations of the Key Individuals, in order to gather sufficient and appropriate evidence required to support the Trustee's determination on the GCC Secured Claim.

81. On September 25, 2020, the Trustee presented its findings and recommendation to disallow the GCC Secured Claim pursuant to s. 135(2) of the BIA to the Inspectors, who approved the Trustee with proceeding to issue a notice of disallowance to GCC to disallow the GCC Secured Claim as a secured claim in the estate and to take any further future actions, as may be required for final determination on the GCC Secured Claim.

THE PAD CUSTOMERS

82. EncoreFX had sixty-one bank accounts denominated in twenty-four foreign currencies that it held at fourteen separate financial institutions located in Canada and internationally. Four of its primary operating accounts were with the Bank of Montreal ("**BMO**").

83. Under these four primary operating accounts (the "**BMO Accounts**"), EncoreFX entered into various standard pre-authorized debit agreements ("**PAD Agreements**") with approximately 70 of its clients (the "**PAD Customers**") to facilitate the transfer of funds between the parties by way of electronic funds transfer ("**EFT**"), including to make payments to EncoreFX (the "**PAD Payments**").

84. The PAD Agreements authorized EncoreFX to debit the PAD Customer's account for the purposes of settling transactions, such as spot transactions, entered into between the PAD Customer and EncoreFX (the "**PAD Transactions**").

85. In order to facilitate the processing of the PAD Payments, EncoreFX entered into a contract with BMO called a Payee Letter of Undertaking, pursuant to the Rules of the *Canadian Payments Act*, R.S.C. 1985, c C-21 (the "**CPA Rules**"), and more specifically, Rule H1 – Pre-Authorized Debits ("**Rule H1**").

86. Per the terms of the Payee Letter of Undertaking, BMO issued PADs on behalf of EncoreFX, and EncoreFX agreed to indemnify BMO for any losses suffered as a result of any disputed PADs.

87. The Trustee's understanding of the PAD Transactions is as follows:

    i) EncoreFX submitted PAD Transactions to BMO in accordance with the PAD Agreements and the Payee Letter of Undertaking throughout each business day.

    ii) BMO presented the PAD Transactions to other banks (the "**Processing Banks**") via the Automated Clearing Settlement System ("**ACSS**"). BMO submitted the PAD Payments to the Processing Banks in two batches: once in the morning and once at the end of the business day.

iii) The Processing Banks would accept or reject the PAD Transactions within a few hours of receipt. If accepted, the PAD Payments would be credited to EncoreFX's BMO Account.

iv) PAD Transactions that were submitted to BMO prior to approximately 10:30am PST were accepted or rejected by the Processing Bank and credited to EncoreFX's account between 12:00pm and 1:00pm PST the same day. PAD Transactions submitted by EncoreFX after approximately 10:30am were credited to EncoreFX's account prior to 5:00am on the following day.

88. EncoreFX submitted PAD Transactions until the end of day on March 27, 2020. EncoreFX advised its employees it was ceasing operations on Monday, March 30, 2020, prior to the start of operations. Accordingly, no PAD Transactions were processed on Monday, March 30, 2020.

89. EncoreFX was assigned into bankruptcy at 9:47am PST on March 30, 2020. Pursuant to Section 69.3(1) of the BIA, a Stay has been in effect with respect to EncoreFX since the Bankruptcy Date.

90. That same day, the Trustee notified EncoreFX's financial institutions, including BMO, of the bankruptcy and instructed each financial institution to freeze all debit and credit accounts (the **"Notice"**), leaving the BMO Accounts open only to accept deposits.

91. Subsequent to the Notice being issued, the Trustee determined that funds were still being debited from the BMO Accounts. The Trustee was advised that the debits were reversals of the PAD Payments that had been authorized under the PAD Agreements prior to the bankruptcy (the "**EFT Reversals**").

92. The EFT Reversals were processed by BMO notwithstanding the Stay. BMO has advised the Trustee that it believes it was entitled to process the EFT Reversals notwithstanding

the Stay, pursuant to the CPA Rules. The Trustee understands that the EFT Reversals were effected in a number of different ways. In some cases, the EFT Reversals were the result of PADs being dishonored by the Processing Bank.

93. In other cases, the EFT Reversals were the result of requests made by the PAD Customers for reimbursement and recourse. Claims for reimbursement and recourse can be made by the payor under certain conditions, which are required to be declared by the payor, including, among other things, where the PAD was not drawn in accordance with the payor's PAD Agreement.

94. The Trustee is of the view that the EFT Reversals, which were initiated by the PAD Customers and processed by BMO, amount to a breach of the Stay. Despite this, in the days following the Bankruptcy Date, approximately 75 customers effected approximately 100 EFT Reversals totaling approximately $8,700,000 CAD and $3,000,000 USD.

95. The Trustee was advised by BMO that the EFT Reversals occurred automatically pursuant to the CPA Rules and BMO had no ability to stop them. Accordingly, the Trustee closed the BMO Accounts and transferred the balances to accounts at the Royal Bank of Canada controlled by, and in the name of, the Trustee. Prior to the balances being transferred, BMO debited approximately $4,900,000 CAD and $2,300,000 USD from the frozen BMO Accounts.

96. BMO continued to process the EFT Reversals subsequent to the Trustee having transferred the balances of the BMO Accounts. From April 2, 2020 to on or around April 14, 2020, additional EFT Reversals totaling approximately CAD $3,900,000 and USD $800,000 were paid to PAD Customers by BMO (the "**Subsequent Reversals**"). These Subsequent Reversals were not processed against the BMO Accounts but paid directly to the PAD Customers by BMO. The Trustee has been advised by BMO's counsel that BMO has recorded the Subsequent Reversals in a loss account in the name of EncoreFX.

Collection Efforts to Date

97. The Trustee advised BMO of its view that, amongst other things, the processing of the EFT Reversals against the BMO Account contravened the Stay. The Trustee completed standard dispute forms and instructed BMO to dispute each of the EFT Reversals processed against the operating accounts of the Company and paid directly by BMO.

98. On or about April 8, 2020, a demand letter was sent to the PAD Customers who had carried out EFT Reversals notifying that the EFT Reversals were in contravention of the Stay and demanding that any PAD Payments transferred or reversed on or following the Bankruptcy Date be immediately returned to the Trustee (the "**April Demand Letter**"). A copy of the April Demand Letter is attached hereto as **Appendix "G"**.

99. On or about July 15, 2020, a follow-up demand letter (the "**July Demand Letter**") was sent to the PAD Subset Customers with Double Dip Payments (as defined and discussed below).

The Double Dip Payments

100. A subset of the PAD Customers (the "**PAD Subset Customers**") effected the EFT Reversals subsequent to EncoreFX completing wire transfer payments at the PAD Customer's request (the "**Double Dip Payments**"). In other words, the PAD Subset Customers had their respective spot transactions fulfilled by virtue of EncoreFX wiring funds to the PAD Subset Customers or to the customers of the PAD Subset Customers and also received a reimbursement for those wire transfers pursuant to an EFT Reversal. This effectively amounts to double recovery by these PAD Subset Customers.

101. As is stated above, the July Demand Letter was sent to the PAD Subset Customers. The July Demand Letter confirmed that the requested transactions were completed pursuant to the terms of the PAD Agreement and asserted that the PAD Subset Customer was unjustly enriched as a result of the Double Dip Payment. A copy of the July Demand Letter is attached hereto as **Appendix H**.

102. Since April 8, 2020, many of the PAD Subset Customers have repaid their PAD Payments, which were the subject of the EFT Reversals, to the Trustee in accordance with the April Demand Letter.

103. As of the date of this Report, the Trustee has collected from all but three of the PAD Subset Customers: JL Trading Company Ltd. ("**JL Trading**"), AgraCity Crop and Nutrition Ltd. ("**AgraCity**"), and Southland Pulse Ltd. ("**Southland**").

104. The outstanding Double Dip Payments in Canadian dollars are summarized as follows:

CAD Double Dip Payments	
PAD Subset Customer: JL Trading Company Ltd.	
Date of PAD Agreement	December 17, 2015
Date of PAD Payments to EncoreFX	March 20, 2020 – CAD $143,000.00 March 26, 2020 – CAD $144,000.00
EncoreFX completed the wire transfers on behalf of the PAD Subset Customer pursuant to the PAD Agreement in the following amounts: USD $61,741.20 (March 23, 2020); USD $38,258.80 (March 23, 2020); USD $79,855.00 (March 26, 2020); and USD $20,145.00 (March 26, 2020).	
Date of completion of Reimbursement Claim forms: March 30, 2020	
Date of EFT Reversals	March 30 – CAD $143,000.00 March 30 – CAD $144,000.00
Date of Demands	April 8, 2020 July 15, 2020
Amount Returned	$0
Amount Outstanding	CAD $287,000.00
PAD Subset Customer: AgraCity Crop and Nutrition Ltd.	
Date of PAD Agreement	August 3, 2018
Date of PAD Payments to EncoreFX	March 27, 2020 - CAD $184,244.20 March 27, 2020 - CAD $130,300.00
EncoreFX completed the wire transfers on behalf of the PAD Subset Customer pursuant to the PAD Agreement in the following amounts: USD $141,400.00 (March 27, 2020) and USD $100,000.00 (March 27, 2020)	
Completion of Reimbursement Claim forms: March 30, 2020	
Date of EFT Reversals	March 30 – CAD $184,244.20 March 30 – CAD $130,300.00
Date of Demands	April 8, 2020 and July 15, 2020
Amount Returned	$0
Amount Outstanding	CAD $314,544.20

Total Amount CAD Outstanding: CAD $601,544.20

105. The Double Dip Payments in USD are summarized as follows:

USD Double Dip Payments	
PAD Subset Customer: Southland Pulse Inc.	
Date of PAD Agreement	November 29, 2018
Date of PAD Payment to EncoreFX	March 27, 2020 – USD $39,675.55 (including USD $20 fee)
On March 27, 2020, EncoreFX completed the wire transfer on behalf of the PAD Subset Customer pursuant to the PAD Agreement in the amount of USD $39,655.55.	
Date of completion of Reimbursement Claim form: March 30, 2020	
Date of EFT Reversal	March 31, 2020 - USD $39,675.55
Date of Demands	April 8, 2020 July 16, 2020
Amount Returned	$0
Amount Outstanding	USD $39,675.55
Total Amount USD Outstanding: USD $39,675.55	

JL Trading Company Ltd.

106. JL Trading entered into a PAD Agreement with EncoreFX on December 17, 2015.

107. JL Trading authorized EncoreFX to debit the amount of CAD $143,000.00 from JL Trading's bank account, and issue a credit in the amount of USD $61,741.20 to Hangzhou Wahaha Drinking Co Ltd. on JL Trading's behalf and a credit in the amount of USD $38,258.80 to JL Trading (the "**Hangzhou Transaction**" or transaction EFX-CAN-DEAL-0408368). The Hangzhou Transaction is evidenced by a deal confirmation generated by EncoreFX dated March 20, 2020.

108. JL Trading authorized EncoreFX to debit the amount of CAD $144,000.00 from JL Trading's bank account, and issue a credit in the amount of USD $79,855.00 to Shanghai Dong Mei Import and Export Co Ltd. and a credit of USD $20,145.00 to Shanghai High Lead Intl Logistics Co Ltd. (the "**Shanghai Transaction**" or transaction EFX-CAN-DEAL-

0409860). The Shanghai Transaction is evidenced by a deal confirmation generated by EncoreFX dated March 24, 2020.

109. EncoreFX confirmed the following payments were made on behalf of JL Trading:

Date	Transaction	Recipient	Amount (USD)
March 23, 2020	EFX-CAN-DEAL-0408368	Hangzhou Wahaha Drinking Co Ltd.	$61,741.20
	EFX-CAN-DEAL-0408368	JL Trading Company Ltd.	$38,258.80
March 26, 2020	EFX-CAN-DEAL-0409860	Shanghai Dong Mei Import and Export Co Ltd.	$79.855.00
	EFX-CAN-DEAL-0409860	Shanghai High Lead Intl Logistics Co Ltd.	$20,145.00

110. Evidence that the Hangzhou Transaction and the Shanghai Transaction were completed can be seen in the BMO statements provided to EncoreFX. In the case of transaction EFX-CAN-DEAL-0408368, there was a wire transfer sent to Hangzhou Wahaha Drinking Co Ltd., and a second direct transfer to JL Trading out of the BMO Accounts. In the case of transaction EFX-CAN-DEAL-0409860, there were two wire transfers sent to Shanghai Dong Mei Import and Export Co Ltd. and Shanghai High Lead Intl Logistics Co Ltd., respectively.

111. JL Trading's EFT Reversals were the result of requests it made for reimbursement and recourse. Claims for reimbursement and recourse can be made by the payor under

conditions, which are required to be declared by the payor, including, among other things, where the PAD was not drawn in accordance with the payor's PAD Agreement.

112. JL Trading's EFT Reversals were made on March 30, 2020. JL Trading claimed that the PAD in each case was not processed in accordance with the PAD Agreement.

113. On or about April 8, 2020, a demand letter was sent to JL Trading notifying JL Trading that the EFT Reversals were invalid and improper and made in breach of the Stay of Proceedings, and demanding that any PAD Payments transferred or reversed on or following the Bankruptcy Date be immediately returned to the Trustee.

114. On or about July 15, 2020, a subsequent demand letter was sent to JL Trading demanding the return of CAD $287,000.00.

AgraCity Crop and Nutrition

115. AgraCity entered into a PAD Agreement with EncoreFX on August 3, 2018.

116. AgraCity authorized EncoreFX to debit the amount of CAD $184,244.20 from AgraCity's bank account, and issue a credit in the amount of USD $141,400.00 to Polaquimia S A DE C V on AgraCity's behalf (the "**Polaquimia Transaction**" or transaction EFX-CAN-DEAL-0411061). The Polaquimia Transaction is evidenced by a deal confirmation generated by EncoreFX dated March 27, 2020.

117. AgraCity authorized EncoreFX to debit the amount of CAD $130,300.00 from AgraCity's bank account, and issue a credit in the amount of USD $100,000.00 to Anhui Huaxing Chemical Industry Co Ltd. on AgraCity's behalf (the "**Anhui Transaction**" or transaction EFX-CAN-DEAL-0410810). The Anhui Transaction is evidenced by a deal confirmation generated by EncoreFX dated March 26, 2020.

118. EncoreFX confirmed the following payments were made on behalf of AgraCity:

Date	Transaction	Recipient	Amount (USD)
March 27, 2020	EFX-CAN-DEAL-0411061	Polaquimia S A DE C V	$141,400.00
March 27, 2020	EFX-CAN-DEAL-0410810	Anhui Huaxing Chemical Industry Co. Ltd.	$100,000.00

119. Evidence that the Anhui Transaction and the Polaquimia Transaction were completed can be seen in the BMO statements provided to EncoreFX. In the case of transaction EFX-CAN-DEAL-0410810, there was a wire transfer sent to Anhui Huaxing Chemical Industry Co Ltd. on March 27, 2020.

120. In the case of transaction EFX-CAN-DEAL-0411061, the wire was sent via the ACH (Automated Clearing House) Network, a batch processing, store and forward system. Transactions received by BMO on behalf of EncoreFX were stored and processed in batches, between 1-3 business days later. The payment set out in transaction EFX-CAN-DEAL-0411061 formed part of an ACH batch totaling USD $746,796.92 which was processed on April 1, 2020.

121. AgraCity's EFT Reversals were the result of requests it made for reimbursement and recourse. Claims for reimbursement and recourse can be made by the payor under conditions, which are required to be declared by the payor, including, among other things, where the PAD was not drawn in accordance with the payor's PAD Agreement.

122. AgraCity's EFT Reversals were made on March 30, 2020. AgraCity claimed that the PAD in each case was not processed in accordance with the PAD Agreement.

123. On or about April 8, 2020, a demand letter was sent to AgraCity stating that AgraCity's EFT Reversals were invalid and improper and made in breach of the Stay of Proceedings, and demanding that any PAD Payments transferred or reversed on or following the Bankruptcy Date be immediately returned to the Trustee.

124. On or about July 15, 2020, a subsequent demand letter was sent to AgraCity demanding the return of CAD $314,544.20.

Southland Pulse

125. Southland entered into a PAD Agreement with EncoreFX on November 29, 2018.

126. Southland authorized EncoreFX to debit the amount of USD $39,675.55 (including a USD $20 fee) from Southland's bank account, and issue a credit in the amount of USD $39,655.55 to Tim Heuer on Southland's behalf (the "**Heuer Transaction**" or transaction EFX-CAN-DEAL-0410849). The Heuer Transaction is evidenced by a deal confirmation generated by EncoreFX dated March 26, 2020.

127. EncoreFX confirmed the following payments were made on behalf of Southland:

Date	**Transaction**	**Recipient**	**Amount (USD)**
March 26, 2020	EFX-CAN-DEAL-0410849	Tim Heuer	$39,655.55

128. Evidence that the Heuer Transaction was completed can be seen in the BMO statements provided to EncoreFX. The wire was sent via the ACH (Automated Clearing House) Network, a batch processing, store and forward system. Transactions received by BMO on behalf of EncoreFX were stored and processed in batches, between 1-3 business days later. The payment set out in transaction EFX-CAN-DEAL-0410849 formed part of an ACH batch totaling USD $746,796.92 which was processed on April 1, 2020.

129. Southland's EFT Reversal was the result of a request it made for reimbursement and recourse. Claims for reimbursement and recourse can be made by the payor under conditions, which are required to be declared by the payor, including, among other things, where the PAD was not drawn in accordance with the payor's PAD Agreement.

130. Southland's EFT Reversal was made on March 31, 2020. Southland claimed that the PAD in each case was not processed in accordance with the PAD Agreement.

131. On or about April 8, 2020, a demand letter was sent to Southland, among others who had carried out EFT Reversals, notifying the PAD Customers that the EFT Reversals were invalid and improper and made in breach of the Stay of Proceedings, and demanding that any PAD Payments transferred or reversed on or following the Bankruptcy Date be immediately returned to the Trustee.

132. On or about July 15, 2020, a subsequent demand letter was sent to Southland demanding the return of USD $39,675.55.

Double Dip Application

133. The Trustee has applied to this Honourable Court for a declaration that the EFT Reversals effected by the PAD Subset Customers were invalid and improper and amount to a breach of the Stay, and that the Double Dip Payments amount to unjust enrichment. The Trustee has also asked for directions from the Court regarding the process for ensuring that PAD Subset Customers remit the PAD Payments, which were subject to EFT Reversals, to the Trustee.

Future Collection Efforts

134. The Trustee has had discussions with BMO and GCC (as guarantor) for reimbursement of the EFT Reversals initially debited against the frozen operating accounts the Company by the PAD Customers, in the days following the Bankruptcy Date. To date, such discussions have been preliminary in nature and have considered the possibility of BMO

being permitted to file a Proof of Claim as an unsecured creditor in this estate. The Trustee will seek the approval of the Inspectors prior to a final determination, if any, on this matter.

135. Nevertheless, and irrespective of any agreement that may materialize from the aforementioned discussions, the Trustee reserves all its rights and remedies to pursue the return of the EFT Reversals initiated by the PAD Customers and processed by BMO to the detriment of the estate and may seek a further declaration for this Honourable Court irrespective of whether or not the aforementioned discussions not materialize in the return of the EFT Reversals to the estate.

PROPERTY PROOF OF CLAIMS

136. Given the nature of the Company's business, a significant number of property proof of claims ("**Property Claims**") have been filed in these proceedings. To date, a total of 60 Property Claims for a total approximate value of CAD $42,600,000 have been filed with the Trustee.

137. The Property Claims can generally be categorized into four categories. The Property Claims of each category share similar and common facts and characteristics which may include the nature of the funds being claimed, the timing of when the funds were paid to the Company, how such funds were internally accounted for by the Company and if applicable, similar reasons for being disallowed by the Trustee. The number and the total value of the Property Claims in each category are summarized and discussed in further detail below.

Category	No.	$ CAD Amount
In-Flight Claims	31	4,622,558
Holding Claims	21	30,126,877
Margin Call Claims	6	4,105,282

Miscellaneous	4	3,755,354
Total	**62**	**$42,610,071**

i) In-Flight Claims – Thirty-one (31) Property Claims relating to In-Flight Funds (defined below) for a total claim value of approximately CAD $4,600,000 have been filed to date (the "**In-flight Claims**"). In-flight claims relate to customer funds paid into the Company's bank accounts in the days preceding the Bankruptcy Date for purposes of a specific transaction, typically a spot transaction, to be completed in the days immediately following the Bankruptcy Date (the "**In-Flight Funds**"). The Transaction for which the In-Flight Funds were paid and related to, remained unsettled and not completed by the Company subsequent to the Bankruptcy Date.

ii) Holding Claims – Twenty-one (21) Property Claims relating to Holding Funds (defined below) for a total value of approximately CAD $30,125,000 have been filed to date (the "**Holding Claims**"). The Holding Claims relate to customer funds paid to the Company prior to the Bankruptcy Date, but which the Company allocated to the Client's internal holding account (the "**Holding Funds**") as the Company had yet to allocate the funds to settle a future transaction or was awaiting or had not been provided with specific instructions on how or when to transact these funds by the Client.

iii) Margin Call Claims – Six (6) Property Claims relating to payments of Margin Calls (defined below) for a total value of approximately CAD $4,100,000 have been filed to date (the "**Margin Call Claims**"). Margin Call Claims relate to client funds paid to the Company prior to the Bankruptcy Date pursuant to a forward/option contract to cover unfavourable market fluctuations in excess of the MTM Limit as set out in their Credit Facility Letter with the Company ("**Margin Calls**" or "**Margin Deposits**").

iv) Miscellaneous Claims – Four (4) miscellaneous Property Claims were received by the Trustee which did not fit within any of the above three categories. These claims include the following:

i. Itex Inc. ("**Itex**") submitted a Property Claim in respect of amounts which had already been returned to Itex by way of an EFT Reversal, as well as other amounts in respect to an oppression claim as against EncoreFX;

ii. Storagepipe Solutions Inc. submitted a Property Claim in respect of certain computer servers held by EncoreFX;

iii. Young's Equipment Inc. ("**Young's**") submitted a Property Claim in respect of amounts allegedly owing by EncoreFX on the basis that Young's was ITM on certain contracts with EncoreFX on the Bankruptcy Date; and

iv. Lamb Cattle Company Ltd. submitted a Property Claim which did not contain enough detail or supporting documentation to place its claim within any of the established categories.

Trustee Review and Response

138. The Trustee reviewed the Property Claims filed in these proceedings and responded to each claimant within the 15-day period following the FMOC, as is contemplated by s. 81(2) of the BIA except for one Property Claim filed on behalf of Vine Productions Inc.

Vine Property Claim

139. On May 6, 2020, Whitelaw Twining Law Corp filed a PPOC on behalf of Vine Productions Inc. ("**Vine**") with the Trustee in respect of USD $300,000 advanced by Vine to EncoreFX pursuant to Transaction No. EFX-CAN-DEAL-0411149 (the "**Vine Property Claim**").

140. On or around May 6, 2020, the Trustee was managing an extensive mandate within short time frames. The Trustee was preparing for the FMOC and was in receipt of and reviewing

approximately 215 Proof of Claim forms ("**Proof of Claims**") and 52 Property Claims, including the Vine Property Claim, as well as a number of other invalid or inappropriately filed Proof of Claims and Property Claims.

141. On or around May 21, 2020, with the exception of the Vine Property Claim, the Trustee completed its review and responded to all of the Property Claims it had received to that date.

142. On May 26, 2020, the Trustee became aware that it had inadvertently failed to respond to the Vine Property Claim within the 15-day period following the FMOC. Immediately upon becoming aware of this honest oversight, the Trustee reviewed the Vine Property Claim and, on May 27, 2020, or 20 days after the FMOC, issued a notice of disallowance in respect of the Vine Property Claim. Notwithstanding the Trustee's delayed response to the Vine Property Claim, it was always the Trustee's intention to disallow the Vine Property Claim.

Current Status of Property Claims

143. The current status of the Property Claims filed to date is summarized in the table below:

Current Status	**No.**	**$ CAD Amount**
Property Claims - Admitted	3	2,074,573
Property Claims – Withdrawn	1	3,672,428
Property Claims - Disallowed		
Disallowed – No appeal filed	43	2,946,297
Disallowed – Still within appeal period	1	500,000
Disallowed – Appeal filed	14	33,416,773
Total Property Claims Filed	**62**	**$42,610,071**

Property Claims - Admitted

144. Three(3) Property Claims were admitted in their entirety and two (2) further Property Claims were partially admitted with a total approximate value of CAD $2,100,000 have been admitted (the "**Admitted Claims**") by the Trustee. The Admitted Claims were admitted as the funds for which the Property Claim related to, were deposited into the Company's bank accounts subsequent to the Bankruptcy Date or in respect of payments which were initiated by EncoreFX prior to the Bankruptcy Date but failed as a result of EncoreFX's error. The Trustee has released and repaid the funds to the claimants of the Admitted Claims.

Property Claims – Withdrawn

145. Itex withdrew its Property Claim in the collective amount of $3,672,428 on a without prejudice basis. Itex may, however, file a Property Claim in the future.

Property Claims - Disallowed

146. Subsequent to the Trustee's review, the Trustee issued a notice of disallowance ("**NOD**") disallowing a total of fifty-eight (58) Property Claims representing a total claim amount of approximately CAD $36,900,000.

147. Given the current situation with COVID-19, the Trustee, with the approval of the Inspectors, granted a further extension of the appeal period provided under s. 81 of the BIA by an additional 15 days permitting claimants with disallowed Property Claims to appeal the decision communicated in the NOD within 30 days after the Trustee's issuance of the same (the "**Appeal Period**").

Disallowed Property Claims – No Appeal Filed

148. For forty-three (43) Property Claims disallowed by the Trustee and representing a total claim value of approximately CAD $3,000,000, the Appeal Period to appeal the Trustee's NOD has expired. Upon expiration of the Appeal Period, the Trustee issued a notice of

relinquishment to notify and to provide these claimants with formal written notice of the expiration of the Appeal Period.

Disallowed Property Claims – Still Within Appeal Period

149. The Property Claim submitted by MetaLab Design Ltd. which was disallowed by the Trustee, representing a total claim value of approximately CAD $500,000, is the only Property Claim received by the Trustee to date which remains within the Appeal Period, as provided by the Trustee or as otherwise agreed to.

Disallowed Property Claims – Appeal Filed

150. Fourteen (14) Property Claims disallowed by the Trustee and representing a total claim value of approximately CAD $33,500,000 have filed an appeal to the Trustee's NOD within the Appeal Period. A summary of the Property Claims for which an appeal has been filed to date are summarized by category in the table below.

Category	No.	$ CAD Amount
In-Flight Claims	6	1,609,717
Holding Claims	6	29,365,366
Margin Call Claims	2	2,441,690
Total	**14**	**$33,416,773**

In-Flight Claims

151. Property Claims with an appeal filed to the Trustee's NOD to date include:

No.	Claimant	$ CAD Amount
1.	Deca Cables Inc.	813,300
2.	John A. McAfee	28,014
3.	Tam International LP	173,647
4.	Vine Productions Inc.	392,940

5.	Webooook Information Technology Inc.	180,636
6.	Jeremy Gregoire	21,180
Total In-Flight Claims - Appealed		**$1,609,717**

152. The Trustee notes the following with respect to the appeal of the In-Flight Claim filed by Tam International LP:

i) On Thursday March 26, 2020, EncoreFX provided TAM International LP ("**TAM**") with a deal confirmation in respect of Transaction NO. EFX-CAN-DEAL- 0410699 (the "**TAM Deal Confirmation**"). The TAM DEAL Confirmation contemplated a transaction for the purchase and sale of currency whereby TAM, as purchaser, would purchase €110,715.22 (the "**Requested EUR**") from EncoreFX, as vendor, for a purchase price of USD$122,554.61, inclusive of a US $15.00 wiring fee (the "**Purchase Price**"). Upon the payment of the Purchase Price, EncoreFX would deliver the Requested EUR to TAM's supplier, Maschinen Meyer GmbH Co KG ("**Maschinen**"), in Germany.

ii) Pursuant to the TAM Deal Confirmation, on March 26, 2020, EncoreFX initiated a pre-authorized debit from TAM's bank account for the Purchase Price for a value date of March 27, 2020. On March 27, 2020, the Purchase Price credited to EncoreFX's bank account following the cut off time for processing same day value euro wire payments, which was 7:40AM (PST) (the "**Euro Wire Cut Off**"). In light of the timing of the receipt of the Purchase Price by EncoreFX, the outbound payment of the Requested EUR to Maschinen was not posted by EncoreFX's branch operations manager until after the Euro Wire Cut Off and was therefore scheduled to occur the morning of March 30, 2020.

iii) On March 30, 2020 at 2:55 AM (PST), Peter Gustavson, Chief Executive Officer of EncoreFX, sent an email to all EncoreFX Staff in Canada indicating that, effective immediately, EncoreFX was suspending all trading in Canada (the "**Trading Suspension**").

iv) As the Trading Suspension occurred prior to the commencement of EncoreFX's business on March 30, 2020, the wire to deliver the Requested EUR to Maschinen was not actioned by EncoreFX.

153. The Trustee notes the following with respect to the appeal of the In-Flight Claim filed by filed by Deca Cables Inc. ("**Deca**"):

i) Pursuant to Transaction EFX-CAN-DEAL-0411225 (the "**Deca Transaction**") EncoreFX provided Deca with a Wire Confirmation (the "**Deca Wire Confirmation**") listing a transaction date of March 30, 2020, whereby EncoreFX was to wire Deca USD $600,000 pursuant to the Deca Transaction on March 30, 2020.

ii) As the Trading Suspension occurred prior to the commencement of EncoreFX's business on March 30, 2020, the wire pursuant to the Deca Wire Confirmation was not actioned by EncoreFX.

154. The Trustee notes the following with respect to the appeal of the In-Flight Claim filed by filed by John A. McAfee ("McAfee"):

i) Pursuant to Transaction EFX-CAN-DEAL-0411293 (the "**McAfee Transaction**") EncoreFX provided McAfee with a Wire Confirmation (the "**McAfee Wire Confirmation**") listing a transaction date of March 30, 2020, whereby EncoreFX was to wire McAfee USD $20,000 pursuant to the McAfee Transaction on March 30, 2020.

ii) As the Trading Suspension occurred prior to the commencement of EncoreFX's business on March 30, 2020, the wire pursuant to the McAfee Wire Confirmation was not actioned by EncoreFX.

155. The Trustee notes the following with respect to the appeal of the In-Flight Claim filed by filed by Vine:

i) Pursuant to Transaction EFX-CAN-DEAL-0411149 (the "**Vine Transaction**") EncoreFX provided Vine with a Wire Confirmation (the "**Vine Wire Confirmation**") listing a transaction date of March 30, 2020, whereby EncoreFX was to wire Vine CAD $392,940 pursuant to the Vine Transaction on March 30, 2020.

ii) As the Trading Suspension occurred prior to the commencement of EncoreFX's business on March 30, 2020, the wire pursuant to the Vine Wire Confirmation was not actioned by EncoreFX.

156. The Trustee notes the following with respect to the appeal of the In-Flight Claim filed by filed by Webooook Information Technology Limited ("**Webooook**"):

i) Pursuant to Transaction EFX-CAN-DEAL-0411042 (the "**Webooook Transaction**") EncoreFX provided Webooook with a Wire Confirmation (the "**Webooook Wire Confirmation**") listing a transaction date of March 31, 2020, whereby EncoreFX was to wire Vine ¥15,000,000 to Hongmall Japan Corp. pursuant to the Webooook Transaction on March 31, 2020.

ii) As the Trading Suspension occurred prior to the commencement of EncoreFX's business on March 30, 2020, the wire pursuant to the Webooook Wire Confirmation was not actioned by EncoreFX.

157. The Trustee notes that pursuant to Transaction EFX-CAN-DEAL-0408432 (the "**Gregoire Transaction**") Jeremey Gregoire ("**Gregoire**") was to purchase CAD$21,180 from EncoreFX for a purchase price of USD$15,000. While Gregoire paid the purchase price to EncoreFX on March 27, 2020, no wire was actioned by EncoreFX to deliver the requested CAD to Gregoire prior to the Trading Suspension.

Holding Claims

158. Property Claims with an appeal filed to the Trustee's NOD to date include:

No.	Claimant	$ CAD Amount
1.	Dyna Engineering Ltd.	26,398
2.	Nash Jewellers	17,783
3.	Mex Y Can Trading East Inc.	68,791
4.	Ecosafe Zero Waste Inc.	117,649
5.	Great Northern Growers Inc.	377,501
6.	Andreas Wrede	28,757,244
Total Holding Claims - Appealed		**$29,365,366**

159. Legal counsel for Andreas Wrede – the largest unsecured creditor with an approximate claim of $18M Euro or $29M CAD - and the Trustee have agreed to deal with the appeal of the Trustee's NOD of Andreas Wrede's Property Claim by way of a trial of an issue pursuant to s. 187(8) of the BIA. The Trustee and Andrea's Wrede's counsel have now obtained a Consent Order setting out the parameters of proceeding in this manner.

Margin Call Claims

160. Property Claims with an appeal filed to the Trustee's NOD to date include:

No.	Claimant	$ CAD Amount
1.	Intelligent Imaging Systems Inc.	141,690
2..	Wanna Make It Farm Grain Corp. *Note: $2,000,000 of this claim relates to margin deposits and the remaining $300,000 relates to in-flight funds.*	2,300,000
Total Margin Call Claims - Appealed		**$2,441,690**

161. The Trustee and Wanna Make IT Farm Grain Corp. ("**WMI**") have now settled WMI's Property Claim.

162. The Trustee notes the following with respect to the appeal of the Margin Call Claim filed by Intelligent Imaging Systems Inc. ("**IISI**"):

i) On or about August 6, 2019, IISI completed a new account application (the "**IISI Account Application**") with the Company which included the Master Terms. In the IISI Account Application, IISI confirmed "receipt, understanding and acceptance" of the Master Terms.

ii) The Master Terms governed all Transactions entered into between IISI and the Company. Pursuant to the Master Terms, IISI was "exercising its own business judgment" and was not entering into any Transaction on the advice of the Company.

iii) On or about September 3, 2019, the Company and IISI entered into a credit facility letter (the "**IISI Credit Facility Letter**"), whereby the Company agreed to make available certain trading credit facilities to IISI. Pursuant to the IISI Credit Facility Letter, IISI was required to pay the Company margin deposits in CAD $25,000.00 increments when its net-aggregate out-the-money position (the "**IISI OTM Position**") was greater than CAD $200,000.00, which margin deposits could be refunded to IISI if the IISI OTM Position fell back below CAD $175,000.00.

iv) On March 23, 2020, the Company notified IISI that the IISI OTM Position was in-call for the amount of CAD $100,000.00 pursuant to the terms of the Master Terms and IISI Credit Facility Letter (the "**March 23 IISI Margin Call**"). Notwithstanding that its OTM Position was only in-call for CAD $100,000.00, IISI paid the Company USD $100,000.00 in respect of the March 23 IISI Margin Call on March 24, 2020 (the "**IISI Margin Deposit**").

v) Based on the Trustee's review of the Company's records, at no time did the Company agree, or otherwise represent to IISI, that it would hold the IISI Margin Deposit in trust for IISI.

vi) On April 2, 2020, the Trustee caused an email to be sent from "receivables@encorefx.com" to IISI, care of Nurez Khimji ("**Mr. Khimji**") at "nkhim@drivewyze.com", the email address listed in the Account Application as the email address for service on IISI (the "**IISI Service Email**"), enclosing a written notice from the Trustee (the "**April 2 Notice**") advising IISI that:

   (a) the Company had suspended trading and filed an assignment in bankruptcy;

   (b) the credit facility pursuant to the IISI Credit Facility Letter had been terminated;

   (c) the Services provided by the Company pursuant to the Master Terms had been terminated; and

   (d) the current IISI OTM Position was CAD $235,829.34 and that such amount was due and payable by IISI to the Company within two business days thereof (the "**April 2 IISI Margin Call**").

vii) At paragraph 37 of the first affidavit of Mr. Khimji filed in the within Proceeding on July 15, 2020, Mr. Khimji indicates that the April 2 Notice was not received at the IISI Service Email. The Trustee has no knowledge regarding why the April 2 IISI Notice may not have been received at the IISI Service Email.

viii) As a result of IISI's failure to pay the April 2 IISI Margin Call within two business days, the Trustee closed out IISI's accounts on April 7, 2020.

Proposed Dealing with Appeals Filed

163. As stated above, the Property Claims of each category share similar and common facts and characteristics. As such, the Trustee intends to have the appeals filed to the Property Claims disallowed by the Trustee to be heard by this Honourable Court by category in an effort to expedite resolution and to minimize professional costs to be borne by the estate and the claimants of the Property Claims.

Foreign Exchange Software

164. Prior to its bankruptcy, the Company utilized Datasoft FXOffice software ("**FXOffice**") for managing its trading program with customers. In FXOffice, each customer was assigned an account number associated with a sub consignment account, holding account and margin account (the "**Internal Account(s)**"). In interactions with various customers, the Company often used the terms "trading account," "consignment account," and "holding account" to reference the Internal Accounts held by a particular customer.

165. The Internal Accounts were references to notional credit positions held by customers with the Company which were used to ensure the notional credit positions of individual customers were properly reconciled within the Company's own accounting records in respect of the Company's own pooled operating bank accounts. All funds received from EncoreFX from its customers were held in EncoreFX's own operating bank accounts. When the Company received funds from a customer, a entry would be made in one of that customer's Internal Accounts to record the customer's respective notional credit position with the Company.

166. The notional credit positions recorded in the Internal Accounts were akin to liabilities which the Company owed to a particular customer and not specific funds held by the Company in a segregated bank account on behalf of the particular customer or any other party. The Company would only be in a position to payout a particular notional credit position

recorded in a particular customer's Internal Account if the Company actually had sufficient funds available to do so in its own pooled operating bank account(s).

167. The liabilities associated with the notional credit positions recorded in the Internal Accounts were recorded in EncoreFX's financial statements as liabilities of EncoreFX under line item "**Client deposits**". Accordingly, each time a customer paid EncoreFX pursuant to a particular transaction, a corresponding record would be reflected in EncoreFX's financial statements under line item "Cash and cash equivalents" to reflect EncoreFX's receipt of such payment.

168. Notwithstanding that some correspondence to EncoreFX customers in respect of KPMG LLP's audit of EncoreFX's annual financial statements referred to "records of cash deposits" held in the name of EncoreFX's customers, the actual financial statements do not contain any records of "cash deposits" held by EncoreFX in the name of any other party.

ESTIMATED STATEMENT OF RECEIPTS AND DISBURSEMENTS

169. The estimated statement of receipts and disbursements for the period March 30, 2020 to October 19, 2020 (the "**Estimated SRD**") is attached hereto as **Appendix "I"**. The Estimated SRD can be summarized as follows:

a) Total estimated cash receipts of approximately $38.9M consisting of:

   i) Cash accounts of approximately $16.6M;

   ii) Liquidator Party funds of approximately $13M;

   iii) OTM Close Outs of approximately $8.3M; and

   iv) Other various receipts of approximately $1M.

b) Total estimated cash disbursements of approximately $7.2M with major disbursements as follows:

   i) Computer and IT services of approximately $240K;

ii) Legal fees and disbursements (net of applicable sales taxes) of approximately $906K;

iii) Distributions respecting payments of Admitted Claims of approximately $2.1M;

iv) Payroll and employee related benefits of approximately $1.5M;

v) Rent payments of approximately $356K;

vi) Trustee's fees (net of applicable sales tax) of approximately $1.5M; and

vii) Other various disbursements totaling approximately $598K.

c) The Trustee is currently holding an estimated cash balance of approximately $31.7M CAD.

170. Estate funds are currently held in both $USD and $CAD denominations.

All of which is respectfully submitted this 22st day of October, 2020.

Yours very truly,

ERNST & YOUNG INC.
In its capacity as Trustee
in the bankruptcy of EncoreFX Inc.
and not in its personal capacity

Per:

Mike Bell, CPA, CA, CIRP, LIT
Senior Vice President

Peter Venetsanos, CPA, CA, CIRP, LIT
Vice President

APPENDIX “A”

EY
Building a better working world

Ernst & Young Inc.
700 West Georgia Street
Vancouver, BC V7Y 1C7

Tel: +1 604 891 8200
Fax: +1 604 899 3530
ey.com

VIA EMAIL

1st June 2020

To ITM Customers,

As you are aware, on March 30, 2020 ("**Bankruptcy Date**"), EncoreFX Inc. (the "**Company**") filed an assignment in bankruptcy pursuant to Section 49(1) of the *Bankruptcy and Insolvency Act* (Canada) with respect to its Canadian operations. Ernst & Young Inc ("**EY**") was appointed trustee in bankruptcy (the "**Trustee**") of the Company.

Capitalized terms in this letter not otherwise defined have the meaning given to them in the Master Terms and Conditions ("**MTCs**") contained in the New Account Application (the "**Customer Agreement**") governing your relationship with the Company.

We write to you as a client of the Company whose Transactions in the aggregate are in the money ("**ITM**") at the time of our last calculation. That means that as at the time of that calculation, you may be a creditor of the Company (subject, among other things, to fluctuations in currency exchange rates and any other potential liabilities between you and the Company).

COURT ORDER

The Trustee sought and obtained a court order before the Supreme Court of British Columbia (the "**Court**") on April 28, 2020 (the "**Order**") authorizing the Trustee, with the approval of the inspectors, to disclaim any Transactions between the Company and its customers where such Transactions were calculated to be ITM (the "**ITM Customers**"). The inspectors have now given their approval to disclaim the forward currency contracts and options. A copy of the Order is enclosed as Schedule "A" to this letter. The Trustee has not yet taken any steps to disclaim the Transactions of the ITM Customers.

The rationale for the Trustee seeking the authorization to disclaim ITM Customers contracts are detailed in a report filed by the Trustee, dated April 22, 2020, with the Court; a copy of which report is available on the Trustee's website at www.ey.com/ca/EncoreFX.

To mitigate the impact on ITM Customers, to the extent possible, and based on the individual needs of each customer of EncoreFX, we are providing the ITM Customers an option with respect to their collective net contract positions. The options are as set out below:

OPTIONS

The Trustee is providing the ITM Customers with the following options:

1. **Automatic closing out of Transactions**

   Unless the Trustee receives your written instructions to keep your Transactions open by 5 PM PDT on June 30, 2020 (the "Instructions Deadline"), the Trustee will close out your Transactions not previously closed out as of June 30, 2020. If the Trustee closes out your Transactions, the Trustee will provide a statement to you shortly thereafter that will detail the closing out of your Transactions. That statement will show, as of that date, the settlement details and your claim as against the estate as an unsecured creditor. To assist you with the bankruptcy process, the Trustee will complete a proof of claim form and admit same on your behalf, subject only to receiving back from you an executed copy of the proof of claim form for purpose of the bankruptcy estate administration.

2. Conditional Maintenance of Transactions

You may provide written instructions to the Trustee by no later than the Instructions Deadline to keep your Transactions open until the Settlement Date. **The Trustee advises that it will be unable to perform the settlement obligations under the Transactions on the Settlement Date; the maturity date will merely dictate the value of your unsecured claim for distribution purposes (including a *pro rata* sharing of the monies to be distributed by the Trustee, if any, following the conclusion of these proceedings).** Therefore, the maintenance of any of your Transactions is subject to the following conditions:

(a) You release the Trustee from any liability arising in connection with any of the Transactions.

(b) You acknowledge that your only remedies, if any, are against the Company as an unsecured creditor of the Company.

(c) You agree to indemnify and hold harmless the Company's estate and the Trustee, personally, for any losses suffered by them in connection with the Transactions (except to the extent of the Transactions' ITM amount on the Settlement Date).

(d) You acknowledge that your ITM positions may become out of the money ("**OTM**") based on fluctuations in currency exchange rates. If your Transactions become OTM, the Trustee advises and you acknowledge that the Credit Facility Letter, if any, between you and the Company is terminated and you will strictly comply with the MTCs to which the contracts were subject, including payment of margin payments. **This may result in your being a debtor of the Company.**

(e) You enter into a written agreement with the Trustee in a form satisfactory to the Trustee's counsel (acting reasonably) providing for the above conditions.

For purpose of the bankruptcy proceeding, the Trustee will complete a proof of claim form and admit same, based on the FX rate applicable as at the Bankruptcy Date, on your behalf, subject only to receiving back from you an executed copy of the proof of claim form for purpose of the bankruptcy estate administration. Upon maturity of the Transactions (the final contract associated with your account), the Trustee will amend the amount of your unsecured claim based on the ITM position, if any, applicable at that date; an amended proof of claim form will be provided to you for execution and return thereafter.

Should you desire to proceed with the Conditional Maintenance option, we would ask that you please contact Samer Awadh of MLT Aikins LLP at sawadh@mltaikins.com before the Instructions Deadline. A form of agreement will be provided to you by MLT Aikins LLP, legal counsel to the Trustee.

* * * * *

For any questions or concerns, please contact **receivables@encorefx.com**.

Respectfully,

ERNST & YOUNG INC.
In its capacity as Trustee
in the bankruptcy of EncoreFX Inc.
and not in its personal capacity
Per:

Peter Venetsanos, CPA, CA, CIRP, LIT
Vice President

APPENDIX “B”

EY
Building a better working world

Ernst & Young Inc.
700 West Georgia Street
Vancouver, BC V7Y 1C7

Tel: +1 604 891 8200
Fax: +1 604 899 3530
ey.com

VIA EMAIL

June 26, 2020

To: [Customer Name]

Re: Demand Letter

As you are aware, on March 30, 2020, EncoreFX Inc. ("**EncoreFX**" or the "**Company**") filed an assignment in bankruptcy. Ernst & Young Inc. was appointed as the licensed insolvency trustee (the "**Trustee**") of the bankrupt estate.

We refer to our letter dated [Date] (the "**Close Out Letter**") notifying [Customer Name] among other things, that:

- [Customer Name] was in violation of the Master Terms and Conditions as a result of not paying the margin call payment within two business days as required under the Master Terms and Conditions;
- Pursuant to the Master Terms and Conditions, the Company terminated all Transactions; and
- Upon the termination of the Transactions due to [Customer Name] violation of the Master Terms and Conditions, the Company was relieved of its obligations under the Master Terms and Conditions to complete any Transactions.

The Company closed out all of the [Customer Name] Transactions, and the amount of $[Amount] CAD and $[Amount] USD ("**Total Amount Outstanding**") was due and payable to the Company by [Customer Name]. The Total Amount Outstanding was required to be paid within two business days from the date of the Close Out Letter.

As you are aware, in the Close Out Letter and on a without prejudice basis, the amount of $[Amount] (the "**Deducted Amount**") was deducted from the Total Amount Outstanding representing the amount of Margin Calls or Margin Deposits made prior to the bankruptcy filing on March 30, 2020. The legal right to reduce the Total Amount Outstanding by the Deducted Amount has not yet been determined by the Court. A Court may decide that the Deducted Amount may not be properly deducted from Total Amount Outstanding. In the event a Court decides that no amount should have been deducted from the Total Amount Outstanding (including the Deducted Amount) we reserve the right to claim the Deducted Amount from [Customer Name] at any time. After deducting the Deducted Amount from the Total Amount Outstanding the net close out amount owing is **CAD $**[Amount] plus **USD $**[Amount] (the "**Close Out Amount**").

To date, the Trustee has not received payment of the Close Out Amount outstanding [Customer Name]. The Trustee demands the Close Out Amount outstanding be paid by [Customer Name] by no later than fourteen (14) days from the date of this letter. Wire instructions for where payments are to be made are attached to this letter.

Take notice, [Customer Name] failure to make such payment will leave the Trustee with no choice but to exercise any and all of its legal rights, including to collect the Total Amount Outstanding from [Customer Name].

For any questions, please contact Marko Gordic at (604) 891-8280 or at marko.gordic@ca.ey.com.

Respectfully,

ERNST & YOUNG INC.
In its capacity as Trustee of EncoreFX Inc.
and not in its personal or corporate capacity

Per:

Peter Venetsanos, CPA, CA, CIRP, LIT
Vice President

APPENDIX "C"

MLT AIKINS

WESTERN CANADA'S LAW FIRM

MLT Aikins LLP
Suite 2600 - 1066 West Hastings Street
Vancouver, British Columbia V6E 3X1
T: (780) 969-3500
F: (604) 682-7131

Arooj Shah
Direct Line: (780) 969-5068
E-mail: ashah@mltaikins.com

Zeena Ali
Direct Line: (604) 608-4561
E-mail: zali@mltaikins.com

July 31, 2020

VIA EMAIL: [email]

[OTM Customer Name]
[OTM Customer Name Address]

Dear Sir/Madam:

Re:	**In the Matter of the Bankruptcy of EncoreFX Inc. ("EncoreFX")**
And Re:	**Demand for Payment**
Court File No.	**VCL-S-B-200204, District of British Columbia, Division No. 3 - Vancouver**
Our File:	**7230-36**

We are legal counsel for Ernst & Young Inc., the Trustee in Bankruptcy of EncoreFX ("**Trustee**").

On or about [Date], the Trustee sent you a Margin Call per your obligations under your New Account Agreement and Credit Facility Letter with EncoreFX. You failed or refused to pay the Margin Call to the Trustee.

On or about [Date], the Trustee sent you a detailed close out letter requiring you to pay an amount totaling [Amount] (the "**Unpaid Debt**") to the Trustee as a result of your failure to pay the Margin Call. You failed or refused to pay the Unpaid Debt to the Trustee in breach of your obligations under your New Account Agreement and Credit Facility Letter.

<u>We hereby demand that you pay the Unpaid Debt</u>. Please make your payment by way of a certified cheque or bank draft made payable to "MLT Aikins LLP In Trust" within **<u>five (5) days</u>** of your receipt of this letter and deliver the payment to our address set out above. If you fail or refuse to do so before the above deadline, then we will file a legal claim against you and seek additional costs and interest as a result.

Yours truly,

MLT AIKINS LLP

Per:
Arooj Shah

AS:zza
cc: Client

APPENDIX "D"

MLT AIKINS

WESTERN CANADA'S LAW FIRM

MLT Aikins LLP
Suite 2600 - 1066 West Hastings Street
Vancouver, British Columbia V6E 3X1
T: (604) 682-7737
F: (604) 682-7131

William E. J. Skelly
Direct Line: (604) 608-4597
E-mail: wskelly@mltaikins.com

Zeena Ali
Direct Line: (604) 608-4561
E-mail: zali@mltaikins.com

_____________, 2020

Via Email:

NTD: Address

Dear Sir / Madam:

Re:	**In the Matter of the Bankruptcy of EncoreFX Inc. ("EncoreFX")**
And Re:	**Demand for Payment – NTD**
Our File:	**7230-36**

We are legal counsel for Ernst & Young Inc., the Trustee in Bankruptcy of EncoreFX ("**Trustee**").

Further to the Trustee's communications with you dated April __, 2020, May __, 2020, and June 26, 2020 regarding funds owing to the Trustee pursuant to the terms of a New Account Application dated _________________ and a Credit Facility Letter dated ______________, this letter serves as a final demand for payment of a margin call closed out on April ___, 2020 in an amount totaling $___________. The Trustee hereby demands that you issue payment to the Trustee of an amount totaling $_____________, such payment to be made by no later than five (5) business days from your receipt of this letter, failing which the Trustee will commence litigation proceedings against you substantially in the form appended hereto.

Payment should be made by way of a certified cheque or bank draft made payable to "MLT Aikins LLP In Trust" within **five (5) business days** of your receipt of this letter and delivered to our address set out above.

Yours truly,

MLT AIKINS LLP

Per:

for: William E. J. Skelly

WEJS:zza
cc: Client

Encls.

APPENDIX “E”

MLT AIKINS

WESTERN CANADA'S LAW FIRM

MLT Aikins LLP
Suite 2600 - 1066 West Hastings Street
Vancouver, British Columbia V6E 3X1
T: (780) 969-3500
F: (604) 682-7131

Arooj Shah
Direct Line: (780) 969-5068
E-mail: ashah@mltaikins.com

Zeena Ali
Direct Line: (604) 608-4561
E-mail: zali@mltaikins.com

August 24, 2020

VIA REGISTERED MAIL
COPY VIA EMAIL: [email]

[OTM Customer Name]
[OTM Customer Address]

Dear Sir/Madam:

Re:	**In the Matter of the Bankruptcy of EncoreFX Inc. ("EncoreFX")**
And Re:	**Final Demand for Payment**
Court File No.	**VCL-S-B-200204, District of British Columbia, Division No. 3 - Vancouver**
Our File:	**7230-36**

As you know, we are legal counsel for Ernst & Young Inc., the Trustee in Bankruptcy of EncoreFX ("**Trustee**"). On [date], we wrote to you to demand payment of the unpaid debt owed by you to EncoreFX in the amount of [amount] (the "**Unpaid Debt**"). The Trustee had written to you twice before in respect of the Unpaid Debt.

Despite repeated demands, you have continuously failed, refused or neglected to pay the Unpaid Debt. **This letter is a final demand for you to pay the Unpaid Debt.** Should you fail to comply with this demand before the deadline set out below, we will file the enclosed Notice of Civil Claim against you, and seek additional costs and interest as a result.

Please make your payment by way of a certified cheque or bank draft made payable to "MLT Aikins LLP" within **five (5) business days** of your receipt of this letter and deliver payment to our address set out above.

Yours truly,

MLT AIKINS LLP

Per:
Arooj Shah

Encls.
AS:zza
cc: Client

MLT AIKINS
WESTERN CANADA'S LAW FIRM

MLT Aikins LLP
Suite 2600 - 1066 West Hastings Street
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T: (780) 969-3500
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Arooj Shah
Direct Line: (780) 969-5068
E-mail: ashah@mltaikins.com

Zeena Ali
Direct Line: (604) 608-4561
E-mail: zali@mltaikins.com

August 24, 2020

VIA REGISTERED MAIL
COPY VIA EMAIL: [email]

[OTM Customer Name]
[OTM Customer Address]

Dear Sir/Madam:

Re:	**In the Matter of the Bankruptcy of EncoreFX Inc. ("EncoreFX")**
And Re:	**Final Demand for Payment**
Court File No.	**VCL-S-B-200204, District of British Columbia, Division No. 3 - Vancouver**
Our File:	**7230-36**

As you know, we are legal counsel for Ernst & Young Inc., the Trustee in Bankruptcy of EncoreFX ("**Trustee**"). On [date], we wrote to you to demand payment of the unpaid debt owed by you to EncoreFX in the amount of [amount] (the "**Unpaid Debt**"). The Trustee had written to you twice before in respect of the Unpaid Debt.

Despite repeated demands, you have continuously failed, refused or neglected to pay the Unpaid Debt. **This letter is a final demand for you to pay the Unpaid Debt.** Should you fail to comply with this demand before the deadline set out below, we will file a legal claim against you, and seek additional costs and interest as a result.

Please make your payment by way of a certified cheque or bank draft made payable to "MLT Aikins LLP" within **five (5) business days** of your receipt of this letter and deliver payment to our address set out above.

Yours truly,

MLT AIKINS LLP

Per:
Arooj Shah

Encls.
AS:zza
cc: Client

APPENDIX “F”

TEMPLATE

NO.
VANCOUVER REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN

ERNST & YOUNG INC.,
IN ITS CAPACITY AS TRUSTEE IN BANKRUPTCY OF
ENCOREFX INC.

PLAINTIFF

AND

NTD

DEFENDANT

NOTICE OF CIVIL CLAIM

This action has been started by the Plaintiff for the relief set out in Part 2 below.

If you intend to respond to this action, you or your lawyer must

(a) file a response to civil claim in Form 2 in the above-named registry of this court within the time for response to civil claim described below, and

(b) serve a copy of the filed response to civil claim on the Plaintiff.

If you intend to make a counterclaim, you or your lawyer must

(a) file a response to civil claim in Form 2 and a counterclaim in Form 3 in the above-named registry of this court within the time for response to civil claim described below, and

(b) serve a copy of the filed response to civil claim and counterclaim on the Plaintiff and on any new parties named in the counterclaim.

JUDGMENT MAY BE PRONOUNCED AGAINST YOU IF YOU FAIL to file the response to civil claim within the time for response to civil claim described below.

Time for response to civil claim

A response to civil claim must be filed and served on the Plaintiff,

(a) if you reside anywhere in Canada, within 21 days after the date on which a copy of the filed notice of civil claim was served on you,

(b) if you reside in the United States of America, within 35 days after the date on which a copy of the filed notice of civil claim was served on you,

(c) if you reside elsewhere, within 49 days after the date on which a copy of the filed notice of civil claim was served on you, or

(d) if the time for response to civil claim has been set by order of the court, within that time.

Form 11 (Rule 4-5 (2))

ENDORSEMENT ON ORIGINATING PLEADING FOR SERVICE OUTSIDE BRITISH COLUMBIA

[Rule 22-3 of the Supreme Court Civil Rules applies to all forms.]

The Plaintiff claims the right to serve this Notice of Civil Claim on the Defendant outside British Columbia on the grounds that the Plaintiff's claim concerns contractual obligations, and: (i) the contractual obligations, to a substantial extent, were to be performed in British Columbia, and (ii) by its express terms, the contract is governed by the law of British Columbia, this all pursuant to Rule 4-5(1) and s.10(e) of the *Court Jurisdiction and Proceedings Transfer Act*, SBC 2003, c-28.

CLAIM OF THE PLAINTIFF

PART 1: STATEMENT OF FACTS

Introduction

1. This is a claim for specific damages resulting from a breach of contract by the Defendant, brought by Ernst & Young Inc. ("**E&Y**") in its capacity as trustee in bankruptcy of EncoreFX Inc. ("**EncoreFX**"), all pursuant to the provisions of the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3 ("***BIA***").

The Parties

2. The Plaintiff, E&Y, is a federally incorporated corporation duly registered in British Columbia with offices located, *inter alia*, in the City of Vancouver in the Province of British Columbia.

3. The Defendant, _______________ (the "**Defendant**"), is a corporation incorporated pursuant to the laws of the Province of ____________. The Defendant entered into a contractual relationship with EncoreFX, as further described below, which is governed by the laws of the Province of British Columbia and pursuant to which the Defendant attorns to the jurisdiction of Courts of the Province of British Columbia.

Particulars Regarding EncoreFX's Business

4. EncoreFX is a federally registered corporation based in Victoria, British Columbia, with branch offices in a number of cities across Canada.

5. EncoreFX was in the business of providing foreign exchange ("**FX**") risk management and cross-border payment services predominantly to small and medium enterprise customers who import or export products to and from foreign markets, and base their pricing on foreign currencies. Among other things, EncoreFX sold FX derivative contracts (including forward contracts and options) to its customers in order to mitigate their exposure to fluctuating FX rates (the "**EncoreFX Derivatives**").

6. The EncoreFX Derivatives are referred to as "over-the-counter" derivatives because they are not traded on a market or securities exchange, but rather negotiated with each counterparty (EncoreFX and its customer) at the time they are consummated.

7. The "market value" of all of the EncoreFX Derivatives products sold to customers fluctuates every second of every day once entered into due to movements in underlying FX rates; and at any given time, the market value of the derivatives is "out-the-money" ("**OTM**"), "in-the-money", or "at-the-money". In simplistic terms, an OTM position means that the FX rate and other factors moved against the client and if the contract were to be liquidated, the client would owe EncoreFX an amount equal to the dollar value of the OTM position.

The EncoreFX Account Application Process

8. Customers of EncoreFX, including the Defendant, were required to complete a "New Account Application" form ("**NAA**") in order to book EncoreFX's Derivatives.

9. The NAA is executed by the customer and memorializes, *inter alia*, the following information:

   a. applicant information;

   b. authorized signatory particulars;

   c. authorized representative particulars;

   d. beneficial ownership information for privately held businesses;

   e. bank information;

   f. legal entity identifier information for application purchasing derivatives products; and

g. applicant's representations, warranties and covenants (the "**NAA Representations**").

10. The NAA Representations provide, *inter alia*, as follows:

a. The customer confirms receipt, understanding and acceptance of the EncoreFX Master Terms and Conditions (the "**MTC**") and agrees to be bound thereby and further agrees that all dealings between the customer and EncoreFX remain subject to the MTC.

b. All statements and representations made in the NAA are deemed repeated each time the customer purchases EncoreFX Derivatives.

11. The MTC expressly provide, *inter alia*, as follows:

a. The customer is bound by the MTC (Article 1.1).

b. The MTC apply to all transactions entered into between the customer and EncoreFX. Such transactions and all related contracts or agreements between the Customer and EncoreFX will at all times be subject to the MTC, except to the extent modified expressly and clearly by the specific provisions of a transaction (Article 2.1).

c. The customer represents and warrants to EncoreFX that it is entering into the NAA and any transactions contemplated by the NAA for the purpose of hedging, and not for the purpose of speculation or investment (Articles 4.1(e) and 8.1).

d. The customer is exercising its own business judgement when entering into all transactions pursuant to the NAA, and is not entering into the NAA or any transaction on the advice of EncoreFX(Article 4.1(f)).

e. The customer has received and understands the following documentation: Product Disclosure Statement, Disclosure - Reporting Requirements, and Credit Facility Letter (to the extent the customer will use margins) (Article 4.1(h)).

f. Customers shall be required to maintain margins with respect to certain accounts or transactions, as set out in the credit facility letter (defined *infra*). EncoreFX may issue a margin call or an additional margin call to such a customer. Upon the issuance of such a margin call, the customer shall, *inter alia*, forthwith deposit the funds required to maintain the appropriate margin with EncoreFX within two business days. In the event that the customer fails to respond to the margin call, the customer shall be in default under the transaction, which shall cause a default under all pending transactions and EncoreFX may at its sole discretion and without further notice and in addition to any other rights it may have: i) close out the customer's account and terminate the contract which relates to the specific service or transaction; ii) terminate and close out any other pending transaction/contract for services with the customer; and iii) set off amounts owed to the customer including any gains on contracts closed out (terminated) against any losses incurred and amounts then owing to EncoreFX on transactions with the customer (Articles 5.3(b), 6.3, 6.4, 6.5, 7.9, 7.10, and 7.11).

g. Where a margin deposit is placed on a floating basis for a forward contract or an option, the customer agrees to submit to EncoreFX additional deposit funds/letter of guarantee when EncoreFX determines that the mark-to-market potential loss on the forward contract exceeds the prescribed amount established with EncoreFX in a credit facility letter.

EncoreFX shall determine the mark-to-market value of a forward contract at a given point on a daily basis on each business day based upon the mid-market rate. The customer agrees to accept and be bound by such mark-to-market value determination as made by EncoreFX (Articles 6.3 and 7.9).

h. Forward contracts and options must not be entered into by a customer for the purpose of speculation or investment. By entering into a forward contract or option, the customer is deemed to represent and warrant at that time and at all times thereafter that the purpose of the forward contract or option is solely for hedging (Articles 6.1 and 8.1).

i. EncoreFX may suspend or terminate services to the customer at any time without notice (Article 11.1).

j. In the event that a customer has violated the terms of a NAA, including but not limited to, by not performing any of its obligations under any transaction, EncoreFX may, at its sole discretion, withhold services and/or terminate any pending transactions immediately by providing written notice to the customer. In the event that any transaction is terminated based upon a customer's violation of the terms of the NAA, EncoreFX will be relieved of any and all its obligations under the NAA to complete any pending transaction, including its obligations under any transaction entered into prior to such termination (Article 11.4.).

k. The NAA and MTC, except as supplemented by an additional agreement between the parties and the terms and conditions of each transaction, constitute the entire agreement between the parties regarding the customer's use of EncoreFX's services (Article 22.10).

The EncoreFX Credit Process

12. In order to be competitive within its industry, EncoreFX offered credit to certain customers, including to the Defendant, in booking EncoreFX Derivatives. The credit terms offered included no initial margin and an OTM / mark-to-market limit up to a predetermined amount.

13. Prior to granting credit to customers, including to the Defendant, EncoreFX's credit department would perform a detailed credit assessment and would extend terms that were in line with the customer's financial strength.

14. Once the customer assessment was finalized, EncoreFX would issue and a customer would sign a credit facility letter ("**CFL**") that outlined the terms under which credit was granted. The CFL expressly reiterates that the customer would be required to pay margin deposits and additional margin deposits to EncoreFX to cover unfavourable market fluctuations over and above a prescribed mark-to-market limit.

Reasons for EncoreFX's Insolvency

15. Beginning in March 2020, global FX markets began to observe atypical levels of volatility mainly driven by the impact that COVID-19 was having on the global economy. In particular, the US Dollar (USD) strengthened in a significant way against some of the world's most traded currencies, including against the Canadian, Australian and New Zealand dollars in which the majority of the EncoreFX Derivatives were booked.

16. Due to this market volatility, a number of EncoreFX's customers (and its subsidiaries' customers) were OTM on their transactions and subject to margin calls. EncoreFX attempted to work with many of its OTM customers to address the outstanding margin calls, however many OTM customers' businesses had been negatively impacted by COVID-19 and they were unable to honour the terms of their credit facility agreements.

17. As a consequence of nonpayment of margin calls by its customers, EncoreFX was left OTM with third party banking counterparties (the "**Liquidity Providers**") in respect of exposure limiting "International Swaps and Derivatives Association, Inc." agreements between itself and such Liquidity Providers and EncoreFX was required to pay significant additional margins to its Liquidity Providers to cover the value of OTM contracts.

18. In the days leading up to March 30, 2020, EncoreFX's management determined that even if all OTM amounts owing could be collected from OTM customers over time, EncoreFX's short-term liquidity was insufficient to meet its obligations to its Liquidity Providers.

19. On Monday, March 30, 2020, EncoreFX filed an assignment into bankruptcy pursuant to the provisions of the *BIA*. E&Y consented to act as the licensed trustee in bankruptcy of the insolvent estate of EncoreFX and its appointment as same was confirmed at a first meeting of EncoreFX's creditors on May 7, 2020.

Particulars Regarding the Defendant's Breach of Contract

20. On or about _______________, EncoreFX entered into a NAA with the Defendant (the "**Defendant's NAA**").

21. On or about ______________________, EncoreFX entered into a CFL with the Defendant (the "**Defendant's CFL**") for the purpose of being extended credit when booking forwards and/or options with EncoreFX. Express terms of the Defendant's CFL included, *inter alia*, the following:

a. the hedging limit for booking forwards and/or options was $____________;

b. the mark-to-market limit was $_____________ ($_____________ with $________ increments) (the "**MTM Limit**");

c. the maximum cumulative amount of a hedging contract at any one time was $__________;

d. the Defendant was required to pay margin deposits to EncoreFX to cover unfavourable market fluctuations over the MTM Limit of $____________;

e. the mark-to-market position of all hedging contracts would be monitored and if the net-aggregate OTM position was greater than $____________, then the Defendant's position would be considered to be "in-call" for an amount totalling $____________;

f. once the Defendant's account was "in-call", the Defendant was required to make the required margin payment within two business days;

g. in the event that a margin call was not received within two business days, EncoreFX, at its sole discretion and without further notice, had the right, *inter alia*, to:

    i. close out the account and terminate the Defendant's CFL which related to the specific service or transaction;

    ii. terminate and close out any other pending transaction;

    iii. set-off amounts owed to the Defendant against any losses incurred; and

h. EncoreFX reserved the right to re-evaluate, amend or cancel the Defendant's CFL at any time at its discretion.

22. On April ____, 2020, E&Y terminated the Services as defined in the Defendant's NAA and cancelled the Defendant's CFL (subject to margin calls and other ongoing obligations in connection with existing transactions). As the Defendant was OTM on this date, cancellation of the Defendant's CFL led to a margin shortfall. E&Y therefore issued a margin call in an amount totaling $_____________ and required the Defendant to pay same within two business days (the "**Margin Call**"), which the Defendant has failed or refused to pay.

23. On May ____, 2020, E&Y issued written correspondence notifying the Defendant that, as a result of not paying the Margin Call within two business days as required under the MTC, they were in violation of the MTC, and all transactions were terminated and their accounts were closed out as

at April ___, 2020. In accordance with the MTC, E&Y required the Defendant to pay an amount totalling $____________ (the "**Indebtedness**"), less a without prejudice deduction, within two business days, which the Defendant has failed or refused to pay.

24. On June 26, 2020, E&Y issued a further demand to the Defendant to pay the Indebtedness, less a without prejudice deduction, which the Defendant has failed or refused to pay.

25. The Defendant has failed or refused to pay the Indebtedness to E&Y in breach of its contractual obligations to EncoreFX (the "**Breach**").

26. E&Y claims specific damages from the Defendant in the amount of the Indebtedness as a result of Breach.

PART 2: RELIEF SOUGHT

1. The Plaintiff claims as follows:

   a. specific damages for breach of contract in an amount totalling $____________;

   b. interest pursuant to the *Court Order Interest Act*, RSBC 1996 c 79, as amended; and

   c. costs on a solicitor client full indemnity basis or on such other basis as this Honourable Court deems fit.

PART 3: LEGAL BASIS

1. The Plaintiff relies on the laws of:

   a. contract;

   b. bankruptcy; and

   c. costs.

2. At all material times, the Defendant was bound to the terms of the Defendant's NAA and the Defendant's CFL.

3. E&Y terminated the Services as defined in the Defendant's NAA, cancelled the Defendant's CFL, closed out the Defendant's accounts, and issued the Margin Call in accordance with the terms of the Defendant's NAA and the Defendant's CFL.

4. The Defendant has neglected or refused to pay the Indebtedness to E&Y in accordance with the terms of the Defendant's NAA and the Defendant's CFL, which is a breach of the express terms thereof.

Plaintiff's address for service: MLT Aikins LLP
Suite 2600, 1066 West Hastings Street
Vancouver, BC V6E 3X1
Attention: William E.J. Skelly / Dana M. Nowak

Fax number address for service (if any): 604-682-7131

E-mail address for service (if any): wskelly@mltaikins.com
dnowak@mltaikins.com

Place of trial: Vancouver, British Columbia

The address of the registry is: The Law Courts
800 Smithe Street
Vancouver, BC V6Z 2E1

Date: ______________________

____
Signature of William E.J. Skelly / Dana M. Nowak
Lawyers for the Plaintiff

Rule 7-1 (1) of the Supreme Court Civil Rules states:

(1) Unless all parties of record consent or the court otherwise orders, each party of record to an action must, within 35 days after the end of the pleading period,

(a) prepare a list of documents in Form 22 that lists

(i) all documents that are or have been in the party's possession or control and that could, if available, be used by any party at trial or prove or disprove a material fact, and

(ii) all other documents to which the party intends to refer at trial, and

(b) serve the list on all parties of record.

APPENDIX

PART 1: CONCISE SUMMARY NATURE OF CLAIM:

This is a claim for specific damages resulting from a breach of contract by the Defendant, brought by Ernst & Young Inc. in its capacity as trustee in bankruptcy of EncoreFX Inc.

PART 2: THIS CLAIM ARISES FROM THE FOLLOWING:

A dispute concerning:

[ ] a motor vehicle accident

[ ] personal injury, other than one arising from a motor vehicle accident

[ ] a dispute about real property (real estate)

[ ] a dispute about personal property

[ ] the lending of money

[X] the provision of goods or services or other general commercial matters

[ ] an employment relationship

[ ] a dispute about a will or other issues concerning the probate of an estate

[ ] a matter not listed here

PART 3: THIS CLAIM INVOLVES

[ ] a class action

[ ] maritime law

[ ] aboriginal law

[ ] constitutional law

[ ] conflict of laws

[X] none of the above

[ ] do not know

PART 4:

Bankruptcy and Insolvency Act, RSC 1985, c B-3.

Court Order Interest Act, RSBC 1996 c 79.

APPENDIX “G”

MLT AIKINS
WESTERN CANADA'S LAW FIRM

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William E. J. Skelly
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Zeena Ali
Legal Assistant
Direct Line: (604) 608-4561
E-mail: zali@mltaikins.com

April 8, 2020

VIA **EMAIL**: [Customer email]

[Customer address]

Attention Customer:

Dear [Name]:

Re: Bankruptcy of EncoreFX Inc. ("EncoreFX"); Court Action No. 11-2634864

We are counsel to Ernst & Young Inc. ("**EY**"), the Trustee in bankruptcy of EncoreFX in the above-noted bankruptcy proceeding.

We write further to Reimbursement Claim made by you under the Rules of the *Canadian Payments Act*, R.S.C. 1985, c. C-21 (the "**CPA Rules**"), specifically Rule H1 – Pre-Authorized Debits (PADs) ("**Rule H1**"), in an attempt to cancel a pre-authorized debit ("**PAD**") from your financial institution to EncoreFX which would result in the return of funds from the EncoreFX Bank of Montreal ("**BMO**") account.

As you are aware, on March 30, 2020, EncoreFX made an assignment in bankruptcy at approximately 11:00am (PDT) and, as a result, a stay of proceedings is in place respecting EncoreFX.

The bankruptcy stay of proceedings prohibits all recovery remedies against EncoreFX and its assets and the commencement of any execution or any other recovery proceedings pursuant to 69.3 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 (the "***BIA***").

The act of issuing the Reimbursement Claim constitutes a recovery proceeding and was made after the date of the bankruptcy filing which is directly contrary to the stay of proceedings provided for in the *BIA*. The funds in the EncoreFX BMO account constitute assets of the bankrupt estate. As a result, you are not entitled to this remedy for the payment (or return) of those funds without leave of the court.

Pursuant to the CPA Rules, the three conditions under which a claim for reimbursement for a PAD may be made are as follows:

a. The PAD was not drawn in accordance with the payer's PAD agreement;

b. The payer's PAD agreement was revoked; or

c. Notice or confirmation of the PAD was not given in accordance with Rule H1.

None of the above-noted conditions are applicable in this case and, as a result, your request for return of the funds paid by you to EncoreFX by PAD is invalid and improper pursuant to the Rules of the CPA Rules, specifically Rule H1.

As a result, we demand that funds in the amount of $● [CAD/USD] which were transferred on or after the date of the assignment in bankruptcy of EncoreFX be immediately returned to EY.

Please be advised that if you fail to return these funds to EY, we will obtain a Court Order requiring the return of funds to EY plus costs payable on a solicitor and own client (full-indemnity) basis.

Please contact EY immediately to coordinate the return of funds.

Name:	Peter Venetsanos
Phone:	604.648.3665
Email:	peter.venetsanos@ca.ey.com

Sincerely,

MLT AIKINS LLP

for: William E. J. Skelly

c. Mike Bell, Ernst & Young Inc. (via email)
Peter Vaartnou, Jones Emery Hargreaves Swan LLP (via email)
Catrina J. Webster, MLT Aikins LLP (via email)

APPENDIX "H"

MLT AIKINS

WESTERN CANADA'S LAW FIRM

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Joy Mutuku
Legal Assistant
Direct Line: (403) 693-5403
E-mail: jmutuku@mltaikins.com

July 15, 2020

***VIA* EMAIL:** [Customer email]

[Customer address]

Re: Bankruptcy of EncoreFX Inc. ("EncoreFX") and demand for repayment from [Customer] ("Customer"); Court Action No. 11-2634864

As you are aware, we are counsel to Ernst & Young Inc. ("**EY**"), the Trustee in bankruptcy of EncoreFX in the above-noted bankruptcy proceeding.

We write further to our correspondence dated April 8, 2020 demanding return of the funds from [Customer] issued pursuant to a Pre-Authorized Debit Agreement.

The following is a summary of the timeline respecting the improper transfer:

[Date]	A Pre-Authorized Debit (PAD) Agreement ("**PAD Agreement**") was executed by [Customer] in favour of EncoreFX (copy enclosed as **Schedule "A"**)
[Date]	Pursuant to the PAD Agreement, and at the request of [Customer], a Deal Confirmation was issued for $● [USD/CAD] (copy enclosed as **Schedule "B"**).
[Date]	A Reimbursement Claim form was issued by [Customer] stating that the Pre-Authorized Debit was not processed in accordance with the PAD Agreement in the amount of $● [USD/CAD] (copy enclosed as **Schedule "C"**)
March 30, 2020	EncoreFX made an assignment in bankruptcy
[Date]	The payment was transferred/stopped as a result of a request issued and funds were returned to [Customer] (copy of a Direct Electronic Funds Transfer Summary enclosed as **Schedule "D"**)
April 8, 2020	Demand was issued for return of funds (copy enclosed as **Schedule "E"**)

As you are aware, based on the steps taken above, [Customer] improperly requested reimbursement of funds in the amount of $● [USD/CAD], which it received and further, requested an additional $● [USD/CAD] pursuant to its PAD Agreement resulting in an improper double recovery by [Customer] contrary to the PAD Agreement. Attached hereto and marked as **Schedule "F"** is a copy of the corresponding Wire Transfer Confirmation of EncoreFX confirming the completion of the requested transaction pursuant to the terms of the PAD Agreement in the amount of $● [USD/CAD].

The PAD Agreement authorized EncoreFX to debit the bank account of [Customer] to complete foreign exchange contracts and other services on behalf of and at the request of [Customer]. Contrary to the allegations put forward by [Customer] that the transfer of $● [USD/CAD] was not processed in accordance with the terms of the PAD Agreement, that transaction was completed by EncoreFX and the $● [USD/CAD] Pre-Authorized debit was also terminated.

Due to the assignment of bankruptcy by EncoreFX, a stay of proceedings was in place at the time of the request for return of funds by [Customer] that prevented [Customer] from terminating the transfer.

[Customer] has failed to comply with the requirements of the *Bankruptcy and Insolvency Act*, 1985, c. B-3, the *Canadian Payments Act*, R.S.C. 1985, c. C-21, and specifically, Rule H1 - Pre-Authorized Debits and has been unjustly enriched as a result.

If [Customer] continues to refuse to return the funds to EY on or before **July 20, 2020**, we intend to pursue a Court Application directing that all funds be returned and will seek all costs of that Court Application payable by [Customer] on a solicitor and own client (full-indemnity) basis.

Sincerely,

MLT AIKINS LLP

C.Web

Catrina J. Webster

c. Mike Bell, Ernst & Young Inc. (via email)
Peter Vaartnou, Jones Emery Hargreaves Swan LLP (via email)
William E. J. Skelly, MLT Aikins LLP (via email)

APPENDIX “I”

In the Bankruptcy of EncoreFX Inc. **Appendix I**
Estimated Statement of Receipts and Disbursements
As at October 19, 2020

	Oct-19 $ CAD
Cash Receipts	
Cash Accounts	
Island Savings	52
Toronto Dominion Bank	1,375,939
Bank of Montreal	2,847,873
Bank of Montreal - Harris Bank	6,717,571
ATB Financial	39,965
Connexus Credit Union	31,801
Citibank	1,548,945
ANZ	4,075,552
	16,637,698
Counter Party Funds	**12,988,400**
OTM Close outs	**8,281,505**
EFT Reversals	**441,640**
Cost Reimbursements	**273,396**
Funds Held in Escrow	**263,300**
Other	**52,932**
Total Cash Receipts	**38,938,871**
Cash Disbursements	
Bank Charges	1,744
Bond Premium	6,000
Computer and IT services	238,917
Filing Fees	150
GST paid on disbursements	1,479
Legal fees/disbursements	905,641
GST on legal fees	43,946
PST on legal fees	61,524
Other Disbursements	346,510
Payment of Admitted Property Claims	2,074,573
Payroll and Employee Benefits	1,501,349
Rent Payments	356,192
Trustee's Fees	1,513,792
GST charged on Trustee remuneration	75,690
Utilities	71,001
Total Cash Disbursements	**7,198,507**
Total Cash Available	**$ 31,740,364**

USD balances converted using October 19, 2020 exchange rate of 1.3165 as per Bank of Canada.