

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

**IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT
ACT*, R.S.C. 1985, c. C-36, AS AMENDED**

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR
ARRANGEMENT OF CANTRUST HOLDINGS INC., CANTRUST INC.,
CTI HOLDINGS (OSOYOOS) INC. AND ELMCLIFFE INVESTMENTS
INC.**

Applicants

**FACTUM OF THE UNDERWRITERS
(Responding to the Applicants' Motion, returnable January 29, 2021)**

January 28, 2021

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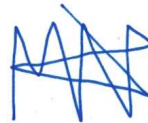
THE UNDERWRITERS' SUBMISSIONS

1. This factum is filed by the Underwriters¹ in response to the Applicants' motion for a stay extension, the appointment of claimant representatives and other relief under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended ("CCAA").
2. The central premise underlying the Applicants' restructuring in these proceedings and the mediation ordered by this Court is a global resolution of all claims against the Applicants. The Underwriters have supported that aim, participated in the mediation in good faith and consistently communicated that they would object to any piecemeal restructuring that does not meaningfully address the claims held by and against them. While the Underwriters do not object to the specific and limited relief sought by the Applicants in the within motion, the Underwriters are concerned with the path being considered by the Applicants; namely, abandoning efforts to effect a global resolution of claims and instead proceeding with a piecemeal settlement. The Underwriters intend to object to any resulting CCAA Plan that does not provide the intended and necessary global resolution of claims.
3. Paragraph 2(b) of the Notice of Motion seeks an order appointing various "CCAA Representatives," namely some of the class action plaintiffs and some of their legal counsel. The Underwriters understand that this order is being sought only for purposes related to the CCAA proceeding, and not for any purpose related to the Ontario *Class Proceedings Act*, including the

¹ Merrill Lynch Canada Inc., Merrill Lynch Pierce, Fenner & Smith, Inc., Citigroup Global Markets Canada Inc., Citigroup Global Markets Inc., Credit Suisse Securities (Canada) Inc., Credit Suisse Securities (USA) LLC, RBC Dominion Securities Inc., Jefferies LLC, Canaccord Genuity LLC (collectively, the "**Underwriters**").

test for certification under section 5 of the Act.² The Underwriters' lack of objection to the order sought by the Applicants in paragraph 2(b) of the Notice of Motion is based on the accuracy of this understanding, and the Underwriters reserve all defences and arguments opposite the class action plaintiffs in respect of any litigation under the *Class Proceedings Act* (and its equivalents in other provinces and under U.S. class action statutes) which may continue notwithstanding or subsequent to the CCAA proceeding.

ALL OF WHICH IS RESPECTFULLY SUBMITTED



David Bish / John Fabello / Gillian Dingle /
Craig Gilchrist / Mike Noel

Lawyers for the Underwriters

² Subsections 5(1)(b) and 5(1)(e) stipulate requirements that must be met before a party may be a representative plaintiff in a certified class proceeding.

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

Court File No.
CV-20-00638930-00CL

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF CANNTRUST HOLDINGS INC., CANNTRUST INC., CTI HOLDINGS (OSOYOOS) INC. AND ELMCLIFFE INVESTMENTS INC.

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Proceeding commenced at TORONTO

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