IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	Chapter 15
SPECTRA PREMIUM INDUSTRIES INC., *et al.*,[1]	Case No. 20-10611 (BLS) (Jointly Administered)
Debtors in a Foreign Proceeding.	**Hearing Date: March 31, 2021 at 11:00 a.m. (ET)** **Objection Deadline: March 9, 2021 at 4:00 p.m. (ET)**

NOTICE OF MOTION

TO: The following entities or, in lieu thereof, their counsel: (a) the office of the US Trustee for the District of Delaware; (b) Wells Fargo; (c) LBC; (d) EDC; (e) IQ; (e) any lessors of any non-residential real property located in the United States; (f) VFI Corporate Finance; (g) any parties in litigation against any of the Debtors that is pending in the United States; and (h) any party that has requested notice pursuant to Bankruptcy Rule 2002.

PLEASE TAKE NOTICE that on February 23, 2021, the above-captioned debtors (the "Debtors in a Foreign Proceeding") filed the ***Foreign Representative's Motion to Enforce Order Granting Canadian Motion to Enter Into Factoring Agreements and Sell Receivables*** (the "Motion").

PLEASE TAKE FURTHER NOTICE that objections, if any, to the relief requested in the Motion must be filed with the United States Bankruptcy Court, 824 North Market Street, 2nd Floor, Wilmington, Delaware 19801, on or before **March 9, 2021 at 4:00 p.m. (ET).**

PLEASE TAKE FURTHER NOTICE that at the same time, you must also serve a copy of the objection upon the undersigned counsel so as to be **received no later than 4:00 p.m. (ET) on March 9, 2021.**

A HEARING ON THE MOTION WILL BE HELD ON **MARCH 31, 2021 AT 11:00 A.M. (ET)** BEFORE THE HONORABLE BRENDAN L. SHANNON IN THE UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE, 824 NORTH MARKET STREET, 6th FLOOR, COURTROOM 1, WILMINGTON, DELAWARE 19801.

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[1] The Debtors in these Chapter 15 cases, along with the last four digits of each Debtor's federal identification number, are: Spectra Premium Industries Inc. (4016); Spectra Premium Holdings (USA) Corp. (7133); Spectra Premium (USA) Corp. (9447); and Spectra Premium Properties (USA) Corp. (7618). The registered office of Spectra Premium Industries Inc., the Debtors' ultimate corporate parent company, is located at 1 Place Ville Marie in Montréal, Québec, Canada, H3B 4M4, Suite 4000. The Debtors are collectively managed from the Spectra Group's corporate headquarters in Boucherville, Québec, Canada.

IF YOU FAIL TO RESPOND IN ACCORDANCE WITH THIS NOTICE, THE COURT MAY GRANT THE RELIEF REQUESTED IN THE MOTION WITHOUT FURTHER NOTICE OR HEARING.

Dated: February 23, 2021
Wilmington, Delaware

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Counsel to the Foreign Representative

IN THE UNITED STATES BANKRUPTCY COURT
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In re:	Chapter 15
SPECTRA PREMIUM INDUSTRIES INC., *et al.*,[1]	Case No. 20-10611 (BLS)
Debtors in a Foreign Proceeding.	(Jointly Administered)
	Hearing Date: March 31, 2021 at 11:00 a.m. (ET)
	Objection Deadline: March 9, 2021 at 4:00 p.m. (ET)

FOREIGN REPRESENTATIVE'S MOTION TO ENFORCE ORDER GRANTING CANADIAN MOTION TO ENTER INTO FACTORING AGREEMENTS AND SELL RECEIVABLES

Ernst & Young Inc., in its capacity as the court-appointed monitor and duly authorized foreign representative (in such capacity, the "Foreign Representative"), as defined by section 101(24) of title 11 of the United States Code (the "Bankruptcy Code"), of Spectra Premium Industries Inc. ("Spectra"), Spectra Premium Holdings (USA) Corp. ("Spectra Holdings US"), Spectra Premium (USA) Corp. ("Spectra US"), and Spectra Premium Properties (USA) Corp. ("Spectra Properties US," and, together with Spectra Holdings US and Spectra US, the "US Subsidiaries," and collectively with Spectra, the "Debtors"), in insolvency proceedings commenced under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "CCAA") pending before the Superior Court, sitting in the Commercial Division for the district of Montréal (the "Canadian Court"), File No. 500-11-058116-209 (the "Canadian Proceedings"), through the Foreign Representative's United States co-counsels, Landis Rath &

[1] The Debtors in these Chapter 15 cases, along with the last four digits of each Debtor's federal identification number, are: Spectra Premium Industries Inc. (4016); Spectra Premium Holdings (USA) Corp. (7133); Spectra Premium (USA) Corp. (9447); and Spectra Premium Properties (USA) Corp. (7618). The registered office of Spectra Premium Industries Inc., the Debtors' ultimate corporate parent company, is located at 1 Place Ville Marie in Montréal, Québec, Canada, H3B 4M4, Suite 4000. The Debtors are collectively managed from the Spectra Group's corporate headquarters in Boucherville, Québec, Canada.

Cobb LLP and Norton Rose Fulbright US LLP, respectfully submits this motion (the "Motion") seeking entry of an order, substantially in the form of the proposed order (the "Proposed Order") attached hereto as **Exhibit A**, (i) giving full force and effect to that certain Factoring Order (defined herein) in respect of the Debtors' entry into the Factoring Agreements (defined herein) and sale of the Receivables (defined herein) and (ii) granting related relief. In support thereof, the Foreign Representative respectfully states as follows:

JURISDICTION AND VENUE

1. The Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated February 29, 2012.

2. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Pursuant to Rule 9013-1(f) of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the "Local Rules"), the Foreign Representative consents to the entry of a final order by the Court in connection with this Motion to the extent it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments consistent with Article III of the United States Constitution.

3. Venue is proper before the Court pursuant to 28 U.S.C. § 1410.

4. The statutory predicates for the relief requested herein are Bankruptcy Code sections 105, 363, 1507, 1520, and 1521.

GENERAL BACKGROUND

5. On March 9, 2020, the Debtors and certain of their affiliates (the "Spectra Group") commenced insolvency proceedings in the Canadian Court under the CCAA. On March 10, 2020, the Canadian Court entered an initial order (the "Initial Order") that, among other

things, (a) appointed the Foreign Representative as Monitor of the Spectra Group and authorized it to commence these Chapter 15 Cases, *see* Verified Petition at Ex. A at ¶ 26; (b) stayed the commencement or continuation of proceedings against the Debtors and their assets, *see id.* at ¶¶ 8-12; and (c) authorized the Debtors to continue operating in the ordinary course of their businesses.

6. On March 11, 2020, the Foreign Representative filed with this Court the *Petitioner's Verified Petition Under Chapter 15 for Recognition of the Canadian Proceedings and Request for Related Relief* [Docket No. 5] (the "Verified Petition")[2] seeking, among other things, recognition of the Canadian Proceedings for each of the Debtors as foreign main proceedings or, in the alternative, foreign nonmain proceedings under chapter 15 of the Bankruptcy Code. On March 24, 2020, the Canadian Court entered that certain amended and restated initial order (as amended, the "First Amended Initial Order") that, among other things, continued the relief granted to the Debtors and the Foreign Representative through the Initial Order.

7. On May 29, 2020, this Court entered the *Final Order Granting Recognition of Foreign Main Proceedings and Certain Related Relief* [Docket No. 80] (the "Recognition Order") through which the Court recognized the Canadian Proceedings as foreign main proceedings and further enforced the First Amended Initial Order, as such order may be amended from time to time, on a final basis, giving it full force and effect within the United States. *See* Recognition Order at ¶¶ 6 ("The Initial Order is hereby enforced on a final basis and given full

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[2] Capitalized terms used in this Motion but not otherwise defined herein shall have the meanings ascribed to such terms in the Verified Petition. A detailed description of the Debtors, including their business operations, their corporate and capital structure, and the events leading to the commencement of the Canadian Proceedings and the Chapter 15 Cases, is set forth in greater detail in the Verified Petition and incorporated by reference herein.

force and effect in the United States") and 10 ("Subject to sections 1520 and 1521 of the Bankruptcy Code, the Canadian Proceedings, and the Initial Order, and the transactions consummated or to be consummated thereunder, shall be granted comity and given full force and effect in the United States to the same extent as in Canada, and each is binding on all creditors of the Debtors and any of their successors and assigns").

8. On September 25, 2020, the Canadian Court entered that certain second amended and restated initial order (as amended, the "Second Amended Initial Order" and collectively with the Initial Order and the First Amended Initial Order, the "Initial Orders"), and consequently the Debtors are authorized to maintain possession and control of their business and continue to operate their business in the ordinary course.

9. On January 8, 2021, the Debtors filed that certain *Motion For the Issuance of an Order Regarding Certain Transactions (Factoring With Wells Fargo Bank, National Association)* (the "Canadian Motion"), a true and correct copy of which is attached hereto as **Exhibit B**, in the Canadian Proceedings seeking, among other things, authorization to enter into certain factoring contracts (the "Factoring Agreements") with Wells Fargo Bank, National Association or its related party or assignee ("WF Factoring") in order to collect certain receivables and better manage their liquidity. On January 14, 2021, the Canadian Court entered an order granting the Canadian Motion, a copy of which is attached hereto as **Exhibit C** (the "Factoring Order"), authorizing the Debtors to enter into the Factoring Agreements, and approving the sale of the Receivables to WF Factoring free and clear of all claims, liens, and liabilities.

THE FACTORING AGREEMENTS

10. The Spectra Group's US operations are limited to activities associated with its Aftermarket Division, which the Spectra Group is downsizing in order to effect its operational restructuring through the Canadian Proceedings. As explained in the Verified Petition, the Debtors commenced the Canadian Proceedings under severe liquidity pressure that left them unable to timely pay all of their obligations and operating expenses. During the course of the Canadian Proceedings, the Spectra Group continued to cut costs, manage liquidity, and gradually divest itself of the Aftermarket Division. However, the Debtors often experience significant delays in collecting receivables due to their customers' varied payment terms and industry practices. The Debtors, like others in the automotive-parts industry, sometimes seek to manage their cash inflows and outflows by entering into factoring arrangements with financial institutions (a "<u>Factoring Bank</u>") whereby a Factoring Bank purchases the Debtors' receivables (the "<u>Receivables</u>") on a "true sale" basis and agrees to bear the credit risk of the Debtors' customers and counterparties. With the exception of certain customary protections that are provided to Factoring Banks and other institutions, under these factoring arrangements, the Debtors generally have no obligations with respect to the sold receivables, and retain no rights or interests in the Receivables.

11. As explained in the Canadian Motion, the Debtors have entered into certain Factoring Agreements as follows:

> **The AAP Factoring Agreement.** AAP, LLC ("<u>AAP</u>") is a large, US-based automobile-products distributor and a significant customer of the Spectra Group (in fiscal 2019, the Spectra Group sold more than $13 million in aftermarket products to AAP). Currently, AAP owes the Spectra Group more than $1.5 million. AAP, however, typically requests 365-day payment terms, which

the Debtors simply could not accommodate. As an alternative, the Debtors seek to enter into a Factoring Agreement with WF Factoring that will allow the Debtors to be paid within 30 to 60 days, after deduction of the discount applied by WF Factoring.

The First Brands Factoring Agreement. During the Canadian Proceedings, the Canadian Court approved a sale of certain of the Spectra Group's assets to First Brands Group, LLC f/k/a Trico Group, LLC ("FBG") as part of its operational restructuring to downsize the Aftermarket Division. To date, the Spectra Group has received a total amount of $12 million from FBG, leaving a balance of approximately $3.5 million. Under the purchase agreement, FBG was required pay a portion of the purchase price over a six-month period. FBG later requested that those payments be made through FBG's existing factoring program with SGSF Master Purchasing De LLC ("SGSF") at FBG's expense. The Spectra Group agreed and entered into a Factoring Agreement with SGSF that ensured the estates would receive the full benefit of the FBG sale. Accordingly, neither the Spectra Group nor SGSF required the Canadian Court's approval to enter into the Factoring Agreement. FBG, however, recently changed its Factoring Bank from SGSF to WF Factoring.

12. The Foreign Representative understands that such Factoring Agreements are customary in the Debtors' industry and have long been used by the Debtors to manage their cashflows.[3] And although WF Factoring is an affiliate of Wells Fargo Capital Finance Corporation Canada ("Wells Fargo")—the Spectra Group's largest secured creditor—it insisted that the Debtors file the Canadian Motion and obtain entry of the Factoring Order in the Canadian Proceedings and that the Foreign Representative file this Motion in the Chapter 15 Cases to enforce the Factoring Order in order to confirm that the Debtors are authorized to enter into the Factoring Agreements and to ensure that the Receivables are sold free and clear of third-party interests. Absent access to the liquidity provided by the Factoring Agreements, the Debtors

[3] With respect to the FBG Factoring Agreement, the Debtors entered into the agreement for the sole purpose of finalizing the Canadian Court-approved sale to FBG without imposing an additional burden on the Spectra Group or its estates (given that FBG is responsible for paying WF Factoring's fees and any other costs incident to the transaction).

would likely not collect the subject amounts for several months, which could disturb their ongoing efforts to reorganize their business and restructure their balance sheet. Authority to enter into the Factoring Agreements and similar arrangements with WF Factoring would instead give the Debtors the ability to better manage their collections in the ordinary course for the benefit of their estates and creditors.

INTERESTS OF SECURED CREDITORS

13. As described in the Verified Petition, the Debtors' assets, including those located in the United States, are subject to blanket liens in favor of Wells Fargo and Laurentian Bank of Canada ("LBC" and together with Wells Fargo, the "Secured Lenders"), the Spectra Group's largest secured creditors. The Foreign Representative has communicated with the Secured Lenders with respect to this Motion, and both entities consent to the relief sought in this Motion and the enforcement of the Factoring Order in the Chapter 15 Cases.

RELIEF REQUESTED

14. The Foreign Representative understands that the Debtors are authorized, pursuant to applicable Canadian law and section 363(c) of the Bankruptcy Code, to continue to factor receivables, including under the Factoring Agreements, in the ordinary course of business. Nevertheless, at the request of the Debtors' Factoring Bank, WF Factoring, the Foreign Representative files this Motion. Accordingly, out of an abundance of caution, the Foreign Representative respectfully requests the entry of the Proposed Order giving full force and effect to the Factoring Order authorizing the Debtors to enter into and perform under the Factoring Agreements, including an "Ordered" decretal paragraph expressly finding that the sale of the Receivables to WF Factoring under the Factoring Agreements shall be free and clear of all claims, liens, and liabilities.

BASIS FOR RELIEF

A. The Relief Requested is Appropriate Under Section 363(c) of the Bankruptcy Code

15. The Foreign Representative requests that the Debtors be granted authority, pursuant to Bankruptcy Code sections 363(c) and 1520(a), to enter into the Factoring Agreements in accordance with the Initial Orders, the Factoring Order, and applicable law.[4] Pursuant to section 1520(a)(3), a foreign representative may exercise the rights and powers of a trustee under and to the extent provided by section 363. *See* 11 U.S.C. § 1520(a)(3). Bankruptcy Code section 363(c)(1) provides that the Foreign Representative and the Debtors, "may enter into transactions, including the sale or lease of property of the estate, in the ordinary course of business, without notice or a hearing, and may use property of the estate in the ordinary course of business without notice or a hearing." *See* 11 U.S.C. § 363(c)(1). The Third Circuit has applied the two-part test adopted in *In re Roth American, Inc.*, 975 F.2d 949, 952 (3d Cir. 1992), for purposes of determining whether a particular transaction falls within the ordinary course of a

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[4] In addition to sections 1520 and 363, the Foreign Representative respectfully submits that the relief requested in this Motion is available under section 1521 and 1507. Under section 1521(a)(7), this Court may grant "any additional relief that may be available to a trustee." Given that a trustee may operate a debtor's assets in the ordinary course of business under section 363, without notice or a hearing, the Debtors should similarly be authorized to enter into the Factoring Agreements. Moreover, the, relief requested may be granted pursuant to Bankruptcy Code section 1507. Section 1507 authorizes this Court to "provide additional assistance to a foreign representative under [the Bankruptcy Code] or under other laws of the United States." 11 U.S.C. § 1507. In deciding whether to extend relief under section 1507, this Court must consider principles of comity and determine whether the requested relief would reasonably assure: (a) just treatment of the Debtors' creditors and equity holders; (b) protection of the Debtors' US creditors against prejudice and inconvenience in claim processing; (c) prevention of preferential or fraudulent dispositions of the Debtors' property; and (d) distribution of the Debtors' property substantially in accordance with the Bankruptcy Code's priority scheme. *See id.* "These provisions embody the protections that were previously contained in section 304 of the Bankruptcy Code . . . ." *In re Rede Energia S.A.,* 515 B.R. 69, 95 (Bankr. S.D.N.Y. 2014). Given the long history of Canadian proceedings being recognized and relief granted in such proceedings being enforced by US courts, we are not aware of any facts or circumstances that would counsel against granting comity to the Factoring Order, including the authorization therein in respect of sales of the Receivables. *See In re Davis,* 191 B.R. 577, 587 (Bankr. S.D.N.Y. 199) ("Courts in the United States uniformly grant comity to Canadian proceedings.").

debtor's business. *See, e.g., Nellson Nutraceutical*, 369 B.R. 787, 797 (Bankr. D. Del. 2007). The *Roth* court applied a "vertical dimension" and a "horizontal dimension" test for purposes of determining whether a transaction was considered "ordinary course." *See Roth*, 975 F.2d at 953. Under the "vertical" test, court looks to the reasonable expectations of interested parties as to the types of transactions a debtor is likely to enter into the ordinary course of business. *Id.* Thus, the relevant inquiry under the vertical test is whether the proposed action is consistent with the Debtors' prepetition business practices and conduct. *Id.* Under the "horizontal" test, however, courts focus on whether the proposed action "is of the sort commonly undertaken by companies in that industry." *Id.* at 953.

16. As mentioned above, the Debtors have long used factoring arrangements in the ordinary course of business given the often extended payment terms that some customers require. The Foreign Representative understands that such arrangements are commonplace throughout the automotive-parts industry. As a result, the Debtors did not initially seek approval of the Factoring Agreements in the Canadian Court. The Debtors and the Foreign Representative filed the Canadian Motion and this Motion, respectively, only out of an abundance of caution and to give certainty and comfort to WF Factoring. Under the circumstances, the Foreign Representative believes that the Debtors' entry into the Factoring Agreements and factoring of the Receivables in accordance therewith is authorized under section 363(c)(1) of the Bankruptcy Code.

17. Moreover, the Foreign Representative notes that the interests of creditors and other parties are fully protected through the Canadian Proceedings and these Chapter 15 Cases. Parties in interest had the opportunity to object and be heard before the Canadian Court in respect of the Canadian Motion, but none did. Further, creditors continue to have recourse to the

Canadian Court to seek any relief that may be necessary to protect their interests. Accordingly, the interests of creditors and other parties in interest are adequately protected under the circumstances. *See* 11 U.S.C. § 1522(a) ("The court may grant relief under section 1519 or 1521, or may modify or terminate relief under subsection (c), only if the interests of the creditors and other interested entities, including the debtor, are sufficiently protected").

18. For the foregoing reasons, the Foreign Representative believes that granting the relief requested herein is appropriate and in the best interests of the Debtors, their estates, and their creditors.

B. Entry into the Factoring Agreements is a Sound Exercise of the Debtors' Business Judgment and in the Best Interests of the Estates

19. Although the Foreign Representative believes that entry into the Factoring Agreements falls within the Debtors' ordinary course of business, to the extent that it does not, the requirements of Bankruptcy Code section 363(b) are satisfied. Section 363(b) provides that the Debtors, "after notice and a hearing, may use, sell or lease, other than in the ordinary course of business, property of the estate . . . ." Courts in this District and others have recognized that, if a debtor's proposed use of its assets represents a reasonable business judgment, that use is permissible under Bankruptcy Code section 363(b). *See*, *e.g.*, *Official Comm. of Unsecured Creditors of LTV Aerospace & Defense Co. v. LTV Corp. (In re Chateaugay Corp.)*, 973 F.2d 141, 143 (2d Cir. 1992) (holding that a court may approve an application under section 363(b) upon a showing of a good business reason for the disposition); *Comm. of Equity Sec. Holders v. Lionel Corp. (In re Lionel Corp.)*, 722 F.2d 1063, 1070–71 (2d Cir. 1983) (stating that a judge ruling on a motion under section 363(b) should determine whether there is a good business reason to grant the request); *In re Delaware & Hudson R.R. Co.*, 124 B.R. 169, 175–76 (D. Del. 1991) (courts have applied the "sound business purpose" test to evaluate motions brought

pursuant to section 363(b)); *see also In re Ionosphere Clubs, Inc.*, 98 B.R. 174, 175 (Bankr. S.D.N.Y. 1989) (a bankruptcy court is authorized to approve the sale of assets of the estate outside of the ordinary course of business if the debtors articulate a reasonable business reason for the sale).

20. In addition, Bankruptcy Code section 105 authorizes this Court to "issue any order, process or judgment that is necessary or appropriate to carry out the provisions of this title." 11 U.S.C. § 105 (a). As discussed above, absent the requested relief, the Debtors and their estates would not collect Receivables owed by AAP or FBG for months, which would be harmful and disruptive to their business and efforts to restructure through the Canadian Proceedings..

C. To the Extent Applicable, the Requirements of Bankruptcy Rules 4001 and 6004 and Local Rule 4001-2 are Satisfied or, alternatively, Should be Waived

21. Bankruptcy Rule 4001(c) permits a court to approve a debtor's request for authority to obtain financing during the fourteen-day period following the filing of a motion "to the extent necessary to avoid immediate and irreparable harm to the estate pending a final hearing." Fed. R. Bankr. P. 4001(c)(2). In examining requests under Bankruptcy Rule 4001, courts apply the same business judgment standard as is applicable to other business decisions. *See, e.g., In re Ames Dept. Stores, Inc.*, 115 B.R. 34, 38 (Bankr. S.D.N.Y. 1990).

22. The Debtors believe that the transactions executed pursuant to the Factoring Agreement are true sales, and therefore, do not implicate Bankruptcy Rule 4001(c) or Local Rule 4001-2, which requires certain provisions of financing motions to be highlighted. In an

abundance of caution, however, the Debtors submit that, to the extent applicable the requirements of Bankruptcy Rule 4001(c) and Local Rule 4001-2 are satisfied.[5]

23. Moreover, to the extent that Bankruptcy Rule 6004(a) applies, the Foreign Representative respectfully requests a waiver of such notice requirement in order to successfully implement the foregoing requested relief.

24. The Foreign Representative also requests that the Court waive the stay imposed by Bankruptcy Rule 6004(h), which provides that "[a]n order authorizing the use, sale, or lease of property other than cash collateral is stayed until the expiration of 14 days after entry of the order, unless the court orders otherwise." Fed. R. Bankr. P. 6004(h). As described above, the relief that the Foreign Representative seeks in this Motion is necessary for the Debtors to operate their businesses without interruption and to preserve value for their estates for administration in the Canadian Proceedings. Accordingly, the Foreign Representative respectfully requests that the Court waive the 14-day stay imposed by Bankruptcy Rule 6004(h), as the exigent nature of the relief sought herein justifies immediate relief.

RESERVATION OF RIGHTS

25. Nothing in this Motion is intended or should be construed as an admission of the validity of any claim or lien against the Debtors, a waiver of the Debtors' right to dispute any claim or lien. The Foreign Representative expressly reserves all rights in accordance with applicable bankruptcy and nonbankruptcy law.

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[5] The Foreign Representative submits that there are no provisions in the Factoring Agreements that are required to be identified in accordance with Local Rule 4001-2.

NOTICE

26. The Foreign Representative has provided notice of this Motion to the following parties or their respective counsel: (a) the office of the US Trustee for the District of Delaware; (b) Wells Fargo Capital Finance Corporation Canada; (c) Laurentian Bank of Canada; (d) Export and Development Canada; (e) Investissement Québec; (e) any lessors of any non-residential real property located in the United States; (f) Varilease Finance, Inc. and VFI KIR SPE I LLC; (g) any parties in litigation against any of the Debtors that is pending in the United States; and (h) any party that has requested notice pursuant to Bankruptcy Rule 2002. In light of the nature of the relief requested herein, the Foreign Representative submits that no other or further notice of this Motion is necessary or required.

NO PRIOR REQUEST

27. Except as set forth herein, no previous request for the relief sought herein has been made by the Foreign Representative or the Debtors to this or any other court.

CONCLUSION

WHEREFORE, the Foreign Representative respectfully requests that this Court grant the relief requested herein and such other and further relief as may be just and proper.

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Dated: February 23, 2021
Wilmington, Delaware

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Counsel to the Foreign Representative

Exhibit A

Proposed Order

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	Chapter 15
SPECTRA PREMIUM INDUSTRIES INC., *et al.*,[1]	Case No. 20-10611 (BLS)
Debtors in a Foreign Proceeding.	(Jointly Administered)
	Ref. No. ___

ORDER ENFORCING CANADIAN ORDER AUTHORIZING DEBTORS TO ENTER INTO FACTORING AGREEMENTS AND SELL RECEIVABLES

Upon the motion (the "Motion")[2] of Ernst & Young Inc. (the "Foreign Representative"), in its capacity as the court-appointed monitor of the above captioned debtors (collectively, the "Debtors") in insolvency proceedings (the "Canadian Proceedings") commenced under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36 (as amended, the "CCAA") pending before the Superior Court, sitting in the Commercial Division for the district of Montréal (the "Canadian Court") and as the duly authorized foreign representative as defined by section 101(24) of title 11 of the United States Code (the "Bankruptcy Code"), seeking entry of an order giving full force and effect to the order entered by the Canadian Court on or about January 14, 2021 (the "Factoring Order") authorizing the Debtors' entry into certain factoring contracts (the "Factoring Agreements") with Wells Fargo Bank, National Association or its related party or assignee ("WF Factoring") and approving the sale of accounts receivable ("Receivables") to WF Factoring free and clear of all claims, liens, and liabilities in connection

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[2] Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Motion.

therewith; and the Court having jurisdiction to consider the Motion and the relief requested therein in accordance with sections 157 and 1334 of title 28 of the United States Code, and the *Amended Standing Order of Reference from the United States District Court for the District of Delaware*, dated as of February 29, 2012 (the "Amended Standing Order"); and consideration of the Motion and the relief requested therein being a core proceeding pursuant to section 157(b) of title 28 of the United States Code; and it appearing that venue of this proceeding and the Motion is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the relief sought in the Motion having been provided; and it appearing that no other or further notice need be provided; and this Court having found that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and this Court having found that the relief sought in the Motion is in the best interests of the Debtors, their estates, their creditors and all other parties in interest; and after due deliberation and sufficient cause appearing therefor, it is hereby

ORDERED, ADJUDGED, AND DECREED THAT:

1. The Motion is granted as set forth herein.

2. The Factoring Order is hereby enforced and given full force and effect in the United States.

3. Pursuant to sections 105(a), 363(b)(1), 363(c) and 1520(a) of the Bankruptcy Code, the Debtors are authorized, but not directed, to enter into the Factoring Agreements with WF Factoring and to continue to sell, transfer or otherwise convey Receivables to WF Factoring in accordance therewith.

4. Subject to the Factoring Order, the Debtors and the Foreign Representative are hereby authorized to take such actions as may be necessary and appropriate to effectuate the sale,

transfer, or conveyance of any receivables to WF Factoring in accordance with the Factoring Agreements without the need for a further order of this Court.

5. Consistent with the Factoring Order, upon receipt by the Debtors of a payment from WF Factoring under a Factoring Agreement, all rights, title and interest in and to the receivables of the Debtors corresponding to said payment shall vest absolutely and exclusively in and with WF Factoring, free and clear of and from any and all claims, liabilities (direct, indirect, absolute or contingent), obligations, prior claims, right of retention, charges, hypothecs, deemed trusts, judgments, writs of seizure or execution, notices of sale, contractual rights relating to the said receivables, encumbrances, whether or not they have been registered, published or filed and whether secured, unsecured or otherwise.

6. Notice of the Motion as provided therein shall be deemed good and sufficient and the requirements of Bankruptcy Rule 6004(a) and the Local Rules are satisfied by such notice.

7. The requirements set forth in Bankruptcy Rule 6003(b) are satisfied.

8. Notwithstanding Bankruptcy Rule 6004(h), the terms and conditions of this Order are immediately effective and enforceable upon its entry.

9. Nothing contained herein shall be construed as an admission of the validity of any claim or lien against the Debtors, a waiver of the Foreign Representative's or the Debtors' rights to dispute any claim or lien, or an approval or assumption of any agreement, contract or lease under section 365 of the Bankruptcy Code. All parties' rights to contest any claim or lien with respect to any receivable or other assets of the Debtors in accordance with applicable nonbankruptcy law and prior orders of the Court are hereby expressly reserved.

10. This Court shall retain jurisdiction to hear and determine all matters arising from or related to the implementation, interpretation or enforcement of this Order.

Dated: _______________, 2021
Wilmington, Delaware

____
THE HONORABLE BRENDAN L. SHANNON
UNITED STATES BANKRUPTCY JUDGE

Exhibit B

Canadian Motion

C A N A D A

PROVINCE OF QUÉBEC
DISTRICT OF MONTREAL

Nº: 500-11-058116-209

S U P E R I O R C O U R T
(Commercial Division)
(Sitting as a court designated pursuant to the Companies' Creditors Arrangement Act, R.S.C. 1995, c. 36, as amended)

IN THE MATTER OF THE COMPROMISE OR ARRANGEMENT OF:

SPECTRA PREMIUM INDUSTRIES INC.
-and-

SPECTRA PREMIUM HOLDINGS (USA) CORP.

-and-

SPECTRA PREMIUM (USA) CORP.

-and-

SPECTRA PREMIUM PROPERTIES (USA) CORP.

-and-

SPECTRA PREMIUM TAIWAN CO. LTD.

-and-

SPECTRA PREMIUM (SHANGHAI) AUTOMOTIVE TECHNICAL SERVICES CO. LTD.

-and-

SPECTRA PREMIUM (CHONGQING) AUTOMOTIVE SERVICES CO. LTD.

Petitioners

-and-

ERNST & YOUNG INC.

Monitor

-and-

WELLS FARGO BANK, NATIONAL ASSOCIATION

Impleaded party

MOTION FOR THE ISSUANCE OF AN ORDER REGARDING CERTAIN TRANSACTIONS (FACTORING WITH WELLS FARGO BANK, NATIONAL ASSOCIATION)
Sections 4, 5, 11 and *ff.* of the *Companies' Creditors Arrangement Act* ("**CCAA**")

INTRODUCTION

1. The Petitioners (collectively, the "**Spectra Group**") are debtor companies for whom a first day initial order under the CCAA was rendered in this file on March 10, 2020 (the "**First Day Order**") and an amended and restated initial order was rendered on March 24, 2020 and a second amended and restated initial order was rendered on September 25, 2020 (collectively, the "**A&R Initial Order**"), as appears from the court record. The stay period provided for in the A&R Initial Order expires on January 30, 2021.

2. Since the issuance of the First Day Order, the Spectra Group, with the assistance of the Monitor, have been in contact with their suppliers, clients and several other stakeholders to inform them of the fact that all proceedings regarding pre-filing debts are stayed and that the Spectra Group are continuing their operations in the normal course of business.

3. On April 6, 2020, this Court rendered an order regarding the approval of certain transaction in the normal course of business which were factoring agreement allowing the Spectra Group to significantly reduce the terms of payment of certain clients in consideration for a discount rate.

4. The intervention of this Court is once again required for a similar situation.

CONTRACTS AT ISSUE

- AAP, LLC

5. AAP, LLC is a large distributor of several automobile products in the United States that owns several subsidiaries (collectively, "**AAP**").

6. In the year 2019, the Spectra Group sold over 13 M $ to AAP.

7. AAP requests terms of payment of 365 days to its suppliers, which would simply be impossible to support financially for the Spectra Group. As an alternative, suppliers can participate in a factoring program allowing them to be paid within 30 to 60 days, after deduction of the discount applied by the factoring bank.

8. Wells Fargo Bank, National Association ("**WF Factoring**") is prepared to act as the factoring bank for AAP's amount owed to Spectra Group.

9. As of this day, the Spectra Group has receivables that are past due by AAP in an approximate amount of 1.4M $ and an additional approximate amount of 200,000 $ will become due by AAP before the end of the year 2020.

- Trico Group LLC / First Brands Group, LLC

10. On May 21, 2020, this Court rendered an order approving a sale of assets (the "**Trico Sale**") between the Spectra Group and Trico Group, LLC ("**Trico**"). The purpose of that sale was to downsize certain lines of products of its US aftermarket division (cooling and fuel pumps).

11. This transaction with Trico provided, *inter alia*, that i) Trico would pay a certain percentage of the book value of the purchased assets and ii) the transfer and payment of the purchased assets would be made over a period of 6 months.

12. During the summer of 2020, Trico requested that the payments owed to the Spectra Group under the Trico Sale be made through an existing factoring program that Trico had with SGSF Master Purchasing De LLC, which is something the Spectra Group was willing to do insofar as the fees of the factoring be assumed exclusively by Trico so that the terms of the Trico Sale, as was approved by this Court, would not be modified.

13. The Monitor was made aware of this situation and on August 18, 2020, the parties signed an addendum to the Trico to provide for the factoring of the payments to be made by Trico, without any consequences as to the proceeds of sale to be received by the Spectra Group, as appears from that addendum, **Exhibit R-1** *under seal*;

14. Practically speaking, the Spectra Group increased the amount of the sale of the assets purchased compare to what was provided in the Trico Sale to take into consideration the discount being applied by SGSF Master Purchasing De LLC as factoring bank.

15. SGSF Master Purchasing De LLC had never requested a court order to proceed with the factoring of these payments owed by Trico to the Spectra Group, hence why this Court's intervention was not requested before.

16. Trico has recently changed its name to First Brands Group, LLC ("**FBG**") and WF Factoring is now also the factoring bank of FBG.

17. As of this day, the Petitioners have received a total amount of 12M $ from Trico/FBG in accordance with the Trico Sale and a last payment of approximately 3.5M$ is scheduled to be paid before the end of the year.

POSITION OF WF FACTORING AND CONCLUSIONS SOUGHT

18. Despite the fact that WF Factoring is related to Wells Fargo Capital Finance Corporation Canada, the main secured creditor of the Spectra Group, WF Factoring is insisting that an order be rendered confirming that the Spectra Group is authorized to enter into the factoring contract (or contracts) substantially in the form submitted as **Exhibit R-2**, *under seal* (the "**Contract**") and that no other parties will have rights on the receivables being purchased by WF Factoring pursuant to the Contract;

19. Therefore, the Spectra Group has no other real alternative but to request the Court's intervention to satisfy WF Factoring's request and issue the order sought herein.

20. As it relates to AAP, the sale of the receivables to WF Factoring in accordance with the Contract is done in the normal course of business and is essential to the Spectra Group' cash flow.

21. As it relates to Trico/FBG, although the receivables being sold to WF Factoring in accordance with the Contract are not in the normal course of business, it is simply a way to finalize the Trico Sale that was already approved by this Court without any burden on the Spectra Group or the creditors, as the fees of WF Factoring will be assumed by Trico/FBG.

22. Without the factoring program allowing for the efficient payment of the amounts owed to the Spectra Group by AAP and Trico/FBG, these amounts are at risk of not being collected for several months which would have a detrimental effect on the Spectra Group's business.

23. More generally, it is in the interest of Spectra Group's business to have the flexibility to enter into contracts that are substantially in the form of the Contract in order to have the capacity, in the normal course of business, to assign receivables to WF Factoring in order to collect amounts owed by clients in an efficient manner.

24. The Monitor has been made aware of the situation described herein and has advised the Spectra Group that it approves the factoring program with WF Factoring and that it supports the present motion.

FOR THESE REASONS, MAY IT PLEASE THE COURT TO:

GRANT the present *Motion regarding certain transactions in the normal course of business* (the "**Motion**")*;*

ABRIDGE the delays of presentation of the Motion;

DECLARE that the Petitioners are authorised to enter into factoring contracts with Wells Fargo Bank, National Association, or any related party or assignee (the "**WF Factoring**") that are substantially in the form of the draft contract file under seal as Exhibit R-2 to the Motion (the "**Contract**").

ORDER that upon the receipt by the Petitioners of a payment from WF Factoring pursuant to a Contract, all rights, title and interest in and to the receivables of the Petitioners corresponding to said payment shall vest absolutely and exclusively in and with WF Factoring, free and clear of and from any and all claims, liabilities (direct, indirect, absolute or contingent), obligations, prior claims, right of retention, charges, hypothecs, deemed trusts, judgments, writs of seizure or execution, notices of sale, contractual rights relating to the said receivables, encumbrances, whether or not they have been registered, published or filed and whether secured, unsecured or otherwise.

THE WHOLE without costs, except in case of contestation.

MONTREAL, January 8, 2021

Lavery De Billy

LAVERY, DE BILLY, L.L.P.
Lawyers for Petitioners

AFFIDAVIT

I, the undersigned, HENRI PAUL BOYER, Vice-President, Finance of the Petitioners, having a place of business at 1421 Ampère Street, Boucherville, Québec, J4B 5Z5, solemnly affirm that:

1. I am the authorized representative of the Petitioners and, as such, I have cognizance of all the facts in the present matter;

2. All the facts alleged in the Motion for the issuance of an order regarding certain transactions (Factoring with Wells Fargo Bank, National Association) are true.

AND I HAVE SIGNED:

HENRI PAUL BOYER

SOLEMNLY AFFIRMED before me on January 8, 2021, by videoconference Zoom, in St-Donat and St-Hubert allowing me to recognize Henri-Paul Boyer, and witnessing him having read the motion and the sworn declaration and having signed it. The document transferred by email is *Motion for the issuance of an order regarding certain transactions (Factoring with Wells Fargo Bank, National Association).*

Nathalie Tremblay
119,696

Commissioner of Oaths for Province of Quebec

NOTICE OF PRESENTATION

TO: **THE SERVICE LIST**

TAKE NOTICE that the present **Motion for the issuance of an order regarding certain transactions (Factoring with Wells Fargo Bank, National Association)** will be presented for before the Honourable Justice Louis Gouin, S.C.J., on January 14, 2021. Any party wishing to object to this motion shall file a notice of objection **no later than January 13, at 5 p.m.** If no notice of objection is received, the judge will render judgment on January 14, 2021, without a hearing. If a notice of objection is filed within the aforementioned delay, hearing details will be arranged with the Court.

DO GOVERN YOURSELVES ACCORDINGLY.

MONTREAL, January 8, 2021

Lavery De Billy

LAVERY, DE BILLY, L.L.P.
Lawyers for Petitioners

C A N A D A

PROVINCE OF QUÉBEC
DISTRICT OF MONTREAL

Nº: 500-11-058116-209

S U P E R I O R C O U R T
(Commercial Division)
(Sitting as a court designated pursuant to the Companies' Creditors Arrangement Act, R.S.C. 1995, c. 36, as amended)

IN THE MATTER OF THE COMPROMISE OR ARRANGEMENT OF:

SPECTRA PREMIUM INDUSTRIES INC.
-and-

SPECTRA PREMIUM HOLDINGS (USA) CORP.

-and-

SPECTRA PREMIUM (USA) CORP.

-and-

SPECTRA PREMIUM PROPERTIES (USA) CORP.

-and-

SPECTRA PREMIUM TAIWAN CO. LTD.

-and-

SPECTRA PREMIUM (SHANGHAI) AUTOMOTIVE TECHNICAL SERVICES CO. LTD.

-and-

SPECTRA PREMIUM (CHONGQING) AUTOMOTIVE SERVICES CO. LTD.

Petitioners

-and-

ERNST & YOUNG INC.

Monitor

-and-

WELLS FARGO BANK, NATIONAL ASSOCIATION

Impleaded party

LIST OF EXHIBITS

PIÈCE R-1: *Under seal*, Addendum signed on August 18, 2020;

PIÈCE R-2: *Under seal*, Factoring contract (or contracts)

MONTREAL, January 8, 2021

Lavery De Billy

LAVERY, DE BILLY, L.L.P.
Lawyers for Petitioners

Nº: 500-11-058116-209

SUPERIOR COURT
(Commercial Division)
DISTRICT OF MONTRÉAL

IN THE MATTER OF THE ARRANGEMENT OF:

SPECTRA PREMIUM INDUSTRIES INC.
-and-
SPECTRA PREMIUM HOLDINGS (USA) CORP.
-and-
SPECTRA PREMIUM (USA) CORP.
-and-
SPECTRA PREMIUM PROPERTIES (USA) CORP.
-and-
SPECTRA PREMIUM TAIWAN CO. LTD.
-and-
SPECTRA PREMIUM (SHANGHAI) AUTOMOTIVE TECHNICAL SERVICES CO. LTD.
-and-
SPECTRA PREMIUM (CHONGQING) AUTOMOTIVE SERVICES CO. LTD.

Petitioners

AND

ERNST & YOUNG INC.

Monitor

-and-

WELLS FARGO BANK, NATIONAL ASSOCIATION

Impleaded party

MOTION FOR THE ISSUANCE OF AN ORDER REGARDING CERTAIN TRANSACTIONS (FACTORING WITH WELLS FARGO BANK, NATIONAL ASSOCIATION)
Sections 4, 5, 11 and *ff.* of the *Companies' Creditors Arrangement Act* ("**CCAA**")**, AFFIDAVIT, NOTICE OF PRESENTATION, LIST OF EXHIBITS**

O/file: 001320-00060 BL 1332

Me Jonathan Warin : 514 878-5616

LAVERY, DE BILLY, L.L.P.
SUITE 4000, 1, PLACE VILLE MARIE, MONTREAL, QUEBEC H3B 4M4
TELEPHONE: 514 871-1522 FAX NUMBER: 514 871-8977
EMAIL NOTIFICATIONS: NOTIFICATIONS-MTL@LAVERY.CA

Exhibit C

Factoring Order

SUPERIOR COURT
(Commercial Division)

CANADA
PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

Nº: 500-11-058116-209

DATE: January 14, 2021

PRESIDING : THE HONOURABLE LOUIS J. GOUIN, J.S.C.

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

SPECTRA PREMIUM INDUSTRIES INC.

-and-

SPECTRA PREMIUM HOLDINGS (USA) CORP.

-and-

SPECTRA PREMIUM (USA) CORP.

-and-

SPECTRA PREMIUM PROPERTIES (USA) CORP.

-and-

SPECTRA PREMIUM TAIWAN CO. LTD.

-and-

SPECTRA PREMIUM (SHANGHAI) AUTOMOTIVE TECHNICAL SERVICES CO. LTD.

-and-

SPECTRA PREMIUM (CHONGQING) AUTOMOTIVE SERVICES CO. LTD.

Petitioners

-and-

ERNST & YOUNG INC.

Monitor

-and-

WELLS FARGO BANK, NATIONAL ASSOCIATION

Impleaded party

JUDGMENT (Factoring Wells Fargo Bank)

CONSIDERING the *Motion for the issuance of an order regarding certain transactions (factoring with Wells Fargo Bank, National Association)* (the "**Motion**");

GIVEN the allegations of the Motion, the sworn statement filed in support therewith and the absence of contestation;

WHEREFORE, THE COURT:

[1] **GRANTS** the Motion*;*

[2] **ABRIDGES** the delays of presentation of the Motion.

[3] **DECLARES** that the Petitioners are authorised to enter into factoring contracts with Wells Fargo Bank, National Association, or any related party or assignee (the "**WF Factoring**") that are substantially in the form of the draft contract file under seal as Exhibit R-2 to the Motion (the "**Contract**").

[4] **ORDERS** that upon the receipt by the Petitioners of a payment from WF Factoring pursuant to a Contract, all rights, title and interest in and to the receivables of the Petitioners corresponding to said payment shall vest absolutely and exclusively in and with WF Factoring, free and clear of and from any and all claims, liabilities (direct, indirect, absolute or contingent), obligations, prior claims, right of retention, charges, hypothecs, deemed trusts, judgments, writs of seizure or execution, notices of sale, contractual rights relating to the said receivables, encumbrances, whether or not they have been registered, published or filed and whether secured, unsecured or otherwise;

[5] **THE WHOLE** without costs.

LOUIS J. GOUIN, J.S.C.

Mr. Jean Legault and
Mr. Jonathan Warin
Lavery, de Billy LLP
Attorneys for the Petitioners

Mr. Luc Morin and
Mr. Guillaume Michaud
Norton Rose Fulbright Canada LLP
Attorneys for the Monitor