

**TAB 3**

Court File No. CV-14-10609-00CL

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

THE HONOURABLE MR.	)	TUESDAY, THE 8TH
	)	
JUSTICE NEWBOULD	)	DAY OF JULY, 2014

**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  
AND ARRANGEMENT INVOLVING METCALFE & MANSFIELD  
ALTERNATIVE INVESTMENTS VII CORP. IN ITS CAPACITY  
AS ISSUER TRUSTEE OF THE DEVONSHIRE TRUST**

**CLAIMS PROCEDURE AND MEETING ORDER**

THIS APPLICATION, made by Metcalfe & Mansfield Alternative Investments VII Corp. in its capacity as issuer trustee (the "Applicant") of the Devonshire Trust (the "Conduit" and together with the Applicant, the "CCAA Parties") for an Order (i) establishing a claims procedure to identify and determine claims of Noteholders (the "Claims Procedure"); and (ii) authorizing the CCAA Parties to call, hold and conduct a meeting of certain creditors of the CCAA Parties to consider and approve the Plan of Compromise and Arrangement proposed by the Applicant (the "Plan"), was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the affidavit of Mathieu Lafleur-Ayotte sworn June 27, 2014 (the "Lafleur-Ayotte Affidavit") and the Exhibits thereto, the affidavit of Robert Girard sworn July 7, 2014 and the Exhibits thereto, and the Report of Deloitte Restructuring Inc. ("Deloitte") dated July 3, 2014 (the "First Report") prepared in contemplation of Deloitte's appointment as monitor of the CCAA Parties (hereinafter referred to as the "Monitor") and on hearing the submissions of counsel for the Applicant, counsel for the Monitor, counsel for the Caisse de dépôt et placement du Québec, counsel for Barclays Bank PLC and the Barclays' Subsidiaries, and counsel for

CIBC Mellon Trust Company, no one else appearing although duly served as appears from the affidavit of service of Tasha Boyd sworn July 4, 2014.

#### **DEFINITIONS AND INTERPRETATION**

1. THIS COURT ORDERS that all capitalized terms that are not otherwise defined herein shall have the meaning given to such terms set out in the Plan.
2. THIS COURT ORDERS that all references to time herein shall mean local time in Toronto, Ontario, Canada, and any reference to an event occurring on a Business Day shall mean prior to 5:00 p.m. on such Business Day unless otherwise indicated herein.

#### **CLAIMS PROCEDURE**

3. THIS COURT ORDERS that the Monitor, in consultation with the Applicant, is hereby authorized to use reasonable discretion as to the adequacy of compliance with respect to the manner in which forms delivered hereunder are completed and executed, and the time in which they are submitted, and may, where it is satisfied that a Proven Claim has been adequately proven, waive strict compliance with the requirements of this Order, including in respect of completion, execution and time of delivery of such forms. Further, the Monitor may request any further documentation from a Noteholder that the Monitor, in consultation with the Applicant, may require in order to enable it to determine the validity of a Proven Claim.
4. THIS COURT ORDERS that any Noteholder that does not provide all Required Documentation (as defined below) to the Monitor within two (2) years of the Plan Implementation Date (a) shall be and is hereby forever barred from making or enforcing a Noteholder Claim against the CCAA Parties and all such Noteholder Claims shall be forever extinguished; (b) shall be and is hereby forever barred from making or enforcing such Noteholder Claims as against any other Person who could claim contribution or indemnity from the CCAA Parties; (c) shall not be entitled to receive any distribution in respect of such Noteholder Claims; and (d) shall not be entitled to any further notice in and shall not be entitled to participate in the CCAA Proceedings in respect of such Noteholder Claims. The "Required Documentation" is comprised of the physical certificates, if any, representing the Notes held by a

- 3 -

Noteholder; a Voter Identification Form; and such customary tender and transmittal documentation as the Monitor may request (the "Required Documentation").

5. THIS COURT ORDERS that the Monitor, subject to the terms of this Order, shall review all Required Documentation, and at any time:

- (a) may request additional information from a Noteholder;
- (b) may request that a Noteholder provide revised Required Documentation; and
- (c) may, (i) with the consent of the CCAA Parties or (ii) with Court approval in a further order of the Court, resolve and settle any issue arising in respect of Required Documentation, as applicable.

6. THIS COURT ORDERS that where the Required Documentation has been accepted by the Monitor in accordance with this Order, the Required Documentation shall constitute such Noteholder's Proven Claim:

- (a) for the purpose of voting at the Meeting if such Required Documentation is received by the Monitor no later than the fifth Business Day prior to the proposed date of the Meeting;
- (b) for the purpose of receiving the Initial Distribution at the time contemplated in the Plan if such Required Documentation is received by the Monitor no later than the third Business Day before the appeal periods and any periods for leave to appeal with respect to the Sanction Order shall have expired without an appeal or application for leave to appeal of such Order having been commenced or, in the event of an appeal or application for leave to appeal, a final determination denying leave to appeal or dismissing such appeal and affirming the sanctioning of the Plan and recognizing the sanctioning of the Plan, as the case may be, shall have been made by the applicable appellate court, with no further right of appeal;
- (c) for the purpose of receiving Interest Distributions at the times contemplated in the Plan if such Required Documentation is received by the Monitor no later than the

- 4 -

third Business Day before such Interest Distributions are made, subject to paragraph 4 of this Order; and

- (d) for the purpose of receiving the Initial Distribution or the Interest Distribution(s) or any of them, as the case may be, after the times contemplated in the Plan, at any time, subject to paragraph 4 of this Order.

7. THIS COURT ORDERS that in the event the Monitor is not able to resolve any issue with respect to the Required Documentation within a time period or in a manner satisfactory to the Monitor, in consultation with the Applicant and the applicable Noteholder, then the Monitor may seek directions from the Court concerning an appropriate process for resolving the dispute. If the Monitor, in consultation with the Applicant and the applicable Noteholder, is not able to resolve any issue with respect to the Required Documentation before the Meeting, then such Noteholder's vote shall be marked by the Monitor as being an Unconfirmed Vote. In the event that the aggregate Unconfirmed Votes are sufficient to alter the outcome of the vote to approve the Plan (by number or dollar value), the Monitor shall apply to this Court for directions with respect to the voting eligibility of the Unconfirmed Votes.

#### **FORMS OF DOCUMENTS**

8. THIS COURT ORDERS that the forms of: (i) Notice of Proceedings; (ii) Voter Identification Form; (iii) Proxy Form; and (iv) Instructions for Noteholders as appended to the First Report, are hereby approved, and the Applicant, with the consent of the Monitor, is authorized and directed to make such changes thereto as the Applicant considers necessary or desirable to describe or to conform the content thereof to the terms of the Plan or this Claims Procedure and Meeting Order. (The foregoing documents, collectively with this Order, are referred to herein collectively as the "Meeting Documents".)

9. THIS COURT ORDERS that the procedures described in the Lafleur-Ayotte Affidavit and the First Report as having been undertaken with a view to (a) identifying all Noteholders who are entitled to notice of, and to vote at, the Meeting, and (b) confirming holdings of such Noteholders, are hereby approved.

**DELIVERY OF MEETING DOCUMENTS TO HOLDERS**

10. THIS COURT ORDERS that the Monitor shall promptly deliver the Meeting Documents by regular pre-paid mail, courier, fax or e-mail to NBCN Inc., the issuing and paying agent for the Conduit (the "Issuing and Paying Agent") as well as to each registered holder of Notes ("Registered Holder") and each beneficial Noteholder whose identity is disclosed in the Lafleur-Ayotte Affidavit.

11. THIS COURT ORDERS that the Monitor shall promptly deliver the Meeting Documents by regular pre-paid mail, courier, fax or e-mail to any other Person that has contacted the Monitor and requested a copy of the Meeting Documents, but without duplication to the extent already addressed in paragraph 10 herein.

12. THIS COURT ORDERS that the Monitor shall be at liberty, acting reasonably, to take such additional and further steps as are reasonably required to identify all Persons who are entitled to notice of, and to vote at, the Meeting, and to deliver to such Persons in a timely and cost-effective manner the Meeting Documents, and all such Persons shall co-operate with the Monitor in connection therewith.

13. THIS COURT ORDERS that the Monitor will forthwith establish a website containing PDF copies of, *inter alia*, Meeting Documents (the "Website"), which Website has the following addresses:

- (a) for English: <http://www.deloitte.com/ca/devonshire>;
- (b) for French: <http://www.deloitte.com/ca/devonshire/fr/>.

14. THIS COURT ORDERS that the delivery of the Meeting Documents substantially in accordance with the requirements of this Order shall constitute good and sufficient service and delivery of this Order and the other documents referred to in this Order on all Persons who may be entitled to receive notice or be present or vote in person or by proxy at the Meeting or any adjournments thereof and that no other notice or service need be given or made and no other document or material need be served upon such Persons.

**AMENDMENTS TO THE PLAN**

15. THIS COURT ORDERS that the Applicant may, at any time and from time to time, whether before, during or after the Meeting, with the consent of the Monitor, amend the Plan as provided for and in compliance with Section 17.1 of the Plan.

**CONDUCT OF MEETING AND DELIVERY OF PROXIES**

16. THIS COURT ORDERS that the Applicant seek approval of the Plan by the Noteholders entitled to vote at the Meeting in the manner set forth herein.

17. THIS COURT ORDERS that, for the purposes of voting to approve the Plan, there shall be a single class of creditors consisting of Noteholders as established in the Plan.

18. THIS COURT ORDERS that the Applicant shall call the Meeting to be held and conducted on August 7, 2014, at the offices of Osler, Hoskin and Harcourt LLP, counsel to the Monitor, at 1000 de la Gauchetière West, in the City of Montreal, or at such other time and place to which the Meeting may be properly adjourned or otherwise re-scheduled by the Applicant, with the Monitor's consent.

19. THIS COURT ORDERS that the Meeting shall be called, held and conducted, and the Plan shall be voted upon and, if approved by Noteholders, ratified and given full force and effect, in accordance with the provisions of this Claims Procedure and Meeting Order, the CCAA, the Meeting Documents and any further Order of this Court, notwithstanding the provisions of any agreement or other instrument to the contrary.

20. THIS COURT ORDERS that an officer of the Monitor, designated by the Monitor, shall preside as the chair (the "Chair") of the Meeting and, subject to this Order, shall decide all matters relating to the conduct of the Meeting.

21. THIS COURT ORDERS that at the Meeting, the Chair shall direct a vote by written ballot to approve the Plan (as it may be amended pursuant to the Plan, the Initial Order and the Claims Procedure and Meeting Order).

22. THIS COURT ORDERS that the quorum required at the Meeting shall be two of the Noteholders present in person or by proxy having a Proven Claim.

- 7 -

23. THIS COURT ORDERS that the Monitor shall appoint one or more scrutineers for the supervision and tabulation of the attendance at, quorum at and votes cast at the Meeting. A person designated by the Monitor shall act as secretary of the Meeting.

24. THIS COURT ORDERS that if the requisite quorum is not present at the Meeting, or if the Meeting is postponed by the Applicant or by the vote of Noteholders representing no less than 2/3 in value of the face amounts of the Notes present in person or by proxy, the Meeting shall be adjourned by the Chair to a later date, time and place designated by the Chair. The Chair shall be entitled to adjourn and further adjourn the Meeting at the Meeting or any adjourned Meeting provided that any such adjournment or adjournments shall be for a period of not more than thirty (30) days in total and, in the event of any such adjournment, the Applicant shall not be required to deliver any notice of the adjournment of the Meeting other than posting a notice of the adjournment on the Website, announcing the adjournment at the Meeting or posting notice of the adjournment at the originally designated time and location of the Meeting or Meeting being adjourned.

25. THIS COURT ORDERS that the only persons entitled to notice of, or to attend and speak at the Meeting are the Noteholders entitled to vote at the Meeting (including, for the purposes of attendance, speaking and voting, their respective proxy holders and legal counsel), officers and other representatives (including legal counsel and financial advisors) of the Monitor, and any persons appointed as scrutineers for the meeting. Any other person may be admitted to the Meeting on invitation of the Applicant or the Chair.

26. THIS COURT ORDERS that the only persons entitled to vote at the Meeting, in person or by proxy, are Noteholders having a Proven Claim.

27. THIS COURT ORDERS that any Noteholders' Proxy in respect of the Meeting (or any adjournment thereof) shall be provided to the Monitor on or before 5:00 p.m. (Toronto time) on the Business Day before the Meeting. Notwithstanding the foregoing, the Monitor shall have the discretion to accept for voting purposes any Proxy signed by a Noteholder with a Proven Claim and delivered to the Chair (or the Chair's designee) prior to the commencement of the Meeting.

28. THIS COURT ORDERS that the Monitor, in consultation with the Applicant, may in its discretion, generally or in individual circumstances, waive in writing the time limits imposed on



Noteholders as set out in the Meeting Documents and all other procedural matters if the Monitor deems it advisable to do so (without prejudice to the requirement that all other Noteholders must comply with the requirements of the Meeting Documents and in respect of the Meeting and this Claims Procedure and Meeting Order).

#### **VOTING PROCEDURE**

29. THIS COURT ORDERS that the date for determining those entitled to vote at the Meeting shall be July 7, 2014 2014, (the "Record Date").

30. THIS COURT ORDERS that each Noteholder as of the Record Date with a Proven Claim shall be entitled to vote at the Meeting, in person or by proxy. For the purpose of calculating the two-thirds majority by value of Proven Claims, each Noteholder having a Proven Claim shall be entitled to vote, without duplication, the aggregate face amount of all Notes held by such Noteholder, as determined by the Monitor based on the Required Documentation. For the purpose of calculating a majority in number at the Meeting, each individual Noteholder having a Proven Claim shall only be counted once, without duplication, even if that Noteholder holds Notes through more than one Registered Holder or participant in the CDS system. For greater certainty, only Noteholders having a Proven Claim shall be entitled to vote in respect of the Plan as provided for in this Order. Where the Registered Holder differs from the beneficial holder of a Note, only the beneficial holder of the Note may be entitled to vote.

31. THIS COURT ORDERS that after the Record Date, the beneficial holder of a Note shall not transfer its interest in the Note and that after the Plan Implementation Date, a Noteholder shall not transfer its interest in its Noteholder Claim(s).

#### **PERSONS WITH UNAFFECTED CLAIMS NOT ENTITLED TO VOTE OR RECEIVE DISTRIBUTIONS**

32. THIS COURT ORDERS that a Creditor with an Unaffected Claim shall not be entitled to vote or to receive any distribution under the Plan in respect of such Unaffected Claim.

#### **COURT SANCTIONING OF PLAN**

33. THIS COURT ORDERS that the Monitor shall report to the Court the results of the Meeting. If the Plan is approved by the required majorities of Noteholders with Proven Claims,

the Applicant may bring a motion to the Court returnable on August 20, 2014 or such other date as is set by the Court upon motion by the Applicant, for approval of the Plan (the "CCAA Sanction Motion").

34. THIS COURT ORDERS that service of this Claims Procedure and Meeting Order by the Monitor to the parties on the service list and the delivery of the Meeting Documents in accordance with this Claims Procedure and Meeting Order, shall constitute good and sufficient service of notice of the CCAA Sanction Motion on all persons entitled to receive such service and no other form of notice or service need be made in respect of the CCAA Sanction Motion. The Monitor may post any additional materials to be used at the CCAA Sanction Motion, including the notice of motion, on the Website.

35. THIS COURT ORDERS that any party who wishes to oppose the CCAA Sanction Motion shall serve on the service list a Notice of Appearance setting out the basis for such opposition and a copy of the material to be used to oppose the CCAA Sanction Motion at least two days before the date set for the CCAA Sanction Motion, or such shorter time as the Court, by order, may allow.

36. THIS COURT ORDERS that any Person who delivers a Notice of Appearance in respect of the CCAA Sanction Motion shall effect service thereof on the Applicant and the Monitor respectively by e-mailing a PDF or by other electronic transmission of the Notice of Appearance to counsel at the following addresses:

Fasken Martineau DuMoulin LLP  
Attention: Aubrey Kauffman  
Facsimile: 416.364.7813  
E-mail: [akauffman@fasken.com](mailto:akauffman@fasken.com)

With a copy to the Monitor's counsel at:

Osler, Hoskin & Harcourt LLP  
Attention: Sandra Abitan & Mary Paterson  
Facsimile: 514.904.8100; 416.862.6666  
E-mail: [sabitan@osler.com](mailto:sabitan@osler.com); [mpaterson@osler.com](mailto:mpaterson@osler.com)

37. THIS COURT ORDERS that in the event the CCAA Sanction Motion is adjourned, only those Persons who have filed and served a Notice of Appearance shall be served with notice of the adjourned date.

#### **GENERAL**

38. THIS COURT ORDERS that the Applicant or the Monitor may from time to time apply to this Court for advice and directions in the discharge of their powers and duties hereunder.

39. THIS COURT ORDERS that the Monitor, in addition to its prescribed rights, duties, responsibilities and obligations under the CCAA and under the Initial Order, is hereby directed and empowered to take such other actions and fulfill such other roles as are authorized by this Order or incidental thereto.

40. THIS COURT ORDERS that (i) in carrying out the terms of this Order, the Monitor shall have all of the protections given to it by the CCAA, the Initial Order, other orders in the CCAA Proceeding, and this Order, or as an officer of the Court, including the stay of proceedings in its favour, (ii) the Monitor shall incur no liability or obligation as a result of the carrying out of the provisions of this Order save and except for any gross negligence or wilful misconduct on its part, (iii) the Monitor shall be entitled to rely on the books and records of the CCAA Parties and any information provided by the CCAA Parties, all without independent investigation, and (iv) the Monitor shall not be liable for any claims or damages resulting from any errors or omissions in such books, records or information.

41. THIS COURT ORDERS AND DECLARES that none of the Monitor, the Chair, the CCAA Parties, the Issuing and Paying Agent, or any of their respective officers, directors, shareholders, partners, employees, representatives, agents, financial advisors, legal counsel or other professional advisers, shall incur any liability or obligation as a result of the carrying out of the provisions of this Order, save and except for any gross negligence or wilful misconduct on its, his or her part.

42. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada, the United States, the United Kingdom or Belgium to give effect to this Order and to assist the CCAA Parties and the Monitor

**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 AND ARRANGEMENT INVOLVING METCALFE & MANSFIELD**  
**ALTERNATIVE INVESTMENTS VII CORP. IN ITS CAPACITY AS ISSUER TRUSTEE OF THE DEVONSHIRE TRUST**

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
**(Commercial List)**

Proceedings commenced at  
Toronto

**CLAIMS PROCEDURE AND MEETING ORDER**

**FASKEN MARTINEAU DU MOULIN LLP**  
Barristers and Solicitors  
333 Bay Street, Suite 2400  
Bay Adelaide Centre, Box 20  
Toronto, ON M5H 2T6

**Aubrey E. Kauffman (LSUC#18829N)**  
Tel: 416 868 3538  
Fax: 416 364 7813  
Email: akauffman@fasken.com

**Dylan Chochla (LSUC# 62137I)**  
Tel: 416 868 3425  
Fax: 416 364 7813  
Email: dchochla@fasken.com

Lawyers for Applicant