

Court File No: SM 125 2023

No. de dossier: _____

IN THE COURT OF KING'S BENCH OF
NEW BRUNSWICK

COUR DUE BANC DU ROI DU NOUVEAU-
BRUNSWICK

TRIAL DIVISION

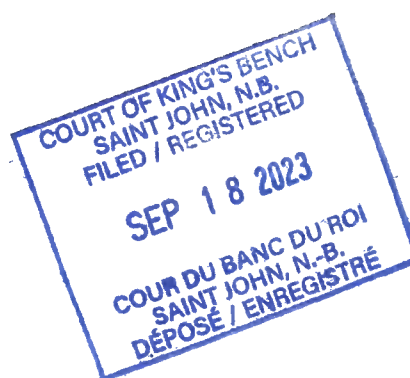
DIVISION DE PREMIÈRE INSTANCE

JUDICIAL DISTRICT OF SAINT JOHN

CIRCONSCRIPTION JUDICIAIRE DE SAINT
JOHN

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
SOUTH SHORE SEAFOODS LTD.,
CAPTAIN COOKE'S SEAFOOD INC., BY
THE WATER SHELLFISH (2012) INC.,
CAN-AM LOBSTER & SHELLFISH LTD.,
SOUTH SHORE SEAFOODS
INTERNATIONAL LTD., BRIDGE
LOBSTERS LIMITED, ARSENAULT'S FISH
MART INC.



B E T W E E N:

E N T R E:

THE TORONTO-DOMINION BANK

Applicant Requerante

- and -

- et -

SOUTH SHORE SEAFOODS LTD.,
CAPTAIN COOKE'S SEAFOOD INC., BY
THE WATER SHELLFISH (2012) INC.,
CAN-AM LOBSTER & SHELLFISH LTD.,
SOUTH SHORE SEAFOODS
INTERNATIONAL LTD., BRIDGE
LOBSTERS LIMITED AND ARSENAULT'S
FISH MART INC.

Intimees

Respondents

**NOTICE OF APPLICATION
(FORM 16D)**

TO:

The Respondents

To the Service List (see Schedule "A"
attached hereto)

**LEGAL PROCEEDINGS HAVE BEEN
COMMENCED BY FILING THIS NOTICE
OF APPLICATION.**

The applicant will make an application before the Court at the Saint John Law Courts, 10 Peel Plaza, Saint John, New Brunswick on the **21st day of September, 2023 at 1h30 p.m.** for an order as set out hereunder.

If you wish to oppose this application you must appear at the hearing of the application at the place, date and time stated, either in person or by a New Brunswick lawyer acting on your behalf.

If you intend to appear on the hearing of the application and wish to present to the Court at that time affidavit or other documentary evidence to support your position, you must serve a copy of such evidence on the applicant or his lawyer and, with proof of such service, file it in this Court Office prior to the hearing of the application.

If you fail to appear on the hearing of the application **AN ORDER WHICH MAY AFFECT YOU MAY BE MADE IN YOUR ABSENCE.**

You are advised that:

(a) you are entitled to issue documents and present evidence in the proceeding in English or French or both;

(b) the applicant intends to proceed in the language; and

**AVIS DE REQUÊTE
(FORMULE 16D)**

DESTINATAIRE:

**PAR LE DÉPÔT DU PRÉSENT AVIS DE
REQUÊTE, UNE POURSUITE JUDICIAIRE
A ÉTÉ EN- GAGÉE.**

Le requérant présentera une requête à la Cour au **[address]** le 21 septembre 2023 à en vue d'obtenir l'ordonnance décrite ci-dessous.

Si vous désirez contester cette requête, vous devrez comparaître à l'audition de la requête aux lieu, date et heure indiqués, soit en personne ou par l'intermédiaire d'un avocat du Nouveau-Brunswick chargé de vous représenter.

Si vous prévoyez comparaître à l'audition de la requête et désirez présenter à la Cour un affidavit ou une autre preuve littérale en votre faveur, vous devrez signifier copie de cette preuve au requérant ou à son avocat et la déposer, avec une preuve de sa signification, au greffe de cette Cour avant l'audition de la requête.

Si vous ne comparez pas à l'audition de la requête, **UNE ORDONNANCE POUVANT VOUS CONCERNER POURRA ÊTRE RENDUE EN VOTRE ABSENCE.**

Sachez que:

(a) vous avez le droit dans la présente instance, d'émettre des documents et de présenter votre preuve en français, en anglais ou dans les deux langues;

(b) le requérant a l'intention d'utiliser la langue; et

(c) if you require the services of an interpreter at the hearing you must advise the clerk at least 7 days before the hearing.

(c) si vous avez besoin des services d'un interprète à l'audience, vous devez en aviser le greffier au moins 7 jours avant l'audience.

THIS NOTICE is signed and sealed for the Court of King's Bench by *Amanda Evans, K.C.*
Clerk of the Court of the King's Bench, at 10 Peel Plaza, Saint John, NB E2L 3G6 on the 18 day of September, 2023.

CET AVIS est signé et scellé au nom de la Cour du Banc du Roi par _____, greffier de la Cour du Banc du Roi, au **[address]**, ce _____ septembre 2023.

(Sgt.) Amenda J. Evans, KC

Clerk of the Court of the King's Bench

Greffier de la Cour du Banc du Roi

**Judicial District of Saint John
Saint John Law Courts
10 Peel Street
Saint John, NB E2L 3G6**

[address]

APPLICATION

1. The Toronto-Dominion Bank (the “**Applicant**”), brings this application for an initial order (the “**Initial Order**”), a charging order (the “**Charging Order**”) and sealing order (the “**Sealing Order**”) and collectively, the “**Proposed Initial Orders**”), in respect of South Shore Seafoods Ltd., Captain Cooke’s Seafood Inc., By the Water Shellfish (2012) Inc., Can-Am Lobster & Shellfish Ltd., South Shore Seafoods International Ltd., Bridge Lobsters Limited and Arsenault’s Fish Mart Inc. (collectively, the “**Debtors**”), substantially in the form of the draft Proposed Orders attached hereto as Schedules “B”, “C” and “D”, respectively, *inter alia*:
 - a) if necessary, abridging the time for service of this application, excusing the lack of service of this application, or excusing the lack of service of the Applicant’s record on application and pre-hearing brief pursuant to Rules 1.03, 2.01 and 3.02 of the New Brunswick Rules of Court;
 - b) Declaring that each of the Debtors is a company to which the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”) applies;
 - c) Staying, for an initial period of not more than ten (10) days (the “**Stay of Proceedings**”), all proceedings and remedies taken or that might be taken in respect of the Debtors, the CRO (defined below), the Monitor or affecting the Debtors’ business or any of their assets, undertakings and properties (“**Property**”), except with the written consent of the Debtors, the Applicant, the CRO and the Monitor, or with leave of this Court;
 - d) Appointing David Boyd, a representative of Resolve Advisory Services Ltd., as

chief restructuring officer (“**CRO**”) to assist the Debtors through the restructuring period;

- e) Appointing Deloitte Restructuring Inc. (“**Deloitte**”) as court-appointed monitor in these proceedings (in such capacity, the “**Monitor**”) in respect of the business and affairs of the Debtors;
- f) Authorizing the Debtors to borrow funds pursuant to a debtor-in-possession financing facility (the “**DIP Facility**”) to be provided by the Applicant pursuant to a second forbearance and fourth amendment agreement (the “**DIP Facility Agreement**”), in the maximum initial amount of \$3 million;
- g) Authorizing the Debtors to pay to the Applicant, in accordance with the DIP Facility Agreement, amounts owing under the DIP Facility Agreement and any and all amounts owing by the Debtors on account of pre-filing obligations, from funds on hand or from funds generated by post-filing sales of inventory or otherwise;
- h) With the consent of the Monitor, authorizing the Debtors to make certain pre-filing payments to critical vendors up to a maximum amount of \$900,000 in the aggregate;
- i) Granting the following priority charges of the Property, such charges to rank in the priority set out in the Initial Order and described in the affidavit of Andrea Jamnisek sworn September 18, 2023 (“**Jamnisek Affidavit**”) ;
 - i. First, an Administration Charge: up to a maximum of \$250,000 to secure payment of the fees and expenses of the Monitor, its counsel, the Debtors’ counsel (to a maximum of \$25,000), the CRO (excluding any success fee) and the Applicant’s counsel (the “**Administration Charge**”);

- ii. Second, a Directors' Charge: up to a maximum amount of \$375,000 (the "**Directors' Charge**") to protect the directors and officers against obligations and liabilities they may incur as directors and officers of the Debtors after the commencement of the CCAA proceedings, except to the extent that the obligation or liability is incurred as a result of the director's or officer's gross negligence or willful misconduct; and
 - iii. Third, a DIP Charge to secure obligations owing under the DIP Facility Agreement (the "**DIP Charge**" and together with the Administration Charge and the Directors' Charge, the "**Charges**");
 - j) Sealing the unredacted pre-filing report of the proposed Monitor pending the come-back hearing.
2. If the proposed Initial Order is granted, the Applicant intends to seek an amended and restated initial order and charging order within 10 days of the Initial Order being granted, which may include, among other things:
- a) an extension of the Stay of Proceedings to December 15, 2023;
 - b) an increase in the amount of the Administration Charge to \$500,000
 - c) an increase in the maximum amount under the DIP Facility to \$10 million;
 - d) an increase in the Monitor's powers and authorizations;
 - e) approval of a sales investment and solicitation process;
 - f) extension of the sealing order (if necessary); and
 - g) such other relief as the Applicant may recommend at such motion.
3. Such further and other relief as to this Honorable Court may deem just.
4. The grounds for the application are:

Background

- a) The Applicant is a federally regulated Canadian bank with its principal place of business in Toronto, Ontario;
- b) The Debtors are a group of privately-held companies carrying on business as buyers, processors and wholesalers of cooked lobster in Atlantic Canada;
- c) The Debtors are owned (directly or indirectly) by two shareholders: Timothy Williston and Michel Jacob;
- d) The Debtors' management office is located in the Province of New Brunswick;
- e) Mr. Williston and Mr. Jacob, along with the Debtors' chief financial officer, who together comprise the Debtors' management team, reside and work in the Province of New Brunswick;
- f) The Debtors are party to a Credit Agreement (defined in the Jamnisek Affidavit) pursuant to which the Applicant made certain term and revolving credit facilities available to the borrowers thereunder;
- g) The Debtors have outstanding secured loan and guarantee obligations owing to the Applicant in the principal amount of over \$26 million (not including interest and fees);
- h) The Applicant has a valid and enforceable security securing all obligations owing under the Credit Agreement from each of the Debtors;
- i) The borrowers have consistently been in default of a number of their obligations under the Credit Agreement since June 2022 including numerous reporting and

covenant defaults and, in February 2023, an overstatement of inventory which led to a significant overadvance under the Credit Agreement;

- j) On May 2, 2023, the Debtors and the Applicant entered into a forbearance agreement;
- k) On the same date, the Applicant sent a demand letter dated May 2, 2023 to the Debtors, and a notice of intention to enforce security under section 244 of the *Bankruptcy and Insolvency Act*;
- l) The forbearance period under the prior forbearance agreement has now expired and the Applicant is not prepared to continue to fund the Debtors outside of a formal insolvency proceeding;
- m) The Debtors have consented to both the enforcement by the Applicant of its security as well as the filing by the Applicant of an application pursuant to the CCAA;

Stay of Proceedings

- n) The Applicant is requesting a stay of proceedings in respect of the Debtors, their property, the Monitor and the CRO until October 1, 2023, which is 10 days after the date of the return of this application;
- o) The Stay of Proceedings is necessary to provide the Debtors breathing space while efforts are made to maximize value for the benefit of all stakeholders;

Appointment of Monitor and CRO

- p) Deloitte has consented to act as the court-appointed Monitor in these

proceedings;

- q) Deloitte is a trustee within the meaning of Section 2 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended;
- r) Deloitte is not subject to any of the restrictions on who may be appointed as set out in section 11.7(2) of the CCAA;
- s) The Debtors have retained the services of the CRO to assist them during this process;
- t) The CRO is an experienced restructuring professional in this industry and this jurisdiction and has significant experience in restructuring proceedings;

Administration Charge

- u) The proposed Administration Charge is intended to secure the fees and expenses of the Applicant's counsel, the Monitor, its counsel, the CRO (excluding any success fee) and the Debtors' counsel (up to a maximum of \$25,000);
- v) The expertise of the proposed beneficiaries of the Administration Charge is required in order to pursue the restructuring proceedings;
- w) The proposed Administration Charge will have priority of all other charges granted by the Initial Orders;

Directors and Officers' Charge

- x) During the restructuring process, the Applicant anticipates that the assistance of the directors and officers of the Debtors will continue to be required;
- y) The Debtors do not maintain directors' and officers' insurance;

- z) The directors and officers have indicated that they require the protection of a directors' indemnity to be secured by the Directors' Charge;
- aa) The Directors' Charge will be subject to the Administration Charge but have priority over the DIP Charge;

DIP Funding and DIP Charge

- bb) The Applicant has agreed to provide debtor-in-possession funding ("**DIP Financing**") to the Debtors to finance operations and the restructuring proceedings through the Debtors existing Credit Agreement, as amended by the DIP Facility Agreement;
- cc) The initial borrowing limit under the DIP Facility Agreement is \$3 million;
- dd) The DIP Facility Agreement provides that the existing cash management system will continue to be used during the course of the CCAA proceedings;
- ee) As a result, given the nature of the asset based Revolving Loans, as receivables are collected, they will be swept by the Applicant and applied to existing obligations owing under the Revolving Loans (as defined in the Credit Agreement);
- ff) The Debtors will then borrow funds under the DIP Facility Agreement which advances will be made to fund working capital and restructuring costs but will not be used to repay existing obligations under the Credit Agreement;
- gg) The obligations owing by the Debtors under the DIP Facility Agreement will be secured by the DIP Charge, which will rank subordinate to the Administration Charge and the Directors' Charge;

- hh) The DIP Charge will also not prime certain priority amounts owing to the Business Development Bank of Canada and BDC Capital Inc., with respect to specific collateral supporting such loans;

Critical Vendors

- ii) As set out in the Pre-Filing Report of Deloitte as proposed Monitor (the “**Pre-Filing Report**”), certain recommendations have been made for the ability of the Monitor to make certain pre-filing vendor payments to “critical vendors”;
- jj) The flexibility to make these payments is crucial to the preservation of the going concern given the nature of the business;
- kk) Any pre-filing payments will require the consent of the Monitor;

Sealing

- ll) A redacted copy of the Pre-Filing Report has been filed with the Court on a confidential basis pending the comeback hearing as the Debtors have expressed concern about the potential commercial harms arising from public disclosure of the cash flow forecast;
- mm) As such, the Applicant is requesting that the redacted copy of the Pre-Filing Report be sealed pending the comeback hearing, to be scheduled; and

Other

- nn) Such further and other grounds as the lawyers may advise.

5. The following documentary evidence will be used at the hearing of the application:

- a) The Jamnisek Affidavit;

- b) Consent of Deloitte to act as monitor in the CCAA proceeding;
- c) The Pre-Filing Report; and
- d) Such further and other evidence as the lawyers may advise and this Honorable Court may permit.

September 18, 2023

NORTON ROSE FULBRIGHT CANADA LLP
222 Bay Street, Suite 3000
Toronto, ON M5K 1E7
Fax: 416.216.3930



Jennifer Stam LSO#: 46735J
Tel: 416. 202.6707
jennifer.stam@nortonrosefulbright.com

Lawyers for the Applicant

SCHEDULE "A" – SERVICE LIST

IN THE COURT OF KING'S BENCH OF NEW BRUNSWICK
TRIAL DIVISION
JUDICIAL DISTRICT OF SAINT JOHN

**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 SOUTH SHORE SEAFOODS LTD.,
CAPTAIN COOKE'S SEAFOOD INC., BY THE WATER
SHELLFISH (2012) INC., CAN-AM LOBSTER & SHELLFISH
LTD., SOUTH SHORE SEAFOODS INTERNATIONAL LTD.,
BRIDGE LOBSTERS LIMITED, ARSENAULT'S FISH MART
INC. (each a "Company" and collectively the "Companies")**

B E T W E E N :

THE TORONTO-DOMINION BANK

APPLICANT

- and -

**SOUTH SHORE SEAFOODS LTD., CAPTAIN COOKE'S
SEAFOOD INC., BY THE WATER SHELLFISH (2012) INC.,
CAN-AM LOBSTER & SHELLFISH LTD., SOUTH SHORE
SEAFOODS INTERNATIONAL LTD., BRIDGE LOBSTERS
LIMITED, ARSENAULT'S FISH MART INC.**

RESPONDENTS

SERVICE LIST

<p>NORTON ROSE FULBRIGHT CANADA LLP 222 Bay Street, Suite 3000, P.O. Box 53 Toronto, ON M5K 1E7</p> <p>Jennifer Stam Tel: 416.202.6707 jennifer.stam@nortonrosefulbright.com</p> <p>Arnold Cohen arnold.cohen@nortonrosefulbright.com</p> <p>Michele Friel michele.friel@nortonrosefulbright.com</p> <p>Katie Parent katie.parent@nortonrosefulbright.com</p> <p>Lawyers for the Applicant</p>	<p>COX & PALMER Nova Centre – South Tower 1500-1625 Grafton Street Halifax, NS B3J 0E8</p> <p>Gavin MacDonald GMacDonald@coxandpalmer.com</p> <p>Simon-Pierre Godbout spgodbout@coxandpalmer.com</p> <p>Counsel for the Proposed Monitor</p>
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<p>DELOITTE RESTRUCTURING INC. 1741 Lower Water St. Suite 800 Halifax, NS B3J 0J2 Email: southshoreseafoods@deloitte.ca</p> <p>James Foran jforan@deloitte.ca</p> <p>Kurt Macleod kmacleod@deloitte.ca</p> <p>Warren Leung waleung@deloitte.ca</p> <p>Jorden Sleeth jsleeth@deloitte.ca</p> <p>Proposed Monitor</p>	<p>RESOLVE ADVISORY SERVICES LTD</p> <p>David Boyd davidboyd.resolve@gmail.com</p> <p>Chief Restructuring Officer</p>
<p>STEWART MCKELVEY Queen's Marque 600-1741 Lower Water Street Halifax, NS B3J 0J2</p> <p>Maurice Chiasson, K.C. Tel: 902.420.3300 mchiasson@stewartmckelvey.com</p> <p>Counsel for the Respondents</p>	<p>SOUTH SHORE SEAFOODS LTD., CAPITAL COOKE'S SEAFOOD INC., BY THE WATER SHELLFISH (2012) INC., CAN-AM LOBSTER & SHELLFISH LTD., SOUTH SHORE SEAFOODS INTERNATIONAL LTD., BRIDGE LOBSTERS LIMITED, AND ARSENAULT'S FISH MART INC.</p> <p>Michel Jacob michel@southshoreseafoods.ca</p> <p>Tim Williston tim@southshoreseafoods.ca</p> <p>The Respondents / Debtors</p>
<p>THORNTON GROUT FINNIGAN LLP 100 Wellington Street, West Toronto-Dominion Centre Toronto, ON M5K1K7</p> <p>Leanne Williams Tel: 416.304.0060 lwilliams@tgf.ca</p> <p>Lawyers for Business Development Bank of Canada</p>	

<p>BUSINESS DEVELOPMENT BANK OF CANADA Cogswell Tower – Scotia Square 2000 Barrington Street Suite 1400 Halifax, NS B3J 3K1</p> <p>robert.prince@bdc.ca</p>	<p>BDC CAPITAL INC. 30 Knowledge Park Drive Unit 101 Fredericton, NB E3C 2R2</p> <p>LOUIS-DAVID.JULIEN@bdc.ca</p>
<p>THUNDER COVE INVESTMENTS INC. Box 1600 Summerside, PE C1N 2V5</p> <p>902.853.7160 warren@summersidechrysler.pe.ca</p>	<p>MAPLEWOOD TRUST, by its Trustee, Warren Ellis</p> <p>warren@summersidechrysler.pe.ca</p>
<p>ROBERT ARSENAULT 7823 Route 11 Wellington, PEI</p> <p>afm@bellaliant.com</p>	<p>DEWIS COOKE 2 Water Street, Apt 1 Charlottetown, PEI C1A 1A1</p> <p>dewis@bythewaterlobster.com</p>
<p>RANDY COOKE 129 Navoo Road O’Leary RR1, PEI C0B 1Vo</p> <p>hcs@pei.aibn.com</p>	<p>MURPHY’S LIMITED LIABILITY COMPANY 1224 Buttonwood Lane Sanibel, FL 33957</p> <p>johnjpshellfish@gmail.com</p>
<p>BTW HOLDINGS INC. PO Box 1651 Summerside, PEI C1N 2V5</p> <p>dewis@bythewaterlobster.com</p>	<p>KEY MURRAY LAW 494 Granville Street, PO Box 1570 Summerside, PE C1N 4K4</p> <p>Derek Key, K.C. Tel: 902.436.4851 derek.key@keymurraylaw.com</p> <p>Lawyers for Dewis Cooke, Randy Cooke, Murphy’s Limited Liability Company and BTW Holdings Inc.</p>

CANADA REVENUE AGENCY

Insolvency Division
P.O. Box 638, Stn Central
145 Hobsons Lake Drive
Halifax, NS B3J 2T5

mike.maclean@cra-arc.gc.ca

**SHAWINIGAN-SUD NATIONAL
VERIFICATION AND COLLECTION CENTRE**

Canada Revenue Agency
4695 Shawinigan-Sud Blvd.
Shawinigan QC G9P 5H9

**ATTORNEY GENERAL OF CANADA,
DEPARTMENT OF JUSTICE**

Tax Law Services Atlantic Regional Office
Suite 1400, Duke Tower
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SCHEDULE "B"
DRAFT INITIAL ORDER AND BLACKLINE TO MODEL ORDER

IN THE COURT OF KING'S BENCH OF NEW BRUNSWICK

TRIAL DIVISION

JUDICIAL DISTRICT OF SAINT JOHN

**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 SOUTH SHORE SEAFOODS LTD.,
CAPTAIN COOKE'S SEAFOOD INC., BY THE WATER
SHELLFISH (2012) INC., CAN-AM LOBSTER & SHELLFISH
LTD., SOUTH SHORE SEAFOODS INTERNATIONAL LTD.,
BRIDGE LOBSTERS LIMITED, ARSENAULT'S FISH MART
INC. (each a "Company" and collectively the "Companies")**

B E T W E E N :

THE TORONTO-DOMINION BANK

APPLICANT

- and -

**SOUTH SHORE SEAFOODS LTD., CAPTAIN COOKE'S
SEAFOOD INC., BY THE WATER SHELLFISH (2012) INC.,
CAN-AM LOBSTER & SHELLFISH LTD., SOUTH SHORE
SEAFOODS INTERNATIONAL LTD., BRIDGE LOBSTERS
LIMITED, ARSENAULT'S FISH MART INC.**

RESPONDENTS

INITIAL ORDER

THIS APPLICATION, made by the Applicant, The Toronto-Dominion Bank, pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "CCAA") was heard this day by telephone conference at the City of Saint John, Province of New Brunswick.

ON READING the affidavit of Andrea Jamnisek sworn September 18, 2023 (the "Jamnisek Affidavit") and the Exhibits thereto, and the report of Deloitte Restructuring Inc. dated September 18, 2023 (the "Pre-Filing Report") in the capacity of proposed Monitor of the

Companies;

AND UPON IT APPEARING from the affidavit of service of [NAME] sworn [DATE] (the “**Affidavit of Service**”) that the following persons received notice of this Application:

- a) The Companies;
- b) Canada Revenue Agency;
- c) BDC Capital Inc.;
- d) Business Development Bank of Canada;
- e) Robert Arsenault;
- f) Thunder Cove Investments Inc.;
- g) Maplewood Trust, by its trustee, Warren Ellis;
- h) Dewis Cooke;
- i) Randy Cooke;
- j) Murphy’s Limited Liability Company; and
- k) BTW Holdings Inc.

AND ON READING the consent of Deloitte Restructuring Inc. to act as the Monitor, and hearing the submissions of counsel for the Applicant, the proposed Monitor, the Companies and _____ and no one appearing for any other party although duly served as appears from the Affidavit of Service of _____;

IT IS ORDERED AND DECLARED THAT:

SERVICE

1. The time for service of the Notice of Application, the Application Record and the Pre-Filing Report as set out in the Affidavit of Service is hereby deemed adequate so that this Application is properly returnable today.

APPLICATION

2. The Companies are affiliated debtor companies within the meaning of the CCAA to which the CCAA applies.

POSSESSION OF PROPERTY AND OPERATIONS

3. The Companies shall remain in possession and control of their current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate, including all proceeds thereof (the "**Property**"). Subject to further Order of this Court, the Companies shall continue to carry on business in a manner consistent with the preservation of their business (the "**Business**") and Property.

4. The Companies shall be entitled to continue to utilize the central cash management system currently in place as described in the Pre-Filing Report or replace it with another substantially similar central cash management system (the "**Cash Management System**") and that any present or future bank providing the Cash Management System shall not be under any obligation whatsoever to inquire into the propriety, validity or legality of any transfer, payment, collection or other action taken under the Cash Management System, or as to the use or application by the Companies of funds transferred, paid, collected or otherwise dealt with in the Cash Management System, shall be entitled to provide the Cash Management System without any liability in respect thereof to any Person (as hereinafter defined) other than the Companies, pursuant to the terms of the documentation applicable to the Cash Management System, and shall be, in its capacity as provider of the Cash Management System, an unaffected creditor under a plan with regard to any claims or expenses it may suffer or incur in connection with the provision of the Cash Management System.

5. The Companies may, to the extent provided for in the Approved Cash Flow (as defined in the DIP Facility Agreement attached to the Jamnisek Affidavit as Exhibit "___"), pay the following expenses whether incurred prior to or after this Order:

- a. all outstanding and future wages, salaries, employee and pension benefits, vacation pay, and expenses payable to employees who continue to provide service on or after the date of this Order ("**Active Employees**"), in each case incurred in the ordinary course of business and consistent with existing compensation policies and arrangements; and
- b. all existing and future employee health, dental, life insurance, short and long term disability and related benefits (collectively, the "**Group Benefits**") payable

on or after the date of this Order to Active Employees, in each case incurred in the ordinary course of business and consistent with existing policies and arrangements or such amended policies and arrangements as are necessary or desirable to deliver the existing Group Benefits.

6. With the consent of the Monitor, the Companies may make payments owing to suppliers, contractors, subcontractors and other creditors in respect of amounts owing prior to the date of this Order where such payments are deemed by the Companies to be necessary for the ongoing operation of the Companies or preservation of the Property, up to an aggregate limit of \$900,000.

7. Except as otherwise provided to the contrary herein, the Companies, to the extent provided for in the Approved Cash Flow, may pay all reasonable expenses incurred by the Companies in carrying on the Business in the ordinary course after this Order, and in carrying out the provisions of this Order, which expenses shall include, without limitation:

- a. all expenses and capital expenditures reasonably necessary for the preservation of the Property or the Business including, without limitation, payments on account of insurance (including directors and officers insurance), maintenance and security services; and
- b. payment for goods or services actually supplied to the Companies following the date of this Order.

8. The Companies shall remit or pay, in accordance with legal requirements or on terms as may be agreed to between the Companies and the applicable authority:

- a. any statutory deemed trust amounts in favour of the Crown in right of Canada or of any Province thereof or any other taxation authority which are required to be deducted from employees' wages, including, without limitation, amounts in respect of: i) employment insurance, ii) Canada Pension Plan, iii) Quebec Pension Plan, and iv) income taxes;
- b. all goods and services or other applicable sales taxes (collectively, "**Sales Taxes**") required to be remitted by the Companies in connection with the sale of

goods and services by the Companies, but only where such Sales Taxes are accrued or collected after the date of this Order, or where such Sales Taxes were accrued or collected prior to the date of this Order but not required to be remitted until on or after the date of this Order; and

- c. any amount payable to the Crown in right of Canada or of any Province or any regulatory or administrative body or any other authority, in all cases in respect of municipal realty, municipal business or other taxes, assessments or levies of any nature or kind which are: i) entitled at law to be paid in priority to claims of secured creditors; ii) attributable to or in respect of the ongoing Business carried on by the Companies; and iii) payable in respect of the period commencing on or after the date of this Order.

9. Until such time as any Company who is a tenant under a lease, disclaims a real property lease in accordance with the CCAA, such Company shall pay all amounts constituting rent or payable as rent under real property leases (including, for greater certainty, common area maintenance charges, utilities and realty taxes and any other amounts payable to the landlord under the lease) or as otherwise may be negotiated between the applicable Company and the landlord from time to time, for the period commencing from and including the date of this Order, in accordance with its existing lease agreements. On the date of the first of such payments, any arrears relating to the period commencing from and including the date of this Order shall also be paid.

10. Except as specifically permitted herein or by further Order of this Court, the Companies are hereby directed, until further Order of this Court: i) to make no payments of principal, interest thereon or otherwise on account of amounts owing by the Companies to any of their creditors as of the date of this Order without prior written consent of the Monitor; ii) to grant no security interests, trust, liens, charges or encumbrances upon or in respect of any of their Property; and iii) to not grant credit or incur liabilities except in the ordinary course of the Business or with the prior written approval of the Monitor.

APPOINTMENT OF CRO

11. David Boyd, as a representative of Resolve Advisory Services Ltd. ("**Resolve**"), is

hereby appointed Chief Restructuring Officer (the “CRO”) over the Companies and shall, subject to the Orders of the Court that have been and may be granted from time to time in these proceedings, have the powers to perform the services set out in the engagement letter dated September 13, 2023 in the form attached as Exhibit “_____” to the Jamnisek Affidavit (the “CRO Agreement”), provided that all such services are to be performed in conjunction with the Monitor and the Applicant.

12. The CRO Agreement is approved and the Companies are authorized to perform all of their obligations pursuant to the CRO Agreement.

13. Neither the CRO nor any employee or agent of the CRO shall be deemed to be a director or trustee of any of the Companies.

14. Neither the CRO nor any officer, director, employee or agent of the CRO, including without limitation, David Boyd, shall incur any liability or obligation as a result of its appointment or the carrying out of the provisions of this Order, save and except for any liability or obligation incurred as a result of gross negligence or wilful misconduct on its or their part; provided that any liability of the CRO hereunder shall in no event exceed the quantum of the fees paid to the CRO.

15. The fees and expenses payable to Resolve pursuant to the CRO Agreement are entitled to the benefit of the Administration Charge, as defined in the companion Charging Order dated September 21, 2023.

NO PROCEEDINGS AGAINST THE COMPANIES OR THE PROPERTY

16. Until and including October 1, 2023 , or such later date as this Court may order (the “Stay Period”), no claim, grievance, application, action, suit, right or remedy, proceeding or enforcement process in any court, tribunal or arbitration association (each, a “Proceeding”) shall be commenced, continued or enforced against or in respect of the Companies, the CRO or the Monitor, or affect the Business or the Property, except with the written consent of the Companies, the CRO, the Monitor and the Applicant, or with leave of this Court, and any and all Proceedings currently under way against or in respect of the Companies or affecting the Business or the Property are hereby stayed and suspended pending further Order of this

Court.

NO EXERCISE OF RIGHTS OR REMEDIES

17. During the Stay Period, all rights and remedies of any individual, firm, corporation, governmental body or agency, or any other entities (all of the foregoing collectively being "**Persons**" and each being a "**Person**") against or in respect of the Companies or the Monitor, or affecting the Business or the Property, are hereby stayed and suspended except with the written consent of the Companies, the Monitor and the Applicant, or leave of this Court, provided that nothing in this Order shall: i) empower the Companies to carry on any business which the Companies are not lawfully entitled to carry on; ii) affect such investigations, actions, suits or proceedings by a regulatory body as are permitted by Section 11.1 of the CCAA; iii) exempt the Companies from compliance with statutory or regulatory provisions relating to health, safety or the environment; iv) prevent the filing of any registration to preserve or perfect a security interest; or v) prevent the registration of a claim for lien and the related filing of an action to preserve the right of a lien holder provided that the Companies shall not be required to file a defence during the stay period.

NO INTERFERENCE WITH RIGHTS

18. During the Stay Period, no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Companies, including but not limited to renewal rights in respect of existing insurance policies on the same terms, except with the written consent of the Companies and the Monitor, or leave of this Court.

CONTINUATION OF SERVICES

19. During the Stay Period, all Persons having oral or written agreements with the Companies or statutory or regulatory mandates for the supply of goods and/or services, including without limitation all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Business or the Companies, are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such

goods or services as may be required by the Companies, and the Companies shall be entitled to the continued use of their current premises, telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Companies in accordance with normal payment practices of the Companies or such other practices as may be agreed upon by the supplier or service provider and each of the Companies and the Monitor, or as may be ordered by this Court.

NON-DEROGATION OF RIGHTS

20. Notwithstanding anything else contained herein, no Person shall be prohibited from requiring immediate payment for goods, services, use of lease or licensed property, or other valuable consideration provided on or after the date of this Order, nor shall any Person be under any obligation on or after the date of this Order to advance or re-advance any monies or otherwise extend any credit to the Companies.

PROCEEDINGS AGAINST DIRECTORS AND OFFICERS

21. During the Stay Period, and except as permitted by subsection 11.03(2) of the CCAA, no Proceeding may be commenced or continued against any of the former, current or future directors or officers of the Companies with respect to any claim against the directors or officers that arose before the date hereof and that relates to any obligations of the Companies whereby the directors or officers are alleged under any law to be liable in their capacity as directors or officers for the payment or performance of such obligations, until a compromise or arrangement in respect of the Companies, if one is filed, is sanctioned by this Court or is refused by the creditors of the Companies or this Court, or these proceedings are dismissed by final Order of this Court or with leave of this Court.

APPOINTMENT OF MONITOR

22. Deloitte Restructuring Inc. is hereby appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the Business and financial affairs of the Companies, the Property and the Companies' conduct of the Business with the powers and obligations set out in the CCAA or set forth herein and that the Companies and their shareholders, officers,

directors and employees shall advise the Monitor of all material steps taken by the Companies pursuant to this Order, and shall co-operate fully with the Monitor in the exercise of its powers and discharge of its obligations and provide the Monitor with the assistance that is necessary to enable the Monitor to adequately carry out the Monitor's functions.

23. The Monitor, in addition to its prescribed rights and obligations under the CCAA, is hereby directed and empowered to:

- a. monitor the Companies' receipts and disbursements;
- b. report to this Court at such times and intervals as the Monitor may deem appropriate with respect to matters relating to the Property, the Business, the activities of the Companies and such other matters as may be relevant to the proceedings herein; have full and complete access to the Property, including the premises, books, records, data, including data in electronic form, and other financial documents, relating to the Business and Property of the Companies, to the extent that is necessary to adequately assess the Companies' Business and financial affairs or to perform its duties arising under this Order;
- c. engage independent legal counsel or such other Persons as the Monitor deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order, including any affiliate of or Person related to the Monitor;
- d. develop a claims process to ascertain the quantum of the claims of all creditors;
and
- e. perform such other duties as are required by this Order or by this Court from time to time.

24. The Monitor shall not take possession of the Property and shall take no part in the management or supervision of the management of the Business and shall not, by fulfilling its obligations hereunder, be deemed to have taken or maintained possession or control of the Business or Property, or any part thereof.

25. Nothing herein contained shall limit the protections afforded the Monitor at law including those protections set out in the CCAA.

26. The Monitor shall provide any creditor of the Companies or a potential debtor-in-possession lender (“**DIP Lender**”) with information provided by the Companies in response to reasonable requests for information made in writing by such creditor or DIP Lender addressed to the Monitor. The Monitor shall not have any responsibility or liability with respect to the information disseminated by it pursuant to this paragraph. In the case of information that the Monitor has been advised by the Companies is confidential, the Monitor shall not provide such information to creditors or a DIP Lender unless otherwise directed by this Court or on such terms as the Monitor and the Companies may agree.

27. The Monitor, counsel to the Monitor, counsel to the Applicant and all counsel to the Companies (to the extent provided for in the Approved Cash Flow) shall be paid their reasonable fees and disbursements, in each case not to exceed their standard rates and charges, by the Companies as part of the costs of these proceedings. The Companies are hereby authorized and directed to pay the accounts of the Monitor, counsel for the Monitor, counsel for the Applicant and counsel for the Companies (to the extent provided for in the Approved Cash Flow) immediately upon receipt of an invoice.

28. The Monitor and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Monitor and its legal counsel are hereby referred to the Clerk of the Court of King’s Bench in New Brunswick, in accordance with the Rules of Court, or a Justice of the Court of King’s Bench in New Brunswick.

SERVICE AND NOTICE

29. The Monitor shall: i) without delay, publish in Saltwire/Telegraph a notice containing the information prescribed under the CCAA; and ii) within five (5) days after the date of this Order, (A) make this Order publicly available in the manner prescribed under the CCAA, (B) send, in the prescribed manner, a notice to every known creditor who has a claim against the Companies of more than \$1,000, and (C) prepare a list showing the names and addresses of those creditors and the estimated amounts of those claims, and make it publicly available

in the prescribed manner, all in accordance with Section 23(1)(a) of the CCAA and the regulations made thereunder.

30. The Monitor and the Applicant shall be at liberty to serve this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or electronic transmission to the Companies' creditors or other interested parties at their respective addresses as last shown on the records of the Companies and that any such service or notice by courier, personal delivery or electronic transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

31. The Applicant and the Monitor, and any party who has filed a Notice of Appearance may serve any court materials in these proceedings by e-mailing a PDF or other electronic copy of such materials to counsels' email addresses as recorded on the service list from time to time, and the Monitor may post a copy of any or all such materials on its website at <https://www.insolvencies.deloitte.ca/SouthShoreSeafoods>.

32. Except with respect to the Comeback Hearing (as defined below), a party who makes a motion in these proceedings shall, subject to further Order, serve a motion record at least ten (10) calendar days' before the date on which the motion is to be heard (the "**Return Date**").

33. Any responding party objecting to the relief sought in a motion must serve responding materials no later than 4 p.m. on the date that is four (4) calendar days before the Return Date (the "**Objection Deadline**"). If the responding party will not be serving responding material but nevertheless intends to object to the relief sought in a motion, then such responding party must serve, by the Objection Deadline, a notice stating its objection to the relief sought and the grounds for such an objection (a "**Notice of Objection**").

34. If either (i) responding materials, or (ii) a Notice of Objection is served in respect of a motion, the motion shall be heard on the Return Date, unless the Court orders otherwise.

35. If neither (i) responding materials; nor (ii) a Notice of Objection is served by the

Objection Deadline, the Monitor shall contact the judge having carriage of the motion (the “**Presiding Judge**”) and request a determination as to (a) whether a hearing is necessary, (b) whether such hearing will be in person, by telephone or by written submissions only, and (c) which parties, if any, are required to make submissions on the motion (collectively, the “**Hearing Details**”). Promptly after being advised by the Presiding Judge of the Hearing Details, the Monitor shall advise the service list of such Hearing Details. If the Presiding Judge does not direct otherwise in any Hearing Details, then the motion shall be heard on the Return Date.

COMEBACK HEARING

36. The comeback motion in these CCAA proceedings shall be heard on September 28, 2023 (the “**Comeback Hearing**”).

GENERAL

37. The Applicant, the Companies or the Monitor may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

38. Nothing in this Order shall prevent the Monitor from acting as an interim receiver, a receiver, a receiver and manager, construction lien trustee or a trustee in bankruptcy of the Companies, the Business or the Property.

39. The aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States is requested to give effect to this Order and to assist the Companies, the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Companies and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding or to assist the Companies and the Monitor and their respective agents in carrying out the terms of this Order.

40. Each of the Companies and the Monitor is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition

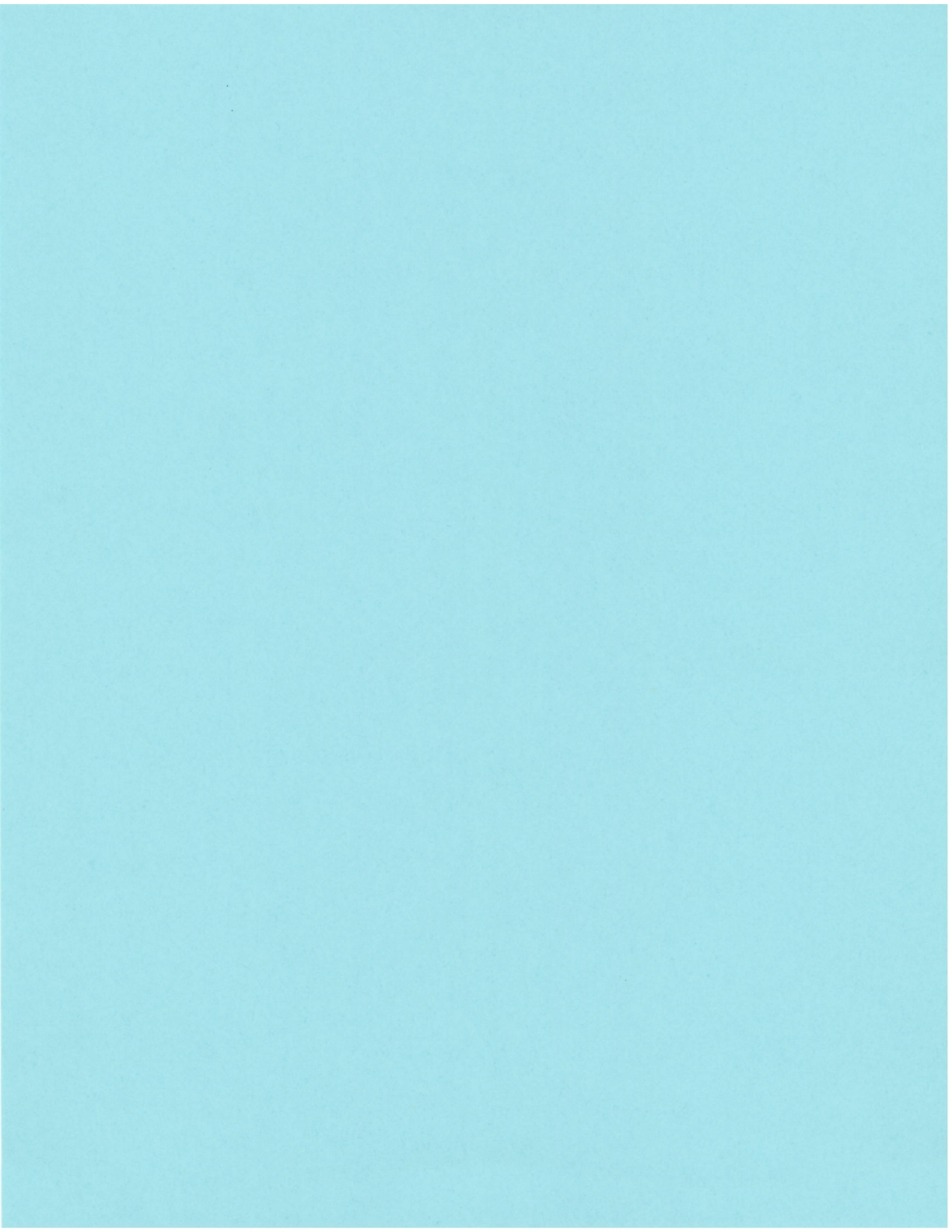
of this Order and for assistance in carrying out the terms of this Order, and the Monitor is authorized and empowered to act in a representative capacity in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

41. This Order and all of its provisions are effective as of _____ a.m./p.m Atlantic Standard/Daylight Time on the _____ day of _____.

Dated at Saint John, New Brunswick, this 21st day of September, 2023.

Justice of the Court of King's Bench
of New Brunswick

CAN_DMS: \1001223927



IN THE COURT OF ~~QUEEN~~KING'S BENCH OF NEW BRUNSWICK
TRIAL DIVISION

JUDICIAL DISTRICT OF ~~____~~SAINT JOHN

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 ~~[APPLICANT'S NAME]~~ (SOUTH
SHORE SEAFOODS LTD., CAPTAIN COOKE'S SEAFOOD
INC., BY THE WATER SHELLFISH (2012) INC., CAN-AM
LOBSTER & SHELLFISH LTD., SOUTH SHORE SEAFOODS
INTERNATIONAL LTD., BRIDGE LOBSTERS LIMITED,
ARSENAULT'S FISH MART INC. (each a "Company" and
collectively the "Applicant Companies")

BETWEEN: THE TORONTO-DOMINION BANK

APPLICANT

- and -

SOUTH SHORE SEAFOODS LTD., CAPTAIN COOKE'S
SEAFOOD INC., BY THE WATER SHELLFISH (2012) INC.,
CAN-AM LOBSTER & SHELLFISH LTD., SOUTH SHORE
SEAFOODS INTERNATIONAL LTD., BRIDGE LOBSTERS
LIMITED, ARSENAULT'S FISH MART INC.

RESPONDENTS

INITIAL ORDER

THIS APPLICATION, made by the Applicant, The Toronto-Dominion Bank, pursuant to
the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "CCAA")

was heard this day by telephone conference at ~~(address), (the City),~~ of Saint John, Province of New Brunswick.

ON READING the affidavit of ~~[NAME]~~ Andrea Jamnisek sworn ~~[DATE]~~ September 18, 2023 (the "Jamnisek Affidavit") and the Exhibits thereto, and the ~~affidavit report~~ of ~~[NAME]~~ Deloitte Restructuring Inc. dated ~~[DATE]~~ September 18, 2023 (the "Pre-Filing Report") in the capacity of proposed Monitor of the ~~Applicant~~ Companies;

AND UPON IT APPEARING from the affidavit of service of [NAME] sworn [DATE] (the "Affidavit of Service") that the following persons ~~[identify secured creditors and others served]~~ received notice of this Application:;

- a) The Companies;
- b) Canada Revenue Agency;
- c) BDC Capital Inc.;
- d) Business Development Bank of Canada;
- e) Robert Arsenault;
- f) Thunder Cove Investments Inc.;
- g) Maplewood Trust, by its trustee, Warren Ellis;
- h) Dewis Cooke;
- i) Randy Cooke;
- j) Murphy's Limited Liability Company; and
- k) BTW Holdings Inc.

AND ON READING the consent of ~~[MONITOR'S NAME]~~ Deloitte Restructuring Inc. to act as the Monitor, and hearing the submissions of counsel for ~~[NAMES]~~ the Applicant, the proposed Monitor, the Companies and _____ and no one appearing for any other party although duly served as appears from the Affidavit of Service of _____;

IT IS ORDERED AND DECLARED THAT:

SERVICE

1. The time for service of the Notice of Application ~~and,~~ the Application Record and the Pre-Filing Report as set out in the Affidavit of Service is hereby deemed adequate¹ so that this Application is properly returnable today ~~[and further service thereof is hereby dispensed with].~~²

APPLICATION

2. The ~~Applicant is a company~~ Companies are affiliated debtor companies within the meaning of the CCAA to which the CCAA applies³.

~~PLAN OF ARRANGEMENT~~

~~3. The Applicant, in consultation with the Monitor, shall have the authority to file and may, subject to further order of this Court, file with this Court a plan of compromise or arrangement (hereinafter referred to as the "Plan").~~

POSSESSION OF PROPERTY AND OPERATIONS

3. ~~4.~~ The ~~Applicant~~ Companies shall remain in possession and control of ~~its~~ their current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate, including all proceeds thereof (the "Property"). Subject

¹ ~~The Applicant should seek to have service deemed adequate if it was done in a manner other than as authorized by the Rules of Court.~~

² ~~This provision should only be used when all parties entitled to notice have been served with notice of the application. If all parties entitled to service have not been served then the section should be deleted and the Initial Order should provide for a motion hearing as set out in Sections 29 and 39.~~

³ ~~If there are multiple applicants, the Order should confirm that the applicants are "affiliated debtor companies" within the meaning of the CCAA.~~

to further Order of this Court, the ~~Applicant~~Companies shall continue to carry on business in a manner consistent with the preservation of ~~its~~their business (the "**Business**") and Property.

4. The ~~Applicant~~Companies shall be ~~authorized and empowered~~entitled to continue to ~~retain and employ, consultants, agents, experts, accountants, counsel and such other persons (collectively "Assistants") and the employees currently retained or employed by it, with liberty to retain such further Assistants as it deems reasonably necessary~~utilize the central cash management system currently in place as described in the Pre-Filing Report or replace it with another substantially similar central cash management system (the "Cash Management System") and that any present or future bank providing the Cash Management System shall not be under any obligation whatsoever to inquire into the propriety, validity or legality of any transfer, payment, collection or other action taken under the Cash Management System, or as to the use or application by the Companies of funds transferred, paid, collected or otherwise dealt with in the Cash Management System, shall be entitled to provide the Cash Management System without any liability in respect thereof to any Person (as hereinafter defined) other than the Companies, pursuant to the terms of the documentation applicable to the Cash Management System, and shall be, in its capacity as provider of the Cash Management System, an unaffected creditor under a plan with regard to any claims or expenses it may suffer or desirableincur in connection with the ordinary course of business or for provision of the carrying out of the terms of this OrderCash Management System.

5. ⁴The ~~Applicant~~Companies may, to the extent provided for in the Approved Cash Flow

⁴~~If the Applicant has a central cash management system the provision below may be inserted in advance of paragraph 5 above. This provision should only be utilized where necessary, in view of the fact that central cash management systems often operate in a manner that consolidates the cash of applicant. Specific attention should be paid to cross border and inter company transfers of cash. If there are multiple applicant companies it may be appropriate to create an inter company charge that provides a charge against the assets of one applicant company for any amount advanced from another applicant company.~~

~~"5. The Applicant shall be entitled to continue to utilize the central cash management system~~

(as defined in the DIP Facility Agreement attached to the Jamnisek Affidavit as Exhibit “ ”), pay the following expenses whether incurred prior to or after this Order:

- a. all outstanding and future wages, salaries, employee and pension benefits, vacation pay, and expenses payable to employees who continue to provide service on or after the date of this Order (“**Active Employees**”), in each case incurred in the ordinary course of business and consistent with existing compensation policies and arrangements; and
- b. all existing and future employee health, dental, life insurance, short and long term disability and related benefits (collectively, the “**Group Benefits**”) payable on or after the date of this Order to Active Employees, in each case incurred in the ordinary course of business and consistent with existing policies and arrangements or such amended policies and arrangements as are necessary or desirable to deliver the existing Group Benefits;~~and~~
- ~~c. with prior written approval of the Monitor, the fees and disbursements for any Assistants retained or employed by the Applicant in respect of these proceedings, at their reasonable standard rates and charges.~~

6. With the consent of the Monitor, the Companies may make payments owing to suppliers, contractors, subcontractors and other creditors in respect of amounts owing

~~currently in place as described in the Affidavit of [NAME] sworn [DATE] or replace it with another substantially similar central cash management system (the "Cash Management System") and that any present or future bank providing the Cash Management System shall not be under any obligation whatsoever to inquire into the propriety, validity or legality of any transfer, payment, collection or other action taken under the Cash Management System, or as to the use or application by the Applicant of funds transferred, paid, collected or otherwise dealt with in the Cash Management System, shall be entitled to provide the Cash Management System without any liability in respect thereof to any Person (as hereinafter defined) other than the Applicant, pursuant to the terms of the documentation applicable to the Cash Management System, and shall be, in its capacity as provider of the Cash Management System, an unaffected creditor under the Plan with regard to any claims or expenses it may suffer or incur in connection with the provision of the Cash Management System."~~

prior to the date of this Order where such payments are deemed by the Companies to be necessary for the ongoing operation of the Companies or preservation of the Property, up to an aggregate limit of \$900,000.

7. ~~6.~~ Except as otherwise provided to the contrary herein, the ~~Applicant~~Companies, to the extent provided for in the Approved Cash Flow, may pay all reasonable expenses incurred by the ~~Applicant~~Companies in carrying on the Business in the ordinary course after this Order, and in carrying out the provisions of this Order, which expenses shall include, without limitation:

- a. all expenses and capital expenditures reasonably necessary for the preservation of the Property or the Business including, without limitation, payments on account of insurance (including directors and officers insurance), maintenance and security services; and
- b. payment for goods or services actually supplied to the ~~Applicant~~Companies following the date of this Order.

8. ~~7.~~ The ~~Applicant~~Companies shall remit or pay, in accordance with legal requirements or on terms as may be agreed to between the ~~Applicant~~Companies and the applicable authority:

- a. any statutory deemed trust amounts in favour of the Crown in right of Canada or of any Province thereof or any other taxation authority which are required to be deducted from employees' wages, including, without limitation, amounts in respect of: i) employment insurance, ii) Canada Pension Plan, iii) Quebec Pension Plan, and iv) income taxes;
- b. all goods and services or other applicable sales taxes (collectively, "**Sales Taxes**") required to be remitted by the ~~Applicant~~Companies in connection with the sale of goods and services by the ~~Applicant~~Companies, but only where

such Sales Taxes are accrued or collected after the date of this Order, or where such Sales Taxes were accrued or collected prior to the date of this Order but not required to be remitted until on or after the date of this Order; and

- c. any amount payable to the Crown in right of Canada or of any Province or any regulatory or administrative body or any other authority, in all cases in respect of municipal realty, municipal business or other taxes, assessments or levies of any nature or kind which are: i) entitled at law to be paid in priority to claims of secured creditors; ii) attributable to or in respect of the ongoing Business carried on by the ~~Applicant~~Companies; and iii) payable in respect of the period commencing on or after the date of this Order.

9. ~~8.~~ Until such time as ~~the Applicant~~any Company who is a tenant under a lease, disclaims ~~[or resiliates]~~ a real property lease ⁵in accordance with the CCAA, ~~the Applicant~~such Company shall pay all amounts constituting rent or payable as rent under real property leases (including, for greater certainty, common area maintenance charges, utilities and realty taxes and any other amounts payable to the landlord under the lease) or as otherwise may be negotiated between the ~~Applicant~~applicable Company and the landlord from time to time (~~"Rent"~~), for the period commencing from and including the date of this Order, in accordance with its existing lease agreements. On the date of the first of such payments, any arrears relating to the period commencing from and including the date of this Order shall also be paid.

⁵~~The term "resiliate" should remain if there are leased premises in the Province of Quebec, but can otherwise be removed.~~

10. ~~9.~~ Except as specifically permitted herein or by further Order of this Court⁶, the ~~Applicant is~~ Companies are hereby directed, until further Order of this Court: i) to make no payments of principal, interest thereon or otherwise on account of amounts owing by the ~~Applicant~~ Companies to any of ~~its~~ their creditors as of the date of this ~~e~~ O order without prior written consent of the Monitor;⁷ ii) to grant no security interests, trust, liens, charges or encumbrances upon or in respect of any of ~~its~~ their Property; and iii) to not grant credit or incur liabilities except in the ordinary course of the Business or with the prior written approval of the Monitor.

RESTRUCTURING

~~10. The Applicant shall, subject to such requirements as are imposed by the Monitor and under any agreements for debtor in possession financing which may be granted, have the right to:~~

- ~~a. permanently or temporarily cease, downsize or shut down any of its business or operations,~~
- ~~b. [terminate the employment of such of its employees or temporarily lay off such of its employees as it deems appropriate and, as applicable, in accordance with the terms of any collective agreement];⁷~~
- ~~c. pursue all avenues of refinancing of its Business or Property, in whole or part, subject to prior approval of this Court being obtained before any refinancing; and~~
- ~~d. in accordance with its ordinary course of business, dispose of redundant or~~

⁶ This language is inserted to allow for payments which may be authorized by the Court under a companion charging order or otherwise.

⁷ Reference should be made to section 33 of the CCAA.

~~non-material assets not exceeding \$ _____ in value in the aggregate.~~

APPOINTMENT OF CRO

11. David Boyd, as a representative of Resolve Advisory Services Ltd. (“Resolve”), is hereby appointed Chief Restructuring Officer (the “CRO”) over the Companies and shall, subject to the Orders of the Court that have been and may be granted from time to time in these proceedings, have the powers to perform the services set out in the engagement letter dated September 13, 2023 in the form attached as Exhibit “_____” to the Jamnisek Affidavit (the “CRO Agreement”), provided that all such services are to be performed in conjunction with the Monitor and the Applicant.

12. The CRO Agreement is approved and the Companies are authorized to perform all of their obligations pursuant to the CRO Agreement.

13. Neither the CRO nor any employee or agent of the CRO shall be deemed to be a director or trustee of any of the Companies.

14. Neither the CRO nor any officer, director, employee or agent of the CRO, including without limitation, David Boyd, shall incur any liability or obligation as a result of its appointment or the carrying out of the provisions of this Order, save and except for any liability or obligation incurred as a result of gross negligence or wilful misconduct on its or their part; provided that any liability of the CRO hereunder shall in no event exceed the quantum of the fees paid to the CRO.

15. The fees and expenses payable to Resolve pursuant to the CRO Agreement are entitled to the benefit of the Administration Charge, as defined in the companion Charging Order dated September 21, 2023.

NO PROCEEDINGS AGAINST THE ~~APPLICANT~~COMPANIES OR THE PROPERTY

16. ~~11.~~ Until and including ~~[DATE — MAX. 30 DAYS]~~October 1, 2023, or such later date

as this Court may order (the "Stay Period"), no claim, grievance, application, action, suit, right or remedy, proceeding or enforcement process in any court, tribunal or arbitration association (each, a "Proceeding") shall be commenced, continued or enforced against or in respect of the Applicant Companies, the CRO or the Monitor, or affecting the Business or the Property, except with the written consent of the Applicant and Companies, the CRO, the Monitor and the Applicant, or with leave of this Court, and any and all Proceedings currently under way against or in respect of the Applicant Companies or affecting the Business or the Property are hereby stayed and suspended pending further Order of this Court.

NO EXERCISE OF RIGHTS OR REMEDIES

17. ~~12.~~—During the Stay Period, all rights and remedies of any individual, firm, corporation, governmental body or agency, or any other entities (all of the foregoing collectively being "Persons" and each being a "Person") against or in respect of the Applicant Companies or the Monitor, or affecting the Business or the Property, are hereby stayed and suspended except with the written consent of the Applicant and Companies, the Monitor and the Applicant, or leave of this Court, provided that nothing in this Order shall: i) empower the Applicant Companies to carry on any business which the Applicant is Companies are not lawfully entitled to carry on; ii) affect such investigations, actions, suits or proceedings by a regulatory body as are permitted by Section 11.1 of the CCAA; iii) exempt the Applicant Companies from compliance with statutory or regulatory provisions relating to health, safety or the environment; iv) prevent the filing of any registration to preserve or perfect a security interest; or v) prevent the registration of a claim for lien and the related filing of an action to preserve the right of a lien holder provided that the Applicant Companies shall not be required to file a defence during the stay period.

NO INTERFERENCE WITH RIGHTS

18. ~~13.~~ During the Stay Period, no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the ApplicantCompanies, including but not limited to renewal rights in respect of existing insurance policies on the same terms, except with the written consent of the ApplicantCompanies and the Monitor, or leave of this Court.

CONTINUATION OF SERVICES

19. ~~14.~~ During the Stay Period, all Persons having oral or written agreements with the ApplicantCompanies or statutory or regulatory mandates for the supply of goods and/or services, including without limitation all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Business or the ApplicantCompanies, are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the ApplicantCompanies, and the ApplicantCompanies shall be entitled to the continued use of ~~its~~their current premises, telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the ApplicantCompanies in accordance with normal payment practices of the ApplicantCompanies or such other practices as may be agreed upon by the supplier or service provider and each of the ApplicantCompanies and the Monitor, or as may be ordered by this Court.

NON-DEROGATION OF RIGHTS

20. ~~15.~~ Notwithstanding anything else contained herein, no Person shall be prohibited from requiring immediate payment for goods, services, use of lease or licensed property, or other valuable consideration provided on or after the date of this Order, nor shall any

Person be under any obligation on or after the date of this Order to advance or re-advance any monies or otherwise extend any credit to the ~~Applicant~~Companies.⁸

PROCEEDINGS AGAINST DIRECTORS AND OFFICERS

21. ~~16.~~ During the Stay Period, and except as permitted by subsection 11.03(2) of the CCAA, no Proceeding may be commenced or continued against any of the former, current or future directors or officers of the ~~Applicant~~Companies with respect to any claim against the directors or officers that arose before the date hereof and that relates to any obligations of the ~~Applicant~~Companies whereby the directors or officers are alleged under any law to be liable in their capacity as directors or officers for the payment or performance of such obligations, until a compromise or arrangement in respect of the ~~Applicant~~Companies, if one is filed, is sanctioned by this Court or is refused by the creditors of the ~~Applicant~~Companies or this Court, or these proceedings are dismissed by final Order of this Court or with leave of this Court.

APPOINTMENT OF MONITOR

22. ~~17.~~ ~~[MONITOR'S NAME]~~Deloitte Restructuring Inc. is hereby appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the Business and financial affairs of the ~~Applicant~~Companies, the Property and the ~~Applicant~~Companies's conduct of the Business with the powers and obligations set out in the CCAA or set forth herein and that the ~~Applicant~~Companies and ~~its~~their shareholders, officers, directors, and employees ~~and Assistants~~ shall advise the Monitor of all material steps taken by the ~~Applicant~~Companies pursuant to this Order, and shall co-operate fully with the Monitor in the exercise of its powers and discharge of its obligations and provide the Monitor with the

⁸ ~~The Order must conform with the provisions of the CCAA. Particular attention should be paid when drafting the Order as a number of actions or steps cannot be stayed and the stay is subject to certain limits and restrictions under the CCAA. See, for example, CCAA Sections 11.01, 11.04, 11.06, 11.07, 11.08, 11.1(2) and 11.5(1).~~

assistance that is necessary to enable the Monitor to adequately carry out the Monitor's functions.

23. ~~18.~~ The Monitor, in addition to its prescribed rights and obligations under the CCAA, is hereby directed and empowered to:

- a. monitor the ~~Applicant's~~ Companies' receipts and disbursements;
- b. report to this Court at such times and intervals as the Monitor may deem appropriate with respect to matters relating to the Property, the Business, the activities of the ~~Applicant~~ Companies and such other matters as may be relevant to the proceedings herein;
- ~~c. advise the Applicant in its development of the Plan and any amendments to the Plan, and, to the extent deemed appropriate by the Monitor, assist in its negotiations with creditors, customers, vendors and other interested Persons;~~
- ~~d. assist the Applicant, to the extent deemed appropriate by the Monitor, with the holding and administering of creditors' or shareholders' meetings for voting on the Plan;~~
- e. have full and complete access to the Property, including the premises, books, records, data, including data in electronic form, and other financial documents, relating to the Business and Property of the ~~Applicant~~ Companies, to the extent that is necessary to adequately assess the ~~Applicant~~ Companies's Business and financial affairs or to perform its duties arising under this Order;
- c. ~~f.~~ engage independent legal counsel or such other ~~p~~ Persons as the Monitor deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order, including any affiliate of or ~~p~~ Person related to the Monitor;

d. ~~g.~~ develop a claims process to ascertain the quantum of the claims of all creditors; and

e. ~~h.~~ perform such other duties as are required by this Order or by this Court from time to time.

24. ~~19.~~ The Monitor shall not take possession of the Property and shall take no part in the management or supervision of the management of the Business and shall not, by fulfilling its obligations hereunder, be deemed to have taken or maintained possession or control of the Business or Property, or any part thereof.

25. ~~20.~~ Nothing herein contained shall limit the protections afforded the Monitor at law including those protections set out in the CCAA.

26. ~~21.~~ The Monitor shall provide any creditor of the ~~Applicant~~Companies or a potential ~~Debtor~~Debtor-in-Possession lender (“**DIP Lender**”) with information provided by the ~~Applicant~~Companies in response to reasonable requests for information made in writing by such creditor or DIP Lender addressed to the Monitor. The Monitor shall not have any responsibility or liability with respect to the information disseminated by it pursuant to this paragraph. In the case of information that the Monitor has been advised by the ~~Applicant~~Companies is confidential, the Monitor shall not provide such information to creditors or a DIP Lender unless otherwise directed by this Court or on such terms as the Monitor and the ~~Applicant~~Companies may agree.

27. ~~22.~~ The Monitor, counsel to the Monitor, counsel to the Applicant and all counsel to the ~~Applicant~~Companies (to the extent provided for in the Approved Cash Flow) shall be paid their reasonable fees and disbursements, in each case not to exceed their standard rates and charges, by the ~~Applicant~~Companies as part of the costs of these proceedings. The ~~Applicant is~~Companies are hereby authorized and directed to pay the accounts of the Monitor, counsel for the Monitor ~~and,~~ counsel for the Applicant ~~on a [TIME INTERVAL] basis~~

and, in addition, the Applicant is hereby authorized to pay to the Monitor, counsel ~~to~~for the Monitor, and counsel Companies (to the Applicant, retainers extent provided for in the amount[s] of \$ ~~—~~ [, respectively,] to be held by them as security for payment of their respective fees and disbursements outstanding from time to time Approved Cash Flow) immediately upon receipt of an invoice.

28. The Monitor and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Monitor and its legal counsel are hereby referred to the Clerk of the Court of ~~Queen~~King's Bench in New Brunswick, in accordance with the Rules of Court, or a Justice of the Court of ~~Queen~~King's Bench in New Brunswick.

~~[NOTE: If the companion CCAA Charging Order will not be granted or the Court directs that a comeback hearing would be appropriate, the following provisions may be used to provide for an interim Administrative Charge and a comeback hearing:~~

~~[ADMINISTRATIVE CHARGE]~~

~~23.— [The Monitor, the Monitor's counsel and the Applicants' counsel (collectively, the "Chargees") shall be entitled to the benefit of and are hereby granted a charge (the "Administration Charge") on the Property, which charge shall not exceed an aggregate amount of \$ _____, as security for their professional fees and disbursements incurred at the standard rates and charges of the Monitor and such counsel, both before and after the making of this Order in respect of these proceedings.]~~

~~24.— [The filing, registration or perfection of the Administration Charge shall not be required and the Administration Charge shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the Administration Charge coming into existence, notwithstanding any such failure to file, register, record or perfect.]~~

~~25. — [The Administration Charge shall constitute a charge on the Property and shall rank in priority to claims of the following secured creditors: [identify secured creditors who have received notice as required by CCAA section 11.52 and over whom priority is sought] and in priority to any other interests, trusts, liens, charges and encumbrances and claims, statutory or otherwise, in favour of any Person.]~~

~~26. — [The Applicant and the Chargees shall be entitled, upon giving notice to parties likely affected, to seek an Order changing the amount of the Administration Charge or providing that the Administrative Charge shall rank in priority to secured claims not listed in paragraph 26.]~~

~~27. — [Except as otherwise expressly provided for herein, or as may be approved by this Court, the Applicant shall not grant any encumbrance over any Property that ranks in priority to, or pari passu with the Administration Charge unless the Applicant also obtains the prior written consent of the Chargees, or further Order of this Court]~~

~~28. — [The Administration Charge shall not be rendered invalid or unenforceable and the rights and remedies of the Chargees shall not otherwise be limited or impaired in any way by: (a) the pendency of these proceedings and the declarations of insolvency made herein; (b) any application(s) for bankruptcy order(s) issued pursuant to the Bankruptcy and Insolvency Act, R.S.C 1985, c. B-3 (the "BIA"), or any bankruptcy order made pursuant to such applications; (c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; or (d) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of encumbrances, contained in any existing loan documents, lease, sublease, offer to lease or other agreement (collectively, an "Agreement") which binds the Applicants, and notwithstanding any provision to the contrary in any Agreement:~~

- ~~a. the creation of the Administration Charge shall not create or be deemed to constitute a breach by the Applicant of any Agreement to which it is a party;~~

~~b. none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the Applicant seeking the creation of the Administration Charge; and~~

~~c. the payments made by the Applicant pursuant to this Order do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.]~~

SERVICE AND NOTICE

29. The Monitor shall: i) without delay, publish in ~~[newspapers specified by the Court]~~[Saltwire/Telegraph](#) a notice containing the information prescribed under the CCAA; and ii) within five (5) days after the date of this Order, (A) make this Order publicly available in the manner prescribed under the CCAA, (B) send, in the prescribed manner, a notice to every known creditor who has a claim against the ~~Applicant~~[Companies](#) of more than \$1,000, and (C) prepare a list showing the names and addresses of those creditors and the estimated amounts of those claims, and make it publicly available in the prescribed manner, all in accordance with Section 23(1)(a) of the CCAA and the regulations made thereunder.

30. The ~~Monitor and the Applicant and the Monitor~~ shall be at liberty to serve this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or electronic transmission to the ~~Applicant's~~[Companies'](#) creditors or other interested parties at their respective addresses as last shown on the records of the ~~Applicant~~[Companies](#) and that any such service or notice by courier, personal delivery or electronic transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

31. The Applicant and the Monitor, and any party who has filed a Notice of Appearance may serve any court materials in these proceedings by e-mailing a PDF or other electronic copy of such materials to counsels' email addresses as recorded on the service list from

time to time, and the Monitor may post a copy of any or all such materials on its website at ~~{INSERT WEBSITE ADDRESS}~~ <https://www.insolvencies.deloitte.ca/SouthShoreSeafoods>.

GENERAL

32. Except with respect to the Comeback Hearing (as defined below), a party who makes a motion in these proceedings shall, subject to further Order, serve a motion record at least ten (10) calendar days' before the date on which the motion is to be heard (the "Return Date").

33. Any responding party objecting to the relief sought in a motion must serve responding materials no later than 4 p.m. on the date that is four (4) calendar days before the Return Date (the "**Objection Deadline**"). If the responding party will not be serving responding material but nevertheless intends to object to the relief sought in a motion, then such responding party must serve, by the Objection Deadline, a notice stating its objection to the relief sought and the grounds for such an objection (a "**Notice of Objection**").

34. If either (i) responding materials, or (ii) a Notice of Objection is served in respect of a motion, the motion shall be heard on the Return Date, unless the Court orders otherwise.

35. If neither (i) responding materials; nor (ii) a Notice of Objection is served by the Objection Deadline, the Monitor shall contact the judge having carriage of the motion (the "**Presiding Judge**") and request a determination as to (a) whether a hearing is necessary, (b) whether such hearing will be in person, by telephone or by written submissions only, and (c) which parties, if any, are required to make submissions on the motion (collectively, the "**Hearing Details**"). Promptly after being advised by the Presiding Judge of the Hearing Details, the Monitor shall advise the service list of such Hearing Details. If the Presiding Judge does not direct otherwise in any Hearing Details, then the motion shall be heard on the Return Date.

COMEBACK HEARING

36. The comeback motion in these CCAA proceedings shall be heard on September 28, 2023 (the “Comeback Hearing”).

GENERAL

37. ~~36.~~ The Applicant, the Companies or the Monitor may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

38. ~~37.~~ Nothing in this Order shall prevent the Monitor from acting as an interim receiver, a receiver, a receiver and manager, construction lien trustee or a trustee in bankruptcy of the ~~Applicant~~Companies, the Business or the Property.

39. ~~38.~~ The aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States, is requested to give effect to this Order and to assist the ~~Applicant~~Companies, the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the ~~Applicant~~Companies and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the ~~Applicant~~Companies and the Monitor and their respective agents in carrying out the terms of this Order.

40. ~~39.~~ Each of the ~~Applicant~~Companies and the Monitor is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and the Monitor is authorized and empowered to act in a representative capacity in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

41. ~~40.~~ This Order and all of its provisions are effective as of _____ a.m./p.m Atlantic Standard/Daylight Time on the _____ day of _____.

Dated at ~~_____~~ Saint John, New Brunswick, this ~~_____~~ 21st day of ~~_____~~,
~~_____~~ September, 2023.

Justice of the Court of ~~Queen~~King's Bench
of New Brunswick

SCHEDULE "C"
DRAFT CHARGING ORDER AND BLACKLINE TO MODEL ORDER

IN THE COURT OF KING'S BENCH OF NEW BRUNSWICK

TRIAL DIVISION

JUDICIAL DISTRICT OF SAINT JOHN

**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 SOUTH SHORE SEAFOODS LTD.,
CAPTAIN COOKE'S SEAFOOD INC., BY THE WATER
SHELLFISH (2012) INC., CAN-AM LOBSTER & SHELLFISH
LTD., SOUTH SHORE SEAFOODS INTERNATIONAL LTD.,
BRIDGE LOBSTERS LIMITED, ARSENAULT'S FISH MART
INC. (each a "Company" and collectively the "Companies")**

B E T W E E N :

THE TORONTO-DOMINION BANK

APPLICANT

- and -

**SOUTH SHORE SEAFOODS LTD., CAPTAIN COOKE'S
SEAFOOD INC., BY THE WATER SHELLFISH (2012) INC.,
CAN-AM LOBSTER & SHELLFISH LTD., SOUTH SHORE
SEAFOODS INTERNATIONAL LTD., BRIDGE LOBSTERS
LIMITED, ARSENAULT'S FISH MART INC.**

RESPONDENTS

CHARGING ORDER

THE INITIAL APPLICATION, made by the Applicant, The Toronto-Dominion Bank, pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "CCAA") was heard by telephone conference and the Court granted an Order (the "Initial Order") on the 21st day of September, 2023.

WHEREAS the Applicant also requested in its initial application the granting of certain Charges, as defined below, in priority to the interests of the Companies' existing secured creditors.

ON READING the affidavit of Andrea Jamnisek sworn September 18, 2023 and the

Exhibits thereto (the “**Jamnisek Affidavit**”), the report of Deloitte Restructuring Inc. dated September 15, 2023, in its capacity as proposed Monitor of the Companies, and on being satisfied that, Canada Revenue Agency, BDC Capital Inc., Business Development Bank of Canada, Robert Arsenault, Thunder Cove Investments Inc., Maplewood Trust, by its trustee, the secured creditors who are likely to be affected by the Charges, as defined below, created herein were given notice as set out in the affidavit of service of [NAME] sworn [DATE] and the Exhibits thereto (the “**Affidavit of Service**”), and on hearing the submissions of counsel for [NAMES], no one appearing for [NAME] although duly served as appears from the Affidavit of Service.

IT IS ORDERED AND DECLARED THAT:

SERVICE

1. The service of the Notice of Application and the Application Record as set out in the Affidavit of Service is deemed adequate so that this Application is properly returnable today and further service thereof is hereby dispensed with.

INTERPRETATION

2. All Capitalized words used in this Order that are not otherwise defined in this Order have the meanings ascribed to them in the Initial Order.

DIRECTORS’ AND OFFICERS’ INDEMNIFICATION AND CHARGE

3. The Companies shall indemnify their directors and officers against obligations and liabilities that they may incur as directors or officers of the Companies after the commencement of the within proceedings, except to the extent that, with respect to any officer or director, the obligation or liability was incurred as a result of the director's or officer's gross negligence or actionable misconduct.

4. The directors and officers of the Companies shall be entitled to the benefit of and are hereby granted a charge (the “**Directors’ Charge**”) on the Property, which charge shall not exceed an aggregate amount of \$375,000, as security for the indemnity provided in this Order. The Directors’ Charge shall have the priority set out herein.

5. Notwithstanding any language in any applicable insurance policy to the contrary, (a) the Companies' directors and officers shall only be entitled to the benefit of the Directors' Charge to the extent that they do not have coverage under any directors' and officers' insurance policy, or to the extent that such coverage is insufficient to pay amounts indemnified in accordance with this Order, and (b) no insurer shall be entitled to be subrogated to or claim the benefit of the Directors' Charge.

ADMINISTRATIVE CHARGE

6. The Monitor, counsel to the Monitor, counsel to the Applicant, the Chief Restructuring Officer and, subject to Paragraph 8, the Companies' counsel shall be entitled to the benefit of and are hereby granted a charge (the "**Administration Charge**") on the Property, which charge shall not exceed an aggregate amount of \$250,000, as security for their professional fees and disbursements incurred at the standard rates and charges of the Monitor and such counsel, both before and after the making of this Order in respect of these proceedings. The Administration Charge shall have the priority set out herein.

7. Subject to further order of this Court, the Companies' counsel shall be entitled to the benefit of the Administration Charge on the Property up to an aggregate maximum amount of \$25,000.

DIP FINANCING

8. The Companies are hereby authorized and empowered to obtain and borrow under a credit facility from The Toronto-Dominion Bank (the "**DIP Lender**") in order to finance the Companies' working capital requirements and other general corporate purposes and capital expenditures, provided that borrowings under such credit facility shall not exceed \$3,000,000 (the "**DIP Facility**") unless permitted by further Order of this Court.

9. The DIP Facility shall be substantially on the terms and subject to the conditions set forth in the Dip Facility Agreement between the Companies and the DIP Lender dated as of September 18, 2023 (the "**DIP Facility Agreement**") annexed hereto as Schedule "A", as same may be amended from time to time with the Monitor's written consent provided any amendment may not affect a secured creditor's rights without further order of this Court.

10. The Companies are hereby authorized and empowered to execute and deliver such credit agreements, mortgages, charges, hypothecs and security documents, guarantees and other definitive documents (collectively, the "**DIP Documents**"), as are contemplated by the DIP Facility Agreement or as may be reasonably required by the DIP Lender pursuant to the terms thereof, and the Companies are hereby authorized and directed to pay and perform all of their indebtedness, interest, fees, liabilities and obligations including, on account of any pre-filing obligations, to the DIP Lender under and pursuant to the DIP Facility Agreement as and when the same become due and are to be performed, from funds on hand or from funds generated by post-filing sales of inventory or otherwise, notwithstanding any other provision of this Order or the Initial Order.

11. The DIP Lender shall be entitled to the benefit of and is hereby granted a charge (the "**DIP Lender's Charge**") on the Property as security for any and all obligations of the Companies under or pursuant to the DIP Facility and the DIP Facility Agreement, which charge shall not exceed the aggregate amount owed to the DIP Lender under or pursuant to the DIP Facility and the DIP Facility Agreement. The DIP Lender's Charge shall have the priority set out herein.

12. Notwithstanding any other provision of this Order or the Initial Order:

- a. the DIP Lender may take such steps from time to time as it may deem necessary or appropriate to file, register, record or perfect the DIP Lender's Charge or the DIP Facility Agreement or any of the DIP Documents;
- b. upon the occurrence of an event of default under the DIP Facility Agreement or DIP Documents or the DIP Lender's Charge, the DIP Lender, upon five (5) days notice to the Companies and the Monitor, may with leave of the Court exercise any and all of its rights and remedies against the Companies or the Property under or pursuant to the DIP Facility Agreement, DIP Documents and the DIP Lender's Charge; and
- c. the foregoing rights and remedies of the DIP Lender shall be enforceable against any trustee in bankruptcy, interim receiver, receiver or receiver and manager of the Companies or the Property.

13. The DIP Lender shall be treated as unaffected in any plan under the CCAA, or any proposal filed by the Companies under the *Bankruptcy and Insolvency Act* of Canada (the "**BIA**"), with respect to any advances made under the DIP Facility Agreement or the DIP Documents and with respect to any claims and rights the DIP Lender may have under or pursuant to any agreements related to the DIP Facility.

VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER

14. The priorities of the Directors' Charge, the Administration Charge, and the DIP Lender's Charge as among them, and as against the existing security held by any secured creditor prior to the issuance of this Order (the "**Existing Security**") subject to Paragraph 17, shall be as follows:

- a. First – Administration Charge;
- b. Second – Directors' Charge;
- c. Third – DIP Lender's Charge; and
- d. Fourth - Existing Security in such priority as they currently have.

15. The filing, registration or perfection of the Directors' Charge, the Administration Charge and the DIP Lender's Charge (collectively, the "**Charges**") shall not be required, and the Charges shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the Charges coming into existence, notwithstanding any such failure to file, register, record or perfect.

16. Each of the Charges (all as constituted and defined herein) shall constitute a charge on the Property and such Charges shall rank in priority to all other security interests, trusts, liens, charges and encumbrances, statutory or otherwise (collectively, "**Encumbrances**") in favour of any Person, other than any secured creditors under the Existing Security who have not been served with this Application prior to this hearing, and provided that the DIP Lender's Charge shall not rank in priority to any of the security interests, liens, charges and encumbrances granted by the Companies in favour of BDC Capital Inc. or the Business Development Bank of Canada in respect of any BDC Priority Loans and BDC Priority Collateral (as both terms are defined in the DIP Facility Agreement) or in respect of any Crown claims

which have priority in bankruptcy.

17. Except as otherwise expressly provided for herein, or as may be approved by this Court, the Companies shall not grant any Encumbrances over any Property that rank in priority to, or *pari passu* with, the Existing Security or any of the Charges unless the Companies also obtain the prior written consent of the Monitor, their existing secured creditors and the beneficiaries of the Charges (the “**Chargees**”), or further Order of this Court.

18. The Charges, the DIP Facility Agreement and the DIP Documents shall not be rendered invalid or unenforceable and the rights and remedies of the Chargees shall not otherwise be limited or impaired in any way by i) the pendency of these proceedings and the declarations of insolvency made herein; ii) any application(s) for bankruptcy order(s) issued pursuant to the BIA, or any bankruptcy order made pursuant to such applications; iii) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; iv) the provisions of any federal or provincial statutes; or v) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, lease, sublease, offer to lease or other agreement (collectively, an “**Agreement**”) which binds the Companies. Notwithstanding any provision to the contrary in any Agreement:

- a. neither the creation of the Charges nor the execution, delivery, perfection, registration or performance of the DIP Facility Agreement or the DIP Documents shall create or be deemed to constitute a breach by the Companies of any Agreement to which it is a party;
- b. none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the Companies entering into the DIP Facility Agreement, the creation of the Charges, or the execution, delivery or performance of the DIP Documents; and
- c. the payments made by the Companies pursuant to this Order, the DIP Facility Agreement or the DIP Documents, and the granting of the Charges, do not and will not constitute fraudulent preferences, fraudulent conveyances, oppressive conduct, settlements or other challengeable, voidable or reviewable transactions under any applicable law.

19. Any Charge created by this Order over leases of real property in Canada shall only be a Charge on the Companies' interest in such real property leases.

20. The Monitor, in addition to its prescribed rights and obligations under the CCAA and under the Initial Order, is hereby directed and empowered to:

- a. assist the Companies, to the extent required by the Companies, in their dissemination to the DIP Lender and its counsel on a weekly basis of financial and other information as agreed to between the Companies and the DIP Lender which may be used in these proceedings including reporting on a basis to be agreed with the DIP Lender; and
- b. advise and/or assist the Companies in their preparation of the Companies' cash flow statements and reporting required by the DIP Lender, which information shall be reviewed with the Monitor and delivered to the DIP Lender and its counsel on a periodic basis, but not less than weekly, or as otherwise agreed to by the DIP Lender.

21. Any amounts actually advanced or expended pursuant to any of the Charges shall have the priority as provided for herein regardless of the time of advance or the use to which funds were actually put.

SERVICE AND NOTICE

22. The Applicant and the Monitor shall serve a copy of this Order on all secured creditors of the Companies and shall be at liberty to serve this Order on such other Persons as either determines is appropriate. All such service shall be made in accordance with the provisions of the Initial Order.

GENERAL

23. The aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States is hereby requested, to give effect to this Order and to assist the Applicant, the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Applicant

and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Applicant and the Monitor and their respective agents in carrying out the terms of this Order.

24. Each of the Applicant and the Monitor is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order.

25. A party who makes a motion in these proceedings shall, subject to further Order, serve a motion record at least ten (10) calendar days before the date on which the motion is to be heard (the “**Return Date**”).

26. Any responding party objecting to the relief sought in a motion must serve responding materials no later than 4 p.m. on the date that is four (4) calendar days before the Return Date (the “**Objection Deadline**”). If the responding party will not be serving responding material but nevertheless intends to object to the relief sought in a motion, then such responding party must serve, by the Objection Deadline, a notice stating its objection to the relief sought and the grounds for such an objection (a “**Notice of Objection**”).

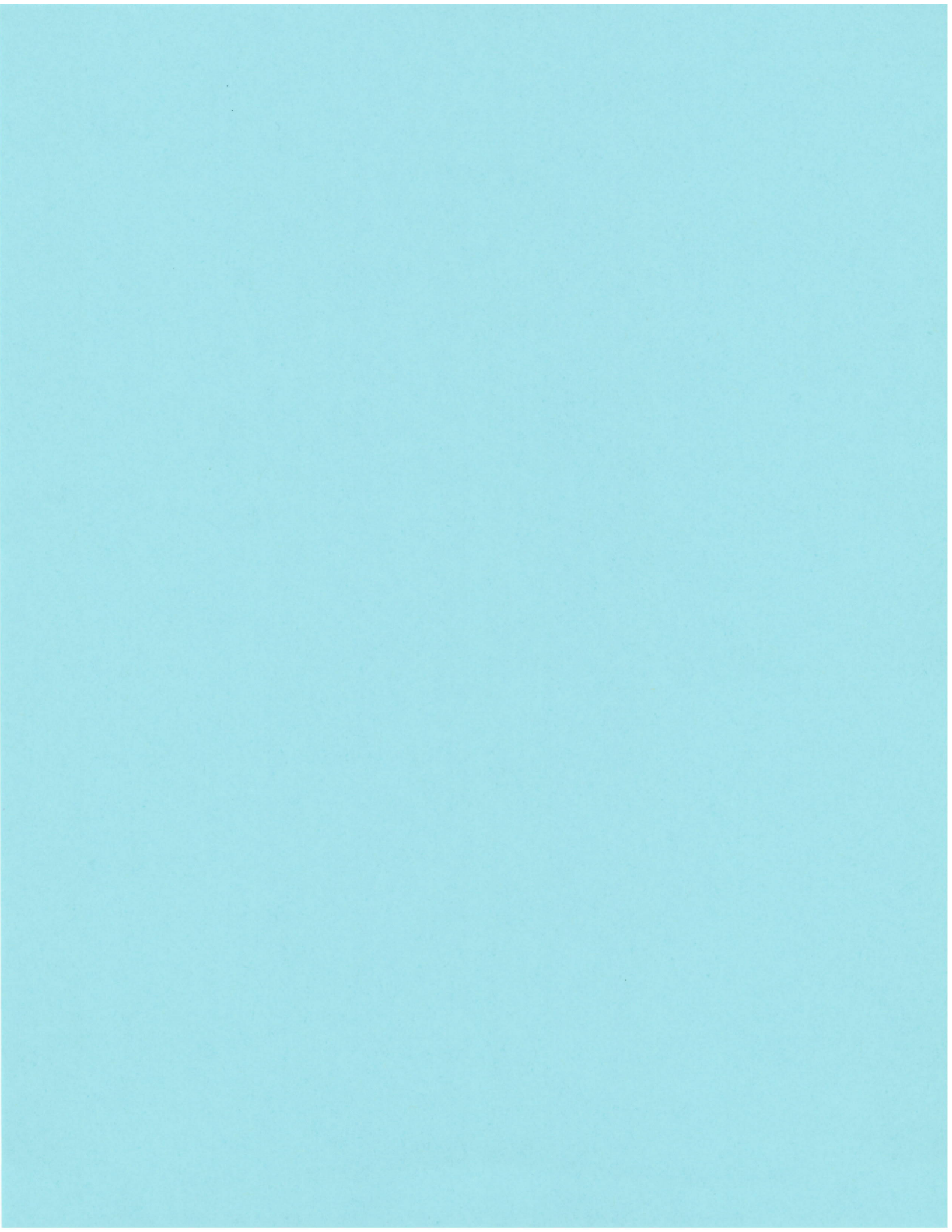
27. If either (i) responding materials, or (ii) a Notice of Objection is served in respect of a motion, the motion shall be heard on the Return Date, unless the Court orders otherwise.

28. If neither (i) responding materials; nor (ii) a Notice of Objection is served by the Objection Deadline, the Monitor shall contact the judge having carriage of the motion (the “**Presiding Judge**”) and request a determination as to (a) whether a hearing is necessary, (b) whether such hearing will be in person, by telephone or by written submissions only, and (c) which parties, if any, are required to make submissions on the motion (collectively, the “**Hearing Details**”). Promptly after being advised by the Presiding Judge of the Hearing Details, the Monitor shall advise the service list of such Hearing Details. If the Presiding Judge does not direct otherwise in any Hearing Details, then the motion shall be heard on the Return Date.

29. This Order and all of its provisions are effective as of _____ a.m./p.m Atlantic Standard/Daylight Time on the _____ day of _____.

Dated at Saint John, New Brunswick, this _____ day of _____, _____.

Justice of the Court of King's Bench
of New Brunswick



SCHEDULE "D" – DRAFT SEALING ORDER

IN THE COURT OF KING'S BENCH OF NEW BRUNSWICK

TRIAL DIVISION

JUDICIAL DISTRICT OF SAINT JOHN

**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 SOUTH SHORE SEAFOODS LTD.,
CAPTAIN COOKE'S SEAFOOD INC., BY THE WATER
SHELLFISH (2012) INC., CAN-AM LOBSTER & SHELLFISH
LTD., SOUTH SHORE SEAFOODS INTERNATIONAL LTD.,
BRIDGE LOBSTERS LIMITED, ARSENAULT'S FISH MART
INC. (each a "Company" and collectively the "Companies")**

B E T W E E N :

THE TORONTO-DOMINION BANK

APPLICANT

- and -

**SOUTH SHORE SEAFOODS LTD., CAPTAIN COOKE'S
SEAFOOD INC., BY THE WATER SHELLFISH (2012) INC.,
CAN-AM LOBSTER & SHELLFISH LTD., SOUTH SHORE
SEAFOODS INTERNATIONAL LTD., BRIDGE LOBSTERS
LIMITED, ARSENAULT'S FISH MART INC.**

RESPONDENTS

SEALING ORDER

THE INITIAL APPLICATION, made by the Applicant, The Toronto-Dominion Bank, pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**") was heard by telephone conference and the Court granted an Order (the "**Initial Order**") on the 21st day of September, 2023;

WHEREAS the Applicant also requested in its initial application the granting of a sealing order with respect to the Confidential Pre-Filing Report as defined below, pending the comeback;

ON READING the materials filed in this matter as contained in the Record on Application including the Pre-Filing Report and the Confidential Pre-Filing Report of the proposed Monitor, Deloitte Restructuring Inc. (the “**Monitor**”) dated September 18, 2023 (the “**Confidential Pre-Filing Report**”) and on hearing the submissions of counsel for the Applicant, the Monitor, the Companies, and counsel for those other parties appearing:

IT IS HEREBY ORDERED THAT:

1. The Confidential Pre-Filing Report dated September 18, 2023 shall be sealed, kept confidential and not form part of the public record, but rather shall be placed, separate and apart from all other contents of the Court file, in a sealed envelope and shall only be opened upon or after October 1, 2023 (the “**Sealing Date**”) unless the Sealing Date is extended pursuant to further Order of this Court; provided that the Monitor may release parts of the Confidential Pre-Filing Report or the attachments thereto provided the recipient of such material executes a confidentiality agreement in form and substance acceptable to the Monitor.
2. Any person affected by this Order which did not receive notice in advance of the hearing of the application may apply to this Court to vary or amend this Order within ten (10) days of such Person being served with a copy of this Order or becoming aware of the Order.

Dated at Saint John, New Brunswick, this _____ day of September 2023.

The Honourable Justice Darrell J. Stephenson
Justice of the Court of King’s Bench of New Brunswick