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August 23, 2016

Honourable Justice Presiding in Chambers  
Supreme Court of Nova Scotia (Halifax)  
The Law Courts  
1815 Upper Water Street  
Halifax, NS B3J 1S7

Dear My Lord/Lady:

**Re: Application of Victory Farms Inc. ("VFI") and Jonathan Mullen Mink Ranch Limited ("JMMR") for Initial Order pursuant to the *Companies' Creditors Arrangement Act* ("CCAA")**

We represent VFI and JMMR. An application for Initial Order under the CCAA is scheduled to be heard before the Court in regular Chambers on August 31, 2016. It is set down in regular Chambers due to the unavailability of the Justice regularly hearing insolvency matters. It is anticipated that there will be no objection to the Initial Order being granted, and that the matter will be unopposed.

Filed with the Court on the Application are the following:

- A. Notice of Application in Chambers;
- B. Affidavit of Jonathan Mullen;
- C. Affidavit of Tim Hill, Q.C.;
- D. This memorandum;
- E. A draft Initial Order;
- F. The proposed monitor's report (which will be filed by Deloitte Restructuring Inc. ["DRI"] on even date herewith).

In this memorandum we first summarize the factual situation of the Applicants, then refer to the statutory requirements of the CCAA, and finally comment on some inconsequential changes made to the model form of Initial Order.



## FACTS

The shares of the Applicants are primarily owed by Jonathan Mullen, with his wife owing 25% of the shares of JMMR. Mr. Mullen has an extensive history in mink farming.

Other than as a result of the common share ownership, the Applicants are closely related in that JMMR supplies services exclusively to VFI.

The Applicants find themselves to be insolvent as a result of a number of circumstances which include:

- (a) the existence and spread of Aleutian Disease Virus (ADV), which has the effect of causing increased mortality, low birth rates, smaller growth and poor fur quality in the mink affected;
- (b) a heavy debt load incurred to expand production borrowed from American Legend Cooperative (ALC) which expects repayment in US Dollars, resulting in a large increase in the debt level occasioned by the devaluation of the Canadian against the US dollar since the original loans were advanced; and
- (c) a 75% decline in pelt prices beginning in 2014 caused by over production of global mink pelts, higher than usual climate temperatures in China, and the invasion of the Ukraine by Russia (which led to sanctions being placed against Russia). Russia and China constitute 80% of the world market for mink pelts.

The prospects of the Applicants successfully restructuring appear to be reasonable as:

- (a) the Applicants have developed an ADV resistant breeding population;
- (b) the Applicants have a relatively new relationship with North American Fur Auctions Inc. (NAFA), which is prepared to supply DIP financing and to enter into a long term financing arrangement with the Applicants;
- (c) the low Canadian dollar is making Canadian pelts "cheaper" in the marketplace, where sales are all in US dollars;
- (d) the global production of mink pelts has been reduced by some 50% since 2014; and
- (e) there have been greater than expected retail clearances of pelts through the 2015/2016 retail selling season, reducing the quantity on the market.

The Applicants have worked to decrease production costs by reducing the size of the breeder herd, engaging in cheaper contracting agreements, significantly reducing labour costs, and participating in the government AgriStability program.



The Applicants employ some 60 part-time and full-time employees. The Applicants expect to generate export sales of between five and seven million dollars per annum in the foreseeable future.

#### **REQUIREMENTS OF THE CCAA**

The Court's attention is respectfully drawn to Section 3 of the CCAA, the germane parts of which read:

3 (1) This Act applies in respect of a debtor company or affiliated debtor companies if the total of claims against the debtor company or affiliated debtor companies, determined in accordance with section 20, is more than \$5,000,000 or any other amount that is prescribed.

#### Affiliated companies

(2) For the purposes of this Act,

(a) companies are affiliated companies if one of them is the subsidiary of the other or both are subsidiaries of the same company or each of them is controlled by the same person; and

(b) two companies affiliated with the same company at the same time are deemed to be affiliated with each other.

#### Company controlled

(3) For the purposes of this Act, a company is controlled by a person or by two or more companies if

(a) securities of the company to which are attached more than fifty per cent of the votes that may be cast to elect directors of the company are held, other than by way of security only, by or for the benefit of that person or by or for the benefit of those companies; and

(b) the votes attached to those securities are sufficient, if exercised, to elect a majority of the directors of the company.

The Applicants are clearly affiliated companies for the purpose of the Act in that they are both controlled by the same person, control being defined to be where an individual is possessed of sufficient securities of a company to elect a majority of the directors of the company. Here VFI is solely owned by Jonathan Mullen, and he own 75% of the shares of JMMR (the other 25% being owned by his wife).

In addition, these affiliated companies owe in excess of \$5,000,000 to creditors.



With respect to an Application for an Initial Order, certain requirements are set out in Section 10 of the CCAA. The Court's attention is respectfully drawn to both the statement preceding the cash flow projections as Appendix "B" to the proposed monitor's report, and paragraphs 21 and 22 of the Affidavit of Jonathan Mullen which comply with the requirements of Section 10. The Court's attention is also respectfully drawn to the *Companies Creditors Arrangement Regulations*, SOR/2009-219 (attached for ease of reference) and particularly Section 4 thereof.

#### **FORM OF ORDER**

It is respectfully submitted that the changes made to the form of the Model Initial Order sought are inconsequential. We note that:

- (a) Throughout the Order the singular is changed to the plural with respect to the Applicants; and
- (b) Paragraph 8 has been deleted, as the Applicants have no real property leases. This results in the renumbering of the subsequent paragraphs.

With respect to paragraph 5 it is noted that none of the Applicants' employees are unionized and therefore Section 33 of the CCAA does not apply.

In paragraph 9 the sale of redundant or nonmaterial assets is not to exceed \$10,000.

In paragraph 10 the stay period is for 30 days, until September 30, 2016. This complies with the maximum stay period allowed under the Act for an Initial Order.

Paragraph 16 deals with the appointment of Deloitte Restructuring Inc. as monitor, and is in the prescribed form.

Paragraph 21 sets out the amount of the retainers provided to the monitor, its counsel, and counsel to the Applicants, all of which have been paid.

Paragraph 24 sets out an administrative charge not to exceed a total of \$150,000.

Paragraph 26 lists the secured creditors of the both of the Applicants as being "primed". However, it should be noted that two of the secured creditors are not primed. Their security appears to be in the nature of a purchase money security interest. It is not usual to prime such interests.

Paragraph 32 specifies the website for the display of materials respecting this application.

Paragraph 38 makes the stay effective as of 12 A.M. on the date of the hearing of the Application.



An Affidavit of Service of the Application documents will be provided to the Court upon appearing before the Court on August 31.

**SUMMARY**

It is respectfully submitted that:

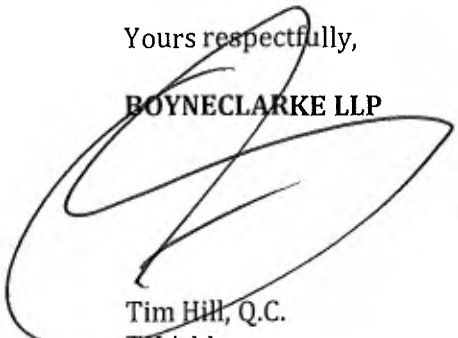
1. The Applicants are companies to which the CCAA applies, so as to allow a joint filing;
2. The Applicants are proven to be insolvent; and
3. This is an appropriate case in which to grant an Initial Order.

As noted in the proposed monitor's report and the affidavit of Jonathan Mullen, negotiations are ongoing for both DIP financing, and long term post plan of arrangement financing. It is anticipated that the Applicants will within the next few weeks seek a DIP order, the same being on notice to all secured creditors.

All of which is respectfully submitted.

Yours respectfully,

**BOYNECLARKE LLP**



Tim Hill, Q.C.  
TH/vbb



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**Companies' Creditors Arrangement Regulations (SOR (Statutory Orders and Regulations)/2009-219)**

Full Document: [HTML \(FullText.html\)](#) | [XML \(/eng/XML/SOR-2009-219.xml\)](#) [58 KB] | [PDF \(/PDF/SOR-2009-219.pdf\)](#) [271 KB]

Regulations are current to 2016-08-01 and last amended on 2009-09-18. [Previous Versions \(PITIndex.html\)](#)

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## Companies' Creditors Arrangement Regulations

### SOR (Statutory Orders and Regulations)/2009-219

#### COMPANIES' CREDITORS ARRANGEMENT ACT (/eng/acts/C-36)

Registration 2009-07-30

Companies' Creditors Arrangement Regulations

P.C. 2009-1209 2009-07-30

Her Excellency the Governor General in Council, on the recommendation of the Minister of Industry, pursuant to section 62<sup>a</sup> of the *Companies' Creditors Arrangement Act (/eng/acts/C-36)*<sup>b</sup>, hereby makes the annexed *Companies' Creditors Arrangement Regulations (/eng/regulations/SOR-2009-219)*.

<sup>a</sup>S.C. 2007, c. 36, s. 82

<sup>b</sup>R.S., c. C-36

#### Interpretation

**1** The following definitions apply in these Regulations.

**Act** means the *Companies' Creditors Arrangement Act (/eng/acts/C-36)*. (*Loi*)

**initial order** means an order that is made on the initial application in respect of a debtor company. (*ordonnance initiale*)

**Stock exchange**

**2** A stock exchange that is regulated by an Act of Parliament or of the legislature of a province is prescribed for the purposes of the definition *income trust* in subsection 2(1) of the Act.

**Pension plan**

**3** A pension plan that is regulated by an Act of Parliament or of the legislature of a province is prescribed for the purposes of subsection 6(6) of the Act.

**Representations**

**4** The representations set out in the table to this section are prescribed for the purposes of paragraph 10(2)(b) of the Act.

**TABLE**

Item	Representation
1	The hypothetical assumptions are reasonable and consistent with the purpose of the projections described in Note ..., and the probable assumptions are suitably supported and consistent with the plans of the debtor company and provide a reasonable basis for the projections. All such assumptions are disclosed in Notes ....
2	Since the projections are based on assumptions regarding future events, actual results will vary from the information presented, and the variations may be material.
3	The projections have been prepared solely for the purpose described in Note ..., using the probable and hypothetical assumptions set out in Notes .... Consequently, readers are cautioned that it may not be appropriate for other purposes.

**Regulatory bodies**

**5** A stock exchange that is regulated by an Act of Parliament or of the legislature of a province, the Investment Industry Regulatory Organization of Canada and the Mutual Fund Dealers Association of Canada are prescribed for the purposes of subsection 11.1(1) of the Act.

**Information to be published in newspapers**

**6** The following information is prescribed for the purposes of subparagraph 23(1)(a) (i) of the Act:

- (a) the name of each applicant and the name under which the applicant carries on business, if any;

- (b) the name and judicial district of the court that made the initial order;
- (c) the court file number for the proceedings;
- (d) the date on which the initial order was made; and
- (e) the name and contact information of the monitor, including its Web site address.

#### **Making initial order and list of creditors publicly available**

**7** For the purposes of clauses 23(1)(a)(ii)(A) and (C) of the Act, the prescribed manner for making the initial order and list publicly available is by posting them on a Web page created by the monitor for the proceedings.

#### **Notice that initial order is publicly available**

**8** For the purposes of clause 23(1)(a)(ii)(B) of the Act, the prescribed manner of sending the notice is by personal service, mail, courier, facsimile or other electronic transmission.

#### **Paragraph 23(1)(f) of the Act**

**9** The following paragraphs set out the documents that are specified for the purposes of paragraph 23(1)(f) of the Act and the prescribed manner and time for filing them:

- (a) Form 1 of the schedule, entitled "Information Pertaining to Initial Order", to be filed by facsimile or other electronic transmission within one business day after the day on which the initial order is made;
- (b) the initial application, the initial order and any amendments to that order, to be filed by facsimile or other electronic transmission within two business days after the day on which the monitor receives them;
- (c) Form 2 of the schedule, entitled "Debtor Company Information Summary (Commencement of Proceedings)", to be filed by facsimile or other electronic transmission within five business days after the day on which the monitor receives the initial order;
- (d) Form 3 of the schedule, entitled "Debtor Company Information Summary (Following the Order Discharging the Monitor)", to be filed by facsimile or other electronic transmission within five business days after the day on which the court makes an order discharging the monitor; and



(e) the documents posted on the Web page created by the monitor under section 7, to be filed by submitting them on a compact disc, digital versatile disc or other data storage medium within 30 days after the day on which the court makes an order discharging the monitor.

#### **Documents to be publicly available**

**10 (1)** The following documents are prescribed for the purposes of paragraph 23(1)(j) of the Act:

- (a) reports of the monitor, including exhibits, and cash-flow statements that are filed with the court, other than those – or any part of them – that are subject to a court order prohibiting their release to the public;
- (b) proposed compromises or arrangements that are filed with the court, including amendments to them;
- (c) court orders; and
- (d) written communications and notifications that the monitor sends to all creditors.

#### **Posting on Web page**

**(2)** The prescribed manner for making the documents publicly available is by posting them on the Web page created by the monitor under section 7.

#### **Time limit for posting**

**(3)** The prescribed time for posting the documents is, in respect of the documents referred to in paragraphs (1)(a) and (b), within two business days after the day on which they are filed, in respect of the documents referred to in paragraph (1)(c), within two business days after the day on which the monitor receives them and, in respect of the documents referred to in paragraph (1)(d), within two business days after the day on which they are sent.

#### **Public record**

**11 (1)** For the purposes of subsection 26(1) of the Act, the prescribed information is the information set out on Form 1 of the schedule, and the prescribed period is 10 years after the day on which the information is received by the Superintendent of Bankruptcy.

#### **Other records**

**(2)** For the purposes of subsection 26(2) of the Act, the prescribed period is 10 years

after the day on which the record is received by the Superintendent of Bankruptcy.

#### **Notice of delegation**

**12** For the purposes of subsection 31(2) of the Act, the prescribed manner of giving notice of the delegation is by personal service, mail, courier, facsimile or other electronic transmission.

#### **Notice to disclaim or resiliate**

**13** For the purposes of subsection 32(1) of the Act, Form 4 of the schedule, entitled "Notice by Debtor Company to Disclaim or Resiliate an Agreement", is prescribed and the prescribed manner of giving notice is by personal service, registered mail or courier or, if the recipient agrees, by facsimile or other electronic transmission.

#### **Information to be published in newspapers**

**14** For the purposes of paragraph 53(b) of the Act, the prescribed information is the following:

- (a) the name and contact information of the foreign representative;
- (b) the name of the debtor company and the name under which it carries on business in Canada;
- (c) the following information respecting the order, namely,
  - (i) the name of the court that made it,
  - (ii) the legislative provision under which it was made, and
  - (iii) the date on which it was made;
- (d) the country in which the foreign proceeding is filed;
- (e) whether the proceeding is a foreign main or foreign non-main proceeding; and
- (f) the name and contact information of legal counsel for the foreign representative.

#### **Coming into force**

**15** These Regulations come into force on the day on which section 124 of *An Act to establish the Wage Earner Protection Program Act, to amend the Bankruptcy and Insolvency Act and the Companies' Creditors Arrangement Act and to make consequential amendments to other Acts*, chapter 47 of the Statutes of Canada, 2005, comes into force, but if they are registered after that day, they come into force on the day on which they are registered.