

**THE QUEEN'S BENCH**  
**WINNIPEG CENTRE**

IN THE MATTER OF THE: *Companies' Creditors Arrangement Act*,  
R.S.C. 1985, c. C-36, as Amended

AND IN THE MATTER OF: A Proposed Plan of Compromise or  
Arrangement of The Puratone Corporation,  
Pembina Valley Pigs Ltd. and Niverville  
Swine Breeders Ltd. (the "Applicants")

Application under the: *Companies' Creditors Arrangement Act*, R.S.C.  
1985, c. C-36, as Amended

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**EIGHTH REPORT OF THE MONITOR**

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**THE QUEEN'S BENCH  
WINNIPEG CENTRE**

**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 THE PURATONE CORPORATION, NIVERVILLE  
SWINE BREEDERS LTD., AND PEMBINA VALLEY PIGS LTD.**

**APPLICANTS**

**EIGHTH REPORT OF THE MONITOR  
DATED APRIL 4, 2013**

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**INTRODUCTION**

1. On September 12, 2012, 4444043 Manitoba Ltd., formerly called The Puratone Corporation (“**TPC**”), 0263672 Manitoba Ltd., formerly called Niverville Swine Breeders Ltd., and 5561630 Manitoba Ltd., formerly called Pembina Valley Pigs Ltd. (collectively the “**Applicants**”) filed for and obtained protection under the *Companies' Creditors Arrangement Act* (the “**CCAA**”). Pursuant to the Order of the Manitoba Court of Queen's Bench (the “**Court**”) dated September 12, 2012 (the “**Initial Order**”), Deloitte & Touche Inc.

(“**Deloitte**”) was appointed as the Monitor of the Applicants (the “**Monitor**”) in the CCAA proceedings and a stay of proceedings was granted in favour of the Applicants.

2. On October 10, 2012, the Court extended the stay of proceedings until November 2, 2012.
3. On October 30, 2012, the Court extended the stay of proceedings until November 12, 2012.
4. On November 8, 2012, the Court extended the stay of proceedings until January 15, 2013.
5. On January 4, 2013, the Court extended the stay of proceedings until March 15, 2013.
6. On March 12, 2013, the Court further extended the stay of proceedings until July 28, 2013 (the “**Stay Period**”).
7. The Monitor has provided the Court with the following reports:
  - i. The Pre-Filing Report of the Proposed Monitor dated September 11, 2012 (the “**Pre-Filing Report**”) in connection with the Applicants’ application for protection under the CCAA;
  - ii. The First Report of the Monitor dated October 5, 2012 (the “**First Report**”) in connection with the Applicants’ motion to extend the Stay Period;
  - iii. The Second Report of the Monitor dated October 25, 2012 (the “**Second Report**”) in connection with the Applicants’ motion to

extend the Stay Period;

- iv. The Third Report of the Monitor dated November 5, 2012 (the “**Third Report**”) in connection with the Applicants’ motion to i) further extend the Stay Period; and ii) seek approval for the sale transaction (the “**Transaction**”) contemplated by the Asset Purchase Agreement (the “**APA**”) between the Applicants and Maple Leaf Foods Inc. (the “**Purchaser**”), and agreed to by the Monitor;
- v. The Fourth Report of the Monitor dated November 14, 2012 (the “**Fourth Report**”) in connection with the Applicants’ motion to allow the transfer of their shares and limited partnership units in the Partially Owned Subsidiaries (as defined in the APA) and the assignment of certain agreements between the Partially Owned Subsidiaries and/or their shareholders/unit holders to the Purchaser on Closing;
- vi. The Fifth Report of the Monitor dated November 20, 2012 (the “**Fifth Report**”) in connection with the Applicants’ motion to assign their rights and obligations under certain Assumed Contracts (as defined in the APA) to the Purchaser on Closing, where the consent of the relevant counterparty was required for the assignment and such counterparty had not expressly agreed to an assignment of the Applicants’ rights and obligations to the Purchaser;
- vii. The Sixth Report of the Monitor dated December 27, 2012 (the “**Sixth Report**”) in connection with the Applicants’ motion to extend the Stay Period and expand the powers and duties of the Monitor to permit it to act as agent for each of the Applicants in order to

discharge certain of their obligations under the APA, and to make an application to the Court for a distribution order; and

- viii. The Seventh Report of the Monitor dated March 8, 2013 (the “**Seventh Report**”) in connection with the Applicants’ motion to extend the Stay Period and the Monitor’s motion for an order approving a proposed distribution (the “**Distribution Order**”).
8. Copies of the Initial Order, the Pre-Filing Report, the First, Second, Third, Fourth, Fifth, Sixth and Seventh Report(s), certain motion materials and Orders in the CCAA proceedings, and certain other documents related to the CCAA proceedings have been posted and are available on the Monitor’s website at [www.deloitte.com/ca/puratone](http://www.deloitte.com/ca/puratone).

## **PURPOSE**

9. The purpose of this eighth report of the Monitor (the “**Eighth Report**”) is to:
  - (a) provide certain further information with respect to the claims asserted by Interlake Turkey Breeders Ltd. and others (collectively “ITB”) as detailed in the Affidavit of John Sigurdson (the “**Sigurdson Affidavit**”) affirmed March 5, 2013 wherein the claimants state that they each delivered feed grains to the Applicants between August 29, 2012 and September 11, 2012, for which no payment was received; and
  - (b) to provide the Monitor’s views with respect to the request by ITB for a lifting of the stay of proceedings so that ITB is able to initiate an action against the Applicants and the directors and/or officers of the Applicants.

## TERMS OF REFERENCE

10. In preparing this Eighth Report, the Monitor has relied upon unaudited interim financial information, the Applicants' books and records, the Affidavits of Raymond Hildebrand sworn on September 11, October 4, October 24, November 1 and November 6, 2012, the Affidavits of Larry Johnson sworn on November 14, November 16, November 20, 2012, January 2, 2013 and March 6, 2013, the Sigurdson Affidavit and discussions with the Applicants' management ("**Management**") and the Applicants' financial and legal advisors.
11. The financial information of the Applicants has not been audited, reviewed or otherwise verified by the Monitor as to its accuracy or completeness, nor has it necessarily been prepared in accordance with generally accepted accounting principles and the reader is cautioned that this Eighth Report may not disclose all significant matters about the Applicants. Additionally, none of the Monitor's procedures were intended to disclose defalcations or other irregularities. If the Monitor were to perform additional procedures or to undertake an audit examination of the financial statements in accordance with generally accepted auditing standards, additional matters may have come to the Monitor's attention. Accordingly, the Monitor does not express an opinion nor does it provide any other form of assurance on the financial or other information presented herein. The Monitor may refine or alter its observations as further information is obtained or brought to its attention after the date of this Eighth Report.
12. The Monitor assumes no responsibility or liability for any loss or damage occasioned by any party as a result of the circulation, publication, reproduction

or use of this Eighth Report. Any use which any party makes of this Eighth Report, or any reliance or decision to be made based on this Eighth Report, is the sole responsibility of such party.

13. Unless otherwise stated, all monetary amounts contained in this Eighth Report are expressed in Canadian dollars.
14. Capitalized terms used in this Eighth Report but not defined herein are as defined in the Pre-Filing Report, the First Report, the Second Report, the Third Report, the Fourth Report, the Fifth Report, the Sixth Report, the Seventh Report and the APA, as applicable.

## **BACKGROUND**

15. The Sigurdson Affidavit claims that a group of seventeen (17) farmers supplied feed grains to the Applicants between August 29, 2012 and September 11, 2012 for which no payment has been received. The aggregate of the seventeen (17) claims is \$903,204.59.
16. The Motion materials filed by ITB on March 12, 2013 seeks the following relief:
  - i. \$903,205.50 of the sale proceeds received by the Monitor pursuant to the APA, or otherwise, be imposed with a trust in favour of ITB or be paid into Court or held with counsel for the Monitor;
  - ii. The Stay Period be lifted to allow ITB to initiate action against the directors and/or officers of the Applicants; and
  - iii. Such further and other relief as counsel may advise and this Court may permit.

17. According to the records of the Applicants, the total unpaid accounts for feed grains delivered to the Applicants by producers between August 28, 2012 and September 11, 2012 amounted to approximately \$1,124,779 from 35 individual feed grain producers. The Monitor can advise that the records of the Applicants generally correspond with the amounts being claimed by ITB.
18. The ITB claims comprise approximately 80.3% of the total unpaid accounts for feed grains delivered in the fifteen (15) day period leading up to the CCAA filing.
19. As detailed in the First Report of the Monitor, the Monitor was aware that certain agricultural suppliers of grain to the Applicants in the thirty (30) days prior to the commencement of the CCAA proceedings may be of the view that receivership or bankruptcy proceedings would advance their priority claim pursuant to Section 81.1 of the BIA (or in the last fifteen (15) days prior to the commencement of the CCAA proceedings pursuant to Section 81.2 of the BIA). The Monitor specifically addressed its position on this matter in paragraphs 29 and 30 of the First Report which read as follows:

29. At the hearing for the Initial Order, there was discussion as to whether the Applicants should be granted protection under CCAA or be in ordered into Receivership. The Monitor is aware of its duty under Section 23(1)(h) of the CCAA which states that, if the Monitor is of the opinion that it would be more beneficial to the company's creditors if proceedings in respect of the company were taken under the Bankruptcy and Insolvency Act ("BIA"), it shall so advise the court without delay after coming to that opinion. The Monitor has not formed that opinion. The Monitor is also aware that certain agricultural suppliers of grain to the Applicants in the last thirty (30) days prior to the commencement of the CCAA proceedings may be of the view that receivership or bankruptcy proceedings would advance their priority claim pursuant to Section 81.1 of the BIA (or in the last fifteen (15) days prior to the commencement of the CCAA proceedings pursuant to Section 81.2 of the BIA). These Sections are intended to protect agricultural suppliers in the event of the insolvency of their customer. The Monitor has been advised by its counsel that, while those Sections have no direct relevance in CCAA proceedings, there are cases in which the courts have essentially suspended the running of time during CCAA proceedings so that, should



bankruptcy or receivership ultimately occur, the suppliers rights would not have been prejudiced by the mere passage of time. The Monitor is of the view that the issue of whether such an order ought to be made in these proceedings should be the subject of an appropriate motion to this Court on behalf of such a supplier, either on its own behalf or as a representative of a group of such suppliers, at which time the Applicants, BMO and FCC would also be entitled to make representations. The Monitor has also been advised by its counsel that merely putting the Applicants into receivership at this time would not be of any benefit to agricultural suppliers as their rights, except to the extent that they might effectively be revived pursuant to such a motion, have now expired.

30. The Monitor is of the view that continuing the Company's restructuring under the CCAA proceedings will preserve the business as a going concern and will allow time for the completion of the Sales Process, which hopefully will result in a going concern buyer, which offers the only opportunity for many of the stakeholders to make a recovery. Receivership at this time would be very disruptive and costly and, in the view of the Monitor, would be counterproductive to the interests of all stakeholders."

## **LIFTING OF STAY**

20. The Monitor understands that the general purpose of a stay of proceedings under the CCAA is to maintain the *status quo* for a period of time in order that a debtor company (and its directors and officers) can focus on restructuring efforts without undue interference.
21. Substantially all of the undertaking, property and assets of the Applicants have been sold and it is not anticipated that any formal restructuring will occur. In these circumstances, subject to the proviso which follows with respect to the role of the Monitor should litigation ensue, the Monitor is of the view that there would be no particular prejudice to the CCAA Proceedings if the stay of proceedings is lifted to enable ITB to initiate and proceed with an action against the Applicants and the directors and/or officers of the Applicants.
22. The proviso mentioned above has to do with access to the records of the Applicants which may be relevant in connection with the claims of ITB. Article 7.9 of the APA provides that the Purchaser is to provide the Monitor

with reasonable access from time to time to the books and records of the Applicants to enable the Monitor to fulfill its obligations as Monitor, including pursuant to any Order of the Court, provided that (i) such access does not interfere with the Purchaser's operation of its business, (ii) the Monitor will reimburse the Purchaser in respect of all reasonable out-of-pocket costs and expenses incurred by the Purchaser, and (iii) to the extent such access involves the assistance of any transferred employee and causes a material disruption to the business of the Purchaser, as determined by the Purchaser, acting reasonably, the Monitor will pay a fee to the Purchaser in respect of any such assistance provided by any transferred employee that replicates the cost to the Purchaser to retain or employ such individual for the period of time that the individual assists the Monitor, as applicable.

23. The Monitor is of the view that it should not be expected to play any role in the proposed action to be commenced by ITB. Furthermore, the Monitor's position is that the power conferred on it by Section 7.9 of the APA would not allow it to access records of the Applicants in the possession of the Purchaser for any purpose incidental to the proceedings which ITB seeks leave to pursue and, in the absence of a further Order of the Court directing it to do so, the Monitor would not lend its assistance to any party seeking access to such records.

24. The Monitor further notes that counsel for ITB has already requested certain further information from the Monitor relating to the purchase of grain by the Applicants in the period prior to the commencement of the CCAA proceedings. While the Monitor may be able to assemble some of the further information sought by counsel for ITB if necessary, the Monitor is reluctant to incur time and effort gathering information sought by ITB in connection with its proposed

legal actions in the absence of directions from the Court as to what, if any, further information ought to be provided by the Monitor.

## **STATEMENT OF RECEIPTS AND DISBURSEMENTS**

25. Attached as Exhibit “A” is the Monitor’s Statement of Receipts and Disbursements for the period December 14, 2012 to April 2, 2013.

## **MONITOR’S CONCLUSIONS AND RECOMMENDATIONS**

26. As detailed in the First Report of the Monitor, the Monitor was and remains of the view that sections 81.1 and 81.2 of the BIA have no direct relevance in the CCAA proceedings.

27. That being said, the Monitor is not opposed to the Court lifting the stay of proceedings to enable ITB to initiate an action against the Applicants and the directors and/or officers of the Applicants.

28. In addition, the Monitor requests that the Seventh Report of the Monitor be approved.

All of which is respectfully submitted at Winnipeg, Manitoba, this 4<sup>th</sup> day of April, 2013.

**DELOITTE & TOUCHE INC.**

In its capacity as Monitor of  
The Puratone Corporation, Niverville Swine  
Breeders Ltd., and Pembina Valley Pigs Ltd.,  
and not in its personal capacity.

A handwritten signature in black ink, appearing to read "Steven Peleck". The signature is written in a cursive style with a large initial 'S'.

Per: Steven Peleck, CA•CIRP  
Senior Vice-President

## Exhibit A – Statement of Receipts and Disbursements

### THE PURATONE CORPORATION, NIVERVILLE SWINE BREEDERS LTD., AND PEMBINA VALLEY PIGS LTD.

#### STATEMENT OF RECEIPTS AND DISBURSEMENTS OF THE MONITOR December 14, 2012 to April 2, 2013

##### RECEIPTS

MAFR Holdback	1,573,765		
Interest	3,454	\$	1,577,220
Asset Purchase Agreement Proceeds	43,846,930		
Interest	95,537		43,942,467
Cash on Hand (Niverville Credit Union Accounts)			1,873
Accounts Receivable			9,046
Insurance Rebates			26,208
Other			13,738
<b>Subtotal</b>		\$	<b>45,570,552</b>

##### DISBURSEMENTS

Corporate Expenses		\$	216
Farm Purchases			67
Payroll and Benefits			18,612
Professional Fees			125,273
Utilities			69
<b>Subtotal</b>		\$	<b>144,237</b>

<b>EXCESS OF RECEIPTS OVER DISBURSEMENTS</b>		\$	<b>45,426,315</b>
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**Note 1:** Interim distributions had not been paid as at April 2, 2013 as the supporting Affidavits required by the March 12, 2013 Interim Distribution Order had not yet been filed with the Monitor.