

**COURT FILE NUMBER**

24-2582587

**COURT**

COURT OF QUEEN'S BENCH OF ALBERTA  
IN BANKRUPTCY AND INSOLVENCY

**JUDICIAL CENTRE**

EDMONTON

**DOCUMENT**

FIRST REPORT OF THE TRUSTEE  
IN THE MATTER OF S. 50.4(9) OF THE  
BANKRUPTCY AND INSOLVENCY ACT,  
R.S.C., 1985, c. B-3



IN THE MATTER OF THE NOTICE INTENTION TO

MAKE A PROPOSAL OF

MCG RESTAURANTS LTD.

DATED DECEMBER 2, 2019

**ADDRESS FOR SERVICE AND  
CONTACT INFORMATION OF  
PARTY FILING THIS DOCUMENT**

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TRUSTEE:

DELOITTE RESTRUCTURING INC.  
1500 MANULIFE PLACE  
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# Introduction

1. On November 12, 2019 (the "**NOI Date**"), MCG Restaurants Ltd. (the "**Company**") filed a Notice of Intention to Make a Proposal ("**NOI**") pursuant s. 50.4(1) of the *Bankruptcy and Insolvency Act* ("**BIA**"). Deloitte Restructuring Inc. (the "**Trustee**") was appointed Licensed Insolvency Trustee.
2. The Company is an amalgamated corporation registered in Alberta. Mr. Philip Clarke and Mr. Robert Morris are the directors of the Company.
3. The Company operates as the franchisee of a chain of restaurants known as Moxie's Grill & Bar under franchise agreements with Moxie's Restaurants, Limited Partnership as franchisor (the "**Franchisor**"). The Company currently operates five (5) franchised restaurants (the "**Locations**") in Edmonton with the following addresses:
  - 3.1. 13551 St. Albert Trail (the "**St. Albert Trail Location**")
  - 3.2. 10628 Kingsway Avenue (the "**Kingsway Location**")
  - 3.3. #1670, 8882-170th Street (the "**West Edmonton Mall Location**")
  - 3.4. 17109 100 Avenue (the "**170 Street Location**")
  - 3.5. 1739 102 Street (the "**South Common Location**")

The Company formerly operated a sixth location in Edmonton at 4790 Calgary Trail (the "**Calgary Trail Location**"), which was closed on October 29, 2019. The Calgary Trail Location has some ongoing lease obligations, but is not otherwise active.

4. The Company leases its head office space (the "**Head Office**") at 17811 106 Avenue, Edmonton, Alberta.
5. Information on the NOI proceedings can be accessed on the Trustee's website (the "**Trustee's Website**") at [www.insolvencies.deloitte.ca](http://www.insolvencies.deloitte.ca) under the link "MCG Restaurants Ltd."

## *Notice to reader*

6. In preparing this report, the Trustee has relied on unaudited financial information, the books and records of the Company, and discussions with the Company's management ("**Management**"), interested parties, and stakeholders. The Trustee has not audited, reviewed or otherwise attempted to verify the accuracy or completeness of the information in a manner that would wholly or partially comply with Generally Accepted Assurance Standards pursuant to the Chartered Professional Accountants of Canada Handbook. The Proposal Trustee expresses no opinion or other form of assurance with respect to the accuracy of any financial information presented in this report, or relied upon by the Proposal Trustee in preparing this report.
7. Certain of the information referred to herein consists of financial forecasts and/or projections. The financial forecasts included in this report are the responsibility of Management. Management's responsibility extends beyond ensuring that the individual assumptions used to prepare the financial forecasts are appropriate in the circumstances and to ensure that the assumptions as a whole are appropriate. While the Trustee has reviewed the information, the Trustee has not performed an audit or other verification of such information. The Trustee expresses no opinion or other form of assurance with respect to the accuracy of any financial information presented in the financial forecasts, or relied upon by it in reporting on the financial forecasts. Future oriented financial information included in this report is based upon Management's assumptions regarding future events. Actual results achieved may vary and these variations may be material.
8. The Trustee 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 report. Any use, which any party makes of this report, or any reliance or decision to be made based on this report, is the sole responsibility of such party.

## *Currency*

9. All amounts included herein are in Canadian dollars unless otherwise stated.

## *Purpose of this report*

10. The purpose of this first report of the Trustee (the "**First Report**") is to provide the Court with:
  - 10.1. Information regarding the Trustee's activities to date;
  - 10.2. Information regarding the Company's restructuring efforts to date;
  - 10.3. The Trustee's position with respect to the Company's application for an extension of time to make a proposal; and
  - 10.4. The Trustee's position with respect to the Company's application for the Court's authorization of an electronic service protocol for service of Court applications initiated by the Company, or other interested parties, other than the Trustee.

## Activities of the Trustee

11. Since the NOI Date, the Trustee has performed the following activities:
  - 11.1. Sent notice of the NOI proceedings to all known creditors;
  - 11.2. Posted information on the NOI proceedings on the Trustee's Website;
  - 11.3. Attended various meetings and teleconferences with Management, the Company's legal counsel, significant creditors of the Company, and the Franchisor to discuss the Company's restructuring efforts;
  - 11.4. Reviewed the Company's cash-flow projections, and filed same with the Office of the Superintendent of Bankruptcy;
  - 11.5. Made inquiries of Management and requested certain records of the Company pertaining to its operations, liabilities, and cash-flow projections;
  - 11.6. Established a monitoring program to monitor the affairs of the Company during the NOI proceedings; and
  - 11.7. Prepared, reviewed, and finalized this First Report.

# Overview of creditors

12. The Company estimates that Canada Revenue Agency (the "**CRA**") is owed approximately \$580,000, plus interest and penalties, in respect of outstanding employee payroll source deductions. Since the NOI Date, the Company remitted \$56,004.43 to CRA on November 19, 2019, in respect of payroll source deductions for the biweekly pay period ended October 29, 2019. The Company's next remittance is due on December 4, 2019, in the amount of \$57,041.46, for the biweekly pay period ended November 12, 2019. The Company anticipates it will be able to make remittance payments for payroll source deductions coming due after the NOI Date in the normal course of operations. The Trustee has advised Management that a trust examination by the CRA should be requested in order to quantify the payroll source deduction arrears.
13. The Company has a secured loan with Canadian Western Bank ("**CWB**") with a current principal balance of approximately \$3,334,000. CWB has registered its security interest in the Personal Property Registry ("**PPR**") over all present and after-acquired personal property of the Company. The Company is currently not in compliance with the covenants of the CWB loan. However, prior to the NOI Date, CWB agreed to accept interest only payments in the monthly amount of approximately \$20,500 until March 2020. The Company anticipates being able to maintain these interest only payments during the NOI proceedings.
14. Pursuant to the PPR, the Franchisor is also secured in respect of all of the Company's present and after-acquired personal property. Payments due under the franchise agreements are based on a percentage of weekly sales, and are also remitted on a weekly basis. The Company anticipates it will be able to make the required payments, due under the franchise agreements, after the NOI Date, in the normal course of operations. The Company estimated that approximately \$21,510 was due to the Franchisor at the NOI Date.
15. Pursuant to the PPR, Rye Inc. and Ric Young are secured creditors in respect of all of the Company's property for a loan made to the Company to renovate the West Edmonton Mall Location. The Company estimates the amount owed under the loan is approximately \$560,000. Payments are \$2,500 per month due at the beginning of each month.

November 2019's payment was made prior to the NOI Date, and the Company anticipates being able to maintain these payments in the normal course of operations during the NOI proceedings.

16. The Company disclosed approximately \$1,480,294 in additional unsecured claims and other debts excluding the amounts noted above.

## Company's restructuring efforts

17. The Company has been operating under the NOI for less than three (3) weeks as of the date of this First Report, and Management's efforts have been concentrated on:

- 17.1. Stabilizing the Company's operations and relationships with creditors following the NOI Date;
- 17.2. Preparing cash-flow projections; and
- 17.3. Cooperating with the Trustee in establishing the Trustee's monitoring program, which includes, but is not limited to, monitoring actual cash-flow against projected cash-flow, disbursements, CRA remittances for payroll source deductions and GST, as well as operational results for the Locations, generally.

18. The Trustee has attended teleconferences with the Company, certain of the Company's significant vendors, as well as the Franchisor, and as at the date of this First Report, there appears to be support for the Company's restructuring activities and ongoing operations, subject to the Company meeting its obligations in the normal course subsequent to the NOI Date.

19. The Company's cash-flow projections for the 14 weeks ending February 18, 2020, the Trustee's Report on Cash-Flow Statement, and Report on Cash-Flow Statement by the Company are collectively attached hereto as Exhibit "A". The cash-flow projection shows that Management expects that there will be sufficient cash-flow to meet its day-to-day obligations. The Company is also projecting a cash balance of approximately \$740,836 by February 18, 2020.

20. The Trustee's understanding is that January and February tend to be low periods in restaurant traffic, and the Company will need to evaluate its long term cash-flow requirements to determine the necessary resources to fund continued operations, fund a proposal, pay down its secured creditors and payroll source deduction arrears, and otherwise meet its commitments beyond the period covered in the cash-flow.

The Company has advised the Trustee that it does not anticipate that it will be in a position to file a proposal to its creditors before the initial thirty (30) day stay expires on December 12, 2019, and that it intends to seek an extension of time to make a proposal to its creditors.

## Extension of time to make proposal

21. The Company is seeking an extension of time to make its proposal. The Trustee agrees that an extension for a further forty-five (45) days to January 25, 2020, is appropriate for the following reasons:

- 21.1 The Company requires additional time to assess each of the Locations in more detail, and develop longer term profitability and cash-flow forecasts;
- 21.2 The Company has acted, and is acting in good faith, and with due diligence;
- 21.3 The Company would likely be able to make a viable proposal if the extension being applied for were granted;
- 21.4 No creditor would be materially prejudiced if the requested extension is granted.

## Protocol for service of NOI materials

22. The Company is seeking an Order (the "**ESP Order**") establishing an electronic service protocol (the "**Electronic Service Protocol**") for service of notice of Court applications



initiated by the Company or other interested parties, other than the Trustee. The Electronic Service Protocol proposed by the Company is as follows:

- 22.1 An explanatory notice explaining the Electronic Service Protocol shall be served by the Trustee by way of regular mail on all of the Company's creditors as listed in the creditor's package dated November 15, 2019;
  - 22.2 For all future materials or applications by the Company, or other interested parties other than the Trustee, parties shall be required only to serve those creditors who provide an email address for service to Duncan Craig LLP, the Company's legal counsel;
  - 22.3 The Company's legal counsel shall use best efforts to maintain and update as necessary a list of creditors who provide their e-mail addresses for service in accordance with the forgoing paragraph (the "**Service List**"), and shall provide the Service List, and any updates made as addresses are received, to the Trustee for posting to the Trustee's Website to be maintained for these proceedings;
  - 22.4 Service of all future materials or applications, other than applications initiated by the Trustee, on those creditors who do not provide an e-mail address as provided for herein shall be deemed effective by posting the materials or applications on the Trustee's Website;
  - 22.5 Any party wishing to serve material in accordance with the Electronic Service Protocol shall provide filed copies of all material to the Trustee for posting to the Trustee's Website five prior to any hearing; and
  - 22.6 The service protocol for any Trustee initiated process and/or application, such as an application for Court approval of any proposal, material adverse change notices, calling of meeting of creditors, etc., will continue to follow the process as codified in the BIA.
23. The Trustee is of the view that the proposed Electronic Service Protocol is reasonable. The explanatory notice to be issued by the Trustee will provide all creditors with the procedural information pertaining to the Electronic Service Protocol, and will provide sufficient time for creditors to consider same and register an email address with Duncan Craig LLP.

# Conclusion and recommendations

24. The Trustee respectfully recommends that this Honourable Court grant an Order approving the proposed Electronic Service Protocol, and extending the time for the Company to make a proposal to January 24, 2020, or such other date as may be directed by the Court.

25. As detailed above, the Trustee believes an extension is reasonable given the following:

- 25.1 At all times since the NOI Date, the Company has acted, and is acting in good faith, and with due diligence;
- 25.2 The Company is likely to make a viable proposal if an extension being applied for is granted;
- 25.3 No creditor would be materially prejudiced if the requested extension is granted.

All of which is respectfully submitted this 2<sup>nd</sup> day of December, 2019.

**DELOITTE RESTRUCTURING INC.,**

In its capacity as Trustee acting in *re* the proposal of  
MCG Restaurants Ltd.,  
And not in its personal capacity



Darren Crocker, CPA, CGA, CIRP, LIT  
Senior Vice-President

# Exhibit "A"



District of: Alberta  
Division No. 01 - Edmonton  
Court No. 24-2582587  
Estate No. 24-2582587

– FORM 29 –  
Trustee's Report on Cash-Flow Statement  
(Paragraphs 50(6)(b) and 50.4(2)(b) of the Act)

In the Matter of the proposal of  
MCG Restaurants Ltd.  
of the City of Edmonton, in the Province of Alberta

The attached statement of projected cash flow of MCG Restaurants Ltd., as of the 22nd day of November 2019, consisting of monthly projections for the period of November 13, 2019 to February 18, 2020, has been prepared by the management of the insolvent person (or the insolvent debtor) for the purpose described in the notes attached, using the probable and hypothetical assumptions set out in the notes attached.

Our review consisted of inquiries, analytical procedures and discussion related to information supplied to us by:  the management and employees of the insolvent person or  the insolvent person. Since hypothetical assumptions need not be supported, our procedures with respect to them were limited to evaluating whether they were consistent with the purpose of the projection. We have also reviewed the support provided by:  management or  the insolvent person for the probable assumptions and preparation and presentation of the projection.

Based on our review, nothing has come to our attention that causes us to believe that, in all material respects,

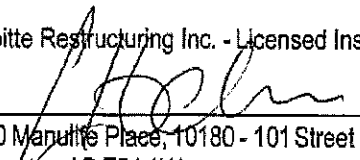
- (a) the hypothetical assumptions are not consistent with the purpose of the projection;
- (b) as at the date of this report, the probable assumptions developed are not suitably supported and consistent with the plans of the insolvent person or do not provide a reasonable basis for the projection, given the hypothetical assumptions; or
- (c) the projection does not reflect the probable and hypothetical assumptions.

Since the projection is based on assumptions regarding future events, actual results will vary from the information presented even if the hypothetical assumptions occur, and the variations may be material. Accordingly, we express no assurance as to whether the projection will be achieved.

The projection has been prepared solely for the purpose described in the notes attached, and readers are cautioned that it may not be appropriate for other purposes.

Dated at the City of Edmonton in the Province of Alberta, this 22nd day of November 2019.

Deloitte Restructuring Inc. - Licensed Insolvency Trustee

  
1500 Manitoba Place, 10180 - 101 Street  
Edmonton AB T5J 4K1  
Phone: (780) 401-3913 Fax: (780) 421-3782

District of: Alberta  
Division No. 01 - Edmonton  
Court No. 24-2582587  
Estate No. 24-2582587

FORM 29 - Attachment  
Trustee's Report on Cash-flow Statement  
(Paragraphs 50(6)(b) and 50.4(2)(b) of the Act)

In the Matter of the proposal of  
MCG Restaurants Ltd.  
of the City of Edmonton, in the Province of Alberta

Purpose:

This Statement of Projected Cash-Flow is prepared in accordance with Subsection 50.4(2) of the Bankruptcy and Insolvency Act.

Projection Notes:

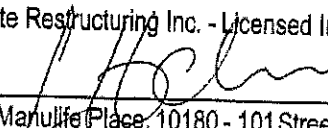
Sales at St. Albert location down 5% from same period last year  
Sales at West Edmonton Mall location up 5% from same period last year  
Sales at South Common location down 3% from same period last year  
Sales at 170 Street and Kingsway locations remain at same levels as same period last year  
Fixed costs do not increase by a material amount beyond management estimates  
Variable costs and margins remain at same levels as previous year

Assumptions:

Creditors take no steps to terminate the stay of proceedings  
The Company is able to fulfil the terms of its franchise agreement  
The Company is supported by its critical vendors throughout the proposal proceedings

Dated at the City of Edmonton in the Province of Alberta, this 22nd day of November 2019.

Deloitte Restructuring Inc. - Licensed Insolvency Trustee

  
1500 Manulife Place, 10180 - 101 Street  
Edmonton AB T5J 4K1  
Phone: (780) 401-3913 Fax: (780) 421-3782

District of: Alberta  
Division No. 01 - Edmonton  
Court No. 24-2582587  
Estate No. 24-2582587

- FORM 30 -

Report on Cash-Flow Statement by the Person Making the Proposal  
(Paragraphs 50(6)(c) and 50.4(2)(c) of the Act)

In the Matter of the proposal of  
MCG Restaurants Ltd.  
of the City of Edmonton, in the Province of Alberta

I, MCG Restaurants Ltd., have developed the assumptions and prepared the attached statement of projected cash flow of the insolvent person, as of the 22nd day of November 2019, consisting of ~~monthly~~ *weekly* projections for the period of November 13, 2019 to February 18, 2020.

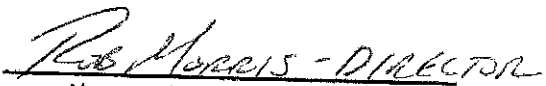
The hypothetical assumptions are reasonable and consistent with the purpose of the projection described in the notes attached, and the probable assumptions are suitably supported and consistent with the plans of the insolvent person and provide a reasonable basis for the projection. All such assumptions are disclosed in the notes attached.

Since the projection is based on assumptions regarding future events, actual results will vary from the information presented, and the variations may be material.

The projection has been prepared solely for the purpose described in the notes attached, using a set of hypothetical and probable assumptions set out in the notes attached. Consequently, readers are cautioned that it may not be appropriate for other purposes.

Dated at the City of Edmonton in the Province of Alberta, this 22nd day of November 2019.

  
MCG Restaurants Ltd.  
Debtor

 - DIRECTOR  
Name and title of signing officer

\_\_\_\_\_  
Name and title of signing officer

District of: Alberta  
Division No. 01 - Edmonton  
Court No. 24-2582587  
Estate No. 24-2582587

FORM 30 - Attachment  
Report on Cash-Flow Statement by the Person Making the Proposal  
(Paragraphs 50(6)(c) and 50.4(2)(c) of the Act)

In the Matter of the proposal of  
MCG Restaurants Ltd.  
of the City of Edmonton, in the Province of Alberta

Purpose:

This Statement of Projected Cash-Flow is prepared in accordance with Subsection 50.4(2) of the Bankruptcy and Insolvency Act.

Projection Notes:

Sales at St. Albert location down 5% from same period last year  
Sales at West Edmonton Mall location up 5% from same period last year  
Sales at South Common location down 3% from same period last year  
Sales at 170 Street and Kingsway locations remain at same levels as same period last year  
Fixed costs do not increase by a material amount beyond management estimates  
Variable costs and margins remain at same levels as previous year

Assumptions:

Creditors take no steps to terminate the stay of proceedings  
The Company is able to fulfil the terms of its franchise agreement  
The Company is supported by its critical vendors throughout the proposal proceedings

Dated at the City of Edmonton in the Province of Alberta, this 22nd day of November 2019.

  
MCG Restaurants Ltd.