



File Reference: SM043375-7

Queen's Marque, 600-1741 Lower Water Street, P.O. Box 997  
Halifax NS B3J 2X2 Canada tel: 902.420.3200 fax: 902.420.1417 [stewartmckelvey.com](http://stewartmckelvey.com)  
Sara L. Scott / David Wedlake  
Direct Dial: 902.420.3200  
Direct Fax: 902.420.1417  
[sscott@stewartmckelvey.com](mailto:sscott@stewartmckelvey.com)  
[dwedlake@stewartmckelvey.com](mailto:dwedlake@stewartmckelvey.com)

June 4, 2024

## Hand Delivered

The Honourable Justice Darlene Jamieson  
Supreme Court of Nova Scotia  
The Law Courts  
1601 Lower Water Street  
Halifax, NS B3J 1S7

Dear Justice Jamieson:

**Re: In the Matter of the Receivership of Meridien Atlantic Fishing Ltd., Rocky Coast Seafoods Ltd. and 9514228 Canada Inc. – Hfx No. 521470**

**Motion: Tuesday, June 11, 2024 at 2:00 p.m.**

We are counsel for Deloitte Restructuring Inc. ("**Deloitte**"), the court appointed Receiver of the assets, undertakings and properties of Meridien Atlantic Fishing Ltd. ("**MAF**"), Rocky Coast Seafoods Ltd. ("**RCS**"), and 9514228 Canada Inc. ("**951Can**" and collectively with MAF and RCS, the "**Companies**") acquired for, or used in relation to a business carried on by the Companies.

Deloitte has filed a motion seeking the following relief:

1. sealing of the Confidential Supplement to the Sixth Report dated June 4, 2024;
2. approval of the sale of the real property located at 735-739 Highway 1, Nova Scotia, identified as PID Nos. 30043939 and 30206874 (the "**Real Property**"), the personal property of RCS located at the Real Property (excluding the Tunnel Freezer, as defined herein) (the "**Personal Property**") and certain licenses (the "**Licenses**"); and
3. approval of the Receiver's activities to date.

Please accept the following as the submissions of Deloitte in support of the motion scheduled for June 11, 2024 at 2:00 p.m.

## I. FACTS

1. Deloitte has filed the following material in support of these submissions:
  - (a) the sixth report of Deloitte dated June 4, 2024, filed with this motion (the “**Sixth Report**”);
  - (b) the Confidential Supplement to the Sixth Report dated June 4, 2024, filed with this motion (the “**Confidential Supplement**”); and
  - (c) solicitor’s affidavit of David Wedlake sworn June 4, 2024, outlining the various interests registered against the Property (the “**Solicitor’s Affidavit**”).
2. Deloitte also references and relies on the following materials previously filed with the Court:
  - (a) the first report of Deloitte dated April 5, 2023 (the “**First Report**”), previously filed in these proceedings and attached to the Sixth Report as Appendix C;
  - (b) the second report of Deloitte dated June 27, 2023 (the “**Second Report**”), previously filed in these proceedings and attached to these submissions at **Tab 1**; and
  - (c) the fifth report of Deloitte dated April 17, 2024, previously filed in these proceedings (the “**Fifth Report**”) and attached to the Sixth Report as Appendix B.

## II. BACKGROUND

3. The Companies were involved in the silver hake industry and held a number of fishing licenses and quota, as well as real property.
4. As a result of the Companies’ financial challenges, Deloitte was appointed as Receiver of all of the assets, undertakings and properties of the Companies by Order dated March 9, 2023 and amended on April 14, 2023 and July 4, 2023 (together, the “**Receivership Order**”).
5. Following Deloitte’s appointment, a sale and investment solicitation process (the “**SISP**”) was approved by Order dated April 14, 2023. The SISP utilized the services of the TriNav

Group of Companies (“**TriNav**”), a marine consulting firm, to solicit offers for the assets of the Companies. The details of the SISP are set out in the First Report.

Sixth Report, Appendix C, pp. 3-5, paras 16-29

6. The SISP was amended by an Order dated July 4, 2023 (the “**Amended SISP**”). The details of the Amended SISP are set out in the Second Report.

Tab 1, pp. 3-4, paras 18-20

7. As a result of the SISP and Amended SISP, various property and assets of the Companies have been sold to date, with approval of the Court, and an interim distribution of \$2.1M has been made to the Companies’ senior secured creditor, Toronto-Dominion Bank (“**TD**”).

Sixth Report, para 13(iii)

8. The only remaining asset for Deloitte to realize on is the Real Property, Personal Property and Licenses.

Sixth Report, Appendix B, p. 8, para 21

9. The Personal Property does not include the 40ft x 15ft x 12ft custom built IQF 3-Tier Conveyor Tunnel Freezer Solid Belt with Glazer Machine and Infeed Table and Machine (the “**Tunnel Freezer**”).

Sixth Report, para 18

### **III. ISSUES**

10. The issues to be determined on this motion are:
  - (a) whether this Honourable Court should seal the Confidential Supplement to the Sixth Report;
  - (b) whether this Honourable Court should approve the sale of the Real Property, Personal Property (excluding the Tunnel Freezer) and Licenses; and
  - (c) whether this Honourable Court should approve the Receiver’s activities to date.

### III. LAW AND ARGUMENT

#### Notice & Service Requirements

11. As Deloitte has been appointed as Receiver pursuant to section 243 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 (the “BIA”) (**Book of Authorities, Tab 10**), it relies on the *Bankruptcy and Insolvency General Rules*, CRC, c 368, and in particular, section 6 (**Book of Authorities, Tab 11**), for both notice and service requirements in respect of this motion. This section provides:

*General*

...

6 (1) *Unless otherwise provided in the Act or these Rules, every notice or other document given or sent pursuant to the Act or these Rules must be served, delivered personally, or sent by mail, courier, facsimile or electronic transmission.*

(2) *Unless otherwise provided in these Rules, every notice or other document given or sent pursuant to the Act or these Rules*

(a) *must be received by the addressee at least four days before the event to which it relates, if it is served, delivered personally, or sent by facsimile or electronic transmission;*  
or

(b) *must be sent to the addressee at least 10 days before the event to which it relates, if it is sent by mail or by courier.*

[Emphasis added]

12. Deloitte will provide confirmation of service of notice of this motion in accordance with the foregoing in advance of the motion date.

#### Issue 1 – Request for Sealing Order

13. As part of this motion, Deloitte is seeking an Order sealing the Confidential Supplement to the Sixth Report. The Confidential Supplement contains commercially sensitive material, including:

- (a) a copy of the asset purchase agreement dated May 21, 2024 (the “**Agreement**”) in relation to the sale of the Real Property, Personal Property and Licenses (the “**Purchased Assets**”);
  - (b) details of the offers received for the Purchased Assets; and
  - (c) details of the appraisal values of the Purchased Assets.
14. Deloitte requests that above noted materials contained in the Confidential Supplement remain sealed and kept confidential until the transaction contemplated in the Agreement (the “**Transaction**”) has closed, or upon further order of this Honourable Court.
15. *Civil Procedure Rule 85.04* provides as follows:

*Order for confidentiality*

- 85.04 (1) *A judge may order that a court record be kept confidential only if the judge is satisfied that it is in accordance with law to do so, including the freedom of the press and other media under section 2 of the Canadian Charter of Rights and Freedoms and the open courts principle.*
- (2) *An order that provides for any of the following is an example of an order for confidentiality:*
- (a) *sealing a court document or an exhibit in a proceeding;*
  - (b) *requiring the prothonotary to block access to a recording of all or part of a proceeding;*
  - (c) *banning publication of part or all of a proceeding;*
  - (d) *permitting a party, or a person who is referred to in a court document but is not a party, to be identified by a pseudonym, including in a heading.*
- (3) *A judge who is satisfied that it is in accordance with law to make an order excluding the public from a courtroom, under Section 37 of the Judicature Act, may make an order for confidentiality to aid the purpose of the exclusion.*

16. As set out in *Sierra Club of Canada v Canada (Minister of Finance)*, 2002 SCC 41 (**Book of Authorities, Tab 8**) (para 53) and *Sherman Estate v Donovan*, 2021 SCC 25 (**Book of Authorities, Tab 7**) (paras 38 and 41-43), sealing orders may be granted when:
- (a) court openness poses a serious risk to an important public interest;
  - (b) the order sought is necessary to prevent this serious risk to the identified interest because reasonably alternative measures will not prevent this risk; and
  - (c) as a matter of proportionality, the benefits of the order outweigh its negative effects.
17. A sealing order will assist to maximize returns to the creditors of the Companies should the Transactions not close. It is submitted that there is a public interest in maximizing returns to creditors and maintaining the integrity of the Receiver's sales process.
18. Courts have previously identified the public interest of sealing orders following a bidding or sales process in a receivership. For example, in *Yukon (Government of) v Yukon Zinc Corporation*, 2022 YKSC 2 (**Book of Authorities, Tab 9**), the Yukon Territory Supreme Court made the following comments in response to a request to seal the details of bids and the receiver's evaluation of such bids in connection with a sales process (at para 39):

*In the insolvency context, especially where there is a sale process, it is a standard practice to keep all aspects of the bidding or sales process confidential. Courts have found this appropriately meets the Sierra Club test as modified by Sherman Estate, as sealing this information ensures the integrity of the sales and marketing process and avoids misuse of information by bidders in a subsequent process to obtain an unfair advantage. The important public interest at stake is described as the commercial interests of the Receiver, bidders, creditors and stakeholders in ensuring a fair sales and marketing process is carried out, with all bidders on a level playing field.*

[Emphasis added]

19. Courts have found that a temporary sealing order, sealing the commercially sensitive information relating to a sales process until the applicable transaction has closed, is necessary to protect such information, and that the benefits of such sealing order outweigh the negative effect. In *Rose-Isli Corp. v. Frame-Tech Structures Ltd.*, 2023 ONSC 832

(**Book of Authorities, Tab 3**), the Ontario Superior Court of Justice noted as follows (at paras 138 – 141):

*The requested partial sealing order is limited in its scope (only specifically identified confidential exhibits) and in time (until the Transaction is completed). It is necessary to protect commercially sensitive information that could negatively impact the Company and its stakeholders if this transaction is not completed and further efforts to sell the property must be undertaken.*

*The proposed partial sealing order appropriately balances the open court principle and legitimate commercial requirements for confidentiality. It is necessary to avoid any interference with subsequent attempts to market and sell the property, and to avoid any prejudice that might be caused by publicly disclosing confidential and commercially-sensitive information prior to the completion of the now approved Ora Transaction.*

*These salutary effects outweigh any deleterious effects, including the effects on the public interest in open and accessible court proceedings. I am satisfied that the limited nature and scope of the proposed sealing order is appropriate and satisfies the Sierra Club of Canada v. Canada (Minister of Finance), 2002 SCC 41, [2002] 2 S.C.R. 522 requirements, as modified by the reformulation of the test in Sherman Estate v. Donovan, 2021 SCC 25, 458 D.L.R. (4th) 361, at para. 38.*

*Granting this order is consistent with the court's practice of granting limited partial sealing orders in conjunction with approval and vesting orders.*

20. In the present matter, the Confidential Supplement for which the sealing order is being sought contains sensitive commercial information, including: the sales price of the Purchased Assets; the other terms and conditions for the purchase and sale of the Purchased Assets; details of appraisals and bids for the Purchased Assets (Sixth Report, para 19). If made publicly available, this information could negatively impact realization if the Transaction does not close.
  
21. Further, the SISP and Amended SISP were premised on a confidential process, and potential bidders were required to enter into non-disclosure agreements before they received information concerning the assets of the Companies.

Sixth Report, Appendix C, p. 3, para 22

22. As a result of the foregoing, it is submitted that there is an important public interest in preserving: (i) the integrity of tender processes generally; and (ii) confidentiality with respect to the assessed value of, and bids for, assets to be sold pursuant to a bidding process within an insolvency proceeding. Alternative measures will not prevent risk of disclosure.
23. As a matter of proportionality, in light of the relatively short period of time during which the Confidential Supplement will be under seal (three months), the beneficial effects of the confidentiality sought outweigh its deleterious effects. Accordingly, it is respectfully submitted that this is an appropriate case for the Court to exercise its discretion pursuant to Rule 85.04 of the *Civil Procedure Rules* and grant an Order sealing the Confidential Supplement. The sealing order will preserve the integrity of the sales process, which greatly outweighs any negative effects that result from temporarily limiting public access to the small amount of commercially sensitive information.

## **Issue 2 – Approval of Sale**

24. Deloitte is seeking the Court's approval for the sale of the Purchased Assets, specifically:
  - (a) the Real Property located at 735-739 Highway 1, Nova Scotia (PID Nos. 30043939 and 30206874);
  - (b) the Personal Property located at the Real Property, other than the Tunnel Freezer;
  - (c) the Licenses, being a fish buyers license no. BL2755 and a fish processors license no. PL2745.
25. The closing date for the sale of the Purchased Assets set out in the Agreement is June 28, 2024. All applicable conditions precedent in the Agreement have been met, other than the Court approving the Transaction (Confidential Supplement, para 15), addressing the sale of the Tunnel Freezer, and certain normal-course conditions which may only be satisfied on the closing date.

### The Tunnel Freezer

26. The Solicitor's Affidavit shows the encumbrances listed against the Purchased Assets and the Receiver wishes to draw the Court's attention to the Tunnel Freezer. The Receiver understands that title to the Tunnel Freezer is held by 6318703 Canada Inc. ("**631 Can**"),

a related party to the Companies, but which is not a party to these proceedings. The Receiver has reached a commercial arrangement with 631 Can to sell the Tunnel Freezer as part of the SISP, and the Receiver is aware that the Tunnel Freezer is encumbered by secured parties in priority to TD (Sixth Report, para 17).

27. The Receiver is currently engaged in discussions to facilitate the sale and transfer of the Tunnel Freezer to the purchaser of the Purchased Assets. Discussions are on-going and the Receiver expects to be in a position to provide an update on these discussions to the Court at the motion hearing.
28. The Receiver wishes to be clear that it is not seeking to include the Tunnel Freezer in the Sale and Vesting Order being sought by this Court. The Receiver does note that the Agreement does include the Tunnel Freezer as an asset of RCS and to be sold to the with the other Purchased Assets (Confidential Supplement, para 12), but this was an oversight. All other terms of the Agreement remain, including the price allocated for the Real Property, Licenses and Personal Property, and the Tunnel Freezer. As noted above, the Receiver is seeking alternative arrangements in order to facilitate the transfer and sale of the Tunnel Freezer to the purchaser of the Purchased Assets, as ultimately contemplated by the Agreement.
29. It is the Receiver's intention to facilitate the transfer and sale of the Tunnel Freezer outside of a court-approved sale. Should there be any issues with the sale and transfer of title of the Tunnel Freezer that will impact on the closing for the sale of the Real Property, Licenses and Personal Property, the Receiver may return to Court for further direction.

#### The Test for Approval

30. The principles for the Court to consider on a motion for the approval of a sale of assets by a receiver are well established and set out in *Royal Bank v. Soundair Corp.*, 1991 CarswellOnt 205 (C.A.) (**Book of Authorities, Tab 4**). These principles are:
  - (a) whether the receiver has made a sufficient effort to get the best price and has not acted improvidently;
  - (b) the interests of all parties;
  - (c) the efficacy and integrity of the process by which offers are obtained; and

(d) whether there has been unfairness in the working out of the process.

31. Section 247(b) of the BIA (**Book of Authorities, Tab 10**) requires that a receiver deal with any property of an insolvent person in a “commercially reasonable manner”. In *Royal Bank of Canada v. 2M Farms Ltd.*, 2017 NSSC 105 (**Book of Authorities, Tab 5**), Moir J. stated the following in respect of the test set forth in *Soundair, supra* (at paras 5 – 8):

*The receiver submits that Royal Bank of Canada v. Soundair Corporation 1991 CanLII 2727 (ON CA), [1991] O.J. 1137 (CA) is the leading case on approval of sales. It emphasizes: (1) sufficiency of the sales effort, (2) interests of the parties, (3) efficacy or integrity of the sale process, and (4) fairness in working out the process.*

*The Bankruptcy and Insolvency Act was amended after Soundair. The amendment established a national receivership and included a provision on the general duties of receivers, which must now be kept in mind when approval of a receiver sale is sought. An appointment of a receiver to enforce security is now usually made under both the national receivership provisions and provincial law (both statutory and common law).*

*As stated by Justice Wood at paragraph 14 of ECBC v. Crown Jewel Resort Ranch Inc., 2014 NSSC 420 (CanLII): “it is not the role of the Court to review in detail every element of the process followed by the Receiver”. Under s. 247(b) of the Bankruptcy and Insolvency Act, a receiver must deal with the receivership property in a commercially reasonable manner. Justice Wood followed long standing authorities when he held, also at paragraph 14 of Crown Jewel, that the court will consider fairness of the process that led to the sale.*

*As I see it, the general obligation under s. 247(b) is the touchstone for approval of a sale by the receiver when the receiver has been appointed under the Bankruptcy and Insolvency Act, alone or in combination with provincial law. Commercial reasonableness is the touchstone for approval. The case law tells us that commercial reasonableness includes fairness, efficacy, integrity, and sufficiency of the sale process. It also tells us that the interests of the parties have to be borne in mind.*

[Emphasis added]

32. It is submitted that the factors set out in *Soundair, supra*, should be considered with a view to the overall commercial reasonableness of the proposed sale of the Property.
33. Galligan J.A. examined each of the four factors separately in *Soundair* and the subsequent jurisprudence has tended to focus on the factors in isolation.

### Factor 1 – Sufficient Effort

34. With respect as to whether the Receiver has made sufficient effort to get the best price, there is little in the jurisprudence following *Soundair* to suggest that, absent an egregious lack of effort on the part of the receiver or a deficiency in a key component of the general sales process, the Courts will quash a sale based on the “sufficient effort” factor.
35. The Agreement was entered into in accordance with the Amended SISP. It is submitted that the Fifth Report and Sixth Report show that sufficient effort has been made to seek the best price for the Purchased Assets, as the Purchased Assets were the subject of an extensive marketing campaign.

### Factor 2 – The Interests of All Parties

36. The second factor set out in *Soundair*, and the balancing of interests that forms part of this factor, is often addressed by the Courts through an analysis of the fourth factor – fairness.
37. Galligan J.A., in *Soundair*, did provide some additional guidelines in addressing this factor:

39 *It is well established that the primary interest is that of the creditors of the debtor: see Crown Trust Co. v. Rosenberg, supra, and Re Selkirk, supra (Saunders J.). However, as Saunders J. pointed out in Re Beauty Counsellors, supra at p. 244 [C.B.R.], "it is not the only or overriding consideration."*

40 *In my opinion, there are other persons whose interests require consideration. In an appropriate case, the interests of the debtor must be taken into account. I think also, in a case such as this, where a purchaser has bargained at some length and doubtless at considerable expense with the receiver, the interests of the purchaser ought to be taken into account. While it is not explicitly stated in such cases as Crown Trust Co. v. Rosenberg, supra, Re Selkirk (1986), supra, Re Beauty Counsellors, supra, Re Selkirk (1987), supra, and (Cameron), supra, I think they clearly imply that the interests of a person who has negotiated an agreement with a court-appointed receiver are very important.*

[Emphasis added]

38. An acknowledgment of the interest of the purchaser is also provided by Duncan J. in *Bank of Montreal v. Sportsclick Inc.*, 2009 NSSC 354 (**Book of Authorities, Tab 1**) at paragraph 33.

39. In the present matter, it is submitted that the proposed Transaction supports the interests of TD, the Companies and the Purchaser. TD, the senior secured creditor, and Ernst & Young (“EY”), financial advisor for the guarantors of the Companies, are in support of the proposed sale, and the Purchaser wishes to complete the Transaction pending the outcome of this motion. It is further submitted that the proposed sale provides a commercially reasonable return for creditors of the Companies.

Sixth Report, para 21  
Confidential Supplemental, para 13

40. It is respectfully submitted that there are no parties known to Deloitte who oppose the sale. Given the foregoing, it is respectfully submitted that the interests of all parties, on balance, favour approval of the proposed sale.

### Factor 3 – Efficacy and Integrity of the Process

41. The third factor of efficacy and integrity was addressed by Galligan J.A. in *Soundair*, by reference to the decision of the Nova Scotia Supreme Court, Appeal Division, in *Cameron v. Bank of N.S.*, 1981 CarswellNS 47 (S.C., A.D.):

*43 The importance of a court protecting the integrity of the process has been stated in a number of cases. First, I refer to Re Selkirk, supra, where Saunders J. said at p. 246 [C.B.R.]:*

*In dealing with the request for approval, the court has to be concerned primarily with protecting the interest of the creditors of the former bankrupt. A secondary but important consideration is that the process under which the sale agreement is arrived at should be consistent with commercial efficacy and integrity.*

*In that connection I adopt the principles stated by Macdonald J.A. of the Nova Scotia Supreme Court (Appeal Division) in Cameron v. Bank of N.S. (1981), 38 C.B.R. (N.S.) 1, 45 N.S.R. (2d) 303, 86 A.P.R. 303 (C.A.), where he said at p. 11:*

*In my opinion if the decision of the receiver to enter into an agreement of sale, subject to court approval, with respect to certain assets is reasonable and sound under the circumstances at the time existing it should not be set aside simply because a later and higher bid is made. To do so would literally create chaos in the commercial world and receivers and purchasers would never be sure they had a binding*

*agreement. On the contrary, they would know that other bids could be received and considered up until the application for court approval is heard -- this would be an intolerable situation.*

*While those remarks may have been made in the context of a bidding situation rather than a private sale, I consider them to be equally applicable to a negotiation process leading to a private sale. Where the court is concerned with the disposition of property, the purpose of appointing a receiver is to have the receiver do the work that the court would otherwise have to do.*

42. Galligan J.A. went on to refer to the unreported holding in *Crown Trust Co. v. Rosenberg*:

45 *Finally, I refer to the reasoning of Anderson J. in Crown Trust Co. v. Rosenberg, supra, at p. 124 [O.R.]:*

*While every proper effort must always be made to assure maximum recovery consistent with the limitations inherent in the process, no method has yet been devised to entirely eliminate those limitations or to avoid their consequences. Certainly it is not to be found in loosening the entire foundation of the system. Thus to compare the results of the process in this case with what might have been recovered in some other set of circumstances is neither logical nor practical.*

[Emphasis added by Galligan J.A.]

...

47 *Before this court, counsel for those opposing the confirmation of the sale to OEL suggested many different ways in which the receiver could have conducted the process other than the way which he did. However, the evidence does not convince me that the receiver used an improper method of attempting to sell the airline. The answer to those submissions is found in the comment of Anderson J. in Crown Trust Co. v. Rosenberg, supra, at p. 109 [O.R.]:*

*The court ought not to sit as on appeal from the decision of the Receiver, reviewing in minute detail every element of the process by which the decision is reached. To do so would be a futile and duplicitous exercise.*

43. This characterization of the third factor, as ensuring that commercial good-sense be present, was again echoed by Duncan J. in *Sportsclick, supra*, at paragraph 33, and also by Roscoe J.A. writing for the Nova Scotia Court of Appeal in *Edwards v. Edwards Dockrill Horwich Inc.*, 2009 NSCA 37 (**Book of Authorities, Tab 2**) at paragraph 5. So long as

the receiver has acted in a commercially reasonable manner in conducting the sale, the efficacy and integrity of the process is intrinsically upheld as a direct result.

44. It is submitted that the requirements of this factor have been met for the following reasons:
- (a) the Agreement resulted from the court-approved SISF and the Amended SISF;
  - (b) Deloitte engaged TriNav, reputable commercial brokerage, and the Purchased Assets were the subject of an extensive marketing campaign; and
  - (c) the proposed Transaction is not opposed by the creditors and there is no evidence to suggest that that a better result can be realistically expected from an extended or alternative sales process.

#### Factor 4 – Unfairness

45. As stated by Galligan J.A. in *Soundair*, the Court must also decide whether the sales process was fair (para 49). Roscoe J.A. for the Nova Scotia Court of Appeal in *Edwards, supra*, in noting the trial decision of MacAdam J., referenced the decision in *Rosenberg, supra*:

*5 Justice MacAdam found that there was no excess of power, fraud or lack of bona fides on behalf of the receivers and therefore the question was whether the receivers' report was reasonable. He also adopted the test established in Crown Trust Co. v. Rosenberg (1986), 39 D.L.R. (4th) 526 (Ont. H.C.) where Anderson, J., stated at page 548:*

*. . . The court ought not to sit as on appeal from the decision of the Receiver, reviewing in minute detail every element of the process by which the decision is reached. To do so would be a futile and duplicitous exercise. The court ought not to embark on a process analogous to the trial of a claim by an unsuccessful bidder for something in the nature of specific performance. The court should not proceed against the recommendations of its Receiver except in special circumstances and where the necessity and propriety of doing so are plain. Any other rule or approach would emasculate the role of the Receiver and make it almost inevitable that the final negotiation of every sale would take place on the motion for approval.*

*In all of this it is necessary to keep in mind not only the function of the court but the function of the Receiver. The Receiver is selected and appointed having regard for experience and expertise in the duties which are involved. It is the function of the Receiver to conduct negotiations and to assess the practical business aspects of the problems involved in the disposition of the assets.*

*and at page 550:*

*It is equally clear, in my view, though perhaps not so clearly enunciated, that it is only in an exceptional case that the courts will intervene and proceed contrary to the Receiver's recommendations if satisfied, as I am, that the Receiver has acted reasonably, prudently and fairly and not arbitrarily.*

*And further at page 551:*

*If the court were to reject the recommendation of the Receiver in any but the most exceptional circumstances, it would materially diminish and weaken the role and function of the Receiver both in the perception of receivers and in the perception of any others who might have occasion to deal with them. It would lead to the conclusion that the decision of the Receiver was of little weight and that the real decision was always made upon the motion for approval. That would be a consequence susceptible of immensely damaging results to the disposition of assets by court-appointed receivers.*

46. Accordingly, while maintaining the ability to quash the sale, the jurisprudence indicates that courts make great effort to confirm that such power will only be wielded in “the most exceptional circumstances”, when unfairness is obvious and fundamentally detrimental. It is respectfully submitted that there can be no fundamental or obvious unfairness shown in this matter.
47. Based on the foregoing, it is submitted that Deloitte has acted in a commercially reasonable manner and that the sale of the Purchased Assets, as contemplated under the Agreement, satisfies the *Soundair* principles.

## Approval and Vesting Order

48. With respect to the proposed sale of the Purchased Assets, Deloitte requests an approval and vesting order. The authority of this Honourable Court to grant such an order pursuant to section 243(1)(c) of the BIA was considered by Rosinski, J. in *Royal Bank of Canada v Eastern Infrastructure*, 2019 NSSC 297 (**Book of Authorities, Tab 6**), where the Court stated at para 7:

*[7] Lemare Logging was released one year after Justice Wood made his comments in Crown Jewel. Although Nova Scotia does not have express provincial legislation giving the court jurisdiction to make such vesting orders, it is clear that in appropriate circumstances courts can rely on s 243(1)(c) BIA to do so. In Dianor, the court cited Crown Jewel at para. 78, noting that "...the case law on vesting orders in the insolvency context is limited."*

[Emphasis added]

49. Regarding the appropriate circumstances to make an approval or vesting order, Rosinski J. cited at paragraph 8 the test set out in *Soundair*, as approved in Nova Scotia by Duncan J. in *Sportsclick, supra*.
50. The Receiver draws the Court's attention to registrations filed by 631 against RCS that relate to the Tunnel Freezer (Solicitor's Affidavit, p.2, paras 6-7 and Exhibits A & B p. 3, para 10(e) and Exhibit D, pp. 7-8). The purpose of these registrations by 631 against its own asset is unclear, but to the extent that this registration would impact or restrict the transfer of any interest RCS may have in the Tunnel Freezer (which interest is unknown), the Receiver requests that these registrations be included in and released and discharged by the Sale and Vesting Order. It is understood that 631 will have no opposition to this request. The proposed form of Sale and Vesting Order clarifies that the Order does not transfer or otherwise extinguish title to the Tunnel Freezer held by 631 Can nor discharge or release any lien, security interest, or charge held by secured creditors of 631 Can in respect of the Tunnel Freezer.
51. Given the foregoing, it is submitted that the proposed form of approval and vesting order requested by Deloitte in this matter, which is in a form similar to other orders granted by this Honourable Court since the decision of Rosinski, J. in *Eastern Infrastructure, supra*, is appropriate in the circumstances.

### **Issue 3 – Approval of Receiver’s Activities**

52. Since the approval of the SISP and Amended SISP and the interim distribution to TD, Deloitte has been engaged in the following activities (Sixth Report, para 12):
- (a) Distributing funds to TD;
  - (b) participating in discussions with representatives of TD regarding the administration of the estate, including the Amended SISP;
  - (c) participating in discussions with TriNav, EY and the Receiver’s legal counsel regarding the administration of the Amended SISP;
  - (d) filing outstanding corporate tax returns to bring the business accounts of MAF into compliance with Canada Revenue Agency;
  - (e) maintaining the Receiver’s Website; and
  - (f) preparation of the Sixth Report and Confidential Supplement.
53. It is respectfully requested that the activities as listed by Deloitte in the Sixth Report are appropriate and should be approved by this Court.

### **IV. RELIEF SOUGHT**

54. Based on the foregoing, it is respectfully submitted that this Honourable Court grant the following relief:
- (a) sealing of the Confidential Supplement to the Sixth Report for a period of three (3) months;
  - (b) approval of the sale of the Purchased Assets; and
  - (c) approving the activities of Deloitte as set out in the Sixth Report.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED** this 4<sup>th</sup> day of June, 2024.



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**Sara Scott / David Wedlake**  
Stewart McKelvey  
600-1741 Lower Water Street  
Halifax, NS B3J 0J2  
Telephone: (902) 444-1705  
Facsimile: (902) 420-1417  
**Counsel for the Receiver,**  
**Deloitte Restructuring Inc.**

**TAB 1**

**DISTRICT OF: NOVA SCOTIA**  
**DIVISION NO: 01 – HALIFAX**  
**COURT NO: 2023-521470**  
**ESTATE NO'S: 51-126400/51-126401/51-126414**



**SECOND REPORT OF DELOITTE RESTRUCTURING INC.  
IN ITS CAPACITY AS RECEIVER OF  
MERIDIEN ATLANTIC FISHING LTD.,  
ROCKY COAST SEAFOODS LTD. AND 9514228 CANADA INC.**

**JUNE 27, 2023**

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**APPENDICES**

**APPENDIX A – STATEMENT OF RECEIPTS AND DISBURSEMENTS**

## INTRODUCTION AND PURPOSE OF THIS REPORT

1. On March 9, 2023 (the "**Appointment Date**"), upon application by TD Bank ("**TD**"), the Supreme Court of Nova Scotia in Bankruptcy and Insolvency (the "**Court**") granted an order (the "**Receivership Order**") appointing Deloitte Restructuring Inc. ("**Deloitte**") as receiver (the "**Receiver**") without security, of all the assets, undertakings and properties of Meridien Atlantic Fishing Ltd. ("**Meridien**") and Rocky Coast Seafoods Ltd. ("**Rocky Coast**").
2. On April 14, 2023, upon application by TD, the Receivership Order was amended (the "**Amended Receivership Order**") appointing Deloitte as Receiver without security, over the assets, undertakings and properties of 9514228 Canada Inc. ("**951**") (Meridien, Rocky Coast and 951 are collectively referred to herein as the "**Meridien Group**").
3. Additionally, on April 14, 2023, the Court granted an order approving the proposed sale and investment solicitation process (the "**SISP**") (the "**SISP Order**") as outlined in the Receiver's first report dated April 5, 2023 (the "**First Report**").
4. The purpose of this second report of the Receiver (the "**Second Report**") is to provide information to the Court with respect to:
  - a) the Receiver's activities and the administration of the estate since the First Report;
  - b) the Receiver's request that the Court approve the activities of the Receiver to date (the "**Activities Order**");
  - c) update the Court on the outcome of the SISP to date and the Receiver's request that the Court approve an amendment to the SISP Order (the "**Amended SISP Order**"); and
  - d) the Receiver's request for an order increasing the Receiver's borrowing ability as contained within the Amended Receivership Order to \$350,000 (the "**Borrowing Order**").

## TERMS OF REFERENCE

5. In preparing this Second Report, Deloitte has been provided with, and has relied upon, unaudited, draft and/or internal financial information, the Meridien Group's books and records, discussions with management, and information from third-party sources (collectively, the "**Information**"). Except as described in this Second Report:
  - a) Deloitte has reviewed the Information for reasonableness, internal consistency and use in the context in which it was provided. However, Deloitte has not audited or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would wholly or partially comply with Canadian Audit Standards ("**CAS**") pursuant to the Chartered Professional Accountants Canada Handbook and, accordingly, Deloitte expresses no opinion or other form of assurance contemplated under CAS in respect of the Information.
  - b) Deloitte has prepared this Second Report in its capacity as Receiver to provide background to the Court for its consideration of the relief being sought. Parties using this Second Report other than for the purposes outlined herein are cautioned that it may not be appropriate for their purposes.
6. Unless otherwise stated, all dollar amounts contained in this Second Report are expressed in Canadian Dollars.
7. Documents pertaining to the administration of the estate can be found on the Receiver's website at [www.insolvencies.deloitte.ca/MeridienGroup](http://www.insolvencies.deloitte.ca/MeridienGroup).

### ACTIVITIES OF THE RECEIVER

8. Since the First Report, the Receiver's activities have included, but were not limited to:
  - a) issuing statutory notices pursuant to sections 245(1) and 246(1) of the *Bankruptcy and Insolvency Act* (Canada) (the "**BIA**") to creditors of 951;
  - b) completing administrative activities pertaining to the Wage Earners Protection Program Act;
  - c) participating in discussions with representatives of TD and its legal counsel regarding the administration of the estate;
  - d) participating in discussions with and assisting Stewart McKelvey, the Receiver's independent legal counsel, with the completion of an independent verification of TD's security;
  - e) participating in discussions with parties holding quota in trust for Meridien and 951;
  - f) participating in discussions with Ernst & Young Inc., financial advisor to the guarantors (the "**Guarantors**") regarding obligations outstanding to TD and the SISP;
  - g) participating in discussions with representatives from the Nova Scotia Department of Fisheries and Aquaculture;
  - h) issuing notices of the appointment to Fisheries and Oceans Canada;
  - i) assisting TriNav Group of Companies ("**TriNav**") with the administration of the SISP including, but not limited to, the following:
    - i. providing additional due diligence documentation to TriNav pertaining to the assets of the Meridien Group;
    - ii. providing copies of the one-page teaser (the "**Teaser**") to potential interested parties and connecting parties with TriNav;
    - iii. participating in discussions with TriNav regarding interest received to date and providing updates to TD and EY regarding the same; and
    - iv. reviewing letters of intent received from interested parties.
9. A summary of estate receipts and disbursements (the "**R&D**") as at June 21, 2023 is enclosed as **Appendix A**. For the purpose of the Second Report, the R&D's of Meridien, Rocky Coast and 951 are presented on a consolidated basis. Once the realization of assets has been completed, the Receiver will marshal certain costs and provide separate R&D's for each estate.
10. As at the date of the R&D, the Receiver has borrowed \$40,000 from TD pursuant to paragraphs 26 through 29 of the Amended Receivership Order (the "**Borrowed Funds**"). Furthermore, as at the date of the R&D, the Receiver is holding \$2,759 in trust representing the current balance of Borrowed Funds net of expenses paid to date.
11. As at the date of the Second Report, the Receiver is not aware of any objection to the Receiver's conduct or activities to date.
12. The Receiver is currently seeking the Court's approval of the First Report and Second Report including the conduct and activities described therein.

13. Based on the activities outlined above and contained within the First Report, the Receiver anticipates that moving forward its activities will focus on the execution and completion of the SISP as amended herein.

#### **MARKETING AND SALE PROCESS UPDATE**

14. As previously discussed herein, on April 14, 2023, the Court granted the SISP Order approving the Receiver's plans to market the assets of the Meridien Group via a sales agent (TriNav).
15. Marketing activities as set out in the SISP Order, completed by TriNav to date included:
- a) contacting parties identified by the Receiver who had previously expressed interest in the assets;
  - b) providing the Teaser to TriNav's email distribution network of brokers and buyers (approximately 10,000 parties);
  - c) advertising the SISP in the Chronicle Herald, ALLNovaSoctia.com, Insolvency Insider, The Navigator magazine, and Atlantic Fisherman newspaper; and
  - d) listing parcels on TriNav Marine Brokerage and TriNav Realty websites (collectively the "**Marketing Activities**").
16. These Marketing Activities resulted in the execution of 23 non-disclosure agreements and as at May 31, 2023 (the letter of intent ("**LOI(s)**") deadline) the receipt of eight LOIs.
17. Despite the SISP process garnering significant interest in the assets of the Meridien Group, the unique nature of the assets and the blind tender process (i.e. no advertised list price) utilized has made it more challenging for interested parties to gauge their interest in the assets and submit offers. TriNav has advised Deloitte that establishing a range of appropriate values in the case of fishing quota and licenses, list prices in the case of real estate and equipment and allowing them to negotiate with interested parties will enhance and simplify the realization process.
18. Taking into consideration the initial results of the SISP and feedback provided to the Receiver from TriNav, and with the support of TD and the Guarantors, the Receiver is recommending and requesting the following amendments to the SISP:

#### **Fishing Licenses and Quota**

- a) TriNav will establish an appropriate range of values for licenses and quota parcels taking into consideration the estimated value as contained within an appraisal which was completed in 2022.
- b) Once a range has been established, TriNav will enter into negotiations with interested parties.

#### **Fish processing facility, apartment building and equipment**

- a) Real estate and equipment assets including the fish processing facility and its various equipment, and a residential apartment building located in Comeauville, Nova Scotia will be listed by TriNav's realty division on the Nova Scotia MLS System.
- b) In both cases, TriNav will establish an appropriate list price in consultation with the Receiver, TD and the Guarantors taking into consideration the estimated value as contained within appraisals which was completed in 2023.

19. The Receiver is of the opinion that assigning value ranges/listed prices and allowing TriNav the authority and time to negotiation with interested parties over a longer period of time will enhance the recoveries of the estate as compared to proceeding to the next phase of the SISP as originally approved by the Court.
20. The Receiver has discussed the proposed amendments to the SISP with TD and the Guarantors and both key stakeholders support the amendments discussed herein.

#### **CHURCH POINT PROPERTY**

21. As at the date of the Second Report, the Receiver is in the process of finalizing the terms of an agreement of purchase and sale pertaining to the Church Point Property. To protect sensitive information relating to the proposed transaction, the Receiver intends to provide the Court with a confidential report along with a motion for a sale approval and vesting order as soon as possible.
22. The Receiver has discussed the proposed Church Point Property transaction with TD and the Guarantors and both parties support the transaction.

#### **RECEIVER BORROWINGS**

23. As discussed above, as at the date of this Second Report the Receiver has Borrowed Funds in the amount of \$40,000.
24. As at the date of the Second Report, the Receiver has requested additional funding from TD in the amount of \$125,000 (bringing total Borrowed Funds to \$165,000) in order to pay professional fees and projected ongoing holding costs (approximately \$12,000 per month).
25. Considering monthly holding costs, ongoing professional fees of the Receiver and its legal counsel and the proposed amendments to the SISP discussed above, the Receiver is of the opinion that borrowings may exceed the maximum borrowing limit of \$250,000 contained within the Amended Receivership Order.
26. The Receiver has consulted with TD regarding the increase to the borrowing limit and it supports the Receiver's request.
27. As such, the Receiver is seeking approval from the Court to increase its borrowing limit to \$350,000.

SECOND REPORT OF DELOITTE RESTRUCTURING INC.  
COURT NO: 2023-521470  
ESTATE NO'S: 51-126400/51-126401/51-126414  
JUNE 27, 2023

**CONCLUSION**

28. The Second Report has been prepared to provide this Court with information regarding the Receiver's activities since the First Report, update the Court on the outcome of the SISP to date, advise the Court of the Receiver's intention to bring forward a sale approval motion imminently, and the Receiver's request that the Court approve the Activities Order, an amendment to the SISP Order and the Borrowing Order.
29. Based on the foregoing, the Receiver requests the Court grant the Activities Order, the amended SISP Order, and the Borrowing Order in the form submitted by legal counsel.

All of which is respectively submitted on June 27, 2023.

**DELOITTE RESTRUCTURING INC.**

Acting in its capacity as  
Receiver of Meridien Atlantic Fishing Ltd.,  
Rocky Coast Seafoods Ltd. and 9514228 Canada Inc.  
and not in its personal capacity.

Per:



**James Foran**  
Senior Vice President

Per:



**Kurt MacLeod**  
Vice President

## **Appendix A**

### **STATEMENT OF RECEIPTS AND DISBURSEMENTS**

District of: Nova Scotia  
Division No: 01- Halifax  
Estate No's: 51-126401/51-126400/51-126414

In the matter of the receivership of  
Meridien Atlantic Fishing Ltd., Rocky Coast Seafoods Ltd.  
and 9514228 Canada Inc.  
of the town of Comeauville, in the Province of Nova Scotia, and  
the town of Matane, in the Province of Quebec

Consolidated Interim Statement of Receipts and Disbursement  
for the period from March 9, 2023 to June 21, 2023

**RECEIPTS**

Receiver's borrowings	40,000.00	
Rental income	6,117.46	
Interest	2.85	46,120.31

**TOTAL RECEIPTS**

**46,120.31**

**DISBURSEMENTS**

Contracted workers	18,052.71	
Insurance	17,207.95	
Utilities	4,856.51	
Telephone and internet	822.24	
Repair and maintenance	819.60	
HST paid on disbursements	717.09	
Fishing quota fees paid to Fisheries and Oceans Canada	592.13	
Security	120.00	
Bank charges	100.00	
Filing fees paid to the official receiver	72.82	43,361.05

**TOTAL DISBURSEMENTS**

**43,361.05**

**AMOUNT RETAINED IN TRUST ACCOUNT BY THE RECEIVER**

**2,759.26**

**DELOITTE RESTRUCTURING INC.**

Acting in its capacity as Receiver  
Meridien Atlantic Fishing Ltd., Rocky Coast Seafoods Ltd.  
and 9514228 Canada Inc.  
and not in its personal capacity

Per: 

**Kurt Macleod, MBA, CIRP, LIT**  
Vice President