

Court File Number: SJM/125/2023

Numéro du dossier :

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

COUR DU BANC DU ROI DU  
NOUVEAU-BRUNSWICK  
DIVISION DE PREMIÈRE INSTANCE  
CIRCONSCRIPTION JUDICIAIRE DE  
SAINT JEAN

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  
709280 NB LTD., 103232 P.E.I. INC.,  
CAN-AM LOBSTER & SHELLFISH LTD.,  
103233 P.E.I. INC., 103234 P.E.I. INC.,  
3249640 NOVA SCOTIA LIMITED and  
12588129 CANADA INC. (each a  
"Company" and collectively the  
"Companies")

B E T W E E N:

ENTRE :

THE TORONTO-DOMINION BANK

Applicant

Requérant

- and -

- et -

709280 NB LTD., 103232 P.E.I. INC.,  
CAN-AM LOBSTER & SHELLFISH LTD.,  
103233 P.E.I. INC., 103234 P.E.I.  
INC., 3249640 NOVA SCOTIA  
LIMITED, and 12588129 CANADA INC.

Intimé

Respondents

**NOTICE OF MOTION  
(FORM 37A)**

**AVIS DE MOTION  
(FORMULE 37A)**

TO: THE RESPONDENTS

DESTINATAIRE :

To: The Service List (see Schedule "A" attached hereto)

Deloitte Restructuring Inc., in its capacity as Monitor of the Respondents (the "**Monitor**"), will apply to the Court before the Court at the Saint John Law Courts, 10 Peel Plaza, Saint John, New Brunswick on the **23<sup>rd</sup> day of August, 2024 at 11:00 a.m. (ADT), via teleconference**, for an order as set out hereunder.

Le requérant demandera à la Cour au Palais de Justice de \_\_\_\_\_ Nouveau-Brunswick, \_\_\_\_\_, le \_\_\_\_\_ 2023, à \_\_\_\_\_ h \_\_\_\_\_, d'obtenir l'ordonnance décrite ci-dessous.:

You are advised that:

Sachez que :

- (a) You are entitled to issue documents and present evidence at the hearing in French or English or both;
- (b) The Monitor intends to proceed in the ENGLISH language; and
- (c) If you intend to proceed in the other official language, an interpreter may be required and you must so advise the clerk at least 5 days before the hearing.

- (a) vous avez le droit d'émettre des documents et de présenter votre preuve à l'audience en français, en anglais ou dans les deux langues;
- (b) le requérant a l'intention d'utiliser la langue ANGLAISE; et
- (c) si vous avez l'intention d'utiliser l'autre langue officielle, les services d'un interprète pourront être requis et vous devrez en aviser le greffier au moins 5 jours avant l'audience.

## MOTION

On hearing of this Motion, Deloitte Restructuring Inc. (“**Deloitte**”), in its capacity as the court-appointed monitor (the “**Monitor**”) of 709280 NB LTD., 103232 P.E.I. INC., CAN-AM LOBSTER & SHELLFISH LTD., 103233 P.E.I. INC., 103234 P.E.I. INC., 3249640 NOVA SCOTIA LIMITED and 12588129 CANADA INC. (collectively, the “**Debtors**”), intends to apply for the following relief pursuant to the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”):

1. If necessary, abridging the time for service of this Notice of Motion, the eighth report of the Monitor dated April 10, 2024 (the “**Eighth Report**”) and/or the Record on Motion, or excusing the lack of service of this Notice of Motion and/or the Record on Motion;
2. An order (the “**Stay Extension Order**”) substantially in the form of the draft attached hereto as Schedule “B”, among other things:
  - a) extending the Stay Period (as defined below) from August 30, 2024, until and including October 31, 2024; and
  - b) approving the activities of the Monitor, as set out the Eighth Report of the Monitor dated August 16, 2024.
3. Such further and other relief as to this Honourable Court may deem just.

Upon hearing of the Motion, the Monitor intends to argue the following grounds and rely upon the following statutory provisions or rules:

A l’audience de la motion, la partie donnant l’avis de motion invoquera les motifs et les dispositions législatives ou règles suivantes;

## Background

4. Capitalized terms used herein and not otherwise defined have the meaning given to them in the Eighth Report;
5. On September 21, 2023, upon an application by The Toronto-Dominion Bank (the “**Applicant**”), the Debtors obtained protection under the CCAA by orders of this Court (the “**Initial Orders**”);
6. The Initial Orders, among other things:
  - a) appointed Deloitte as the Monitor;
  - b) appointed David Boyd, a representative of Resolve Advisory Services Ltd., as the chief restructuring officer (in this capacity, the “**CRO**”); and
  - c) approved a stay of proceedings up to and including October 1, 2023 (as subsequently extended, the “**Stay Period**”);
7. On October 5, 2023, this Court granted an order extending the Stay Period to October 25, 2023.
8. On October 25, 2023, this Court granted the following orders:
  - d) The Sale and Investment solicitation Process order (the “**SISP Order**”) approving a sale and investment solicitation procedure (the “**SISP**”) and authorizing the Monitor to implement the SISP and administer the sale of the Purchased Assets; and

- e) The Second Amended and Restated Initial Order extending, *inter alias*, the Stay period from October 25, 2023 to January 31, 2024.
9. On January 29, 2024, this Court granted the following orders:
- f) The Approval and Vesting Order (the “**AVO**”) authorizing the sale of the Companies’ assets in accordance with the terms of the Sale Agreement dated January 12, 2024 (the “**Sale Agreement**”) to Phillips Bridge Seafood ULC (the “**Transaction**”)
  - g) The Ancillary Order providing for, *inter alias*, the extension of the Stay Period from January 31, 2024 to April 30, 2024;
  - h) The Priority Claims Order for the purposes of settling any claims that rank in priority to the claims of the Applicant, The Toronto-Dominion Bank;
10. On March 19, 2024, this Court issued an Amended Approval and Vesting Order to facilitate the conveyancing of certain classes of assets, among the Purchased Assets to newly incorporated affiliates of the Purchaser, namely, Phillips Bridge Properties Canada ULC and Phillips Bridge Logistics Corp.
11. On April 15, 2024, this Court issued an Ancillary Order extending the Stay Period from April 30, 2024, until and including August 30, 2024, approving the activities of the Monitor as reported in the Seventh Report of the Monitor dated April 10, 2024 and declaring that the debtors, and their collective former employees met the criteria established by section 3.2 of the *Wage Earner*

*Protection Regulations*, SOR/2008-222 (the “WEPPA Regulation”) issued pursuant to the *Wage Earner Protection Act*, SC 2005, c. 47 (the “WEPPA”) and are individuals to whom the WEPPA applies.

### **The Transaction and Post Closing Activities of the Monitor**

12. The Transaction was completed on April 23, 2024 (the “**Closing Date**”).

Subsequent to the Closing Date, the Debtors’ ongoing business operations ceased, and all employees were terminated by the Monitor;

13. Subsequent to closing, certain former staff of the Debtors have assisted the Monitor to collect trade accounts receivables, filing excise tax returns and providing the Monitor information required for WEPPA;

14. The Monitor continues to receive cooperation from former staff and the CRO is assisting with the administration of the CCAA Proceedings;

15. As are more fully detailed in the Eighth Report of the Monitor, since the Seventh Report, the activities of the Monitor have included:

- a) Reviewing and approving disbursements of the Debtors;
- b) Conducting appraisals of certain assets;
- c) Repaying the DIP Facility;
- d) Working with retained staff, the CRO, and legal counsel to monetize assets not contained as part of the Transaction;
- e) Working with EDC and an international collection agency in an attempt to recover on certain foreign trade accounts receivables;

- f) Disclaiming certain leases; and
- g) Commencing the WEPPA;

16. The Monitor is actively engaged in preparing a proposed distribution schedule (the “**Proposed Distribution Schedule**”), which is nearing completion and will be shared with the affected stakeholders in the near future.

17. The Monitor also continues to be engaged with CRA regarding the CRA Priority Claim. The CRA Priority Claim is part of the Proposed Distribution Schedule.

#### **Extension of the Stay Period**

18. The Stay Period currently expires on August 30, 2024 and the Monitor seeks to extend the Stay Period until and including October 31, 2024;

19. The requested extension will allow the Monitor to complete the remaining post closing items, which are primarily collection efforts for residual assets and distribution;

20. The Monitor has prepared an interim statement of receipts and disbursements and the Debtors will have sufficient funds to cover their expenses during the extended Stay Period given the cessation of their business operations;

21. The Monitor is of the view that the requirement of good faith and due diligence has been met;

### Approval of Activities and Reports

22. The activities of the Monitor are set out in detail in the Eighth Report and are consistent with its mandate pursuant to the Initial Orders, as amended and restated.

### Other Grounds

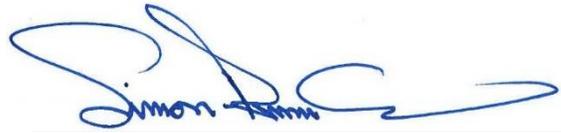
23. The provisions of the CCAA and the inherent and equitable jurisdiction of this Honourable Court;
24. Rules 1.03, 2.01 and 3.02 of the Rules of Court, NB Reg 82-73; and
25. Such further and other grounds as counsel may advise and this Court may permit.

Upon hearing of the Motion, the following affidavits or other documentary evidence will be presented:      À l'audition de la motion, les affidavits ou les autres preuves littérales suivantes seront présentées :

26. The Eighth Report, including the appendices attached thereto;
27. Such further and other materials as counsel may advise and this Honourable Court may permit.

DATED AT MONCTON, NEW BRUNSWICK THIS  
16<sup>th</sup> day of August, 2024.

**COX & PALMER**



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**Gavin MacDonald**

**Simon-Pierre Godbout**

Solicitors for the Moving Party, Deloitte Restructuring Inc. in its capacity as the court-appointed monitor of 709280 NB LTD., 103232 P.E.I. INC., CAN-AM LOBSTER & SHELLFISH LTD., 103233 P.E.I. INC., 103234 P.E.I. INC., 3249640 NOVA SCOTIA LIMITED and 12588129 CANADA INC.

*Cox & Palmer*  
*Nova Centre – South Tower*  
*1500-1625 Grafton Street*  
*Halifax, NS B3J 0E8*  
*Telephone: 902 421 6262*  
*Fax: 902-421-3130*  
[gmacdonald@coxandpalmer.com](mailto:gmacdonald@coxandpalmer.com)  
[spgodbout@coxandpalmer.com](mailto:spgodbout@coxandpalmer.com)

SCHEDULE "A" - SERVICE LIST

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

**IN THE MATTER OF THE COMPANIES' CREDITORS  
ARRANGEMENT ACT, R.S.C. 1985, c.C-36, AS AMENDED**

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR  
ARRANGEMENT OF 709280 NB LTD., 103232 P.E.I. INC.,  
CAN-AM LOBSTER & SHELLFISH LTD., 103233 P.E.I. INC.,  
103234 P.E.I. INC., 3249640 NOVA SCOTIA LIMITED and  
12588129 CANADA INC. (each a "Company" and  
collectively the "Companies")**

**B E T W E E N :**

**THE TORONTO-DOMINION BANK**

**APPLICANT**

- and -

**709280 NB LTD., 103232 P.E.I. INC., CAN-AM LOBSTER  
& SHELLFISH LTD., 103233 P.E.I. INC., 103234 P.E.I.  
INC., 3249640 NOVA SCOTIA LIMITED and 12588129  
CANADA INC.**

**RESPONDENTS**

**SERVICE LIST**

<p><b>NORTON ROSE FULBRIGHT CANADA LLP</b> 222 Bay Street, Suite 3000, P.O. Box 53 Toronto, ON M5K 1E7</p> <p><b>Jennifer Stam</b> Tel: 416.202.6707 <a href="mailto:jennifer.stam@nortonrosefulbright.com">jennifer.stam@nortonrosefulbright.com</a></p> <p><b>Arnold Cohen</b> <a href="mailto:arnold.cohen@nortonrosefulbright.com">arnold.cohen@nortonrosefulbright.com</a></p> <p><b>Michele Friel</b> <a href="mailto:michele.friel@nortonrosefulbright.com">michele.friel@nortonrosefulbright.com</a></p> <p><b>Katie Parent</b> <a href="mailto:katie.parent@nortonrosefulbright.com">katie.parent@nortonrosefulbright.com</a></p> <p>Lawyers for the Applicant</p>	<p><b>COX &amp; PALMER</b> Nova Centre – South Tower 1500-1625 Grafton Street Halifax, NS B3J 0E8</p> <p><b>Gavin MacDonald</b> <a href="mailto:GMacDonald@coxandpalmer.com">GMacDonald@coxandpalmer.com</a></p> <p><b>Simon-Pierre Godbout</b> <a href="mailto:spgodbout@coxandpalmer.com">spgodbout@coxandpalmer.com</a></p> <p>Counsel for the Monitor</p>
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<p><b>DELOITTE RESTRUCTURING INC.</b>  1741 Lower Water St.  Suite 800  Halifax, NS B3J 0J2  Email: <a href="mailto:southshoreseafoods@deloitte.ca">southshoreseafoods@deloitte.ca</a></p> <p><b>James Foran</b>  <a href="mailto:jforan@deloitte.ca">jforan@deloitte.ca</a></p> <p><b>Kurt Macleod</b>  <a href="mailto:kmacleod@deloitte.ca">kmacleod@deloitte.ca</a></p> <p><b>Warren Leung</b>  <a href="mailto:waleung@deloitte.ca">waleung@deloitte.ca</a></p> <p><b>Jorden Sleeth</b>  <a href="mailto:jsleeth@deloitte.ca">jsleeth@deloitte.ca</a></p> <p>The Monitor</p>	<p><b>RESOLVE ADVISORY SERVICES LTD</b></p> <p><b>David Boyd</b>  <a href="mailto:davidboyd.resolve@gmail.com">davidboyd.resolve@gmail.com</a></p> <p>Chief Restructuring Officer</p>
<p><b>STEWART MCKELVEY</b>  Queen's Marque  600-1741 Lower Water Street  Halifax, NS B3J 0J2</p> <p><b>Maurice Chiasson, K.C.</b>  Tel: 902.420.3300  <a href="mailto:mchiasson@stewartmckelvey.com">mchiasson@stewartmckelvey.com</a></p> <p>Counsel for the Respondents</p>	<p>709280 NB LTD., 103232 P.E.I. INC., CAN-AM LOBSTER &amp; SHELLFISH LTD., 103233 P.E.I. INC., 103234 P.E.I. INC., 3249640 NOVA SCOTIA LIMITED AND 12588129 CANADA INC.</p> <p><b>Michel Jacob</b>  <a href="mailto:michel@southshoreseafoods.ca">michel@southshoreseafoods.ca</a></p> <p><b>Tim Williston</b>  <a href="mailto:tim@southshoreseafoods.ca">tim@southshoreseafoods.ca</a></p> <p>The Respondents / Debtors</p>
<p><b>THORNTON GROUT FINNIGAN LLP</b>  100 Wellington Street, West  Toronto-Dominion Centre  Toronto, ON M5K1K7</p> <p><b>Leanne Williams</b>  Tel: 416.304.0060  <a href="mailto:lwilliams@tgf.ca">lwilliams@tgf.ca</a></p> <p><b>Patrick Power</b>  <a href="mailto:PPower@tgf.ca">PPower@tgf.ca</a></p> <p>Lawyers for Business Development Bank of Canada and BDC Capital Inc.</p>	

<p><b>THUNDER COVE INVESTMENTS INC.</b> Box 1600 Summerside, PE C1N 2V5</p> <p><b>902.853.7160</b> <a href="mailto:warrenellis@summersidechrysler.pe.ca">warrenellis@summersidechrysler.pe.ca</a></p>	<p><b>MAPLEWOOD TRUST, by its Trustee, Warren Ellis</b></p> <p><a href="mailto:warrenellis@summersidechrysler.pe.ca">warrenellis@summersidechrysler.pe.ca</a></p>
<p><b>ROBERT ARSENAULT</b> 7823 Route 11 Wellington, PEI</p> <p><a href="mailto:afm@bellaliant.com">afm@bellaliant.com</a></p>	<p><b>DEWIS COOKE</b> 2 Water Street, Apt 1 Charlottetown, PEI C1A 1A1</p> <p><a href="mailto:cookedewis@gmail.com">cookedewis@gmail.com</a></p>
<p><b>RANDY COOKE</b> 129 Navoo Road O'Leary RR1, PEI C0B 1Vo</p> <p><a href="mailto:hcs@pei.aibn.com">hcs@pei.aibn.com</a></p>	<p><b>MURPHY'S LIMITED LIABILITY COMPANY</b> 1224 Buttonwood Lane Sanibel, FL 33957</p> <p><a href="mailto:johnjpshellfish@gmail.com">johnjpshellfish@gmail.com</a></p>
<p><b>BTW HOLDINGS INC.</b> PO Box 1651 Summerside, PEI C1N 2V5</p> <p><a href="mailto:dewis@bythewaterlobster.com">dewis@bythewaterlobster.com</a></p>	<p><b>KEY MURRAY LAW</b> 494 Granville Street, PO Box 1570 Summerside, PE C1N 4K4</p> <p><b>Derek Key, K.C.</b> Tel: 902.436.4851 <a href="mailto:derek.key@keymurraylaw.com">derek.key@keymurraylaw.com</a></p> <p>Lawyers for Dewis Cooke, Randy Cooke, Murphy's Limited Liability Company and BTW Holdings Inc.</p>
<p><b>CANADA REVENUE AGENCY</b> Insolvency Division P.O. Box 638, Stn Central 145 Hobsons Lake Drive Halifax, NS B3J 2T5</p> <p><a href="mailto:Devon.Steele@cra-arc.gc.ca">Devon.Steele@cra-arc.gc.ca</a></p> <p><b>SHAWINIGAN-SUD NATIONAL VERIFICATION AND COLLECTION CENTRE</b> <b>Canada Revenue Agency</b> 4695 Shawinigan-Sud Blvd. Shawinigan QC G9P 5H9</p>	<p><b>ATTORNEY GENERAL OF CANADA, DEPARTMENT OF JUSTICE</b> Tax Law Services Atlantic Regional Office Suite 1400, Duke Tower 5251 Duke Street Halifax, NS N3J 1P3</p> <p><a href="mailto:AGC_PGC_ARO-BRA@JUSTICE.GC.CA">AGC_PGC_ARO-BRA@JUSTICE.GC.CA</a></p> <p><b>Deanna M. Frappier, K.C.</b> <a href="mailto:Deanna.frappier@justice.gc.ca">Deanna.frappier@justice.gc.ca</a></p>

**KEY MURRAY LAW**

494 Granville Street, PO Box 1570  
Summerside, PE C1N 4K4

**Andrew G. MacDonald**

Tel: 902.436.4632

[Andrew.MacDonald@keymurraylaw.com](mailto:Andrew.MacDonald@keymurraylaw.com)

Lawyers for Jeff Wood

**ATLANTIC CANADA OPPORTUNITIES  
AGENCY LEGAL SERVICES**

Department of Justice, Government of  
Canada

644 Main Street  
PO Box 6051  
Moncton, NB E1C 9J8

**Corinne A. Godbout**

[corinne.godbout@justice.gc.ca](mailto:corinne.godbout@justice.gc.ca)

**Karine Le Breton**

[Karine.LeBreton@justice.gc.ca](mailto:Karine.LeBreton@justice.gc.ca)

## PPSA Registrants

<b>TOYOTA INDUSTRIES COMMERCIAL FINANCE CANADA, INC.</b> 630-401 The West Mall Toronto, ON M9C 5J5	<b>DE LAGE LANDEN FINANCIAL SERVICES CANADA INC.</b> 3450 Superior Court, Unit 1 Oakville, ON L6L 0C4
<b>THE BANK OF NOVA SCOTIA</b> 10 Wright Boulevard Stratford, ON N5A 7X9	<b>THE ROYAL BANK OF CANADA</b> 10 York Mills Road, 3rd Floor Toronto, ON M2P 0A2

## Municipalities

<b>Municipality of the District of Argyle</b> Argyle Municipal Office 5 J.E. Hatfield Ct., PO Box 10 Tusket NS B0W 3M0  Attention: Marsha d'Eon, Director of Finance Email: <a href="mailto:mdeon@munargyle.com">mdeon@munargyle.com</a>	<b>TOWN OF BORDEN</b> PO Box 89 20 Dickie Road Borden-Carleton, PE C0B1X0  Tel: 902-437-2225 Fax: 902-437-2610
<b>CITY OF SUMMERSIDE</b> 275 Fitzroy Street, Summerside PE C1N 1H9  Tel: (902) 432-0103	

## Email Service List

[jennifer.stam@nortonrosefulbright.com](mailto:jennifer.stam@nortonrosefulbright.com); [arnold.cohen@nortonrosefulbright.com](mailto:arnold.cohen@nortonrosefulbright.com);  
[michele.friel@nortonrosefulbright.com](mailto:michele.friel@nortonrosefulbright.com); [katie.parent@nortonrosefulbright.com](mailto:katie.parent@nortonrosefulbright.com);  
[GMacDonald@coxandpalmer.com](mailto:GMacDonald@coxandpalmer.com); [spgodbout@coxandpalmer.com](mailto:spgodbout@coxandpalmer.com);  
[southshoreseafoods@deloitte.ca](mailto:southshoreseafoods@deloitte.ca); [jforan@deloitte.ca](mailto:jforan@deloitte.ca); [kmacleod@deloitte.ca](mailto:kmacleod@deloitte.ca);  
[waleung@deloitte.ca](mailto:waleung@deloitte.ca); [jsleeth@deloitte.ca](mailto:jsleeth@deloitte.ca); [mchiasson@stewartmckelvey.com](mailto:mchiasson@stewartmckelvey.com); [lwilliams@tgf.ca](mailto:lwilliams@tgf.ca);  
[davidboyd.resolve@gmail.com](mailto:davidboyd.resolve@gmail.com); [michel@southshoreseafoods.ca](mailto:michel@southshoreseafoods.ca); [tim@southshoreseafoods.ca](mailto:tim@southshoreseafoods.ca);  
[warrenellis@summersidechrysler.pe.ca](mailto:warrenellis@summersidechrysler.pe.ca); [afm@bellaliant.com](mailto:afm@bellaliant.com); [hcs@pei.aibn.com](mailto:hcs@pei.aibn.com);  
[dewis@bythewaterlobster.com](mailto:dewis@bythewaterlobster.com); [johnipshellfish@gmail.com](mailto:johnipshellfish@gmail.com); [derek.key@keymurraylaw.com](mailto:derek.key@keymurraylaw.com);  
[Devon.Steele@cra-arc.gc.ca](mailto:Devon.Steele@cra-arc.gc.ca); [AGC\\_PGC\\_ARO-BRA@JUSTICE.GC.CA](mailto:AGC_PGC_ARO-BRA@JUSTICE.GC.CA);  
[Deanna.frappier@justice.gc.ca](mailto:Deanna.frappier@justice.gc.ca); [PPower@tgf.ca](mailto:PPower@tgf.ca); [cookedewis@gmail.com](mailto:cookedewis@gmail.com);  
[Andrew.MacDonald@keymurraylaw.com](mailto:Andrew.MacDonald@keymurraylaw.com); [corinne.godbout@justice.gc.ca](mailto:corinne.godbout@justice.gc.ca);  
[Karine.LeBreton@justice.gc.ca](mailto:Karine.LeBreton@justice.gc.ca)

### **Municipalities:**

[mdeon@munargyle.com](mailto:mdeon@munargyle.com)

**SCHEDULE "B"**  
**STAY EXTENSION ORDER**

IN THE COURT OF KING'S BENCH OF NEW BRUNSWICK

TRIAL DIVISION

JUDICIAL DISTRICT OF SAINT JOHN

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c.C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF 709280 NB LTD., 103232 P.E.I. INC., CAN-AM LOBSTER & SHELLFISH LTD., 103233 P.E.I. INC., 103234 P.E.I. INC., 3249640 NOVA SCOTIA LIMITED and 12588129 CANADA INC. (each a "Company" and collectively the "Companies")

B E T W E E N :

THE TORONTO-DOMINION BANK

APPLICANT

- and -

709280 NB LTD., 103232 P.E.I. INC., CAN-AM LOBSTER & SHELLFISH LTD., 103233 P.E.I. INC., 103234 P.E.I. INC., 3249640 NOVA SCOTIA LIMITED and 12588129 CANADA INC.

RESPONDENTS

**ORDER**  
**(Stay Extension)**

**THIS MOTION**, made by Deloitte Restructuring Inc. ("**Deloitte**"), in its capacity as the court-appointed Monitor (the "**Monitor**") of 709280 NB LTD., 103232 P.E.I. INC., CAN-AM LOBSTER & SHELLFISH LTD., 103233 P.E.I. INC., 103234 P.E.I. INC., 3249640 NOVA SCOTIA LIMITED and 12588129 CANADA INC. (collectively, the "**Debtors**"), for an order approving, among other things:

- (i) the extension of the Stay Period (as defined in the Amended and Restated Initial Order dated October 25, 2023 (the "**Amended and Restated Initial Order**") as subsequently extended) from August 30, 2024 to and including October 31, 2024;

- (ii) approving the activities of the Monitor, as set out in the eighth report of the Monitor dated August 16, 2024 (the “**Eighth Report**”); and

was heard on the 23<sup>rd</sup> day of August, 2024;

**UPON** reading the Notice of Motion, the Eighth Report;

**AND UPON** hearing the submissions of counsel for the Applicant, the Monitor and those other parties present, and no one appearing on the Service List, although duly served as appears from the Affidavit of Service of \_\_\_\_\_ dated August \_\_, 2024;

**AND UPON** reading the material as filed by counsel;

**IT IS HEREBY ORDERED AS FOLLOWS:**

**SERVICE**

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

**STAY EXTENSION**

- 2. The Stay Period, as defined in the Amended and Restated Initial Order (as subsequently extended), be and is hereby extended up to and including August 30, 2024.

**APPROVAL OF THE MONITOR’S ACTIONS**

- 3. The actions of the Monitor, as specified in the Eighth Report, be and are hereby approved.

**GENERAL**

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

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

Dated at Saint John, New Brunswick, this \_\_\_\_ day of August, 2024.

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