

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

THE HONOURABLE MR.)
JUSTICE NEWBOULD)
TUESDAY, THE 8TH
DAY OF JULY, 2014

**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
AND ARRANGEMENT INVOLVING METCALFE & MANSFIELD
ALTERNATIVE INVESTMENTS VII CORP. IN ITS CAPACITY
AS ISSUER TRUSTEE OF THE DEVONSHIRE TRUST**

INITIAL ORDER

THIS APPLICATION, made by Metcalfe & Mansfield Alternative Investments VII Corp., in its capacity as issuer trustee (the "Applicant") of the Devonshire Trust (the "Conduit" and together with the Applicant, the "CCAA Parties"), pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "CCAA") was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the affidavit of Mathieu Lafleur-Ayotte sworn June 27, 2014 (the "Lafleur-Ayotte Affidavit") and the Exhibits thereto, the affidavit of Robert Girard sworn July 7, 2014 and the Exhibits thereto, and the Report of Deloitte Restructuring Inc. ("Deloitte") dated July 3, 2014 (the "First Report") prepared in contemplation of Deloitte's appointment as monitor of the CCAA Parties (hereinafter referred to as the "Monitor") and on being advised that the secured creditors who are likely to be affected by the charges created herein were given notice, and on hearing the submissions of counsel for the Applicant, counsel for Deloitte, counsel for the Caisse de dépôt et placement du Québec, counsel for Barclays Bank PLC and the Barclays' Subsidiaries, and counsel for CIBC Mellon Trust Company, no one else appearing although duly

served as appears from the affidavit of service of Tasha Boyd sworn July 4, 2014, and on reading the consent of Deloitte to act as the Monitor.

SERVICE

1. THIS COURT ORDERS that the time for service of the Notice of Application and the Application Record is hereby abridged and validated so that this Application is properly returnable today and hereby dispenses with further service thereof.

APPLICATION

2. THIS COURT ORDERS AND DECLARES that the Applicant is a company to which the CCAA applies.

PLAN OF ARRANGEMENT

3. THIS COURT ORDERS that the Plan of Compromise and Arrangement (hereinafter referred to as the "Plan" which term shall include amendments thereto) presented by the Applicant and annexed to the Lafleur-Ayotte Affidavit be and is hereby accepted for filing and, unless otherwise ordered by this Court, the Applicant shall have the exclusive authority, subject to the Monitor's consent, to (i) file with this Court amendments to and/or amended and restated versions of the Plan and (ii) propose a meeting of creditors to consider and vote on the Plan. All capitalized terms not otherwise defined herein shall have the meanings given to such terms in the Plan.

POSSESSION OF PROPERTY AND OPERATIONS

4. THIS COURT ORDERS that the CCAA Parties shall remain in possession and control of their title and interests in the Conduit's current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the "Property"). Subject to further Order of this Court, the CCAA Parties shall continue to carry on the Conduit's business in a manner consistent with the preservation of the business (the "Business") and Property. The CCAA Parties are authorized and empowered to continue to retain and employ the employees, consultants, agents, experts, accountants, counsel and such other persons (collectively "Assistants") currently retained or employed by them, with liberty to

retain such further Assistants as they deem reasonably necessary for the carrying out of the terms of this Order.

5. THIS COURT ORDERS that, with respect to any and all obligations of the CCAA Parties payable under this Order, recourse shall be limited to the Property.

6. THIS COURT ORDERS that the CCAA Parties shall, subject to the provisions of the Plan and the Settlement Agreement (as defined below), pay the following expenses whether incurred prior to or after this Order:

- (a) The categories of costs set out in Schedule "C" to the settlement agreement (attached as an exhibit to the Lafleur-Ayotte Affidavit) (the "Settlement Agreement"); and
- (b) the reasonable fees and disbursements of any Assistants retained or employed by the CCAA Parties in respect of these proceedings, at their standard rates and charges in accordance with their respective agreements with the CCAA Parties.

7. THIS COURT ORDERS that, except as otherwise provided to the contrary herein, the CCAA Parties shall, subject to the provisions of the Plan and the Settlement Agreement, pay all reasonable expenses incurred by the CCAA Parties in administering the Property in the ordinary course after this Order, and in carrying out the provisions of this Order, which expenses shall include, without limitation:

- (a) all expenses reasonably necessary for the preservation of the Property; and
- (b) payment for goods or services actually supplied to the CCAA Parties following the date of this Order.

8. THIS COURT ORDERS that the CCAA Parties shall remit, in accordance with legal requirements, or pay:

- (a) any statutory deemed trust amounts in favour of the Crown in right of Canada or of any Province thereof or any other taxation authority which are required to be deducted from employees' wages, including, without limitation, amounts in respect of (i) employment insurance, (ii) Canada Pension Plan, (iii) Quebec Pension Plan, and (iv) income taxes, if any;

- (b) all goods and services or other applicable sales taxes (collectively, "Sales Taxes") required to be remitted by the CCAA Parties in connection with the sale of goods and services by the CCAA Parties, but only where such Sales Taxes are accrued or collected after the date of this Order, or where such Sales Taxes were accrued or collected prior to the date of this Order but not required to be remitted until on or after the date of this Order, if any; and
- (c) any amount payable to the Crown in right of Canada or of any Province thereof or any political subdivision thereof or any other taxation authority in respect of municipal realty, municipal business or other taxes, assessments or levies of any nature or kind which are entitled at law to be paid in priority to claims of secured creditors and which are attributable to or in respect of the carrying on of the Business by the CCAA Parties, if any.

9. THIS COURT ORDERS that, except as specifically permitted herein, the CCAA Parties are hereby directed, until further Order of this Court: (a) to make no payments of principal, interest thereon or otherwise on account of amounts owing by the CCAA Parties to any of its Noteholders as of this date; (b) to grant no security interests, trust, liens, charges or encumbrances upon or in respect of any of its Property; and (c) to not grant credit or incur liabilities except in the ordinary course of the Business.

NO PROCEEDINGS AGAINST THE CCAA PARTIES, MONITOR OR THE PROPERTY

10. THIS COURT ORDERS that until and including August 7, 2014, or such later date as this Court may order (the "Stay Period"), no proceeding or enforcement process in any court or tribunal (each, a "Proceeding") shall be commenced or continued against or in respect of the CCAA Parties, the Monitor or the Property, except with the written consent of the Applicant and the Monitor, or with leave of this Court, and any and all Proceedings currently under way against or in respect of the CCAA Parties or affecting the Property are hereby stayed and suspended pending further Order of this Court.

NO EXERCISE OF RIGHTS OR REMEDIES

11. THIS COURT ORDERS that during the Stay Period, all rights and remedies of any individual, firm, corporation, governmental body or agency, or any other entities (all of the foregoing, collectively being "Persons" and each being a "Person") against or in respect of the CCAA Parties or the Monitor, or affecting the Property, are hereby stayed and suspended except with the written consent of the Applicant and the Monitor, or leave of this Court, provided that nothing in this Order shall (i) empower the CCAA Parties to carry on any business which the CCAA Parties are not lawfully entitled to carry on, (ii) affect such investigations, actions, suits or proceedings by a regulatory body as are permitted by Section 11.1 of the CCAA, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

NO INTERFERENCE WITH RIGHTS

12. THIS COURT ORDERS that during the Stay Period, no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the CCAA Parties, except with the written consent of the Applicant and the Monitor, or leave of this Court.

CONTINUATION OF SERVICES

13. THIS COURT ORDERS that during the Stay Period, all Persons having oral or written agreements with the CCAA Parties or statutory or regulatory mandates for the supply of goods and/or services, including without limitation all computer software, communication and other data services, centralized banking services, insurance or other services to the CCAA Parties, are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the CCAA Parties, and that the CCAA Parties shall be entitled to the continued use of their current premises, telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the CCAA Parties in accordance with normal payment practices of the CCAA Parties or such other practices as may be agreed upon by the supplier or service provider and each of the Applicant and the Monitor, or as may be ordered by this Court.

NON-DEROGATION OF RIGHTS

14. THIS COURT ORDERS that, notwithstanding anything else in this Order, no Person shall be prohibited from requiring immediate payment for goods, services, use of lease or licensed property or other valuable consideration provided on or after the date of this Order, nor shall any Person be under any obligation on or after the date of this Order to advance or re-advance any monies or otherwise extend any credit to the CCAA Parties. Nothing in this Order shall derogate from the rights conferred and obligations imposed by the CCAA.

PROCEEDINGS AGAINST DIRECTORS AND OFFICERS

15. THIS COURT ORDERS that during the Stay Period, and except as permitted by subsection 11.03(2) of the CCAA, no Proceeding may be commenced or continued against any of the former, current or future directors or officers of the Applicant with respect to any claim against the directors or officers relating to the Business or the Property that arose before the date hereof and that relates to any obligations of the CCAA Parties whereby the directors or officers are alleged under any law to be liable in their capacity as directors or officers for the payment or performance of such obligations, until a compromise or arrangement in respect of the CCAA Parties, if one is filed, is sanctioned by this Court or is refused by the creditors of the CCAA Parties or this Court.

16. THIS COURT ORDERS that the directors and officers of the Applicant, CIBC Mellon Trust Company, in its capacity as note indenture trustee ("Indenture Trustee"), NBCN Inc, in its capacity as issuing and paying agent ("Issuing and Paying Agent"), The Bank of New York Mellon (acting through its London Branch), in its capacity as custodian ("Custodian") and 9205-3701 Québec Inc., in its capacity as consultant ("Consultant") (including, in each case, their respective Representatives) shall not incur any liability or obligation as a result of acting in their capacity as such during the pendency of these proceedings or complying with an order of this Court.

17. THIS COURT ORDERS that no action or other proceeding shall be commenced against any of the Indenture Trustee, the Issuing and Paying Agent, the Custodian or the Consultant (including, in each case, their respective Representatives) relating in any way to their acting as such except with prior leave of this Court, on at least seven (7) days' notice to the Indenture

Trustee, the Issuing and Paying Agent, the Custodian and the Consultant, as applicable, and its counsel and the Monitor and its counsel.

DIRECTORS' AND OFFICERS' INDEMNIFICATION AND CHARGE

18. THIS COURT ORDERS that the CCAA Parties shall indemnify the directors and officers of the Applicant against obligations and liabilities that they may incur as directors or officers of the Applicant after the commencement of the within proceedings, except to the extent that, with respect to any officer or director, the obligation or liability was incurred as a result of the director's or officer's gross negligence or wilful misconduct.

19. THIS COURT ORDERS that the directors and officers of the Applicant shall be entitled to the benefit of and are hereby granted a charge (the "Directors' Charge") on the Property, which charge shall not exceed an aggregate amount of \$250,000, as security for the indemnity provided in paragraph 18 of this Order. The Directors' Charge shall have the priority set out in paragraphs 31 and 33 herein.

20. THIS COURT ORDERS that, notwithstanding any language in any applicable insurance policy to the contrary, (a) no insurer shall be entitled to be subrogated to or claim the benefit of the Directors' Charge, and (b) the Applicant's directors and officers shall only be entitled to the benefit of the Directors' Charge to the extent that they do not have coverage under any directors' and officers' insurance policy, or to the extent that such coverage is insufficient to pay amounts indemnified in accordance with paragraph 18 of this Order.

APPOINTMENT OF MONITOR

21. THIS COURT ORDERS that Deloitte is hereby appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the business and financial affairs of the CCAA Parties with the powers and obligations set out in the CCAA or set forth herein and that the CCAA Parties and their respective shareholders, officers, directors, or Assistants shall advise the Monitor of all material steps taken by the CCAA Parties pursuant to this Order, and shall co-operate fully with the Monitor in the exercise of its powers and discharge of its obligations and provide the Monitor with the assistance that is necessary to enable the Monitor to adequately carry out the Monitor's functions.

22. THIS COURT ORDERS that the Monitor, in addition to its prescribed rights and obligations under the CCAA, is hereby directed and empowered to:

- (a) monitor the CCAA Parties' receipts and disbursements;
- (b) perform the obligations and take the steps required of the Monitor as set out in the Settlement Agreement and the Plan;
- (c) report to this Court at such times and intervals as the Monitor may deem appropriate with respect to matters relating to the Property, and such other matters as may be relevant to the proceedings herein;
- (d) advise the CCAA Parties in their preparation of the Conduit's cash flow statements which information shall be reviewed with the Monitor;
- (e) advise the CCAA Parties in their development of any amendments to the Plan;
- (f) consider and, if deemed advisable by the Monitor, prepare a report on and an assessment of the Plan;
- (g) assist the CCAA Parties, to the extent required by the CCAA Parties, with the holding and administering of the creditors' meeting for voting on the Plan;
- (h) have full and complete access to the Property, including the premises, books, records, data, including data in electronic form, and other financial documents of the CCAA Parties to the extent that is necessary to adequately assess the CCAA Parties' business and financial affairs or to perform its duties arising under this Order;
- (i) be at liberty to engage independent legal counsel or such other persons as the Monitor deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order; and
- (j) perform such other duties as are required by this Order or by this Court from time to time.

23. THIS COURT ORDERS that the Monitor shall not take possession of the Property and shall take no part whatsoever in the management or supervision of the management of the CCAA

Parties and shall not, by fulfilling its obligations hereunder, be deemed to have taken or maintained possession or control of the Property, or any part thereof.

24. THIS COURT ORDERS that nothing herein contained shall require the Monitor to occupy or to take control, care, charge, possession or management (separately and/or collectively, "Possession") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, or the *Ontario Occupational Health and Safety Act* and regulations thereunder (the "Environmental Legislation"), provided however that nothing herein shall exempt the Monitor from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Monitor shall not, as a result of this Order or anything done in pursuance of the Monitor's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

25. THIS COURT ORDERS that the Monitor shall provide any creditor of the CCAA Parties with information provided by the CCAA Parties in response to reasonable requests for information made in writing by such creditor addressed to the Monitor. The Monitor shall not have any responsibility or liability with respect to the information disseminated by it pursuant to this paragraph. In the case of information that the Monitor has been advised by the CCAA Parties is confidential, the Monitor shall not provide such information to creditors unless otherwise directed by this Court or on such terms as the Monitor and the Applicant may agree.

26. THIS COURT ORDERS that, the First Report and the activities described therein be and are hereby accepted and approved.

27. THIS COURT ORDERS that, in addition to the rights and protections afforded the Monitor under the CCAA or as an officer of this Court, the Monitor shall incur no liability or obligation as a result of the activities of Deloitte as set out in the First Report or as a result of its appointment or the carrying out of the provisions of this Order, save and except for any gross

negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the protections afforded the Monitor by the CCAA or any applicable legislation.

28. THIS COURT ORDERS that the Monitor, counsel to the Monitor and counsel to the CCAA Parties shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, by the CCAA Parties as part of the costs of these proceedings. The CCAA Parties are hereby authorized and directed to pay the accounts of the Monitor, counsel for the Monitor and counsel for the CCAA Parties on a biweekly basis.

29. THIS COURT ORDERS that the Monitor and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Monitor and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

30. THIS COURT ORDERS that the Monitor, counsel to the Monitor and the CCAA Parties' counsel shall be entitled to the benefit of and are hereby granted a charge (the "Administration Charge") on the Property, which charge shall not exceed an aggregate amount of \$400,000, as security for their professional fees and disbursements incurred at the standard rates and charges of the Monitor and such counsel, both before and after the making of this Order in respect of these proceedings. The Administration Charge shall have the priority set out in paragraphs 31 and 33 hereof.

VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER

31. THIS COURT ORDERS that the priorities of the Directors' Charge and the Administration Charge, as among them, shall be as follows:

First – Administration Charge (to the maximum amount of \$400,000); and

Second – Directors' Charge (to the maximum amount of \$250,000).

32. THIS COURT ORDERS that the filing, registration or perfection of the Directors' Charge or the Administration Charge (collectively, the "Charges") shall not be required, and that the Charges shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the Charges coming into existence, notwithstanding any such failure to file, register, record or perfect.

33. THIS COURT ORDERS that the Charges shall constitute a charge on the Property and such Charges shall rank in priority to all other security interests, trusts, liens, charges and encumbrances, claims of secured creditors, statutory or otherwise (collectively, "Encumbrances") in favour of any Person.

34. THIS COURT ORDERS that except as otherwise expressly provided for herein, or as may be approved by this Court, the CCAA Parties shall not grant any Encumbrances over any Property that rank in priority to, or *pari passu* with, the Charges, unless the CCAA Parties also obtains the prior written consent of the Monitor and the beneficiaries of the Charges, or further Order of this Court.

35. THIS COURT ORDERS that the Charges shall not be rendered invalid or unenforceable and the rights and remedies of the chargees entitled to the benefit of the Charges (collectively, the "Chargees") thereunder shall not otherwise be limited or impaired in any way by (a) the pendency of these proceedings and the declarations of insolvency made herein; (b) any application(s) for bankruptcy order(s) issued pursuant to BIA, or any bankruptcy order made pursuant to such applications; (c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (d) the provisions of any federal or provincial statutes; or (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, lease, sublease, offer to lease or other agreement (collectively, an "Agreement") which binds the CCAA Parties, and notwithstanding any provision to the contrary in any Agreement:

- (a) the creation of the Charges shall not create or be deemed to constitute a breach by the CCAA Parties of any Agreement to which it is a party;
- (b) none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the creation of the Charges; and
- (c) the payments made by the CCAA Parties pursuant to this Order and the granting of the Charges, do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

SERVICE AND NOTICE

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36. THIS COURT ORDERS that the Monitor shall (i) without delay, publish in the ~~Globe & Mail~~ (national edition) and *La Presse* a notice containing the information prescribed under the CCAA, (ii) within five days after the date of this Order, (A) make this Order publicly available in the manner prescribed under the CCAA, (B) send, in the prescribed manner, a notice to every known creditor who has a claim against the CCAA Parties of more than \$1000, and (C) prepare a list showing the names and addresses of those creditors and the estimated amounts of those claims, and make it publicly available in the prescribed manner, all in accordance with Section 23(1)(a) of the CCAA and the regulations made thereunder.

37. THIS COURT ORDERS that the E-Service Protocol of the Commercial List (the “Protocol”) is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at <http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/e-service-protocol/>) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol with the following URLs: for English - <http://www.deloitte.com/ca/devonshire>; for French - <http://www.deloitte.com/ca/devonshire/fr/>.

38. THIS COURT ORDERS that if the service or distribution of documents in accordance with the Protocol is not practicable, the CCAA Parties and the Monitor are at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or facsimile transmission to the CCAA Parties’ Noteholders or other interested parties at their respective addresses as last shown on the records of the CCAA Parties and that any such service or distribution by courier, personal delivery or facsimile transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

GENERAL

39. THIS COURT ORDERS that the CCAA Parties or the Monitor may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

40. THIS COURT ORDERS that nothing in this Order shall prevent the Monitor from acting as an interim receiver, a receiver, a receiver and manager, or a trustee in bankruptcy of the CCAA Parties or the Property.

41. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada, the United States, the United Kingdom or Belgium, to give effect to this Order and to assist the CCAA Parties, 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 CCAA Parties 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 CCAA Parties and the Monitor and their respective agents in carrying out the terms of this Order.

42. THIS COURT ORDERS that the CCAA Parties and the Monitor be at liberty and are hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Monitor is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

43. THIS COURT ORDERS that any interested party (including the CCAA Parties and the Monitor) may apply to this Court to vary or amend this Order on not less than seven (7) days notice to any other party or parties likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

44. THIS COURT ORDERS that this Order and all of its provisions are effective as of 12:01 a.m. Eastern Standard Time on the date of this Order.

D. M. G.

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**AND IN THE MATTER OF A PLAN OF COMPROMISE AND ARRANGEMENT INVOLVING METCALFE & MANSFIELD
ALTERNATIVE INVESTMENTS VII CORP. IN ITS CAPACITY AS ISSUER TRUSTEE OF THE DEVONSHIRE TRUST**

**ONTARIO
SUPERIOR COURT OF JUSTICE
(Commercial List)**

**Proceedings commenced at
Toronto**

INITIAL CCAA ORDER

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