

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

THE HONOURABLE MR.) WEDNESDAY, THE 20th
)
JUSTICE NEWBOULD) DAY OF AUGUST, 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 TRUSTEE OF THE DEVONSHIRE TRUST**

SANCTION ORDER

THIS MOTION made by Metcalfe & Mansfield Alternative Investments VII Corp., in its capacity as issuer trustee (the "Applicant") of Devonshire Trust (the "Conduit" and together with the Applicant, the "CCAA Parties"), pursuant to section 6 of the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "CCAA") for an Order sanctioning the Applicant's Amended Plan of Compromise and Arrangement dated August 6, 2014, as it may be further amended from time-to-time in accordance with its terms (the "Plan"), as described in the Third Report (as defined below) and attached as Appendix "B" to the Third Report, and for ancillary relief associated with the implementation of the Plan, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the third report of Deloitte Restructuring Inc., in its capacity as Monitor (the "Monitor") dated August 15, 2014 (the "Third Report"), and all Appendices to said Third

✓ and counsel for the Custodian
and the Indenture Trustee ✓
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Report, and on hearing the submissions of counsel for the Applicant, counsel for the Monitor, counsel for the Caisse de dépôt et placement du Québec, counsel for Barclays Bank PLC and the Barclays' Subsidiaries, and counsel for National Bank Financial and National Bank of Canada, no one else appearing although notice of this motion was duly given pursuant to the Claims Procedure and Meeting Order of this Court dated July 8, 2014 (the "Claims Procedure and Meeting Order").

SERVICE

1. **THIS COURT ORDERS** that in accordance with the Claims Procedure and Meeting Order this Motion is properly returnable today and hereby dispenses with further service thereof.

DEFINITIONS

2. **THIS COURT ORDERS** that any capitalized terms not otherwise defined in this Order shall have the meanings ascribed to such terms in the Plan.

SERVICE AND MEETING OF CREDITORS

3. **THIS COURT ORDERS AND DECLARES** that the Claims Procedure and Meeting Order remains in full force and effect, unvaried and unamended.

4. **THIS COURT ORDERS AND DECLARES** that there has been good and sufficient notice, service and delivery of the Meeting Documents (as defined in the Claims Procedure and Meeting Order) and that the Meeting called pursuant to paragraph 18 of the Claims Procedure and Meeting Order was duly convened, held and conducted, in conformity with the CCAA and the Claims Procedure and Meeting Order.

SANCTION OF PLAN

5. **THIS COURT ORDERS AND DECLARES** that:

- (a) the Plan has been approved by the requisite majorities of the Noteholders with Proven Claims present and voting, either in person or by proxy, at the Meeting, all in conformity with the CCAA and the terms of the Initial Order and the Claims Procedure and Meeting Order;

- (b) the Applicant has acted in good faith and with due diligence, has complied with the provisions of the CCAA, and has not done or purported to do (nor does the Plan do or purport to do) anything that is not authorized by the CCAA;
- (c) the Applicant has adhered to, and acted in accordance with all Orders of this Court in the CCAA Proceedings; and
- (d) the Plan, together with all of the compromises, arrangements, transactions, releases, discharges, extinguishments, injunctions and results provided for therein and effected thereby including, without limitation, those relating to the Barclays' Other Claims is fair, reasonable and in the best interests of the Noteholders and does not unfairly disregard the interests of any Person (whether a Noteholder or otherwise).

6. **THIS COURT ORDERS** that the Plan is hereby sanctioned and approved pursuant to Section 6 of the CCAA.

PLAN IMPLEMENTATION

7. **THIS COURT ORDERS** that the CCAA Parties and the Monitor, as the case may be, are authorized and directed to take all steps and actions, and to do all things, necessary or appropriate to enter into or implement the Plan in accordance with its terms, and enter into, execute, deliver, implement and consummate all of the steps, transactions, distributions and agreements contemplated pursuant to the Plan.

8. **THIS COURT ORDERS** that the Applicant, the Monitor, the Custodian and any other Person required to make any distributions, deliveries, transfers of funds or other property or allocations or take any steps or actions related thereto pursuant to the Plan are hereby directed to complete such distributions, deliveries, transfers of funds or other property or allocations and to take any such related steps and/or actions in accordance with the terms of the Plan, and such distributions, deliveries, transfers of funds or other property and allocations, and steps and actions related thereto, are hereby approved.

9. **THIS COURT ORDERS** that upon the satisfaction or waiver, as applicable, of the conditions precedent set out in Section 14.1 of the Plan in accordance with the terms of the Plan, the Monitor shall file with this Court a certificate that states that all conditions precedent set out in Section 14.1 of the Plan have been satisfied or waived, as applicable, as set out in Section 14.3 of the Plan, and that the Plan Implementation Date has occurred in accordance with the Plan.

10. **THIS COURT ORDERS** upon the Plan Implementation Date occurring, the Monitor and the CCAA Parties, are hereby directed and authorized to complete the distributions by or at the direction of the Monitor (in each case on behalf of the Applicant) contemplated under the Plan and the Monitor is hereby directed and authorized to establish the Plan Reserves.

11. **THIS COURT ORDERS AND DECLARES** that the steps, compromises, releases, transactions and arrangements to be effected on the Plan Implementation Date are deemed to occur and be effected in the sequential order contemplated in the Plan, without any further act or formality, beginning on the Plan Implementation Date.

12. **THIS COURT ORDERS AND DECLARES** that all distributions or payments by or at the direction of the Monitor, in each case on behalf of the Applicant under the Plan, shall be for the account of the CCAA Parties and the fulfillment of their obligations under the Plan.

13. **THIS COURT ORDERS AND DECLARES** that as of the Plan Implementation Date, the Plan, including all compromises, arrangements, transactions, releases, discharges, extinguishments and injunctions provided for therein, including, without limitation, those relating to the Barclays' Other Claims shall enure to the benefit of and be binding and effective upon the Noteholders, the Monitor, the Released Parties and all other Persons affected thereby, and on their respective heirs, administrators, executors, legal or personal representatives, successors and assigns.

14. **THIS COURT ORDERS AND DECLARES** that, pursuant to and in accordance with the terms of the Plan, on the Plan Implementation Date the claims affected by the Plan, including any and all Noteholder Claims, Barclays' Other Claims and the Released Claims shall be fully, finally, irrevocably and forever compromised, released, discharged, cancelled and barred, subject only to the right of the applicable Persons to receive the distributions and interest to which they are entitled pursuant to the Plan.

15. **THIS COURT ORDERS** that, subject to the performance by the CCAA Parties and the Monitor of their respective obligations under the Plan, and except to the extent expressly provided otherwise by the Plan or this Order, no Person who is a party to any obligation or agreement with the CCAA Parties shall, following the Plan Implementation Date, accelerate, terminate, rescind, refuse to perform or repudiate its obligations thereunder, or enforce or exercise any right (including any right of set-off, dilution or other remedy) or make any demand under or in respect of any such obligation or agreement, by reason:

- (a) of any event(s) that occurred on or prior to the Plan Implementation Date that would have entitled any other Person thereto to enforce those rights or remedies (including defaults or events of default arising as a result of the insolvency of the CCAA Parties);
- (b) of the fact that relief under the CCAA has been sought or obtained in respect of the CCAA Parties, that the CCAA Proceedings have been commenced or completed, or that the within restructuring has been implemented in respect of the CCAA Parties; or
- (c) of any compromises or arrangements effected pursuant to this Plan.

16. **THIS COURT ORDERS** that, as of the Plan Implementation Date, each Noteholder shall be deemed to have consented and agreed to all of the provisions of the Plan in their entirety and, in particular, each Noteholder shall be deemed:

- (a) to have executed and delivered to the Monitor and to the relevant Plan Participants all consents, releases or agreements required to implement and carry out the Plan in its entirety; and
- (b) to have agreed that if there is any conflict between the provisions, express or implied, of any agreement or other arrangement, written or oral, existing between such Noteholder and the Plan Participants as at the Plan Implementation Date (other than those entered into by the Plan Participants in writing on or after the date of the Plan) and the provisions of the Plan, the provisions of the Plan take

precedence and priority and the provisions of such agreement or other arrangement shall be deemed to be amended accordingly.

17. **THIS COURT ORDERS** that section 36.1 of the CCAA, sections 38 and 95 to 101 of the BIA and any other federal or provincial law relating to preferences, fraudulent conveyances or transfers at undervalue, shall not apply to the Plan or to any payments, distributions, transfers, allocations or transactions made or completed in connection with the Plan, whether before or after the date of the Initial Order, including, without limitation, to any and all of the payments, distributions, transfers, allocations or transactions contemplated by and to be implemented pursuant to the Plan.

18. **THIS COURT ORDERS** that, as of the Plan Implementation Date, the Settlement Agreement and all Programme Agreements (save and except the Settlement Deed) shall be deemed to have been terminated and all Charges thereunder shall be discharged, provided, however, that for the purposes of the Plan, (i) the indemnity provisions of the Programme Agreements together with the provisions of Sections 9, 10, 16 and 17 of the Settlement Agreement shall be deemed to remain in full force and effect even following such termination and (ii) the Noteholders shall continue to constitute secured creditors of the Applicant for purposes of the Programme Agreements.

19. **THIS COURT ORDERS** that the Monitor shall be authorized, in connection with the making of any payment or distribution under the Plan, to apply in its sole discretion to any Governmental Authority for any consent, authorization, certificate or approval in connection therewith in order to obtain confirmation that it will not be liable for any Taxes Payable provided that, in so doing, the Monitor may not alter the agreement of the Plan Participants with respect to the Tax Reserve and the Withholding Tax Reserve as set forth in the Plan.

20. **THIS COURT ORDERS AND DECLARES** that the Monitor shall not incur any liability under the Tax Act or any similar provincial or territorial tax legislation as a result of the completion of the steps contemplated by the Plan, including in respect of its making any payments ordered or permitted under the Plan or this Order, and is released, remised and discharged from any claims against it under or pursuant to the Tax Act, any similar provincial or territorial tax legislation or otherwise at law, arising in respect of the completion of the steps

contemplated by the Plan, including in respect of its making any payments ordered or permitted under the Plan or this Order and that any claims of such a nature are forever barred and extinguished.

RELEASES, DISCHARGES AND INJUNCTIONS

21. **THIS COURT ORDERS AND DECLARES** that the compromises, arrangements, exculpations, releases, including, without limitation, the extinguishment of the Barclays' Other Claims, discharges and injunctions contemplated in the Plan, including those granted by and for the benefit of the Released Parties, are integral components thereof and are necessary for, and vital to, the success of the Plan and that, effective on the Plan Implementation Date, all such compromises, arrangements, exculpations, releases, including, without limitation, the extinguishment of the Barclays' Other Claims, discharges and injunctions are hereby sanctioned, approved and given full force and effect in accordance with and subject to their respective terms.

22. **THIS COURT ORDERS** that without limiting the effect or validity of any provision of this Order or the Plan and for greater certainty, immediately upon the Plan Implementation Date having occurred, for good and valuable consideration, every Person (regardless of whether or not such Person is a Noteholder), including each of the Released Parties, on the Person's own behalf and on behalf of the Person's respective present and future Representatives, dependents, heirs, and assigns, as applicable, hereby fully, finally, irrevocably and unconditionally releases and forever discharges each of the Released Parties of and from any and all past, present and future claims, rights, interests, actions, rights of indemnity, liabilities, demands, duties, injuries, damages, expenses, fees (including attorneys' fees and liens), costs, compensation, or causes of action (excluding the NBC Causes of Action to the extent the Exclusion Condition is met) of whatsoever kind or nature whether foreseen or unforeseen, known or unknown, asserted or unasserted, contingent or actual, liquidated or unliquidated, whether in tort or contract, whether statutory, at common law or in equity, based on, in connection with, arising out of, or in any way related to, in whole or in part, directly or indirectly: any act, inaction or omission existing or taking place on or prior to the Plan Implementation Date relating to or otherwise in connection with the creation, issuance, rating, sale and marketing of the Notes in Canada, the Conduit, the Notes, the Litigation, all matters raised or which could have been raised in the Litigation, purchases and sales of the Notes and agreements relating thereto, the Settlement Agreement, the

business and affairs of any of the Released Parties relating to or otherwise in connection with the Notes, the Programme Agreements, the CCAA Proceedings, the activities undertaken or not undertaken as a result of the Standstill, in anticipation of or preparation for the compromise of the Notes and/or the CCAA Proceedings, the Meeting or the Plan (collectively, the "Released Claims"); and each Person shall not make or continue any claims or proceedings whatsoever based on, in connection with, arising out of, or in any way related to, in whole or in part, directly or indirectly, the substance of the facts giving rise to any matter herein released (including, without limitation, any action, cross-claim, counter-claim, third party action or application) against any Person who claims or might reasonably be expected to claim in any manner or forum against one or more of the Released Parties, including, without limitation, by way of contribution or indemnity, in common law, or in equity, breach of trust or breach of fiduciary duty or under the provisions of any statute or regulation, and that in the event that any of the Released Parties are added to such claim or proceeding, it will immediately discontinue any such claim or proceeding. Notwithstanding the foregoing, nothing herein shall release or discharge a Released Party from its obligations, if any, under the Plan or under the Payment Agreement. This paragraph does not apply to the NBC Causes of Action to the extent the Exclusion Condition is met or to Unaffected Claims.

23. **THIS COURT ORDERS** that without limiting the effect or validity of any provision of this Order or the Plan and for greater certainty, immediately upon the Plan Implementation Date having occurred, all Persons (regardless of whether or not such Persons are Noteholders), along with their respective present and future Representatives, dependents, heirs and assigns, as applicable, are permanently and forever barred, estopped, stayed and enjoined, on and after the Effective Time, with respect to Released Claims, from (i) commencing, conducting or continuing in any manner, directly or indirectly, any action, suits, demands or other proceedings of any nature or kind whatsoever (including, without limitation, any proceeding in a judicial, arbitral, administrative or other forum) against the Released Parties, (ii) enforcing, levying, attaching, collecting or otherwise recovering or enforcing by any manner or means, directly or indirectly, any judgment, award, decree or order against the Released Parties or their property, (iii) commencing, conducting or continuing in any manner, directly or indirectly, any action, suits or demands, including without limitation, by way of contribution or indemnity or other relief, in common law, or in equity, breach of trust or breach of fiduciary duty or under the provisions of

any statute or regulation, or other proceedings of any nature or kind whatsoever (including, without limitation, any proceeding in a judicial, arbitral, administrative or other forum) against any Person who makes such a claim or might reasonably be expected to make such a claim, in any manner or forum, against one or more of the Released Parties, (iv) creating, perfecting, asserting or otherwise enforcing, directly or indirectly, any Charge of any kind, or (v) taking any actions to interfere with the implementation or consummation of this Plan. This paragraph does not apply to the NBC Causes of Action to the extent the Exclusion Condition is met or to Unaffected Claims or to the enforcement of any obligations under the Plan or the Payment Agreement.

24. **THIS COURT ORDERS** that, notwithstanding paragraphs 22 and 23, nothing in this Order shall release, enjoin or compromise claims against directors of the Applicant that are described in Section 5.1(2) of the CCAA.

APPROVAL OF THE MONITOR'S THIRD REPORT

25. **THIS COURT ORDERS** that the Third Report and the activities of the Monitor referred to therein be and are hereby approved.

26. **THIS COURT ORDERS** that the fees and disbursements of the Monitor for the period April 7, 2014 to July 31, 2014, as described in the affidavit of Jean-François Nadon sworn August 14, 2014, be and are hereby approved.

27. **THIS COURT ORDERS** that the fees and disbursements of the Monitor's legal counsel for the period April 10, 2014 to July 31, 2014, as described in the affidavit of Linda Sherwood sworn August 13, 2014, be and are hereby approved.

DISCHARGE OF MONITOR

28. **THIS COURT ORDERS** that on the Plan Implementation Date, and subject to this Order, the Monitor shall be discharged and released and shall have no further obligations or responsibilities, except only with respect to any Post Plan Implementation Date Duties.

29. **THIS COURT ORDERS** that in addition to the powers set out in the CCAA, the Initial Order and the Claims Procedure and Meeting Order, the Monitor is hereby directed and empowered to perform the Post Plan Implementation Date Duties.

30. **THIS COURT ORDERS AND DECLARES** 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 carrying out the provisions of this Order and/or the Plan, including the Post Plan Implementation Date Duties, save and except for any gross negligence or wilful misconduct on its part and the Monitor shall be entitled to rely on the books and records of the CCAA Parties and any information provided by the CCAA Parties without independent investigation and shall not be liable for any claims or damages resulting from any errors or omissions in such books, records or information. Nothing in this order shall derogate from the protections afforded the Monitor by the CCAA or any applicable legislation.

31. **THIS COURT ORDERS AND DECLARES** that the Administration Charge provided for in the Initial Order shall extend to and charge for the benefit of the Monitor all funds held by the Monitor in trust on account of the Plan Reserves, and the Monitor shall continue to hold the benefit of all protections in favour of the Monitor as set out in the Orders of this Court in the CCAA Proceedings to date, the CCAA and at law, including the stay of proceedings in its favour as provided for in the Initial CCAA Order as against the funds held in the Plan Reserves from time to time, until the Monitor has completed its duties under the Plan and the fees and disbursements of the Monitor and its counsel have been fully paid.

32. **THIS COURT ORDERS** that the completion of the Monitor's duties, including Post Plan Implementation Date Duties, shall be evidenced, and its final discharge shall be effected by the filing by the Monitor with this Court of a certificate certifying that the Plan Completion Date has been achieved.

33. **THIS COURT ORDERS AND DECLARES** that the actions and conduct of the Monitor in the CCAA Proceedings are hereby approved and that the Monitor has satisfied all of its obligations up to and including the date of this Order, and that in addition to the protections in favour of the Monitor as set out in the Orders of this Court in the CCAA Proceedings to date, the Monitor shall not be liable for any act or omission on the part of the Monitor, including with

respect to any reliance thereof, including without limitation, with respect to any information disclosed, any act or omission pertaining to the discharge of duties under the Plan or as requested by the Applicant or with respect to any other duties or obligations in respect of the implementation of the Plan, including Post Plan Implementation Date Duties, save and except for any claim or liability arising out of any gross negligence or wilful misconduct on the part of the Monitor. Subject to the foregoing, and in addition to the protections in favour of the Monitor as set out herein and in the other Orders of this Court, any claims against the Monitor in connection with the performance of its duties as Monitor are hereby released, stayed, extinguished and forever barred and the Monitor shall have no liability in respect thereof.

34. **THIS COURT ORDERS** that no action or other proceeding shall be commenced against the Monitor in any way arising from or related to its capacity or conduct as Monitor except with prior leave of this Court and on prior written notice to the Monitor and such further order securing, as security for costs, the substantial indemnity costs of the Monitor in connection with any proposed action or proceeding as the Court hearing the motion for leave to proceed may deem just and appropriate.

35. **THIS COURT ORDERS** that the Monitor, its affiliates, and their respective officers, directors, employees and agents, and counsel for the Monitor, are hereby released and discharged from any and all claims that any Persons may have or be entitled to assert against the Monitor, whether known or unknown, matured or unmatured, foreseen or unforeseen, existing or hereafter arising, based in whole or in part on any act or omission, transaction, dealing or other occurrence existing or taking place on or prior to the date of issue of this Order in any way relating to, arising out of or in respect of the CCAA Proceedings, save and except for any claim or liability arising out of any gross negligence or wilful misconduct on the part of the Monitor.

CHARGES

36. **THIS COURT ORDERS** that, the CCAA Charges on the Property of the CCAA Parties provided for in the Initial CCAA Order and any subsequent Orders in the CCAA Proceedings shall automatically be fully and finally terminated, discharged and released on the Plan Implementation Date.

37. **THIS COURT ORDERS** that, notwithstanding the preceding paragraph, the Monitor shall continue to maintain the benefit of the Administration Charge, as provided in the Initial CCAA Order, and paragraph 31 hereof until the Monitor has completed its duties under the Plan, including Post Plan Implementation Date Duties, and the fees and disbursements of the Monitor and its counsel have been fully paid.

INITIAL CCAA ORDER AND OTHER ORDERS

38. **THIS COURT ORDERS** that:

- (a) except to the extent that the Initial CCAA Order has been varied by or is inconsistent with this Order or any further Order of this Court, the provisions of the Initial CCAA Order shall remain in full force and effect until the Plan Implementation Date; provided that the protections granted in favour of the Monitor shall continue in full force and effect after the Plan Implementation Date; and
- (b) all other Orders made in the CCAA Proceedings shall continue in full force and effect in accordance with their respective terms, except to the extent that such Orders are varied by, or are inconsistent with, this Order or any further Order of this Court in the CCAA Proceedings; provided that the protections granted in favour of the Monitor shall continue in full force and effect after the Plan Implementation Date.

EFFECT, RECOGNITION, ASSISTANCE

39. **THIS COURT ORDERS** that this Order shall have full force and effect in all provinces and territories in Canada, outside Canada and against all Persons against whom it may otherwise be enforceable.

40. **THIS COURT REQUESTS** the aid, recognition and assistance of other courts in Canada in accordance with Section 17 of the CCAA and requests that the Federal Court of Canada and the courts and judicial, regulatory and administrative bodies of or by the provinces and territories of Canada, the Parliament of Canada, the United States of America, the states and

other subdivisions of the United States of America including, without limitation, the U.S. District Court, the United Kingdom, Belgium, and other nations and states act in aid, recognition and assistance of, and be complementary to, this Court in carrying out the terms of this Order and any other Order in this proceeding. Each of the Applicant and the Monitor shall be at liberty, and is hereby authorized and empowered, to make such further applications, motions or proceedings to or before such other court and judicial, regulatory and administrative bodies, and take such other steps, in Canada, the United States of America, the United Kingdom, Belgium or other nations and states as may be necessary or advisable to give effect to this Order.

ADVICE AND DIRECTION

41. **THIS COURT ORDERS** that either of the Monitor or the Applicant may from time to time apply to this Court for advice and directions in respect of any matter arising from or under the Plan, this Order or the discharge of their powers and duties hereunder.



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AUG 23 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
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**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

**Proceedings commenced at
Toronto**

**ORDER
(Plan Sanction)**

FASKEN MARTINEAU DuMOULIN LLP

Barristers and Solicitors
333 Bay Street, Suite 2400
Bay Adelaide Centre, Box 20
Toronto, ON M5H 2T6

Aubrey E. Kauffman (LSUC#18829N)

Tel: 416 868 3538

Fax: 416 364 7813

Email: akauffman@fasken.com

Dylan Chochla (LSUC# 62137I)

Tel: 416 868 3425

Fax: 416 364 7813

Email: dchochla@fasken.com

Lawyers for Applicant