

**THE QUEEN'S BENCH**  
**WINNIPEG CENTRE**

IN THE MATTER OF THE: *Companies' Creditors Arrangement Act*,  
R.S.C. 1985, c. C-36, as Amended

AND IN THE MATTER OF: A Proposed Plan of Compromise or  
Arrangement of The Puratone Corporation,  
Pembina Valley Pigs Ltd. and Niverville  
Swine Breeders Ltd. (the "Applicants")

Application under the: *Companies' Creditors Arrangement Act*, R.S.C.  
1985, c. C-36, as Amended

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**FIFTH REPORT OF THE MONITOR**

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**THE QUEEN'S BENCH  
WINNIPEG CENTRE**

**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 THE PURATONE CORPORATION, NIVERVILLE  
SWINE BREEDERS LTD., AND PEMBINA VALLEY PIGS LTD.**

**APPLICANTS**

**FIFTH REPORT OF THE MONITOR  
DATED NOVEMBER 20, 2012**

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**INTRODUCTION**

1. On September 12, 2012, The Puratone Corporation (“**TPC**”), Niverville Swine Breeders Ltd., and Pembina Valley Pigs Ltd. (collectively the “**Applicants**”) filed for and obtained protection under the *Companies' Creditors Arrangement Act* (the “**CCAA**”). Pursuant to the Order of the Manitoba Court of Queen's Bench (the “**Court**”) dated September 12, 2012 (the “**Initial Order**”), Deloitte & Touche Inc. (“**Deloitte**”) was appointed as the Monitor of the Applicants

(the “**Monitor**”) in the CCAA proceedings and a stay of proceedings was granted in favour of the Applicants.

2. On October 10, 2012, the Court extended the stay of proceedings until November 2, 2012.
3. On October 30, 2012, the Court extended the stay of proceedings until November 12, 2012.
4. On November 8, 2012, the Court further extended the stay of proceedings until January 15, 2013 (the “**Stay Period**”)
5. The Monitor has provided the Court with the following reports:
  - i. The Pre-Filing Report of the Proposed Monitor dated September 11, 2012 (the “**Pre-Filing Report**”) in connection with the Applicants’ application for protection under the CCAA;
  - ii. The First Report of the Monitor dated October 5, 2012 (the “**First Report**”) in connection with the Applicants’ motion to extend the Stay Period;
  - iii. The Second Report of the Monitor dated October 25, 2012 (the “**Second Report**”) in connection with the Applicant’s motion to extend the Stay Period;
  - iv. The Third Report of the Monitor dated November 5, 2012 (the “**Third Report**”) in connection with the Applicant’s motion to i) further extend the Stay Period; and ii) seek approval for the sale transaction (the “**Transaction**”) contemplated by the Asset Purchase Agreement between the Applicants and Maple Leaf Foods Inc. (the

“**Purchaser**”), and as agreed to by Deloitte & Touche Inc. in its capacity as Monitor of the Applicants; and

- v. The Fourth Report of the Monitor dated November 14, 2012 (the “**Fourth Report**”) in connection with the Applicant’s motion to allow the transfer of their shares and limited partnership units in the Partially Owned Subsidiaries and the assignment of certain agreements between the Partially Owned Subsidiaries and/or their shareholders/unit holders to the Purchaser in connection with the Transaction.
6. Copies of the Initial Order, the Pre-Filing Report, the First, Second, Third and Fourth Report(s), all motion materials and orders in the CCAA proceedings, and certain other documents related to the CCAA proceedings have been posted and are available on the Monitor’s website at [www.deloitte.com/ca/puratone](http://www.deloitte.com/ca/puratone).

## **PURPOSE**

7. The purpose of this fifth report of the Monitor (the “**Fifth Report**”) is to provide information with respect to the following:
  - i. The Applicants’ request for an Order that they be permitted to assign their rights and obligations under certain agreements to the Purchaser in connection with the Transaction and the Monitor’s recommendations thereon. The agreements in question are identified in the draft Order attached to the Notice of Motion filed by the Applicants and made returnable before the Court on Thursday, November 22, 2012 at 9:00 a.m.

## TERMS OF REFERENCE

8. In preparing this Fifth Report, the Monitor has relied upon unaudited interim financial information, the Applicants' books and records, the Affidavits of Raymond Hildebrand sworn September 11, October 4, October 24, November 1 and November 6, the Affidavit of Larry Johnson sworn on November 16, 2012, and discussions with management ("**Management**") and the Applicants' financial and legal advisors.
9. The financial information of the Applicants has not been audited, reviewed or otherwise verified by the Monitor as to its accuracy or completeness, nor has it necessarily been prepared in accordance with generally accepted accounting principles and the reader is cautioned that this Fifth Report may not disclose all significant matters about the Applicants. Additionally, none of the Monitor's procedures were intended to disclose defalcations or other irregularities. If the Monitor were to perform additional procedures or to undertake an audit examination of the financial statements in accordance with generally accepted auditing standards, additional matters may have come to the Monitor's attention. Accordingly, the Monitor does not express an opinion nor does it provide any other form of assurance on the financial or other information presented herein. The Monitor may refine or alter its observations as further information is obtained or brought to its attention after the date of this Fifth Report.
10. The Monitor assumes no responsibility or liability for any loss or damage occasioned by any party as a result of the circulation, publication, reproduction or use of this Fifth Report. Any use which any party makes of this Fifth

Report, or any reliance or decision to be made based on this Fifth Report, is the sole responsibility of such party.

11. Unless otherwise stated, all monetary amounts contained in this Fifth Report are expressed in Canadian dollars.
12. Capitalized terms used in this Fifth Report but not defined are as defined in the Pre-Filing Report, the First Report, the Second Report, the Third Report, the Fourth Report and the Asset Purchase Agreement, as applicable.

### **THE PRESENT MOTION AND MONITOR'S RECOMMENDATIONS**

13. In connection with the Transaction, the Applicants have filed a notice of motion, returnable on November 22, 2012, seeking an Order pursuant to sections 11, 11.3 and 36 of the CCAA:
  - i. Authorizing the Applicants to assign their rights and obligations under certain Assumed Contracts to the Purchaser on Closing as part of the Purchased Assets pursuant to the Transaction, where the consent of the relevant counterparty is required for the assignment and such counterparty has not expressly agreed to an assignment of the Applicants' rights and obligations to the Purchaser.
14. As detailed in the Asset Purchase Agreement, there are a number of Assumed Contracts that form part of the Purchased Assets under the Transaction. In accordance with the Order issued November 16, 2012, the Court previously approved the transfer and/or assignment of certain Hog Production Agreements (3), Hog Supply Agreements (1), Administration Agreements (2), Other Agreements (1) and Shareholder and Partnership Agreements (7), all of which relate to the Partially Owned Subsidiaries.

15. In the case of the majority of the Assumed Contracts, the Applicants' legal counsel has advised that the Assumed Contracts may be assigned by the Applicants at law without the express consent of the counterparty involved. There are, however, a number of Assumed Contracts (the "**Outstanding Contracts**") where the consent of the relevant counterparty is required for the assignment and such counterparty has not yet expressly agreed to the assignment of the Applicants' rights and obligations to the Purchaser. Those Outstanding Contracts may be summarized as follows (as at the time of this Report):

- i. Equipment Leases (5);
- ii. Real Property Leases (7);
- iii. Genetics Agreements (1);
- iv. Feed, Ingredient and Nutrition Agreements (2);
- v. Software License Agreements (7); and
- vi. Other Agreements (2);

16. The Monitor is advised that as of the date of this Report, the Applicants are working diligently to obtain consents to the assignment of the remaining Outstanding Contracts prior to the hearing scheduled for Thursday, November 22, 2012. It is expected that counsel for the Applicants will provide further evidence prior to or at the hearing indicating the Outstanding Contracts for which executed consents to the assignment of the rights and obligations of the Applicants have not been received from the relevant counterparties.

17. Pursuant to clause 7.2 of the Asset Purchase Agreement, the Applicants are obliged to use their best efforts to obtain, prior to Closing, all necessary consents of counterparties to the Assumed Contracts to assign the Assumed Contracts to the Purchaser, failing which the Applicants are obliged to apply for an Order of the Court authorizing the assignment of such Assumed Contracts to the Purchaser notwithstanding the absence of such consent.
18. Assuming the Transaction closes, it is the Monitor's understanding that the Outstanding Contracts are integral to continuing the Applicants' operations subsequent to the Closing Date. In the event that all or some of the Outstanding Contracts are not ultimately assigned, the Transaction may be at risk if the Purchaser takes the position that the agreements in question are material to the Transaction as a whole.
19. The Monitor is unable to comment on the Purchaser's business plans or on the degree to which the Purchaser could rely on a continuing relationship with a counterparty to an Outstanding Contract that was assigned with the authority of the Court over the objections of the counterparty. However, the Monitor understands that it is the Purchaser's intention to continue to operate essentially the same business as is currently operated by the Applicants under the Assumed Contracts, including the Outstanding Contracts.
20. All the Outstanding Contracts to be assigned were entered into by the Applicants prior to September 12, 2012 (the day on which proceedings under the CCAA commenced), and none of the Outstanding Contracts are eligible financial contracts or collective agreements as defined under the CCAA. As such, the exceptions which would prevent a Court from issuing an Order



assigning the rights and obligations of the Applicants under section 11.3(2) of the CCAA are not applicable.

21. Given the Purchaser's recognized expertise in the industry of which the Applicants form a part and its apparent financial resources, the Monitor is of the view that it is appropriate and fair to assign the Applicants' rights and obligations under the Outstanding Contracts to the Purchaser. In addition, the Monitor has not been made aware of any facts suggesting that the Purchaser is not in position to fulfill the ongoing obligations under the Outstanding Contracts.
22. Pursuant to clause 7.3 of the Asset Purchase Agreement, on November 16, 2012, the Applicants provided the Purchaser with a list of Assumed Contracts and Licenses in respect of which Cure Costs must be paid in order for such Assumed Contracts and Licenses to be in good standing. The Applicants have identified five Assumed Contracts with Cure Costs in an aggregate amount of \$177,852.58, as follows:
  - i. Genetic Agreements (1) - \$141,812.00;
  - ii. Feed, Ingredient and Nutrition Agreements (2) - \$26,713.59;
  - iii. Software License Agreements (1) - \$5,872.49; and
  - iv. Other Agreements (1) - \$3,454.50

Three of the five Assumed Contracts for which Cure Costs must be paid are also Outstanding Contracts. Under the Asset Purchase Agreement, the Applicants are required to pay to the counterparties under the Assumed Contracts and Licenses in respect of which Cure Costs are owing, all necessary

Cure Costs such that at Closing the Applicants are not in breach of any such Assumed Contracts or Licenses and all such Assumed Contracts and Licenses are in good standing. As a result of the terms of the Asset Purchase Agreement, the Monitor is satisfied that all monetary defaults that exist with respect to any of the Outstanding Contracts that are the subject of the Applicants' motion will be remedied on or before the Closing of the Transaction.

23. Furthermore, the Applicants have indicated that the identified Cure Costs currently exclude all such additional costs (the "**Additional Costs**") that may be incurred from time to time after November 16, 2012 in connection with the ongoing operations of the Applicants in accordance with the Initial Order. Such Additional Costs are to be pre-paid or paid by the Applicants on or prior to the Closing Date. As of November 16, 2012, the Applicants advised that there are no amounts past due in respect of such Additional Costs.
24. In the circumstances, the Monitor supports and approves of the issuance of an Order authorizing the assignment of the Applicants' rights and obligations under the Outstanding Contracts as part of the overall Transaction between the Applicants' and the Purchaser, which the Monitor and this Court have approved as being in the best interests of the Applicants' stakeholders.

All of which is respectfully submitted at Winnipeg, Manitoba, this 20<sup>th</sup> day of November, 2012.

**DELOITTE & TOUCHE INC.**

In its capacity as Monitor of  
The Puratone Corporation, Niverville Swine  
Breeders Ltd., and Pembina Valley Pigs Ltd.,  
and not in its personal capacity.

A handwritten signature in black ink, appearing to read "Steven Peleck". The signature is written in a cursive style with a prominent loop at the end.

Per: Steven Peleck, CA•CIRP  
Senior Vice-President