

THE KING'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 POLAR WINDOW OF CANADA LTD., ACCURATE DORWIN (2020) INC., GLASS 8 INC., NATIONAL INTERIORS (2021) INC., 12986647 CANADA LTD. o/a ALLSCO WINDOWS & DOORS, 12986591 CANADA LTD. o/a ALWEATHER WINDOWS & DOORS, POLAR HOLDING LTD., 10064720 MANITOBA LTD. AND 12986914 CANADA LTD.

(the "Applicants")

APPLICATION UNDER: THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C., c. C-36, AS AMENDED

NOTICE OF MOTION
(STAY EXTENSION, SEALING, AND OTHER RELIEF)
DATE OF HEARING: TUESDAY, DECEMBER 5, 2023 AT 9:00 A.M.
THE HONOURABLE MR. JUSTICE BOCK

McDougall Gauley LLP
500 616 Main Street
Saskatoon SK S7J 0H6

IAN A. SUTHERLAND, K.C. / CRAIG FRITH
PHONE: (306) 665-5417 / (306) 665-5432
FAX: (306) 664-4431
CLIENT FILE NO. 549268.11

THE KING'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 POLAR WINDOW OF CANADA LTD., ACCURATE DORWIN (2020) INC., GLASS 8 INC., NATIONAL INTERIORS (2021) INC., 12986647 CANADA LTD. o/a ALLSCO WINDOWS & DOORS, 12986591 CANADA LTD. o/a ALWEATHER WINDOWS & DOORS, POLAR HOLDING LTD., 10064720 MANITOBA LTD. AND 12986914 CANADA LTD.

(the "**Applicants**")

APPLICATION UNDER: THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C., c. C-36, AS AMENDED

NOTICE OF MOTION
(STAY EXTENSION, SEALING, AND OTHER RELIEF)

Deloitte Restructuring Inc. (the "**Monitor**"), the court appointed monitor of Polar Window of Canada Ltd., Accurate Dorwin (2020) Inc., Glass 8 Inc., National Interiors (2021) Inc., 12986647 Canada Ltd. o/a Allsco Windows & Doors, 12986591 Canada Ltd. o/a Alweather Windows & Doors, Polar Holding Ltd., 10064720 Manitoba Ltd., and 12986914 Canada Ltd. (collectively, the "**Applicants**"), will make a motion before the Honourable Mr. Justice Bock on Tuesday, the 5th day of December, 2023 at 9:00 o'clock in the forenoon or so soon after that time as the motion can be heard at the Law Courts, 408 York Avenue at Kennedy Street, in the City of Winnipeg, in Manitoba.

THE MOTION IS FOR:

1. An Order in substantially the form attached hereto as Schedule "A" to this Notice of Motion:
 - (a) abridging the time for service of this notice of motion and all other materials filed in support of the same such that this motion is properly returnable on December 5, 2023 at 9:00 a.m., and dispensing with further service thereof;

- (b) extending the Stay Period (as that term is defined in the Amended and Restated Initial Order of the Honourable Mr. Justice Bock dated February 14, 2023 (the "**ARIO**")) to January 29, 2023;
- (c) sealing the confidential supplement (the "**Confidential Supplement**") to the Fifth Report of the Monitor dated December 4, 2023 (the "**Fifth Report**");
- (d) amending the Approval and Vesting Order of the Honourable Mr. Justice Bock dated July 21, 2023 (the "**AVO**") to:
 - (i) reference and approve the additional amendments to the Asset Purchase Agreement dated July 21, 2023 (the "**Sale Agreement**") between the Monitor, for and on behalf of the Applicants, as vendor, and Stephen Segal, in trust for a corporation or corporations to be formed (the "**Purchaser**");
 - (ii) require, as an additional condition of the vesting of the Purchased Assets in the Purchaser and the release of the Principals, that the Applicants reduce the DIP Facility in accordance with the Fifth Amendment to Interim Facility Loan Agreement (the "**Fifth DIP Amendment**"); and
 - (iii) revise the Monitor's certificate to include confirmation that the requirements of the Fourth DIP Amendment have been satisfied.
- (e) authorizing and directing the Monitor to pay the outstanding professional fees owing by the Applicants to the Monitor, the Monitor's legal counsel, and the Applicant's legal counsel as set out in the Fifth Report from the non-refundable Increased Deposit (as defined in the Fifth Report);
- (f) further amending paragraph 7 of the Order (Stay Extension, Interim Distribution, and Other Relief) of the Honourable Justice Bock dated July 21, 2023 (the "**July 21 Order**") to revise the interim distributions payable from the Net Proceeds, should the Amended Transaction (as defined in the Fifth Report) close;
- (g) amending the Order (Enhancement of the Monitor's Powers) of the Honourable Mr. Justice Bock dated October 27, 2023 (the "**Enhanced Powers Order**") *nunc pro tunc* to:
 - (i) provide that the Monitor shall file the Monitor's certificate if it determines, in its sole discretion, that the Amended Transaction is unlikely to close or, alternatively, that a material adverse change in the Applicants' financial condition has occurred;

- (ii) revise the interim distributions the Monitor is authorized to pay from the Increased Deposit; and
- (iii) revise the Monitor's Certificate to reference the new triggering events for the Enhanced Powers Order;
- (h) approving the Fifth Report and the Confidential Supplement, and the activities, actions, and conduct of the Monitor described therein;
- (i) approving the fees and disbursements of the Monitor, its legal counsel, McDougall Gauley LLP, as set out in the Fourth Report; and
- (j) such further and other relief as counsel may advise and this Honourable Court may permit.

THE GROUNDS FOR THE MOTION ARE:

2. For the purposes of this motion, the Monitor relies on:

- (a) sections 11, 11.02(2), and 36 of the *CCAA*; and
- (b) Rules 1.04, 3.02(1), 16.04(1), and 16.08 of the *King's Bench Rules*.

3. Unless otherwise defined herein, capitalized terms will have the meanings given to them in the ARIO, AVO, July 21, 2023 Order, Sale Agreement, and Fifth Report.

SERVICE

4. The Monitor's Notice of Motion was served by email on the members of the service list established in these proceedings, as contemplated by paragraph 51 of the ARIO. The forthcoming Fifth Report and Monitor's brief of law will be served in the same manner.

EXTENDING THE STAY OF PROCEEDINGS

5. Since this matter was last before the Court on October 27, 2023, the Monitor, in consultation with TD Bank, has negotiated the Fourth Amending Agreement with the Purchaser.

6. The Fourth Amending Agreement:

- (a) reduces the amount of the Purchaser Price;
 - (b) extends the closing date to December 5, 2023; and
 - (c) provides for an increase to the at-risk Deposit (i.e., the Increased Deposit).
- (the "**Amended Transaction**")

7. The Monitor's execution of the Fourth Amending Agreement extending the timeline for closing is authorized by the ARIO's approval of the original Sale Agreement, and the Monitor's agreement to the Increased Deposit is authorized by paragraphs 4 and 5 of the Order of the Honourable Justice Bock dated September 12, 2023; however, the change to the Purchase Price requires court approval, as discussed below.

8. The Stay Period expires on December 8, 2023. The Monitor is seeking an extension of the Stay Period until January 29, 2024 to facilitate the closing of the Amended Transaction, if approved, and allow the Monitor sufficient time to prepare a motion for a final distribution and discharge.

9. If the Transaction does not close by the December 5, 2023, then the additional time will be necessary to determine whether there will be a further extension of the closing date or if the Enhanced Powers Order will be triggered. In the event of the latter, the Monitor will require the additional time to carry out its mandate pursuant to the Enhanced Powers Order and prepare a motion for final distribution and discharge.

10. Finally, the Monitor is of the view that the Applicants have acted and continue to act in good faith and with due diligence.

SEALING ORDER

11. The Confidential Supplement is expected to contain unredacted versions of the following documents:

- (a) the Fifth DIP Amendment, if finalized and executed;
- (b) the Third Amending Agreement; and
- (c) the Fourth Amending Agreement.

12. Redacted versions of these documents are expected to be appended to the Fifth Report. The anticipated redactions will be limited to the amount of the Purchase Price, Cash to Close, and Deposit, and the various changes to those figures pursuant to the amendments. The sealing of the Confidential Supplement is being sought so as to maintain the confidentiality of this commercially sensitive information.

SECOND AMENDMENT TO THE AVO

13. The terms of the Fifth DIP Amendment (if agreed upon) and the Fourth Amending Agreement necessitate further amendments to the AVO (and Monitor's Certificate):

- (a) the Fifth DIP Amendment requires that the DIP Facility be reduced to \$1.8 million before the Monitor's Certificate can be delivered to effect the vesting of title to the Purchased Assets in the Purchaser; and
- (b) the Fourth Amending Agreement has reduced the amount of the Purchase Price, which is a material change requiring Court approval.

14. With respect to the change to the Purchase Price, the Monitor is of a view that the consummation of the Amended Transaction is still the best possible outcome in the circumstances because:

- (a) the aggregate consideration remains superior to all other offers submitted during the SISP;

- (b) the Amended Transaction:
 - (i) is expected to provide greater net realizations than would be expected in a receivership or bankruptcy;
 - (ii) will result in the Purchaser assuming, among other things, responsibility for the Applicants' ongoing projects;
 - (iii) provides for the continued employment of at least 85% of the Applicants' current active employees; and
 - (iv) provides for the continued involvement of key personnel who are most familiar with the Applicants' business;
- (c) the approval of the Amended Transaction will limit the ongoing costs required to fund the *CCAA* proceedings, the costs which are being borne by TD Bank;
- (d) TD Bank is the primary secured creditor and is supportive of the Amended Transaction; and
- (e) the Monitor is already in possession of the Cash to Close.

USE OF THE INCREASED DEPOSIT

15. The Increased Deposit will either be credited to the Purchaser when the Amended Transaction closes or forfeited to the Monitor for the benefit of the Applicants' creditors in these proceedings.

16. As detailed in the Fifth Report, the Applicants owe significant professional fees to the Monitor, the Monitor's legal counsel, and the Applicants' legal counsel (collectively, the "**Professionals**"), all of which are secured by the first-ranking Administration Charge on the Property. The Monitor is seeking the Court's authorization to pay these professional fee arrears from the Increased Deposit, thereby reducing the amounts secured by the Administration Charge.

AMENDMENTS TO THE OTHER ORDERS

17. If the Monitor is authorized to pay the professional fee arrears from the Increased Deposit, paragraph 7 of the July 21 Order and paragraph 8 of the Enhanced Powers Order will be redundant, as each paragraph contemplates the same payments being made to the Professionals to reduce the amounts secured by the Administration Charge in the event the Amended Transaction closes or the Enhanced Powers Order takes effect, respectively.

18. The amendments to paragraph 2 and Schedule "A" of the Enhanced Powers Order are being requested so as to align the Order with the extension of the closing date resulting from the Fourth Amending Agreement, as well as provide the Monitor with the necessary flexibility to deal with any further amending agreements while protecting the Applicants' stakeholders in the event of a material adverse change in the Applicants' financial condition.

THE FOLLOWING DOCUMENTARY EVIDENCE WILL BE USED AT THE HEARING OF THE MOTION:

1. The pleadings filed herein;
2. The Amended and Restated Initial Order pronounced February 14, 2023;
3. The Order pronounced April 5, 2023;
4. The Approval and Vesting Order pronounced July 21, 2023;
5. The Stay Extension, Interim Distribution, and Other Relief Order pronounced July 21, 2023;
6. The Amendment to the Sale Agreement and Other Relief Order pronounced September 12, 2023;
7. The Affidavit of Stephen Segal sworn February 6, 2023;
8. The Affidavit of Stephen Segal sworn April 3, 2023;
9. The Pre-Filing Report of the Monitor dated February 7, 2023;

10. The First Report of the Monitor dated April 3, 2023;
11. The Second Report of the Monitor and the Confidential Supplement thereto, both dated July 20, 2023;
12. The Third Report of the Monitor and the Confidential Supplement thereto, both dated September 8, 2023;
13. The Fourth Report of the Monitor and the Confidential Supplement thereto, both dated October 24, 2023;
14. The Fifth Report of the Monitor, to be served and filed, and the Confidential Supplement thereto;
15. The Monitor's Brief of Law, to be served and filed;
16. The Affidavit of Service of Alecia Iwanchuk, to be filed; and
17. Such further and other documents and evidence as counsel may advise and this Honourable Court may permit.

December 1, 2023

McDOUGALL GAULEY LLP
500 – 616 Main Street, Saskatoon SK S7J 0J6
Ian A. Sutherland, K.C. / Craig Frith
PHONE: (306) 665-5417 / (306) 665-5432
FAX: (306) 664-4431

TO: SERVICE LIST

SCHEDULE "A"

Court File No. CI 23-01-39360

THE KING'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 POLAR WINDOW OF CANADA LTD., ACCURATE DORWIN (2020) INC., GLASS 8 INC., NATIONAL INTERIORS (2021) INC., 12986647 CANADA LTD. o/a ALLSCO WINDOWS & DOORS, 12986591 CANADA LTD. o/a ALWEATHER WINDOWS & DOORS, POLAR HOLDING LTD., 10064720 MANITOBA LTD. AND 12986914 CANADA LTD.

(the "**Applicants**")

APPLICATION UNDER: *THE COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C., c. C-36, AS AMENDED

ORDER
(STAY EXTENSION, SEALING, AND OTHER RELIEF)
DATE OF HEARING: TUESDAY, DECEMBER 5, 2023 AT 9:00 A.M.
THE HONOURABLE MR. JUSTICE BOCK

McDougall Gauley LLP
500 616 Main Street
Saskatoon SK S7J 0H6

IAN A. SUTHERLAND, K.C. / CRAIG FRITH
PHONE: (306) 665-5417 / (306) 665-5432
FAX: (306) 664-4431
CLIENT FILE NO. 549268.11

ON READING the Fifth Report of the Monitor dated December 4, 2023 (the "**Fifth Report**"), the and Confidential Supplement, and on hearing the submissions of counsel for the Monitor, the Applicants, and The Toronto-Dominion Bank, no one appearing for any other person on the Service List, although properly served as appears from the affidavit of Alecia Iwanchuk sworn December 4, 2023; all filed:

SERVICE

1. THIS COURT ORDERS that the time for service of the Monitor's notice of motion and supporting materials is hereby abridged and validated so that the motion is properly returnable today and hereby dispenses with further service thereof.

EXTENSION OF THE STAY PERIOD

2. THIS COURT ORDERS that that the Stay Period (as that term is defined in the Amended and Restated Initial Order of the Honourable Mr. Justice Bock dated February 14, 2023) is hereby extended from December 5, 2023 to January 29, 2023.

SEALING OF THE CONFIDENTIAL SUPPLEMENT

3. THIS COURT ORDERS that the Confidential Supplement and the appendices thereto be filed under seal, kept confidential, and not form part of the public record. The Confidential Supplement shall be kept separate and apart from the other contents of the Court file in a sealed envelope which sets out the style of cause of these proceedings and a statement that the contents thereof are subject to a Sealing Order, and shall not be opened except by the Registrar of this Court and the Honourable Mr. Justice Bock (or another Justice of the Court of King's Bench).

4. The Confidential Supplement shall only be made available or form part of the public record after the Monitor's Certificate (as that term is defined in the Approval and

Vesting Order of the Honourable Justice Bock dated July 21, 2023, as amended by paragraph 3 of the Order (Amendment to the Sale Agreement and Other Relief) of the Honourable Justice Bock dated September 12, 2023 (the "AVO")) is filed with this Court, or further Order of this Court.

SECOND AMENDMENT TO THE APPROVAL AND VESTING ORDER

5. THIS COURT ORDERS that the preamble, paragraphs 4 and 9, and Schedule "A" of the AVO are hereby further amended as follows (with the bold and underlined text to be added to the Order):

THIS MOTION, made by Deloitte Restructuring Inc. in its capacity as the Court-appointed monitor (the "**Monitor**") of the undertaking, property and assets of Polar Window of Canada Ltd., Accurate Dorwin (2020) Inc., Glass 8 Inc., National Interiors (2021) Inc., 12986647 Canada Ltd. o/a Allsco Windows & Doors, 12986591 Canada Ltd. o/a Alweather Windows & Doors, Polar Holding Ltd., 10064720 Manitoba Ltd. and 12986914 Canada Ltd. (collectively, the "**Applicants**") for an order approving the sale transaction (the "**Transaction**") contemplated by an agreement of purchase and sale between the Monitor, in its capacity as court-appointed monitor of the Applicants and not in its personal or corporate capacity, and Stephen Segal (in trust for a corporation or corporations to be formed) (the "**Purchaser**") and appended to the Second Report of the Monitor dated July 20, 2023 (the "**Second Report**"), as amended by the the Amendment to the Asset Purchase Agreement dated August 31, 2023 appended to the Third Report of the Monitor dated September 8, 2023, the Second Amendment to the Asset Purchase Agreement dated October 6, 2023 and appended to the Fourth Report of the Monitor dated October 24, 2023, and the Third Amendment to the Asset Purchase Agreement dated October 26, 2023 and Fourth Amendment to the Asset Purchase Agreement dated November 30, 2023 appended to the Fifth Report of the Monitor dated December 4, 2023 (together, the "**Sale Agreement**"), and vesting in the Purchaser the Applicants' right, title and interest in and to the assets described in the Sale Agreement (the "**Purchased Assets**"), was heard this day at the Law Courts Building at 408 York Avenue, in the City of Winnipeg, Manitoba.

[...]

VESTING OF PROPERTY

4. THIS COURT ORDERS AND DECLARES that, upon the delivery of a Monitor's certificate to the Purchaser substantially in the form attached as Schedule A hereto (the "**Monitor's Certificate**") certifying, among other things, that the outstanding principal amount owing under the DIP Facility (as defined in the Amended and Restated Order of the Honourable Mr. Justice Bock dated February 14, 2023) ("DIP Facility") is no greater than \$1,800,000 in compliance with the Fourth Amendment to Interim Facility Loan Agreement dated

December 1, 2023, all of the Applicants' right, title and interest in and to the Purchased Assets described in the Sale Agreement shall vest absolutely in the Purchaser, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the "**Claims**") including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Amended and Restated Initial Order of the Honourable Justice Bock dated February 14, 2023; and (ii) all charges, security interests or claims evidenced by registrations pursuant to The Personal Property Security Act (Manitoba) or any other personal property registry system (all of which are collectively referred to as the "**Encumbrances**", but which term shall not include the permitted encumbrances listed at Schedule B herein) and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Purchased Assets are hereby expunged and discharged as against the Purchased Assets.

[...]

RELEASE

9. THIS COURT ORDERS that, conditional on the closing of the Transaction contemplated hereby, **the delivery of the Monitor's Certificate to the Purchaser certifying, among other things, that the outstanding principal amount owing under the DIP Facility is no greater than \$1,800,000 in compliance with the Fourth Amendment to Interim Facility Loan Agreement dated December 1, 2023**, and the Purchaser's payment of the Additional Consideration (as that term is defined in the Sale Agreement) to First West Credit Union Corp. and Sallyport Commercial Finance, LLC and effective immediately upon the filing of the Monitor's Certificate contemplated herein, Stephen Segal, Brant Enderle and Tim Morris (together the "**Principals**") are hereby forever and permanently released and discharged from any and all claims, liabilities or obligations in connection with any of the Principals' guarantees of any of the commitments, loans or obligations of any of the Applicants. Notwithstanding the foregoing, this release shall not release or discharge any statutory obligations that the Principals may have in their capacity as Directors or Officers of the Applicants (should they, in fact, be or have been a Director or Officer of the Applicants) or release or discharge any claims or entitlements that a Person may have against any Director's or Officer's liability insurance or the Director's Charge as contained in the Amended and Restated Order.

[...]

Schedule A – Form of Monitor's Certificate

[...]

THE MONITOR CERTIFIES the following:

1. The Purchaser has paid and the Monitor has received the Purchase Price for the Purchased Assets payable on the Closing Date pursuant to the Sale Agreement;
2. The conditions to Closing the Sale Agreement have been satisfied or waived by the Monitor and the Purchaser; and

3. The Transaction has been completed to the satisfaction of the Monitor **and the outstanding principal amount owing under the DIP Facility (as defined in the Amended and Restated Order of the Honourable Mr. Justice Bock dated February 14, 2023) is no greater than \$1,800,000 in compliance with the Fourth Amendment to Interim Facility Loan Agreement dated November , 2023.**

[...]

USE OF THE DEPOSIT

6. THIS COURT ORDERS that the Monitor shall be authorized and directed to pay the outstanding professional fees owing by the Applicants to the Monitor, the Monitor's legal counsel, McDougall Gauley LLP, and the Applicant's legal counsel, MLT Aikins LLP, as set out in the Fifth Report, from the Increased Deposit (as defined in the Fifth Report).

THIRD AMENDMENT TO THE JULY 21 ORDER

7. THIS COURT ORDERS that paragraph 7 of the Order (Stay Extension, Interim Distribution, and Other Relief) of the Honourable Justice Bock dated July 21, 2023 (as amended by the Order (Amendment to the Sale Agreement and Other Relief dated September 12, 2023 and the Order (Stay Extension and Other Relief) dated October 31, 2023) is hereby amended as follows (with the bold and underlined text to be substituted for the struck out text in the Order):

7. THIS COURT ORDERS that the Monitor shall **be authorized to repay the amount of the outstanding DIP Facility, up to the maximum amount of \$2,350,000, to TD Bank** ~~make the following interim distributions from the Net Proceeds:~~

- ~~(a) first, to reduce the amounts presently owed by the Applicants and secured by the Administration Charge:~~
 - ~~(i) to Deloitte Restructuring Inc., \$326,554 on account of the Monitor's outstanding fees and disbursements;~~
 - ~~(ii) to McDougall Gauley LLP, \$235,580 on account of its outstanding fees and disbursements;~~

~~(iii) to MLT Aikins LLP, \$216,636.94 on account of its outstanding fees and disbursements;~~

~~(b) second, in satisfaction of the DIP Lender's Charge, to TD Bank, the repayment of the DIP Facility to the maximum amount of \$2,350,000.~~

AMENDMENT TO THE ENHANCED POWERS ORDER

8. THIS COURT ORDERS that paragraphs 2 and 8 and Schedule "A" of the Order (Enhancement of the Monitor's Powers) of the Honourable Mr. Justice Bock dated October 27, 2023 are hereby amended as follows (with the bold and underlined text to be substituted for the struck out text in the Order):

ORDER TO TAKE EFFECT UPON FILING OF MONITOR'S CERTIFICATE

2. THIS COURT ORDERS that the Monitor shall file the Monitor's certificate attached as **Schedule "A"** to this Order (the "**Monitor's Certificate**") if **the Monitor determines, in its sole discretion, that the Amended Transaction (as that term is defined in the Fifth Report of the Monitor dated December 4, 2023) is unlikely to close or, alternatively, that a material adverse change in the Applicants' financial condition has occurred.** ~~(i) the transaction for the purchase and sale of Applicants' assets pursuant to an Asset Purchase Agreement dated July 21, 2023 between Stephen Segal, in trust for a corporation of corporations to be formed (the "**Purchaser**") and the Monitor for and on behalf of the Applicants (as amended by amending agreements dated August 31, 2023 and October 6, 2023 and as may be amended thereafter) (collectively the "**APA**") fails to close by November 3, 2023, and (ii), the Purchaser fails to provide the Monitor with an additional non-refundable deposit by November 3, 2023 in accordance with the APA in an amount agreed upon by TD.~~

[...]

USE OF THE DEPOSIT

8. THIS COURT ORDERS that the Monitor shall be authorized and entitled to make the following interim disbursements from the Deposit (as that term is defined in the APA):

~~(a) first, to pay the outstanding professional fees owing by the Applicants to the Monitor, the Monitor's legal counsel, McDougall Gauley LLP ("**MG**"), and the Applicant's legal counsel, MLT Aikins LLP ("**MLTA**") as set out in the Fourth Report.~~

~~(b)~~ **(a)** ~~second~~ **first**, to pay the ongoing reasonable professional fees and disbursements of the Monitor and **MG McDougall Gauley LLP** and any final invoice received from ~~MLTA~~ **MLT Aikins LLP**, in each case at their standard rates and charges as part of the costs of these proceedings; and

(e)(b) ~~third~~ **second**, to pay the reasonable costs and expenses incurred in exercising the Monitor's powers pursuant to the terms of this Order

[...]

Schedule A – Form of Monitor's Certificate

[...]

THE MONITOR CERTIFIES the following:

1. The **Monitor has concluded that:**

[the transaction for the purchase and sale of the Applicants' assets pursuant to an Asset Purchase Agreement dated July 21, 2023 between Stephen Segal, in trust for a corporation ~~or~~ of corporations to be formed (the "Purchaser") and the Monitor for and on behalf of the Applicants (as amended by the amending agreements dated August 31, 2023, ~~and~~ October 6, 2023, **October 26, 2023, and November 30, 2023, and as may be amended thereafter **is unlikely to close]****

OR

that a material adverse change in the Applicants' financial circumstances has occurred.]

~~2. The Purchaser failed to provide the Monitor with an additional non-refundable deposit by November 3, 2023 in accordance with the APA in an amount agreed upon by TD; and~~

~~3.~~ **2.** This Certificate was delivered by the Monitor at _____ [TIME] on _____ [DATE].

[...]

APPROVALS

9. THIS COURT ORDERS that the Fifth Report, the Confidential Supplement, and the activities, actions, and conduct of the Monitor described therein are hereby approved.

10. THIS COURT ORDERS that the fees and disbursements of the Monitor and its legal counsel, McDougall Gauley LLP, as set out in the Fifth Report are hereby approved.

MISCELLANEOUS MATTERS

11. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Applicants, the Monitor and their 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 Applicants or the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Applicants, the Monitor and their agents in carrying out the terms of this Order.

December __, 2023

BOCK, J.

I, Craig Frith, of the firm of McDougall Gauley LLP, hereby certify that I have received the consents as to form of the following parties:

J.J. Burnell, MLT Aikins LLP, counsel for the Applicants

Sam Gabor, Gowling WLG, counsel for The Toronto-Dominion Bank