

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

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 CHALICE BRANDS LTD.

APPLICANT

**FACTUM
(AMENDED AND RESTATED INITIAL ORDER AND SISP APPROVAL ORDER)**

May 30, 2023

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PART I - NATURE OF THE APPLICATION

1. The Applicant, Chalice Brands Ltd. (“**Chalice**” or the “**Applicant**”), together with its direct and indirect subsidiaries (together, the “**Chalice Group**”) forms a vertically integrated cannabis company operating primarily in the regulated adult-use market of Oregon. The Applicant is the ultimate parent of the Chalice Group.¹

2. On May 23, 2023, the Applicant was granted protection under the *Companies’ Creditors Arrangement Act*² (the “**CCAA**”) pursuant to an Initial Order (the “**Initial Order**”) of the Ontario Superior Court of Justice (Commercial List) (the “**CCAA Court**” or this “**Court**”). The stay of proceedings in the Initial Order was extended in favour of the direct and indirect subsidiaries of the Applicant (the “**Non-Filing Affiliates**”). KSV Restructuring Inc. was appointed as monitor within these CCAA proceedings (the “**Monitor**”).

3. On the same day, certain of the Non-Filing Affiliates (the “**Oregon Receivership Entities**”) were placed into receivership in the State of Oregon by order of the Circuit Court of the State of Oregon (the “**Oregon Court**” and the “**Oregon Receivership**”). Kenneth S. Eiler was appointed as receiver over the Oregon Receivership Entities (the “**Oregon Receiver**”). It is intended that the Applicant, with the assistance of the Monitor, will work in a coordinated fashion with the Oregon Receiver to operate the business of the Chalice Group while it seeks to achieve a going concern transaction.³

¹ Affidavit of Scott Secord dated May 22, 2023 at para 24 [First Second Affidavit]. Terms not defined in herein have the meaning ascribed to them in the First Second Affidavit; or in the Affidavit of Scott Secord dated May 26, 2023 [Second Second Affidavit]; or in the Affidavit of Scott Secord dated May 26, 2023 [Third Second Affidavit].

² [RSC 1985, c C-36](#), as amended (the “**CCAA**”).

³ Second Second Affidavit at para 18.

4. At this comeback hearing, the Applicant now seeks an Amended and Restated Initial Order (the “**ARIO**”). The ARIO would, among other things:

- (a) authorize the engagement between the Applicant and Cardinal Advisory Services Inc. (“**Cardinal Advisory**”), pursuant to which Cardinal Advisory will act as the Chief Restructuring Officer (the “**CRO**”) of the Chalice Group through the services of Scott Secord;
- (b) increase the Administration Charge by \$100,000, up to a maximum amount of \$500,000, to reflect the success fee provided under the engagement letter between the Applicant and Cardinal Advisory (the “**CRO Engagement Letter**”), which is payable upon the occurrence of a sale, transfer, or assumption, on a going concern basis, of all or substantially all of the Chalice Group’s operations and assets;
- (c) grant the Applicant relief from certain securities disclosure and shareholder meeting requirements (the “**Securities Relief**”, as defined more fully below); and
- (d) extend the stay of proceedings to July 28, 2023.

5. In addition, the Applicant also seeks an order (the “**CCAA Court SISP Approval Order**”) at the comeback hearing approving an expedited sales and investment solicitation process (the “**SISP**”), soliciting transactions for the acquisition of or investment in all or substantially all of the property or the business of the Chalice Group. The SISP will take place over approximately 30 days, with an outside transaction closing deadline of July 20, 2023. This accelerated timeline is necessary due to the dire financial situation of the Chalice Group.

6. The SISP will be conducted by the Applicant and builds in extensive consultation with, and approval and consent rights to, both the Monitor and the Oregon Receiver. Concurrent SISP

approval and proposed sale approval hearings will be held in both the CCAA Court and the Oregon Court to respect the integrity of both insolvency proceedings. The CRO would be empowered to act for the Applicant during the SISP.

7. Given the Applicant's significant liquidity constraints, the implementation of an accelerated SISP, with the consent of both the Monitor and the Oregon Receiver, is the best option to preserve the Chalice Group's business and assets while maximizing potential value for stakeholders. The Monitor supports granting both proposed orders.

PART II - FACTS

8. The Applicant is an Ontario corporation and a reporting issuer with its registered head office in Toronto. The Applicant is the 100% owner of Greenpoint Holdings.⁴ Greenpoint Holdings is the 100% owner of each operating company in the Chalice Group, including the Oregon Receivership Entities. Other than Chalice, the remaining entities in the Chalice Group were incorporated in and operate in the United States.⁵

A. CCAA Proceedings

9. On May 23, 2023 the Applicant was granted protection under the CCAA pursuant to the Initial Order. The Applicant was granted a stay of proceedings pursuant to the Initial Order until June 2, 2023.

10. The stay of proceedings was extended to the Non-Filing Affiliates. In her endorsement, the Honourable Madam Justice Kimmel stated: "Chalice and its subsidiaries (the Non-Filing Affiliates) need "breathing space" from their creditors to pursue a going concern sale".⁶ "The

⁴ First Second Affidavit at para 25.

⁵ First Second Affidavit at para 6.

⁶ *Re Chalice Brands Ltd*, 2023 ONSC 3174 [*Chalice*] at para 19.

commencement of a CCAA proceeding to address the significant issues the Chalice Group faces represents the only realistic path forward at this time.”⁷

11. Since the date of the Initial Order, the Applicant, in close consultation and with the assistance of the Monitor, has been working diligently and in good faith to (i) stabilize the business and operations of the Applicant; (ii) advise its stakeholders, including the Investment Industry Regulatory Organization of Canada (IIROC) of the granting of the Initial Order; (iii) respond to employee and creditor inquiries regarding the CCAA proceeding; and (iv) work with the Oregon Receiver and its counsel in connection with the Oregon Receivership.

B. Oregon Receivership

12. Because the Chalice Group is a farm-to-table cannabis business that grows its own cannabis flower, there is uncertainty about whether the Chalice Group can access the tools under the federal U.S. Bankruptcy Code and the matter is untested. As a result, concurrent with these CCAA proceedings, the Applicant commenced proceedings in the State of Oregon to have the Oregon Receivership Entities placed into state receivership.⁸

13. On May 23, 2023, the Oregon Receiver was appointed as state receiver over the Oregon Receivership Entities.⁹ Pursuant to the Oregon Court’s Order Appointing Receiver, a stay has been applied in the State of Oregon protecting the Oregon Receivership Entities and their property.¹⁰

14. Since its appointment, the Oregon Receiver has taken steps to stabilize the business and operations of the Oregon Receivership Entities.¹¹ Among other things, the Oregon Receiver wrote

⁷ *Chalice* at para 42.

⁸ Second Second Affidavit at para 14.

⁹ Second Second Affidavit at para 15.

¹⁰ Second Second Affidavit at para 15.

¹¹ Second Second Affidavit at paras 16.

to the Oregon Liquor and Cannabis Commission to advise it of the commencement of the Oregon Receivership and to request temporary cannabis licenses in order to continue operating the retail stores of the Oregon Receivership Entities.¹² The Oregon Receiver has also had preliminary discussions with certain creditors of the Chalice Group, including counsel to the Homegrown Lenders.

C. Sale and Investment Solicitation Process

15. The Initial Order authorized the Applicant to pursue all avenues of refinancing of its Business or Property (as defined therein), subject to the approval of this Court, to enable the Applicant to proceed with an orderly restructuring of its business.¹³

16. Since the commencement of this CCAA proceeding, the Applicant has been working with the Monitor, the CRO, and the Oregon Receiver to design and implement an accelerated and flexible sale and investment process as part of this CCAA proceeding and in parallel with the Oregon Receivership.¹⁴ The purpose of the SISP is to seek out proposals for the acquisition of or investment in all or part of the Chalice Group's property, assets and undertaking (the "**Property**") and/or its business (the "**Business**") (such transaction, a "**Transaction**").¹⁵ It is intended that the SISP will result in a recapitalization or reorganization of the business and affairs of the Applicant as a going concern, or a sale of all, substantially all, or one or more components of the Property and Business operations as a going concern or otherwise (the "**Opportunity**").¹⁶

¹² Second Second Affidavit at para 16.

¹³ Third Second Affidavit at para 12.

¹⁴ Third Second Affidavit at para 13.

¹⁵ Third Second Affidavit at para 13.

¹⁶ Third Second Affidavit at para 13.

17. The proposed SISP builds in extensive consultation with, and consent and approval rights to, the Oregon Receiver.¹⁷ The proposed SISP contemplates a similar motion for approval of the SISP (or “bid procedures”) before the Oregon Court in the Oregon Receivership proceedings.¹⁸

18. Accordingly, concurrent with this motion, the Oregon Receiver has also served a motion (the “**Bid Procedures Motion**”) seeking an order from the Oregon Court authorizing the implementation of the SISP (the “**Oregon Court SISP Approval Order**”, and together with the CCAA Court SISP Approval Order, the “**SISP Approval Orders**”).¹⁹ The hearing of the Bid Procedures Motion is anticipated to take place on or about June 2, 2023, subject to availability of the Oregon Court.²⁰

19. The SISP will be conducted by the Applicant, the Monitor, and the CRO, in consultation with the Oregon Receiver.²¹ The CRO shall be deemed to be acting for and on behalf of the Chalice Group and is authorized to take any and all actions or steps on behalf of the Applicant pursuant to the SISP.²² The Monitor will oversee the conduct of the SISP by the Applicant.²³

20. The SISP will proceed on the following timeline:²⁴

Date	Event
June 1, 2023	CCAA Court and Oregon Court approval and commencement of the SISP
June 1, 2023 at 5:00 p.m. (prevailing Eastern Time)	Deadline for distribution of the Teaser Letter (as defined below)

¹⁷ Third Second Affidavit at para 10.
¹⁸ Third Second Affidavit at para 10.
¹⁹ Third Second Affidavit at para 11.
²⁰ Third Second Affidavit at para 11.
²¹ Third Second Affidavit at para 14.
²² Third Second Affidavit at para 14.
²³ Third Second Affidavit at para 14.
²⁴ Third Second Affidavit at para 17.

Date	Event
June 26, 2023 at 5:00 p.m. (prevailing Eastern Time) (“Bid Deadline”)	Deadline for submission of Qualified Bids (as defined below)
June 30, 2023 at 11:59 p.m. (prevailing Eastern Time) (“Successful Bid Selection Deadline”)	Deadline for selection of the Successful Bid (as defined below)
July 10, 2023 at 10:00 a.m. (prevailing Eastern Time) or such other time as the CCAA Court may advise. (“CCAA Court Sale Approval Motion Date”)	Hearing of the CCAA Court Sale Approval Motion (as defined below)
July 10, 2023 at 10:00 a.m. (prevailing Pacific Time) or such other time as the Oregon Court may advise (“Oregon Court Sale Approval Motion Date”)	Hearing of the Oregon Court Sale Approval Motion (as defined below)
July 20, 2023, or such later date as may be agreed to by the Successful Bidder (as defined below) and the Applicant, with the consent of the Monitor and the Oregon Receiver (“Outside Date”)	Deadline for completion of the transaction(s) represented by the Successful Bid

21. This accelerated timeline is appropriate and necessary due to the Chalice Group’s dire financial position. As outlined in the First Second Affidavit, the Chalice Group faces an urgent liquidity crisis. The Chalice Group’s cash flow forecast does not support a more traditional two-phased SISF that would require continuing going concern operations for several months.²⁵

²⁵ Third Second Affidavit at para 19.

PART III - ISSUES AND THE LAW

22. The issues to be considered at the Comeback Hearing are whether
- (a) the ARIO should be granted:
 - (i) the engagement of the CRO should be authorized;
 - (ii) the Administration Charge should be increased
 - (iii) the Securities Relief should be granted; and
 - (iv) the stay of proceedings should be extended; and
 - (b) the CCAA Court SISP Approval Order should be granted.

A. The ARIO should be granted

(a) The engagement of the CRO should be authorized

23. This Court has the statutory authority to make an order engaging the CRO under s. 11 of the CCAA.²⁶ The engagement of a chief restructuring officer is appropriate where the proposed chief restructuring officer has expertise that will assist the Applicant and the Monitor in achieving the objectives of the CCAA.²⁷ The “experience and skills” of a restructuring professional can be key to maximizing the value of a CCAA applicant’s business and assets.²⁸ For example, in *Walter* a chief restructuring officer was appointed to “ensure that the SISP will be implemented by professionals who will enhance the likelihood that it generates maximum value for [...] stakeholders.”²⁹

²⁶ CCAA, s 11.

²⁷ *Boreal Capital Partners Ltd et al, Re*, [2021 ONSC 7802](#) at [para 31](#) [*Boreal*]; see also *Walter Energy Canada Holdings, Inc, Re*, [2016 BCSC 107](#) at [para 35](#) [*Walter*].

²⁸ *Re JTI-MacDonald Corp*, [2019 ONSC 1625](#) at [para 26](#); *Boreal* at [para 32](#).

²⁹ *Walter* at [para 31](#).

24. Courts have also emphasized the utility of a chief restructuring officer with “thorough knowledge of the affairs of” the debtor.³⁰ For instance, in *Mobilicity*, this Court approved the appointment of a chief restructuring officer who had been engaged by the debtor five months earlier to assist with restructuring matters.³¹ Similarly, in *Victorian Order of Nurses*, the CCAA court praised the chief restructuring officer’s “extensive background knowledge of the VON group’s structure and business operations” when concluding that engaging the chief restructuring officer was “appropriate and essential.”³²

25. The CRO possesses these key characteristics. Mr. Secord has served on the Applicant’s board for over three years and has developed deep familiarity with the Applicant’s business, operations, and financial affairs.³³ Moreover, Mr. Secord has prior restructuring experience, including experience acting as a chief restructuring officer, and has already been acting as CRO for the Applicant through Cardinal Advisory.³⁴ Mr. Secord’s experience and industry knowledge make him well-positioned to lead the Chalice Group through the restructuring process and into the proposed SISP.³⁵

26. The ARIO provides for the inclusion of the CRO’s fees in the Administration Charge and a corresponding increase in the size of the charge (discussed below). The ARIO also provides certain protections for the CRO similar to those granted to chief restructuring officers in other CCAA proceedings. CCAA courts have emphasized the importance of providing such protections

³⁰ *Re 8449522 Canada Inc*, [2013 ONSC 6167](#) at [para 48](#) [*Mobilicity*]; see also *Boreal* at [para 32](#).

³¹ *Mobilicity* at [paras 17](#) and [32](#).

³² *Victorian Order of Nurses for Canada, Re*, [2015 ONSC 7371](#) at [para 27](#).

³³ First Secord Affidavit at paras 2-3.

³⁴ First Secord Affidavit at para 2.

³⁵ First Secord Affidavit at para 121.

to ensure that qualified professionals consent to take on such roles and provide necessary expertise in restructuring proceedings.³⁶

(b) The Administration Charge should be increased

27. As noted above, the Applicant asks this Court to approve the fees and expenses contemplated under the CRO Engagement Letter and to increase the Administration Charge to a maximum amount of \$500,000. This would reflect the \$100,000 success fee provided under the CRO Engagement Letter, which is only payable upon the occurrence of a sale, transfer, or assumption, on a going concern basis, of all or substantially all of the Chalice Groups operations and assets.³⁷

28. Pursuant to s. 11.52 of the CCAA, this Court has authority to order a charge over the assets of a debtor company in an amount that the Court considers appropriate in respect of the fees and expenses of “any financial, legal or other experts engaged by the company for the purposes of proceedings under this Act.”³⁸ The CRO is one such person. CCAA courts routinely grant priority charges to chief restructuring officers and similar restructuring professionals pursuant to their authority under s. 11.52. A priority charge is often required to secure the involvement of professionals whose expertise can help achieve the best possible outcome for stakeholders.³⁹ The Applicant submits that the quantum of the proposed increase is fair and reasonable given the complexity of the business being restructured and the proposed roles of the Monitor, its counsel, and the CRO.

³⁶ *Collins & Aikman Automotive Canada Inc, Re*, [2007 CanLII 45908](#) (Ont SCJ) at [para 23](#) and [paras 133-138](#); *ICR Commercial Real Estate (Regina) Ltd v Bricore Land Group Ltd*, [2007 SKQB 121](#) at [para 19](#), *aff'd* on this point [2007 SKCA 72](#) at [paras 75-77](#).

³⁷ Second Second Affidavit at para 3(e).

³⁸ CCAA, [s 11.52\(1\)](#).

³⁹ *Walter* at [para 41](#); *20. Re US Steel Canada Inc*, [2014 ONSC 6145](#) at [para 22](#); *Re Timminco Ltd*, [2012 ONSC 948](#) at Appendix A, [para 66](#).

(c) **The Securities Relief should be granted**

29. The Applicant seeks relief in respect of two categories of obligations (together, the “**Securities Relief**”):

(a) *Securities Disclosure* – in light of the Applicant’s liquidity constraints, the Applicant has determined that directing further time and resources to securities reporting is not appropriate. Accordingly, the Applicant seeks authorization from this Court to incur no further expenses in respect of any filings, disclosures or statements required pursuant to any federal, provincial or other law respecting securities or capital markets in Canada or the United States and other rules and policies of the CSE or OTCOX®.⁴⁰

(b) *Annual General Meeting* – the Applicant is required, pursuant to s. 94(1) of the Ontario *Business Corporations Act*,⁴¹ to call an annual general meeting of shareholders (an “**AGM**”). The Applicant believes it would be an unnecessary distraction and expense to hold an AGM while it is subject to creditor protection. The Applicant asks to be relieved of any obligation to call or hold an AGM.⁴²

30. This Court has broad discretion under s. 11 of the CCAA to order such relief and has done so in numerous other CCAA proceedings where the time and costs associated with securities disclosure requirements would detract from restructuring efforts.⁴³ That is the case here. The

⁴⁰ First Second Affidavit at para 127.

⁴¹ [RSO 1990, c B16, s 94\(1\)](#).

⁴² First Second Affidavit at para 128.

⁴³ *MPX International Corporation*, [2022 ONSC 4555](#) at [para 7](#) [*MPX Second Endorsement*]. See also [In the matter of a plan of compromise or arrangement of Magna Gold Corp.](#), Court File No CV-23-00696874-00CL (Ont SCJ [Commercial List]), Order of McEwan J dated 27 March 2023 (Initial Order) at para 40; [In the matter of a plan of compromise or arrangement of Canntrust Holdings Inc.](#), Court File No CV-20-00638930-00CL (Ont SCJ [Commercial List]), Order of Hainey J dated 31 March 2020 (Initial Order) at para 46.

Applicant has limited resources and is undertaking an accelerated SISP with the aim of pursuing a going concern transaction, the only alternative to which is liquidation. Prioritizing securities disclosure requirements at this time would divert necessary time and resources away from the SISP.

31. The proposed language in the ARIO respecting the Securities Relief is consistent with similar provisions recently approved by this Court.⁴⁴

32. The Applicant also seeks to be relieved of any obligations to call and hold an AGM until further order of this Court. The Applicant believes it would be a distraction and an unnecessary expense to hold an AGM in circumstances when it is subject to creditor protection.⁴⁵

33. CCAA courts have exercised their discretion to make similar orders in other insolvency proceedings for similar reasons.⁴⁶ For example, in *Canwest* this Court authorized a debtor to postpone its AGM until further order of the Court because holding the AGM would divert necessary time and resources from the insolvency and would impede a timely resolution to the CCAA proceedings.⁴⁷

34. This Court has also authorized a CCAA debtor to indefinitely postpone its AGM because shareholders have no remaining economic interest in an insolvent entity.⁴⁸ In such circumstances, there is no prejudice to shareholders from postponing the AGM.⁴⁹

⁴⁴ *In the matter of a plan of compromise or arrangement of Magna Gold Corp*, Court File No. CV-23-00696874-00CL (OCJ [Commercial List]), Order of McEwan J. dated 29 May 2023 (Amended and Restated Initial Order) at para 40 [attached at Schedule C].

⁴⁵ First Second Affidavit at para 128.

⁴⁶ *MPX International Corporation*, [2022 ONSC 4348](#) [*MPX First Endorsement*] at [para 72](#).

⁴⁷ *Re Canwest Global Communications Corp*, [2009 CanLII 55114](#) (Ont SCJ) at [paras 53 and 54](#) [*Canwest*].

⁴⁸ *Re Cline Mining Corp*, [2014 ONSC 6998](#) at [paras 54-55](#).

⁴⁹ *MPX First Endorsement* at [paras 72-74](#).

35. CCAA courts have held that stakeholders will not be prejudiced by relief such as the Securities Relief where, as here, detailed financial and operational information of the Applicant will be publicly available on the Monitor's website and available to all stakeholders.⁵⁰

(d) The Stay Period should be extended

36. The Applicant requests that this Court extend the CCAA stay of proceedings, including the stay in respect of the Non-Filing Affiliates, to July 28, 2023.⁵¹ This stay extension is necessary for the Applicant to continue operating the Chalice Group's business, continuing discussions with stakeholders, and undertaking the SISP with the assistance of the Monitor and the Oregon Receiver, with the aim of achieving a going concern sale of all or substantially all of the assets of the Chalice Group.⁵²

37. When determining whether to grant or extend a CCAA stay, courts will consider the factors outlined in s. 11.02(3) of the CCAA.⁵³ Both of those factors are satisfied here. A stay extension is appropriate in the circumstances so the Applicant can implement the proposed SISP for the benefit of all stakeholders. Moreover, the Applicant has acted in good faith and with due diligence since the granting of the Initial Order.⁵⁴ The Applicant has sufficient liquidity to fund the SISP and continue going concern operations through the stay extension period.⁵⁵

⁵⁰ *MPX Second Endorsement* at [para 7](#); First Second Affidavit at para 129.

⁵¹ Second Second Affidavit at para 19.

⁵² Second Second Affidavit at para 19.

⁵³ CCAA, [s 11.02\(3\)](#).

⁵⁴ Second Second Affidavit at para 20.

⁵⁵ Pre-Filing Report of the Proposed Monitor dated May 22, 2023 at paras 3.1-3.6.

B. The CCAA Court SISP Approval Order should be granted

(a) Overview of SISP

38. The proposed SISP contemplates the following steps (all capitalized terms as defined in the CCAA Court SISP Approval Order):

(i) Solicitation of Interest (June 1 and following)

39. As soon as reasonably practicable following the issuance of the SISP Approval Orders, to the extent not already in progress, Applicant, with the consent of the Monitor and the Oregon Receiver, will prepare a list of persons potentially interested in the Opportunity, including (i) parties that have previously communicated an interest in the Opportunity and (ii) strategic and financial parties that the Applicant, the CRO, the Monitor or the Oregon Receiver reasonably determine may be interested.⁵⁶ The Applicant will also advertise the SISP in publications as appropriate.⁵⁷

40. On the first business day following the date of the CCAA Court SISP Approval Order, the Applicant will prepare and distribute a Teaser Letter describing the Opportunity, outlining the SISP terms, including a non-disclosure agreement (the “NDA”), and inviting recipients to express their interest pursuant to the SISP.⁵⁸

(ii) Due Diligence (June 1- June 26)

41. Any Potential Bidder must deliver to the Monitor materials including (i) an executed NDA and (ii) written confirmation of the identity of the Potential Bidder and financial disclosure

⁵⁶ Third Second Affidavit at para 22.

⁵⁷ Third Second Affidavit at para 22.

⁵⁸ Third Second Affidavit at para 23.

sufficient for the Monitor to determine that the Potential Bidder is capable of consummating a Transaction. A Potential Bidder that satisfies the requirements may be deemed a Qualified Bidder.

42. Subject to competitive and business considerations, the Applicant, with the consent of the Monitor and the Oregon Receiver, shall provide Qualified Bidders access to due diligence materials, which may include management presentations and access to an electronic data room.⁵⁹

(iii) Receipt of Qualified Bids (Bid Deadline: June 26)

43. A Qualified Bidder that wishes to make a formal binding proposal to acquire all, substantially all, or a portion of the Property, or make an investment in, restructure, reorganize or refinance the Business or the Chalice Group, must deliver a binding bid to the Monitor no later than the Bid Deadline.⁶⁰

(iv) Bid Selection (Successful Bid Selection Deadline: June 30)

44. Following the Bid Deadline, the Applicant, with the consent of the Monitor and the Oregon Receiver, will assess each bid from a Qualified Bidder, including potentially aggregating separate non-overlapping bids from unaffiliated Qualified Bidders to create one Qualified Bid.⁶¹ Only Qualified Bids are eligible to become the Successful Bid.⁶²

45. A Qualified Bid will be valued based on numerous factors as determined by the Applicant with the consent of the Monitor and the Oregon Receiver.⁶³ Such factors may include: the net value

⁵⁹ Third Second Affidavit at para 26.

⁶⁰ Third Second Affidavit at para 27.

⁶¹ Third Second Affidavit at para 29.

⁶² Third Second Affidavit at para 30.

⁶³ Third Second Affidavit at para 31.

of such bid; the effect of the bid on stakeholders; factors affecting the speed, certainty, and value of the transaction; and the likelihood and timing of consummating the proposed transaction.⁶⁴

46. The Applicant, with the consent of the Monitor and the Oregon Receiver, may identify the highest and best bid (the “**Successful Bid**”), subject to the approval of this Court and the Oregon Court.⁶⁵ The Applicant shall have no obligation to enter into a Successful Bid and reserves the right, with the consent of the Monitor and the Oregon Receiver, to reject all Qualified Bids.⁶⁶

(v) Sale Approval and Closing (July 10-July 20)

47. The hearing of a motion for this Court to approve any transaction with a Successful Bidder (the “**CCAA Court Sale Approval Motion**”) shall take place on the CCAA Court Sale Approval Motion Date.⁶⁷ The Applicant shall seek to coordinate the CCAA Sale Approval Motion with a similar or analogous motion before the Oregon Court in the Oregon Receivership proceedings (the “**Oregon Court Sale Approval Motion**”) on the Oregon Court Sale Approval Motion Date.⁶⁸ As part of the Oregon Court Sale Approval Motion, the Oregon Receiver shall seek, among other things, approval from the Oregon Court to consummate any Successful Bid.⁶⁹

(b) The SISP is Fair and Reasonable

48. The Court may exercise its statutory discretion under s. 11 of the CCAA to approve a sale and investment solicitation process that is fair and reasonable.

⁶⁴ Third Second Affidavit at para 31.

⁶⁵ Third Second Affidavit at paras 32-33.

⁶⁶ Third Second Affidavit at para 34.

⁶⁷ Third Second Affidavit at para 35.

⁶⁸ Third Second Affidavit at para 36.

⁶⁹ Third Second Affidavit at para 37.

49. It is fair and reasonable to conduct a sale process in a “short and critical timeframe” where circumstances demand.⁷⁰ Expedited transactions are “an aspect of the ‘real time litigation’ that [insolvency] proceedings require.”⁷¹ For example, in the *Bankruptcy and Insolvency Act* proceedings of *Feronia Inc (Re)*, the court authorized a sale process with a 30-day time limit.⁷² It was reasonable for the sale process to “run only for so long as the business could continue to operate with the cash available.”⁷³ This Court also authorized a sale and investment solicitation process with a 30-day timeline in the CCAA proceedings of *Nexient*.⁷⁴

50. In this case, the SISP reflects and respects the cross-border nature of this unusual insolvency proceeding, which involves coordination between a state receivership and a CCAA court. The Applicant, the Monitor, the CRO, and the Oregon Receiver have engaged in productive and cooperative consultations throughout the development of the SISP. The SISP is the product of those discussions and ensures that any Transaction will require the approval of both the CCAA Court and the Oregon Court, thereby respecting the roles of both.

51. This Court has previously identified four factors a court should consider in exercising its statutory discretion to approve a SISP (the “**Nortel Factors**”).⁷⁵ CCAA courts will also have regard to the factors outlined in s. 36(3) of the CCAA, which are relevant when determining whether to

⁷⁰ *Arrangement relatif à Xebec Adsorption Inc*, [2022 QCCS 3888](#) at para [12](#).

⁷¹ *Re Port Capital Development (EV) Inc*, [2022 BCSC 1464](#) at [para 56](#).

⁷² *Re Feronia Inc*, [2020 BCSC 1372](#) [*Feronia*].

⁷³ *Feronia* at [para 45](#).

⁷⁴ *In the matter of a plan of compromise or arrangement of Nexient Learning Inc*, Court File No CV-09-8257-00CL (Ont SCJ [Commercial List]), Order of Cumming J dated July 8, 2009 at para 4; [Report of RSM Richter Inc as CCAA Monitor of Nexient Learning Inc](#) dated July 3, 2009 at Appendix B (Sale Process Overview) at para 9.

⁷⁵ *Re Nortel Networks Corp*, [2009 CanLII 39492](#) (Ont SCJ [Comm List]) at [para 49](#). See also *Re Brainhunter Inc*, [2009 CanLII 72333](#) (Ont SCJ) at [para 13](#) [*Brainhunter*].

authorize a sale of the debtor's assets outside the ordinary course of business.⁷⁶ While not determinative, courts often take into account the s. 36(3) factors at the outset of a sale process.⁷⁷

52. The Applicant submits that all four Nortel Factors are satisfied in this case, as are several applicable factors outlined in s. 36(3) of the CCAA:

- (a) A sale or investment transaction is warranted at this time. The Chalice Group is facing a liquidity crisis and does not have sufficient funds to continue operating through a traditional, two-step sales process. The proposed SISP will help identify the best opportunity to restructure, recapitalization, reorganize, or sell the Business;⁷⁸
- (b) There is no better viable alternative to the SISP. Given the Chalice Group's dire financial circumstances, the Applicant must pursue a highly expeditious sale process. An efficient and circumscribed SISP process is the best option to preserve and maximize value for stakeholders;⁷⁹
- (c) The SISP is reasonable and fair in the circumstances. Both the Monitor and the Oregon Receiver are deeply involved throughout all stages of the SISP. The SISP is carefully structured so any Transaction will have the consent and support of both the Monitor and the Oregon Receiver, as well as the CCAA Court and the Oregon Court;

⁷⁶ CCAA, [s 36\(3\)](#).

⁷⁷ *Brainhunter* at [para 17](#).

⁷⁸ Third Second Affidavit at para 40.

⁷⁹ Third Second Affidavit at para 19.

- (d) The SISP will benefit the whole “economic community”. The expedited nature of the SISP is both necessary and appropriate for the Applicant to successfully complete a transaction(s) as soon as practicable, and possibly allow the Business to continue as a going concern;⁸⁰
- (e) The SISP was developed in consultation with the Monitor and the Oregon Receiver;
and
- (f) The Monitor supports the approval of the SISP.

53. For the foregoing reasons, the Applicant submits that the SISP is fair and reasonable and reflects the best viable option to maximize the value of the Applicant’s assets for the benefit of all stakeholders. This Court should exercise its statutory discretion to authorize the SISP.

⁸⁰ Third Second Affidavit at para 40.

PART IV - NATURE OF THE ORDER SOUGHT

54. The Applicant requests that this Court grant the proposed Amended and Restated Initial Order and the CCAA Court SISP Approval Order.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 30th day of May, 2023:



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Lawyers for the Applicant,
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TO: THE ATTACHED SERVICE LIST

**SCHEDULE “A”
LIST OF AUTHORITIES**

1. *Arrangement relatif à Xebec Adsorption Inc*, [2022 QCCS 3888](#)
2. *Boreal Capital Partners Ltd et al, Re*, [2021 ONSC 7802](#)
3. *Collins & Aikman Automotive Canada Inc, Re*, [2007 CanLII 45908](#) (Ont SCJ)
4. *ICR Commercial Real Estate (Regina) Ltd v Bricore Land Group Ltd*, [2007 SKQB 121](#) aff'd [2007 SKCA 72](#)
5. *In the matter of a plan of compromise or arrangement of Canntrust Holdings Inc*, Court File No CV-20-00638930-00CL (Ont SCJ [Commercial List]), Order of Hainey J dated 31 March 2020 (Initial Order)
6. *In the matter of a plan of compromise or arrangement of Magna Gold Corp*, Court File No CV-23-00696874-00CL (Ont SCJ [Commercial List]), Order of McEwan J dated 27 March 2023 (Initial Order)
7. *In the matter of a plan of compromise or arrangement of Magna Gold Corp*, Court File No. CV-23-00696874-00CL (Ont SCJ [Commercial List]), Order of McEwan J. dated 29 May 2023 (Amended and Restated Initial Order)
8. *In the matter of a plan of compromise or arrangement of Nexient Learning Inc*, Court File No CV-09-8257-00CL (Ont SCJ [Commercial List]), Order of Cumming J dated July 8, 2009 (SISP Approval Order)
9. *In the matter of a plan of compromise of arrangement of Plant-Based Investment Corp*, Court File No CV-23-00698826-00CL (Ont SCJ [Commercial List]), Order of Conway J. dated 11 May 2023 (Amended and Restated Initial Order)
10. *MPX International Corporation*, [2022 ONSC 4348](#)
11. *MPX International Corporation*, [2022 ONSC 4555](#)
12. *Re 8449522 Canada Inc*, [2013 ONSC 6167](#)
13. *Re Brainhunter Inc*, [2009 CanLII 72333](#) (Ont SCJ)
14. *Re Canwest Global Communications Corp*, [2009 CanLII 55114](#) (Ont SCJ)
15. *Re Chalice Brands Ltd*, 2023 ONSC 3174
16. *Re Cline Mining Corp*, [2014 ONSC 6998](#)
17. *Re Feronia Inc*, [2020 BCSC 1372](#)
18. *Re JTI-MacDonald Corp*, [2019 ONSC 1625](#)
19. *Re Nortel Networks Corp*, [2009 CanLII 39492](#) (Ont SCJ [Comm List])

20. *Re Port Capital Development (EV) Inc*, [2022 BCSC 1464](#)
21. *Re Timminco Ltd*, [2012 ONSC 948](#)
22. *Re US Steel Canada Inc*, [2014 ONSC 6145](#)
23. [Report of RSM Richter Inc as CCAA Monitor of Nexient Learning Inc](#) dated July 3, 2009 at Appendix B (Sale Process Overview)
24. *Victorian Order of Nurses for Canada, Re*, [2015 ONSC 7371](#)
25. *Walter Energy Canada Holdings, Inc, Re*, [2016 BCSC 107](#)

SCHEDULE “B”
TEXT OF STATUTES, REGULATIONS & BY-LAWS

Business Corporations Act, RSO 1990, c B.16

Shareholders’ meetings

94 (1) Subject to subsection 104 (1), the directors of a corporation,

- (a) shall call an annual meeting of shareholders not later than eighteen months after the corporation comes into existence and subsequently not later than fifteen months after holding the last preceding annual meeting; and
- (b) may at any time call a special meeting of shareholders.

Companies’ Creditors Arrangement Act, RSC 1985, c C-36

General power of court

11 Despite anything in the Bankruptcy and Insolvency Act or the Winding-up and Restructuring Act, if an application is made under this Act in respect of a debtor company, the court, on the application of any person interested in the matter, may, subject to the restrictions set out in this Act, on notice to any other person or without notice as it may see fit, make any order that it considers appropriate in the circumstances.

Burden of proof on application

11.02 (3) The court shall not make the order unless

- (a) the applicant satisfies the court that circumstances exist that make the order appropriate; and
- (b) in the case of an order under subsection (2), the applicant also satisfies the court that the applicant has acted, and is acting, in good faith and with due diligence.

Court may order security or charge to cover certain costs

11.52 (1) On notice to the secured creditors who are likely to be affected by the security or charge, the court may make an order declaring that all or part of the property of a debtor company is subject to a security or charge — in an amount that the court considers appropriate — in respect of the fees and expenses of

- (a) the monitor, including the fees and expenses of any financial, legal or other experts engaged by the monitor in the performance of the monitor’s duties;
- (b) any financial, legal or other experts engaged by the company for the purpose of proceedings under this Act; and

(c) any financial, legal or other experts engaged by any other interested person if the court is satisfied that the security or charge is necessary for their effective participation in proceedings under this Act.

Factors to be considered

36 (3) In deciding whether to grant the authorization, the court is to consider, among other things,

- (a) whether the process leading to the proposed sale or disposition was reasonable in the circumstances;
- (b) whether the monitor approved the process leading to the proposed sale or disposition;
- (c) whether the monitor filed with the court a report stating that in their opinion the sale or disposition would be more beneficial to the creditors than a sale or disposition under a bankruptcy;
- (d) the extent to which the creditors were consulted;
- (e) the effects of the proposed sale or disposition on the creditors and other interested parties; and
- (f) whether the consideration to be received for the assets is reasonable and fair, taking into account their market value.

SCHEDULE "C"
EXCERPT FROM AMENDED AND RESTATED INITIAL ORDER IN THE CCAA
PROCEEDINGS OF MAGNA GROUP CORP.

SECURITIES MATTERS

40. **THIS COURT ORDERS** that the decision by Magna to incur no further expenses for the duration of the Stay Period in relation to any filings (including financial statements), disclosures, core or non-core documents and press releases (collectively, the "**Securities Filings**") that may be required by any federal, provincial or other law respecting securities or capital markets in Canada or the United States, or by the rules and regulations of a stock exchange, including without limitation, the *Securities Act* (Ontario) and comparable statutes enacted by other provinces of Canada, the *Securities Act of 1933* (United States) and the *Securities Exchange Act of 1934* (United States) and comparable statutes enacted by individual states of the United States, the TSXV Exchange Corporate Finance Manual and other rules, regulations and policies of the TSX Venture Exchange, the NEX Board or OTC Pink (collectively, the "**Securities Provisions**"), is hereby authorized, provided that nothing in this paragraph shall prohibit any securities regulator or stock exchange from taking any action or exercising any discretion that it may have of a nature described in section 11.1(2) of the CCAA as a consequence of Magna failing to make any Securities Filings required by the Securities Provisions.

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

Court File No: CV-23-00699872-00CL

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF
CHALICE BRANDS LTD.

Applicant

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST
PROCEEDING COMMENCED AT TORONTO

FACTUM
(AMENDED AND RESTATED INITIAL ORDER AND
SISP APPROVAL ORDER)

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