

**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 LOYALTYONE, CO.**

Applicant

**FACTUM OF BANK OF MONTREAL  
(THE BUYER AND THE DIP LENDER)**

**(In support of the Applicant's motion for Approval and Vesting Order,  
Assignment Order and Ancillary Relief Order, returnable May 12, 2023)**

May 10, 2023

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and the DIP Lender

## **PART I – OVERVIEW**

1. This factum is filed by Bank of Montreal (“**BMO**”), the Buyer under the Asset Purchase Agreement<sup>1</sup> and the DIP Lender under the DIP Financing Facility, in support of the Applicant’s within motion for this Court’s entry of the Approval and Vesting Order, Contract Assignment Order and Ancillary Relief Order.

## **PART II – FACTS**

2. BMO adopts the summary of facts set out in Part II of the Applicant’s Factum, dated May 10, 2023 (the “**Applicant’s Factum**”).

## **PART III – SUBMISSIONS**

3. BMO further adopts and supports the Applicant’s submissions in paragraphs 28 to 50 of the Applicant’s Factum.

4. As the Monitor notes in its Third Report dated May 8, 2023 (the “**Third Report**”), the transaction contemplated under the Asset Purchase Agreement provides the greatest recovery available in the circumstances and will be more beneficial to creditors than a sale or disposition in a bankruptcy.<sup>2</sup> The Asset Purchase Agreement has also been market-tested through the SISP, which the Monitor notes was commercially reasonable and conducted in accordance with this

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<sup>1</sup> Capitalized terms in this factum that are not otherwise defined have the meanings given to them in the affidavit of Shawn Stewart, dated May 3, 2023 (“**Stewart Affidavit**”), Tab 2 to the Applicant’s Motion Record dated May 3, 2023.

<sup>2</sup> Third Report, para 5.3(1)(b).

Court's SISP Approval Order.<sup>3</sup> The Asset Purchase Agreement was declared the "Successful Bid" as a result of, and in accordance with, the SISP.

5. Importantly for BMO, the Asset Purchase Agreement also provides a going-concern solution for the Applicant, including preservation of jobs for the Applicant's approximately 700 employees.<sup>4</sup> BMO strongly believes in the long-term value of the Applicant's AIR MILES rewards program, which belief led to BMO's membership in the program growing over the last three decades to be the largest by revenue and Reward Miles generation. BMO fully expects the AIR MILES program to continue driving this value for participants, suppliers and collectors alike under its leadership and through the stability its ownership would provide.

6. BMO believes that each of the contracts to be assigned by the Contract Assignment Order pursuant to section 11.3 of the CCAA are necessary for the continued operation of the AIR MILES business. The Applicant consulted with BMO in the process of obtaining consents from the counterparties to each assigned contract, and BMO believes those efforts—which commenced one month prior to the hearing for the within motion<sup>5</sup>—were fair and reasonable. Additionally, the Asset Purchase Agreement expressly provides that such contracts must be assigned to the Buyer either on consent or by a section 11.3 order of this Court.<sup>6</sup>

7. Finally, the Applicant's arrangements in respect of the Reserve Account with RBC Investor Services Trust will be assumed in full under the Asset Purchase Agreement. The Reserve Account contains a pool of assets that have been set aside to ensure that the Applicant

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<sup>3</sup> Third Report, para 5.3(1)(a).

<sup>4</sup> Third Report, para 5.3(1)(d).

<sup>5</sup> Third Report, para 5.1(2).

<sup>6</sup> Asset Purchase Agreement, ss 2.5(b)-(c), Exhibit C to the Stewart Affidavit.

can meet its obligations to provide rewards for redeemed Reward Miles to Collectors under the AIR MILES program.<sup>7</sup> As of March 2, 2023, the Reserve Account had a balance of approximately US\$566 million.<sup>8</sup> BMO therefore views the assumption of the Reserve Account as critical to the continuation of the AIR MILES business.

#### **PART IV – CONCLUSION**

8. For the reasons set forth above and in the Applicant’s Factum, BMO supports the relief sought by the Applicant in this motion.

ALL OF WHICH IS RESPECTFULLY SUBMITTED



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Lawyers for Bank of Montreal, the Buyer and the DIP Lender

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<sup>7</sup> Affidavit of Shawn Stewart dated March 10, 2023, para 43, Exhibit A to the Stewart Affidavit.

<sup>8</sup> Affidavit of Shawn Stewart dated March 10, 2023, para 46, Exhibit A to the Stewart Affidavit.

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Proceeding commenced at TORONTO

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