

**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 LOYALTONE, CO.

(the “**Applicant**”)

**FACTUM OF THE APPLICANT  
(Stay Extension)**

May 28, 2025

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## PART I - INTRODUCTION

1. This Factum is filed in support of the motion by the Applicant for an order that:
  - (a) extends the stay of proceedings until and including November 30, 2025 to provide the Applicant with time necessary to (i) consensually resolve the CRA Setoff Claim and the Refund (each as defined below) or otherwise advance resolution of those issues, (ii) participate in an anticipated global mediation to seek to resolve issues in Canada and the United States as between, among others, the Applicant and Bread (as defined below), including the principle issues in the TMA Motions (as defined below), and (iii) complete the realization of the Applicant's remaining assets and pursue other remaining wind-up activities for the benefit of the Applicant's creditors;
  - (b) approves the fees and activities of KSV Restructuring Inc. in its capacity as Monitor (the "**Monitor**") and its legal counsel, since they were last approved on June 13, 2024; and
  - (c) temporarily seals the unredacted version of the Confidential Financial Update (as defined below) which is Confidential Appendix "C" to the Tenth Report of the Monitor dated May 28, 2025 (the "**Tenth Report**"), subject to further order of the Court, as public disclosure of this limited but important redacted financial information at this time would provide a tactical advantage to Canada Revenue Agency ("**CRA**") and Bread Financial Holdings Inc. ("**Bread**") in the context of the current negotiations, mediation and ultimately in litigation (if necessary).<sup>1</sup>

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<sup>1</sup> Tenth Report at para 1.1(1)(e).

## PART II - SUMMARY OF FACTS

### A. BACKGROUND

2. The background regarding this motion is set out in more detail in the Eighth Report of the Monitor dated September 16, 2024 (the “**Eighth Report**”), the Ninth Report of the Monitor dated March 14, 2025 (the “**Ninth Report**”), and the Tenth Report.

3. Capitalized terms used and not otherwise defined in this Factum have the meaning given to them in the Tenth Report.

4. The Applicant historically operated the AIR MILES® Reward Program.

5. The Applicant commenced this proceeding under the *Companies’ Creditors Arrangement Act* (this “**CCAA Proceeding**”) in March of 2023 and at the comeback hearing, sought and obtained approval of a sale and investment solicitation process (the “**SISP**”).<sup>2</sup> Also in March of 2023, the Applicant’s ultimate parent, Loyalty Ventures Inc., and three of its affiliates (collectively, the “**U.S. Debtors**”), commenced cases under chapter 11 of title 11 of the United States Code before the United States Bankruptcy Court for the Southern District of Texas (the “**U.S. Bankruptcy Court**”).

6. The SISP was supported by an asset purchase agreement (the “**BMO APA**”) with Bank of Montreal (“**BMO**”) – the Applicant’s most significant partner in the AIR MILES® Reward Program – as buyer, which was designated as a stalking horse bid.<sup>3</sup>

7. Following completion of the SISP, no competing qualified bids were received at the bid deadline, and the BMO APA, as amended, was selected as the successful bid. The Court granted

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<sup>2</sup> Tenth Report at para 1.0(3)(c).

<sup>3</sup> *LoyaltyOne Co. (Re)*, (March 10, 2023), ONSC (Commercial List), Court File No. CV-23-0069017-00CL ([Initial Order](#)); *LoyaltyOne Co. (Re)*, (March 20, 2023), ONSC (Commercial List), Court File No. CV-23-0069017-00CL ([SISP Approval Order](#)) [SISP Approval Order]. *LoyaltyOne Co. (Re)*, (March 20, 2023), ONSC (Commercial List), Court File No. CV-23-0069017-00CL ([Endorsement](#)) [March 20 Endorsement].

an approval and vesting order in respect of the BMO APA on May 12, 2023.<sup>4</sup> On June 1, 2023, the transaction contemplated by the BMO APA closed and accordingly the Applicant sold substantially all of its operating assets to two affiliates of BMO (the “**Transaction**”).<sup>5</sup>

8. Pursuant to an additional order (the “**Ancillary Relief Order**”) granted on May 12, 2023, upon closing of the Transaction, the Applicant’s directors and officers were deemed to resign (other than certain officers who remained employed by the Applicant for a short time following closing) and the Monitor was authorized and empowered to exercise any powers which may be properly exercised by a board of directors or any officers of the Applicant.<sup>6</sup>

9. On June 2, 2023, the Combined Disclosure Statement and Joint Chapter 11 Plan of Reorganization filed by the U.S. Debtors and approved and confirmed by the U.S. Bankruptcy Court became effective, providing for the establishment of a liquidating trust (the “**Liquidating Trust**”) to monetize the U.S. Debtors’ remaining assets – including claims in the United States against Bread and its directors and officers – on behalf of the U.S. Debtors’ stakeholders.<sup>7</sup>

10. On July 5, 2023, the Court issued an order that, among other things, (i) approved one or more distributions of the proceeds from the Transaction and other cash held by the Applicant (or held by the Monitor on behalf of the Applicant) to the Applicant’s secured lenders, and (ii) extended the stay of proceedings to June 28, 2024.<sup>8</sup>

11. Following the closing of the sale and distributions being made, the Applicant’s remaining assets principally consist of (a) cash on hand held by the Monitor on behalf of the Applicant, (b)

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<sup>4</sup> *LoyaltyOne Co. (Re)*, (May 12, 2023), ONSC (Commercial List), Court File No. CV-23-0069017-00CL ([Approval and Vesting Order](#)).

<sup>5</sup> Seventh Report of the Monitor dated June 10, 2024 at para 2.2(1) [Seventh Report].

<sup>6</sup> *LoyaltyOne Co. (Re)*, (May 12, 2023), ONSC (Commercial List), Court File No. CV-23-0069017-00CL ([Ancillary Relief Order](#)).

<sup>7</sup> Tenth Report at para 1.0(4).

<sup>8</sup> *LoyaltyOne Co. (Re)*, (July 5, 2023), ONSC (Commercial List), Court File No. CV-23-0069017-00CL ([Stay Extension and Distribution Order](#)) [Stay Extension and Distribution Order].

the Refund (subject to the CRA Setoff Claim) and any refund payments that may be received from CRA associated with reassessments for taxation years subsequent to 2013, and (c) and certain additional assets – primarily litigation claims against Bread – which were excluded from the sale.<sup>9</sup>

12. On June 13, 2024, this Court issued an order, among other things, extending the stay of proceedings for 12 months to June 12, 2025 (the “**2024 Stay Extension Order**”).<sup>10</sup>

13. On September 26, 2024, this Court granted a settlement authorization order approving the settlement entered into by the Applicant and His Majesty the King of the Applicant’s tax appeal relating to its 2013 tax assessment (the “**Tax Appeal**”).<sup>11</sup> The settlement resulted in a complete acceptance of the Applicant’s position on the substantive tax issue in dispute on the Tax Appeal and required the prompt issuance of a reassessment of the Applicant’s 2013 tax assessment by the Minister of National Revenue (the “**2013 Reassessment**”).<sup>12</sup>

14. The 2013 Reassessment was issued on March 5, 2025 and received by the Applicant in April 2025.<sup>13</sup> As a result of the 2013 Reassessment, the Applicant’s corporate income tax account reflects a tax refund of approximately \$74 million before interest (the “**Refund**”).<sup>14</sup>

15. As of the date of this Factum, the Refund has not been issued to the Applicant.<sup>15</sup>

16. As previously described in the Monitor’s Seventh Report dated June 10, 2024 and in the Eighth Report, and as further described in the Tenth Report, corporate taxes of approximately \$72 million have been assessed against the Applicant as of June 1, 2023, and the CRA and the Department of Justice (the “**DOJ**”) on its behalf have asserted a right to set-off some or all of

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<sup>9</sup> Tenth Report at para 1.0(10).

<sup>10</sup> *LoyaltyOne Co. (Re)*, (June 13, 2024), ONSC (Commercial List), Court File No. CV-23-0069017-00CL ([Stay Extension Order](#)) [2024 Stay Extension Order].

<sup>11</sup> Tenth Report at para 2.0(1).

<sup>12</sup> Tenth Report at para 2.0(2).

<sup>13</sup> Tenth Report at para 2.0(2).

<sup>14</sup> Tenth Report at para 2.0(2).

<sup>15</sup> Tenth Report at para 2.0(2).

those taxes against the Refund (the “**CRA Setoff Claim**”).<sup>16</sup> The CRA Setoff Claim, if permitted, would reduce the Refund and therefore the proceeds available for distribution in these proceedings.

17. The Applicant and Monitor have engaged in extensive negotiations with representatives of CRA and the DOJ on its behalf in an effort to settle matters pertaining to the CRA Setoff Claim and the Refund amount payable by CRA to the Applicant. If a resolution on these issues cannot be reached, it will be necessary to litigate the CRA Setoff Claim before the Court.<sup>17</sup>

18. Counsel to the Applicant and the Monitor have kept counsel to Bread and counsel to the group of lenders under the credit agreement dated as of November 3, 2021 (as amended, the “**Credit Agreement**”) and Bank of America N.A. (in its capacity as administrative agent to the Credit Agreement lenders) updated regarding the status of the 2013 Reassessment, Refund and ongoing discussions with CRA and the DOJ relating to the CRA Setoff Claim and have responded to inquiries and related diligence requests from those stakeholders relating to these matters.<sup>18</sup> The Monitor has also reported on the status of these matters in its Eighth and Ninth Reports and in the Tenth Report.<sup>19</sup>

19. In addition to ongoing resolution of the Refund and CRA Setoff Claim, the Applicant requires additional time to resolve an ongoing dispute with Bread in respect of the Tax Matters Agreement dated November 5, 2021 (the “**TMA**”), pursuant to which Bread has asserted it has a proprietary interest in any Refund payment received.<sup>20</sup>

20. The Applicant, the Monitor and Bread filed motions in the CCAA Proceeding relating to the TMA (the “**TMA Motions**”).<sup>21</sup> A hearing on the TMA Motions proceeded before the Court on

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<sup>16</sup> Tenth Report at paras 2.0(3) and (4); Seventh Report at para 4.0(4); Eighth Report at para 4.0(2).

<sup>17</sup> Tenth Report at para 2.0(5).

<sup>18</sup> Tenth Report at para 2.0(6).

<sup>19</sup> Eighth Report at para 4.0; Ninth Report at para 5.0; Tenth Report at para 2.0.

<sup>20</sup> Ninth Report at para 4.0(1); Tenth Report at para 3.0(1).

<sup>21</sup> Tenth Report at para 3.0(1).

June 13 and 14, 2024, and on July 10, 2024.<sup>22</sup> This Court made an endorsement in respect of the TMA Motions (the “**TMA Motions Endorsement**”) that:

- (a) determined that the Applicant is a party to the TMA and that a disclaimer of the TMA was not permitted; and
- (b) did not grant Bread’s request for a constructive trust or propriety claim over the Refund and found that it was premature to address Bread’s request for an order directing the Applicant to comply with the TMA.<sup>23</sup>

21. On July 31, 2024, the Applicant and the Monitor filed a motion for leave to appeal to the Ontario Court of Appeal on certain aspects of the order made pursuant to the TMA Motions Endorsement. Leave to appeal was dismissed by the Ontario Court of Appeal on March 7, 2025.<sup>24</sup> Over the past several months, counsel to each of the Applicant, the Monitor, Bread, the trustee of the Liquidating Trust in the chapter 11 cases, the Credit Facility Agent and the secured lenders, the various other named individual defendants, and the insurers for Bread and various other named individual defendants have been discussing a potential global mediation to address and resolve the outstanding issues in dispute between the parties in the United States and Canada, including the substantive relief sought in the TMA Motions (and any related costs thereof) and other litigation pending.<sup>25</sup>

22. The parties are in the process of finalizing the terms of the mediation and, as described in the Tenth Report, it is expected that a mediation will take place in the summer of 2025.<sup>26</sup>

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<sup>22</sup> Tenth Report at para 3.0(2).

<sup>23</sup> Tenth Report at para 3.0(2).

<sup>24</sup> Tenth Report at para 3.0(3).

<sup>25</sup> Tenth Report at para 3.0(6).

<sup>26</sup> Tenth Report at para 3.0(6).



## **B. STAY EXTENSION AND REMAINING ACTIVITIES**

23. The stay of proceedings currently expires on June 12, 2025. The Applicant is requesting a 6-month extension of the stay of proceedings to November 30, 2025 (the “**Stay Extension**”) at which time the Applicant will return to the Court for additional relief as necessary.<sup>27</sup>

24. The extension of the stay period will provide the Applicant, under the direction of the Monitor, further time to:

- (a) resolve the CRA Setoff Claim and the Refund either consensually or with the assistance of this Court;
- (b) resolve any other outstanding tax years with CRA;
- (c) participate in mediation in an effort to try to resolve some or all of the outstanding issues in dispute with Bread;
- (d) determine next steps in the CCAA Proceeding based on the outcome of the ongoing negotiations with CRA and the anticipated mediation with Bread; and
- (e) pursue other remaining wind-up activities for the benefit of the Applicant’s creditors including distributing its remaining assets (subject to the outcome of the other remaining activities in the CCAA Proceeding),

(collectively, the “**Remaining Activities**”).<sup>28</sup>

## **C. MONITOR’S FEES AND ACTIVITIES**

25. The Tenth Report attaches affidavits from representatives of the Monitor and its legal counsel that provide, among other things, each account (in certain limited instances redacted for

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<sup>27</sup> Tenth Report at para 7.0(1).

<sup>28</sup> Tenth Report at para 7.0(1).

matters of confidentiality and privilege) and summary tables identifying the individual professionals who have worked on this matter, their hourly billing rates and the total number of hours worked.<sup>29</sup> The activities of the Monitor and its legal counsel relating to those accounts have also been described in the other recent reports filed in this CCAA Proceeding.<sup>30</sup>

26. The fees (excluding disbursements and HST) of the Monitor from June 1, 2024 to April 30, 2025 total \$886,309.25. The fees (excluding disbursements and HST) of the Monitor's legal counsel from June 1, 2024 to April 29, 2025 total \$499,679.<sup>31</sup>

27. The Monitor and its legal counsel billed amounts at hourly rates consistent with the market and the circumstances of this CCAA Proceeding.<sup>32</sup>

### **PART III - STATEMENT OF ISSUES, LAW & AUTHORITIES**

28. The issues to be determined on this Motion are whether the Court should:

- (a) extend the stay to November 30, 2025;
- (b) approve the Monitor's Reports and the activities of the Monitor and the fees and disbursements of the Monitor and its counsel; and
- (c) seal the unredacted version of the Confidential Financial Update.

### **D. STAY EXTENSION**

29. Section 11.02 of the CCAA provides that this Court may grant an extension of the stay of proceedings for any period it deems necessary, provided that the Applicant has satisfied this

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<sup>29</sup> Tenth Report at para 5.0 and Appendices "A" and "B".

<sup>30</sup> Eighth Report; Ninth Report.

<sup>31</sup> Tenth Report at para 5.0(2).

<sup>32</sup> Tenth Report at para 5.0(5).

Court that: (i) the extension is appropriate; and (ii) it has acted, and is acting, in good faith and with due diligence.<sup>33</sup>

30. There is no “standard” length of time for which the stay of proceedings should or must be extended. Rather, the length of a stay extension depends on this Court’s view of what is most appropriate in the circumstances, and is therefore, highly fact specific.<sup>34</sup>

31. The current stay of proceedings expires on June 12, 2025. The 2024 Stay Extension Order (granted on June 13, 2024) previously extended the stay of proceedings for one year.<sup>35</sup> The requested further 6-month Stay Extension up to and including November 30, 2025 is the length of time the Applicant (and Monitor) expect will be required to advance the Remaining Activities.<sup>36</sup>

32. The Applicant has acted, and continues to act, with due diligence and in good faith in this CCAA Proceeding to achieve the best available outcome for its stakeholders and anticipates that it will have sufficient resources to fund the Remaining Activities for the benefit of its creditors.<sup>37</sup> The Monitor supports the Stay Extension.<sup>38</sup> The Stay Extension sought is, therefore, appropriate in the circumstances.

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<sup>33</sup> *Companies’ Creditor Arrangement Act*, s 11.02.

<sup>34</sup> *U.S. Steel Canada Inc., Re*, [2016 ONSC 3106](#) at para 15; *Crystallex International Corporation (Re)*, (November 18, 2021), ONSC (Commercial List), CV-11-9532-00CL ([Endorsement](#)) at para 9 (Conway, J) [*Crystallex 2021 Stay Extension Endorsement*] (“if this stay extension motion is any indication, these motions are battlefields for all sorts of issues that are time consuming and costly. Three months intervals will only consume additional resources and detract from the company’s main focus, which is to secure recovery for stakeholders through the US enforcement proceeding.”); *Crystallex International Corporation (Re)*, (December 12, 2022), ONSC (Commercial List), CV-11-9532-00CL ([Order](#)) [*Crystallex Stay Extension Order*].

<sup>35</sup> [Stay Extension and Distribution Order](#) at para 3; [2024 Stay Extension Order](#) at para 3.

<sup>36</sup> Tenth Report at para 7.0(1). This Court has granted similar relief in recent decisions: see, for example, [Stay Extension and Distribution Order](#) at para 3; [2024 Stay Extension Order](#) at para 3; [Crystallex Stay Extension Order](#) at para 3; *Crystallex International Corporation (Re)*, (December 12, 2022), ONSC (Commercial List), CV-11-9532-00CL ([Endorsement](#)) [*Crystallex 2022 Stay Extension Endorsement*] at para 3; *Tricon Films and Television, Re*, (April 11, 2017), ONSC (Commercial List), CV16-11634-00CL ([Approval Order – Distribution Agreement](#)) at para 4.

<sup>37</sup> Tenth Report at para 5.0(1).

<sup>38</sup> Tenth Report at para 7.0(1).

**E. SEALING OF THE UNREDACTED VERSION OF THE CONFIDENTIAL FINANCIAL UPDATE**

33. The Applicant requests that the unredacted version of the confidential update on the Applicant's financial position (the "**Confidential Financial Update**"), attached as Confidential Appendix "C" to the Tenth Report, be temporarily sealed, subject to further order of the Court. The Applicant is involved in ongoing litigation and a contemplated mediation with Bread, and there is ongoing negotiations and the possibility of litigation with CRA if those discussions related to the Refund and CRA Setoff Claim cannot be consensually resolved.<sup>39</sup> Public disclosure of the unredacted version of the Confidential Financial Update — at this time — would provide a tactical advantage to these parties in the context of the current negotiations or litigation (if necessary) and would be prejudicial to the Applicant's efforts to maximize stakeholder value.<sup>40</sup>

34. Section 137(2) of the Courts of Justice Act provides this Court with discretion to order that any document filed in a civil proceeding, including in the insolvency context, be treated as confidential, sealed and not part of the public record.<sup>41</sup> In the circumstances, sealing is appropriate pursuant to the test to determine whether a sealing order should be granted, as established by the Supreme Court of Canada in *Sierra Club of Canada v Canada (Minister of Finance)* and recast in *Sherman Estate v Donovan*, requiring that:

- (a) disclosure of the information poses a serious risk to an important public interest;
- (b) the order sought is necessary to prevent this serious (and reasonably alternative measures will not prevent it); and

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<sup>39</sup> Tenth Report at para 6.0(3).

<sup>40</sup> Tenth Report at para 6.0(3).

<sup>41</sup> Courts of Justice Act, RSO 1990, c C.43, s 137(2). See also *Target Canada Co (Re)*, [2015 ONSC 1487 \[Target Canada\]](#) at paras [28–30](#).

- (c) as a matter of proportionality, the benefits of the sealing requested by the Applicant outweigh any negative effects.<sup>42</sup>

35. In both *Sierra Club* and *Sherman Estate*, the Supreme Court of Canada explicitly recognized that commercial interest, including preserving confidential information can constitute an “important public interest” for purposes of the *Sierra Club* and *Sherman Estate* test.<sup>43</sup> This Court also recently noted in *Crystallex International Corp (Re)* that there is a public interest in “not placing a CCAA debtor at a tactical disadvantage in its litigation”.<sup>44</sup>

36. This Court has confirmed CCAA proceedings serve important public interests,<sup>45</sup> including maximizing the value of a debtor’s assets and creditor recoveries.<sup>46</sup> This Court has also consistently sealed confidential information in the context of CCAA proceedings (including during the history of this proceeding)<sup>47</sup> where there was a risk that disclosure of the information at issue would compromise the proceeding and undermine efforts to maximize value for creditors.<sup>48</sup>

37. There are no reasonable alternatives to prevent the serious risk posed by the disclosure of the limited information that has been redacted in the Confidential Financial Update. The Applicant and the Monitor carefully considered the information that needed to be sealed to protect the Applicant’s interests in respect of the matters described in paragraph 33 above, and has attempted to minimize the impact of its requested relief on the open-court principle by confining

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<sup>42</sup> *Sierra Club of Canada v Canada (Minister of Finance)*, [2002 SCC 41](#) at para [53](#); *Sherman Estate v Donovan*, [2021 SCC 25](#) at paras [38](#) and [43](#) [*Sherman Estate*].

<sup>43</sup> *Sherman Estate* at paras [41-43](#).

<sup>44</sup> See [Crystallex 2021 Stay Extension Endorsement](#) at para 16 (Conway J) and [Crystallex 2022 Stay Extension Endorsement](#) at para 8 (Conway J); both citing Morawetz CJ in *Cash Store Financial Services Inc.*, 2021 ONSC 7143 at paras 19 and 25, Schedule “C”.

<sup>45</sup> *Re Nortel Networks*, [\[2009\] OJ No 3169](#) at para [29](#).

<sup>46</sup> *9354-9186 Québec Inc. v Callidus Capital Corp.*, [2020 SCC 10](#) at paras [40-42](#); *Urbancorp Cumberland 1 GP Inc. (Re)*, [2020 ONSC 7920](#) at para [24](#) [*Urbancorp*].

<sup>47</sup> *LoyaltyOne Co. (Re)*, (April 23, 2024), ONSC (Commercial List), Court File No. CV-23-0069017-00CL ([Endorsement](#)).

<sup>48</sup> *Re Danier Leather Inc.*, [2016 ONSC 1044](#) at paras [82-85](#); *Toronto-Dominion Bank v Hockey Academy Inc.*, [2016 ONSC 4898](#) at para [35](#); *Urbancorp* at para [56](#); *Re Lydian International Limited*, [2020 ONSC 3850](#) at para [27](#); *Sherman Estate* at para [82](#).

the sealing to targeted redactions and filing a public, redacted version of the Confidential Financial Update. In addition, the unredacted Confidential Financial Update has been provided on a confidential basis to counsel to each of the Credit Facility Agent and the Credit Agreement Lenders – parties who are not in litigation with the Applicant and who hold security over the Applicant’s remaining cash on hand (subject to the priority charges granted in these proceedings).<sup>49</sup>

38. In the circumstances, the proposed sealing of the unredacted version of the Confidential Financial Update is appropriate as the benefits of sealing – which protects the interests of the Applicant’s stakeholders and endeavors to maximize the debtor’s assets and creditor recoveries – greatly outweigh the negative effects. The Monitor is also supportive of the Applicant’s request to seal the unredacted version of the Confidential Financial Update.<sup>50</sup>

#### **F. MONITOR’S REPORTS, ACTIVITIES AND FEES**

##### ***(i) Monitor’s reports and activities should be approved***

39. This Court has held that there are good policy and practical reasons for approving a CCAA monitor’s report and activities, including that such court approval:

- (a) allows the court officer to move forward with next steps in the proceeding;
- (b) bring the court-officer’s activities before the court;
- (c) allows an opportunity for concerns of the stakeholders to be addressed, and any problems to be rectified;
- (d) enables the Court to satisfy itself that the court officer’s activities have been conducted in prudent and diligent manners;

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<sup>49</sup> Tenth Report at para 6.0(4).

<sup>50</sup> Tenth Report at para 6.0(5).

- (e) provides protection for the court-officer not otherwise provided by the CCAA; and
- (f) protects the creditors from the delay and distribution that would be caused by (i) re-litigation of steps taken to date and (ii) potential indemnity claims by the court-officer.<sup>51</sup>

40. Approval of the Eighth Report, the Ninth Report and the Tenth Report (together the “**Monitor’s Reports**”) and activities is appropriate in the circumstances. The Monitor’s Reports outline the specific activities taken by the Monitor over the past year and for which approval is sought. The approval sought is not a general approval of the Monitor’s activities but approval of the specific activities taken by the Monitor, all of which are detailed in the Monitor’s Reports. No adverse comment has been received on the Monitor’s activities described in the Tenth Report or the other reports for which approval is sought. Accordingly, the Monitor’s Reports and the activities set out in therein should be approved.

**(ii) Fees of the Monitor and its legal counsel should be approved**

41. The jurisdiction of this Court to pass the accounts of the Monitor and its counsel is confirmed in the ARIQ, which provides that “the Monitor and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Monitor and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.”<sup>52</sup>

42. The overarching test for assessing the fees and disbursements of the Monitor and its counsel in a CCAA Proceeding is whether they are “fair and reasonable” in all of the circumstances and are appropriate.<sup>53</sup> The factors to be considered include: (i) the nature, extent, and value of the assets being handled; (ii) the complications and difficulties encountered; (iii) the

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<sup>51</sup> *Target Canada* at para 23; *Laurentian University of Sudbury*, [2022 ONSC 2927](#) (May 18, 2022) ONSC (Commercial List) CV-21-656040-00CL (Endorsement) (Morawetz CJ) at paras 13-14.

<sup>52</sup> *LoyaltyOne Co. (Re)*, (March 20, 2023), ONSC (Commercial List), Court File No. CV-23-00696017-00CL ([ARIQ](#)) at para 34.

<sup>53</sup> *Triple-I Capital Partners Limited v 12411300 Canada Inc*, [2023 ONSC 3400](#) at para 26.

time spent; (iv) the court officer's knowledge, experience, and skill; (v) the diligence and thoroughness displayed; (vi) the responsibilities assumed; and (vii) the results of the court officer's efforts.<sup>54</sup>

43. Consideration of each of these factors supports approval of the Monitor's and its counsel's fees and expenses. Among other things, the Monitor and its counsel have been integral in assisting the Applicant and its advisors through a CCAA process to date that has led to the successful closing of the Transaction for the benefit of a wide array of stakeholders, including the Credit Agreement lenders, employees, suppliers and AIR MILES® collectors. The Monitor also agreed to the expansion of its powers, which has led to a greater scope of work and enabled the continuation of the Applicant's restructuring initiatives, including facilitating WEPPA claims, addressing post-closing Transaction matters, settling the Tax Appeal, advancing efforts to recover the Refund for the benefit of stakeholders and otherwise seeking to address and resolve the other outstanding issues in the case.

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<sup>54</sup> *Bank of Nova Scotia v Diemer*, [2014 ONCA 851](#) at paras [33-36](#), quoting *Belyea v Federal Business Development Bank* (1983), [44 NBR \(2d\) 248 \(CA\)](#) at para 9; *Nortel Networks Corp., Re*, [2017 ONSC 673](#) at para [13-14](#) (noting that the same factors apply to review of a Monitor's accounts); *Nordstrom Canada Retail, Inc.*, [2023 ONSC 4199](#) at para [24](#).



**PART IV - ORDER REQUESTED**

44. For all of the reasons above, the Applicant requests that this Court grant the requested Stay Extension Order in the form proposed.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED** this 28<sup>th</sup> day of May, 2025.

*Cassels Brock & Blackwell LLP*

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**SCHEDULE “A”  
LIST OF AUTHORITIES**

1. 9354-9186 Québec Inc. v Callidus Capital Corp., [2020 SCC 10](#)
2. Bank of Nova Scotia v Diemer, [2014 ONCA 851](#)
3. Belyea v Federal Business Development Bank (1983), [44 NBR \(2d\) 248 \(CA\)](#)
4. Cash Store Financial Services Inc., 2021 ONSC 7143
5. Crystallex International Corporation (Re), (November 18, 2021), ONSC (Commercial List), CV-11-9532-00CL ([Endorsement](#))
6. Crystallex International Corporation (Re), (December 12, 2022), ONSC (Commercial List), Court File No. CV-11-9532-00CL ([Order](#))
7. Crystallex International Corporation (Re), (December 12, 2022), ONSC (Commercial List), CV-11-9532-00CL ([Endorsement](#))
8. Laurentian University of Sudbury, [2022 ONSC 2927](#)
9. LoyaltyOne Co. (Re), (March 10, 2023), ONSC (Commercial List), Court File No. CV-23-0069017-00CL ([Initial Order](#))
10. LoyaltyOne Co. (Re), (March 20, 2023), ONSC (Commercial List), Court File No. CV-23-00696017-00CL ([SISP Approval Order](#))
11. LoyaltyOne Co. (Re), (March 20, 2023), ONSC (Commercial List), Court File No. CV-23-0069017-00CL ([Endorsement](#))
12. LoyaltyOne Co. (Re), (March 20, 2023), ONSC (Commercial List), Court File No. CV-23-0069017-00CL ([ARIO](#))
13. LoyaltyOne Co. (Re), (May 12, 2023), ONSC (Commercial List), Court File No. CV-23-0069017-00CL ([Approval and Vesting Order](#))
14. LoyaltyOne Co. (Re), (May 12, 2023), ONSC (Commercial List), Court File No. CV-23-0069017-00CL ([Ancillary Relief Order](#))
15. LoyaltyOne Co. (Re), (July 5, 2023), ONSC (Commercial List), Court File No. CV-23-0069017-00CL ([Stay Extension and Distribution Order](#))
16. LoyaltyOne Co. (Re), (April 23, 2024), ONSC (Commercial List), Court File No. CV-23-0069017-00CL ([Endorsement](#))
17. LoyaltyOne Co. (Re), (June 13, 2024), ONSC (Commercial List), Court File No. CV-23-0069017-00CL ([Stay Extension Order](#))
18. Nordstrom Canada Retail, Inc., 2023 [ONSC 4199](#)
19. Nortel Networks Corp., Re, [2017 ONSC 673](#)

20. *Re Danier Leather Inc.*, [2016 ONSC 1044](#)
21. *Re Nortel Networks*, [\[2009\] OJ No 3169](#)
22. *Re Lydian International Limited*, [2020 ONSC 3850](#)
23. *Sierra Club of Canada v Canada (Minister of Finance)*, [2002 SCC 41](#)
24. *Sherman Estate v Donovan*, [2021 SCC 25](#)
25. *Target Canada Co (Re)*, [2015 ONSC 7574](#)
26. *Toronto-Dominion Bank v Hockey Academy Inc.*, [2016 ONSC 4898](#)
27. *Tricon Films and Television, Re*, (April 11, 2017), ONSC (Commercial List), CV16-11634-00CL ([Approval Order – Distribution Agreement](#))
28. *Triple-I Capital Partners Limited v 12411300 Canada Inc.*, [2023 ONSC 3400](#)
29. *Urbancorp Cumberland 1 GP Inc. (Re)*, [2020 ONSC 7920](#)
30. *U.S. Steel Canada Inc., Re*, [2016 ONSC 3106](#)

I certify that I am satisfied as to the authenticity of every authority.

*Note: Under the Rules of Civil Procedure, an authority or other document or record that is published on a government website or otherwise by a government printer, in a scholarly journal or by a commercial publisher of research on the subject of the report is presumed to be authentic, absent evidence to the contrary (rule 4.06.1(2.2)).*

Date May 28, 2025

  
Signature

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

**Companies’ Creditors Arrangement Act, R.S.C. 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.

**Stays, etc. — initial application**

11.02 (1) A court may, on an initial application in respect of a debtor company, make an order on any terms that it may impose, effective for the period that the court considers necessary, which period may not be more than 10 days,

- (a) staying, until otherwise ordered by the court, all proceedings taken or that might be taken in respect of the company under the *Bankruptcy and Insolvency Act* or the *Winding-up and Restructuring Act*;
- (b) restraining, until otherwise ordered by the court, further proceedings in any action, suit or proceeding against the company; and
- (c) prohibiting, until otherwise ordered by the court, the commencement of any action, suit or proceeding against the company.

**Stays, etc. — other than initial application**

(2) A court may, on an application in respect of a debtor company other than an initial application, make an order, on any terms that it may impose,

- (a) staying, until otherwise ordered by the court, for any period that the court considers necessary, all proceedings taken or that might be taken in respect of the company under an Act referred to in paragraph (1)(a);
- (b) restraining, until otherwise ordered by the court, further proceedings in any action, suit or proceeding against the company; and
- (c) prohibiting, until otherwise ordered by the court, the commencement of any action, suit or proceeding against the company.

**Burden of proof on application**

(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

**Courts of Justice Act, RSO 1990, c C.43**

**Documents public**

137 (1) On payment of the prescribed fee, a person is entitled to see any document filed in a civil proceeding in a court, unless an Act or an order of the court provides otherwise.

**Sealing documents**

137 (2) A court may order that any document filed in a civil proceeding before it be treated as confidential, sealed and not form part of the public record.

**SCHEDULE "C"**  
***CASH STORE FINANCIAL SERVICES, INC., 2021 ONSC 7143***

CITATION: Cash Store Financial Services Inc., 2021 ONSC 7143  
COURT FILE NO.: Court File No. CV-14-10518-00CL  
DATE: 2021-11-03

**SUPERIOR COURT OF JUSTICE - ONTARIO**

**RE: 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 1511419 ONTARIO INC., FORMERLY  
KNOWN AS THE CASH STORE FINANCIAL SERVICES  
INC., 1545688 ALBERTA INC., FORMERLY KNOWN AS  
THE CASH STORE INC., 986301 ALBERTA INC.,  
FORMERLY KNOWN AS TCS CASH STORE INC., 1152919  
ALBERTA INC., FORMERLY KNOWN AS INSTALOANS  
INC., 7252331 CANADA INC., 5515433 MANITOBA INC.,  
AND 1693926 ALBERTA LTD DOING BUSINESS AS "THE  
TITLE STORE"**

**BEFORE:** Chief Justice G.B. Morawetz

**COUNSEL:** *John L. Finnigan, Jessica DeFilippis, Megan Keenberg, and Mike Woollcombe*, for  
Cash Store

*Brendan O'Neil*, for the Ad Hoc Committee

*Patrick Flaherty*, for Canaccord Genuity Inc.

*Geoff R. Hall*, for FTI Consulting Canada Inc., Monitor

*Allie Allison*, for Canaccord Genuity Corp.

*Dylan Chochla*, for KPMG LLP

*Dan Murdoch*, for Cassels Brock

*Andrew Hatnay*, for the Borrowers

**HEARD and DETERMINED:** October 28, 2021

**REASONS RELEASED:** November 3, 2021



**ENDORSEMENT**

[1] This motion was heard on October 28, 2021 and at the conclusion of submissions, I granted the requested relief, with reasons to follow. These are the reasons.

[2] 1511419 Ontario Inc., formerly known as The Cash Store Financial Services Inc. ("Cash Store") brought this motion for an order approving the litigation funding agreement between Cash Store and Augusta Pool 4 Canada Limited (the "Augusta Funder"), dated September 8, 2021 (the "LFA"). Cash Store also sought an order: (i) authorizing certain consequential amendments to the retainer agreements for counsel and the litigation trustee and a prior funding agreement, all previously approved by the court; (ii) approving the distribution of approximately \$3.8 million, net of fees, held in the estate's restricted bank account to the estate's creditors; and (iii) sealing the unredacted copy of the LFA in the Motion Record filed confidentially with the court.

[3] The motion was not opposed.

[4] Cash Store, through its court appointed Litigation Trustee is pursuing three professional negligence actions (the "Actions") against its former auditor, financial advisor, and legal counsel. The Actions are the only remaining material assets of the Cash Store estate and, without financing, Cash Store contends it does not have the means to finance the Actions or provide security for costs.

[5] The Litigation Trustee was given a mandate to secure litigation funding for the prosecution of the Actions and has entered into the LFA with the Augusta Funder to:

- (i) finance the disbursements required to prosecute the Actions; and
- (ii) satisfy adverse costs or security for costs orders made against Cash Store to a maximum of \$8.5 million.

[6] The LFA leaves control of the litigation with the Litigation Trustee and recognizes the primacy of counsel's professional obligations to Cash Store.

[7] The Augusta Funder is an affiliate of and has secured funding commitments for the Actions from the Augusta Group, the United Kingdom's largest litigation funding firm.

[8] The LFA has the support of the Ad Hoc Committee of Noteholders (the "Noteholders") who have the largest economic stake in Cash Store's estate.

[9] The Litigation Trustee has kept the CCAA Monitor, informed of the negotiations of the LFA. The Monitor is a signatory to the LFA and supports this motion for approval of the LFA.

[10] Cash Store submits that the LFA is fair and appropriate in all the circumstances and satisfies the test for approval as an interim financing arrangement under s. 11.2 of the *Companies' Creditors Arrangement Act* ("CCAA").



[11] Cash Store submits that approval of a third-party litigation funding agreement as interim financing is a case specific inquiry and will be approved when it is determined that it is fair and appropriate, having regard to all of the circumstances and objectives of the CCAA. (See: 9354-9186 *Québec Inc. v. Callidus Capital Corp.*, (“Callidus”) 2020 SCC 10 at para. 97).

[12] Cash Store also submits that whether a litigation funding agreement should be approved as interim financing is a question that a supervisory judge is in the best place to answer and this is achieved by taking into consideration the factors enumerated in s. 11.2(4) of the CCAA. Cash Store and the Monitor address these factors in the affidavit of Mr. Aziz and in the Report of the Monitor.

[13] I accept the submission that the LFA in this case is interim financing as it supports the overarching purpose of interim financing; allowing Cash Store to potentially realize on the value of its litigation claims against the defendants.

[14] I have also noted that the LFA contains a settlement clause which provides that the Litigation Trustee will have the sole and exclusive right to instruct and control the conduct of the litigation.

[15] I am satisfied that it is appropriate to approve the LFA, the consequential amendments to the previously approved amounts and to also approve the \$3.8 million distribution.

[16] The filed version of the LFA has certain redactions. Counsel to Cash Store submits that the reason for this is twofold. First, redactions to competitively sensitive information ensure that the financial and strategic terms and conditions of the agreement will not be disclosed and accessible on the public record for review by other competitors. Secondly, redactions to terms of the underlying financial agreement, such as financial terms, are meant to protect a debtor’s interest and success in litigation as disclosure of same can create unfair tactical advantages for the defendants to the actions in question.

[17] Counsel also submits that while a litigation funding agreement is not a privileged document, courts have recognized that they contain highly sensitive information that should remain confidential. Although the trial court’s decision was overturned on appeal and unredacted versions of the agreement were ordered to be provided to creditors for approval, the appellate court engaged in a balancing of rights between the rights of creditors and litigation privilege. In ordering the unredacted version to be provided to creditors but not the defendant, the court held that “litigation privilege [would] continue to apply to the defendant of the potential litigation”. (See: *Arrangement Relatif à 9354 – 9186 Québec Inc. (Bluberi Gaming Technologies Inc.)* 2019 QCCA 171 at para. 64 - and - *Ernst & Young Inc.*, 2018 QCCS 1040.

[18] The LFA contains redactions to sections of the agreement including the total amount to be provided for disbursements, specified time-based adjustments to recovery scenarios and the Augusta Funder’s returns.

[19] I am satisfied that the redactions that have been made are appropriate to prevent the defendants from capitalizing on any tactical advantage in the litigation or during settlement discussions that would be available to them if the redacted content were to be disclosed.

[20] I am also satisfied that the terms of the LFA contain competitively sensitive information, the disclosure of which could be harmful to the parties. Public disclosure of the information would result in competitive prejudice to the Augusta Funder and its funding affiliates. Further, I am satisfied that the time-based adjustments to various recovery scenarios should also be redacted.

[21] It should be noted that the secured noteholders who approved the LFA and stand to be the beneficiaries of any recoveries have access to the unredacted version of the LFA, as does the Monitor.

[22] In arriving at the conclusion that the unredacted LFA should be sealed, I have taken into account the test in *Sierra Club of Canada v. Canada (Minister of Finance)*, 2002 SCC 41 at para. 53, as recently restated by the Supreme Court in *Sherman Estate v. Donovan*, [2021] SCC 25.

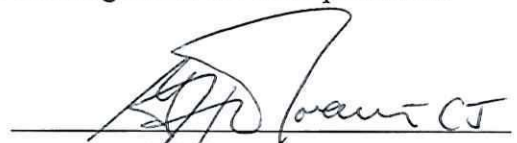
[23] In order to succeed with a request for sealing order, the person asking a court to exercise discretion in a way that limits the open court presumption must establish that:

- (a) court openness poses a serious risk to an important public interest;
- (b) the order sought is necessary to prevent this serious risk to the identified interest because reasonably alternative measures will not prevent this risk; and
- (c) as a matter of proportionality, the benefits of the order outweigh its negative effects.

[24] Only when all three of these prerequisites have been met can a sealing order be granted.

[25] In my view, Cash Store has established that there is an important public interest in not placing it at a tactical disadvantage in the litigation and in protecting the commercially sensitive information of the Augusta Funder. Further, there is no reasonable alternative to the proposed redactions to protect these interests and the benefits of the sealing order outweigh the harm. Full details with respect to the factual background have been summarized at paragraph 61 – 71 of the factum and submitted by counsel on behalf of Cash Store.

[26] In the result, the motion is granted in the order has been signed in the form presented.

  
Chief Justice G.B. Morawetz

**Date:** November 3, 2021

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 LOYALTONE, CO.

Court File No. CV-23-00696017-00CL

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

PROCEEDING COMMENCED AT  
TORONTO

**FACTUM OF THE APPLICANT  
(Stay Extension)**

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