

**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 THE APPLICANT, LOYALTYONE, CO.  
(STAY EXTENSION)**

November 20, 2025

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**PART I - INTRODUCTION**

1. LoyaltyOne, Co. ("LoyaltyOne") seeks an order (the "Stay Extension Order") (i) extending the stay of proceedings until May 30, 2026, (ii) approving the Eleventh Report of the Monitor dated October 14, 2025 (the "Eleventh Report") and the Twelfth Report of the Monitor dated November 20, 2025 (the "Twelfth Report") filed in this proceeding by KSV Restructuring Inc., in its capacity as Monitor of LoyaltyOne (in such capacity, the "Monitor") and approving the activities of the Monitor as described in those reports, (iii) approving the fees and disbursements of the Monitor and its counsel, as described in the Twelfth Report, and (iv) temporarily sealing the unredacted version of the Confidential Financial Update (defined below), until further order of this Court.
2. No party opposes the orders sought on this motion and all of the relief sought is appropriate.
3. First, an extension of the stay to May 30, 2026 is appropriate because it will provide LoyaltyOne and the Monitor with time to:

- a) receive a significant refund payment (no less than CAD\$79 million plus continuing interest accrued) (the “CRA Tax Payment”) from Canada Revenue Agency (“CRA”) and complete the process of quantifying certain Expense Deductions (defined and described in greater detail below) in accordance with this Court’s order dated October 17, 2025 (“CRA Tax Matters Resolution Order”);
- b) resolve certain outstanding matters with Alberta Tax and Revenue Administration (“Alberta TRA”) and Revenu Québec;
- c) advance and potentially resolve, subject to this Court’s consideration of the impact of ongoing litigation before the United States Bankruptcy Court for the Southern District of Texas (the “U.S. Bankruptcy Court”), the outstanding disputes regarding the TMA (defined below), including the claim advanced by Bread (defined and described below) that it has a proprietary interest – to the exclusion of all other creditors – to certain tax refunds received by LoyaltyOne (including the CRA Tax Payment) (the “Refund Entitlement Claim”);
- d) advance and potentially resolve LoyaltyOne’s civil claims against Bread and LoyaltyOne’s former sole director for alleged wrongdoing in connection with the Spin Transaction (defined and described below) (the “Canadian Fiduciary Claim”); and
- e) complete the realization of LoyaltyOne’s remaining assets and pursue other remaining wind-up activities for the benefit of LoyaltyOne’s creditors (collectively with the matters described in paragraph 3a) to 3d), the “Remaining Activities”).

4. Second, this Court’s approval of the activities of the Monitor described in the Eleventh Report and the Twelfth Report (collectively, the “Monitor’s Reports”) is appropriate because: (i) the Monitor’s activities as described in the Monitor’s Reports demonstrate that the Monitor has

acted prudently and diligently, and (ii) no party has raised any concern or objection to the Monitor's activities described in the Monitor's Reports.

5. Third, this Court's approval of the fees and disbursements of the Monitor and its counsel are appropriate because those fees and disbursements reflect the integral participation of the Monitor and its counsel in this CCAA Proceeding (as defined below). The Monitor and its counsel have diligently worked with LoyaltyOne to facilitate outcomes for the benefit of LoyaltyOne's stakeholders, including efforts to recover the CRA Tax Payment.

6. Finally, the temporary sealing of the unredacted version of the confidential update on LoyaltyOne's financial position (the "Confidential Financial Update") is appropriate to ensure that certain counterparties to potential or pending litigation involving LoyaltyOne do not receive a tactical advantage in that litigation that would be prejudicial to LoyaltyOne's efforts to maximize stakeholder value.

## **PART II - THE FACTS**

### **A. Background**

7. LoyaltyOne historically operated the AIR MILES® Reward Program. LoyaltyOne is a Nova Scotia unlimited liability company with its head office in Ontario. It was purchased in 1998 by Alliance Data Systems Corporation, now known as Bread Financial Holdings, Inc. ("Bread").<sup>1</sup>

8. In 2021, through a spin transaction (the "Spin Transaction"), LoyaltyOne became a wholly-owned subsidiary of Loyalty Ventures Inc. ("LVI").<sup>2</sup> Approximately 18 months later, on March 10, 2023, LoyaltyOne sought and was granted protection under the *Companies' Creditors Arrangement Act*<sup>3</sup> ("CCAA") through this CCAA proceeding (the "CCAA Proceeding"). At about

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<sup>1</sup> Pre-Filing Report of the Proposed Monitor dated March 10, 2023 ("Pre-Filing Report") at section [2.1](#) (para. [1](#)).

<sup>2</sup> Pre-Filing Report at section [2.3](#) (para. [1](#)).

<sup>3</sup> *Companies' Creditors Arrangement Act*, [RSC 1985, c C-36](#) [CCAA]; *LoyaltyOne Co. (Re)*, (March 10, 2023), ONSC (Commercial List), Court File No. CV-23-0069017-00CL ([Initial Order](#)).

the same time, LVI and three of its affiliates (the “U.S. Debtors”) commenced chapter 11 cases in the United States before the U.S. Bankruptcy Court.<sup>4</sup>

9. Through a sale and investment solicitation process in this CCAA Proceeding, LoyaltyOne sold substantially all of its operating assets to affiliates of Bank of Montreal (the “Transaction”). This Court granted an approval and vesting order in respect of the sale, and the Transaction closed on June 1, 2023.<sup>5</sup>

10. In connection with the sale, this Court issued an ancillary order on May 12, 2023 pursuant to which, among other things, the Monitor was authorized and empowered to exercise any powers which may be properly exercised by a board of directors or any officers of LoyaltyOne.<sup>6</sup>

11. 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 trustee of the liquidating trust, the “Liquidating Trustee”) 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.

12. 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 LoyaltyOne (or held by the Monitor on behalf of LoyaltyOne) to LoyaltyOne’s secured lenders, and (ii) extended the stay of proceedings to June 28, 2024.<sup>7</sup>

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<sup>4</sup> Pre-Filing Report at section [1.0](#) (paras. [1-2](#)).

<sup>5</sup> *LoyaltyOne, Co. (Re)*, (May 12, 2023), ONSC (Commercial List), Court File No. CV-23-0069017-00CL ([Approval and Vesting Order](#)); Fourth Report of the Monitor dated June 27, 2023 at section [2.2](#) (para. [3](#)).

<sup>6</sup> *LoyaltyOne, Co. (Re)*, (May 12, 2023), ONSC (Commercial List), Court File No. CV-23-0069017-00CL ([Ancillary Relief Order](#)) at para. [5](#).

<sup>7</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].

13. Subsequent stay extension orders have been granted from time to time, most recently to November 30, 2025 (such order, the “2025 Stay Extension Order”).<sup>8</sup>

14. LoyaltyOne’s remaining assets consist of, among other things:

- (a) the undistributed remaining net proceeds from the sale of its assets and cash on hand, all of which is subject to a security interest in favour of its secured lenders;
- (b) the Canadian Fiduciary Claim (which has not yet been determined); and
- (c) the net CRA Tax Payment and other net tax refunds received from CRA and/or other provincial taxing authorities.<sup>9</sup>

15. LoyaltyOne’s creditor pool consists of: (i) its secured lenders who, at the commencement of this CCAA Proceeding, were owed approximately USD\$600 million; and (ii) approximately 100 unsecured creditors with potentially as much as CAD\$100 million in claims, including trade creditors, taxing authorities, and counterparties to disclaimed contracts.<sup>10</sup>

## **B. Remaining Activities Requiring Stay Extension**

16. The stay of proceedings currently expires on November 30, 2025. LoyaltyOne is requesting a six-month extension of the stay of proceedings to May 30, 2026 (the “Stay Extension”) at which time LoyaltyOne will return to the Court for additional relief as necessary.<sup>11</sup>

17. The extension of the stay period will provide LoyaltyOne and the Monitor further time to address the Remaining Activities, including (i) implementing the CRA Tax Matters Resolution

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<sup>8</sup> *LoyaltyOne Co. (Re)*, (June 2, 2025), ONSC (Commercial List), Court File No. CV-23-0069017-00CL ([Stay Extension Order](#)) [2025 Stay Extension Order].

<sup>9</sup> Eleventh Report at section [1.0](#) (para. [10](#)), section [4.0](#) (para. [1](#)); First Report of the Monitor dated March 16, 2023 at section [3.1](#), section [3.2](#) (paras. [1-4](#)).

<sup>10</sup> [Preliminary List of Creditors](#) as at April 11, 2024 and Fifth Report of the Monitor dated November 23, 2023 at section [2.3](#) (para. [4](#)).

<sup>11</sup> Twelfth Report at section 9.0 (para. 1).

(defined below) and carrying out the directions of this Court regarding the quantification of certain Expense Deductions (defined and described below), (ii) resolving other outstanding matters with Alberta TRA and Revenu Québec, (iii) advancing and potentially resolving, subject to a determination being made in the ongoing litigation before the U.S. Bankruptcy Court, Bread's Refund Entitlement Claim, and (iv) advancing and potentially resolving the Canadian Fiduciary Claim, in each case either consensually with interested parties, or with the assistance of this Court.

***(i) CRA Tax Matters Resolution***

18. On October 17, 2025, this Court granted the CRA Tax Matters Resolution Order in connection with a resolution reached with CRA that relates to the 2013 and 2023 tax years (the "CRA Tax Matters Resolution"). The resolution provides finality regarding an outstanding six-year long dispute on the 2013 tax year refund, certainty on a potential setoff claim raised by CRA in connection with LoyaltyOne's 2023 corporate tax liability, and ultimately a significant refund payment to LoyaltyOne (no less than CAD\$79 million plus continuing interest accrued, representing approximately 95% of the refund amount after setoff) for the benefit of its creditors (i.e. the CRA Tax Payment).

19. In 2015, CRA initiated an income tax audit of LoyaltyOne for the tax year ending December 31, 2013. In 2019, CRA issued an assessment which disallowed deductions claimed by LoyaltyOne in the amount of CAD\$348.5 million. Those deductions were associated with deferred revenue for services provided by LoyaltyOne through the AIR MILES® Reward Program. CRA determined that LoyaltyOne was required to pay an additional amount of CAD\$109.8 million in taxes (and related interest and penalties) for the 2013 taxation year.<sup>12</sup> LoyaltyOne paid

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<sup>12</sup> Eighth Report of the Monitor dated September 16, 2024 ("Eighth Report") at section [3.0](#) (paras. [1-2](#)); Eleventh Report at section [2.1](#) (para. [2](#)).



approximately CAD\$96 million and simultaneously commenced an appeal before the Tax Court of Canada (the “Tax Appeal”) seeking a reassessment.<sup>13</sup>

20. Throughout the four years that followed, LoyaltyOne and the Monitor expended significant effort and resources preparing for the Tax Appeal while working simultaneously to negotiate a resolution of the Tax Appeal with CRA. LoyaltyOne and the Monitor maintained that the deductions were properly claimed; CRA took the opposite view and advised that in the event that LoyaltyOne is successful on the Tax Appeal and to the extent that gross tax refunds became payable by the Crown in respect thereof, CRA reserved the right of set-off as may be permitted by law (although no particular position regarding set-off was asserted at the time) (the “CRA Setoff Claim”).<sup>14</sup>

21. In late 2023, CRA assessed corporate income tax for the period beginning January 1, 2023 and ending June 1, 2023, reflecting a balance asserted by CRA to be owed by LoyaltyOne for that period of CAD\$72,769,840.82 (the “CRA Assessed Taxes”).<sup>15</sup>

22. LoyaltyOne and CRA ultimately reached a settlement of the Tax Appeal in the fall of 2024. The settlement was thereafter approved by this Court. Through the settlement, LoyaltyOne achieved complete success on the Tax Appeal: CRA reassessed the taxes purportedly owed for the 2013 tax year on the basis originally claimed by LoyaltyOne.<sup>16</sup>

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<sup>13</sup> Eighth Report at section [3.0](#) (paras. [3](#), [6](#)); Eleventh Report at section [2.1](#) (paras. [3](#), [5](#)). The Tax Appeal was commenced in 2020 following LoyaltyOne’s filing of notices of objection. Also in 2020, CRA completed income tax audits of LoyaltyOne for the 2014, 2015, and 2016 tax year. CRA issued assessments in the amounts of CAD\$11.1 million for 2014 and CAD\$4.0 million for 2015. Those assessments were made on the same basis as the original assessment of the 2013 tax year – CRA denied deductions claimed by LoyaltyOne associated with deferred revenue for services provided through AIR MILES. LoyaltyOne has filed notices of objection for those assessments. See: Eighth Report at section [3.0](#) (para. [4](#)); Eleventh Report at section [2.1](#) (para. [4](#)).

<sup>14</sup> Eighth Report at section [3.0](#) (paras. [7-8](#)); Seventh Report of the Monitor dated June 10, 2024 (“Seventh Report”) at section [4.0](#) (para. [4](#)); Eleventh Report at section [2.1](#) (para. [7](#)), section [2.2](#) (para. [5](#)).

<sup>15</sup> Eleventh Report at section [2.1](#) (para. [6](#)).

<sup>16</sup> Eighth Report at section [3.1](#) (paras. [1-4](#)), [Appendix A](#), [Appendix B](#); *LoyaltyOne, Co. (Re)*, (September 26, 2024), ONSC (Commercial List), Court File No. CV-23-0069017-00CL ([Settlement Authorization Order](#)); *LoyaltyOne, Co. (Re)*, (September 26, 2024), ONSC (Commercial List), Court File No. CV-23-0069017-00CL ([Endorsement](#)) at para. [10](#).

23. Following that reassessment, CRA determined that a significant refund in the amount of CAD\$74,136,564.04 was payable to LoyaltyOne (the “CRA Refund”).<sup>17</sup> CRA did not, however, authorize payment of the CRA Refund and instead engaged with LoyaltyOne and the Monitor on the CRA Setoff Claim and the potential right to set off the CRA Assessed Taxes against the CRA Refund, which, if effected in full, would result in a small amount (if any) payable to LoyaltyOne.<sup>18</sup>

24. Following lengthy negotiations and discussions with CRA (and the Department of Justice on CRA’s behalf) over several months, LoyaltyOne and the Monitor ultimately reached a very favourable resolution providing certainty on the CRA Setoff Claim and a significant refund payment to LoyaltyOne of no less than CAD\$79 million plus continuing accrued interest for the benefit of its creditors, while allowing LoyaltyOne to avoid exposure to additional costs, expense, and risk associated with litigating these issues.<sup>19</sup>

25. The CRA Tax Matters Resolution Order authorized LoyaltyOne’s acceptance of the CRA Tax Matters Resolution (which resolved the CRA Refund and CRA Setoff Claim) and provided for, among other things, the following:<sup>20</sup>

- (a) CRA promptly issuing to LoyaltyOne a cheque for the full amount of the CRA Refund together with additional CRA Refund interest and adjustments calculated through September 4, 2025, net of approximately 5% of the CRA Refund amount (which was set off against the balance owing in respect of the CRA Assessed Taxes), plus accrued interest through the date of payment, which the Monitor would thereafter deposit into a segregated interest bearing account (the “CRA Tax Payment Account”);

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<sup>17</sup> Eleventh Report at section [2.2](#) (para. [4](#)).

<sup>18</sup> Eleventh Report at section [2.2](#) (para. [5](#)).

<sup>19</sup> Eleventh Report at section [2.3](#) (paras. [1-9](#)), section [2.4](#) (para. [1](#)).

<sup>20</sup> *LoyaltyOne Co. (Re)*, (October 17, 2025), ONSC (Commercial List), Court File No. CV-23-0069017-00CL ([CRA Tax Matters Resolution Order](#)); *LoyaltyOne Co. (Re)*, (October 17, 2025), ONSC (Commercial List), Court File No. CV-23-0069017-00CL ([Endorsement](#)) [CRA Tax Matters Resolution Endorsement].

- (b) without prejudice in any way to the parties' respective positions on the Refund Entitlement Claim, following receipt of the CRA Tax Payment the Monitor will (i) calculate the amount of the deductions as contemplated by the TMA in respect of the CRA Tax Payment (such amount, the "Expense Deductions"), (ii) set out its calculation in a report (the "Expense Deductions Report") to be served on the service list in this CCAA Proceeding, and (iii) thereafter transfer an amount equal to the Expense Deductions from the CRA Tax Payment Account to LoyaltyOne's general bank account (to reimburse LoyaltyOne for the permitted expenses it has incurred in connection with obtaining the CRA Tax Payment), unless a written objection to the amount of the Expense Deductions is received from any interested party within 30 days following the Monitor serving the Expense Deductions Report, in which case the objection will either be promptly consensually resolved among the parties or referred to this Court by the Monitor for resolution (such amount remaining in the CRA Tax Payment Account after netting-off the Expense Deductions or such amount as agreed to by the parties or ordered by the Court, the "Net Refund");
- (c) the remaining balance owing in respect of the CRA Assessed Taxes (the "CRA Remaining 2023 Tax Claim") shall be an unsecured claim in this CCAA Proceeding and in any subsequent receivership or bankruptcy of LoyaltyOne, without prejudice to the rights of CRA to seek to set-off (as may be permitted) the CRA Remaining 2023 Tax Claim against future tax refunds owing to LoyaltyOne that specifically relate to post-filing tax years; and
- (d) the CRA Tax Matters Resolution is without prejudice to any other tax matters affecting LoyaltyOne or remaining tax liabilities or positions LoyaltyOne or the Monitor may take with respect to any federal or provincial taxes not addressed by

the CRA Tax Matters Resolution Order (including the rights of CRA to seek to set off the CRA Remaining 2023 Tax Claim (if permitted) against future tax refunds owing to LoyaltyOne that are specifically relating to post-filing tax years), and notably does not impact certain taxation years subsequent to the 2013 Tax Year and prior to the 2023 tax year which LoyaltyOne expects will be favourably reassessed by CRA in a manner consistent with the 2013 CRA Reassessment.

26. No party, including CRA, Bread or the secured lenders opposed LoyaltyOne's motion for the CRA Tax Matters Resolution Order.<sup>21</sup>

27. The Monitor is in the process of calculating the Expense Deductions, has been advised by CRA that payment of the CRA Tax Payment is forthcoming, and is working with CRA to expedite payment.<sup>22</sup> The Stay Extension will provide the Monitor with time to carry out the process required by the CRA Tax Matters Resolution Order, including to seek the Court's determination of the Expense Deductions to be applied if there are unresolved written objections received to the Monitor's proposed Expense Deductions.

***(ii) Alberta and Québec Tax Matters***

28. LoyaltyOne and the Monitor are hopeful that the CRA Tax Matters Resolution will prompt a similar favourable resolution with Alberta TRA and Revenu Québec.

29. Regarding Alberta TRA, earlier this year Alberta TRA issued two reassessments, for the 2013 and 2022 taxation years respectively. Those reassessments reflected an aggregate credit balance of approximately CAD\$4.5 million (the "Alberta TRA Refund"). Alberta TRA did not, however, issue a refund cheque to LoyaltyOne for that amount. Instead, Alberta TRA unilaterally set off approximately CAD\$1.3 million against the refund owing (the "Alberta TRA Setoff"). That

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<sup>21</sup> [CRA Tax Matters Resolution Endorsement](#) at para. 2.

<sup>22</sup> Twelfth Report at section 2.0 (paras. 3-6).

setoff amount reflects the taxes assessed against LoyaltyOne for the tax period January 1, 2023 to June 1, 2023. As a result of Alberta TRA's unilateral decision to set off the assessed taxes against the refund, the refund cheque received by LoyaltyOne was only approximately CAD\$3.2 million.<sup>23</sup>

30. The Monitor deposited the funds into LoyaltyOne's bank account without prejudice to LoyaltyOne's ability to claim for the balance and ongoing interest. LoyaltyOne has advised Alberta TRA that its application of a unilateral setoff violates the Amended and Restated Initial Order granted in this CCAA Proceeding (the "ARIO"). Pursuant to the ARIO, Alberta TRA is required to obtain the consent of LoyaltyOne and the Monitor (which it did not obtain) or further order of this Court before applying any setoff and thereby reducing the pool of assets available for distribution to LoyaltyOne's creditors.<sup>24</sup>

31. The Legal Services Division of Alberta Justice ("Alberta Justice") on behalf of Alberta TRA has recently engaged in discussions with legal counsel to LoyaltyOne, the Monitor and legal counsel to the Monitor with respect to the Alberta TRA Setoff and Alberta TRA Refund.<sup>25</sup>

32. LoyaltyOne is seeking to negotiate a resolution with Alberta TRA with respect to the Alberta TRA Refund and Alberta TRA Setoff on the same basis as the CRA Tax Matters Resolution.

33. Regarding Revenu Québec, LoyaltyOne has not received any correspondence from Revenu Québec regarding the 2013 tax year and any related potential tax refunds LoyaltyOne may be entitled to, which LoyaltyOne and the Monitor continue to explore. To the extent there is a refund owing and Revenu Québec asserts a right to set off any assessed taxes, penalties and

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<sup>23</sup> Eleventh Report at section [3.0](#) (paras. [1-4](#)); Twelfth Report at section 3.0 (para. 1-3).

<sup>24</sup> *LoyaltyOne Co. (Re)*, (March 20, 2023), ONSC (Commercial List), Court File No. CV-23-0069017-00CL ([Amended and Restated Initial Order](#)) at para. 22 [ARIO]; Eleventh Report at section [3.0](#) (paras. [5-6](#)); Twelfth Report at section 3.0 (paras. 3-5).

<sup>25</sup> Eleventh Report at section [3.0](#) (para. [7](#)); Twelfth Report at section 3.0 (para. 6).

interest against LoyaltyOne, LoyaltyOne expects that it and the Monitor will seek to negotiate a favourable resolution with Revenu Québec that is similar to the CRA Tax Matters Resolution.<sup>26</sup>

34. The Stay Extension will allow LoyaltyOne and the Monitor time to engage in discussions with Alberta TRA and Revenu Québec to try and reach a resolution (or otherwise seek the Court's assistance to reach a resolution) that maximizes the assets available for all of LoyaltyOne's creditors.

**(iii) Bread's Entitlement Claim to the net Tax Refunds**

35. Shortly after LoyaltyOne commenced this CCAA Proceeding, Bread claimed that it had a proprietary interest – to the exclusion of all other creditors – to certain tax refunds received by LoyaltyOne (*i.e.* the Refund Entitlement Claim).

36. Bread's Refund Entitlement Claim is based on its interpretation of the Delaware-law governed Tax Matters Agreement dated November 5, 2021 (the "TMA") that it entered into with LVI (LoyaltyOne's parent) in connection with the Spin Transaction. LoyaltyOne and the Monitor disagree with Bread's position – at best, any claim Bread may have under the TMA is a pre-filing unsecured claim and Bread is not entitled to any special priority status to the prejudice of all other creditors as it relates to the Net Refund.

37. The Refund Entitlement Claim was brought before the Honourable Justice Conway on cross motions heard in the summer of 2024. Justice Conway determined that LoyaltyOne is a party to the TMA (as defined below) and did not approve LoyaltyOne's disclaimer, but the Court did not grant Bread's request for a proprietary interest in the Net Refund and found that it was "premature to determine the nature of Bread's rights with respect to the [t]ax [r]efund[s]".<sup>27</sup>

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<sup>26</sup> Eleventh Report at section [3.0](#) (para. [9](#)).

<sup>27</sup> *LoyaltyOne, Co. (Re)*, [2024 ONSC 3866](#) at para. [7](#).

38. As a result, the remaining issues in the Refund Entitlement Claim are: (i) whether it is appropriate to make an order of specific performance against LoyaltyOne requiring performance under the TMA; and if not (ii) whether the TMA provides Bread with a proprietary interest or remedy in the nature of a trust over the Net Refund to the exclusion of all other creditors.<sup>28</sup>

39. LoyaltyOne, the Liquidating Trustee, the Monitor, Bread and representatives of the secured lenders (among others) participated in a mediation in early November to try to resolve all claims among the parties including the Refund Entitlement Claim and the Canadian Fiduciary Claim. No mediated resolution was reached.<sup>29</sup>

40. Following mediation, Bread advised LoyaltyOne that it wished to proceed with litigating the remaining issues in the Refund Entitlement Claim to allow LoyaltyOne to effect a distribution of the Net Refund. However, counsel to the secured lenders advised LoyaltyOne and the Monitor that resuming litigation on these remaining issues would be premature because of certain supervening developments before the U.S. Bankruptcy Court. In particular, in June 2025, the U.S. Bankruptcy Court denied Bread's motion to dismiss the pending litigation between the Liquidating Trustee and Bread (through which the Liquidating Trustee seeks, among other things, to avoid the TMA and the obligations thereunder) (the "Texas Litigation").<sup>30</sup>

41. As a result, the determination of the threshold issue of whether the TMA is even a valid agreement, remains an active and live issue before the U.S. Bankruptcy Court.<sup>31</sup> The Term Loan B secured lenders have advised LoyaltyOne that (i) they believe the ongoing Texas Litigation, in light of the U.S. Bankruptcy Court's denial of Bread's motion to dismiss in the Texas Litigation as it relates to, among other things, the obligation under the TMA to turnover the Net Refund to Bread, could impact or potentially render moot issues on the Refund Entitlement Claim, (ii) as

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<sup>28</sup> Twelfth Report at section 6.0 (para. 2).

<sup>29</sup> Eleventh Report at section [4.0](#) (paras. [1-3](#)); Twelfth Report at section 5.0 (paras. 2-3).

<sup>30</sup> Twelfth Report at section 6.0 (paras. 1-3).

<sup>31</sup> Twelfth Report at section 6.0 (para. 3).

such, no further steps should be advanced with respect to the Refund Entitlement Claim in Canada until the relevant determination has been made in the Texas Litigation, and (iii) they will object should Bread continue to pursue litigation in respect of the TMA before this Court while the threshold issues relating to the TMA in the Texas Litigation remain extant and will require a reasonable opportunity to submit briefs and file evidence before this Court as necessary on that issue.

42. In November 2025, the parties discussed the status of the Refund Entitlement Claim in light of the secured lenders' views described above. Bread has advised it will seek instructions, but as of the date of this factum, neither LoyaltyOne nor the Monitor has received feedback from Bread.<sup>32</sup>

***(iv) Canadian Fiduciary Claim***

43. LoyaltyOne commenced a contingent claim for damages in the amount of USD\$775 million on a joint and several basis (i) against Joseph L. Motes III ("Motes"), a senior executive of Bread and former director of LoyaltyOne, for breach of his fiduciary duty and breach of his duty of care to LoyaltyOne, and (ii) against Bread for, among other things, knowingly causing, participating in and receiving the benefits of Motes's breaches of his duties to LoyaltyOne, in each case in relation to the Spin-off Transaction, including as a result of a certain dividend paid to Bread and LoyaltyOne's guarantee of LVI's obligations under the Credit Agreement (*i.e.* the Canadian Fiduciary Claim).

44. The Canadian Fiduciary Claim has been held in abeyance on consent of the parties pending mediation. The extension of the stay period will allow the parties to continue to attempt to resolve the Canadian Fiduciary Claim or otherwise return to this Court as appropriate for approval of a litigation schedule and subsequent litigation of the claim.

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<sup>32</sup> Twelfth Report at section 6.0 (para. 4).



### **C. Monitor's Fees and Activities**

45. The Twelfth 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 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>33</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>34</sup>

46. The fees (excluding disbursements and HST) of the Monitor from May 1, 2025 to October 31, 2025 total \$424,444. The fees (excluding disbursements and HST) of the Monitor's legal counsel from May 1, 2025 to October 31, 2025 total \$194,910.50.<sup>35</sup>

47. The Monitor and its legal counsel billed amounts at hourly rates consistent with the market and the circumstances of this CCAA Proceeding.<sup>36</sup>

### **D. Confidential Financial Update**

48. Consistent with the last stay extension, a cash flow projection has not been prepared as LoyaltyOne is no longer conducting active business operations.<sup>37</sup> Instead, the Monitor has prepared the Confidential Financial Update to provide an update to the Court on LoyaltyOne's financial position.

49. The Confidential Financial Update demonstrates that LoyaltyOne will have sufficient liquidity during the proposed extended period for the stay.<sup>38</sup>

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<sup>33</sup> Twelfth Report at section 8.0 (paras. 1-5) and Appendices "B" and "C".

<sup>34</sup> Eleventh Report; Twelfth Report.

<sup>35</sup> Twelfth Report at section 8.0 (para. 2).

<sup>36</sup> Twelfth Report at section 8.0 (para. 5).

<sup>37</sup> Twelfth Report at section 7.0 (para. 1).

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

### PART III - STATEMENT OF ISSUES, LAW & ARGUMENT

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

- (a) extend the stay of proceedings to May 30, 2026;
- (b) approve the Monitor's Reports, 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.

#### A. Stay Extension is Appropriate

51. 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 LoyaltyOne has satisfied this Court that: (i) the extension is appropriate; and (ii) it has acted, and is acting, in good faith and with due diligence.<sup>39</sup>

52. 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>40</sup>

53. The current stay of proceedings expires on November 30, 2025. The 2025 Stay Extension Order previously extended the stay of proceedings for six months.<sup>41</sup> Before the extension

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<sup>39</sup> CCAA at s [11.02](#).

<sup>40</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>41</sup> [2025 Stay Extension Order](#) at para. 3.

commencing on June 2, 2025, this Court granted a 12-month extension of the stay of proceedings from June 13, 2024,<sup>42</sup> which succeeded a stay extension for 12 months, granted in July 2023.<sup>43</sup>

54. The requested further six-month Stay Extension up to and including May 30, 2026 is the length of time LoyaltyOne (and the Monitor) expect will be required to materially advance the Remaining Activities.<sup>44</sup>

55. LoyaltyOne 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>45</sup> The Monitor supports the Stay Extension.<sup>46</sup> The Stay Extension sought is, therefore, appropriate in the circumstances.

## **B. Monitor's Reports, Activities and Fees Should be Approved**

### ***(i) Monitor's Reports and Activities Should be Approved***

56. 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) brings the court-officer's activities before the court;

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<sup>42</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>43</sup> [Stay Extension and Distribution Order](#) at para. 3.

<sup>44</sup> Twelfth Report at section 9.0 (para. 1). This Court has granted similar relief in recent decisions: see, for example, [Stay Extension and Distribution Order](#) at para. 3; [2025 Stay Extension Order](#) at para. 3; [2024 Stay Extension Order](#) at para. 3.; *Forme Development Group, (Re)*, (February 25, 2021) (ONSC) (Commercial List), Court File No. CV-18-608313-00CL ([Order](#)) at para. 2; *Ivaco Inc, (Re)* (August 4, 2005) (ONSC) (Commercial List), Court File No. 03-CL-5145 ([Approval Order \(PBGC Minutes of Settlement\)](#)) 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>45</sup> Twelfth Report at section 9.0 (para. 1), section 7.0 (para. 1).

<sup>46</sup> Twelfth Report at section 9.0 (para. 1).

- (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;
- (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>47</sup>

57. Approval of the Monitor's Reports and activities described in those reports is appropriate in the circumstances. The Monitor's Reports outline the specific activities taken by the Monitor over the past six months 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 Monitor's Reports or the other reports for which approval is sought. Accordingly, the Monitor's Reports and the activities set out therein should be approved.

**(ii) Fees of the Monitor and its Legal Counsel Should be Approved**

58. The jurisdiction of this Court to pass the accounts of the Monitor and its counsel is confirmed in the ARIO, 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>48</sup>

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<sup>47</sup> *Target Canada Co. (Re)*, [2015 ONSC 7574](#) 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>48</sup> [ARIO](#) at para. 34.

59. 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>49</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 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>50</sup>

60. 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 LoyaltyOne and its advisors through a CCAA process to date that has led to outcomes to 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 LoyaltyOne’s restructuring initiatives, including facilitating WEPPA claims, addressing post-closing matters, settling the Tax Appeal, advancing efforts to recover the CRA Refund which will ultimately result in the CRA Tax Payment, advancing ongoing efforts to recover the Alberta TRA Refund, and otherwise seeking to address and resolve the other outstanding issues in the case, all for the benefit of LoyaltyOne’s stakeholders.

### **C. Confidential Financial Update Should be Sealed**

61. LoyaltyOne requests that the unredacted version of the Confidential Financial Update, attached as Confidential Appendix “D” to the Twelfth Report, be temporarily sealed, subject to further order of the Court. LoyaltyOne is involved in ongoing litigation with Bread, and there are ongoing negotiations and the possibility of litigation with Alberta TRA if discussions related to the

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<sup>49</sup> *Triple-I Capital Partners Limited v 12411300 Canada Inc.*, [2023 ONSC 3400](#) at para. [26](#).

<sup>50</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 paras. [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](#).

Alberta TRA Refund and Alberta TRA Setoff cannot be consensually resolved.<sup>51</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 current negotiations and/or litigation and would be prejudicial to LoyaltyOne's efforts to maximize stakeholder value.<sup>52</sup>

62. 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>53</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 risk (and reasonably alternative measures will not prevent it); and
- (c) as a matter of proportionality, the benefits of the sealing requested by LoyaltyOne outweigh any negative effects.<sup>54</sup>

63. 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>55</sup> This

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<sup>51</sup> Twelfth Report at section 7.0 (paras. 3-5).

<sup>52</sup> Twelfth Report at section 7.0 (para. 3).

<sup>53</sup> *Courts of Justice Act*, [RSO 1990, c C.43](#) at s [137\(2\)](#). See also *Target Canada Co. (Re)*, [2015 ONSC 1487](#) at paras. [28-30](#).

<sup>54</sup> *Sierra Club of Canada v Canada (Minister of Finance)*, [2002 SCC 41](#) at para. [53](#) [*Sierra Club*]; *Sherman Estate v Donovan*, [2021 SCC 25](#) at paras. [38](#) and [43](#) [*Sherman Estate*].

<sup>55</sup> *Sherman Estate* at paras. [41-43](#).

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>56</sup>

64. This Court has confirmed CCAA proceedings serve important public interests,<sup>57</sup> including maximizing the value of a debtor’s assets and creditor recoveries.<sup>58</sup> This Court has also consistently sealed confidential information in the context of CCAA proceedings (including during the history of this proceeding)<sup>59</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>60</sup>

65. This Court previously granted temporary sealing of the then-current unredacted version of the confidential update on LoyaltyOne’s financial position in the 2025 Stay Extension Order on the basis that disclosure of the information would pose a risk to the public interest in enabling a company in CCAA proceedings to maximize the realization of assets for the benefit of its stakeholders, disclosure of which would provide a tactical advantage to other parties in the context of negotiations (or litigation) which would be prejudicial to LoyaltyOne’s efforts to maximize stakeholder value.<sup>61</sup>

66. 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. LoyaltyOne and the Monitor carefully considered the information that needed to be sealed to protect LoyaltyOne’s interests in respect of the matters described in paragraph 61 above, and has

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<sup>56</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>57</sup> *Re Nortel Networks*, [2009] OJ No 3169 at para. 29.

<sup>58</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>59</sup> 2025 Stay Extension Order at para. 7; see also Tenth Report of the Monitor dated May 28, 2025 at section 6.0 (paras. 1-5); *LoyaltyOne Co. (Re)*, (April 23, 2024), ONSC (Commercial List), Court File No. CV-23-0069017-00CL ([Endorsement](#)).

<sup>60</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.

<sup>61</sup> *LoyaltyOne Co. (Re)*, (June 2, 2025), ONSC (Commercial List), Court File No. CV-23-0069017-00CL ([Endorsement](#)).

attempted to minimize the impact of its requested relief on the open-court principle by confining the sealing to targeted redactions and filing a public, redacted version of the Confidential Financial Update.<sup>62</sup> 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 LoyaltyOne and who hold security over LoyaltyOne’s remaining cash on hand (subject to the priority charges granted in these proceedings).<sup>63</sup>

67. 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 LoyaltyOne’s stakeholders and endeavors to maximize the debtor’s assets and creditor recoveries – greatly outweigh the negative effects. The Monitor is also supportive of LoyaltyOne’s request to seal the unredacted version of the Confidential Financial Update.<sup>64</sup>

#### **PART IV - ORDER REQUESTED**

68. For all of the reasons above, LoyaltyOne requests that this Court grant the requested Stay Extension Order in the form proposed.<sup>65</sup>

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<sup>62</sup> Twelfth Report at section 7.0 (para. 3).

<sup>63</sup> Twelfth Report at section 7.0 (para. 4).

<sup>64</sup> Twelfth Report at section 7.0 (para. 5).

<sup>65</sup> Draft Stay Extension Order, Motion Record, Tab 2.



ALL OF WHICH IS RESPECTFULLY SUBMITTED this 20<sup>th</sup> day of November, 2025.



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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. Forme Development Group, (Re), (February 25, 2021) (ONSC) (Commercial List), Court File No. CV-18-608313-00CL ([Order](#))
9. Ivaco Inc, (Re) (August 4, 2005) (ONSC) (Commercial List), Court File No. 03-CL-5145 ([Approval Order \(PBGC Minutes of Settlement\)](#))
10. Laurentian University of Sudbury, [2022 ONSC 2927](#)
11. LoyaltyOne Co. (Re), (March 10, 2023), ONSC (Commercial List), Court File No. CV-23-0069017-00CL ([Initial Order](#))
12. LoyaltyOne Co. (Re), (March 20, 2023), ONSC (Commercial List), Court File No. CV-23-0069017-00CL ([Amended and Restated Initial Order](#))
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. LoyaltyOne, Co. (Re), [2024 ONSC 3866](#)

19. *LoyaltyOne, Co. (Re)*, (September 26, 2024), ONSC (Commercial List), Court File No. CV-23-0069017-00CL ([Settlement Authorization Order](#))
20. *LoyaltyOne, Co., (Re)*, (September 26, 2024), ONSC (Commercial List), Court File No. CV-23-0069017-00CL ([Endorsement](#))
21. *LoyaltyOne Co.(Re)*, (June 2, 2025), ONSC (Commercial List), Court File No. CV-23-0069017-00CL ([Stay Extension Order](#))
22. *LoyaltyOne Co. (Re)*, (June 2, 2025), ONSC (Commercial List), Court File No. CV-23-0069017-00CL ([Endorsement](#))
23. *LoyaltyOne Co. (Re)*, (October 17, 2025), ONSC (Commercial List), Court File No. CV-23-0069017-00CL ([CRA Tax Matters Resolution Order](#))
24. *LoyaltyOne Co. (Re)*, (October 17, 2025), ONSC (Commercial List), Court File No. CV-23-0069017-00CL ([Endorsement](#))
25. *Nordstrom Canada Retail, Inc.*, [2023 ONSC 4199](#)
26. *Nortel Networks Corp., Re*, [2017 ONSC 673](#)
27. *Re Danier Leather Inc.*, [2016 ONSC 1044](#)
28. *Re Nortel Networks*, [\[2009\] OJ No 3169](#)
29. *Re Lydian International Limited*, [2020 ONSC 3850](#)
30. *Sierra Club of Canada v Canada (Minister of Finance)*, [2002 SCC 41](#)
31. *Sherman Estate v Donovan*, [2021 SCC 25](#)
32. *Target Canada Co. (Re)*, [2015 ONSC 7574](#)
33. *Target Canada Co (Re)*, [2015 ONSC 1487](#)
34. *Toronto-Dominion Bank v Hockey Academy Inc.*, [2016 ONSC 4898](#)
35. *Tricon Films and Television, Re*, (April 11, 2017), ONSC (Commercial List), CV16-11634-00CL ([Approval Order – Distribution Agreement](#))
36. *Triple-I Capital Partners Limited v 12411300 Canada Inc.*, [2023 ONSC 3400](#)
37. *Urbancorp Cumberland 1 GP Inc. (Re)*, [2020 ONSC 7920](#)
38. *U.S. Steel Canada Inc., Re*, [2016 ONSC 3106](#)

I certify that I am satisfied as to the authenticity of every authority cited in this factum.

Date November 20, 2025

A handwritten signature in blue ink, appearing to read 'Bornstein', is written above a horizontal line.

Jeremy Bornstein

**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.

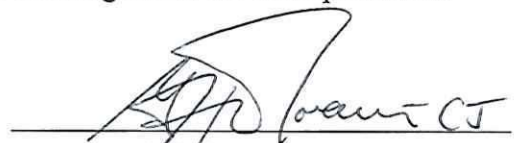
[23] In order to succeed with a request for sealing order, the person asking a court to exercise discretion in a way that limits the open court presumption must establish that:

- (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 LOYALTYONE, CO.

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

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

PROCEEDING COMMENCED AT  
TORONTO

**FACTUM OF THE APPLICANT, LOYALTYONE, CO.  
(Stay Extension)**

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