

**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.

(the "**Applicant**")

**MOTION RECORD
(STAY EXTENSION)**

May 26, 2025

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(the “**Applicant**”)

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(as of March 21, 2025)

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INDEX

Tab	Description
1	Notice of Motion, dated May 26, 2025
2	Draft Stay Extension Order

TAB 1

**ONTARIO
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IN THE MATTER OF THE *COMPANIES' CREDITORS
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**NOTICE OF MOTION
(STAY EXTENSION)**
(returnable June 2, 2025)

The Applicant will make a Motion before the Honourable Justice Conway of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") on Monday, June 2, 2025 at 10:00 a.m., or as soon after that time as the Motion can be heard.

PROPOSED METHOD OF HEARING: The motion is to be heard

- ☐ In writing under subrule 37.12.1(1) because it is
[insert on consent, unopposed or made without notice];
- ☐ In writing as an opposed motion under subrule 37.12.1(4);
- ☐ In person;
- ☐ By telephone conference;
- ☒ By video conference.

Video conference zoom at a link to be provided by the Court in advance of the motion.

THE MOTION IS FOR

- (a) An order (the "**Stay Extension Order**") substantially in the form attached at Tab 2 of the Applicant's Motion Record,

- (i) extending the Stay Period (as defined in the Initial Order, as defined below) until and including November 30, 2025;
 - (ii) approving 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 of the Monitor, to be filed (the “**Tenth Report**”), and the activities and the conduct of the Monitor set out in such reports;
 - (iii) approving the fees and expenses of the Monitor and its legal counsel as set out in the Tenth Report, and the affidavits attached thereto; and
 - (iv) temporarily sealing the Confidential Financial Update (as defined below), which is Confidential Appendix “C” to the Tenth Report; and
- (b) such further and other relief as to this Court may deem just.

THE GROUNDS FOR THE MOTION ARE

Background

- (a) The Applicant, a Nova Scotia unlimited liability company, historically operated the marketing program known as the AIR MILES® Reward Program;
- (b) the Applicant is an indirect subsidiary of Loyalty Ventures Inc. (“**LVI**”), a Delaware corporation;
- (c) LVI is a holding company that was formed as part of a ‘spin-off’ from Bread Financial Holdings, Inc. (“**Bread**” and previously known as Alliance Data Systems

Corporation) in November 2021 (the “**Spin-off Transaction**”), which involved LVI and Bread entering into a series of transactions to, among other things:

- (i) spin-off LVI from Bread’s business; and
 - (ii) transfer direct ownership of certain subsidiaries, including the Applicant, to LVI;
- (d) on March 10, 2023 (the “**Filing Date**”), the Applicant was granted protection under the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended, pursuant to an initial order of this Court (as amended and restated, the “**Initial Order**”) in this proceeding (the “**CCAA Proceeding**”);
- (e) pursuant to the Initial Order, KSV Restructuring Inc. was appointed as monitor of the Applicant (in its capacity as monitor of the Applicant, the “**Monitor**”);
- (f) also on March 10, 2023, the Applicant’s ultimate parent, LVI, 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**”);
- (g) on June 1, 2023, the Applicant closed a transaction with Bank of Montreal (“**BMO**”) to sell substantially all of its business and operations to affiliates of BMO pursuant to an asset purchase agreement approved by this Court on May 12, 2023 (the “**Sale Transaction**”);
- (h) pursuant to an Ancillary Relief Order granted by this Court on May 12, 2023 (the “**Ancillary Relief Order**”), upon closing of the Sale Transaction, the Applicant’s directors and officers were deemed to have resigned (other than certain officers of

the Applicant 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;

- (i) 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;
- (j) on July 5, 2023, this Court granted an Order (the “**Stay Extension and Distribution Order**”) authorizing the Applicant to make distributions of Cash (as defined below) to the administrative agent for the Applicant’s secured lenders (the “**Credit Facility Agent**”) up to the full amount of the Applicant’s “Obligations” (as that term is defined in the credit agreement entered into between LVI, Brand Loyalty Group B.V., Brand Loyalty Holding B.V. and Brand Loyalty International B.V., as borrowers, the Applicant and certain other subsidiaries of LVI, as guarantors, the lenders party thereto, and the Credit Facility Agent dated as of November 3, 2021, as amended, the “**Credit Agreement**”);
- (k) pursuant to the Stay Extension and Distribution Order, distributions were made by the Applicant to the Credit Facility Agent in July of 2023 and January of 2024 for partial repayment of the Applicant’s Obligations under the Credit Agreement;

- (l) the Monitor, on behalf of the Applicant, is holding the remaining portion of the net proceeds from the Sale Transaction and cash on hand (collectively with the remaining net sale proceeds, the “**Cash**”) subject to the terms of the Stay Extension and Distribution Order;
- (m) 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**”);
- (n) 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**”);
- (o) as a result of the settlement and in connection with the 2013 Reassessment, it is the Applicant’s position that a payment is due to the Applicant from Canada Revenue Agency (“**CRA**”) in connection with the 2013 tax year, and for subsequent tax years that remain in dispute;
- (p) the 2013 Reassessment was issued on March 5, 2025 and received by the Applicant in April 2025;
- (q) 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**”), being the net of the credit balance arising from the 2013 Reassessment of approximately \$115 million and the previously existing debit balance of approximately \$40 million;

- (r) as of the date of this notice of motion, the Refund has not been issued to the Applicant;
- (s) 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 of those taxes against the Refund (the "**CRA Setoff Claim**");
- (t) the CRA Setoff Claim, if permitted, would reduce the Refund and therefore would have an effect on proceeds available for distribution in these proceedings;
- (u) 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;
- (v) if a resolution on these issues cannot be reached, it will be necessary to litigate the CRA Setoff Claim before the Court;
- (w) counsel to the Applicant and the Monitor have kept counsel to Bread and counsel to the secured lenders and Credit Facility Agent updated regarding the status of the 2013 Reassessment, the 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;

- (x) the Monitor has also reported to the Court and stakeholders on the status of these matters in its Eighth and Ninth Reports and will provide further detail on these matters in the Tenth Report;
- (y) the Applicant's remaining assets consist of the following:
 - (i) the undistributed portion of the Cash, all of which is subject to a security interest in favour of the Credit Facility Agent;
 - (ii) the Refund (subject to the CRA Setoff Claim) and any refund payments from CRA associated with a reassessment of the Applicant's tax assessments for certain taxation years subsequent to 2013; and
 - (iii) a contingent claim for damages in the amount of US\$775 million on a joint and several basis (y) as against Joseph L. Motes III ("**Motes**"), a senior executive of Bread and former director of the Applicant, for breach of his fiduciary duty and breach of his duty of care to the Applicant and (z) as against Bread for, among other things, knowingly causing, participating in and receiving the benefits of Motes's breaches of his duties to the Applicant, in each case in relation to the Spin-off Transaction, including as a result of a certain dividend paid to Bread and the Applicant's guarantee of LVI's obligations under the Credit Agreement;
- (z) Bread has asserted that pursuant to the Tax Matters Agreement dated November 5, 2021 (which agreement was entered into in connection with the Spin-off

Transaction, the “**TMA**”), Bread has a proprietary interest in any Refund payment received;

(aa) the Applicant, the Monitor and Bread filed motions in the CCAA Proceeding relating to the TMA (the “**TMA Motions**”). A hearing on the TMA Motions proceeded before the Court on June 13 and 14, 2024, and on July 10, 2024 this Court made an endorsement in respect of the TMA Motions (the “**TMA Motions Endorsement**”) that:

(i) determined that the Applicant is a party to the TMA and that a disclaimer of the TMA was not permitted; and

(ii) 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;

(bb) 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;

(cc) over the course of the last 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;

- (dd) the parties are in the process of finalizing the terms of mediation and, as described in the Tenth Report, it is expected that a mediation will take place in the summer of 2025;

Proposed Stay Extension

- (ee) the Applicant requires additional time to: (i) resolve the CRA Setoff Claim and the Refund either consensually or with the assistance of this Court; (ii) resolve the other outstanding tax years with CRA; (iii) participate in mediation in an effort to try to resolve some or all of the outstanding issues in dispute with Bread; (iv) complete the realization of its remaining assets, including resolution of the TMA Motions and its contingent claims (if not resolved through mediation), if necessary; and (v) pursue other remaining wind-up activities for the benefit of the Applicant's creditors;
- (ff) as a result, the Applicant is seeking a 6-month extension of the Stay Period to November 30, 2025 at which time the Applicant will return to the Court for additional relief, as necessary;

Sealing

- (gg) the Tenth Report includes a confidential update on the Applicant's current financial position (the "**Confidential Financial Update**");
- (hh) 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;

- (ii) for the reasons described in the Tenth Report, the Applicant (supported by the Monitor) seeks to temporarily seal the Confidential Financial Update as public disclosure of this limited financial information at this time would provide a tactical advantage to these parties in the context of the current negotiations, mediation and/or litigation (if necessary) and would be prejudicial to the Applicant's efforts to maximize stakeholder value;

Approval of the Monitor's Reports and Fees

- (jj) the proposed Stay Extension Order seeks approval of the Eighth Report, the Ninth Report, and the Tenth Report, and the activities and conduct of the Monitor described in such reports;
- (kk) the Monitor and its counsel also seek approval of their fees and disbursements as will be set out in the Tenth Report, and the affidavits attached thereto;
- (ll) the Monitor and its counsel have maintained appropriately detailed records of their professional costs and time incurred, as set out in the Tenth Report and the affidavits attached thereto. The fees and disbursements charged by the Monitor and its counsel are consistent with market professional rates for significant commercial restructuring matters;
- (mm) the fees and disbursements incurred by the Monitor and its counsel, to be described in the Tenth Report and the affidavits attached thereto, are reasonable in the circumstances and have been validly incurred in accordance with the provisions of the Orders granted in this CCAA Proceeding;

Other Grounds

(nn) in addition to the other grounds discussed in this Notice of Motion, the Applicant relies on:

- (i) the provisions of the CCAA, including sections 11, 11.02 and the inherent and equitable jurisdiction of this Honourable Court;
- (ii) rules 1.04, 1.05, 2.03, 3.02, 16, 37 and 59.06 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, as amended, and section 106 and 137 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended; and
- (iii) such further and other grounds as the lawyers may advise.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the Motion:

- (a) The Eighth Report, the Ninth Report, and the Tenth Report and the exhibits attached thereto; and
- (b) such further and other evidence as the lawyers may advise and this Court may permit.

May 26, 2025

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Lawyers for the Applicant

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

**NOTICE OF MOTION
(STAY EXTENSION)**

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Lawyers for the Applicant

TAB 2

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

THE HONOURABLE

)

MONDAY, THE 2ND

)

JUSTICE CONWAY

)

DAY OF JUNE, 2025

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.

(the "**Applicant**")

STAY EXTENSION ORDER

THIS MOTION made by the Applicant, pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**"), for an order, *inter alia*: (i) approving an extension to the Stay Period until and including November 30, 2025; (ii) approving certain reports filed in this CCAA proceeding by KSV Restructuring Inc., in its capacity as Monitor of the Applicant (in such capacity, the "**Monitor**"), and the activities and conduct of the Monitor described therein; (iii) approving the fees and disbursements of the Monitor and its counsel, as described in the Tenth Report of the Monitor, dated May [●], 2025 (the "**Tenth Report**"), and the affidavits attached thereto sworn in support thereof; (iv) temporarily sealing the Confidential Financial Update, being Confidential Appendix "C" to the Tenth Report, until further order of the Court; and (v) granting certain related relief, was heard this day by Zoom videoconference.

ON READING the Notice of Motion of the Applicant, 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, filed, and on hearing the submissions of counsel for the Applicant, counsel for the Monitor, counsel for the Consenting Stakeholders, counsel for Bread and such other counsel as were present, no one else appearing although duly served as appears from the affidavit of service of [●] sworn [●], filed.

SERVICE AND DEFINITIONS

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Motion Record is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof.

2. **THIS COURT ORDERS AND DECLARES** that all terms not otherwise defined herein shall have the meaning ascribed to them in the Amended and Restated Initial Order dated March 20, 2023 or the Tenth Report, as applicable.

EXTENSION OF THE STAY PERIOD

3. **THIS COURT ORDERS** that the Stay Period be and is hereby extended until and including November 30, 2025.

APPROVAL OF MONITOR'S ACTIVITIES

4. **THIS COURT ORDERS** that the Eighth Report, the Ninth Report, and the Tenth Report, are each hereby approved, and the activities and conduct of the Monitor prior to or on the date hereof in relation to the Applicant and this CCAA proceeding (including as described in each of the foregoing reports) are hereby ratified and approved; provided, however, that only the Monitor, in its personal capacity and only with respect to its own personal liability, shall be entitled to rely upon or utilize in any way such approval.

APPROVAL OF FEES AND DISBURSEMENTS OF THE MONITOR AND ITS COUNSEL

5. **THIS COURT ORDERS** that the fees and disbursements of the Monitor for the period from June 1, 2024 to [●], 2025 all as set out in the affidavit of Noah Goldstein sworn [●], 2025 are hereby approved.

6. **THIS COURT ORDERS** that the fees and disbursements of Goodmans LLP, in its capacity as counsel to the Monitor, for the period from June 1, 2024 to April 29, 2025 all as set out in the affidavit of Christopher Armstrong sworn [●], 2025 are hereby approved.

SEALING ORDER

7. **THIS COURT ORDERS** that Confidential Appendix “C” to the Tenth Report is hereby sealed and shall not form part of the public record, subject to further Order of the Court.

8. **THIS COURT ORDERS** that, any party may apply to the Court on proper notice to all parties in interest to seek to vary paragraph 7 of this Order and nothing in this Order shall be deemed to prejudice their rights to bring a motion to seek such variation or to vary the finding that the contents of Confidential Appendix “C” to the Tenth Report are confidential, provided that for certainty, a moving party shall have the onus on such motion(s) to justify any variation(s) sought.

GENERAL

9. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States, to give effect to this Order and to assist the Applicant, the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Applicant and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Applicant and the Monitor and their respective agents in carrying out the terms of this Order.

10. **THIS COURT ORDERS** that the Applicant and the Monitor be at liberty and are each hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order.

11. **THIS COURT ORDERS** that this Order and all of its provisions are effective as of 12:01 a.m. Toronto time on the date of this Order.

Conway, J.

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

STAY EXTENSION ORDER

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**MOTION RECORD
(STAY EXTENSION)**

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