



# **First Report of KSV Restructuring Inc. as CCAA Monitor of LoyaltyOne, Co.**

**March 16, 2023**

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## ONTARIO

Court File No.: CV-23-00696017-00CL  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,  
R.S.C. 1985, c. C-36, AS AMENDEDAND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT  
OF LOYALTYONE, CO.

## FIRST REPORT OF KSV RESTRUCTURING INC.

MARCH 16, 2023

**1.0 Introduction<sup>1</sup>**

1. Pursuant to an order (the "Initial Order") issued by the Ontario Superior Court of Justice (Commercial List) (the "Court") on March 10, 2023 (the "Filing Date"), LoyaltyOne, Co. (the "Applicant") was granted protection under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "CCAA"), and KSV Restructuring Inc. was appointed monitor of the Applicant (in such capacity, the "Monitor"). The Initial Order also extended the CCAA stay and certain other relief to LoyaltyOne Travel Services Co./Cie Des Voyages LoyaltyOne, a non-applicant subsidiary of the Applicant ("Travel Services" and together with the Applicant, the "LoyaltyOne Entities").
2. The comeback hearing is scheduled to be heard on March 20, 2023 (the "Comeback Hearing").
3. On March 10, 2023, the Applicant's US parent, Loyalty Ventures Inc. ("LVI") and three affiliated entities commenced proceedings by filing voluntary petitions for relief under Chapter 11 of Title 11 of the United States Bankruptcy Code in the United States Bankruptcy Court for the Southern District of Texas (the "US Court") (the "US Proceedings"). The LoyaltyOne Entities are not debtors in the US Proceedings.
4. The principal purposes of this CCAA proceeding are to create a stabilized environment to enable the Applicant to:
  - a) continue to operate in the ordinary course with the breathing space afforded by filing for protection under the CCAA, including to continue to operate the AIR MILES® Reward Program and to honour redemptions by Collectors of AIR MILES® reward miles in the normal course;

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<sup>1</sup> All terms not defined in the Introduction section are defined in the sections that follow.

- b) secure required debtor-in-possession (“DIP”) financing from Bank of Montreal (“BMO” and, in such capacity, the “DIP Lender”) to fund the Applicant’s ongoing business and the restructuring proceeding, as well as the Intercompany DIP Loan (as defined and discussed below) pursuant to a US\$70 million DIP loan facility (the “DIP Facility”); and
- c) identify and complete a going-concern sale transaction pursuant to a Court-supervised sale and investment solicitation process (“SISP”). In this regard, the Applicant has entered into an Asset Purchase Agreement with BMO, the Applicant’s largest customer, that, subject to Court approval, will be used as a stalking horse in the SISP (the “Stalking Horse APA”). The purchase price under the Stalking Horse APA is US\$160 million, subject to certain potential adjustments as described herein.

5. The Applicant is seeking the following Orders at the Comeback Hearing:

- a) an Amended and Restated Initial Order (the “ARIO”), among other things:
  - authorizing the Applicant to enter into a transaction support agreement dated March 10, 2023 (the “Support Agreement”) among the Consenting Stakeholders (as defined below) and LVI and certain of its direct and indirect subsidiaries, including the Applicant, and approving the Support Agreement, *nunc pro tunc*, and directing the Applicant to comply with its obligations thereunder;
  - extending the stay of proceedings from March 20, 2023 to May 18, 2023;
  - approving the US\$70 million DIP Facility to allow the Applicant to: (i) operate its business and operations in the normal course during this proceeding and fund its restructuring efforts; and (ii) fund a secured intercompany loan to LVI (the “Intercompany DIP Loan”) in the maximum aggregate amount of US\$30 million, and granting a charge in favour of the DIP Lender in the maximum amount of US\$70 million (plus accrued and unpaid interest, fees and expenses) to secure the obligations under the DIP Facility (the “DIP Lender’s Charge”);
  - approving the Employee Retention Plans (as defined below) and granting a charge on the Applicant’s current and future assets, property and undertaking (collectively, the “Property”) for the benefit of the participants of the Employee Retention Plans (the “Employee Retention Plans Charge”) in the maximum aggregate amount of \$5.35 million;
  - approving an agreement dated July 11, 2022, among the Applicant, LVI, Akin Gump Strauss Hauer & Feld LLP, counsel to LVI and the Applicant, and PJT Partners LP (“PJT”) (the “Financial Advisor Agreement”) and granting a charge on the Property in favour of PJT in the maximum amount of US\$6 million to secure PJT’s Success Fee (as defined below) in connection with the completion of a successful restructuring or sale transaction, as contemplated therein (the “Financial Advisor Charge”);
  - increasing the maximum charge on the Property in favour of the Administration Professionals (as defined below) from \$2 million to \$3 million (the “Administration Charge”); and

- increasing the maximum amount of the charge on the Property in favour of the LoyaltyOne Entities' directors and officers to secure the Applicant's indemnity obligations in the ARIO (the "D&O Charge") from \$10.521 million to \$15.409 million; and
- b) a SISP Approval Order, among other things:
- approving the SISP, to be conducted by the Applicant, with the assistance of PJT and under the oversight of the Monitor; and
  - authorizing and empowering the Applicant to enter into the Stalking Horse APA, *nunc pro tunc*, approving a break fee and expense reimbursement in favour of BMO (together, the "Bid Protections") and granting a charge on the Property in favour of BMO in the amount of US\$4 million as security for payment of the Bid Protections (the "Bid Protections Charge").

## 1.1 Purposes of this Report

1. The purposes of this report (the "First Report") are to:
  - a) summarize the relief sought by the Applicant at the Comeback Hearing;
  - b) provide the Court with an update on the Monitor's activities since the granting of the Initial Order; and
  - c) provide the Monitor's recommendations regarding the relief sought by the Applicant at the Comeback Hearing.
2. In considering the relief sought by the Applicant at the Comeback Hearing, the Monitor is cognizant of the significant shortfall projected to be incurred by the principal economic stakeholders in this proceeding, being the Credit Agreement Lenders, who are owed approximately US\$656 million of principal funded debt, plus additional amounts in respect of outstanding letters of credit, which is guaranteed by the Applicant on a senior secured basis. Pursuant to and subject to the terms of the Support Agreement, the requisite majority of Credit Agreement Lenders have consented to all of the substantive relief sought at the Comeback Hearing, including approval of the SISP, the Stalking Horse APA (including the Bid Protections), the DIP Facility, the Intercompany DIP Loan, the Employee Retention Plans and the various related Charges ranking in priority to the security granted by the Applicant in favour of the Credit Agreement Lenders.

## 1.2 Restrictions

1. In preparing this First Report, the Monitor has relied upon the Applicant's audited and unaudited financial information, books and records and discussions with the Applicant's legal counsel, Cassels, Brock & Blackwell LLP ("Cassels") and Alvarez & Marsal Inc. ("A&M"), the Applicant's restructuring advisor.

2. The Monitor has not audited or otherwise attempted to verify the accuracy or completeness of the financial information relied on to prepare this First Report in a manner that complies with Canadian Auditing Standards (“CAS”) pursuant to the Chartered Professional Accountants of Canada Handbook and, accordingly, the Monitor expresses no opinion or other form of assurance contemplated under the CAS in respect of such information. Any party wishing to place reliance on the financial information should perform its own diligence.
3. An examination of the Applicant’s cash flow forecast from March 10, 2023 to June 9, 2023 (the “Cash Flow Forecast”) as outlined in the Chartered Professional Accountants of Canada Handbook has not been performed. Future oriented financial information relied upon in this First Report is based upon the Applicant’s assumptions regarding future events; actual results achieved may vary from this information and these variations may be material. The Monitor expresses no opinion or other form of assurance on whether the Cash Flow Forecast will be achieved.

### **1.3 Currency and Definitions**

1. Unless otherwise noted, all currency references in this First Report are in Canadian dollars.
2. Capitalized terms used herein and not otherwise defined have the meaning given to them in the Monitor’s Pre-Filing Report dated March 10, 2023 (the “Pre-Filing Report”). A copy of the Pre-Filing Report (without appendices) is attached as Appendix “A”.

## **2.0 Background**

### **2.1 Overview**

1. The LoyaltyOne Entities operate the marketing program known as the AIR MILES® Reward Program (the “AIR MILES® Reward Program” or “AIR MILES®”).
2. The Affidavit of Shawn Stewart, President of the Applicant, sworn March 10, 2023 in support of the CCAA application (the “First Stewart Affidavit”), and the Pre-Filing Report both provide background information with respect to the Applicant’s business and operations, including the reasons for the commencement of this CCAA proceeding. Accordingly, that information is not repeated in this First Report.
3. Court materials filed in this proceeding, including the First Stewart Affidavit and the Pre-Filing Report, are available on the Monitor’s website at the following link: <https://www.ksvadvisory.com/experience/case/loyaltyone>.

### 3.0 DIP Facility<sup>2</sup>

1. The Applicant is seeking approval of the DIP Facility to fund its business and operations during this CCAA proceeding as well as the Intercompany DIP Loan. The key terms of the DIP Facility are summarized below. A copy of the term sheet for the DIP Facility was provided as Exhibit “P” to the First Stewart Affidavit.
  - a) **Borrower**: The Applicant (in such capacity, the “Borrower”).
  - b) **DIP Lender**: BMO.
  - c) **Maximum Facility Amount**: US\$70 million.
  - d) **Interest Rate**: Currently 14.25%, being the Base Rate (currently 8.25%) plus 6%. All interest owing under the DIP Facility will be capitalized. The Base Rate is the greater of (a) the base rate of interest (however designated) of the DIP Lender for determining interest chargeable by it on United States Dollar commercial loans in Canada and (b) the sum of (i) the Federal Funds Effective Rate and (ii) 1.00% per annum. Upon the occurrence and during the continuance of an Event of Default, the Interest Rate shall be increased by an additional 2%.
  - e) **Fees**:
    - i. Upfront Fee: 2% of the Maximum Amount, being US\$1.4 million.
    - ii. Standby Fee: 1.25% per annum on the daily unadvanced portion of the DIP Facility.
    - iii. All fees will be capitalized and added to the principal amount.
  - f) **Repayment**: The DIP Facility shall be repaid in full on the earlier to occur of:
    - i. the occurrence of any Event of Default that is continuing and not cured or waived by the DIP Lender, and where the DIP Lender has notified the Borrower in writing that the DIP obligations have been accelerated;
    - ii. the closing of one or more sale transactions for all or substantially all of the assets of the Borrower approved by an order of the Court, including in connection with the SISP;
    - iii. the Stalking Horse APA is the successful bid in the SISP but is unable to be completed and closed due to the failure of any condition precedent to be satisfied by the closing date specified therein, which condition precedent has not been waived by the Applicant and/or the DIP Lender, as applicable; and

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<sup>2</sup> Capitalized terms used in this section and not otherwise defined have the meanings ascribed to them in the DIP Facility. The following constitutes a summary of the key terms of the DIP Facility only. Reference should be made directly to the DIP Facility for all of its terms and conditions.



- iv. June 30, 2023 (the earlier to occur of such dates in clauses i.-iv. Inclusive being the Maturity Date).
- g) **Intercompany DIP Loan:** In accordance with the Cash Flow Forecast, and as further discussed below, the Borrower is permitted to make an Intercompany DIP Loan to LVI to a maximum of US\$30 million, subject to the satisfaction of specified conditions, including the Intercompany DIP Loan being approved by order of the US Court in the US Proceedings and given a first priority priming lien over all present and after-acquired property, assets and undertakings of LVI (subject to certain limited exceptions) and super-priority administrative expense status.
- h) **Security:** All obligations of the Applicant under the DIP Facility shall be secured by the DIP Lender's Charge.
- i) **DIP Budget:** Advances under the DIP Facility shall be used by the Applicant in accordance with the Cash Flow Forecast subject to the Permitted Variance, being a negative variance of not more than 15% of the aggregate disbursements in the Cash Flow Forecast on a cumulative basis, subject to certain specified exclusions, including for certain professional costs associated with the administration of the CCAA proceeding and any amounts required to be paid by the Applicant into the Reserve Account.
- j) **Conditions Precedent to Advances:** Conditions precedent to the initial DIP Facility advance include: (a) the granting of the ARIO by March 20, 2023; (b) commensurate with the ARIO, approval of the SISP and the granting of the SISP Order; and (c) there being no material adverse change in the financial condition or operation of the Applicant or otherwise affecting the Applicant after the date of the issue of the ARIO, excluding certain specified matters. Conditions precedent to subsequent DIP Facility advances include: (x) there being no material adverse change in the financial condition or operation of the Applicant or otherwise affecting the Applicant after the date of the issue of the ARIO, excluding certain specified matters; and (y) the Borrower shall at all times have diligently and in good faith implemented and conducted the SISP in accordance with the SISP Approval Order.

### 3.1 Cash Flow Forecast

1. A copy of the Cash Flow Forecast prepared by the Applicant, with the assistance of A&M, and reviewed and discussed with the Monitor, is attached as Appendix "B". This is the same Cash Flow Forecast that was appended to the Pre-Filing Report, and covers the 13-week period from March 10, 2023 to June 9, 2023. The Cash Flow Forecast contemplates that the Applicant is able to fund its business with its cash on deposit until the Comeback Hearing, following which it would require funding under the DIP Facility to continue to operate in the normal course.

2. A summary of the Cash Flow Forecast<sup>3</sup> is provided below.

(unaudited; US\$000s)		Mar 10 -	Mar 21 -	
	Note	Mar 20, 2023	Jun 9, 2023	Total
Receipts	A	2,430	88,969	91,399
Disbursements				
Reserve Account Funding	B	-	(62,066)	(62,066)
Operating Disbursements	C	(3,841)	(39,388)	(43,229)
Intercompany Transfers (to LVI)	D	-	(25,100)	(25,100)
Professional Fees	E	-	(23,525)	(23,525)
Non-Operating Disbursements	F	(250)	(9,850)	(10,100)
Withholding Tax	G	-	(3,690)	(3,690)
Subtotal		(4,091)	(163,619)	(167,710)
Net Cash Flow		(1,662)	(74,650)	(76,311)
Opening Cash Balance		15,390	13,728	15,390
Net Cash Flow		(1,662)	(74,650)	(76,311)
DIP Proceeds		--	62,000	62,000
Ending Cash Balance		13,728	1,079	1,079

3. The Monitor notes the following regarding the Cash Flow Forecast:

- A. *Receipts*: primarily driven by the issuance of reward miles from Partners to Collectors. Typically, Partners pay a fee to the Applicant on a per mile basis on reward miles issued.
- B. *Reserve Account Funding*: reflects funds transferred on a monthly basis to the Reserve Account to cover reward redemptions by Collectors.
- C. *Operating disbursements*: includes payroll, client services spend, data and technology expenses, collector experience and marketing services, commodity tax and other taxes payable, general corporate expenditures and capital expenditures.
- D. *Intercompany Transfers (to LVI)*: includes a US\$24.6 million Intercompany DIP Loan described in Section 3.2 below and a US\$500,000 payment in the normal course for the Intercompany Services provided to the Applicant by LVI (a portion of which will now be remitted directly to BFH (as defined below)).
- E. *Professional Fees*: includes Applicant, Monitor and Consenting Stakeholder professional fees, including both Canadian and certain US professionals.
- F. *Non-Operating Disbursements*: includes employee retention programs and independent director fees.

<sup>3</sup> The notes to the Cash Flow Forecast provide the underlying assumptions, including a description of each line item.

- G. *Withholding Tax*: the Monitor understands that the Applicant must pay a 15% withholding tax on all amounts advanced to LVI.
- H. *DIP Proceeds*: the peak funding requirement over the projection period is US\$70 million. During the week ended June 9, 2023, there is projected to be a repayment of US\$8 million, which results in an ending principal balance owing under the DIP Facility of US\$62 million.

### 3.2 Intercompany DIP Loan

1. LVI provides certain key corporate and back-office support functions, infrastructure and services for the AIR MILES® business, including information technology, legal, tax, human resources, accounting and treasury services (collectively, the “Intercompany Services”) pursuant to an intercompany services agreement (the “Intercompany Services Agreement”). The Applicant therefore relies on LVI’s services to operate the AIR MILES® business in the normal course.
2. According to the First Stewart Affidavit, if LVI ceased or ceases to pay its liabilities in the ordinary course, there is a risk that the Intercompany Services required by the Applicant will be disrupted and/or stopped.
3. The Monitor has been advised by A&M that LVI has limited liquidity and does not generate any revenue. In the absence of LVI obtaining additional funding, there is a risk that the Intercompany Services required by the Applicant will be disrupted and/or discontinued. According to the First Stewart Affidavit, any disruption to the provision of the Intercompany Services would impair the Applicant’s ability to operate the AIR MILES® business and/or to complete a going-concern sale under the SISF.
4. Accordingly, the Applicant has negotiated the ability to on-lend a portion of the DIP Facility to LVI by way of the Intercompany DIP Loan, to a maximum of US\$30 million, so that LVI can: (a) continue to provide the Intercompany Services for the benefit of the AIR MILES® business; and (b) fund its US Proceedings. The US Proceedings benefit the Applicant because a Chapter 11 stay will prevent stakeholders in the US from interfering with LVI’s ability to provide the Intercompany Services to the Applicant. Further, the US Proceedings provide another potential recovery for the Credit Agreement Lenders through the establishment of a liquidating trust expected to pursue claims against LVI’s former parent, Bread Financial Holdings, Inc. (“BFH”), and other parties.
5. A breakdown of the projected uses of the Intercompany DIP Loan by LVI is as follows:

Intercompany DIP Loan – Projected Uses	US\$000s
Professional fees	10,300
Liquidating Trust and Winddown costs	5,800
Unsecured claim cure costs	5,600
Operational expenses	1,400
Retention plans	800
Contingency	700
Total	<u>24,600</u>

6. The Intercompany DIP Loan will be governed by a Senior Secured Superpriority Debtor in Possession Credit Facility Term Sheet to be entered into among the Applicant, as lender, and LVI, as borrower, and the other debtors in the US Proceedings, as guarantors (collectively, the “Intercompany DIP Guarantors”) (the “Intercompany DIP Term Sheet”). An unexecuted copy of the expected final form of Intercompany DIP Term Sheet is attached as Appendix “C”. Certain key terms of the Intercompany DIP Term Sheet are summarized below. The following constitutes a summary of certain key terms of the Intercompany DIP Term Sheet only. Reference should be made directly to the Intercompany DIP Term Sheet for a complete understanding of its terms and conditions.
- a) **Borrower:** LVI.
  - b) **Lender:** The Applicant.
  - c) **Maximum Loan Amount:** US\$30 million, of which up to US\$15 million may be funded upon satisfaction of certain conditions precedent to interim funding (including, without limitation, the entry of an interim order in the US Proceedings granting interim approval to the Intercompany DIP Loan and the Court approving the DIP Facility which authorizes the Applicant to advance the interim Intercompany DIP Loan) and up to the remaining amount upon satisfaction of certain conditions precedent to full funding (including, without limitation, the entry of a final order in the US Proceedings granting final approval of the Intercompany DIP Loan and the Court approving the DIP Facility which authorizes the Applicant to advance the final Intercompany DIP Loan). In each case, availability under the Intercompany DIP Loan is limited to the amount set out in the Cash Flow Forecast applicable for the relevant period.
  - d) **Interest Rate:** Currently 14.25%, being the Base Rate (which is defined in the Intercompany DIP Term Sheet in the same manner as in the DIP Facility) plus 6%. Interest is to be paid in cash on termination of the Intercompany DIP Loan along with all other obligations owing thereunder. At all times automatically following the occurrence and during the continuance of an event of default under the Intercompany DIP Term Sheet, the interest rate increases by an additional 2%.
  - e) **Repayment:** The Intercompany DIP Loan shall be repaid in full and terminate on the earlier to occur of:
    - i. any event of default under the Intercompany DIP Term Sheet that is continuing, has not been cured or waived by the Applicant, and where the Applicant has notified LVI in writing that the obligations under the Intercompany DIP Term Sheet are accelerated; and

- ii. five business days after the trust established pursuant to the Combined Disclosure Statement and Plan (as defined in the Support Agreement) confirmed pursuant to the Confirmation Order (as defined in the Support Agreement) has recovered net proceeds sufficient to satisfy the obligations under the DIP Term Sheet in full (the “Intercompany DIP Loan Maturity Date”), unless otherwise agreed by LVI, the Applicant (after consultation with the Monitor), the Consenting Lenders (as defined therein) and, to the extent loans under the DIP Facility are outstanding at such time, BMO, in each case, acting reasonably. The Intercompany DIP Loan Maturity Date may be extended at the request of LVI and with the consent of the Applicant for such period and on such terms and conditions as LVI and the Applicant may agree.
- f) **Security:** All Intercompany DIP Loans and other liabilities and obligations owed to the Applicant in respect thereof are to be secured by a fully perfected first-priming lien granted by the US Court in the US Proceedings on all present and after-acquired assets of LVI and the Intercompany DIP Guarantors, including any commercial tort claims and proceeds thereof (referred to in the Intercompany DIP Term Sheet as the “DIP Liens”), subject to certain permitted exceptions. The DIP Liens shall rank in priority to the security granted by LVI and the Intercompany DIP Guarantors to the Credit Agreement Lenders.
- g) **Fees:** There are no fees payable under the Intercompany DIP Term Sheet.
- 7. The Monitor understands that the Intercompany DIP Loan is for a maximum amount of up to US\$30 million to provide flexibility in case additional draws are required beyond the amount contemplated in the Cash Flow Forecast, as shown above.

### 3.3 Recommendation

- 1. The Monitor believes that the terms of the DIP Facility are reasonable in the circumstances. When reviewing the reasonableness of the DIP Facility and the DIP Lender’s Charge, the Monitor considered the factors set out in Section 11.2 of the CCAA and notes the following:
  - a) the Applicant has a critical and immediate need for interim financing. Without access to the DIP Facility, the Applicant will be unable to maintain its operations and advance this restructuring proceeding, including the SISF. The DIP Facility will allow the Applicant to fund payroll and other critical obligations, including payments required to be made into the Reserve Account and to fund the Intercompany DIP Loan, which payments are immediately required in order for the Applicant to be able to continue to operate in the normal course;
  - b) the Consenting Stakeholders have been consulted throughout the negotiation of the DIP Facility, including the use of a portion of the DIP Facility advances to fund the Intercompany DIP Loan;

- c) the Monitor believes the Applicant's creditors will benefit from approval of the DIP Facility as it will allow the business to continue to operate, which will enhance value versus the alternative, which is a discontinuation of operations and the potential liquidation of the Applicant's assets. Further, the DIP Facility will fund the SISP pursuant to which the Applicant will attempt to identify a superior transaction to the Stalking Horse APA that provides greater value for stakeholders;
- d) the Applicant is seeking a DIP Lender's Charge to secure advances under the DIP Facility in the maximum amount of US\$70 million (plus accrued and unpaid interest, fees and expenses). The granting and proposed priority of the DIP Lender's Charge is a condition precedent to advances under the DIP Facility. The DIP Lender's Charge will not prime the Reserve Security; and
- e) the Monitor compared the financial terms of the DIP Facility to other DIP facilities approved by Canadian courts in CCAA proceedings commenced between 2020 to 2023. The comparison is attached as Appendix "D". Based on this review, the cost of the proposed DIP Facility is within the range of similar facilities approved by the Court and other Canadian courts in CCAA proceedings, especially considering the recent significant increase in interest rates. The Monitor notes that the Applicant does not have significant tangible assets to support the amounts drawn under the DIP Facility, which it believes is also a relevant factor in considering the financial terms of the DIP Facility.

## 4.0 SISP and Stalking Horse APA<sup>4</sup>

### 4.1 SISP

1. The purpose of the SISP is to market the Applicant's business and assets for sale. The SISP is anchored by the Stalking Horse APA, which provides certainty to the Applicant and its stakeholders of a going-concern transaction, while also enabling the Applicant, with the assistance of PJT and under the oversight of the Monitor, to test the market and pursue the possibility of a superior transaction.
2. Subject to Court approval, the Applicant, with the assistance of PJT and under the supervision of the Monitor, will carry out the SISP.
3. The proposed SISP was developed by the Applicant in consultation with PJT, the Monitor, BMO (in its capacity as the Stalking Horse Purchaser) and the Consenting Stakeholders.
4. The key aspects of the proposed SISP are summarized below; however, interested parties are strongly encouraged to review the full terms of the SISP attached as Schedule "A" to the proposed SISP Approval Order.

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<sup>4</sup> Capitalized terms in this section have the meaning provided to them in the SISP or the Stalking Horse APA unless otherwise defined herein.

5. A summary of the SISP timeline is as follows:

Milestone	Deadline <sup>5</sup>
Court approval of SISP to be sought	March 20, 2023
Latest date for Applicant to commence solicitation process	March 23, 2023
Qualified Bid Deadline	April 27, 2023
Notification to Qualified Bidder of Auction (if any)	May 1, 2023
Auction (if any)	May 4, 2023
Approval and Vesting Order hearing (no auction required) <sup>6</sup>	May 15, 2023
Approval and Vesting Order hearing (auction required)	May 18, 2023
Outside Date for Closing of Successful Bid	June 30, 2023 <sup>7</sup>

## 4.2 Solicitation of Interest

1. The Applicant and PJT, under the oversight of the Monitor, will prepare marketing materials and solicit interest from parties potentially interested in pursuing a transaction (each, a “Potential Bidder”).
2. In particular, the Applicant and PJT will, under the oversight of the Monitor:
  - a) prepare and disseminate marketing materials and a process letter to Potential Bidders identified by the Applicant and PJT, including a form of non-disclosure agreement (an “NDA”), by no later than March 23, 2023;
  - b) provide access to a data room containing diligence information to Potential Bidders. It is proposed that Potential Bidders will be required to execute the NDA in order to obtain access to the data room, and in addition, must also agree to the additional measures that are required by the Applicant to protect competitively sensitive information in the same manner as agreed to by BMO; and
  - c) request that such parties submit a binding offer meeting at least the requirements for a Qualified Bid (as described below) by April 27, 2023, being the Qualified Bid Deadline.
3. A Potential Bidder that wishes to make a bid must deliver a written copy of its bid and other materials required by the SISP by no later than 5:00 p.m. (Eastern Time) on April 27, 2023. The Qualified Bid Deadline may be extended by: (i) the Applicant for up to no longer than seven days with the consent of the Monitor, or (ii) further order of the Court.

<sup>5</sup> To the extent any dates would fall on a non-business day, they shall be deemed to be the first business day thereafter.

<sup>6</sup> The Court dates are subject to Court availability.

<sup>7</sup> Such date shall be extended up to 90 days where regulatory approvals are the only material remaining conditions to closing.



### 4.3 Qualified Bids

1. To be a “Qualified Bid”, a bid must, among other things, meet the following requirements:
  - a) provide aggregate consideration, payable in full on closing, in an amount of at least US\$165 million, being (i) the purchase price payable under the Stalking Horse APA (US\$160 million), plus (ii) the Bid Protections under the Stalking Horse APA (US\$4 million) and (iii) a US\$1 million minimum bid increment (collectively, the “Consideration Value”);
  - b) include an assumption of all obligations of the Applicant (i) to Collectors, and (ii) pursuant to the terms of the Redemption Reserve Agreement and related security;
  - c) provide for cash consideration sufficient to pay: (i) all outstanding obligations under the DIP Facility; (ii) any obligations in priority to amounts owing under the DIP Facility, including the Charges; (iii) US\$5 million to fund a wind-up of the Applicant’s CCAA proceeding and any further proceedings or wind-up costs; and (iv) an amount of US\$4 million to satisfy the Bid Protections;
  - d) provide for a closing date of not later than June 30, 2023, provided that such date may be extended by up to 90 days where regulatory approvals are the only material remaining conditions to closing, being the “Outside Date”;
  - e) include:
    - i. duly executed and binding transaction documents, including a redline of the submitted transaction document against the Stalking Horse APA;
    - ii. the legal name and identity (including jurisdiction of existence) and contact information of the bidder, full disclosure of its direct and indirect principals, and the name(s) of its controlling equityholder(s); and
    - iii. disclosure of any connections or agreements with the LoyaltyOne Entities or their affiliates;
  - f) be accompanied by a cash deposit equal to at least 10% of the Consideration Value provided for in the bid, which Deposit shall be retained by the Monitor in an interest-bearing trust account in accordance with the terms thereof; and
  - g) provide that the bid will serve as a Back-Up Bid if it is not selected as the Successful Bid and if selected as the Back-Up Bid, it will remain irrevocable until the earlier of (i) closing of the Successful Bid or (ii) closing of the Back-Up Bid.

### 4.4 Auction

1. If no Qualified Bids are submitted by the Qualified Bid Deadline, the Stalking Horse Purchaser will be the Successful Bidder.



2. If one or more Qualified Bids are received by the Qualified Bid Deadline, the Applicant will proceed with an auction process (the "Auction") in accordance with the SISP, including as follows:
  - a) bidding at the Auction shall be conducted in rounds. The Qualified Bid that represents the highest or otherwise best Qualified Bid as determined by the Applicant, in consultation with the Monitor, shall constitute the "Initial Bid" for the first round, and any bid made at the Auction by a Qualified Party subsequent to the Applicant's announcement of the Initial Bid (each, an "Overbid"), must be made in minimum cash purchase price increments of US\$1 million above the Initial Bid;
  - b) the Auction shall continue in one or more rounds and will conclude after each participating Qualified Party has had the opportunity to submit an Overbid with full knowledge and confirmation of the then-existing highest or otherwise best bid and no Qualified Party submits an Overbid; and
  - c) during the Auction, the Applicant, in consultation with the Monitor, will review each subsequent Qualified Bid, considering the factors for a Qualified Bid as set out in the SISP, and identify the highest or otherwise best bid received at the Auction as the "Successful Bid".

#### 4.5 The Stalking Horse APA

1. The Stalking Horse APA contemplates a transaction whereby BMO, if selected as the Successful Bidder in the SISP, will purchase all or substantially all of the operating assets of the Applicant, including the shares of Travel Services, and assume certain liabilities in connection with the AIR MILES® business.
2. The following constitutes a summary description of the Stalking Horse APA only. Reference should be made directly to the Stalking Horse APA for all of its terms and conditions. A copy of the Stalking Horse APA was attached as Exhibit "O" to the First Stewart Affidavit.
3. The key terms and conditions of the Stalking Horse APA are provided below.
  - **Purchased Assets:** Substantially all of the Applicant's right, title and interest in the Applicant's business and assets, including all of the issued and outstanding shares in the capital of Travel Services.
  - **Purchase Price:** The Purchase Price is comprised of:
    - a) a cash payment of US\$160 million, less the Purchase Price Adjustments (as defined below) (the "Cash Purchase Amount"); and
    - b) the amount of the Assumed Liabilities as of the Closing Time.

BMO shall pay any applicable Transfer Taxes in addition to the Estimated Purchase Price.

- **Purchase Price Adjustments:** Comprised of:
  - a) the Final Reserve Deficiency, being the amount, if any, required to fund any Reserve Deficiency in the Reserve Fund (i.e. the Reserve Account) on Closing;
  - b) the Final Trade Creditor Amount, being the Trade Creditor Amount, if any, on Closing. The Trade Creditor Amount represents non-contract-based trade creditor liabilities incurred after the Filing Date and on or prior to the Closing Date that are contemplated to be paid prior to the Closing Date under the Cash Flow Forecast, but that are not paid and such non-payment is not in the Ordinary Course; and
  - c) the Final Cure Cap Adjustment, being a reduction for any Cure Costs in excess of US\$10 million (collectively, (a) to (c) are referred to herein as the “Purchase Price Adjustments”). The Monitor has been provided with documentation from the Applicant’s books and records which supports US\$10 million as an estimate for Cure Costs. Based on this information, the estimate appears reasonable; however, the actual amount of Cure Costs payable on Closing will ultimately depend on which contracts are assumed by the Stalking Horse Purchaser.

At present, the Purchase Price Adjustments, if any, cannot be accurately estimated because they in large part will arise from developments occurring after the Filing Date and prior to the Closing. The Monitor will work with the Applicant to quantify the estimated Purchase Price Adjustments and report to the Court on same in connection with the Applicant’s motion for approval of the Stalking Horse APA or any other successful bid.

- **Delivery of Estimate:** As it will not be possible to determine the Cash Purchase Amount as at the Closing Date, the Applicant shall deliver to BMO a certificate detailing its good faith estimate of the Estimated Cash Purchase Amount, including the estimated Purchase Price Adjustments.
- **Payment of Estimated Cash Purchase Price:** BMO shall satisfy the Estimated Cash Purchase Amount at Closing by paying in cash:
  - a) US\$10 million (the Adjustment Escrow Amount) into an escrow account maintained by the Monitor, to be held pending the calculation of the Final Cash Purchase Price as security for the Settlement Payment; and
  - b) the balance of the Estimated Cash Purchase Amount to the Applicant.<sup>8</sup>

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<sup>8</sup> The form of Approval and Vesting Order contemplates the Applicant directing BMO to pay obligations outstanding under the DIP Facility directly to the DIP Lender at Closing.

- **Closing Statement and the Monitor's Dispute Resolution Role:** Section 3.4 of the Stalking Horse APA sets out the terms and procedures for preparing and delivering the final Closing Statement, in order to determine, among other things, the Purchase Price Adjustments and the resulting Final Cash Purchase Amount, including:
  - a) **Delivery:** Within 90 days of Closing, the Applicant will provide a Draft Closing Statement to BMO and the Monitor, setting out its calculations of the Purchase Price Adjustments and the resulting Settlement Payment;
  - b) **Objection Period:** Within 30 days following delivery of the Draft Closing Statement, BMO shall notify the Applicant and Monitor of any objections to the Draft Closing Statement by sending a Notice of Objection stating the basis of the objection(s);
  - c) **Settlement of Dispute:** BMO and the Applicant shall work to resolve any objections within 20 days, failing which any Disputed Items may be submitted by either of the parties to the Monitor for determination as an expert (and not as an arbitrator). Unless arbitration is commenced in accordance with Section 3.4(e) of the Stalking Horse APA, the determination of the Monitor shall be final and binding on BMO and the Applicant;
  - d) **Arbitration:** In the event that: (i) the Monitor's determination of the Settlement Payment is greater than 10% (in either direction) of BMO's calculation of the Settlement Payment; and (ii) the Applicant, BMO or both dispute the Monitor's position, the disputing party shall send the other party a Notice of Arbitration within five (5) days of the Monitor's delivery of its position, following which the dispute shall be finally resolved in accordance with the arbitration provisions contained within Section 3.4(e) of the Stalking Horse APA; and
  - e) **Escrow Release:** On the Settlement Date, BMO and the Applicant shall provide a joint notice and direction to the Monitor, pursuant to the Stalking Horse APA and the Escrow Agreement, for the release of the Adjustment Escrow Amount (US\$ 10 million) consistent with the final determination of the Cash Purchase Amount.
- **Reserve Fund:** If the Value of the Reserve Fund as of the Closing Date is greater than the Final Value of the Reserve Fund, the excess shall be removed from the Reserve Fund and paid to the Applicant or, as designated by the Applicant, the administrative agent under the Credit Agreement.
- **Excluded Assets:** Include, among other things:
  - a) assets, if any, that (i) are located exclusively outside of Canada, and (ii) do not relate to the Business;
  - b) the Applicant's Claims against BFH and its affiliates and their respective present and former directors and officers;

- c) Excluded Contracts, which list may be amended prior to closing and currently consists of, among other things, intercompany contracts and the Credit Agreement;
  - d) cash advanced pursuant to the DIP Facility;
  - e) cash paid in satisfaction of the Purchase Price;
  - f) Excluded Cash, being cash in the amount of US\$2 million;
  - g) Tax Attributes, including as relates to the Tax Dispute between the Applicant and CRA; and
  - h) certain intellectual property.
- **Assumed Liabilities:** Include:
    - a) all liabilities and obligations arising under the Assumed Contracts from and after the Closing Date, including all Cure Costs;
    - b) all liabilities and obligations arising from and after the Closing Date pursuant to or in respect of Permits and Licenses;
    - c) all of the Applicant's present and future liabilities and obligations under the Redemption Reserve Agreement and the Reserve Security;
    - d) all trade obligations payable or accrued (including, for certainty, customer credit balances and open purchase orders) of the Business from and after the Closing Date;
    - e) the BMO LCs;
    - f) all liabilities and obligations of the Applicant to any Collector in respect of the AIR MILES® Reward Program; and
    - g) all liabilities and obligations to Assumed Employees, as described in more detail in Section 8.10 of the Stalking Horse APA;
  - **Excluded Liabilities:** All liabilities, other than the Assumed Liabilities, and specifically including:
    - a) all intercompany obligations, except those between the Applicant and Travel Services;
    - b) all obligations under the Credit Agreement and related guarantees;
    - c) all obligations relating to any Excluded Assets and Excluded Contracts;
    - d) all obligations under the Employee Retention Plans;
    - e) all obligations relating to those Employees whose employment is not assumed by BMO pursuant to the terms of the Stalking Horse APA;
    - f) all obligations relating to the Applicant's employee benefit plans;

- g) all liabilities for Taxes of the Applicant;
  - h) all professional and administrative costs in connection with the Transaction and the CCAA Proceeding;
  - i) Excluded Claims; and
  - j) all claims of the Applicant or any of its affiliates that are unrelated to the Purchased Assets or the Assumed Liabilities.
- **Employee Matters:** BMO will offer employment to all Employees of the Applicant located in Canada on the terms and conditions described in the Stalking Horse APA, including compensation terms substantially similar, in the aggregate, as those existing with the Applicant immediately prior to Closing for a period of one year following the Closing.
  - **Representations and Warranties:** The Applicant has provided various representations and warranties to BMO, including in respect of: organizational matters; authorization and enforceability; the Reserve Fund; consents; its financial statements and other financial matters; material contracts, customers and suppliers; and, various matters pertaining to the Business and Travel Services. None of these representations and warranties survive Closing and the Purchased Assets shall be sold and delivered to BMO on an “as is, where is” basis.
  - **Outside Date:** June 30, 2023; provided that if the Closing Date has not occurred by such date solely as a result of the failure to obtain Competition Act Approval, then either party may elect to extend the Outside Date up to two times by 45 day increments for a maximum of 90 days.
  - **Conditions to Closing:** Include, among other things:
    - a) **Mutual Conditions:**
      - i. the ARIO, SISP Approval Order and Approval and Vesting Order shall have been obtained and shall be Final; and
      - ii. the Competition Act Approval shall have been obtained. The Stalking Horse APA contemplates that BMO shall, as soon as reasonably practicable, and in any event by March 23, 2023, submit a request to the Commissioner for an Advance Ruling Certificate or, in the alternative, a No Action Letter;
    - b) **Buyer Conditions:**
      - i. the SISP shall have been conducted in accordance with its terms and the terms of the SISP Approval Order;
      - ii. the Approval and Vesting Order shall have been obtained by no later than May 31, 2023, or such later date as BMO may agree to in writing, and shall be Final;

- iii. the Fundamental Representations (Seller) shall be correct in all but *de minimis* respects on the Closing Date; certain representations and warranties pertaining to consents and Material Contracts shall be true and correct in all material respects on the Closing Date; and, except as would not have or would not reasonably be expected to have a Material Adverse Effect, either individually or in the aggregate, all other representations and warranties of the Applicant shall be true and correct as of the date of the Stalking Horse APA and the Closing;
  - iv. from the date of the Stalking Horse APA, there shall not have occurred any Material Adverse Change;
  - v. BMO shall have received Consents and Approvals in respect of Contracts with Material Customers, Material Suppliers (including the WestJet Contract) and any Permits and Licenses from a Governmental Authority; and
  - vi. BMO shall have obtained any consents that are necessary, as determined in its sole discretion, acting reasonably, to effect the Reserve Agreement Assignment and Assumption;
- c) Seller Conditions
  - i. all the Fundamental Representations (Buyer) shall be correct in all but *de minimis* respects on the Closing Date; and, except as would not have or would not reasonably be expected to have a Material Adverse Effect, either individually or in the aggregate, all other representations and warranties of BMO shall be true and correct in all material respects as of the date of the Stalking Horse APA and the Closing;
  - ii. the Approval and Vesting Order shall have been obtained by no later than May 31, 2023, or such later date as the Applicant may agree to in writing, and shall be Final; and
  - iii. all amounts due and payable by BMO under the BMO Sponsorship Agreement as of the Closing Date shall have been paid in accordance with the terms of the BMO Sponsorship Agreement.
- **Termination:** the Stalking Horse APA can be terminated by BMO and/or the Applicant:
  - a) if Closing has not taken place by the Outside Date (as described above);
  - b) if the Stalking Horse APA is not selected as the Successful Bid (as determined pursuant to the SISP) or if the Court otherwise approves a transaction other than the Stalking Horse APA, subject to certain restrictions;
  - c) if the Court, or any other court or Governmental Authority (including the Competition Bureau) takes action to restrain, enjoin or otherwise prohibit the transactions contemplated by the Stalking Horse APA and such action is not capable of opposition or appeal, subject to certain restrictions;

- d) if any of the Closing conditions in favour of BMO or the Applicant, as applicable, are not satisfied, waived or performed by the earlier of: (i) the date specified therefor, or (ii) the Closing Date; and
- e) if there has been a material violation or breach by a party of any covenant, representation or warranty that would prevent the satisfaction of any Closing condition in favour of the other party on the Closing Date and such violation or breach has not been waived or cured in accordance with the Stalking Horse APA.

#### 4.6 Bid Protections

1. The Stalking Horse APA includes an Expense Reimbursement of up to US\$1 million for reasonable out-of-pocket third-party expenses incurred by BMO in connection with the Stalking Horse APA and/or the Transaction, and a Break Fee of US\$3 million (the Break Fee being 1.875% of the cash portion of the Purchase Price before accounting for any Purchase Price Adjustments).
2. The Expense Reimbursement and the Break Fee are intended to compensate BMO for its expenditures of time and money and its agreement to act as the stalking horse bidder, including the preparation of the Stalking Horse APA and in performing due diligence, and are payable in the event that: (i) the Stalking Horse APA is not consummated for any reason other than a termination by the Applicant pursuant to Section 10.3 of the Stalking Horse APA or by mutual consent of BMO and the Applicant; and (ii) a transaction is selected as the Successful Bid in accordance with the SISP that is not the transaction contemplated by the Stalking Horse APA.
3. The Expense Reimbursement and the Break Fee are payable on the date upon which closing occurs in respect of an alternative transaction selected as the Successful Bid; provided, however, that BMO shall not be entitled to payment of the Expense Reimbursement and the Break Fee if no Successful Bid is selected in accordance with the SISP and the SISP terminates in accordance with its terms.
4. The maximum amount of the Bid Protections (US\$4 million) represents 2.5% of the cash portion of the Purchase Price under the Stalking Horse APA, being US\$160 million prior to any Purchase Price Adjustments. The Monitor compared the Bid Protections to other bid protections approved by Canadian courts in insolvency proceedings commenced between 2020 to 2023. The comparison is attached as Appendix "E". Based on this analysis, the Monitor is of the view that the Bid Protections are on the low end of the range of reasonable bid protections in comparable restructuring proceedings.
5. As described above, in connection with the Stalking Horse APA and the Bid Protections contemplated therein, the Applicant is seeking approval of a charge on the Property in favour of BMO as security for the Bid Protections in the amount of US\$4 million, being the maximum amount of the Bid Protections payable to BMO.



#### 4.7 Considerations Regarding the Stalking Horse APA

1. The Monitor considered whether BMO's offer warrants it being a stalking horse bid, as opposed to BMO simply participating as a bidder in the SISP. The Monitor's considerations included that the Stalking Horse APA provides certainty to the Applicant's active Collectors, customers (referred to more commonly as "Partners"), employees and other stakeholders that a going-concern transaction will be completed. Given that there are approximately 10 million Collectors in Canada, the Monitor is of the view that the stability and certainty provided by a stalking horse in this situation is paramount and necessary to complete a going-concern transaction for the Applicant's business.

#### 4.8 SISP Recommendation

1. The Monitor recommends that this Court issue an order approving the SISP, the Stalking Horse APA and the Bid Protections Charge for the following reasons:
  - a) the SISP provides for a marketing of the Applicant's business by PJT, which is a highly qualified financial advisory and investment banking firm with extensive experience in the M&A sector and knowledge of the Applicant's business;
  - b) stalking horse sale processes are a recognized mechanism in restructuring processes to maximize recoveries, while creating stability and certainty of a going-concern transaction for the business;
  - c) the SISP provides an opportunity to complete a transaction with greater value than the Stalking Horse APA, if one is identified, which benefits all stakeholders;
  - d) it is in the best interests of the Applicant's stakeholders that the Stalking Horse APA be preserved in order to have the opportunity to maximize value and to protect downside risk in the event that a superior offer is not submitted;
  - e) in the Monitor's view, the 35-day duration of the SISP is sufficient to allow interested parties to perform diligence and submit offers. The SISP has been telegraphed to the market since March 10, 2023, which effectively adds approximately two weeks to the SISP period, resulting in a total period of approximately 48 days. In this regard, the Monitor and the Applicant have already received several enquiries from prospective purchasers immediately following the initial application and have forwarded all such enquiries to PJT. The Monitor also notes that the duration of the SISP reflects a balancing between ensuring that sufficient time is available to attempt to identify a superior transaction, and the costs of conducting this proceeding for a further period of time (which excess costs would be borne by stakeholders). The Monitor also notes that any interested parties will have the benefit of using the definitive Stalking Horse APA to advance and frame their bid. Further, the Monitor notes that the Qualified Bid Deadline can be extended by the Applicant, with the consent of the Monitor, by up to seven days, as considered advisable;
  - f) the Consenting Stakeholders were consulted in the development and negotiation of the Stalking Horse APA;



- g) the Monitor is of the view that the Bid Protections, which represent approximately 2.5% of the cash Purchase Price under the Stalking Horse APA (before potential Purchase Price Adjustments), are reasonable in the circumstances and will not discourage interested parties from submitting offers in the SISP;
- h) as at the date of this First Report, the Monitor is not aware of any objections to the SISP or the Stalking Horse APA. On the contrary, in the Monitor's preliminary discussions with many of the Applicant's major Partners, those Partners were highly supportive of BMO acquiring the Applicant's business and the opportunities that a transaction with BMO may provide; and
- i) the Stalking Horse APA is contemplated to preserve employment for the Applicant's employees on terms and conditions that are substantially similar to the existing terms.

## 5.0 Support Agreement<sup>9</sup>

1. Pursuant to the Support Agreement, certain Credit Agreement Lenders (collectively, the "Consenting Stakeholders") have agreed to support the CCAA proceeding and the US Proceedings and the specific relief sought in each of the Initial Order, the SISP Approval Order and the ARIO, including approval of the SISP, the Stalking Horse APA (including the Bid Protections), the DIP Facility, the Intercompany DIP Loan, the Employee Retention Plans and the various related Charges ranking in priority to the security granted by the Applicant in favour of the Credit Agreement Lenders. The Consenting Stakeholders have also agreed to not submit a credit bid and to support the transaction selected as the successful bid in the SISP. A copy of the Support Agreement is attached as Exhibit "C" to the affidavit of Shawn Stewart sworn March 13, 2023, filed in support of the relief being sought by the Applicant at the Comeback Hearing.
2. The effectiveness of the Support Agreement is subject to, among other things, it being executed by Credit Agreement Lenders holding 66 2/3% of the loans outstanding under the Credit Agreement executing the Support Agreement.<sup>10</sup> The Monitor understands that this threshold was surpassed on the afternoon of March 16, 2023.

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<sup>9</sup> The following constitutes a summary description of the Support Agreement only. Reference should be made directly to the Support Agreement for a complete understanding of its terms and conditions. Capitalized terms used in this section and not otherwise defined have the meanings ascribed to them in the Support Agreement.

<sup>10</sup> The obligations of the Applicant under the Support Agreement are also conditioned on the Court approving the Support Agreement.

3. The Monitor views the Support Agreement as a significant positive step in these proceedings. The Monitor supports Court approval of the Support Agreement as, *inter alia*, it evidences the support of the Applicant's principal economic stakeholders to all of the substantive relief being sought at the Comeback Hearing and therefore provides stability and certainty as to the conduct of this CCAA proceeding. As the Consenting Stakeholders are projected to incur a significant shortfall on their loans under the Credit Agreement, the Support Agreement provides the framework for this proceeding to be carried out on a consensual basis in order to complete a going-concern transaction pursuant to the Stalking Horse APA, or another transaction identified through the SISP, for the benefit of the Applicant's stakeholders, including creditors, employees, Partners and suppliers.

## 6.0 Financial Advisor<sup>11</sup>

### 6.1 PJT

1. The Applicant is seeking the Court's approval to retain PJT as its financial advisor to assist in running the proposed SISP. PJT will be responsible for marketing and selling the Applicant's business and assets pursuant to the proposed SISP, if approved. The Monitor will oversee the conduct of the SISP.
2. PJT is a globally recognized investment bank and an experienced financial advisor headquartered in New York.
3. PJT was initially retained by LVI and the Applicant in July 2022 to assist the Applicant and LVI in connection with considering their business and financial circumstances and restructuring and other strategic options. PJT has extensive knowledge of the Applicant's business, which it has gained over the past eight months.
4. PJT has prepared marketing materials in connection with its proposed mandate and is ready to launch the SISP process, subject to Court approval. The Monitor has scheduled regular meetings with PJT to oversee the SISP, including feedback from, and diligence being performed by, prospective purchasers.

### 6.2 Financial Advisor Agreement

1. A copy of the Financial Advisor Agreement is attached as Exhibit "R" to the First Stewart Affidavit. The relevant financial terms of the Financial Advisor Agreement are as follows:
  - a) **Monthly Fee:** PJT is entitled to a fixed cash monthly fee of US\$150,000 (the "Monthly Fee") payable monthly from the effective date of the Financial Advisor Agreement, provided however that fifty percent (50%) of the Monthly Fees paid beginning after US\$900,000 has been paid and ending after US\$1.8 million has been paid, shall be credited against any Success Fee, subject to certain conditions.

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<sup>11</sup> Capitalized terms in this section have the meaning provided to them in the Financial Advisor Agreement, unless otherwise defined herein.

- b) **Capital Raising Fee**: PJT is entitled to a fee of 1.5% of the amounts raised under the DIP Facility, which amount is budgeted for and projected to be paid in the Cash Flow Forecast.
  - c) **Success Fee**: In the event of a Restructuring, PJT will earn a fee equal to US\$6 million (the “Success Fee”). A Restructuring includes a sale or other acquisition or disposition of any material assets and/or equity of LVI, the Applicant and their direct and indirect subsidiaries, and shall be deemed to have been consummated upon (among other things) the consummation of a Restructuring pursuant to an order of this Court.
2. Pursuant to the above provisions, the consummation and closing of the transaction contemplated by the Stalking Horse APA, or a higher or otherwise better transaction identified in the SISP, would result in the Success Fee being earned and payable.
  3. PJT’s Monthly Fee and expenses are covered by the Administration Charge, whereas any Capital Raising Fee, Amendment Fee or Success Fee (together, the “Additional Fees”) are excluded. The ARIO sought by the Applicant at the Comeback Hearing proposes a Financial Advisor Charge in the maximum amount of US\$6 million to secure the Success Fee.
  4. The Monitor recommends that the Court approve the Financial Advisor Agreement for the following reasons:
    - a) PJT is highly qualified and has deep knowledge of the Applicant’s business as a result of its existing mandate;
    - b) PJT’s prior involvement with the Applicant and its role as its financial advisor in negotiating the Stalking Horse APA will provide for a smooth transition from the pre-filing process to the SISP;
    - c) in the Monitor’s view, the Monthly Fee of US\$150,000 is reasonable and consistent with the market, and the Success Fee payable to PJT as a percentage of the cash Purchase Price of the US\$160 million Stalking Horse APA transaction, being 3.75%, is commercially reasonable, as is the Capital Raising Fee of 1.5% of the amount of the DIP Facility;
    - d) given its prior mandate, PJT is ready to launch the SISP immediately, which will help reduce the costs associated with the SISP and the CCAA proceeding; and
    - e) in the Monitor’s view, it is appropriate for PJT to have the benefit of a Court-approved charge to secure both its Monthly Fee and the Success Fee.

## 7.0 Employee Retention Plans

1. The Applicant employs approximately 750 employees across Canada (including approximately 60 presently on leave).
2. The Employee Retention Plans were developed by the Applicant, with the assistance of A&M, to provide employees with certainty and stability during this CCAA proceeding, including to replace compensation payable under historic incentive plans that are no longer relevant in the context of the CCAA proceeding.

## 7.1 Retention Plan

1. The Applicant has historically maintained an Annual Incentive Plan (the “AIP”) for eligible salaried employees, which has represented a significant portion of compensation for many employees. Under the AIP, the Applicant has traditionally paid an annual bonus based on individual performance metrics, corporate performance metrics and an individual “target” based on a percentage of the employee’s salary. In light of the CCAA proceeding, the AIP and associated performance metrics are no longer feasible.
2. The primary purpose of the proposed retention plan (the “Retention Plan”) developed by the Applicant, with the assistance of A&M, is to retain all of the Applicant’s employees who would otherwise be deprived of a meaningful percentage of their compensation under the AIP and may therefore seek other opportunities.
3. The proposed Retention Plan removes the performance metrics applicable to the AIP, allowing employees to receive up to 100% of their individual target amount (which ranges from 8.5% to 100% of base salary), and accelerates the payment schedule, with payments being made in monthly installments, with the January and February 2023 amounts being paid upon the granting of the ARIO. The Retention Plan provides that if a transaction is consummated pursuant to the SISF, the current and final monthly payment would be accelerated and due on closing. The Retention Plan will effectively terminate once a transaction closes.
4. To be eligible for a payment under the Retention Plan, the employee must be actively employed for the entire applicable month and on the incentive payment date. Approximately 500 employees are eligible for the Retention Plan, and the total estimated cost is approximately \$720,000 per month.

## 7.2 Key Employee Retention Plan

1. The Applicant has identified a total of 20 key senior executives and key employees, plus an additional 5 employees at risk of departure (together, the “KERP Employees”) who are crucial to conducting business during the CCAA proceeding, carrying out the SISF and closing a transaction under the SISF. The Applicant, with the assistance of A&M, has also developed a key employee retention plan (the “KERP” and together with the Retention Plan, the “Employee Retention Plans”) in an effort to retain and incentivize the KERP Employees to assist the Applicant throughout its restructuring.
2. The Applicant has historically provided annual equity based (and in some cash based) long-term incentive awards to certain of the KERP Employees (the “LTI” and together with the “AIP”, the “Historical Incentive Plans”). The KERP will provide for a cash retention bonus (the “Retention Bonus”) in lieu of the annual LTI awards for 2023.
3. The KERP Employees include senior executives, key employees and five other employees who have historically received LTI awards.

4. The terms of the proposed Retention Bonuses are summarized in the table below:

KERP Employee	Target Value	Payment Terms
Senior executives	2/3 of the 2022 target LTI	One quarter vesting on March 31, 2023 and the remaining three quarters vesting upon the earlier of (i) a transaction pursuant to the SISP; and (ii) December 31, 2023.
Key employees	1/3 of the 2022 target LTI	
Other	1/3 of the 2022 target LTI	One quarter vesting on each calendar quarter in 2023.

5. The total cost of the Retention Bonus for the KERP Employees is approximately \$3.2 million. The KERP Employees are also entitled to receive payments under the Retention Plan.

### 7.3 Employee Retention Plans Recommendation

1. The Applicant is seeking approval of the Employee Retention Plans and a corresponding Employee Retention Plans Charge in the maximum amount of \$5.35 million.
2. The Monitor understands that senior executives and other key employees have indicated to the Applicant that, due to the uncertainty associated with the ongoing operations of the Applicant's business and the potential risk of non-payment of Employee Retention Plan amounts, they will not continue their service with the Applicant during the CCAA proceeding unless the Court approves the Employee Retention Plans and grants the Employee Retention Plans Charge.
3. The Monitor supports the Employee Retention Plans and the corresponding Employee Retention Plans Charge for the following reasons:
  - a) the continued involvement and cooperation of the Applicant's workforce, including the KERP Employees, is critical to the overall success of the Applicant's restructuring, and the proposed payments under the Employee Retention Plans are required to increase the likelihood that the Applicant's employees will continue to facilitate the Applicant's operations and the conduct of the SISP during the pendency of this proceeding;
  - b) the Applicant administered the Historical Incentive Plans as recently as until the end of 2022, which plans are no longer feasible given the CCAA proceeding. Accordingly, the Applicant's employees would be asked to take a significant reduction to their individual earnings if the Employee Retention Plans are not approved in lieu of the Historical Incentive Plans. In light of this, there is a risk that the Applicant will face significant attrition (including of KERP Employees) if the Employee Retention Plans are not implemented, which would result in erosion of the going-concern value of the Applicant's business and impair its ability to complete the transaction contemplated by the Stalking Horse APA or a superior transaction that may result from the SISP;

- c) with respect to the KERP Employees specifically, each of them will contribute to this CCAA proceeding by using their existing company knowledge and expertise in their respective roles to continue normal course operations and preserve value. The involvement of the KERP Employees should assist to reduce professional fees, particularly as relates to involvement in the SISP and/or operational matters;
- d) in the Monitor's view, the amounts payable under the Employee Retention Plans are reasonable, including having regard to amounts payable under the Historic Incentive Plans. The Monitor notes that the Retention Plan provides the same compensation to eligible employees as the AIP, with the only changes being timing of payment (monthly versus annually) and the removal of the corporate and individual performance metrics. The KERP provides less compensation to KERP Employees relative to their target LTI compensation (ranging from 1/3 to 2/3 of target 2022 LTI compensation), albeit payable in cash and on a more accelerated timeframe;
- e) the DIP Lender and the Consenting Stakeholders have been consulted in the development of the Employee Retention Plans; and
- f) the Employee Retention Plans Charge is appropriate to provide the employees with comfort that the amounts payable to them under the Employee Retention Plans will be paid.

## 8.0 Stay Extension and Related Relief

1. Pursuant to the Initial Order, the Court granted a stay of proceedings in favour of the LoyaltyOne Entities and their directors and officers to and including March 20, 2023 (the "Stay Period"). The Applicant is requesting an extension of the Stay Period to May 18, 2023, to align the expiry of the Stay Period with the timeline of the SISP, including the anticipated date for seeking Court approval of a Successful Bid.
2. The Monitor supports the request for an extension of the stay and believes that it is appropriate in the circumstances for the following reasons:
  - a) the Applicant is acting in good faith and with due diligence;
  - b) the proposed stay extension will allow the Applicant time to conduct the SISP;
  - c) the Monitor does not believe that any creditor will be materially prejudiced by the extension of the Stay Period;
  - d) as of the date of this First Report, the Monitor is not aware of any party opposed to an extension of the Stay Period; and
  - e) subject to the Court approval of the DIP Facility, the Cash Flow Forecast reflects that the Applicant is projected to have sufficient liquidity to fund its operations and the costs of this CCAA proceeding.

3. The Applicant is also requesting a provision be included in the ARIO which restricts setoff of pre-filing obligations against post-filing obligations without the consent of the Applicant and the Monitor, or further order of the Court.
4. The Monitor believes the proposed setoff provision in the ARIO is appropriate in the circumstances to provide clarity to suppliers, customers and other stakeholders regarding their rights of setoff in this CCAA proceeding, with a view to ensuring that the LoyaltyOne Entities can continue to operate the AIR MILES® business in the ordinary course and that no setoff rights will be exercised in a manner that may disrupt the LoyaltyOne Entities business or the SISF. In addition, the Cash Flow Forecast does not contemplate any setoff of pre-filing obligations due to the Applicant, and accordingly, were that to occur, the Applicant's funding requirements would increase beyond the amount available under the DIP Facility, even if for a short period of time until any disputes over setoff rights could be resolved.

## 9.0 Court Ordered Charges

### 9.1 Proposed Charges and Priority of the Charges

1. As detailed below, the Applicant is seeking an increase in the Administration Charge and the D&O Charge. In addition, as detailed herein, the Applicant is also seeking approval of the Employee Retention Plans Charge, the Financial Advisor Charge, the DIP Lender's Charge and the Bid Protections Charge.
2. Each of the Charges previously granted in this CCAA proceeding rank in priority to all other encumbrances against the Property, other than (a) any Person with a properly perfected purchase money security interest under the Ontario PPSA or other applicable legislation, (b) the Reserve Trustee in respect of the Reserve Security, and (c) any Person that has not been served with notice of the application for the Initial Order. At the Comeback Hearing, the Applicant is seeking to have all of the Charges rank in priority to any encumbrances in respect of the Property except those specified in (a) and (b).
3. If the Court approves the amended Charges and the proposed additional Charges, the priority and amount of the Charges as among them would be as follows:

Priority	Charge	Currency	Current (\$)	Proposed (\$)
First	Administration Charge	CAD	2,000,000	3,000,000
Second	D&O Charge	CAD	10,521,000	15,409,000
Third	Employee Retention Plans Charge	CAD	-	5,350,000
Fourth	Financial Advisor Charge	USD	-	6,000,000
Fifth	DIP Lender's Charge	USD	-	70,000,000 <sup>12</sup>
Sixth	Bid Protections Charge	USD	-	4,000,000

<sup>12</sup> Plus accrued and unpaid interest, fees and expenses.



## 9.2 Administration Charge Increase

1. The Initial Order granted an Administration Charge in an amount not to exceed \$2 million to secure the fees and disbursements of the Monitor, Goodmans, Cassels, A&M and PJT (excluding any Success Fees) (collectively, the “Administration Professionals”) from the date of the Initial Order to the Comeback Hearing.
2. The Applicant is seeking to increase the Administration Charge to \$3 million. The Monitor is of the view that the increased Administration Charge is required and reasonable in the circumstances given the complexities of the Applicant’s CCAA proceeding and the services to be provided by the Administration Professionals, each of whom is required to further the restructuring efforts of the Applicant.
3. The Cash Flow Forecast has been prepared on the basis of bi-weekly payments being made to the Administration Professionals, and accordingly, there should be no exposure to the Administration Professionals with the proposed increased Administration Charge.

## 9.3 D&O Charge Increase

1. The Initial Order approved a D&O Charge in the amount of \$10.521 million to secure the indemnity in favour of the directors and officers in the Initial Order based on potential liability exposure for the directors and officers pending the Comeback Hearing. The Applicant is seeking to increase the D&O Charge to \$15.409 million.
2. As provided in the table below, the amount of the D&O Charge was estimated by the Applicants in consultation with A&M, taking into consideration the current vacation pay liability plus the estimated maximum amount at any point in time of the directors’ and officers’ exposure for unpaid payroll and sales taxes (assuming the Applicant pays these obligations in the normal course during this proceeding, as is reflected in the Cash Flow Forecast).

(unaudited)	Amount (CAD\$000s)
Wages and bonus	2,524
Unremitted source deductions	989
Vacation pay	2,152
Benefits and RRSP contributions – employer portion	214
Unremitted HST	9,063
Provincial sales tax	467
Total D&O Charge	15,409

3. The Monitor has reviewed the backup provided by the Applicant in respect of the potential obligations to be covered by the D&O Charge and is of the view that the proposed increase to the D&O Charge is reasonable in the circumstances as the continued involvement of the directors and officers is beneficial to the Applicant and this proceeding.



## 10.0 Monitor's Activities since the Filing Date

1. Since the Filing Date, the Monitor has, among other things:
  - a) corresponded regularly with the Applicant's legal counsel, financial advisor and management team and its own counsel regarding all aspects of this CCAA proceeding, including the terms of the SISP, the Stalking Horse APA, the DIP Facility, the Intercompany DIP Loan and the Employee Retention Plans;
  - b) worked with the Applicant and its advisors to develop and execute a stakeholder communication strategy;
  - c) attended calls with representatives of the Applicant, BMO and over 20 of the Applicant's key Partners regarding the commencement of the CCAA proceeding, the Stalking Horse APA and SISP;
  - d) mailed the CCAA notice to the Applicant's creditors (other than to the Specified Collectors) and filed Forms 1 and 2 with the Office of Superintendent of Bankruptcy, as required under the CCAA and the Initial Order, as applicable;
  - e) posted the CCAA notice, list of creditors (excluding Collector information as authorized under the Initial Order) and other Court materials on the Case Website;<sup>13</sup>
  - f) arranged for notice of the CCAA proceeding to be published in the *National Post* on March 16 and 23, 2023, as required under the Initial Order;
  - g) monitored the Applicant's daily receipts and disbursements and worked with A&M and management to develop a daily cash management monitoring process;
  - h) reviewed the Cash Flow Forecast and the components of the D&O Charge and discussed same with A&M;
  - i) reviewed and commented on the Applicant's materials filed in support of the relief to be sought at the Comeback Hearing; and
  - j) drafted this First Report.

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<sup>13</sup> Notice of the CCAA proceeding has also been posted on the Applicant's website in French and English.

## 11.0 Conclusion and Recommendation

1. Based on the foregoing, the Monitor respectfully recommends that this Honourable Court grant the relief sought by the Applicant at the Comeback Hearing.

\* \* \*

All of which is respectfully submitted,

*KSV Restructuring Inc.*

**KSV RESTRUCTURING INC.,  
IN ITS CAPACITY AS MONITOR OF  
LOYALTYONE, CO.  
AND NOT IN ITS PERSONAL CAPACITY**

## Appendix “A”



**Pre-Filing Report of  
KSV Restructuring Inc.  
as Proposed CCAA Monitor of  
LoyaltyOne, Co.**

**March 10, 2023**

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Court File No.: \_\_\_\_\_

**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.**

**PRE-FILING REPORT OF KSV RESTRUCTURING INC. AS  
PROPOSED MONITOR**

**MARCH 10, 2023**

## 1.0 Introduction

1. KSV Restructuring Inc. ("KSV") understands that LoyaltyOne, Co. (the "Applicant") intends to make an application to the Ontario Superior Court of Justice (Commercial List) (the "Court") under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "CCAA"), for an initial order (the "Initial Order") granting, among other things, the Applicant protection under the CCAA and appointing KSV as the CCAA monitor (in such capacity, the "Monitor").
2. KSV also understands that, in conjunction with the CCAA application, the Applicant's US parent, Loyalty Ventures, Inc. ("LVI") and certain affiliated entities have filed voluntary petitions for relief under Chapter 11 of Title 11 of the United States Code to commence proceedings in the United States Bankruptcy Court for the Southern District of Texas (the "Chapter 11 Cases"). The Applicant is not a debtor in the Chapter 11 Cases.
3. The principal purposes of these CCAA proceedings are to create a stabilized environment to enable the Applicant to:
  - a) continue to operate in the ordinary course with the breathing space afforded by filing for protection under the CCAA, including to continue to operate the AIR MILES® Reward Program and to honour redemptions by Collectors (as defined below) of AIR MILES® reward miles in the normal course;
  - b) secure required debtor-in-possession ("DIP") financing from Bank of Montreal ("BMO" and, in such capacity, the "DIP Lender") to fund the Applicant's ongoing business and the restructuring proceedings pursuant to a US\$70 million DIP loan facility (the "DIP Facility"); and

- c) identify and complete a going-concern sale transaction pursuant to a Court-supervised sale and investment solicitation process (“SISP”). In this regard, the Applicant has entered into an Asset Purchase Agreement with BMO, the Applicant’s largest customer that, subject to Court approval, would be used as a stalking horse (the “Stalking Horse APA”) in the SISP. The purchase price under the Stalking Horse APA is US\$160 million, subject to certain adjustments.
- 4. No relief is being sought at the initial application in respect of the DIP Facility, the SISP or the Stalking Horse APA.
- 5. The Affidavit of Shawn Stewart, President of the Applicant, sworn March 10, 2023, in support of the CCAA application (the “Stewart Affidavit”), provides information in respect of the Applicant’s business and operations, including the reasons for the commencement of these CCAA proceedings.
- 6. If the Court grants the relief set out in the Initial Order, the Court materials filed in these proceedings will be made available by KSV on its website at <https://www.ksvadvisory.com/experience/case/loyaltyone> (the “Case Website”).
- 7. KSV is filing this report (“Report”) as proposed Monitor. If the Initial Order is granted by the Court, the Monitor will file a subsequent report to the Court in respect of the relief to be sought by the Applicant at the next hearing in these proceedings to be held within 10 days of the Initial Order (the “Comeback Hearing”).

## 1.1 Purposes of this Report

- 1. The purposes of this Report are to:
  - a) provide KSV’s qualifications to act as Monitor;
  - b) provide certain background information about the Applicant and its financial position;
  - c) report on the Applicant’s cash flow projection for the period March 10, 2023 to June 9, 2023 (the “Cash Flow Forecast”);
  - d) discuss the rationale for the following provisions in the Initial Order and related matters:
    - a charge in the amount of \$2 million (the “Administration Charge”) on the Applicant’s current and future property, assets and undertaking (collectively, the “Property”) to secure the fees and disbursements of the Monitor, counsel to the Monitor, Goodmans LLP (“Goodmans”), counsel to the Applicant, Cassels Brock & Blackwell LLP (“Cassels”), the Applicant’s restructuring advisor, Alvarez & Marsal Inc. (“A&M”), and the Applicant’s financial advisor, PJT Partners LP (“PJT”) (excluding any transaction fees payable to PJT);



- a charge on the Property in the amount of approximately \$10.5 million in favour of the directors and officers of the Applicant and its wholly-owned subsidiary, LoyaltyOne Travel Services Co./Cie Des Voyages LoyaltyOne (“Travel Services”) (the “D&O Charge” and, with the Administration Charge, the “Charges”), to secure the proposed indemnity in favour of the directors and officers in the Initial Order;
  - the proposed priority of the Charges;
  - a provision permitting the Applicant to pay certain pre-filing obligations to essential suppliers and contractors, subject to first obtaining the Monitor’s consent;
  - the stay of proceedings being extended to Travel Services;
  - the continued operation of the AIR MILES® Reward Program in the normal course, including by allowing the Applicant’s business partners (“Partners”) to issue new reward miles and for the Applicant’s AIR MILES® users (referred to as “Collectors”) to continue to earn and redeem reward miles, including reward miles earned before the start of this CCAA proceeding;
  - the continued use of the Applicant’s existing cash management system; and
  - the proposed methodology to provide notice of the CCAA proceedings to the Applicant’s creditors, including the Collectors; and
- e) provide the proposed Monitor’s recommendation regarding the relief sought by the Applicant in its application materials.

## 1.2 Restrictions

1. In preparing this Report, KSV has relied upon the Applicant’s audited and unaudited financial information, books and records and discussions with the Applicant’s legal counsel (Cassels) and restructuring advisor (A&M).
2. KSV has not audited or otherwise attempted to verify the accuracy or completeness of the financial information relied on to prepare this Report in a manner that complies with Canadian Auditing Standards (“CAS”) pursuant to the Chartered Professional Accountants of Canada Handbook and, accordingly, KSV expresses no opinion or other form of assurance contemplated under the CAS in respect of such information. Any party wishing to place reliance on the financial information should perform its own diligence.
3. An examination of the Cash Flow Forecast as outlined in the Chartered Professional Accountants of Canada Handbook has not been performed. Future oriented financial information relied upon in this Report is based upon the Applicant’s assumptions regarding future events; actual results achieved may vary from this information and these variations may be material. KSV expresses no opinion or other form of assurance on whether the Cash Flow Forecast will be achieved.

### 1.3 Currency

1. Unless otherwise noted, all currency references in this Report are in Canadian dollars.

### 1.4 KSV's Qualifications to Act as Monitor

1. KSV is a licensed trustee within the meaning of Section 2(1) of the *Bankruptcy and Insolvency Act* (Canada). KSV is not subject to any of the restrictions to act as monitor set out in Section 11.7(2) of the CCAA.
2. KSV has consented to act as Monitor in these proceedings should the Initial Order be granted. A copy of KSV's consent to act as Monitor is attached as Appendix "A".
3. KSV has significant experience acting as CCAA monitor and other court officer capacities in formal insolvency proceedings.
4. On January 24, 2023, KSV was retained by Cassels, on the Applicant's behalf, in contemplation of acting as proposed Monitor if these proceedings were commenced. Since that time, KSV has been involved with the Applicant's preparation for this filing, including reviewing and commenting on the proposed Initial Order and accompanying cash flow projections, as well as the DIP Facility, the SISF and the Stalking Horse APA. During that time, KSV has also obtained an understanding of the Applicant's financial and operational challenges.

## 2.0 Background

### 2.1 Overview

1. The Stewart Affidavit provides background information with respect to the Applicant's business and operations. Accordingly, that information is only summarized in this Report.
2. The Applicant is the main operating entity in respect of the AIR MILES® Reward Program business (the "AIR MILES® Business"). The Applicant is a Nova Scotia unlimited liability company that is extra-provincially registered in, among other provinces, Ontario.
3. The Applicant's headquarters and primary place of business is located at 351 King Street East in Toronto, Ontario. Its registered office is the office of its Nova Scotia counsel in Halifax, Nova Scotia. The Applicant's sole member is LVI Lux Financing S.ar.l, a Luxembourg-based entity.
4. LVI, the ultimate parent of the Applicant, is a Delaware corporation whose common shares are currently listed on the NASDAQ Capital Market under the symbol "LYLT".

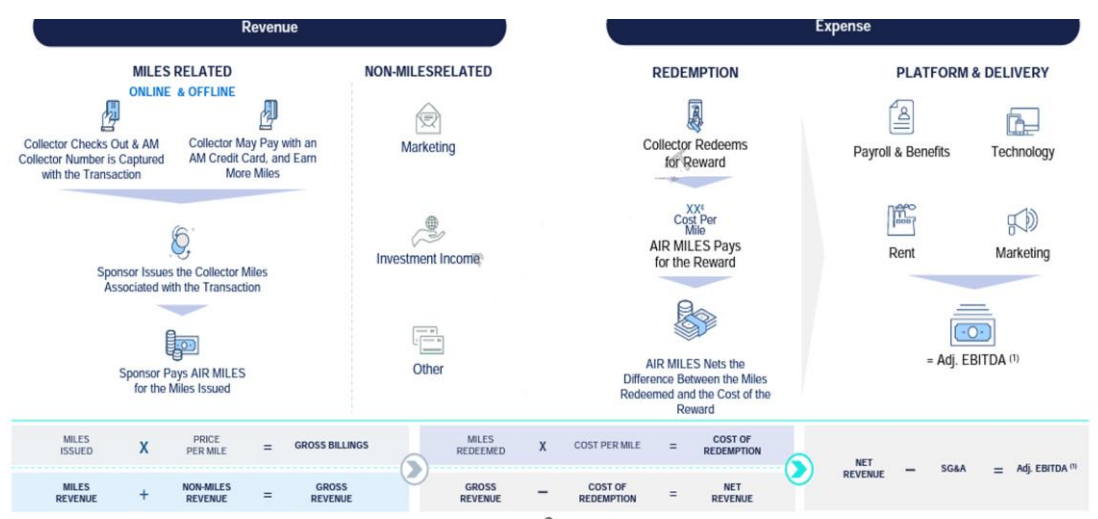
5. Prior to November 5, 2021, LVI, the Applicant, Travel Services and other subsidiaries of LVI (collectively, the “Loyalty Group”) were owned and operated by Bread Financial Holdings, Inc. (“BFH”), a US based company headquartered in Columbus, Ohio. BFH’s common shares are listed under the symbol “BFH” on the NYSE Capital Market. According to the Stewart Affidavit:
  - a) in November 2021, BFH undertook a transaction (the “Spinoff Transaction”) to separate the AIR MILES® Business and the Netherlands-based “BrandLoyalty” business into a newly created public company. Following the Spinoff Transaction, LVI was owned 19% by BFH, with the balance owned by BFH’s shareholders;
  - b) in the context of the Spinoff Transaction, LVI, among other things, borrowed (and the Applicant guaranteed) US\$675 million in debt, absorbed transaction costs of US\$25 million, and transferred the net proceeds of US\$650 million from the debt issuance to BFH. Following the Spinoff Transaction and as at the date of this Report, BFH continues to provide the Applicant with systems and other support services pursuant to a transition services agreement; and
  - c) in connection with the Chapter 11 Cases, it is contemplated that LVI will form a liquidating trust.

## 2.2 LVI

1. LVI, the ultimate parent company of the Loyalty Group, describes itself in its financial statements as “a leading provider of tech-enabled, data-driven consumer loyalty solutions”. The Applicant is an indirect subsidiary of LVI.
2. The Loyalty Group is a leading global provider of campaign-based loyalty solutions for grocers and other high-frequency retailers. It owns and operates two primary business segments, being: (i) the AIR MILES® Business; and (ii) BrandLoyalty (the “BrandLoyalty Business”). The AIR MILES® Business operates in Canada. The BrandLoyalty Business is headquartered in Netherlands, but its operations span internationally, including in Europe, Middle East, Africa and Asia Pacific. The BrandLoyalty Business also has a limited presence in Canada.
3. The proposed Monitor understands that although LVI does not conduct active business operations of its own, it provides certain key corporate and back-office support functions, infrastructure and services for both the AIR MILES® Business and the BrandLoyalty Business, including information technology, legal, tax, human resources, accounting and treasury services (collectively, the “Intercompany Services”), pursuant to an intercompany services agreement (the “Intercompany Services Agreement”). The Applicant appears to be significantly reliant on LVI to operate its business in the normal course. According to the Stewart Affidavit, if LVI ceased or ceases to pay its liabilities in the ordinary course, there is a risk that the Intercompany Services required by the Applicant will be disrupted and/or stopped, and any such disruption would have a serious deleterious impact on the Applicant’s ability to complete a sale as a going concern under the SISP, potentially frustrating these CCAA proceedings.

## 2.3 Business of the Applicant

1. The AIR MILES® Business was originally launched in Canada in 1992 by Loyalty Management Group Canada Inc., a predecessor entity of the Applicant. In 1998, the AIR MILES® Business was acquired by BFH for approximately \$250 million. As noted above, in November 2021, LVI acquired the AIR MILES® Business and the BrandLoyalty Business as a result of the Spinoff Transaction.
2. The AIR MILES® Reward Program is a full-service outsourced loyalty program, which assists its Partners in acquiring and retaining loyal and continuing customers. The majority of the AIR MILES® Business is focused on a small group of Partners (historically called “Sponsors”), who pay the Applicant a fee per reward mile issued to, and in certain instances, when redeemed by, the Collectors. In return, the Applicant provides a number of services to both Partners and Collectors, including, but not limited to, all marketing (including the use of the AIR MILES® Reward Miles brand), analytics, customer services and redemption management.
3. The three primary parties involved in the AIR MILES® Reward Program are: (i) Partners; (ii) Collectors; and (iii) suppliers of travel and other rewards (the “Reward Suppliers”).
4. The AIR MILES® Business model is summarized in the diagram below.<sup>1</sup>



5. Over 10 million Canadians participate in the AIR MILES® Reward Program, and hundreds of thousands of Collectors have reward miles that would entitle them to redeem for value in excess of \$1,000 at any given time.
6. To provide assurances to Collectors and Partners that funds are available to satisfy the Applicant’s obligations to provide rewards for redeemed AIR MILES® reward miles, the Applicant’s corporate predecessor established a fund of investments (the “Reserve Account”) for the benefit of Collectors to fund redemptions. The Reserve Account is governed by an Amended and Restated Redemption Reserve Agreement dated December 31, 2001 (as amended, the “Redemption Reserve Agreement”).

<sup>1</sup> This schematic was sourced from LVI’s Lender Presentation (September 2021).

RBC Investor Services Trust (the “Reserve Trustee”) was granted a security interest over the Reserve Account pursuant to the Reserve Security (defined below). Pursuant to the Redemption Reserve Agreement, the Applicant is required to maintain the Reserve Account in an amount equal to the value of the actual and reasonably expected redemptions of reward miles, taking into account the time value of money (the “Required Reserve Amount”). According to the Stewart Affidavit, as at March 2, 2023, there is approximately US\$566 million in the Reserve Account.

7. BMO is the Applicant’s most significant Partner. In 2022, BMO issued approximately 50% of all reward miles issued. BMO participates in the AIR MILES® Reward Program under a Program Participation Agreement, issues AIR MILES® branded credit cards and subscribes for additional services from AIR MILES® to assist in its marketing activities. Other significant Partners include Shell and Metro.
8. The Applicant operates from leased premises in Toronto, and also maintains an office in Vancouver to comply with applicable travel agency regulations in British Columbia. The Applicant’s Calgary and Montreal premises are presently subleased.

## **2.4 Employees**

1. The Applicant employs approximately 750 employees across Canada (including approximately 70 presently on leave). The Applicant’s employees are not unionized and the Applicant does not maintain any registered pension plans.
2. As of March 9, 2023, the Applicant’s accrued vacation pay obligation was approximately \$2 million. The Applicant is current on its payments in respect of its group registered retirement savings plan and deferred profit-sharing plan, other than those associated with the upcoming payroll which is due and expected to be paid on March 10, 2023. Consistent with past practice, these amounts have been funded in advance of the payment date.

## 2.5 Financial Position

1. The Applicant's most recent unaudited balance sheet as at January 31, 2023 is provided below.

Description	Book Value (CAD \$000s)
Cash and cash equivalents	29,950
Accounts receivable	198,872
Other current assets	15,887
Redemption settlement assets, restricted	802,919
<b>Total Current Assets</b>	<b>1,047,628</b>
Property, plant and equipment	67,507
Goodwill	246,108
Other	44,134
<b>Total Non-current Assets</b>	<b>357,750</b>
<b>Total Assets</b>	<b>1,405,378</b>
Accounts payable and accrued liabilities	48,420
Deferred revenue	1,014,155
Other current liabilities	30,919
<b>Total Current Liabilities</b>	<b>1,093,495</b>
Other liabilities	16,904
Deferred revenue – services	120,720
Long term operating lease liability	52,962
<b>Total Non-current Liabilities</b>	<b>190,586</b>
<b>Total Liabilities</b>	<b>1,284,081</b>
<b>Equity</b>	<b>121,297</b>
<b>Total Liabilities &amp; Equity</b>	<b>1,405,378</b>

2. As the Applicant is a guarantor and not a borrower under the Credit Agreement (as defined below), the Credit Agreement obligations are not reflected on its non-consolidated balance sheet. Recognition of that secured obligation would eliminate any equity reflected on the Applicant's financial statements and cause a material deficiency.
3. The following is a brief description of certain material line items on the Applicant's balance sheet:
  - a) Accounts Receivable: Primarily consists of an income tax receivable with a book value of approximately \$97 million that is subject to an ongoing dispute with Canada Revenue Agency, and which, according to the Stewart Affidavit, BFH caused LVI (purportedly on behalf of the Applicant) to assign to BFH in connection with the Spinoff Transaction. Also includes accounts receivable owing from Partners.
  - b) Redemption settlement assets, restricted: Redemption settlement assets consist of restricted cash, mutual funds and securities available-for-sale and are designated for settling redemptions by collectors of the AIR MILES® Reward Program. These are effectively due on demand and are the investments and funds that were on deposit in the Reserve Account as at January 31, 2023.



- c) Property and Equipment: Primarily consists of computer software and development, furniture and equipment and leasehold improvements.
- d) Deferred Revenue: The deferred revenue associated with AIR MILES® redemptions is recognized into revenue when redeemed by Collectors.

## 3.0 Creditors

### 3.1 Secured Creditors

#### 3.1.1 The Credit Facilities

1. LVI, Brand Loyalty Group B.V., Brand Loyalty Holding B.V. and Brand Loyalty International B.V. (collectively, the “Borrowers”) and a group of lenders (collectively, the “Credit Agreement Lenders”) for whom Bank of America N.A. acts as administrative agent (the “Credit Agreement Agent”) entered into a credit agreement dated as of November 3, 2021 (as amended, the “Credit Agreement”) whereby the Credit Agreement Lenders established credit facilities for the Borrowers. Certain of LVI’s subsidiaries, including the Applicant (but not Travel Services), are guarantors under the credit Agreement (collectively, the “Guarantors”).
2. Pursuant to the terms of the Credit Agreement, the Credit Agreement Lenders made available the following facilities (collectively, the “Credit Facilities”): (i) a US\$175 million Term Loan A facility for the Borrowers due November 3, 2026 (“Term Loan A”); (ii) a US\$500 million Term Loan B facility for the Borrowers due November 3, 2027 (“Term Loan B”); and (iii) a revolving credit facility in the maximum amount of US\$150 million for LVI due November 3, 2026 (the “Revolver”). As of March 9, 2023, there was approximately US\$656 million of principal estimated to be outstanding under the Credit Facilities, plus an additional approximately US\$8 million in respect of letters of credit. The proposed Monitor understands LVI is presently unable to draw additional amounts under the Revolver as a result of LVI being unable to make the representations required to draw on that facility.
3. The obligations under the Credit Agreement are secured by, among other things, a first priority security interest in all present and after-acquired personal property of the Borrowers and the Guarantors, including the Applicant (including shares and other equity interests owned by them), excluding the Excluded Property (as defined in the Credit Agreement) (the “Credit Agreement Collateral”). The Credit Agreement defines Excluded Property to include, among other things, redemption settlement assets of the Applicant that are required to be reserved for collectors in the AIR MILES® Reward Program, together with all investments thereof and all interest, dividends and other amounts earned or derived therefrom. As such, the Reserve Account (together with all interest, dividends and other amounts earned or derived therefrom) does not form part of the Credit Agreement Collateral.



4. Goodmans has provided an Ontario law opinion to KSV that, subject to customary assumptions and qualifications, the security relating to the Credit Agreement creates a validly perfected security interest in favour of the Credit Agreement Agent in the Credit Agreement Collateral. If appointed Monitor, KSV will obtain security opinions under the laws of any other applicable provinces as necessary and update the Court accordingly.

### 3.1.2 The Reserve Account and the Reserve Security

1. As described above, the Reserve Account was established to provide certain security in favour of the Reserve Trustee for the benefit of Collectors. The Reserve Trustee holds, as security for the performance by the Applicant of its obligations to Collectors, a first-ranking security interest in (among other things) the investments held in the Reserve Account and the proceeds thereof for the benefit of Collectors pursuant to an Amended and Restated Security Agreement dated December 31, 2001 (the "Reserve Security").
2. Goodmans has provided an Ontario law opinion to KSV that, subject to customary assumptions and qualifications, the Reserve Security creates a validly perfected security interest in favour of the Reserve Trustee in (among other things) the investments and proceeds thereof held in the Reserve Account. If appointed Monitor, KSV will obtain security opinions under the laws of any other applicable provinces as necessary and update the Court accordingly.

### 3.1.3 Other Secured Creditors

1. Wells Fargo Equipment Finance Company has filed a registration under the *Personal Property Security Act* (Ontario) ("Ontario PPSA") in connection with photocopiers, printers, video conferencing equipment and other office equipment. KSV understands that the Applicant no longer has the equipment referred to in this registration.

## 3.2 Unsecured Creditors and other claims

1. Based on the Applicant's books and records, the unsecured obligations primarily consist of:
  - a) \$18.1 million owing to various contractors and other vendors in respect of goods and services provided to the Applicant for which the Applicant has been invoiced. Additional amounts are accrued but not yet invoiced;
  - b) \$7.7 million owing to the Reward Suppliers for redemptions by Collectors (which includes the Reward Supplier obligations of Travel Services); and
  - c) \$960,000 owing to the landlord in respect of the Toronto leased location for unpaid March 2023 rent obligations.
2. Further information concerning the Applicant's liabilities is provided in the Stewart Affidavit.

## 4.0 Cash Flow Forecast

1. The Applicant, with the assistance of A&M, as its restructuring advisor, has prepared a Cash Flow Forecast for the thirteen-week period March 10, 2023 to June 9, 2023, which the proposed Monitor has reviewed and discussed with A&M. The Cash Flow Forecast and the Applicant's statutory report thereon pursuant to Section 10(2)(b) of the CCAA are attached as Appendix "B".
2. The proposed Monitor notes the following in respect of the Cash Flow Forecast:
  - a) Receipts are primarily driven by the issuance of reward miles from Partners to Collectors. Partners pay a per mile fee to the Applicant based on reward miles issued and, in certain cases, reward miles redeemed by Collectors.
  - b) Reserve Account Funding reflects funds transferred to the Reserve Account to cover reward redemptions by Collectors.<sup>2</sup> It is not contemplated that the Applicant will fund any amounts to the Reserve Account until after the Comeback Hearing as the next such payment is not due until the end of March 2023.
  - c) Operating disbursements include client services spend, data and technology, collector experience and marketing services, commodity tax and other taxes payable, general corporate expenditures and capital expenditures.
  - d) Corporate intercompany transfers include, without limitation, monthly payments from the Applicant to LVI under the Intercompany Services Agreement, and to BFH pursuant to a transition services agreement entered into in connection with the Spinoff Transaction (the "TSA").<sup>3</sup> The Applicant requires the services provided by LVI and BFH pursuant to the foregoing arrangements to operate in the normal course. Corporate intercompany transfers also include payments from the Applicant to LVI in respect of insurance coverage.
3. Based on the proposed Monitor's review of the Cash Flow Forecast, the cash flow assumptions appear reasonable. The proposed Monitor's statutory report on the Cash Flow Forecast is attached as Appendix "C".

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<sup>2</sup> As described in the Stewart Affidavit, once a month in relation to the previous month, the Applicant must deliver a certificate to the Reserve Trustee setting out the (i) Required Reserve Amount; (ii) value of the Reserve Account; (iii) amount of any deficiency or excess in the Reserve Account compared to the Required Reserve Amount; and (iv) value of any deposit required to correct such deficiency. The Applicant must fund the Reserve Account within 30 days of any month for which the foregoing certificate shows a deficiency in such amount as required pursuant to the terms of the Redemption Reserve Agreement to address the deficiency.

<sup>3</sup> As described in the Stewart Affidavit, the Applicant historically paid approximately US\$500,000 per month to LVI pursuant to the Intercompany Services Agreement, of which LVI remitted approximately US\$160,000 to BFH pursuant to the TSA on account of services provided by BFH thereunder for the benefit of the Applicant. The proposed Monitor understands that the Applicant has been made a direct beneficiary of the TSA, with the result being that the Applicant will now make payment directly to BFH for any services provided by BFH to the Applicant under the TSA. Payments by the Applicant to LVI under the Intercompany Services Agreement going forward will therefore be reduced to exclude amounts paid by the Applicant to BFH under the TSA.

4. It is contemplated that the Applicant will be able to fund its business from its own cash on hand until the Comeback Hearing. As such, although the Applicant has entered into the DIP Facility, approval of the DIP Facility will not be sought until the Comeback Hearing.

#### **4.1 Intercompany Funding**

1. As discussed above and in the Stewart Affidavit, the Applicant's parent company, LVI, provides the Intercompany Services to the AIR MILES® Business, including information technology, legal, tax, insurance, human resources, accounting and treasury services. The Applicant is heavily reliant on LVI and these Intercompany Services to operate its business in the normal course.
2. The proposed Monitor has been advised by A&M that LVI has limited liquidity. As described in the Stewart Affidavit, the Applicant recently funded an \$18 million intercompany loan to LVI and made various payments under the Credit Agreement on behalf of LVI, which it had not done historically.
3. In light of LVI's liquidity position, the DIP Facility contemplates that the Applicant will on-lend a portion of its DIP borrowings to LVI on a super-priority basis to facilitate the provision of the Intercompany Services as well as fund the costs of the Chapter 11 Cases (the "Intercompany DIP Loan"). The proposed Monitor will provide further information in respect of the proposed Intercompany DIP Loan in advance of the Comeback Hearing.

### **5.0 Court Ordered Charges**

#### **5.1 Administration Charge**

1. The Applicant is seeking an Administration Charge in an initial amount not to exceed \$2 million to secure the fees and expenses of the Monitor, counsel to the Monitor (Goodmans), counsel to the Applicant (Cassels), the Applicant's restructuring advisor (A&M), and the monthly work fee and expenses of the Applicant's financial advisor, PJT.
2. The Administration Charge is a customary provision in an initial order in a CCAA proceeding – it is required to provide security to the professionals engaged to assist a debtor company and to protect them if the debtor is unable to pay professional fees and costs during the CCAA process.
3. The Applicant has worked with Cassels, A&M and the proposed Monitor to estimate the proposed amount of the Administration Charge.
4. KSV believes that the Administration Charge is reasonable and appropriate in the circumstances given the complexities of the Applicant's proceedings, the Applicant's liquidity position, the unpaid professional fees as of the date of this Report and the professional fees that will continue to be incurred until the Comeback Hearing. Accordingly, the professionals require the benefit of the Administration Charge to protect them for their pre-filing fees related to preparing for these proceedings, as well as for their fees and costs that will be incurred until the Comeback Hearing. Without such protection, the professionals are unlikely to be prepared to continue to provide services in these proceedings.

## 5.2 D&O Charge

1. The proposed D&O Charge provides protection for the directors and officers should the Applicant fail to pay certain obligations arising after the CCAA filing date which may give rise to liability for directors and officers, including sales taxes, payroll and vacation pay. The Cash Flow Forecast contemplates that payroll and sales taxes will continue to be paid in the ordinary course and the Applicant is projected to have sufficient liquidity to do so provided the DIP Facility is approved at the Comeback Hearing.
2. The directors and officers shall only be entitled to the benefit of the D&O Charge to the extent that they do not have coverage under any directors' and officers' insurance policy or to the extent such coverage is insufficient to pay an indemnified amount.
3. As provided in the table below, the amount of the D&O Charge was estimated by the Applicant, with the assistance of A&M (the Applicant's restructuring advisor), taking into consideration current vacation pay liability and the estimated peak payroll and sales tax obligations that can accrue during the ten-day period prior to the Comeback Hearing:

(unaudited)	Amount (CAD\$000s)
Wages (including accrued bonus programs)	2,430
Unremitted source deductions	375
Vacation pay	2,152
Benefits and RRSP contributions – employer portion	84
Unremitted HST	5,277
Provincial sales tax	204
<b>Total D&amp;O Charge</b>	<b>10,522</b>

4. The proposed Monitor has reviewed the backup provided by the Applicant in respect of the potential obligations to be covered by the D&O Charge and is of the view that the D&O Charge is reasonable in the circumstances as the continued involvement of the directors and officers is beneficial to the Applicant and these proceedings.

## 5.3 Priority of Charges

1. Each of the Charges is proposed to rank in priority to all other encumbrances against the Property, other than (a) any Person with a properly perfected purchase money security interest under the Ontario PPSA or other applicable legislation, (b) the Reserve Trustee in respect of the Reserve Security, and (c) any Person that has not been served with notice of the application for the Initial Order.
2. At the Comeback Hearing, the Applicant intends to seek to have the Charges (as well as certain other priority charges to be sought) rank in priority to the encumbrances of any Person other than those encumbrances described in (a) and (b) above.
3. The Applicant proposes the Charges have the following priority as between them (amounts presented below are those proposed to be granted in the Initial Order – any increases to the amounts covered by the Charges will be addressed at the Comeback Hearing):

- a) First, the Administration Charge (to a maximum of \$2,000,000); and
- b) Second, the D&O Charge (to a maximum of \$10,521,000).

## 6.0 Proposed Payment of Critical Vendor Obligations

1. On its application for the Initial Order, the Applicant is seeking a provision permitting it to make payments to certain critical vendors integral to the operation of the AIR MILES® Business in respect of obligations arising prior to the commencement of its CCAA proceedings, including insurance, security, phone and internet, payment processing, utilities, website maintenance, IT services and marketing for its corporate operations. Certain of these obligations are owed to vendors and independent contractors with specific skills that cannot be easily replaced.
2. The Applicant seeks authorization to pay these obligations subject to the consent of the Monitor, with the Monitor considering, among other factors, whether:
  - a) the supplier or service provider is considered critical to the business and ongoing operations of the Applicant and whether the payment is required to ensure ongoing supply;
  - b) the proposed payment is expected to preserve, protect or enhance the value of the Applicant's property or business; and
  - c) the applicable supplier or service provider is otherwise required to continue to provide goods or services to the Applicant after the date of the Initial Order pursuant to the terms of the proposed Initial Order.
3. The proposed Monitor is familiar with provisions of orders under the CCAA permitting the debtor company to pay specific pre-filing obligations, where appropriate. In certain circumstances, such payments are required or appropriate to preserve the value of a debtor's business for the benefit of stakeholders. KSV is aware of the Applicant's reliance on certain critical suppliers to sustain operations, including critical technology infrastructure and subscription service providers.
4. For the foregoing reasons, KSV is supportive of the Applicant's request for the inclusion of a provision authorizing it to pay certain pre-filing obligations owing to critical vendors. KSV will review each proposed payment in accordance with the foregoing criteria prior to providing (or not providing) the Monitor's required consent, with a view to ensuring that payments to suppliers/contractors in respect of pre-filing obligations are limited to those reasonably necessary in the circumstances.

## 7.0 The Continued Operation of the AIR MILES® Reward Program

1. The Applicant intends to continue operating the AIR MILES® Reward Program in the ordinary course. In doing so, Partners are expected to continue working cooperatively with the Applicant, including as mandated by the Initial Order. The Cash Flow Forecast contemplates that the Applicant will continue to contribute to the Reserve Account and use Reserve Account funds to satisfy Collector redemptions and Reward Supplier obligations in the normal course, including obligations to airlines, tour

operators, logistics and warehousing providers, retail brokers and other providers of hard goods.

2. The Applicant believes the ability to fund and utilize the Reserve Account is necessary to honour Collector redemptions and crucial to preserving Collector and Partner confidence, and is therefore necessary to preserve the value of the AIR MILES® Business.

## **8.0 Cash Management System**

1. The Applicant's cash management system (the "Cash Management System") is detailed in the Stewart Affidavit, and accordingly, is not repeated in this Report.
2. In connection with this CCAA proceeding, the Applicant is seeking the authority to continue to operate the Cash Management System to maintain the funding and banking arrangements already in place.
3. The proposed Monitor believes that it is necessary for the Applicant to continue using its existing Cash Management System as the Cash Management System includes the necessary accounting controls to enable the Applicant to trace funds and ensure that all transactions are adequately documented and readily ascertainable. A material change to the Applicant's Cash Management System is likely to disrupt operations, which is not in the interest of the Applicant or its stakeholders.

## **9.0 Stay of Proceedings re: Travel Services**

1. Travel Services is not an applicant in this proceeding (or the Chapter 11 Cases) but is the subject of certain relief sought in the Applicant's CCAA application. It is a Nova Scotia unlimited liability company that is a wholly owned subsidiary of the Applicant. Travel Services is a licensed travel agent which, as agent for the Applicant, arranges travel services for Collectors in exchange for the redemption of reward miles and/or cash.
2. The Applicant is requesting that the stay of proceedings apply to Travel Services to ensure that: (i) Travel Services continues to have the ability to assist the Applicant by providing the travel agency services necessary to the AIR MILES® Business; and (ii) funds can flow uninterrupted as required between the Applicant's operating accounts, the Reserve Account and Travel Services.
3. The proposed Monitor believes it is reasonable and appropriate for the stay of proceedings to apply to Travel Services as it will assist in continuing normal course operations of the Applicant and will enhance the Applicant's ability to maximize value in these proceedings by pursuing the SISP and completing the transaction contemplated by the Stalking Horse APA (or another value maximizing transaction), as the Applicant's equity interest in Travel Services is contemplated to be a purchased asset under the Stalking Horse APA. It would be detrimental to the Applicant's ability to successfully complete a transaction under the SISP if proceedings were commenced or other steps taken against Travel Services.



## 10.0 Creditor Notification

1. Due to the large number of Collectors and the sensitive nature of personal information related to the Collectors, the Applicant is requesting that the Monitor be relieved of its obligations under the CCAA to: (i) provide notice of this CCAA proceeding to Collectors holding reward miles balances that would entitle the Collectors to redeem for items with a cost to the Applicant of at least \$1,000 (the “Specified Collectors”) in accordance with the applicable regulations; and (ii) make the required information related to Specified Collectors publicly available on the creditor’s list. The Applicant estimates that there are hundreds of thousands of Specified Collectors, approximately 13% of which have not provided a valid email address.
2. Instead, and in addition to the required publication of notice of this CCAA proceeding by the Monitor in the *National Post* (National Edition), the Applicant proposes to publish a statement on the AIR MILES® business website ([www.airmiles.ca](http://www.airmiles.ca)) and send an email notification to all of the Specified Collectors for whom the Applicant has current email addresses in the form attached in Exhibit “N” to the Stewart Affidavit.
3. The proposed Monitor believes the relief sought is appropriate in the circumstances. The proposed Monitor intends to treat the information related to Specified Collectors as confidential and will not release this information to stakeholders, absent further order of the Court.
4. The proposed Initial Order requires the Monitor to:
  - a) publish without delay a notice in the national edition of the *National Post* (National Edition) newspaper containing the information prescribed under the CCAA; and
  - b) within five days of the granting of the Initial Order to:
    - i. make the Initial Order publicly available in the manner prescribed under the CCAA;
    - ii. send, in the prescribed manner, a notice to every known creditor (other than the Specified Collectors) with a claim against the Applicant of more than \$1,000 advising that the order is publicly available; and
    - iii. prepare a list, showing the names and addresses of those creditors (other than the Specified Collectors), and the estimated amounts of those claims based on the Applicant’s books and records, and make it publicly available in the prescribed manner.
5. If appointed Monitor, KSV will also post the Initial Order and all motion materials on the Case Website.



## 11.0 Comeback Hearing

1. If the Initial Order is granted, the Applicant intends to return to Court within ten days to seek two orders at the Comeback Hearing: (i) an Order approving the SISP and the Stalking Horse APA as the stalking horse bid in the SISP, including contemplated bid protections in favour of BMO and a related priority charge; and (ii) an Amended and Restated Initial Order, among other things, (a) increasing the amount of the Charges, (b) approving the DIP Facility (including the Intercompany DIP Loan) and granting a related priority charge, and (c) approving certain employee retention plans and a related priority charge.
2. As referenced above, if appointed as Monitor, KSV will file a report providing its views on the relief the Applicant is seeking at the Comeback Hearing in advance of same.

## 12.0 Conclusion and Recommendation

1. Based on the foregoing, KSV respectfully recommends that this Honourable Court make an Initial Order granting the Applicant's CCAA application on the terms of the draft Initial Order set out in the Applicant's application record.

\* \* \*

All of which is respectfully submitted,

*KSV Restructuring Inc.*

**KSV RESTRUCTURING INC.,  
IN ITS CAPACITY AS PROPOSED MONITOR OF  
LOYALTYONE, CO.  
AND NOT IN ITS PERSONAL CAPACITY**

## Appendix “B”

## DIP Agreement Cash Flow Projections

### LoyaltyOne (Airmiles)

(Unaudited, \$USD in millions)

Week Ending	Notes	Week 1 17-Mar	Week 2 24-Mar	Week 3 31-Mar	Week 4 7-Apr	Week 5 14-Apr	Week 6 21-Apr	Week 7 28-Apr	Week 8 5-May	Week 9 12-May	Week 10 19-May	Week 11 26-May	Week 12 2-Jun	Week 13 9-Jun	13 Week Total
<b>Receipts</b>	[2]	\$ 2.4	\$ 0.7	\$ 7.0	\$ 19.9	\$ 3.3	\$ 1.4	\$ 3.6	\$ 20.8	\$ 1.6	\$ 1.3	\$ 3.9	\$ 4.8	\$ 20.6	\$ 91.4
<b>Disbursements</b>															
Reserve Account Funding	[3]	-	(10.3)	(22.8)	-	-	-	-	(15.0)	-	-	-	-	(14.0)	(62.1)
Operating Disbursements	[4]	(3.8)	(6.0)	(0.8)	(0.6)	(3.4)	(0.6)	(4.1)	(1.9)	(0.9)	(0.9)	(0.5)	(2.0)	(3.3)	(29.0)
Payroll	[5]	-	(2.4)	-	(2.4)	-	(2.4)	-	(2.4)	-	(2.4)	-	(2.4)	-	(14.2)
Corporate Interco Transfers	[6]	-	(2.4)	(2.8)	(2.5)	(2.0)	(2.3)	(13.1)	-	-	-	-	-	-	(25.1)
Non-Operating Disbursements	[7]	(0.3)	(0.6)	(4.1)	(0.7)	(0.6)	(0.6)	(2.8)	(0.3)	(0.3)	(0.1)	(0.1)	(0.7)	(2.8)	(13.8)
Professional Fees	[8]	-	(1.1)	(5.8)	(0.3)	(5.3)	-	(3.8)	(0.3)	(3.9)	-	(3.1)	(0.3)	0.3	(23.5)
DIP Interest & Fees	[9]	-	-	-	-	-	-	-	-	-	-	-	-	-	-
<b>Total Disbursements</b>		<b>(4.1)</b>	<b>(22.7)</b>	<b>(36.3)</b>	<b>(6.5)</b>	<b>(11.2)</b>	<b>(5.9)</b>	<b>(23.7)</b>	<b>(19.9)</b>	<b>(5.1)</b>	<b>(3.4)</b>	<b>(3.7)</b>	<b>(5.4)</b>	<b>(19.8)</b>	<b>(167.7)</b>
<b>Net Cash Flow</b>		<b>\$ (1.7)</b>	<b>\$ (22.0)</b>	<b>\$ (29.3)</b>	<b>\$ 13.5</b>	<b>\$ (7.9)</b>	<b>\$ (4.5)</b>	<b>\$ (20.2)</b>	<b>\$ 1.0</b>	<b>\$ (3.4)</b>	<b>\$ (2.2)</b>	<b>\$ 0.2</b>	<b>\$ (0.5)</b>	<b>\$ 0.8</b>	<b>\$ (76.3)</b>
Beginning Cash Balance		15.4	13.7	14.7	14.9	28.3	20.4	15.9	13.2	14.2	10.8	8.6	8.8	8.3	15.4
Net Cash Flow		(1.7)	(22.0)	(29.3)	13.5	(7.9)	(4.5)	(20.2)	1.0	(3.4)	(2.2)	0.2	(0.5)	0.8	(76.3)
FX Impact		-	-	-	-	-	-	-	-	-	-	-	-	-	-
DIP Financing	[10]	-	23.0	29.5	-	-	-	17.5	-	-	-	-	-	(8.0)	62.0
<b>Ending Cash Balance</b>		<b>\$ 13.7</b>	<b>\$ 14.7</b>	<b>\$ 14.9</b>	<b>\$ 28.3</b>	<b>\$ 20.4</b>	<b>\$ 15.9</b>	<b>\$ 13.2</b>	<b>\$ 14.2</b>	<b>\$ 10.8</b>	<b>\$ 8.6</b>	<b>\$ 8.8</b>	<b>\$ 8.3</b>	<b>\$ 1.1</b>	<b>\$ 1.1</b>
<b>Memo: DIP Roll-Forwards</b>															
Beginning Balance - Drawn DIP		-	-	23.0	52.5	52.5	52.5	52.5	70.0	70.0	70.0	70.0	70.0	70.0	-
Draw / (Paydown)		-	23.0	29.5	-	-	-	17.5	-	-	-	-	-	(8.0)	62.0
<b>Ending Balance - Drawn DIP</b>		<b>\$ -</b>	<b>\$ 23.0</b>	<b>\$ 52.5</b>	<b>\$ 52.5</b>	<b>\$ 52.5</b>	<b>\$ 52.5</b>	<b>\$ 70.0</b>	<b>\$ 70.0</b>	<b>\$ 70.0</b>	<b>\$ 70.0</b>	<b>\$ 70.0</b>	<b>\$ 70.0</b>	<b>\$ 62.0</b>	<b>\$ 62.0</b>
Beginning Balance - PIK Fees & Interest		-	-	1.4	1.5	1.6	1.8	1.9	2.1	2.3	2.5	2.7	2.9	3.1	-
PIK DIP Fees & Interest		-	1.4	0.1	0.1	0.1	0.1	0.2	0.2	0.2	0.2	0.2	0.2	0.2	3.3
<b>Ending Balance - PIK Fees &amp; Interest</b>		<b>\$ -</b>	<b>\$ 1.4</b>	<b>\$ 1.5</b>	<b>\$ 1.6</b>	<b>\$ 1.8</b>	<b>\$ 1.9</b>	<b>\$ 2.1</b>	<b>\$ 2.3</b>	<b>\$ 2.5</b>	<b>\$ 2.7</b>	<b>\$ 2.9</b>	<b>\$ 3.1</b>	<b>\$ 3.3</b>	<b>\$ 3.3</b>
<b>Total Drawn DIP and PIK Fees &amp; Interest</b>		<b>\$ -</b>	<b>\$ 24.4</b>	<b>\$ 54.0</b>	<b>\$ 54.1</b>	<b>\$ 54.3</b>	<b>\$ 54.4</b>	<b>\$ 72.1</b>	<b>\$ 72.3</b>	<b>\$ 72.5</b>	<b>\$ 72.7</b>	<b>\$ 72.9</b>	<b>\$ 73.1</b>	<b>\$ 65.3</b>	<b>\$ 65.3</b>

## DIP Agreement Cash Flow Projections

### LoyaltyOne Inc. - Forecast Assumptions

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#### LoyaltyOne (Airmiles) Forecast Notes

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- [1] The purpose of the projection is to present a cash flow forecast of LoyaltyOne Inc. for the period March 10, 2023 to June 9, 2023 in respect to its proceedings under the Companies' Creditor Arrangement Act ("CCAA").
- [2] Receipts: Primarily driven by collections from sponsors of the Airmiles rewards program. Sponsors pay a fee on a per mile basis on rewards miles issued.
- [3] Reserve Account Funding: Funds transferred to a restricted reserve account used to cover rewards redemptions for consumers of the Airmiles rewards program. The funding amount is driven by miles collected within the month netted against investment performance.
- [4] Operating Disbursements: General operating disbursements including for
  - o Client services spend
  - o Data & technology
  - o Collector experience & marketing services
  - o Commodity tax and income tax installment payments
  - o General corporate expenditures
  - o Capital expenditures
- [5] Payroll: Payroll & Benefits for LoyaltyOne employees.
- [6] Corporate Interco Transfers: Includes \$0.5M monthly payment from LoyaltyOne to Loyalty Ventures Inc. per intercompany services agreement. Also includes transfer of DIP proceeds through intercompany loans of \$24.6M during the projection period. The transfer of DIP proceeds will be used by Loyalty Ventures Inc. for coverage of general operating costs, professional fees, and other expenses related to the Chapter 11 process commencing in the U.S. Intercompany loans are subject to a 15% withholding tax.
- [7] Non-Operating Disbursements: Includes spend related to employee retention programs, independent director fees, withholding tax on intercompany loans, and other expenditures related to the CCAA proceedings.
- [8] Professional Fees: Includes fees for company advisors, lender advisors, and general case administration.
- [9] DIP Interest & Fees: Assumes 2% funding fee, 1.5% unused line fee, and 14% interest all paid in kind. All paid in kind DIP fees & Interest paid through sale proceeds at closing.
- [10] DIP Financing: Total DIP financing of \$70.0M funded into LoyaltyOne with \$62.0 million outstanding at closing. A portion of DIP proceeds will be loaned to Loyalty Ventures Inc., to fund general operating and Chapter 11 costs throughout the process.

## Appendix “C”

**LOYALTY VENTURES INC.****Senior Secured Superpriority Debtor in Possession Credit Facility  
Term Sheet****Dated as of March [\_\_\_], 2023**

This Senior Secured Superpriority Debtor in Possession Credit Facility Term Sheet (including all schedules, annexes and exhibits hereto, as may be amended, amended and restated, supplemented or otherwise modified from time to time, this “**Term Sheet**”) contains the terms and conditions of a proposed senior secured superpriority debtor in possession credit facility (the “**DIP Credit Facility**”) to be provided by LoyaltyOne, Co., a corporation existing under the laws of Nova Scotia (the “**DIP Lender**”), to Loyalty Ventures Inc., a Delaware corporation (the “**Borrower**” and, together with the Guarantors (as defined below), the “**Debtors**”), in connection with the Debtors’ cases (the “**Chapter 11 Cases**”) filed in the United States Bankruptcy Court for the Southern District of Texas (the “**Bankruptcy Court**”) pursuant to chapter 11 of title 11 of the United States Code (as amended, the “**Bankruptcy Code**”) on March 10, 2023 (the “**Petition Date**”).

The DIP Lender has commenced a proceeding under the *Companies’ Creditors Arrangement Act* (Canada) (the “**CCAA**”, and such proceeding, the “**DIP Lender’s CCAA Proceeding**”) before the Ontario Superior Court of Justice (Commercial List) (the “**CCAA Court**”) and in connection with the DIP Lender’s CCAA Proceeding, subject to approval of the CCAA Court, Bank of Montreal, as lender, has agreed to make a secured credit facility available to the DIP Lender, as borrower (the “**CCAA DIP Loans**”), pursuant to, and in accordance with, that certain DIP Term Sheet, dated as of March 10, 2023 (the “**CCAA DIP Term Sheet**”), by and among Bank of Montreal, as lender, and the DIP Lender, as borrower. The DIP Lender will request the CCAA Court in the DIP Lender’s CCAA Proceeding to approve the CCAA DIP Term Sheet and CCAA DIP Loans which authorize the DIP Lender to provide the DIP Credit Facility to the Borrower.

Capitalized terms used but not defined herein have the meanings assigned to them in the Transaction Support Agreement, dated as of March 10, 2023 (including all amendments, modifications, exhibits, and supplements thereto, the “**TSA**”) by and among the Company Parties (as defined therein), the Consenting Lenders (as defined therein) and Bank of America, N.A., as administrative agent (the “**Prepetition Agent**”).

<b>BORROWER:</b>	Loyalty Ventures Inc., a Delaware corporation, in its capacity as a debtor and debtor in possession under the Bankruptcy Code.
<b>GUARANTORS:</b>	LVI Lux Holdings S.à r.l., a private limited liability company organised and established under the laws of the Grand Duchy of Luxembourg, LVI Sky Oak LLC, a Delaware limited liability company, and Rhombus Investments L.P., a Bermuda limited partnership (collectively, the “ <b>Guarantors</b> ” and each, individually, a “ <b>Guarantor</b> ”).
<b>DIP LENDER:</b>	LoyaltyOne, Co., a corporation existing under the laws of Nova Scotia.
<b>DIP CREDIT FACILITY:</b>	Subject to the approval of the CCAA DIP Loans by the CCAA Court in accordance with the CCAA DIP Term Sheet, the DIP Lender agrees to make senior secured superpriority debtor in possession

	loans to the Borrower consisting of delayed-draw term loans to be made from time to time during the Availability Period (as defined below) in an aggregate principal amount not to exceed at any time outstanding aggregate principal commitments of \$30,000,000 (the “ <b>DIP Commitment</b> ”), of which up to \$15,000,000 of the DIP Commitment may be funded on and after the Interim Closing Date (as defined below) (the “ <b>Interim DIP Amount</b> ”) and up to the full remaining DIP Commitment will be funded on or after the Final Closing Date (as defined below) (the “ <b>Final Commitment</b> ”), in each case, in accordance with the CCAA DIP Term Sheet and the DIP Agreement Cash Flow Projection (as defined in the CCAA DIP Term Sheet) in effect at such time.
<b>AVAILABILITY PERIOD &amp; DRAW SCHEDULE:</b>	<p>The DIP Credit Facility shall be available from the Interim Closing Date to the earlier of (i) the Maturity Date (as defined below) and (ii) the date of the termination of the DIP Credit Facility pursuant to the terms hereof or the DIP Orders (the “<b>Availability Period</b>”). The Borrower may request draws under the DIP Credit Facility in accordance with the following schedule (the “<b>Draw Schedule</b>”) by delivering a notice of borrowing to the DIP Lender in substantially the form of <u>Exhibit A</u> attached hereto (the “<b>Notice of Borrowing</b>”), duly executed by an authorized officer of the Borrower:</p> <p>(i) <u>Interim DIP Loans</u>: On or after the Interim Closing Date and prior to the Final Closing Date, the Borrower may request loans in one or more borrowings in an amount not to exceed the amount set out in respect thereof for the relevant period in the DIP Agreement Cash Flow Projection (as defined in the CCAA DIP Term Sheet) in effect at such time and in an aggregate principal amount not to exceed the Interim DIP Amount, in accordance with the provisions of this Term Sheet and the terms of the Interim Order (as defined below) (the “<b>Interim DIP Loans</b>”); and</p> <p>(ii) <u>Final DIP Loans</u>: On or after the Final Closing Date, the Borrower may request loans in one or more borrowings in an amount not to exceed the amount set out in respect thereof for the relevant period in the DIP Agreement Cash Flow Projection (as defined in the CCAA DIP Term Sheet) in effect at such time and in an aggregate principal amount (the “<b>Final DIP Amount</b>”) not to exceed the DIP Commitment, less amounts drawn under the Interim DIP Loans (the “<b>Final DIP Loans</b>” and, together with the Interim DIP Loans, the “<b>DIP Loans</b>”), in accordance with the provisions of this Term Sheet and the terms of the Final Order (as defined below).</p>
<b>CLOSING DATES:</b>	“ <b>Interim Closing Date</b> ” means the date on which the “Conditions Precedent to Interim DIP Loans” (including, without limitation, entry of the Interim Order) shall have been satisfied or waived in accordance with this Term Sheet.



	<p><b>“Final Closing Date”</b> means the date on which the “Conditions Precedent to Final DIP Loans” as set forth below (including, without limitation, entry of the Final Order) shall have been satisfied or waived in accordance with this Term Sheet.</p>
<p><b>TERM SHEET, INTERIM ORDER AND FINAL ORDER:</b></p>	<p>The provisions of this Term Sheet, the Interim Order and the Final Order shall govern the DIP Credit Facility.</p> <p>As used herein, the term <b>“Interim Order”</b> means an interim order with respect to the Chapter 11 Cases and the DIP Credit Facility granting interim approval of the DIP Credit Facility, in form and substance reasonably satisfactory to the Borrower, the Prepetition Agent and that certain Ad Hoc Group of Prepetition Lenders represented by Gibson, Dunn &amp; Crutcher LLP (the <b>“Term B Ad Hoc Group”</b>).</p> <p>As used herein, the term <b>“Final Order”</b> means a final order with respect to the Chapter 11 Cases and the DIP Credit Facility granting final approval of the DIP Credit Facility (together with the Interim Order, the <b>“DIP Orders”</b>), in form and substance reasonably satisfactory to the Borrower, the Prepetition Agent and the Term B Ad Hoc Group.</p>
<p><b>USE OF PROCEEDS:</b></p>	<p>Subject to Bankruptcy Court approval and the terms of the DIP Orders, proceeds of the DIP Credit Facility will be used in accordance with this Term Sheet for (a) working capital and general corporate purposes of the Debtors and/or their respective subsidiaries, (b) any adequate protection payments in accordance with the DIP Orders, and (c) for bankruptcy-related costs and expenses in respect of the Chapter 11 Cases, including, without limitation, funding and implementing a chapter 11 plan and the payment of professional fees in respect thereof and/or related thereto.</p> <p>No cash collateral or proceeds of the DIP Credit Facility may be used to investigate, challenge, object to or contest the validity, security, perfection, priority, extent or enforceability of any amount due under, or the liens or claims granted under or in connection with, the DIP Credit Facility or the Prepetition Credit Agreement (as defined below); provided that the official committee of unsecured creditors (the <b>“Creditors’ Committee”</b>), if any, may use up to \$50,000 to investigate (but not seek formal discovery in respect of or commence or prosecute any challenge or objection related to) any such claims or causes of action.</p>
<p><b>FIRST PRIORITY SECURITY INTEREST:</b></p>	<p>All DIP Loans and other liabilities and obligations owed to the DIP Lender under or in connection with this Term Sheet and/or the DIP Orders (collectively, the <b>“DIP Obligations”</b>), in all cases subject to (a) the Carve-Out (as defined in the Interim Order) and (b) the Prepetition Permitted Liens (as defined below), shall be:</p>

	<p>(i) pursuant to Bankruptcy Code section 364(c)(1), entitled to superpriority administrative expense claim status in the Chapter 11 Cases of the Debtors with priority over any and all administrative expenses, whether heretofore or hereafter incurred, of the kind specified in Bankruptcy Code sections 503(b) or 507(a);</p> <p>(ii) pursuant to sections 364(c)(2) secured by a fully perfected first-priority lien on the DIP Collateral (as defined below), to the extent that such DIP Collateral is unencumbered;</p> <p>(iii) pursuant to section 364(c)(3), secured by a fully perfected junior lien on the DIP Collateral, to the extent such DIP Collateral is subject to a Prepetition Permitted Lien; and</p> <p>(iv) pursuant to section 364(d)(1), secured by a fully perfected first-priority priming lien on the DIP Collateral, <i>provided</i> that such lien shall be subordinate to the Prepetition Permitted Liens but senior to all other liens (including the liens securing the Prepetition Loan Obligations (as defined below)) (collectively, the liens described in clauses (ii), (iii) and (iv), the “<b>DIP Liens</b>”).</p> <p>The DIP Liens under Section 364(d)(1) shall not be <i>pari passu</i> with, or subordinated to, any other liens or security interests (whether currently existing or hereafter created), subject in each case only to the Carve-Out and any Prepetition Permitted Liens.</p> <p>As used herein, “<b>Prepetition Permitted Liens</b>” shall mean certain liens senior by operation of law and other valid, non-avoidable, senior priority liens in existence as of the Petition Date that are perfected after the Petition Date as permitted by Bankruptcy Code section 546(b). For the avoidance of doubt, the Prepetition Secured Parties’ liens on account of the Prepetition Loan Obligations are not Prepetition Permitted Liens.</p>
<b>PREPETITION CREDIT FACILITY:</b>	<p>Certain of the Debtors owe approximately \$665.0 million (which for certainty, includes amounts outstanding under term and revolving credit facilities and outstanding letters of credit) plus accrued interest, premiums (if any), costs, fees, expenses and other obligations (the “<b>Prepetition Loan Obligations</b>”) under that certain Credit Agreement, dated as of November 3, 2021 (as amended and otherwise modified prior to the date hereof, the “<b>Prepetition Credit Agreement</b>”) by and among the Borrower and certain of its subsidiaries, as borrowers, certain other subsidiaries of Borrower, as guarantors, the financial institutions party thereto from time to time as lenders (the “<b>Prepetition Lenders</b>”), and the Prepetition Agent (together with the Prepetition Lenders, the “<b>Prepetition Secured Parties</b>”).</p>

<b>ADEQUATE PROTECTION FOR PREPETITION SECURED PARTIES:</b>	As set forth and provided in the Interim Order.
<b>DIP COLLATERAL:</b>	<p><b>“DIP Collateral”</b> means, collectively, all assets of the Borrower and each Guarantor (and, in the case of each Debtor, its bankruptcy estate) of any nature whatsoever and wherever located, whether first arising prior to or following the Petition Date, now owned or hereafter acquired, including all accounts, chattel paper, commercial tort claims, deposit accounts, documents, equipment, general intangibles, goods (including fixtures), instruments, inventory, investment property, money, cash, cash equivalents, and all deposit accounts, securities accounts, commodities accounts and lockboxes together with all money, cash, securities and other investment property on deposit from time to time therein, letters of credit, letter-of-credit rights and other supporting obligations, real property, books and records, and to the extent not otherwise included, all substitutions, replacements, accessions, products and other proceeds and products (whether tangible or intangible and including, without limitation, insurance proceeds, licenses, royalties, income, payments, claims, damages and proceeds of suit) of any and all of the foregoing and all collateral security and guarantees given by any person or entity with respect to any of the foregoing, and subject to entry of the Final Order, the proceeds of avoidance actions under chapter 5 of the Bankruptcy Code.</p> <p>All of the DIP Liens described herein with respect to the DIP Collateral shall be effective and perfected by the Interim Order and the Final Order and without the necessity of the execution or filing of mortgages, security agreements, pledge agreements, account control agreements, financing statements or other agreements or filings.</p>
<b>INTEREST RATE:</b>	<p>Interest will be payable on the unpaid principal amount of all DIP Loans at a rate per annum equal to Base Rate (as defined below) plus 6.00%, payable in cash on the Termination Date.</p> <p>All interest under this Term Sheet shall be calculated on the basis of a 365-day year for the actual number of days elapsed.</p> <p>As used herein, <b>“Base Rate”</b> means a fluctuating rate of interest per annum, expressed on the basis of a year of three-hundred and sixty-five (365) days, which is equal at all times to the greater of (a) the base rate of interest (however designated) of Bank of Montreal for determining interest chargeable by it on United States Dollar commercial loans in Canada and (b) the sum of (i) the Federal Funds Effective Rate and (ii) 1.00% per annum. The Base Rate shall be calculated in a manner consistent the calculation of the “Base Rate” in the CCAA DIP Term Sheet.</p>

	As used herein, “ <b>Federal Funds Effective Rate</b> ” means, for any day, an annual rate of interest, expressed on the basis of a year of 360 days, equal, for each day during such period, to the weighted average of the rates on overnight United States federal funds transactions with members of the Federal Reserve System arranged by United States federal funds brokers, as published for such day (or, if such day is not a business day, for the preceding business day) by the Federal Reserve Bank of New York or, for any day on which that rate is not published for that day by the Federal Reserve Bank of New York, the simple average of the quotations for that day for such transactions received by the Bank of Montreal from three United States federal funds brokers of recognized standing selected by it. The Federal Funds Effective Rate shall be calculated in a manner consistent with the calculation of the “Federal Funds Effective Rate” under the CCAA DIP Term Sheet.
<b>DEFAULT RATE:</b>	At all times automatically following the occurrence and during the continuance of an Event of Default, the unpaid principal amount of all DIP Loans shall bear interest at a rate equal to 2.00% per annum in excess of the interest rate set forth under “Interest Rate” above.
<b>MATURITY DATE:</b>	The DIP Obligations shall be repaid in full on the earlier to occur of (the “ <b>Termination Date</b> ”): (i) the occurrence of any Event of Default (as defined below) that is continuing, has not been cured or waived in writing by the DIP Lender (and, to the extent any CCAA DIP Loans are outstanding at such time, Bank of Montreal), and where the DIP Lender has notified the Borrower in writing that the DIP Obligations have been accelerated; and (ii) five (5) business days after the trust established pursuant to the Combined Disclosure Statement and Plan (as defined in the TSA) confirmed pursuant to the Confirmation Order (as defined in the TSA) has recovered net proceeds sufficient to satisfy the DIP Obligations in full (the “ <b>Maturity Date</b> ”), unless otherwise agreed by the Borrower, the DIP Lender (after consultation with the Monitor (as defined in the CCAA DIP Term Sheet)), the Consenting Lenders (as defined in the TSA) and, to the extent any CCAA DIP Loans are outstanding at such time, Bank of Montreal, in each case, acting reasonably. The Maturity Date may be extended at the request of the Borrower and with the prior written consent of the DIP Lender for such period and on such terms and conditions as the Borrower and the DIP Lender may agree.
<b>OPTIONAL PREPAYMENTS:</b>	The Borrower may prepay the DIP Loans in whole or in part at any time without premium or penalty.
<b>MANDATORY PREPAYMENTS:</b>	None.
<b>CONDITIONS PRECEDENT TO INTERIM DIP LOANS:</b>	The obligations of the DIP Lender to make any Interim DIP Loans will be subject to satisfaction, or waiver by the DIP Lender to the

	<p>extent applicable, of each of the following conditions precedent in connection with the related draw request:</p> <ul style="list-style-type: none"> <li>(i) the CCAA Court in the DIP Lender's CCAA Proceeding shall have approved the CCAA DIP Term Sheet and CCAA DIP Loans which authorize the DIP Lender to advance the Interim DIP Loans to the Borrower on the terms set out herein (and for certainty, subject to, and in accordance with, the DIP Agreement Cash Flow Projection (as defined in the CCAA DIP Term Loan Term Sheet) in effect at such time);</li> <li>(ii) the Borrower shall have delivered to the DIP Lender a Notice of Borrowing in connection with such draw request for such Interim DIP Loans;</li> <li>(iii) the Interim Order shall have been entered by the Bankruptcy Court and the Borrower shall be in compliance in all material respects with the Interim Order and any Approved Budget (as defined in the Interim Order); and</li> <li>(iv) (w) the CCAA DIP Loans shall have been approved by an order of the CCAA Court and such approval order shall not be the subject of any appeal or leave for appeal application and shall not have been stayed in any respect, (x) no "Event of Default" (as defined in the CCAA DIP Loan Term Sheet) shall have occurred and be continuing, (y) all conditions precedent for the DIP Lender (in its capacity as a borrower under the CCAA DIP Loans) to obtain an advance under the CCAA DIP Loans shall have been satisfied by the DIP Lender or waived by Bank of Montreal (in its capacity as the lender under the CCAA DIP Loans) and (z) the DIP Lender shall have cash on hand from the proceeds of such CCAA DIP Loans in an amount not less than the aggregate principal amount of requested Interim DIP Loans.</li> </ul>
<b>CONDITIONS PRECEDENT TO FINAL DIP LOANS:</b>	<p>The obligations of the DIP Lender to make any Final DIP Loans shall be subject to satisfaction, or waiver by the DIP Lender to the extent applicable, of each of the following conditions precedent in connection with the related draw request:</p> <ul style="list-style-type: none"> <li>(i) the CCAA Court in the DIP Lender's CCAA Proceeding shall have approved the CCAA DIP Term Sheet and CCAA DIP Loans which authorize the DIP Lender to advance any such Final DIP Loans to the Borrower on the terms set out herein (and for certainty, subject to, and in accordance with, the DIP Agreement Cash Flow Projection (as defined in the CCAA DIP Term Loan Term Sheet) in effect at such time);</li> <li>(ii) the Borrower shall have delivered to the DIP Lender a Notice of Borrowing in connection with such draw request no later than 11:00 am New York City time one (1) business day prior</li> </ul>

	<p>to the requested funding date for such Final DIP Loans (or such later time as the DIP Lender may agree to);</p> <p>(iii) the Final Order shall have been entered by the Bankruptcy Court and the Borrower shall be in compliance in all material respects with the Final Order and any Approved Budget; and</p> <p>(iv) (w) the CCAA DIP Loans shall have been approved by an order of the CCAA Court and such approval order shall not be the subject of any appeal or leave for appeal application and shall not have been stayed in any respect, (x) no “Event of Default” (as defined in the CCAA DIP Loan Term Sheet) shall have occurred and be continuing, (y) all conditions precedent for the DIP Lender (in its capacity as a borrower under the CCAA DIP Loans) to obtain an advance under the CCAA DIP Loans shall have been satisfied by the DIP Lender or waived by Bank of Montreal (in its capacity as the lender under the CCAA DIP Loans) and (z) the DIP Lender shall have cash on hand from the proceeds of such CCAA DIP Loans in an amount not less than the aggregate principal amount of requested Final DIP Loans.</p>
<b>EVENTS OF DEFAULT:</b>	<p>Each of following shall constitute an “<b>Event of Default</b>”:</p> <p>(i) failure by the Borrower to be in compliance in all material respects with provisions of this Term Sheet or any DIP Order (in each case, subject to applicable grace and/or cure periods);</p> <p>(ii) the filing of any application by the Borrower (other than any application for financing provided by a third party that seeks authority to pay all of the DIP Obligations in full in cash upon the closing of such financing) for the approval of (or an order is entered by the Bankruptcy Court approving) any claim arising under Bankruptcy Code section 507(b) or any other provision of the Bankruptcy Code or any security, mortgage, collateral interest or other lien in its Chapter 11 Case, in each case, which is <i>pari passu</i> with or senior to the DIP Liens, excluding the Carve-Out, liens arising under the DIP Orders and/or <i>pari passu</i> or senior liens expressly contemplated by the DIP Orders;</p> <p>(iii) the Borrower files a pleading in any court seeking or supporting an order to revoke, reverse, stay, vacate, amend, supplement or otherwise modify this Term Sheet or any DIP Order, or to disallow any DIP Obligations, in whole or in part, in each case, without the consent of Bank of Montreal (in its capacity as the lender under the CCAA DIP Loans);</p> <p>(iv) the appointment in the Borrower’s Chapter 11 Case of a trustee, receiver, examiner, or responsible officer with enlarged powers relating to the operation of the business of the</p>

	<p>Borrower (powers beyond those set forth in Bankruptcy Code sections 1106(a)(3) and (a)(4));</p> <p>(v) the granting of relief from the automatic stay by the Bankruptcy Court to any other creditor or party in interest in the Borrower's Chapter 11 Case with respect to any portion of the DIP Collateral with an aggregate value of at least \$5.0 million;</p> <p>(vi) the conversion of the Borrower's Chapter 11 Case into a case pursuant to chapter 7 of the Bankruptcy Code;</p> <p>(vii) the termination of the Borrower's exclusive right to propose a plan under chapter 11 of the Bankruptcy Code;</p> <p>(viii) a dismissal of the Chapter 11 Case;</p> <p>(ix) subject to applicable grace and/or cure periods, failure to pay principal, interest or other DIP Obligations in full when due, including without limitation, on the Maturity Date; or</p> <p>(x) the acceleration of the CCAA DIP Loans after the occurrence and during the continuance of an "Event of Default" (as defined in the CCAA DIP Loan Term Sheet) under the CCAA DIP Term Sheet.</p>
<b>REMEDIES UPON EVENT OF DEFAULT:</b>	As set forth in the DIP Orders.
<b>DIP ORDERS GOVERN:</b>	To the extent of any conflict or inconsistency between this Term Sheet and any DIP Order, such DIP Order shall govern.
<b>AMENDMENTS, WAIVERS AND MODIFICATIONS:</b>	No provision of this Term Sheet or any DIP Order may be amended, waived or otherwise modified other than by an instrument in writing signed by the Borrower, the DIP Lender, the Prepetition Agent (acting at the direction of the Required Lenders under, and as defined in, the Prepetition Credit Agreement) and, to the extent any CCAA DIP Loans are outstanding at such time, Bank of Montreal.
<b>ASSIGNMENTS:</b>	Other than as collateral security for the CCAA DIP Loans, the DIP Lender may not assign all or any part of the DIP Loans or the DIP Commitments without the prior written consent of the Borrower. The Borrower may not assign all or any part of its obligations under the DIP Credit Facility without the prior written consent of the DIP Lender.
<b>GOVERNING LAW AND JURISDICTION:</b>	The laws of the State of New York (except as governed by the Bankruptcy Code) shall govern this Term Sheet.

	Each of the Borrower and the DIP Lender submits to the exclusive jurisdiction of the Bankruptcy Court for any action, matter or dispute hereunder and waives any right to trial by jury.
<b>COUNTERPARTS AND ELECTRONIC TRANSMISSION:</b>	This Term Sheet may be executed in any number of counterparts and by different parties hereto on separate counterparts, each of which when so executed and delivered, shall be deemed an original, and all of which, when taken together, shall constitute one and the same instrument. Delivery of an executed counterpart of a signature page to this Term Sheet by facsimile, "PDF" or other electronic transmission shall be effective as delivery of a manually executed counterpart of this Term Sheet.
<b>TAXES:</b>	All payments of principal and interest due under the terms of this Term Sheet shall be made by the Borrower without deduction for or on account of any present or future tax, assessment, or other governmental charge imposed upon such payment by any governmental authority, political subdivision or taxing authority thereof or therein (collectively, " <b>Taxes</b> "). If the Borrower shall at any time be required by law to withhold any Taxes, the Borrower will pay as additional amounts to the DIP Lender such amounts as may be necessary so that every net payment to the DIP Lender after withholding for or on account of any Taxes will not be less than the amount required under the terms of this Term Sheet then due and payable.
<b>CURRENCY AND JUDGMENT CURRENCY:</b>	<p>Unless otherwise specified herein, all dollar amounts are in the lawful currency of the United States of America. The Borrower shall pay to the DIP Lender all payments on account of principal and interest hereunder in lawful money of the United States of America.</p> <p>If in the recovery by the DIP Lender of any amount owing by the Borrower hereunder in any currency, judgment can only be obtained in another currency and because of changes in the exchange rate of such currencies between the date of judgment and payment in full of the amount of such judgment, the amount received by the DIP Lender is less than the recovery provided for under the judgment, the Borrower shall immediately pay any such shortfall to the DIP Lender and such shortfall can be claimed by the DIP Lender against the Borrower as an alternative or additional cause of action.</p>

*[Remainder of page intentionally left blank]*



**DIP LENDER:**

**LOYALTYONE, CO.,** as DIP Lender

By: \_\_\_\_\_  
Name:  
Title:

**BORROWER:****LOYALTY VENTURES INC.**

By: \_\_\_\_\_  
Name:  
Title:

**GUARANTORS:****LVI LUX HOLDINGS S.À R.L.**

By: \_\_\_\_\_  
Name:  
Title:

**LVI SKY OAK LLC**

By: \_\_\_\_\_  
Name:  
Title:

**RHOMBUS INVESTMENTS L.P.**

By: \_\_\_\_\_  
Name:  
Title:

**EXHIBIT A TO TERM SHEET**  
**FORM OF NOTICE OF BORROWING**

**Date:** \_\_\_\_\_

THIS NOTICE OF BORROWING (this “**Notice**”) is delivered in accordance with the terms of that certain Senior Secured Superpriority Debtor in Possession Credit Facility Term Sheet, dated as of March [ ], 2023 (as amended, restated, amended and restated, supplemented or otherwise modified from time to time, including all schedules, annexes and exhibits hereto, the “**Term Sheet**”), by and among LOYALTY VENTURES INC., a Delaware corporation (the “**Borrower**”) and Guarantors (as defined therein) party thereto, and LOYALTYONE, CO., a corporation existing under the laws of Nova Scotia (the “**DIP Lender**”), in connection with cases to be filed by the Borrower and Guarantors in the United States Bankruptcy Court for the Southern District of Texas pursuant to chapter 11 of title 11 of the United States Code on March 10, 2023. Capitalized terms used herein without definition shall have the meanings set forth in the Term Sheet. To the extent the provisions set forth in this Notice conflict with any provisions in the Term Sheet, the Term Sheet shall govern.

The undersigned, as [the chief executive officer, president or chief financial officer] of the Borrower, hereby certifies to the DIP Lender, on behalf of the Borrower, and not in any individual capacity, that he/she is authorized to execute this Notice and hereby gives notice to the DIP Lender of the Borrower’s request to borrow [an Interim][a Final] DIP Loan in the amount of \$ \_\_\_\_\_ on \_\_\_\_\_.

The undersigned hereby requests that such funds be disbursed to the following account:

Name of Bank: [ ]  
 ACH Routing Number: [ ]  
 Account No.: [ ]  
 Wire Transfer ABA: [ ]  
 SWIFT: [ ]

[The undersigned, as the [chief executive officer, president or chief financial officer] of the Borrower, hereby certifies to the DIP Lender, on behalf of Borrower, and not in any individual capacity, that as of the date hereof, no Event of Default has occurred and is continuing or will occur under the DIP Credit Facility or [the Interim Order]<sup>1</sup>[the Final Order]<sup>2</sup> before or after giving effect to the [Interim][Final] DIP Loan.

*[Signature page follows]*

<sup>1</sup> To be included for any borrowing made after the Interim Closing Date and prior to the Final Closing Date.

<sup>2</sup> To be included for any borrowing made after the Final Closing Date.

IN WITNESS WHEREOF, the undersigned has duly executed and delivered this Notice as of the date first set forth above.

**BORROWER:**

**LOYALTY VENTURES INC.**

By: \_\_\_\_\_  
Name:  
Title:

## Appendix “D”

## Comparative Summary of DIP Facilities

January 2020 to March 2023

(\$, millions)

Debtor	Lender	Filing Type	Monitor	Filing Date	Jurisdiction	Industry	Commitment (\$MM)	Fees	Interest rate
Acerus Pharmaceuticals Corporation et al.	First Generation Capital Inc.	CCAA	EY	January 26, 2023	Ontario	Healthcare	7.00	Reasonable fees and expenses of the lender	8%
Laboratoires Bodycad Inc.	Sante BB inc.	CCAA	Raymond Chabot	December 22, 2022	Quebec	Healthcare	2.16	Unclear - materials not available	Unclear - materials not available
DCL Corporation	Wells Fargo Bank, National Association, as administrative agent	CCAA	A&M	December 20, 2022	Ontario	Distribution	55.00		SOFR Loan obligations and Letters of Credit: Adjusted Term SOFR or Canadian BA Rate, plus 4.00% Base Rate obligations and Swingline Loans: US Base Rate or Canadian Base Rate, plus 3.00% Unused line fee of 0.50% Additional default interest of 2.0%
Groupe Sélection Inc.	National Bank, CIBC, Desjardins, TD, BMO, HSBC, Briva Finance and Fiera	CCAA	PwC	November 21, 2022	Quebec	Food & Accommodation	20.00		
Manitoba Clinic Medical Corporation and The Manitoba Clinic Holding Co. Ltd.	CIBC	CCAA	A&M	November 30, 2022	Manitoba	Healthcare	4.00	Reasonable fees and expenses of the lender	Prime plus 5%
Trichome Financial Corp.	Cortland Credit Lending Corporation	CCAA	KSV	November 7, 2022	Ontario	Cannabis	4.88	Commitment fee of \$97,000	14%
Springer Aerospace Holdings Limited and 1138969 Ontario Inc.	Hillmount Capital Inc.	CCAA	MNP	November 23, 2022	Ontario	Professional Services	1.50	Commitment fee of \$60,000, Lender Legal Fees, Disbursements and HST - To be determined by Lender's solicitor	The greater of RBC Prime plus 7% or 12 % per annum
Pure Gold Mining Inc.	Sprott Private Resource Lending II (Collector), LP	CCAA	KSV	October 31, 2022	British Columbia	Mining	10.00		15%
Cannapie Group Inc. et al.	Cardinal Advisory Limited	CCAA	BDO	November 3, 2022	Ontario	Cannabis	0.50	Commitment fee of \$10,000	12%
The Flowr Corporation et al.	1000343100 Ontario Inc.	CCAA	EY	October 20, 2022	Ontario	Cannabis	2.00	Commitment fee of \$40,000	Prime plus 12%
Xebec Adsorption Inc. et al.	National Bank of Canada	CCAA	Deloitte	September 29, 2022	Quebec	Oil and Gas	3.60		
Superette Inc. et al.	SNDL Inc.	CCAA	EY	August 30, 2022	Ontario	Cannabis	1.37		15%
Speakeasy Cannabis Club Ltd.	Travelers Capital Corp.	CCAA	Crowe MacKay	July 27, 2022	British Columbia	Cannabis	1.00	Commitment fee of 4.25%; standby fee of 2.5%; break fee of 5%	RBC prime rate (currently 4.7%) plus 725 basis points (currently 11.95%)
MPX International Corporation	Certain Debentureholders	CCAA	KSV	July 24, 2022	Ontario	Cannabis	2.67	Commitment fee of 2%	12%
Sproutly, Inc. and Toronto Herbal Remedies Inc.	0982244 B.C. Ltd. o/a Isle of Mann Property Group	CCAA	BDO	June 24, 2022	Ontario	Cannabis	0.75	Facility fee of 2%	14%
Revlon Inc. et al.	The BrandCo Lenders and certain Prepetition ABL Lenders	Foreign order recognition	KSV	June 20, 2022	Ontario	Manufacturing		Term DIP Facility - 1% of the aggregate principal amount of each Term DIP Lender's Term DIP Commitment; ABL DIP Facility - 1% of the aggregate Tranche A DIP ABL Commitments as of the Petition Date	Term DIP Facility - SOFR + 775 basis points (with a 1% SOFR floor); LIFO ABL DIP Loans - ABR + 2.50% (with a 1.5% ABR floor); SISO ABL DIP Loans - ABR + 4.75% (with a 2.75% ABR floor)
Canadian Dehua International Mines Group Inc.	Qubo Liu (a 50% shareholder)	CCAA	FTI	June 3, 2022	British Columbia	Mining	0.35		0
MJardin Group Inc., Growforce Holdings Inc., 8586985 Canada Corporation and Highgrade MMJ Corporation	Bridging Finance	CCAA	KSV	June 2, 2022	Ontario	Cannabis	2.00	Upfront fee of \$50,000. Debtor responsible for DIP lender's expenses.	10%
Freshlocal Solutions Inc. et al.	Third Eye Asset Management Inc. / Ayal Capital Advisors EliteFund LP and Heidi S. Shippel Heiland 2008 Irrevocable Trust	CCAA	EY	May 16, 2022	British Columbia	Retail	1) TEC - 10 2) Ayal - 3	1) Closing fee of \$300,000; exit fee of \$300,000; extension fee of \$150,000 payable to extend the maturity date 2) Closing fee of \$90,000	1) Variable interest rate of the RBC Prime Rate + 8% (currently 12.7% per annum) 2) Variable interest rate of the RBC Prime Rate + 5% (currently 9.7% per annum)
Choom Holdings Inc.	1) Aurora Cannabis Inc. 2) Secured creditor other than Aurora	CCAA	EY	April 22, 2022	British Columbia	Cannabis	1) 0.8 2) 0.15	1) Borrower responsible for DIP lender's expenses.	1) 12% 2) 12%
Hazellton Development Corporation	Triumph Eastern Investments Inc.	CCAA	Grant Thornton	April 20, 2022	Ontario	Real Estate	9.00	Commitment fee of \$180,000	13%
0989705 B.C. Ltd. et al.	Gatland, REV and South Street LP	CCAA	A&M	April 1, 2022	British Columbia	Real Estate	1.00		25,000 10%
Eve & Co Incorporated, Natural Medco Ltd. and Eve & Co International Holdings Ltd.	Deans Knight Private Credit GP Inc., as General Partner of Deans Knight Private Credit Limited Partnership and DK Strategic Yield U.S. GP LLC, as General Partner of DK Strategic Yield Master Trust Limited Partnership	CCAA	BDO	March 25, 2022	Ontario	Cannabis	2.20	Facility fee of 60,000. Borrower responsible for DIP lender's expenses.	12%
Rising Phoenix International Inc.	Interim Financing - Gestion Levy Inc. Junior Interim Financing - 6815464 Canada Ltd.	CCAA	Richter	January 6, 2022	Quebec	Education	Interim Financing - 1.75 Junior Interim Financing - 2.5	Unclear - facilities granted under seal	Unclear - facilities granted under seal
Canada Fluorspar (NL) Inc. and Canada Fluorspar Inc. (collectively "CFI")	(i) Bridging Finance Inc., a body corporate, existing pursuant to the laws of Canada, as agent for the Bridging Funds ("BFI") and (ii) Her Majesty in Right of Newfoundland and Labrador, as represented by the Minister of Industry, Energy and Technology (as successor to the Minister of Tourism, Culture, Industry and Innovation)	CCAA	Grant Thornton	CCAA - March 11, 2022 Interim Receivership - February 21, 2022	Newfoundland	Mining	6.50	N/A	Prime plus 12%
Trinity Ravine Community Inc.	Nahid Corporation or an affiliate	CCAA	Deloitte	February 23, 2022	Ontario	Real Estate	0.85	1. one-time fee of \$20,000 payable from proceeds of the first Advance; 2. Advance Fee of \$500 plus HST in respect of each Advance; 3. Utilization Fee in respect of any unutilized portion of the DIP Facility at a rate of 0.35% per annum calculated and compounded monthly in arrears; 4. \$40,000 to be applied against the lender's legal fees and disbursements	The greater of 12% or the TD Bank Prime Rate (currently 2.45%) plus 9.55%
BlackRock Mining Inc. et al.	OMF Fund II H Ltd. and Investissement Québec	CCAA	Deloitte	December 23, 2021	Quebec	Mining	2.00		12% per annum
Kaisen Energy Corp.	Durum Opportunities LP, an affiliate of Durum Capital Inc.	CCAA	EY	December 8, 2021	Alberta	Oil and Gas	1.00	\$50,000 commitment fee	ATB Financial Prime Rate + 5% per annum and is only payable on amounts advanced under the Interim Lender Facility;

## Comparative Summary of DIP Facilities

January 2020 to March 2023

(\$, millions)

Debtor	Lender	Filing Type	Monitor	Filing Date	Jurisdiction	Industry	Commitment (\$MM)	Fees	Interest rate
Harte Gold Corp.	1000025833 Ontario Inc., a wholly owned subsidiary of Silver Lake Resources Limited.	CCAA	FTI	December 7, 2021	Ontario	Other	10.80	Borrower responsible for DIP lender's expenses	(a) in the case of the Balance in the Monitor's Account from time to time, 2% per annum; (b) in the case of any portion of the Loan Amount that has been advanced, 5% per annum from the date of the advance
Boreal Capital Partners	Halmont Properties Corporation	CCAA	EY	25-Nov-21	Ontario	Real Estate	10.00	Borrower responsible for DIP lender's expenses	7.5%
Medifocus Inc. (TSX-v:MFS)	Asset Profits Limited	CCAA	Spergel	8-Sep-21 (NOI)7-Oct-21 (CCAA)	Ontario	Biotech	0.70	Borrower responsible for DIP lender's expenses	9%
Coalspur Mines (Operations) Ltd.	Cline Trust Company LLC	CCAA	FTI	26-Apr-21	Alberta	Mining	26.00	Closing fee of US\$50,000. Undrawn amount fee of 2% on any undrawn amounts. The Borrower must also pay for the Lender and Monitor's reasonable expenses in connection with the loan.	12%
BioEnergy AE Cole-Nord Canada Inc.	Biogaz SP snc	CCAA	Raymond Chabot	6-May-21	Quebec	Biotech	0.30		
CannTrust	Cortland Credit Lending Corporation	CCAA	EY	6-May-21	Ontario	Cannabis	22.50	Confidential	Confidential
Spartan Bioscience Inc.	Casa-Dea Financing Ltd.	NOI continued as CCAA	EY	4-May-21	Ontario	Biotech	0.60	Facility fee of \$6,000. The Borrower is responsible for the Lender's reasonable expenses incurred in connection with the interim financing.	10%
Ardenton Capital Corporation	RCM Capital Management Ltd.	CCAA	KSV	5-Mar-21	British Columbia	Financial Services	5.00	n/a	10%
Just Energy Group Inc. (TSX:JE)	LVS III SPE XV LP, TOCU XVII LLC, HVS XVI LLC and QC II LVS XIV LP	CCAA	FTI	9-Mar-21	Ontario	Oil and Gas	125.00	Commitment fee of \$1.25 million and origination fee of \$1.25 million. The Borrower will be responsible for all of the DIP Lenders' reasonable legal fees incurred in respect of the DIP Financing.	13%
Atis Group	BNS	CCAA	Raymond Chabot	24-Feb-21	Quebec	Manufacturing	6.25	Facility fee of \$112,500	Prime plus 3.75%
TGF Acquisition Parent Ltd., Sun Rich Fresh Foods Inc. and Tiffany Gate Foods Inc.	Cortland Capital Market Services Ltd.	CCAA	EY	17-Feb-21	British Columbia	Food & Accommodation	13.40	Commitment fee of \$516,000.	Either 15% or 12.5%, pursuant to the terms of the Term Sheet
Laurentian University	Firm Capital Corporation	CCAA	EY	1-Feb-21	Ontario	Education	25.00	Commitment fee of \$500,000. The Borrower will be responsible for all of the DIP Lender's reasonable legal fees incurred in respect of the DIP Financing.	Floating at the greater of 8.50% Per Annum or the TD Canada Trust Posted Bank Prime Rate of Interest from time to time plus 6.05% Per Annum
Yatsen Group of Companies	1699803 Ontario Inc.	CCAA	A&M	25-Jan-21	Ontario	Food & Accommodation	5.00	The Borrower and Guarantors must pay the Lender's fees and expenses incurred in connection with the DIP loan and the CCAA proceedings.	3%
FIGR Brands, Inc.	Alliance One Tobacco Canada, Inc.	CCAA	FTI	21-Jan-21	Ontario	Cannabis	16.00	The Borrower and Guarantors must pay the Lender's fees and expenses incurred in connection with the DIP loan and the CCAA proceedings.	8%
King Street Restaurant Group	Third Eye Capital	CCAA	MNP	6-Nov-20	Ontario	Food & Accommodation	3.20	3% closing fee	12%
Creditloans Canada Financing Inc. (o/a Progressa) and Creditloans Canada Capital Inc.	JWC Opportunities Fund Inc.	CCAA	BDO	30-Sep-20	British Columbia	Financial Services	3		12%
Hematite Group	Woodbridge Foam Corporation	CCAA	KPMG	18-Sep-20	Ontario	Automotive	6	The Borrowers must pay the Lender's reasonable fees and expenses in connection with the CCAA proceedings.	15%
UrtheCast Corp.	1) 1262743 B.C. Ltd. 2) HCP-FVL, LLC	CCAA	EY	4-Sep-20	British Columbia	Technology	USD \$3mm term loan facility and USD \$2mm revolving credit facility.	1) The Borrowers must pay the Lender's reasonable fees and expenses in connection with the CCAA proceedings. 2) Standby fee of 2% on any undrawn portion; 3% commitment fee; exit fee of \$160,000-\$400,000, calculated on the basis of how much is drawn down. The Borrower must also pay the Lender's reasonable expenses in connection with the DIP loan.	18%
PharmHouse Inc.	Canopy Rivers Corporation	CCAA	EY	15-Sep-20	Ontario	Cannabis	10.74	The Borrower must pay the Lender's reasonable costs and expenses (including legal) incurred by or on behalf of the Lender in respect of the Facility or any loan documents and in connection with the enforcement of the Lender's rights thereunder.	8%

## Comparative Summary of DIP Facilities

January 2020 to March 2023

(\$, millions)

Debtor	Lender	Filing Type	Monitor	Filing Date	Jurisdiction	Industry	Commitment (\$MM)	Fees	Interest rate
Mountain Equipment Co-operative Groupe Dynamite	Toronto-Dominion Bank, Royal Bank of Canada and Canadian Imperial Bank of Commerce 10644579 Canada Inc.	CCAA	Alvarez & Marsal Deloitte	14-Sep-20 4-Sep-20	British Columbia Quebec	Retail Retail	100 10	The Interim Lenders also provided the petitioners' pre-filing credit facilities, so an "amendment fee" of \$250,000 is payable on the execution of the Interim Financing Credit Agreement. The petitioners are also required to reimburse the Interim Lenders for all reasonable and documented expenses in connection with the Interim Financing Facility and Interim Financing Credit Agreement.	Interest is payable on the outstanding principal amount at the applicable rate per annum for the Prime Rate, BA Rate and LIBO Rate Loans, any unused line fee, and the Default Rate for past due payments (all as defined in the Updated Credit Agreement), plus a rate of 2% per annum, payable on the Maturity Date
Port Capital Development (EV) Inc.	Desjardins Financial Security Life Assurance Company	CCAA	EY	29-May-20	British Columbia	Real Estate	1.80	Commitment fee of \$25k. The Borrower will be responsible for all of the Interim Lender's reasonable legal fees incurred in respect of the Interim Financing and CCAA proceedings.	The higher of (a) the prime rate posted by the Fédération des caisses Desjardins du Québec plus 9.55% per annum, or (b) 12% per annum, accruing daily in arrears on the outstanding amount of the DIP Facility from time to time
Reitmans (Canada) Limited	Bank of Montreal and Roynat Inc.	CCAA	EY	19-May-20	Quebec	Retail	60	The interim financing provides for: 1) a standby charge of 0.6% on amounts committed and not drawn; 2) a commitment fee of \$360k payable on court approval of the interim facility; and 3) reimbursement of the reasonable out-of-pocket expenses.	Prime + 5%
Northern Pulp Nova Scotia Corporation	Paper Excellence Canada Holdings Corporation (in its capacity as Lender) together with one or more other financial institutions or investment funds	CCAA	EY	19-Jun-20	Nova Scotia	Agriculture	21	Commitment fee of 2.5% on any advance and standby fee of 2.5% on any unadvanced portion. Agency fee of \$5,000 per annum.	10%
Moores	JPMorgan Chase Bank, N.A., and a syndicate of lenders	CCAA (recognition of Texas proceeding as foreign main proceeding)	Grant Thornton	5-Aug-20	Ontario	Retail	US\$500, which includes a "creeping roll up" of the US Chapter 11 Debtors' obligations under Prepetition ABL Facility and includes a US\$50 million facility for the Foreign Representative	Commitment fee and letter of credit fee calculated pursuant to a formula in the DIP agreement	Interest calculated pursuant to a formula in the DIP agreement
Bow River Energy Ltd.	2270943 Alberta Ltd.	CCAA	BDO	1-Jun-20	Alberta	Oil and Gas	1.1	The Borrower shall pay all of the Interim Lender's legal fees and out of pocket disbursements and any costs of realization or enforcement, in each case in connection with or otherwise related to the Interim Facility, the Interim Lender Charge, the other Interim Financing Credit Documentation or the CCAA Proceedings.	8%
Korite International	5024639 Ontario Inc.	CCAA	BDO	30-Jun-20	Alberta	Manufacturing	0.702	The Borrower shall pay all of the Interim Lender's legal fees and out of pocket disbursements and any costs of realization or enforcement, in each case in connection with or otherwise related to the Interim Facility, the Interim Lender Charge, the other Interim Financing Credit Documentation or the CCAA Proceedings	Prime plus 3.5% per annum
GNC Holdings	GLAS Trust Company as agent and JP Morgan Chase Bank, N.A.	CCAA - Chapter 11 Recognition Order	FTI	24-Jun-20	Ontario	Retail	200 (GLAS) and 305 (JP Morgan Chase)		
Peraso Technologies Inc.	Roadmap Capital General Partner Ltd., Roadmap Peraso LP III (U.S. and Offshore) and XCOM Labs, Inc.	CCAA	EY	3-Jun-20	Ontario	Technology	Confidential		6% per annum and 8% per annum on overdue amounts
Sequence Energy Ltd.	Confidential	CCAA	EY	29-May-20	Alberta	Oil and Gas	7.00		9% per annum on drawn funds and 1% per annum on undrawn funds. Default interest is an additional 3% on all amounts outstanding.
Green Growth Brands Inc.	All Js Greenspace LLC	CCAA	EY	20-May-20	Ontario	Cannabis	US\$14.2		5% per annum
Dominion Diamond Mines	Washington Diamond Lending, LLC and a syndicate of lenders	CCAA	FTI	23-Apr-20	Alberta	Mining	60.00	DMI shall pay all outstanding fees and expenses to date of the Existing Credit Facility Lenders, including legal and financial advisory expenses, via the initial draw under the Interim Facility	5.25% per annum, payable monthly, and increases to 7.25% in the event of a default
Beleave Inc.	Hegedus Consulting Services Inc.	CCAA	Grant Thornton	5-Jun-20	Ontario	Cannabis	0.50		Interest shall accrue upon the occurrence of any of the following events: (i) in accordance with the terms set out in Schedule "E" of the Stalking Horse APA; or (ii) upon the occurrence of an Event of Default hereunder
Entrec Corporation	Wells Fargo Capital Finance Corporation Canada as Administrative Agent	CCAA	A&M	14-May-20	Alberta	Transportation	30.00	Amendment fee of \$250,000 (interim facility is provided as amendment to existing credit facilities)	8%
Redrock Camps Inc.	Invivo Diversified Income Limited Partnership	CCAA	BDO	13-May-20	Alberta	Food & Accommodation	2.50	Commitment fee of \$50,000	10%
Quest University Canada	RCM Capital Management Limited	CCAA	PWC	16-Jan-20	British Columbia	Education	8.20	Commitment fee of \$35,000; structuring fee of 4% on each drawdown	9% until the maturity date; 15% thereafter



## Comparative Summary of DIP Facilities

January 2020 to March 2023

(\$, millions)

Debtor	Lender	Filing Type	Monitor	Filing Date	Jurisdiction	Industry	Commitment (\$MM)	Fees	Interest rate
JMB Crushing Systems	ATB Financial / Canadian Aggregate Resource Corporation	CCAA	FTI	1-May-20	Alberta	Manufacturing	0.9 / 0.5		10% / 10%
Aldo Group	National Bank of Canada	CCAA	EY	7-May-20	Quebec	Retail	60.00	Standby charge of 1.25% on amounts committed and not drawn and commitment fee of \$600,000	LIBOR + 5.5% for the first 9 months and LIBOR + 6.5% thereafter. An additional 2% applies where there is a default.
James E. Wagner Cultivation Corporation	Trichome Financial Corp.	CCAA	KSV	01-Apr-20	Ontario	Cannabis	8.20	Commitment fee of \$120,000	10.00%
Green Relief	1) Antonio Battaglia / Dr. Neilank Jha; 2) 2650064 Ontario Inc.	CCAA	PwC	08-Apr-20	Ontario	Cannabis	1) 0.25 / 0.5; 2) 1.5	2) The Company must pay the DIP Lender's reasonable costs and expenses to a maximum of \$100,000	1) 5%; 2) 5%
Pure Global Cannabis Inc. et al.		CCAA	EY	19-Mar-20	Ontario	Cannabis	4.00	2.25% of DIP facility	9.25%
Lydian International Limited	Orion Co IV (ED) Limited, Resource Capital Fund VI L.P. and Osisko Bermuda Limited	CCAA	Alvarez & Marsal	23-Dec-19	Ontario	Mining	Confidential		Confidential
2607380 Ontario Inc.	Meridian	CCAA	Richter	26-Feb-20	Ontario	Real Estate	7.18	Commitment fee of \$107,000, availability fee of \$2,000 per month.	9.25%
Pier 1 Imports (U.S.), Inc.	Various pre-petition lenders	Foreign order recognition	Alvarez & Marsal	18-Feb-20	Ontario	Retail	USD \$256.0	\$2.4 million in aggregate fees (equal to 0.9% of the total financing)	Revolving loans: LIBOR + 3% FILO Loans: LIBOR + 4.5% ABL Term Loan: LIBOR + 8%
Ontario Graphite	Orionis Corporation	CCAA	Deloitte	12-Feb-20	Ontario	Mining	2.75		15.0%
Invictus MD Strategies	ATB Financial	CCAA	PwC	13-Feb-20	British Columbia	Cannabis	3.00	\$60,000 upfront fee (2% of total commitment, \$500/mo. monitoring fee.	10.0%
Rebuts Solides Canadiens inc. et al	RECYC-QUÉBEC and le Ministre de l'Environnement de la Lutte contre les changements climatiques	CCAA	PwC	03-Feb-20	Quebec	Recycling	9.00		5.0%

## Appendix “E”

Comparative Summary of Break Fees  
January 2020 to March 2023

Debtor	Purchaser	Proceeding Type	Trustee	APA date	Jurisdiction	Industry	A Termination Fee	B Expense Reimbursement	C = A + B Total Break Fee ("BF")	Estimated Transaction Value ("TV")	BF as a % of TV
Robus Resources Inc.	Robus Equity Acquisition Corporation, as nominee of Blue Fin Group LLP and Robus Services LLC	Receivership	A&M	08-Dec-22	Alberta	Oil & Gas	182,000		182,000	USD\$9,100,000	2.00%
The Flow Corporation et al.	1000343100 Ontario Inc.	CCAA	EY	31-Oct-22	Ontario	Cannabis	185,000		185,000	\$3,888,888.88 plus the Closing DIP Loan (as defined below) and Assumed Liabilities	4.76%
Solvaqua Inc.	2464525 Alberta Ltd.	Receivership	MNP	01-Oct-22	Alberta	Other	175,000		175,000	A cash payment sufficient to cover various security interests, a CRA claim and a holdback, plus the payment of the balance of the purchase price being \$2.5 million, to be paid by way of set-off against (as a non-cash credit reduction of) the Amaki Claim.	7.00%
Cannapie Group Inc. et al.	Cardinal Advisory Limited	CCAA	BDO	08-Nov-22	Ontario	Cannabis	175,000	25,000	200,000	\$3.5 million cash, plus Assumed Liabilities, if any	5.70%
iS5 Communications Inc.	Elektrophenix GmbH	NOI	Grant Thornton	17-Oct-22	Ontario	Technology	USD \$200,000	USD \$200,000	USD \$250,000	USD \$5 million, a portion of which will be comprised of a "credit bid" of amounts owing under the DIP Term Sheet	5.00%
Go-To Developments Holdings Inc.	2357616 Ontario Inc.	Receivership	KSV	08-Aug-22	Ontario	Real Estate	-	60,000	60,000	9.5 million or greater	1.00%
Just Energy Group	The DIP lenders and one of their affiliates	CCAA	FTI	04-Aug-22	Ontario	Oil & Gas	US\$14.66 million	-	US\$14.66 million	US\$184.9 million in cash, plus up to an additional \$10 million, a credit bid of US\$252.7 million, plus the assumption of certain liabilities	3.40%
Zenabis Group	2657408 Ontario Inc.	CCAA	EY	16-Jun-22	Quebec	Cannabis	-	750,000	750,000	Unclear - confidential	Unclear
Freshloc Solutions Inc.	Third Eye Capital Corporation	CCAA	EY	17-Jun-22	British Columbia	Retail	Unclear - confidential	Unclear - confidential	Unclear - confidential	Unclear - confidential	2.50%
Cura-Can Health Corp. and its wholly-owned subsidiary The Clinic Network Canada Inc.	Avonlea-Drewry Holdings Inc.	Receivership	KPMG	14-Mar-22	Alberta	Cannabis	325,000		325,000	Approximately \$6,750,000 of which \$6,500,000 will be credited against the indebtedness owing to the purchaser	4.80%
Jam Hospitality Inc. et al.	2424115 Alberta Ltd.	Receivership	PwC		Alberta	Food & Accommodation	500,000			18.5 million	
Balanced Energy Oilfield Services Inc. et al.	XDI Energy Solutions Inc.	Receivership	FTI	21-Mar-22	Alberta	Oil & Gas	250,000			(i) CA \$11,250,000 in cash; (ii) such amount as it required to pay out and satisfy, in full, the first charge held by Laurentian Bank over certain equipment held by BUSA (currently estimated at approximately CA\$900,000); (iii) the dollar amount equal of costs funded by the Senior Secured Lender to repair the damaged coiled tubing unit of BCAN having serial No. 27124977-0435A-1013 (the "Damaged Unit"); (iv) the dollar amount equal to the value of any coiled tubing used by the Receiver in the ongoing operation of the Debtors' business prior to closing (estimated at approximately \$150,000); and (v) the dollar amount equal to the costs incurred by the Receiver in conducting annual maintenance on the Debtors' equipment, less revenue earned, all during the period after the date of the SSP Approval Order until closing	Unclear
BlackRock Metals Inc. et al.	OMF Fund II H Ltd. and Investissement Québec	CCAA	Deloitte	22-Dec-21	Quebec	Mining	2.5 million		2.5 million	Credit bid of \$90,759M	2.75%
Behr Technologies Inc.	13486826 Canada Inc.	NOI	Farber	19-Jan-22	Ontario	Technology	75,000		75,000	Purchase price comprised of a credit bid of \$1,000,000 in debt owing under the DIP Facility plus cash in a to-be-determined amount for priority payables and any assumed contract cure payments plus the assumption of certain liabilities	Unclear
Harte Gold Corp.	1000025833 Ontario Inc.	CCAA	FTI	15-Dec-21	Ontario	Mining	-	-	-	-	Unclear
McEwan Enterprises Inc.	2864785 Ontario Corp.	CCAA	A&M		Ontario	Food & Accommodation	390,000		390,000	(A) \$2,200,000, plus (B) an amount equal to Cure Costs, plus (C) the assumption of the Assumed Obligations by the Purchaser	Unclear
Junction Craft Brewing Inc.	1000003509 Ontario Limited	NOI	Richter	05-Nov-21	Ontario	Food & Accommodation	50,000	25,000	75,000	400,000 cash plus the assumption of certain liabilities	Unclear
Nimbus Water Systems Inc.	2752837 Ontario Inc.	Receivership	BDO	06-Sep-21	Ontario	Professional Services	250,000	50,000	300,000	13,000,000	2.31%
O2 Industries Inc.	2841551 Ontario Limited	Receivership	RSM	2021	Ontario	Healthcare	-	-	-	-	0.00%
Turuss (Canada) Industry Co. Ltd.	Westmount Park Investments Inc.	Receivership	MNP	13-Apr-21	Ontario	Manufacturing	Combined break fee and expense reimbursement amount of \$175,000	Combined break fee and expense reimbursement amount of \$175,000	175,000	6,500,000	2.69%
Salt Bush Energy Ltd.	Ironbark Energy Ltd.	NOI	Deloitte	02-Feb-21	Alberta	Oil & Gas	50,000	25,000	75,000	Unclear	Unclear
Allied Track Services Inc.	2806401 Ontario Inc.	NOI	KSV	21-Jan-21	Ontario	Professional Services	-	-	-	104,800,000	0.00%
Family Fitness Inc.	BITA Real Estate Group Inc.	Receivership	A&M	15-Jan-21	Saskatchewan	Other	40,000		40,000	800,000 plus the assumption of assumed liabilities	5.00%
Avenir Sports Entertainment Limited	Avina Acquisition Corp.	Receivership	KSV	15-Dec-20	Alberta	Entertainment	186,000		186,000	4,650,000	4.00%
Urthecast Corp. (TSX:UR)	Antarctica Infrastructure Partners, LLC, an affiliate of Antarctica Capital LLC	CCAA	EY	15-Oct-20	British Columbia	Technology	2,070,000	1,000,000	3,070,000	69,000,000	4.45%
110-112 Avenue Road, 114 Avenue Road and 116 Avenue Road	SC Land Inc.	Receivership	RSM	09-Oct-20	Ontario	Financial Services	-	385,000	385,000	16,100,000	2.39%
Fun and Fitness Trampolines Inc.	2786323 Ontario Inc.	NOI	Crowe Soberman Inc.	26-Oct-20	Ontario	Entertainment	10,000	-	10,000	Purchase price confidential	Unclear - purchase price confidential
Muskoka Grown	Arthur Zwigenberger, in trust for a corporation to be formed under the laws of the Province of Ontario, and 2685164 Ontario Inc.	NOI	Farber	27-Jul-20	Ontario	Cannabis	-	113,000	113,000	11,961,394	<1%
Wire IE (Canada) Inc.	Crown Capital Private Credit Fund, LP	NOI	Farber	20-Jul-20	Ontario	Technology	-	200,000	200,000	\$9.5 million plus the assumption or satisfaction of certain liabilities	Unclear
Bow River Energy Ltd.	2270943 Alberta Ltd.	CCAA	BDO	17-Jul-20	Alberta	Oil & Gas	175,000		175,000	4,290,221.00	4.08%
Cirque du Soleil	Spectacle Bidco LP	CCAA	EY	15-Jul-20	Quebec	Media	-	-	-	US\$1,215 million	Unclear
Dominion Diamond Mines	Washington Diamond Investments Holdings II, LLC	CCAA	FTI	21-May-20	Alberta	Mining	US\$2,522,000	US\$2,250,000	4,772,000	US\$126.1 million in cash, plus up to US\$5.0 million in respect of any incremental amounts outstanding, plus the assumption of certain liabilities	2.0%
Penady (Barrie) Ltd.	Choice Properties Limited Partnership	Receivership	RSM	02-Jun-20	Ontario	Real Estate	-	400,000	400,000	Unclear - credit bid	Unclear
James E. Wagner Cultivation Corporation	Trichome Financial Corp.	CCAA	KSV	31-Mar-20	Ontario	Cannabis	-	100,000	100,000	11,700,000.00	0.9%
Traverse Energy Ltd.	Barrel Oil Corp.	Receivership	EY	05-Feb-20	Alberta	Oil & Gas	97,500	-	97,500	3,250,000.00	3.0%
Viafoura Inc.	InterCap Equity Inc.	NOI	KSV	22-Jan-20	Ontario	Technology	25,000	45,000	70,000	1,491,000.00	4.7%
Waves E-Gaming Inc.	Amulka Ventures Inc.	Receivership	Dodick Landau	16-Jan-20	Ontario	E-gaming	-	-	-	370,000.00	0.0%

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF LOYALTYONE, CO.

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

PROCEEDING COMMENCED AT  
TORONTO

**FIRST REPORT OF THE MONITOR  
(March 16, 2023)**

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