Court File No. CV-11-9283-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

BETWEEN:

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 UNIQUE BROADBAND SYSTEMS, INC. and UBS WIRELESS SERVICES INC.

FACTUM OF THE MONITOR, DUFF & PHELPS CANADA RESTRUCTURING INC.

November 7, 2012

LAX O'SULLIVAN SCOTT LISUS LLP
Counsel
Suite 2750, 145 King Street West
Toronto, ON M5H 1J8

Matthew P. Gottlieb LSUC#: 32268B
Tel: (416) 644-5353
Fax: (416) 598-3730

Lawyers for the Monitor, Duff & Phelps Canada Restructuring Inc.

TO: GOWLING LAFLEUR HENDERSON LLP
1 First Canadian Place
Suite 1600
Toronto, ON M5X 1G5

Patrick Shea
email: patrick.shea@gowlings.com
Benjamin Na
email: benjamin.na@gowlings.com
Kelley McKinnon
email: kelley.mckinnon@gowlings.com
Tel: 416.369.7399
Fax: 416.862.7661

Lawyers for the Applicants

AND TO: BENNETT JONES LLP
1 First Canadian Place
Suite 3400
Toronto, ON M5X 1A4

Derek Bell
email: belld@bennettjones.com
Raj Sahni
email: sahnir@ bennettjones.com
Tel: 416.777.4804
Fax: 416.863.1716

Lawyers for Gerald T. McGoey and Jolian Investments Ltd.

AND TO: ROY ELLIOTT O'CONNOR LLP
200 Front Street West
Suite 2300
Toronto, ON M5V 3K2

Peter Roy
email: plr@reolaw.ca
Tel: 416.362.1989
Fax: 416.362.6204

Lawyers for Alex Dolgonos and DOL Technologies Inc.

AND TO: ONTARIO SECURITIES COMMISSION
Corporate Finance Legal Counsel
20 Queen Street West, Suite 1903
Toronto, ON M5H 3S8

Frederic Duguay
Tel: (416) 593-3677
Fax: (416) 593-3683
Email: fduguay@osc.gov.on.ca

AND TO: GROIA & COMPANY
365 Bay Street, 11th Floor
Toronto, ON MH 2VJ

Joe Groia
Email: jgroia@groiaco.com
Gavin Smyth
Email: gsmyth@groiaco.com
Tel: 416.203.4472
Fax: 416.203.9231

Lawyers for Gerald T. McGoey and Jolian Investments Ltd.

Court File No. CV-11-9283-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

B E T W E E N :

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 UNIQUE BROADBAND SYSTEMS, INC. and UBS WIRELESS SERVICES INC.

FACTUM OF THE MONITOR, DUFF & PHELPS CANADA RESTRUCTURING INC.

PART I ~ THIS MOTION

1. This is a motion by Unique Broadband Systems, Inc. ("UBS") and UBS Wireless Services Inc. ("Wireless") (collectively, the "Company"), for:

(a) an Order approving the process for the marketing for sale by the Monitor, Duff and Phelps Canada Restructuring Inc. (the "Monitor"), of Wireless' shares of LOOK Communications Inc. ("LOOK") (the "Sale Process");

(b) an Order approving the process and timeline for the determination of the validity and quantum and the claims asserted against UBS by Gerald McGoey and Jolian Investments Limited (collectively, "Jolian");

(c) an Order extending the stay period as defined in the Initial Order dated July 5, 2011 to February 1, 2013; and

(d) an Order approving the actions and activities of the Monitor described in the Monitor's Eleventh Report dated October 15, 2012.

2. The Monitor supports the relief sought in the motion and respectfully recommends that the Court grant the requested relief.

3. This Factum is filed by the Monitor in connection with the Sale Process described in the Eleventh Report and Supplement to the Eleventh Report dated November 5, 2012 (the "Reports") and, specifically, to respond to certain issues raised by counsel to Jolian regarding the proposed Sale Process and, in particular, whether the Sale Process complies with or will comply with Canadian securities law. It is the Monitor's position that the Sale Process does and will comply with Canadian securities law.

PART II ~ THE FACTS

Background

4. Pursuant to an Order (the "Initial Order") of the Ontario Superior Court of Justice (Commercial List) made on July 5, 2011, the Company was granted protection under the *Companies' Creditors Arrangement Act* and the Monitor was appointed as Monitor pursuant to the provisions of the CCAA.[1] The stay of proceedings is currently set to expire on November 8, 2012.

5. UBS is a reporting issuer in each of the provinces of Canada and has its shares listed on the TSX Venture Exchange (the "TSX-V"). Wireless is a wholly-owned subsidiary of UBS.

6. UBS has a three-member Board of Directors. The current Directors of UBS are Robert Ulicki, Victor Wells and Ken Taylor. Both Mr. Wells and Mr. Taylor were appointed to UBS' Board of Directors on July 12, 2012 as a result of a settlement reached between UBS and Alex

---

1 R.S.C., 1985, c. C-36.

Dolgonos and his corporation. The Settlement Agreement and the appointment of the two new directors was approved by the Court by Order dated July 6, 2012. Mr. Wells and Mr. Taylor were chosen because they are experienced, independent professionals and because they had no prior relationship or involvement with UBS or any of the relevant parties.

7. Wireless is the largest shareholder of LOOK. Wireless owns 39.2% of LOOK's shares, being 24,864,000 Multiple-Voting and 29,921,000 Subordinate-Voting Shares (collectively, the "Ownership Interest"). The Ownership Interest is the principal asset of Wireless.

8. LOOK is a public company listed on the TSX-V under the symbols "LOK.H" for Multiple Voting Shares and "LOK.K" for Subordinate Voting Shares.

Proposed Sale Process

9. Since obtaining the Initial Order, UBS has been approached by several parties who have expressed an interest in acquiring some or all of the Ownership Interest.

10. Because UBS was receiving unsolicited expressions of interest to acquire the Ownership Interest, the Monitor requested that the Company consider engaging in a formal process to market the Ownership Interest to determine the level of market interest. The Monitor was concerned that there was a *de facto* sale process under way and that some manner of formality was required. The Company's Board also believed that a formal process was required to determine what interest, if any, may exist in the Ownership Interest.

11. As a consequence, members of the UBS Board (as it was then constituted), along with its counsel, the Monitor and the Monitor's counsel, met with two investment banking firms to discuss the marketing of the Ownership Interest. The UBS Board considered the proposals put forward

and discussed them with the Monitor. The Board was concerned with the significant cost of the investment banking firms conducting a sale process regarding the Ownership Interest, and discussed whether the Monitor would be willing to conduct a sale process with respect to the Ownership Interest. The Monitor understands that the Board was also mindful of the fact that the Monitor would, in any event, have a supervisory role in the Sale Process. The Monitor indicated its willingness to conduct a sale process pursuant to an Order granted by this Court.

12. On September 4, 2012, the UBS Board of Directors (with Robert Ulicki abstaining from voting) resolved to carry out a process to solicit offers for the Ownership Interest. The proposed Sale Process is to be run by the Monitor and the Monitor is to make a recommendation to the Board with respect to the offers received. The particulars of the Sale Process are set out in the Eleventh Report. Robert Ulicki will not be involved in any aspect of the Sale Process on behalf of the Company. In effect, a committee of the Board, comprised of Victor Wells and Ken Taylor, will make all decisions regarding the Sale Process on behalf of UBS.

13. At a hearing before Justice Wilton-Siegel on October 31, 2012, counsel to Jolian raised several issues regarding the Sale Process and, in particular, whether the Sale Process violates or would violate Canadian securities law. For the reasons set out below, it is the Monitor's position that the Sale Process does not and will not violate Canadian securities law.

PART III ~ STATEMENT OF ISSUES AND ARGUMENT

14. The issue on this motion is, in part, whether the Court should approve of the Sale Process and direct the Monitor to carry out the Sale Process as set out in the Reports.

15. While many of the issues raised by Jolian are premature and deal with issues relating to whether and when an offer made for the Ownership Interest should be accepted, the Monitor will

deal with each of the issues concerning securities law, including those raised by Jolian below. By responding to these issues, the Monitor is not accepting that they are relevant at this time.

Prospectus Requirements

16. Under the Sale Process, the Monitor will market the entire Ownership Interest and will allow interested parties to seek to obtain the entirety of the Ownership Interest or parts thereof. As part of the Sale Process, the Monitor will only accept an offer from a party that will allow any sale to be exempt from the prospectus requirements under Canadian securities legislation.

17. Under applicable Canadian securities laws, any sale of previously issued securities from the holdings of any "control person" is a distribution of securities which, absent an exemption, attracts the prospectus requirements of such laws.[2] Because Wireless holds more than 20% of the voting rights attached to all outstanding voting securities of LOOK, it is deemed (in the absence of evidence to the contrary) to be a control person. As a result, the sale by Wireless of all or any part of the Ownership Interest will be a sale from a control block.

18. There are two primary prospectus exemptions that Wireless may rely on. First, in accordance with s. 2.10(1) of National Instrument 45-106 - *Prospectus and Registration Exemptions* ("NI 45-106"), the prospectus requirement does not apply to a distribution of a security to a person if (a) that person purchases as principal, (b) the security has an acquisition cost to the purchaser of not less than $150,000 paid in cash at the time of the distribution, and (c) the distribution is of a security of a single issuer.[3]

---

2 *Securities Act*, R.S.O. 1990, c. S.5, ss. 1(1), 53(1).

3 *Prospectus and Registration Exemptions*, O.S.C. NI 45-106 (28 September 2009).

19. Second, section 2.3 of NI 45-106 provides that the prospectus requirement does not apply to a distribution of a security of an issuer to a person who purchases the security as principal and is an accredited investor.[4]

20. As a result of the two exemptions contained in NI 45-106, the Monitor will only sell to a purchaser that fits within one of them. Specifically, to be exempt from prospectus requirements, the sale must be: (a) for an amount not less than $150,000; or (b) to a purchaser that is an "accredited investor". Based on the above, Wireless will be able to sell the Ownership Interest, or a portion thereof, and remain exempt from prospectus requirements contained in Canadian securities laws. As a result, for the purpose of authorizing the Sale Process at this time, there is no basis to suggest that the Sale Process, as set out in the Reports, will violate Canadian securities laws.

Related Party Transactions

21. As set out in the Reports, Robert Ulicki, a director of UBS, has advised that he or a party related to him may be interested in making an offer to purchase the Ownership Interest. As a result, Mr. Ulicki will not, in any way, be involved in the Sale Process on behalf of the Company. All decisions regarding the Sale Process, including whether to accept any offer for the purchase of the Ownership Interest, will be made by the remaining two members of the Board of Directors of UBS.

22. Notwithstanding that the Sale Process has not yet begun and there is no basis upon which to suggest or anticipate that Mr. Ulicki will be the recommended "successful bidder" for the purchase of the Ownership Interest, Jolian is taking the position that the Sale Process is flawed because of

---

4 *Ibid.*

the potential that Mr. Ulicki will be the successful bidder. At the hearing before Justice Wilton-Siegel on October 31, 2012, Jolian alleged that Canadian securities laws will be violated if Mr. Ulicki is the successful bidder and Wireless attempts to consummate a transaction with Mr. Ulicki. This is not accurate.

23. As discussed above, the shares of LOOK trade on the TSX-V. The TSX-V has adopted as its Policy 5.9 the provisions of a multi-lateral instrument published by Ontario and Quebec securities administrators known as "Multilateral Instrument 61-101 *Protection of Minority Security Holders and Special Transactions*" ("MI 61-101"). MI 61-101 requires a reporting issuer that is a party to a "related-party transaction" to obtain (a) a formal valuation of the non-cash assets involved in a related-party transaction (the "Valuation Requirement"), and (b) "minority approval" of such transaction (the "Minority Approval Requirement") prior to the consummation of the transaction.[5] These related-party transaction requirements also apply to transactions carried out by wholly-owned subsidiaries of reporting issuers.

24. As a result, a sale of all or a portion of the Ownership Interest to Mr. Ulicki, a director of UBS, would constitute a related-party transaction for the purposes of MI 61-101 and TSX-V Policy 5.9, and would be subject to the Valuation Requirement and the Minority Approval Requirement, unless an exemption from these requirements is available.

(a) Valuation Requirement Exemptions

25. Because the shares of UBS trade only on the TSX-V, a related-party transaction with respect to the sale of its shares is exempt from the Valuation Requirement.

---

5 *Protection of Minority Security Holders in Special Transactions*, O.S.C., MI 61-101 (1 February 2008) ss. 5.4, 5.6.

26. Specifically, s. 3.1 of Policy 5.9 and s. 5.5(b) of MI 61-101, provide an exemption from the Valuation Requirement for TSX-V listed issuers that do not have their securities inter-listed on the Toronto Stock Exchange, the New York Stock Exchange, the American Stock Exchange, the NASDAQ stock market or a stock exchange outside of Canada and the United States, other than the AIM or the PLUS markets. As the shares of UBS are not listed on any exchange other than the TSX-V, UBS and Wireless can avail themselves of this exemption for the purpose of the proposed sale of the Ownership Interest to Mr. Ulicki or any other related party.

27. Therefore, contrary to the position stated by Jolian, a formal valuation need not be obtained by UBS or Wireless in connection with the sale of the Ownership Interest. Moreover, there are other exemptions that the Company could rely on so as to not be required to provide a formal valuation.

28. Under Policy 5.3, the TSX-V may, in its discretion, still require UBS to provide evidence of value for the disposition of the Ownership Interest to a related party. There is no reason to believe that the TSX-V would require such evidence but, in any event, other expressions of interest received during the Sale Process and the published market for LOOK shares should be all the evidence needed by the TSX-V. Moreover, considering that the process that lead to the proposed sale was mandated and supervised by the Court, the TSX-V would likely elect not to exercise its discretion to require a valuation to be done. UBS intends to provide the TSX-V with notice of a proposed sale of the Ownership Interest in accordance with Policy 5.3.

(b) Minority Approval Requirement Exemption

29. A TSX-V listed issuer is prohibited from consummating a related-party transaction without obtaining "minority approval", being the approval of the issuer's shareholders by ordinary

resolution (having regard to the classes of affected securities, but excluding the related party and any of its affiliates) at a meeting of such shareholders called to consider the transaction. It is noted that this requirement is intended to protect the shareholders of an issuer where a related party is engaged in a transaction; it is not intended to protect competing bidders.

30. Section 5.7(d) of MI 61-101 provides an exemption from the Minority Approval Requirement in respect of any related-party transaction that is subject to Court approval, or where a Court orders that the transaction be effected under bankruptcy or insolvency law, provided that the Court is advised of the Minority Approval Requirement and the exemption provided in section 5.7(d) and does not require compliance with the Minority Approval Requirement.[6]

31. It is respectfully submitted that the Court should not require compliance with the Minority Approval Requirement in connection with a sale of the Ownership Interest in the event the sale is to Mr. Ulicki or any other related party.

32. Simply, any sale of the Ownership Interest would be conducted with the supervision of the Monitor and only pursuant to an Order of this Court. At a hearing held for the purpose of considering whether a sale of the Ownership Interest to Mr. Ulicki or any other related party should be approved, the Court will consider all relevant aspects relating to the proposed transaction, including the process that lead to the proposed transaction and the other offers and interests received with respect to a potential transaction regarding the Ownership Interest. The Court would have to be satisfied that, in the circumstances, a sale of the Ownership Interest (or a portion thereof) to Mr. Ulicki or any other related party is in the best interests of the Company and its stakeholders and that the Sale Process was reasonable in the circumstances. At such a hearing,

---

6 *Ibid*, s. 5.7(d).

all stakeholders would be entitled to attend and make submissions as to whether the proposed transaction should be approved.

33. Moreover, the CCAA explicitly provides that the Court may approve the sale of assets by a debtor under CCAA protection to a related party and that a sale of assets may be approved without shareholder approval even if, in the normal course, such approval would be required under provincial or federal law. The CCAA sets out the various matters the Court shall consider with respect to sale transactions (both in general, and if the transaction is with a related party).

34. Specifically, s. 36 of the CCAA provides as follows[7]:

Restriction on disposition of business assets

> 36. (1) A debtor company in respect of which an order has been made under this Act may not sell or otherwise dispose of assets outside the ordinary course of business unless authorized to do so by a court. **Despite any requirement for shareholder approval, including one under federal or provincial law, the court may authorize the sale or disposition even if shareholder approval was not obtained.**
>
> Notice to creditors
>
> (2) A company that applies to the court for an authorization is to give notice of the application to the secured creditors who are likely to be affected by the proposed sale or disposition.
>
> Factors to be considered
>
> (3) In deciding whether to grant the authorization, the court is to consider, among other things,
>
> (a) whether the process leading to the proposed sale or disposition was reasonable in the circumstances;
>
> (b) whether the monitor approved the process leading to the proposed sale or disposition;

---

7 R.S.C., 1985, c. C-36, s. 36.

> (c) whether the monitor filed with the court a report stating that in their opinion the sale or disposition would be more beneficial to the creditors than a sale or disposition under a bankruptcy;
>
> (d) the extent to which the creditors were consulted;
>
> (e) the effects of the proposed sale or disposition on the creditors and other interested parties; and
>
> (f) whether the consideration to be received for the assets is reasonable and fair, taking into account their market value.
>
> Additional factors — related persons
>
> **(4) If the proposed sale or disposition is to a person who is related to the company, the court may, after considering the factors referred to in subsection (3), grant the authorization only if it is satisfied that**
>
> **(a) good faith efforts were made to sell or otherwise dispose of the assets to persons who are not related to the company; and**
>
> **(b) the consideration to be received is superior to the consideration that would be received under any other offer made in accordance with the process leading to the proposed sale or disposition.** (Emphasis added)

35. Therefore, considering the exemption contained in s. 5.7(d) of MI 61-101, combined with s. 36 of the CCAA, it is respectfully submitted that, in the event approval is sought for a sale of the Ownership Interest to Mr. Ulicki or any other related party, this Court may and should not require shareholder approval. That said, that is an issue that will be before the Court if and when a sale transaction with Mr. Ulicki is proposed.

Sale of All or Substantially All of Wireless' Assets

36. Pursuant to s. 184(3) of the Ontario *Business Corporations Act* (the "OBCA"):[8]

> A sale, lease or exchange of all or substantially all the property of a corporation other than in the ordinary course of business of the

[8] R.S.O. 1990, c. B.16.

> corporation requires the approval of the shareholders in accordance with subsections (4) to (8).

37. The provision of the OBCA would require Wireless to obtain approval from UBS, its wholly-owned parent, for the sale of the Ownership Interest. If UBS' Board brings forward a motion to seek the approval of a sale of the Ownership Interest, it will, undoubtedly, vote in favour of the transaction pursuant to the OBCA if any such shareholder approval is required. For the reasons stated above, given s. 36 of the CCAA, it is respectfully submitted that this Court may approve of a sale of the Ownership Interest without requiring shareholder approval and, in these circumstances, it would make no sense to require a shareholders' vote pursuant to the OBCA.

38. Therefore, it is appropriate that the Sale Process does not provide that shareholder approval be sought.

Take-Over Bid Regime

39. The Canadian take-over bid rules apply to offers to acquire outstanding voting or equity securities over reporting issuers, alone or together with any other act, that would result in the offeror beneficially owning or exercising control or direction over 20% or more of the outstanding securities of a class of securities.[9] Therefore, an offer to acquire all or a portion of the Ownership Interest could result in the bidder exceeding the 20% threshold, in which case the bidder will need to launch either a formal take-over bid for the affected LOOK securities or rely on an exemption from the requirements.

---

[9] *Business Corporations Act*, R.S.O. 1990, c. S.5, s. 89(1).

40. The key exemption from compliance with the formal take-over bid requirements available to a bidder in the case of the Sale Process, is the "private agreement exemption".[10] Such an exemption is available if:

(a) purchases are made from not more than five persons or companies;

(b) the offer to acquire the voting or equity securities is not made generally to all holders of the class; and

(c) the value of the consideration paid for the voting or equity securities, including brokerage fees and commissions, does not exceed 115% of the market price at the date of the offer.

41. In the event that an offeror wishes to pay less than 115% of the market price, the bid will be exempt. If the offeror wishes to pay more than 115% of the market price, it will be required to make an offer to purchase, on the same terms, to all shareholders of LOOK. In the event that this occurs, the timelines set out in the Sale Process will need to be adjusted so as to allow for such an offer to be made. It is noted that the onus to make the offer to all shareholders of LOOK is on a prospective purchaser and is not an obligation of the Company. That said, the Sale Process will, in any event, comply with Canadian securities legislation regarding the take-over bid requirements.

---

10 *Ibid.*, s. 100.1(1).

PART IV ~ ORDER REQUESTED

42. The Monitor respectfully recommends that the Court approve of the Sale Process.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 7th day of November, 2012.

Matthew P. Gottlieb

LAX O'SULLIVAN SCOTT LISUS LLP
Counsel
Suite 2750, 145 King Street West
Toronto, ON M5H 1J8

Matthew P. Gottlieb LSUC#: 32268B
Tel: (416) 644-5353
Fax: (416) 598-3730

Lawyers for the Monitor, Duff & Phelps Canada Restructuring Inc.

SCHEDULE "A": TEXT OF STATUTES, REGULATIONS & BY - LAWS

1. *Companies' Creditors Arrangement Act*, R.S.C., 1985, c. C-36.

36. (1) A debtor company in respect of which an order has been made under this Act may not sell or otherwise dispose of assets outside the ordinary course of business unless authorized to do so by a court. Despite any requirement for shareholder approval, including one under federal or provincial law, the court may authorize the sale or disposition even if shareholder approval was not obtained.

Notice to creditors

(2) A company that applies to the court for an authorization is to give notice of the application to the secured creditors who are likely to be affected by the proposed sale or disposition.

Factors to be considered

(3) In deciding whether to grant the authorization, the court is to consider, among other things,

(a) whether the process leading to the proposed sale or disposition was reasonable in the circumstances;

(b) whether the monitor approved the process leading to the proposed sale or disposition;

(c) whether the monitor filed with the court a report stating that in their opinion the sale or disposition would be more beneficial to the creditors than a sale or disposition under a bankruptcy;

(d) the extent to which the creditors were consulted;

(e) the effects of the proposed sale or disposition on the creditors and other interested parties; and

(f) whether the consideration to be received for the assets is reasonable and fair, taking into account their market value.

Additional factors — related persons

(4) If the proposed sale or disposition is to a person who is related to the company, the court may, after considering the factors referred to in subsection (3), grant the authorization only if it is satisfied that

(a) good faith efforts were made to sell or otherwise dispose of the assets to persons who are not related to the company; and

(b) the consideration to be received is superior to the consideration that would be received under any other offer made in accordance with the process leading to the proposed sale or disposition.

2. *Securities Act*, R.S.O. 1990, c. S.5.

1. (1) In this Act,

...

"control person" means,
(a) a person or company who holds a sufficient number of the voting rights attached to all outstanding voting securities of an issuer to affect materially the control of the issuer, and, if a person or company holds more than 20 per cent of the voting rights attached to all outstanding voting securities of an issuer, the person or company is deemed, in the absence of evidence to the contrary, to hold a sufficient number of the voting rights to affect materially the control of the issuer, or

(b) each person or company in a combination of persons or companies, acting in concert by virtue of an agreement, arrangement, commitment or understanding, which holds in total a sufficient number of the voting rights attached to all outstanding voting securities of an issuer to affect materially the control of the issuer, and, if a combination of persons or companies holds more than 20 per cent of the voting rights attached to all outstanding voting securities of an issuer, the combination of persons or companies is deemed, in the absence of evidence to the contrary, to hold a sufficient number of the voting rights to affect materially the control of the issuer;

53. (1) No person or company shall trade in a security on his, her or its own account or on behalf of any other person or company if the trade would be a distribution of the security, unless a preliminary prospectus and a prospectus have been filed and receipts have been issued for them by the Director.

89. (1) In this Part,

...
"take-over bid" means an offer to acquire outstanding voting securities or equity securities of a class made to one or more persons or companies, any of whom is in Ontario or whose last address as shown on the books of the offeree issuer is in Ontario, where the securities subject to the offer to acquire, together with the offeror's securities, constitute in the aggregate 20 per cent or more of the outstanding securities of that class of securities at the date of the offer to acquire but does not include an offer to acquire if the offer to acquire is a step in an amalgamation, merger, reorganization or arrangement that requires approval in a vote of security holders.

3. *Prospectus and Registration Exemptions*, O.S.C. NI 45-106 (28 September 2009).

2.3 (1) The prospectus requirement does not apply to a distribution of a security if the purchaser purchases the security as principal and is an accredited investor.

2.10 (1) The dealer registration requirement does not apply in respect of a trade in a security to a person if

(a) that person purchases as principal,

(b) the security has an acquisition cost to the purchaser of not less than

$150 000 paid in cash at the time of the trade, and

(c) the trade is in a security of a single issuer.

(2) The prospectus requirement does not apply to a distribution of a security in the circumstances referred to in subsection (1).

4. *Protection of Minority Security Holders in Special Transactions*, O.S.C., MI 61-101 (1 February 2008).

5.4 Formal Valuation
(1) An issuer shall obtain a formal valuation for a related party transaction described in any of paragraphs (a) to (g) of the definition of related party transaction.

5.5 Exemptions from Formal Valuation Requirement – Section 5.4 does not apply to an issuer carrying out a related party transaction in any of the following circumstances:

(b) **Issuer Not Listed on Specified Markets** – no securities of the issuer are listed or quoted on the Toronto Stock Exchange, the New York Stock Exchange, the American Stock Exchange, the NASDAQ Stock Market, or a stock exchange outside of Canada and the United States other than the Alternative Investment Market of the London Stock Exchange or the PLUS markets operated by PLUS Markets Group plc,

5.6 Minority Approval – An issuer shall not carry out a related party transaction unless the issuer has obtained minority approval for the transaction under Part 8.

5.7 Exemptions from Minority Approval Requirement
(1) Subject to subsections (2), (3), (4) and (5), section 5.6 does not apply to an issuer carrying out a related party transaction in any of the following circumstances if the exemption relied on, any formal valuation exemption relied on, and the facts supporting reliance on those exemptions are disclosed in the disclosure document, if any, for the transaction:

(d) **Bankruptcy, Insolvency, Court Order** – the circumstances described in subparagraph (f)(i) of section 5.5, if the court is advised of the requirements of this Instrument regarding minority approval for related party transactions, and of the provisions of this paragraph, and the court does not require compliance with section 5.6,

5. *Business Corporations Act*, R.S.O. 1990, c. B.16.

184.

...

(3) A sale, lease or exchange of all or substantially all the property of a corporation other than in the ordinary course of business of the corporation requires the approval of the shareholders in accordance with subsections (4) to (8)

IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT
OF UNIQUE BROADBAND SYSTEMS, INC.
Applicant

Court File No. CV-11-9283-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

PROCEEDING COMMENCED AT
TORONTO

FACTUM

LAX O'SULLIVAN SCOTT LISUS LLP
Counsel
Suite 2750, 145 King Street West
Toronto, ON M5H 1J8

Matthew P. Gottlieb (LSUC #32268B)
Tel: (416) 644-5353
Fax: (416) 598-3730

Lawyers for the Monitor, Duff & Phelps Canada Restructuring Inc.