



No. S1710393  
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA  
IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,  
R.S.C. 1985, c. C-36, AS AMENDED

AND

IN THE MATTER OF THE *BUSINESS CORPORATIONS ACT*,  
S.B.C. 2002, c. 57, AS AMENDED

AND

IN THE MATTER OF THE *CANADA BUSINESS CORPORATIONS ACT*,  
R.S.C. 1985, c. C-44, AS AMENDED

AND

IN THE MATTER OF A PLAN OF COMPROMISE AND ARRANGEMENT OF  
ALL CANADIAN INVESTMENT CORPORATION

### NOTICE OF APPLICATION

**Name of application:** All Canadian Investment Corporation (the "Petitioner")

**To:** Service List

**And To:** Lighthouse Capital Corporation and its counsel.  
Ernst & Young Inc.

TAKE NOTICE that an application will be made by the Petitioner to the presiding Judge at the courthouse at 800 Smithe Street, Vancouver, British Columbia, on July 19, 2023 at 10:00 a.m., for the Orders set out in Part 1 below.

#### Part 1: ORDERS SOUGHT

1. The Petitioner seeks an order substantially in the form attached as **Schedule "A"**:
  - a. authorizing the Monitor to enter into the share purchase transaction (the "Share Transaction") and approving the Share Purchase Agreement between McEown & Associates Ltd. in its capacity as Court Appointed Monitor of All Canadian Investment Corporation as vendor, and Lighthouse Capital Corporation ("Lighthouse") as purchaser (the "Share Purchase Agreement");

- b. authorizing the Monitor to enter into and approving the Agreement dated January 5, 2023 with Ernst & Young Inc. (the “**Transaction Commission Agreement**”) and payment of fees under the Transaction Commission Agreement on completion of the Share Purchase Agreement;
  - c. amending the Plan of Arrangement to, amongst other things, expressly authorize the cancellation and issuance of shares of the Petitioner to facilitate the Share Transaction; and
  - d. amending and restating the Sanction Order made February 5, 2021.
2. Such further and other orders as the court deems just.

## **Part 2: FACTUAL BASIS**

3. On November 10, 2017, Madam Justice Adair made the initial order in these proceedings (the “**Initial Order**”), granting the Petitioner protection from its creditors pursuant to the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”).

### **The Plan**

4. By Order made February 5, 2021 (the “**Sanction Order**”) the Petitioner’s Plan of Arrangement (the “**Plan**”) was sanctioned by the Court. The Plan provides for a coordinated wind up and liquidation of the Petitioner’s assets so as to realize the greatest possible recovery to stakeholders. The Petitioner is effecting the Plan under the direction of the Monitor.
5. Unless otherwise defined in this application, the Petitioner adopts the defined terms used in the Plan.
6. In accordance with the terms of the Plan the Petitioner’s assets are to be realized and distributed in accordance with the following priorities:
- a. amounts due and owing under the Administrative Charge;
  - b. amounts due and owing under the Directors Charge;
  - c. amounts due and owing to Creditors;
  - d. amounts due and owing under the Representative Counsel Charge; and
  - e. distribution of the balance to Preferred Shareholders.
7. The Sanction Order currently provides that upon the filing of the Monitor’s Implementation Certificate pursuant to the CCAA, the Monitor is authorized and directed to assign the Petitioner into bankruptcy.

**Distributions to Date**

8. The Creditors and the Representative Counsel Charge have now been paid in their entirety, and the Monitor has filed with the Court a Creditors Final Distribution Certificate.
9. The Monitor has made an interim distribution to Preferred Shareholders in the aggregate amount of \$3,000,000 as authorized and directed by Order made July 11, 2022.
10. On June 13, 2023 a further interim distribution to Preferred Shareholders in the aggregate amount of \$2,000,000 was also authorized on receipt of funds by the Monitor from the Supreme Court of Vancouver Action No. H180143.
11. The Monitor is holding back sufficient funds to cover amounts that are due or may become due under the Administration Charge and no payments will be required under the Directors Charge.
12. After payment of the Administration Charge any further proceeds realized from the liquidation of the Petitioner's remaining assets will be distributed to the Preferred Shareholders.

**Remaining Assets**

13. The majority of the Petitioner's Loan Portfolio and assets have now been realized with the exception of those described in the Monitor's 35<sup>th</sup> Report.

**Monitor's 35<sup>th</sup> Report to Court**

14. In addition to the remaining assets which the Monitor was charged with realizing for distribution under the Plan, the Monitor has identified potential value to the stakeholders in the non-transferrable attributes of the Petitioner (the "Attributes").

**Proposed Share Transaction**

15. On January 5, 2023, the Monitor entered into the Transaction Commission Agreement with Ernst & Young Inc. ("EY") to assess the potential value of the shares and the Petitioner, identify buyers and negotiate and complete a transaction.
16. As a result of EY's efforts, the Monitor received two offers to acquire the shares in the Petitioner, the terms of which were as follows:
  - (a) Offer #1 - for a purchase price of \$1,850,000, subject to an adjustment for the agreed net assets of all attributes and working capital of the Petitioner, and subject to a dollar for dollar reduction for any amount

that the fair market value of the Buchmann Loan is determined to be less than its face value of \$500,000; and

- (b) Offer #2 – from Bosa Properties (OC) Inc., for a purchase price of \$1,800,000, subject to a review and determination of the fair market value of the Buchmann Loan in the face value of \$500,000, and dollar for dollar adjustment to the purchase price based on the results of this review.
17. After securing further advice from EY, the Monitor made a counteroffer of \$2,000,000, which resulted in the execution of a Term Sheet with Bosa Properties Inc., the terms of which included:
- a. that the buyer would acquire 100% of the shares of the Petitioner;
  - b. that the purchase price, of \$2,000,000, would be paid in connection with the Petitioner’s exit from the CCAA Proceedings (the “**Purchase Price**”);
  - c. the purchase price, of \$2,000,000 would be calculated as:
    - (i) \$1,600,000 for the acquisition of the Petitioner’s shares; and
    - (ii) \$400,000 for Mortgage CA6412099 (the Buchmann mortgage);
  - d. certain conditions precedent in favour of the buyer;
  - e. the execution, after satisfaction of the conditions precedent, of a formal agreement; and
  - f. the transaction being approved by Court order in a form satisfactory to the buyer.
18. After satisfying the conditions precedent in the Term Sheet the parties negotiated the formal terms of the Share Purchase Agreement which remains subject to court approval. The Share Purchase Agreement provides for payment of a deposit of \$200,000.
19. The purchaser, Lighthouse, is affiliated with Bosa Properties Inc.
20. The structure of the Share Purchase Agreement requires, *inter alia*:
- a. the cancellation of all of the issued and outstanding common and preferred shares in the Petitioner;
  - b. the Petitioner to allot, issue and deliver 100 fully paid and non-assessable Common shares in the authorized share structure of the Petitioner;
  - c. Lighthouse to subscribe for those shares;

- d. payment of the Purchase Price to the Monitor on closing;
  - e. the Petitioner to secure an amendment to the Sanction Order in a form satisfactory to Lighthouse; and
  - f. court approval of the Share Purchase Agreement.
21. The Monitor is of the view that the Share Purchase Agreement is in the best interests of the remaining stakeholders being the Preferred Shareholders. If approved, a further sum of approximately \$1,700,000 will be available for distribution. Although completion of the Share Purchase Agreement will mean that the Monitor is no longer in a position to take steps to realize on the Buchmann mortgage, its value has been incorporated in the Purchase Price and no future legal fees will be incurred in those proceedings.
22. The Monitor is of the view that there is limited, if any, economic value and the balance of the assets.

**Proposed Amendment to the Plan and the Sanction Order**

23. In the event that the Share Purchase Agreement is approved it will be necessary to Amend the Plan and the Sanction Order made February 5, 2021.
24. Schedule “A” to this Application is the proposed form of the Amended Sanction Order which attaches, as Schedule “B” the proposed Amended Plan of Arrangement.
25. A marked up version of the proposed Amended Sanction Order identifying the proposed amendments to both the Sanction Order and the Plan is attached as Appendix “E” to the Monitor’s 35<sup>th</sup> Report to Court.
26. The proposed amendments to both the Sanction Order and the Plan are necessary in order to allow the completion of the Share Purchase Agreement. Completion of the Share Purchase Agreement is consistent with, and will enhance, the purposes of the Petitioner’s Plan of Arrangement which was approved by the Creditors (and sanctioned by this court) being:

*“... to achieve an efficient and coordinated windup and liquidation of the Petitioner’s Assets so as to realize the greatest possible recovery to stakeholders and in particular, to effect and implement the:*

- (a) the most cost-efficient and practical realization of the Petitioner’s Assets; and*
- (b) the distribution of the Petitioner’s Assets in accordance with the following priorities:*
  - i. amounts due and owing under the*

*Administrative Charge;*

- ii. *amounts due and owing under the Directors Charge;*
- iii. *amounts due and owing to Creditors;*
- iv. *amounts due and owing under the Representative Counsel Charge; and*
- v. *distribution of the balance to Preferred Shareholders.*

**Paragraph 2.1****Plan of Arrangement approved by order made February 5, 2021****Transaction Commission Agreement**

27. In order to effect the Realization of the Petitioner's assets the Monitor was authorized to retain such professionals as it deemed necessary effect the highest possible realization of the Petitioner's Assets.

**Plan of Arrangement approved by Order made February 5, 2021,  
at para. 4.1**

28. As a result of preliminary discussions with EY, the Monitor formed the view that there was potential value in certain intangible attributes held by the Petitioner. In order to try to realize that value, the Monitor entered into the Transaction Commission Agreement. One of the significant appeals to that agreement was that EY was prepared to be remunerated on a 'success fee' basis, payment of which was expressly subject to court approval.
29. The terms of the Transaction Commission Agreement include, *inter alia*, that:
- a. EY would:
    - (i) review and compile information relating to the Petitioner's business for the purposes of a potential third-party investment, acquisition or similar transaction;
    - (ii) advise on realization strategies and identify and contact qualified prospective purchasers;
    - (iii) assist in securing written letters of intent and provide advice on pricing, transaction timeline and deal structure;
    - (iv) assist in the administration of due diligence; and

- (v) assist the Monitor in negotiating and completing a transaction.

(the “Services”)

- b. in the event that a transaction was entered into, and completed, EY would be entitled to a success fee equal to 20% of the transaction value to a maximum of \$250,000 plus taxes as applicable (the “Success Fee”); and
- c. any transaction which the Monitor wished to enter into, together with the Transaction Commission Agreement and the Success Fee, would be subject to court approval in these proceedings.

**Completion of the Share Purchase Agreement**

- 30. If the Share Purchase Agreement is approved and the Sanction Order is amended in the form proposed, on completion the Petitioner will exit the CCAA Proceedings.
- 31. Under the proposed terms of the Amended Plan the Monitor will:
  - a. remain responsible for distribution of the funds realized under the Amended Plan;
  - b. be required to file a Monitor’s Implementation Certificate on completion of its responsibilities under the Amended Plan; and
  - c. secure approval of its fees and those of its counsel.
- 32. In the event that the Share Purchase Agreement is not approved the Plan presently provides for the Monitor to assign the Petitioner into bankruptcy. In the event that occurs, the value of the Attributes will not be realized for the benefit of the Preferred Shareholders.

**Part 3:LEGAL BASIS**

- 33. The Petitioner relies on:
  - a. the provisions of the CCAA, as amended.
  - b. Rules 1-3, 4-4, 8-1, 8-5, 22-1 and 22-4 of the *Supreme Court Civil Rules*.

**Jurisdiction to Approve Share Transaction**

- 34. Pursuant to s. 11 of the CCAA, the Court may make any order that it considers appropriate in the circumstances, with or without notice to any person as the Court may see fit.

35. Section 11 of the CCAA signals a legislative endorsement of the broad reading of CCAA authority developed by the jurisprudence. The jurisdiction of s. 11 is constrained only by the restrictions set out in the CCAA itself, and the requirement that the order made be “appropriate in the circumstances”.

***9354-9186 Québec inc. v. Callidus Capital Corp.,  
2020 SCC 10 at paras. 67 – 68***

36. Section 11 of the CCAA is the provision of first resort where there is no CCAA provision conferring more specific jurisdiction, and for the most part supplants the need to resort to inherent jurisdiction in the CCAA context.

***Callidus at para. 68***

37. “Appropriateness” under the CCAA is assessed by inquiring whether the order will usefully further the remedial purpose of the CCAA – avoiding the social and economic losses resulting from an insolvent company.

***Century Services Inc. v. Canada (Attorney General), 2010 SCC 60 at para. 70***

38. In appropriate circumstances, courts have approved the sale of shares of an insolvent company to preserve intangible assets, including non-transferrable tax attributes. This is usually done by way of a reverse vesting order, wherein the purchaser receives shares in a debtor company, and unwanted assets, liabilities, and creditor claims are removed and vended to a residual company while the “good assets” remain with the debtor.

***PaySlate Inc. (Re), 2023 BCSC 608 at paras. 1 and 78***

39. The terms of the Share Purchase Agreement and Amended Plan do not require a reverse vesting order, as all Creditors’ claims have been satisfied (together with interest). That said, the proposed Share Transaction does display some of the characteristics of a reverse vesting order and therefore the authorities which consider the appropriateness of such orders are instructive.

40. In *Harte Gold Corp. (Re)*, 2022 ONSC 653 [“*Harte Gold*”] the reverse vesting order approved by the court involved the cancellation of all existing shares of the company and the issuing of new shares to the purchaser (para. 59).

41. In *Harte Gold*, Justice Penny found that sections 186 and 168(1)(g) of the Ontario *Business Corporations Act*, RSO 1990, c B.16 (“OBCA”) provided the court with jurisdiction to order the cancellation and re-issuance of the company’s shares in CCAA proceedings. Under s. 186(1) of the OBCA, a “reorganization” includes a court order made under the CCAA approving a proposal. Section 186(2) of the OBCA provides that if a corporation is subject to a reorganization, its articles may



be amended by order to effect any change that might lawfully be made by an amendment under s. 168. Section 168(1)(g) provides that a corporation may from time to time amend its articles to add, change or remove any provision that is set out in its articles, including to change the designation of all or any of its shares, and add, change or remove any rights, privileges, restrictions and conditions, including rights to accrued dividends, in respect of all or any of its shares.

***Harte Gold*, at paras. 61 - 62**

42. Likewise in *Arrangement relatif à Blackrock Metals Inc.*, 2022 QCCS 2828 [*“Blackrock Metals”*] leave to appeal ref'd 2022 QCCA 1073, the court found jurisdiction to cancel and re-issue shares in CCAA proceedings in sections 191(2) and 173(1)(g) of the *Canada Business Corporations Act*, RSC 1985, c C-44 (*“CBCA”*), which essentially mirror sections 186(1) and 168(1)(g) of the OBCA.

***Blackrock Metals*, at para. 122**

43. No equivalent provisions exist under the British Columbia *Business Corporations Act*, SBC 2002, c 57 (*“BC BCA”*), which unlike the OBCA and CBCA, does not specifically address the powers of the court in arrangements under the CCAA.
44. Notwithstanding this gap in the BC BCA, the Petitioner submits that the jurisdiction to cancel and re-issue shares can be found in the general power of the court to make any order that it considers appropriate in the circumstances, pursuant to s. 11 of the CCAA.
45. In *Port Capital Development (EV) Inc. (Re)*, 2022 BCSC 1464, Madam Justice Fitzpatrick granted a reverse vesting order in CCAA proceedings, which included orders that the petitioner issue one new common share to the purchaser, and that the petitioner's issued and outstanding shares be cancelled without the need for any further action by the petitioner's shareholders, directors, or officers.

***Port Capital Development (EV) Inc. (Re)*,  
Approval and Vesting Order made July 22, 2022, at para. 2(c)**

46. In *PaySlate Inc. (Re)*, 2023 BCSC 977, the reverse vesting order granted by the court in CCAA proceedings included orders that the petitioner's existing shares be redeemed at the nominal redemption price of \$0.00001 per common share; that all of the petitioner's redeemed existing shares be deemed terminated and cancelled; and that new shares in the petitioner be issued to the purchaser.

***Payslate Inc. (Re)*,  
Approval and Reverse Vest Order made May 10, 2023, at para. 5(e) and (g)**

47. Reverse vesting orders have also been utilized to facilitate the transfer of ownership, to preserve intangible attributes, by vesting ownership of shares and securities in a purchaser. The practical effect of that type of order is exactly the

same as is proposed in the Share Transaction will be that that the process is slightly different. The Petitioner submits that the ability to exercise the section 11 discretion should not be different where ultimately the same result is achieved.

### **Harte Gold Factors**

48. In *PaySlate Inc. (Re)*, 2023 BCSC 608, at paras. 87 – 99, the court cautioned that reverse vesting orders are not the norm, should only be granted in extraordinary circumstances, and not merely because it is more convenient or beneficial for the purchaser. This scrutiny is warranted because reverse vesting orders deviate from the statutory framework intended to provide all creditors with an opportunity to be heard in the process.
49. While those concerns do not exist here (the Creditors having been paid in full) the questions to be considered by the court on an application for a reverse vesting order as summarized by Justice Penny in *Harte Gold*, provide a useful framework:
- (a) Why is the RVO necessary in this case?
  - (b) Does the RVO structure produce an economic result at least as favourable as any other viable alternative?
  - (c) Is any stakeholder worse off under the RVO structure than they would be under any other viable alternative?
  - (d) Does the consideration being paid for debtor's business reflect the importance and value of the licenses and permits (or other intangible assets) being preserved under the RVO structure?

### **Section 36 Factors**

50. In addition to section 11, section 36 of the CCAA has been interpreted as providing courts with the jurisdiction (and relevant criteria) to issue a reverse vesting order.

***Blackrock Metals at paras. 87***

51. Section 36(1) of the CCAA provides that the court may authorize the sale of a debtor company's assets outside the ordinary course of business, without shareholder approval:

*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.*

52. Section 36(3) of the CCAA provides a non-exhaustive list of factors to be considered when deciding whether to authorize a sale:
- (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.

#### **Application to the Share Transaction**

53. The Petitioner submits that the factors set out in *Harte Gold* and *Blackrock Metals* favour approval of the Share Transaction:
- (a) the Petitioner does not seek a typical reverse vesting order: the Share Transaction simply contemplates the cancellation of all existing shares in the Petitioner, and the issuance of new shares to the purchaser. It does not provide for the creation of a residual company to remove unwanted assets, liabilities, and creditor claims.
  - (b) all Creditors with Proven Claims have been paid the value of their claims in full, together with interest at the Court-approved rate of 5% per annum. Accordingly, there are no unpaid Creditors who may be prejudiced by the Share Transaction.
  - (c) the Attributes are an intangible, non-transferrable asset. The only means by which the value of the Attributes can be preserved and realized for the benefit of the Preferred Shareholders is by way of a sale of shares of the Petitioner.
  - (d) the value of the Attributes will be extinguished, to the prejudice of the stakeholders, if the Monitor is not authorized to sell the shares of the Petitioner.

- (e) The process leading to the proposed Share Transaction was reasonable in the circumstances
- (f) as a result of the Monitor being responsible for realizing the Petitioner's assets, the Monitor was directly involved in, and approved of, the process leading to the proposed Share Transaction.
- (g) the Monitor has 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.
- (h) the proposed Share Transaction will not prejudice the Creditors, all of whom have been paid in full. The proposed Share Transaction will increase the funds available for distribution to the Preferred Shareholders, by permitting the Monitor to realize the value of the Attributes.
- (i) The Monitor has engaged in a reasonable process to ensure that the purchase price for the Petitioner's shares reflects their fair market value.

#### **Approval Transaction Commission Agreement**

- 54. Paragraph 4.1 of the Plan of Arrangement provides that "*the Petitioner and the Monitor are authorized to retain, or continue to retain, legal counsel and such other professionals as they deem necessary (at their sole discretion) to effect the highest possible realization of the Petitioner's Assets.*"
- 55. The jurisdiction to grant charges for professional fees is found in s. 11.52 of the CCAA:

#### ***Court may order security or charge to cover certain costs***

***11.52 (1) On notice to the secured creditors who are likely to be affected by the security or charge, the court may make an order declaring that all or part of the property of a debtor company is subject to a security or charge — in an amount that the court considers appropriate — in respect of the fees and expenses of***

***(a) the monitor, including the fees and expenses of any financial, legal or other experts engaged by the monitor in the performance of the monitor's duties;***

***(b) any financial, legal or other experts engaged by the company for the purpose of proceedings under this Act; and***

***(c) any financial, legal or other experts engaged by any other interested person if the court is satisfied that the security or charge***

*is necessary for their effective participation in proceedings under this Act.*

56. The non-exhaustive list of factors that courts may consider in approving or increasing an administrative charge and setting the amount was set out by Madam Justice Fitzpatrick in *Alderbridge Way GP Ltd. (Re)*, 2022 BCSC 1694, at para. 45 (citing *Canwest Publishing Inc. (Re)*, 2010 ONSC 222):
- (a) the size and complexity of the businesses being restructured;
  - (b) the proposed role of the beneficiaries of the charge;
  - (c) whether there is an unwarranted duplication of roles;
  - (d) whether the quantum of the proposed charge appears to be fair and reasonable;
  - (e) the position of the secured creditors likely to be affected by the charge; and
  - (f) the position of the Monitor.

#### **Modification of the Plan**

57. Paragraph 7.1 of the Plan provides that a material variation, amendment, modification or supplement of the Plan is permitted by Court order:

*After the Creditor's Meeting (and both prior to and subsequent to the obtaining of the Final Order), the Petitioner may at any time and from time to time vary, amend, modify or supplement this Plan without the need for obtaining an order of the Court or providing notice to the Creditors if the Monitor determines that such variation, amendment, modification or supplement would not be materially prejudicial to the interests of the Creditors under this Plan or is necessary in order to give effect to the substance of this Plan. In the event a material variation, amendment, modification or supplement is required by the Petitioner, such shall be permitted by Court order.*

58. The proposed Amended Plan will not materially prejudice the Creditors (whose claims have been paid in their entirety) and is necessary to give effect to the substance of the Plan being an efficient and coordinated windup and liquidation of the Petitioner's Assets so as to realize the greatest possible recovery to stakeholders.

#### **Part 4: MATERIAL TO BE RELIED ON**

59. The Monitor's 35<sup>th</sup> Report.

60. Affidavit #1 of Michael Bal sworn June 30, 2023.

61. Such further and other material as may be permitted.

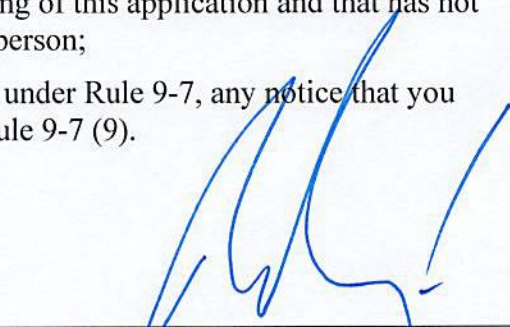
The Applicant estimates that the Application will take one half day.

[ X ] This matter is not within the jurisdiction of a master.

TO THE PERSONS RECEIVING THIS NOTICE OF APPLICATION: If you wish to respond to this notice of application, you must, within 5 business days after service of this notice of application or, if this application is brought under Rule 9-7, within 8 business days after service of this notice of application:

- (a) file an application response in Form 33;
- (b) file the original of every affidavit, and of every other document, that:
  - (i) you intend to refer to at the hearing of this application, and
  - (ii) has not already been filed in the proceeding, and
- (c) serve on the applicant 2 copies of the following, and on every other party of record one copy of the following:
  - (i) a copy of the filed application response;
  - (ii) a copy of each of the filed affidavits and other documents that you intend to refer to at the hearing of this application and that has not already been served on that person;
  - (iii) if this application is brought under Rule 9-7, any notice that you are required to give under Rule 9-7 (9).

Date: June 30, 2023



Signature of Jeremy D. West  
Counsel for the Petitioner

Email: [jwest@watsongoepel.com](mailto:jwest@watsongoepel.com)  
Phone: (604) 642-5684

**APPENDIX**

**THIS APPLICATION INVOLVES THE FOLLOWING:**

[ ] discovery: comply with demand for documents

- discovery: production of additional documents
- extend oral discovery
- other matter concerning oral discovery
- amend pleadings
- add/change parties
- summary judgment
- summary trial
- service
- mediation
- adjournments
- proceedings at trial
- case plan orders: amend
- case plan orders: other
- experts

**Schedule "A" – Amended and Restated Sanction Order and  
Transaction Approval Order**

No. S1710393  
Vancouver Registry

**IN THE SUPREME COURT OF BRITISH COLUMBIA**

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,  
R.S.C. 1985, c. C-36, AS AMENDED

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IN THE MATTER OF THE *BUSINESS CORPORATIONS ACT*,  
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AND

IN THE MATTER OF THE *CANADA BUSINESS CORPORATIONS ACT*,  
R.S.C. 1985, c. C-44, AS AMENDED

AND

IN THE MATTER OF A PLAN OF COMPROMISE AND ARRANGEMENT OF  
ALL CANADIAN INVESTMENT CORPORATION

**ORDER MADE AFTER APPLICATION**

**(Amended and Restated Sanction Order and Transaction Approval Order)**

BEFORE THE HONOURABLE     )     THE 19th DAY OF  
JUSTICE WALKER             )     JULY 2023  
                                   )

ON THE APPLICATION of the Petitioner coming on for hearing at Vancouver, British Columbia on the 19th day of July 2023 and on hearing Jeremy D. West, counsel for the Petitioner, All Canadian Investment Corporation, and those other counsel listed on **Schedule "A"** hereto AND UPON READING the material filed herein for the purposes of this application;

THIS COURT ORDERS that:

1. The time for service of the Notice of Application is hereby abridged such that the Notice of Application is properly returnable today and service upon any interested party other than those parties on the Service List maintained by the Petitioner and the Monitor in this proceeding is hereby dispensed with.

**DEFINITIONS**



2. All capitalized terms not otherwise defined in this Order shall have the meanings ascribed to them in the Plan conditionally approved by the order of Mr. Justice Walker pronounced November 18, 2019 and subsequently amended by this order and the orders of Mr. Justice Walker pronounced May 21, 2020, November 3, 2020 and February 5, 2021. The Plan, as amended by this Order, is attached and marked **Schedule “B”**.
3. Terms and expressions not defined in this Order and the Plan shall have the meanings attributed to them in the Order of this Court pronounced on November 10, 2017 (as varied from time to time, the **“Initial Order”**).

#### **APPROVAL OF TRANSACTION**

4. The Monitor, in its capacity as the court-appointed monitor of the Petitioner and pursuant to the Order made February 5, 2021 in these proceedings, be and is hereby authorized to enter into the Purchase Agreement with Lighthouse Capital Corporation, entered into effective as of June \_\_, 2023 (the **“Agreement”**), and the transactions contemplated by the Agreement be and are approved.
5. On the Closing Date (as defined in the Agreement), and upon the Monitor: (a) having funds in trust representing the purchase price under the Agreement; and (b) being advised by the Petitioner that the transactions contemplated by the Agreement have completed, the Monitor is authorized and directed to file with the Court in the CCAA proceedings the Transaction Implementation Certificate in substantially the form attached as **Schedule “C”**.

#### **APPROVAL OF THE TRANSACTION COMMISSION AGREEMENT**

6. The Monitor, in its capacity as the court-appointed monitor of the Petitioner and pursuant to the Order made February 5, 2021 in these proceedings, be and is hereby authorized to enter into the agreement dated January 5, 2023 with Ernst & Young Inc. for the purposes of securing the Agreement (the **“Transaction Commission Agreement”**).
7. On the Closing Date (as defined in the Agreement), and upon the Monitor: (a) having funds in trust representing the purchase price under the Agreement; (b) being advised by the Petitioner that the transactions contemplated by the Agreement has completed; and (c) having filed with the Court in the CCAA proceedings the Transaction Implementation Certificate, the Monitor is authorized and directed to release the commission payment due and owing under the Transaction Commission Agreement.

#### **THE MEETING**

8. The Meeting had been duly convened and held in conformity with the *Companies Creditors Arrangement Act*, R.S.C. 1985 c.C-36, and all applicable orders made in these proceedings, including good and sufficient service and delivery to all Creditors of the Meeting Materials.

9. The Resolution has been voted on and the Plan approved by the Required Majority in conformity with the CCAA, and no further Meeting is required in respect of the amendments in Schedule B.
10. The Claims of the Creditors have been paid in full as contemplated by the Plan.

#### **SANCTION OF THE AMENDED PLAN**

11. The Petitioner has complied with the provisions of the CCAA and the Orders pronounced in these proceedings.
12. The Petitioner has not done or purported to do anything that is not authorized by the CCAA.
13. The Plan be and is amended by this Order in the form attached as Schedule B and the transactions contemplated thereby are procedurally and substantively fair, reasonable, not oppressive, and are in the best interests of the Petitioner and the Persons affected by the Plan (the “Amended Plan”).
14. The Amended Plan, as attached in Schedule B, is hereby finally and absolutely sanctioned and approved pursuant to the provisions of the CCAA and the Amended Plan and all associated steps, compromises, transactions, arrangements, releases and reorganizations effected thereby shall be binding and effective in accordance with the provisions of the Amended Plan, and shall enure to the benefit of the Petitioner, the Released Parties, the Creditors, and all other Persons named or referred to in, affected by, or subject to the Amended Plan and their respective heirs, executors, administrators and other legal representatives, successors and assigns.

#### **PLAN IMPLEMENTATION**

15. Notwithstanding the terms of the Initial Order or the terms of any other Order, the Petitioner is hereby authorized and directed to take all actions necessary or appropriate, in each case consistent with the terms of the Amended Plan, to enter into, adopt, execute, deliver, implement and consummate the contracts, instruments, releases, and all other agreements or documents, to be created or which are to come into effect in connection with the Amended Plan and all matters contemplated under the Amended Plan involving any corporate action of the Petitioner, or on behalf of the Petitioner. All such actions are hereby approved and will occur and be effective in accordance with the Amended Plan, the Sanction Order made February 5, 2021 and this Order in all respects for all purposes without any requirement of further action by the Directors and Officers and any other Person affected by the Amended Plan . Further, to the extent not previously given, all necessary approvals to take such actions are hereby deemed to have been obtained from the Creditors, the Directors and Officers, and any other Persons, as applicable.

16. The Monitor is hereby authorized and directed to take all steps and actions and to do all things required to facilitate the implementation of the Amended Plan in accordance with its terms and, where necessary or appropriate to do so, to enter into, execute, deliver, implement and consummate all of the steps, transactions, certificates and agreements contemplated by the Amended Plan.
17. Without limiting the generality of paragraphs 15 and 16, the Petitioner and Monitor be and are authorized to take such steps as are necessary to complete the Agreement including, but not limited to:
- issuing 100 Common shares in the authorized share structure of the Petitioner to be allotted and delivered to Lighthouse in accordance with the terms of the Share Purchase Agreement (the “Purchased Shares”); and
  - a. concurrently, and without the need for any further action by the Petitioner, or any of its shareholders, directors or officers, cancelling all other issued and outstanding securities of the Petitioner (but, for clarity, excluding the Purchased Shares), including without limitation any common or preferred shares in the Petitioner, and all certificates formerly representing any such securities shall be deemed to be cancelled and shall be null and void as at the date of cancellation.

#### **COMPROMISE OF CLAIMS AND EFFECT OF PLAN**

18. Effective the Closing Date (as defined in the Agreement) and upon filing of the Transaction Implementation Certificate (the “**Transaction Implementation Date**”):
- a. any and all Claims shall be forever discharged, extinguished, released and compromised and the ability of any Creditor to proceed against the Petitioner, in respect of, or relating to, any Claim shall be forever discharged, extinguished, released and restrained, and all proceedings with respect to, in connection with or relating to such Claims are hereby stayed, subject only to the rights of the Creditors to receive distributions in respect of their Claims, as determined in accordance with the Amended Plan, the Sanction Order made February 5, 2021 and this Order;
  - b. the Amended Plan and all associated steps, compromises, transactions, arrangements, assignments, discharges, waivers, releases and injunctions effected by the Amended Plan (including but not limited to those in Article 4.4 of the Amended Plan) and the restructuring effected thereby, are hereby approved, binding and effective as set out in the Amended Plan upon the Petitioner, the Released Parties, all Creditors, and all other Persons affected by the Amended Plan; and
  - c. any and all Persons shall be and are hereby stayed from commencing,

taking, applying for, issuing or continuing any and all steps or proceedings, including without limitation, administrative hearings and orders, declarations and assessments, commenced, taken or proceeded with or that may be commenced, taken or proceeded with against any of the Released Parties in respect of any Claims and any matter which is released pursuant to the Sanction Order made February 5, 2021, this Order and the Amended Plan.

19. The determination of Claims and Proven Claims in accordance with the Claims Process Order, the Meeting Order and the Amended Plan, as applicable, shall be final and binding on the Petitioner, the Creditors and all other Persons affected by the Claims Process Order, the Meeting Order and the Amended Plan.
20. Without limiting the provisions of the Claims Process Order, the Meeting Order or the Amended Plan, a Creditor that did not file a Proof of Claim by the Claims Bar Date or otherwise in accordance with the provisions of the Claims Process Order, the Meeting Order and the Amended Plan, whether or not such Creditor received notice of the Claims Process established by the Claims Process Order, shall be and is hereby forever barred from making any Claim against the Petitioner, such Creditor shall not be entitled to any distribution or compensation in relation to the Amended Plan and such Creditor's Claim shall be and is hereby forever barred and extinguished. Nothing in the Amended Plan extends or shall be interpreted as extending or amending the Claims Bar Date or gives or shall be interpreted as giving any rights to any Person in respect of Claims that have been barred or extinguished pursuant to the Claims Process Order, the Meeting Order, the Amended Plan, the Sanction Order made February 5, 2021 or this Order.
21. Each Creditor is hereby deemed to have consented and agreed to all of the provisions of the Amended Plan in its entirety and each Creditor is hereby deemed to have executed and delivered to the Petitioner all consents, releases, assignments and waivers, statutory or otherwise, required to implement and carry out the Amended Plan in its entirety.

#### **DISTRIBUTIONS UNDER THE AMENDED PLAN**

22. This Court declares that notwithstanding the issuance of Transaction Implementation Certificate and the occurrence of the Transaction Implementation Date, the Distributable Cash will be paid to an account held by the Monitor and distributed in accordance with section 4 of the Amended Plan.
23. All distributions paid to Creditors and the Preferred Shareholders under the Amended Plan are for the account of the Petitioner and the fulfillment of the Petitioner's obligations under the Amended Plan.

#### **NON-TERMINATED CONTRACTS AND FURTHER PROCEEDINGS**

24. Subject to the performance of the Petitioner of their obligations under the Amended Plan, all obligations, contracts, agreements, leases or other arrangements to which

the Petitioner is a party as at the Transaction Implementation Date, shall be and remain in full force and effect, unamended, as at the Transaction Implementation Date, unless disclaimed or resiliated by the Petitioner prior to the Transaction Implementation Date, and no party to any such obligation or agreement shall, on or following the Transaction Implementation Date, and no party to any such obligation or agreement shall, on or following the Transaction Implementation Date, accelerate, terminate, refuse to renew, rescind, refuse to perform or otherwise disclaim or resiliate its obligations thereunder or enforce or exercise (or purport to enforce or exercise) any right or remedy under or in respect of any such obligation or agreement by reason:

- a. of any event which occurred prior to, and not continuing after, the Transaction Implementation Date or which is or continues to be suspended or waived under the Amended Plan, which would have entitled any other party thereto to enforce those rights or remedies;
  - b. that the Petitioner has sought or obtained relief or has taken steps as part of the Amended Plan or under the CCAA;
  - c. of any default or event of default arising as a result of the financial condition or insolvency of the Petitioner;
  - d. of the effect upon the Petitioner of the completion of any of the transactions contemplated under Amended Plan; and
  - e. any compromises, settlements, restructurings and releases effected pursuant to the Amended Plan.
25. Effective the Transaction Implementation Date, the commencement or prosecution, whether directly, derivatively or otherwise, of any demands, claims, actions, counterclaims, suits, judgments, or other remedy or recovery with respect to any indebtedness, liability, obligation or cause of action released, discharged or terminated pursuant to the Amended Plan, is permanently enjoined and the Petitioner is absolutely released and discharged from all indebtedness, liabilities, and any other obligations arising in respect of the Claims.
26. Effective as of the Transaction Implementation Date, all CCAA Claims shall be discharged as against the Petitioner but shall remain recoverable from the Distributable Cash.

#### **THE MONITOR**

27. After the Plan Implementation Date, the Monitor shall be discharged and released from its duties in relation to the Petitioner, other than those obligations, duties and responsibilities necessary or required to give effect to the terms of the Amended Plan, the Claims Process Order, the Sanction Order made February 5, 2021 and this Order.

28. The actions and conduct of the Monitor in the CCAA Proceedings in relation to the Petitioner are hereby approved and the protections afforded to the Monitor pursuant to the Initial Order are hereby extended and, in addition to these rights and protections and those rights and protections afforded to the Monitor under the CCAA and the Amended Plan, the Monitor shall incur no liability or obligation whatsoever as a result of its appointment, or the carrying out of its duties or obligations in the CCAA Proceedings in relation to the Petitioner, including the discharge of its duties or obligations under the Amended Plan and the implementation thereof, save and except any claim or liability arising out of fraud, willful misconduct or gross negligence on the part of the Monitor.
29. No action or other proceeding shall be commenced against the Monitor in any way arising from or related to its capacity or conduct as Monitor in the CCAA Proceedings in relation to the Petitioner except with prior leave pursuant to an order of the Court made in the CCAA Proceedings on prior written notice to the Monitor, and such further order may provide security for costs, including if the Court so determines, the full costs and disbursements of the Monitor in connection with any proposed action or proceeding.
30. Following the Plan Implementation Date, and upon the Monitor: (a) having satisfied the distributions payable to the Creditors pursuant to the Amended Plan; and (b) is being satisfied that the Transactions have completed, is authorized and directed to file with the Court in the CCAA Proceedings the Monitor's Implementation Certificate in substantially in the form attached hereto as **Schedule "D"**.
31. Paragraph 27 of the Sanction Order made February 5, 2021 be and is deleted.
32. Upon completion by the Monitor of its duties pursuant to the CCAA, the Amended Plan and all applicable Orders. the Monitor is authorized and directed to apply for an order of final discharge and taxation from the Court.

#### **DISCHARGE OF THE PETITIONER FROM CCAA PROCEEDINGS**

33. After the Transaction Implementation Date, the Petitioner shall be discharged and released from the CCAA Proceedings, provided that the Monitor's powers and functions with respect to the resolution and administration of any unresolved Claims, making distributions under the Amended Plan and completing its obligations relating to the Amended Plan shall continue.

#### **AID AND RECOGNITION OF THIS ORDER**

34. **THIS COURT REQUESTS** the aid and recognition of other Canadian and foreign Courts, tribunals, regulatory or administrative bodies to act in aid of and to be complementary to the Court in carrying out the terms of this Order where required. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Petitioner and to the Monitor, as an officer of the Court, as may be necessary or desirable to give

effect to this Order.

**MISCELLANIOUS**

- 35. Without limiting any other term of this Order, all Persons named in the Amended Plan are hereby authorized and directed to perform their functions and fulfil their obligations as provided for in the Amended Plan in order to facilitate the implementation of the Amended Plan.
- 36. The Petitioners, the Monitor, and any other interested parties are hereby granted leave to apply to the Court for any directions or determination required to resolve any matter or dispute relating to the Amended Plan, this Order or the subject matter thereof and the rights and benefits thereunder, provided that no provision of this Order shall be construed to modify or impair any right, title, interest, privilege or remedy expressly provided for or reserved under the Amended Plan.

**APPROVAL**

- 37. Endorsement of this Order by counsel appearing on this application other than counsel for the Petitioner is hereby dispensed with.

**THE FOLLOWING PARTIES APPROVE THE FORM OF THIS ORDER AND CONSENT TO EACH OF THE ORDERS, IF ANY, THAT ARE INDICATED ABOVE AS BEING BY CONSENT:**

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Signature of Jeremy D. West  
Counsel for the Petitioner

By the Court.

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Registrar

**Schedule "A" – List of Counsel Appearing**




**Schedule "B"**  
**Amended Plan**

**Schedule "C"**  
**Transaction Implementation Certificate**

No. S1710393  
Vancouver Registry

**IN THE SUPREME COURT OF BRITISH COLUMBIA**

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,  
R.S.C. 1985, c. C-36, AS AMENDED

AND

IN THE MATTER OF THE *BUSINESS CORPORATIONS ACT*,  
S.B.C. 2002, c. 57, AS AMENDED

AND

IN THE MATTER OF THE *CANADA BUSINESS CORPORATIONS ACT*,  
R.S.C. 1985, c. C-44, AS AMENDED

AND

IN THE MATTER OF A PLAN OF COMPROMISE AND ARRANGEMENT OF  
ALL CANADIAN INVESTMENT CORPORATION

**MONITOR'S TRANSACTION IMPLEMENTATION CERTIFICATE**

By Order made November 25, 2019, this Court appointed McEown and Associates Ltd. as monitor (the "Monitor") of the Petitioner pursuant to the *Companies' Creditors Arrangement Act* (the "Petitioner");

By Order made February 5, 2021 (the "Sanction Order"), this Court sanctioned and approved the Petitioners' plan of arrangement dated November 26, 2020 (the "Plan");

By Order made July 17, 2023 (the "Amended Sanction Order"), this Court sanctioned and approved the Petitioner's amended Plan of Arrangement (the "Amended Plan") and associated transactions, including the Share Purchase Agreement dated \_\_\_\_, 2023 between McEown and Associates Ltd., solely in its capacity as the court-approved monitor of All Canadian Investment Corporation and not in its personal capacity, and Lighthouse Capital Corporation (the "Agreement"), and authorized the Monitor to file with the Court a certificate evidencing completion of the transaction contemplated by the Agreement;

THE MONITOR HEREBY CERTIFIES the following:

1. The Monitor has received funds sufficient to satisfy the purchase price pursuant to the Agreement; and
2. The transaction contemplated in the Agreement has closed and is complete in all respects.

DATED at the City of Vancouver, in the Province of British Columbia, this \_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

McEown and Associates Ltd.  
In its capacity as Monitor of the Petitioner  
And not in its personal capacity.

Per: \_\_\_\_\_

**Schedule "D" – Monitor's Implementation Certificate**

No. S1710393  
Vancouver Registry

**IN THE SUPREME COURT OF BRITISH COLUMBIA**

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,  
R.S.C. 1985, c. C-36, AS AMENDED

AND

IN THE MATTER OF THE *BUSINESS CORPORATIONS ACT*,  
S.B.C. 2002, c. 57, AS AMENDED

AND

IN THE MATTER OF THE *CANADA BUSINESS CORPORATIONS ACT*,  
R.S.C. 1985, c. C-44, AS AMENDED

AND

IN THE MATTER OF A PLAN OF COMPROMISE AND ARRANGEMENT OF  
ALL CANADIAN INVESTMENT CORPORATION

**MONITOR'S PLAN IMPLEMENTATION CERTIFICATE**

By Order made November 25, 2019, this Court appointed McEown and Associates Ltd. as monitor (the "Monitor") of the Petitioner pursuant to the *Companies' Creditors Arrangement Act* (the "Petitioner");

By Order made February 5, 2021 (the "Sanction Order"), this Court sanctioned and approved the Petitioners' plan of arrangement dated November 26, 2020 (the "Plan");

By Order made July 19, 2023 (the "Amended Sanction Order"), this Court sanctioned and approved the Petitioner's amended Plan of Arrangement (the "Amended Plan") and associated transactions;

The Sanction Order and the Amended Sanction Order authorized and directed the Monitor to file this certificate with the Court once the conditions at paragraph 30 of the Amended Sanction Order were satisfied.

THE MONITOR HEREBY CERTIFIES the following:

1. The Monitor has satisfied the distributions payable to the Creditors pursuant to the

Amended Plan;

2. The Monitor is satisfied that all Transactions (as defined in the Plan and the Amended Plan) have completed; and
3. The Amended Plan has been implemented and is complete in all respects.

DATED at the City of Vancouver, in the Province of British Columbia, this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

McEown and Associates Ltd.  
In its capacity as Monitor of the Petitioner  
And not in its personal capacity.

Per: \_\_\_\_\_