

## Affected Users:

This is the fifth communication from Representative Counsel to Affected Users.

The Applicants' motion ("**Comeback Motion**") in the Supreme Court of Nova Scotia (the "**Court**") seeking: (i) an extension of the stay of proceedings for between 45 and 60 days; and (ii) the appointment of a chief restructuring officer ("**CRO**"), was heard March 5, 2019. Paragraph 6 of the Order of the Court dated February 28, 2019 (the "**Representative Counsel Appointment Order**") authorized Representative Counsel, prior to the appointment of the Official Committee of Affected Users (the "**Official Committee**") to take such steps or actions on behalf of Affected Users consistent with the Purpose (as defined in the Representative Counsel Appointment Order) in Representative Counsel's sole discretion and without instruction from the Official Committee. The Court broadcasted the Comeback Motion by web-cast.

The purpose of this communication is to provide you with some context and our views on the Comeback Motion and the Orders that were granted: (i) extending the stay of proceedings for 45 days; and (ii) appointing a limited scope CRO, all of which is without prejudice to Representative Counsel's right to return to Court to amend or vary the Orders after appointment of the Official Committee.

Prior to the hearing date we raised concerns through letters and conference calls on behalf of Affected Users with the relief being sought by the Applicants at the Comeback Motion. In summary, our primary concerns were:

- We did not think it was appropriate to bind the Official Committee before it had been formed. Therefore, the relief sought had to be without prejudice to Representative Counsel's right to vary or amend the Orders granted after the Official Committee has been appointed and provided us with instructions;
- The appointment of the CRO would potentially interfere with and duplicate the Monitor's work; and
- The \$300,000 should not be repaid to Ms. Robertson at this time.

During the days leading up to the Comeback Motion, we worked extensively with the Monitor and the Applicants to address these concerns pending establishment of the Official Committee (the "**Interim Period**"). As a result of these negotiations:

- All of the Orders granted were without prejudice to Representative Counsel's right to return to Court to vary or amend the orders following the appointment of and instructions from the Official Committee.
- The role of the CRO is limited in scope and will not duplicate the Monitor's work while providing an immediate benefit to the Monitor in its investigation efforts. We discussed the role of the CRO at length with the Monitor and the Applicants. The immediate benefit is the preservation and protection of information. The appointment of the CRO ensures information may flow between the Monitor and the Company free of the conflicts surrounding the current governance structure with Ms. Robertson and Mr. Thomas Beazley, who is the second director of the

Applicants and also Ms. Robertson's step-father. Given the Monitor's preliminary findings in the Third Report, in our view, a court-appointed officer with a limited role to protect the Monitor's investigation is of the utmost importance for the Affected Users during the Interim Period. Through our discussions with the Monitor and the Applicants prior to the Comeback Motion, we were satisfied that the parties understood and agreed that the CRO's scope would be limited and there would be no duplication with the Monitor. For these reasons, and because the order was granted without prejudice to Representative Counsel's right to return to Court to vary or amend the order, in our judgment the appointment of the CRO during the Interim Period was in the best interests of Affected Users.

- We raised concerns with the repayment of the \$300,000 allegedly loaned by Ms. Robertson to the Applicants prior to the commencement of the CCAA Proceeding (the "**Repayment**"). As set out in our letter to the Applicants, we were of the view that the Repayment should not occur at the Comeback Motion. Prior to the hearing, we raised with the Applicants various legal issues regarding the Repayment; the Applicants agreed to defer the issue. The Repayment will be further considered once the Official Committee is formed.

Overall, in our view, the arrangements made with the Applicants and the Monitor prior to the Comeback Motion benefit the Affected Users during the Interim Period because:

- Affected Users' rights were preserved pending appointment of the Official Committee;
- the flow of information, in particular with respect to the Monitor's investigation, will be through the CRO and isolated from the current directors; and
- the Repayment was not made.

### **Next Steps**

We have received approximately 80 applications for a spot on the Official Committee. The Official Committee is expected to be 5 – 7 individuals representative of the diverse interests comprising the Affected Users. We are aiming to complete the selection process and finalize the Official Committee within the next 10 days or so.

Thank you.

