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April 2, 2021

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Sent Via Email**

Ernst & Young Inc.
Court-Appointed Trustee of Quadriga
Ernst & Young Tower
100 Adelaide St. West
Toronto, ON M5H 0B3

Stikeman Elliott LLP
5300 Commerce Court West
199 Bay Street
Toronto, ON
M5L 1B9

Attention: Elizabeth Pillon and George Kinsman

Dear Mr. G. Kinsman and Ms. E. Pillon:

**Re: In re Quadriga Fintech Solutions Corp., Whiteside Capital Corporation and
0984750 B.C. Ltd. (dba QuadrigaCX and Quadriga Coin Exchange)
("QuadrigaCX")**

We have been advised that certain Affected Users with large claim amounts against the QuadrigaCX estate have raised a potential surplus issue to the Official Committee. Upon direction from the Official Committee, Representative Counsel writes this letter to communicate the concern of these Affected Users with respect to Overages, should any additional crypto-assets be recovered.

Further to the motion brought by the Trustee on January 26, 2021, the date of bankruptcy was established for the reference date of the conversion of cryptocurrency claims for the purpose of distribution (the "**Conversion Date**"). The Ontario Superior Court of Justice held that the claims of all Affected Users rank equally as unsecured claims without any priority under s. 136 of the *Bankruptcy and Insolvency Act* (the "**BIA**"). This decision was primarily based on administrative efficiency and to ensure that Affected Users did not suffer any prejudice in the conversion of claims to CDN fiat.

Statute and Case Law

Under the BIA, s. 144 states as follows [*emphasis added*]:

The bankrupt, or the legal personal representative or heirs of a deceased bankrupt, is entitled to any surplus remaining after payment in full of the bankrupt's creditors with interest as provided by this Act and of the costs, charges and expenses of the bankruptcy proceedings.

Despite the above, surplus property does not automatically re-vest in a bankrupt. Property does not re-vest unless it is re-conveyed by a trustee.¹ Should an Overage occur, certain Affected Users are of the view that the Trustee should not re-vest any surplus assets to the estate of QuadrigaCX, but instead increase the rateable return on claims to Affected Users.

Hypothetical Overage

As you are aware, further cryptocurrencies could be recovered through the Trustee via asset tracing. Additionally, there is a possibility that the original locked Ethereum that was lost by QuadrigaCX (due to a failed splitter contract) could be amended through a proposal such as EIP-156.²

Using the EIP-156 situation as an example, in June of 2017, the price of Ethereum was only approximately \$250 CDN. As of the week of March 2021, Ethereum has risen to over \$2,200 CDN. A recovery of the locked Ethereum, depending on market price, could hypothetically satisfy all claims of Affected Users (based on conversion to fiat as at the Conversion Date) and leave a surplus (an “**Overage**”).

The Official Committee instructed Representative Counsel to make the Trustee aware of these Affected Users’ concerns. Should an Overage occur, Affected Users may take a position or challenge any decision to distribute to Overage to equity that only arises due to the technicality of converting cryptocurrency to fiat for the purpose of distribution. It would be highly prejudicial for any Overage to return to the Gerald Cotten Estate (as the shareholder of Quadriga), given that:

- Gerald Cotten (through QuadrigaCX) misused client assets for years, in a likely Ponzi scheme, which resulted in a collapse of the platform. The full involvement of the estate (and related parties to Gerald Cotten) in investor losses is still unclear;³
- Over 76,000 Affected Users have been negatively impacted by the QuadrigaCX proceedings, and were collectively owed a combined \$215 million in assets by February of 2019 (40% of which were Ontarians); and
- The losses suffered by Affected Users have been significantly increasing if measured against the current date, due to the volatile rise of cryptocurrencies (ex. a current BTC valuation of over \$56,000 CAD as of the week of March 15, 2021).

While this exercise is theoretical, this letter is written to raise preliminary concerns and to ensure that the Trustee is aware that should an Overage occur, certain Affected Users may take the legal position that: (a) the Trustee should not re-vest surplus assets to the QuadrigaCX estate; and (b) any Overage after conversion should be distributed rateably to Affected Users, given the magnitude of their losses and status as victims.

¹ *MacCulloch Estate, Re*, 113 N.S.R. (2d) 367 at para 60.

² Please see: Official Statement by QuadrigaCX on Reddit at https://np.reddit.com/r/ethereum/comments/6ettq5/statement_on_quadrigacx_ether_contract_error/.

³ Please see: “QuadrigaCX: A Review by Staff of the Ontario Securities Commission”.



Yours truly,

MILLER THOMSON LLP

Per:

A handwritten signature in black ink, consisting of a stylized 'A' and 'I' followed by a long horizontal stroke.

Asim Iqbal

Partner

/AI

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