

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(Commercial List)**

THE HONOURABLE  
MR. JUSTICE CAVANAGH

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FRIDAY, THE 6<sup>TH</sup>  
DAY OF OCTOBER, 2023

**IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL  
UNDER THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, c. B-3, AS  
AMENDED, OF WHYTE'S FOODS INC.**



Applicant

**NOI TERMINATION AND TRANSITION ORDER**

THIS MOTION, made by Wells Fargo Capital Financing Corporation Canada (“**Wells Fargo**”) for an Order, among other things, substituting the trustee in bankruptcy of Whyte’s Foods Inc., granting certain releases and other ancillary relief, was heard this day at, by judicial video conference via Zoom.

ON READING the Motion Record of the Debtor, the second report dated October 4, 2023 (the “**Second Report**”) of Alvarez & Marsal Canada Inc. (“**A&M**”), in its capacity as proposal trustee (the “**Proposal Trustee**”), and on hearing the submissions of the lawyer(s) for the Debtor, the Proposal Trustee, Wells Fargo, Farm Credit Canada and those other parties present, no one else appearing although duly served as appears from the affidavit of service of Natasha Rambaran, filed,

**SERVICE**

1. COURT ORDERS that the time for service of the Notice of Motion, the Motion Record and the Second Report hereby abridged and validated so that this motion is properly returnable today and hereby dispenses with further service thereof.

## **BANKRUPTCY TRUSTEE**

2. THIS COURT ORDERS that, effective upon the filing with the Court of the Proposal Trustee's Certificate (as defined in the St. Louis Sale Approval and Extension Order issued in these proceedings on October 6, 2023, the "**St. Louis AVO**"), (a) the period in which a proposal is to be filed with the Official Receiver shall terminate pursuant to section 50.4(11) of the *Bankruptcy and Insolvency Act* (Canada) (the "**BIA**"); and (b) Ernst & Young Inc. shall be hereby appointed as trustee in these proceedings in *lieu* of Alvarez & Marsal Canada Inc. pursuant to section 57.1 of the BIA.

## **RELEASES**

3. THIS COURT ORDERS that effective upon the filing of the Proposal Trustee's Certificate, the Proposal Trustee and its legal counsel (collectively, the "**Released Parties**") shall be deemed to be forever irrevocably released and discharged from any and all present and future claims (including without limitation, claims for contribution or indemnity), liabilities, indebtedness, demands, actions, causes of action, counterclaims, suits, damages, judgments, executions, recoupments, debts, sums of money, expenses, accounts, liens, taxes, recoveries, and obligations of any nature or kind whatsoever (whether direct or indirect, known or unknown, absolute or contingent, accrued or unaccrued, liquidated or unliquidated, matured or unmatured or due or not yet due, in law or equity and whether based in statute or otherwise) based in whole or in part on any act or omission, transaction, dealing or other occurrence existing or taking place prior to the filing of the Proposal Trustee's Certificate (a) undertaken or completed pursuant to the terms of this Order, (b) arising in connection with or relating to these NOI Proceedings, or (d) related to the management, operations or administration of the Debtor (collectively, the "**Released Claims**"), which Released Claims are hereby fully, finally, irrevocably and forever waived, discharged, released, cancelled and barred as against the Released Parties, save and except for any gross negligence or wilful misconduct.

## **TRANSITION MATTERS**

4. THIS COURT ORDERS AND DIRECTS that upon the filing of the Proposal Trustee's Certificate the gross proceeds from the sale of the Purchased Assets (as defined in the St. Louis

AVO) (the “**Proceeds**”) shall be transferred to FTI Consulting Canada Inc., in its capacity as receiver (the “**FCC Receiver**”) of certain assets, property and undertaking of the Debtor as specifically set out in Court File No. CV-23-00707205-00CL, and, for greater certainty, the Proceeds are not vested in the trustee in bankruptcy and shall not form any part of the Whyte’s bankruptcy estate.

5. THIS COURT ORDERS that from and after the filing of the Proposal Trustee’s Certificate, the FCC Receiver shall be deemed to have assumed and shall perform any post-closing obligations of the Vendor under the St. Louis Purchase Agreement (as defined in the Second Report).

6. THIS COURT ORDERS nothing in this Order, the termination of the NOI Proceedings or the bankruptcy of the Debtor shall prevent the payment of certain post-filing amounts to be funded and paid for within the receivership proceedings bearing Court File No. CV-23-00707052-00CL or the receivership proceedings bearing Court File No. CV-23-00707205-00CL.

#### **MISCELLANEOUS**

7. THIS COURT ORDERS that this Order shall have full force and effect in all provinces and territories in Canada.

8. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada to give effect to this Order and to assist the Debtor, the Proposal Trustee and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Applicants and the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Applicants, the Monitor and their respective agents in carrying out the terms of this Order.

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***ONTARIO*  
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PROCEEDING COMMENCED AT  
TORONTO

**NOI TERMINATION AND TRANSITION  
ORDER**

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