

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

B E T W E E N:

**PRICEWATERHOUSECOOPERS INC.**

(solely in its capacity as court-appointed receiver and manager of Bridging Finance Inc. and certain related entities and investment funds)

Applicant

- and -

**SKYMARK FINANCE CORPORATION and MERK INVESTMENTS LTD.**

Respondents

APPLICATION UNDER Section 101 of the *Courts of Justice Act*, R.S.O. 1990 c.C.43, as amended, and Section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended

**MOTION RECORD OF THE RECEIVER  
(SISP Approval)**

May 17, 2023

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Alvarez & Marsal Canada Inc.

TO: **THE SERVICE LIST**

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4	Draft Order

# TAB 1

**ONTARIO  
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B E T W E E N:

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**NOTICE OF MOTION  
(SISP Approval)**

**ALVAREZ & MARSAL CANADA INC. (“A&M”)** in its capacity as court-appointed receiver and manager (in such capacity, the “**Receiver**”), without security, of all of the assets, undertakings, and properties of each of Skymark Finance Corporation (“**Skymark**”) and Merk Investments Ltd. (“**Merk**”, and together with Skymark, the “**Respondents**”) will make a motion to the Ontario Superior Court of Justice (Commercial List) on Thursday, May 25, 2023 at 12:30 p.m. (Toronto time), or as soon after that time as the motion can be heard.

**PROPOSED METHOD OF HEARING:** The motion is to be heard by videoconference

**THE MOTION IS FOR:**

- (a) an order, substantially in the form of the draft order located at Tab 4 of the Motion Record filed herewith (the “**SISP Approval Order**”),<sup>1</sup> among other things:
- (i) abridging and validating the time for service of this Notice of Motion and the Motion Record and dispensing with further service thereof;
  - (ii) approving the first report of the Receiver, dated May 17, 2023 (the “**First Report**”), and the actions, conduct, and activities of the Receiver described therein;
  - (iii) approving the sale and investment solicitation process (the “**SISP**”) set out and described in Schedule “A” to the SISP Approval Order (the “**SISP Document**”) to identify one or more purchasers of and/or investors in the Consumer Portfolio, other Assets, and/or Business of Skymark to make an offer (a “**Bid**”); and
  - (iv) authorizing and directing the Receiver to perform its obligations under the SISP and SISP Approval Order and to take such steps and execute such documentation as the Receiver considers necessary or desirable in carrying out such obligations, provided that prior approval of this Court shall be obtained before the completion of any transaction(s) under the SISP; and
- (b) such further and other relief as this Honourable Court may deem just.

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<sup>1</sup> Capitalized terms used herein which are not defined have the meanings given to them in the SISP Approval Order.

**THE GROUNDS FOR THE MOTION ARE:**

- (a) Skymark's primary business is providing financing and leasing to consumer borrowers for home renovations, water systems, HVAC systems and smart home improvements. Each of these loans and leases are generally secured by a Notice of Security Interest registered by Skymark on title against the real property on which the financed/leased equipment is located;
- (b) Merk's primary business is to manage and administer select mortgages arranged by Skylark Mortgages Limited ("**Skylark**"), a related mortgage brokerage company owned by the principal of Merk. Skylark is not a party to these proceedings;
- (c) A&M was appointed Receiver by this Court pursuant to the Order of Justice Penny dated March 6, 2023 (the "**Appointment Order**");
- (d) The Appointment Order authorizes the Receiver to, among other things, market any or all of the present and future assets, undertakings, and properties of the Respondents acquired for, or used in relation to the business carried on by the Respondents and all proceeds thereof (the "**Property**"), including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate;
- (e) In furtherance of such goal, the Receiver brings this motion for an Order approving the SISP;



- (f) The terms of the SISP are summarized in the SISP Document and in the First Report;
- (g) The SISP provides for the solicitation of interest in: (i) a purchase of, or investment in, all or part of Skymark's portfolio of leases and loans to residential and commercial consumer borrowers primarily in respect of water systems, HVAC systems, and smart home improvements (the "**Consumer Portfolio**"); and/or (ii) a purchase of, or investment in, any or all of Skymark's Assets or Business;
- (h) The Receiver is satisfied that the SISP represents the most efficient and fair process to be administered in the circumstances that will sufficiently expose the Consumer Portfolio, other Assets, and Business of Skymark to the marketplace for sale and generate maximum value in respect thereof;
- (i) The duration of the SISP is reasonable and will provide all Known Potential Bidders sufficient time to assess the Consumer Portfolio, other Assets, and Business of Skymark and to submit a Bid if they so choose;
- (j) The Receiver has developed the SISP to solicit Bids by a set Bid Deadline and is of the view that the SISP balances the need to have a sale accomplished in a reasonable timeframe to limit the carrying costs associated with the Consumer Portfolio, other Assets, and Business of Skymark with the desire to properly expose the same to the marketplace to maximize recoveries for the stakeholders;
- (k) The SISP also gives the Receiver the right to hold an Auction to select the Successful Bidder(s) if the Receiver deems it desirable, and also to extend or amend

the SISP, including the target dates for key milestones set forth therein, to better promote a robust sale process;

- (l) Under the terms of the SISP, the Receiver shall be under no obligation to: (i) designate the highest or otherwise best Bid, or any Bid, as a Qualified Bid; (ii) accept the highest or best Bid, or any Bid, as the Successful Bid(s); or (iii) conduct an Auction in any circumstance;
- (m) The outside date for closing a transaction under the SISP is anticipated to be as soon as practicable after the selection of the Successful Bid(s), if any, in late July, 2023, or such other date as the Receiver may determine in accordance with the SISP Approval Order;
- (n) Those further grounds as set out in the First Report and the appendices thereto;
- (o) The provisions of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended, and the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended, and the inherent and equitable jurisdiction of this Court;
- (p) Rules 1.04, 1.05, 2.03, 3.02, 16 and 37 of the Rules of Civil Procedure, R.R.O. 1990, reg. 194, as amended; and
- (q) Such further and other grounds as counsel may advise and this Court may permit.

**THE FOLLOWING DOCUMENTARY EVIDENCE** will be used at the hearing of the motion:

- (a) The First Report and the appendices thereto; and

- (b) Such further and other material as counsel may advise and this Honourable Court may permit.

May 17, 2023

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**TO: THE SERVICE LIST**

APPLICATION UNDER Section 101 of the *Courts of Justice Act*, R.S.O. 1990 c.C.43, as amended, and Section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended  
PRICEWATERHOUSECOOPERS INC.  
(solely in its capacity as court-appointed receiver and manager of  
Bridging Finance Inc. and certain related entities and investment  
funds)

-and- SKYMARK FINANCE CORPORATION and MERK  
INVESTMENTS LTD.

Applicant

Respondents  
Court File No. CV-22-00692309-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

**Proceeding commenced at  
Toronto**

**NOTICE OF MOTION  
(SISP Approval)**

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# TAB 2

Court File No. CV-22-00692309-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

B E T W E E N:

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amended

**FIRST REPORT OF THE RECEIVER  
MAY 17, 2023**

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**Appendix A – Appointment Order, dated March 6, 2023**

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## 1.0 INTRODUCTION

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- 1.1 This first report (“**First Report**”) is filed by Alvarez & Marsal Canada Inc. (“**A&M**”) in its capacity as Court-appointed receiver and manager (in such capacity, the “**Receiver**”), without security, of all of the assets, undertakings and properties (the “**Property**”, or the “**Assets**”) of each of Skymark Finance Corporation (“**Skymark**”) and Merk Investments Ltd. (“**Merk**”, and together with Skymark, the “**Companies**”).
- 1.2 Pursuant to an order of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) dated March 6, 2023 (the “**Appointment Order**”), A&M was appointed Receiver of the Companies’ Property. A copy of the Appointment Order is attached as **Appendix “A”**.
- 1.3 This First Report is filed in support of the Receiver’s motion (the “**SISP Approval Motion**”) seeking, among other things, the sale process approval order (the “**SISP Approval Order**”) from this Court:
- a) approving the sale and investment solicitation process to market for sale all or a portion of the assets and/or business of Skymark (the “**SISP**”) as further described in this First Report;
  - b) approving this First Report and the actions, conduct and activities of the Receiver described herein; and
  - c) such further and other relief as this Court may deem just.

## 2.0 TERMS OF REFERENCE AND DISCLAIMER

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- 2.1 In preparing this First Report, the Receiver has relied upon unaudited financial information, books and records and other documents provided by the Companies and discussion with management (collectively, the “**Information**”).
- 2.2 The Receiver has reviewed the Information for reasonableness, internal consistency and use in the context in which it was provided. However, the Receiver has not audited or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would wholly or partially comply with Canadian Auditing Standards (“**CASs**”) pursuant to the *Chartered Professional Accountants Canada Handbook*, and accordingly, the Receiver expresses no opinion or other form of assurance contemplated under CASs in respect of the Information.
- 2.3 Future-oriented financial information referred to in this First Report was prepared based on management’s estimates and assumptions. Readers are cautioned that since projections are based upon assumptions about future events and conditions that are not ascertainable, the actual results will vary from the projections. Even if the assumptions materialize, the variations in such future-oriented financial information could be significant.
- 2.4 This First Report has been prepared to provide the Court with general information and an update regarding these receivership proceedings (the “**Proceedings**”) and to assist the Court in deciding whether to grant the SISP Approval Order. This First Report should not be relied upon for any other purpose or by any other person. The Receiver shall not be

held responsible for any losses or liability incurred as a result of the circulation, publication, reproduction or use of this First Report contrary to the provisions of this paragraph.

- 2.5 Capitalized terms used but not defined in this First Report shall have the meaning given to them in the Appointment Order. Unless otherwise stated, all monetary amounts contained in this First Report are expressed in Canadian dollars.

### 3.0 BACKGROUND

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- 3.1 The background in respect of the Companies, as well as a description of the activities and circumstances leading to the appointment of the Receiver are contained in the application record filed by PricewaterhouseCoopers Inc. (“**PWC**”) as receiver and manager (in such capacity, the “**Bridging Receiver**”) of Bridging Finance Inc. (“**BFI**”) and certain related entities and investment funds (collectively “**Bridging**”), in particular, the affidavit of Christine Sinclair which was filed by PWC in support of its application to appoint the Receiver (collectively, the “**PWC Application Record**”). The PWC Application Record, and other Court-filed documents and notices in these Proceedings have been posted to the case website at [www.alvarezandmarsal.com/skymark](http://www.alvarezandmarsal.com/skymark) (the “**Case Website**”).
- 3.2 The primary business of Skymark is providing financing and leasing to consumer borrowers for home renovations, water systems, HVAC systems and smart home improvements. Each of these loans and leases (collectively, the “**Consumer Loans**”) are generally each secured by a Notice of Security Interest (“**NOSI**”) registered by Skymark on title against the real property on which the financed/leased equipment is located.
- 3.3 In addition to the Consumer Loans and the 258 Loan discussed below, the known assets of Skymark at the date of the Appointment Order include four additional loans that Skymark has provided to third-party borrowers (collectively, the “**Non-Core Loans**”). The Non-Core Loans are described further in Section 4.
- 3.4 Merk’s primary business is to manage and administer select mortgages arranged by Skylark Mortgages Limited (“**Skylark**”), a related mortgage brokerage company owned

by the principal of Merk. Skylark is not a party to these Proceedings. For a fee, Merk would manage and administer the security registration for Skylark as mortgages were being arranged and subsequently the transfer of registrations to the third-party mortgage lender ultimately funding the mortgage. On occasion, Merk also provided certain administrative services to third party mortgage lenders.

- 3.5 As of the date of the Appointment Order, Skymark had 4 employees and 3 contractors. Merk does not have any employees or contractors.
- 3.6 The Companies are incorporated under the laws of the Province of Ontario. Their registered head office is 46 Village Centre Place, 3<sup>rd</sup> Floor, Mississauga, Ontario (the “**Premises**”). The Companies share the Premises with certain other entities owned by the principals of Skymark and Merk, none of which are parties to these Proceedings.

#### **The Senior Lender**

- 3.7 BFI is a privately held investment management firm that offered alternative investment options to investors through various investment funds managed by BFI. Following an investigation by the Ontario Securities Commission (the “**OSC**”) into Bridging and certain related individuals and entities, the Court, on application by the OSC, issued orders dated April 30, 2021, May 3, 2021 and May 14, 2021 appointing the Bridging Receiver in respect of Bridging pursuant to section 129 of the *Securities Act*, R.S.O. 1990, c. S. 5, as amended.
- 3.8 Pursuant to a term sheet dated April 28, 2015 (as amended from time to time, the “**Loan Agreement**”), BFI as agent on behalf of certain Bridging investment funds (collectively,

the “**Lender**”), made available to Skymark five credit facilities in the aggregate principal amount of \$35,170,000. The core credit facility was advanced by BFI to Skymark to be utilized by Skymark: (i) to make eligible Consumer Loans; (ii) for working capital of Skymark; and (iii) for other general corporate purposes. The remaining facilities were advanced by BFI to Skymark to allow Skymark to make larger loans to third parties (referred to herein as the Non-Core Loans, and discussed in greater detail below).

- 3.9 Pursuant to a guarantee agreement dated July 2015 (the “**Merk Guarantee**”), Merk (the “**Guarantor**”) guaranteed the obligations of Skymark under the Loan Agreement up to \$1 million, plus interest.
- 3.10 As security for their obligations to the Lender, Skymark and the Guarantor each executed and delivered security agreements to the Lender, pursuant to which, they each granted to the Lender a security interest over all their personal property.
- 3.11 In addition, pursuant to a term sheet dated July 7, 2017, a separate loan in the aggregate principal amount of \$21 million (the “**Additional Loan**”) was advanced by the Lender to Skymark. The purpose of the Additional Loan was for the Lender to fund a loan (the “**258 Loan**”) made by Skymark to 2581150 Ontario Inc. (“**258**”), a related company to Skymark, in connection with the acquisition by 258 of certain assets of Thomas Canning (Maidstone) Limited and 692194 Ontario Limited (together, the “**Thomas Canning Entities**”).

- 3.12 As security for its obligations under the Additional Loan, Skymark executed and delivered a security agreement to the Lender pursuant to which it granted to the Lender a security interest over all of its personal property.
- 3.13 The obligations of 258 to Skymark under the 258 Loan are secured by, among other security, mortgages registered in favour of Skymark on title to certain real property that 258 acquired from the Thomas Canning Entities. The mortgages in favour of Skymark remain registered on title to the lands, and the Receiver has caused the Appointment Order to be registered on title in each case to provide notice of the Receiver's interest in the Skymark mortgages.
- 3.14 The Receiver understands that 258 takes the position that the 258 Loan and the security granted thereunder was assigned by Skymark to the Lender, such that the 258 Loan is repayable directly from 258 to Bridging and not to Skymark. The Bridging Receiver has indicated that the books and records of Bridging do not include any written agreement that gives effect to this arrangement.
- 3.15 On December 30, 2022, the Bridging Receiver issued a Notice of Action, and on January 23, 2023 filed a Statement of Claim (the "**Statement of Claim**") against Skymark and 258 in respect of, among other things, the 258 Loan. The Statement of Claim has not been served on Skymark. The Bridging Receiver has indicated that it intends to pursue the alleged claim against Skymark in the context of these Proceedings. The Receiver continues to investigate the terms of the 258 Loan, the security granted thereunder and Skymark's recourse in respect of same.

3.16 As of March 31, 2023, the aggregate indebtedness of Skymark to the Lender under the Loan Agreement and the Additional Loan, including interest accrued, amounted to approximately \$47,570,768 and \$23,294,175, respectively.

### **Other Creditors**

3.17 The following provides a summary of other creditors that had registrations against the Companies pursuant to the *Personal Property Security Act* (Ontario) (“**PPSA**”) as of the date of the Appointment Order:

- i. Enbridge Gas Inc. operating as Union Gas (“**Enbridge**”) and BNY Trust Company of Canada (“**BNY**”) have registered a PPSA financing statement in respect of the present and after-acquired accounts of Skymark that are subject to a billing and collection services agreement administered by Enbridge (the “**Enbridge Agreement**”) in respect of which BNY is trustee pursuant to a trust deed dated February 4, 2010;
- ii. Auto One Group Limited has registered PPSA financing statements against Merk in respect of three vehicles leased by Merk. The Receiver is reviewing the current status of the associated vehicle leases; and
- iii. Enlightened Funding Corporation (“**EFC**”) had registered a PPSA financing statement against Skymark which did not appear to be supported by any corresponding obligation owing by Skymark to EFC. The Receiver made inquiries with the law firm listed on the PPSA financing statement about the registration, and it has since been discharged.



- 3.18 In addition to the above, Skymark has unremitted pre-filing HST arrears up to the date of the Appointment Order of approximately \$191,733. Additional information in respect of Skymark's HST arrears is provided in Section 5 below.
- 3.19 According to the Companies' books and records, as of February 28, 2023, Skymark and Merk had unsecured obligations totaling approximately \$7.95 million and \$60,000, respectively.

## 4.0 THE NON-CORE LOANS

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- 4.1 Background information in respect of each of the four Non-Core Loans is provided below. The Receiver's review and investigation of the Non-Core Loans is ongoing and will be described further, together with the Receiver's intended course of action in respect of each Non-Core Loan, in a subsequent report to the Court.

### **Loan #1 - The Industrial Road Loan**

- 4.2 The industrial road loan (the "**Industrial Road Loan**") relates to a loan made by Skymark to a third-party borrower (the "**Industrial Road Borrower**") for the purpose of funding a standby letter of credit to be issued to the Ontario Ministry of Finance (the "**Ministry**") as security in favour of the Ministry for Tobacco Tax Registration Certificates and ongoing tax obligations to be drawn upon in the event that the Industrial Road Borrower fails to make payment to the Ministry of required taxes or permit fees.
- 4.3 Pursuant to the Industrial Road Loan dated November 1, 2015, Skymark advanced \$1.2 million to the Industrial Road Borrower bearing interest at 14.95% per annum. The Industrial Road Loan was secured by liens in respect of certain farm equipment and a mortgage in respect of real property located on Industrial Road in Delhi, Ontario (the "**Industrial Road Property**").
- 4.4 It appears that the Industrial Road Property was sold under power-of-sale for net proceeds of approximately \$425,000 which were paid to Skymark and applied to reduce the balance outstanding under the Industrial Road Loan. As of the Appointment Date,

approximately \$775,000, excluding accrued interest, remained outstanding under the Industrial Road Loan.

- 4.5 Together with its legal counsel, the Receiver continues to investigate matters related to the Industrial Road Loan and the Receiver's available options in respect of the balance outstanding thereunder.

#### **Loan #2 - The UK Property Loan**

- 4.6 The UK property loan (the "**UK Property Loan**") was advanced in July, 2018 by Skymark to one of the Directors of Skymark for the purpose of acquiring a property located in Reading, United Kingdom (the "**UK Property**").
- 4.7 The principal amount of the UK Property Loan is GBP 780,000, with the following financial terms: monthly principal repayments of GBP 5,200, bearing interest at a rate of 8% only if any monthly payments are missed.
- 4.8 The UK Property Loan is secured by a mortgage in favour of Skymark against the UK Property (the "**UK Mortgage**").
- 4.9 The UK Property Loan is governed by English law. Accordingly, the Receiver has engaged Blake Morgan LLP, counsel in the United Kingdom, to assist the Receiver in reviewing and considering the Receiver's rights under the UK Property Loan and in respect of the underlying security. Blake Morgan has delivered an opinion to the Receiver confirming that, subject to standard assumptions and qualifications, the UK Mortgage is valid and enforceable.

- 4.10 The Receiver has been provided with non-cash accounting entries that have been purportedly applied by the borrower to reduce the balance of the UK Property Loan in the books and records of Skymark. The Receiver's investigation in respect of these entries is ongoing.

#### **Loan #3 and #4 - The Mahal Loans and The Golden Miles Loans**

- 4.11 The Mahal loans consist of three loans Skymark advanced to Mahal Venture Capital Inc. ("MVCI") to purchase real property municipally known as 155 Adams Boulevard, Brantford, Ontario (the "**Mahal Property**") and to finance the construction of a flour mill on the Mahal Property (collectively, the "**Mahal Loans**").
- 4.12 The Mahal Loans are dated June 8, 2015, November 30, 2016 and September 4, 2018 and are each secured by mortgages on the Mahal Property. Together, the principal amounts advanced under the Mahal Loans total approximately \$20 million.
- 4.13 The Mahal Loans are syndicated loans. While Skymark continued to administer the mortgages, it transferred the participating interests in the mortgages to various other lenders.
- 4.14 The Non-Core Loans also include five loans (the "**Golden Miles Loans**") made by Skymark to Golden Miles Food Corporation ("**Golden Miles**"), a company related to MVCI, to finance the purchase of equipment required in the operation of the above-referenced flour mill.
- 4.15 The Golden Miles Loans are dated during the period from October 25, 2017 to January 25, 2019, and are secured against the financed equipment. Two of the Golden Miles

Loans are also secured by a mortgage on the Mahal Property. Together, the principal amounts advanced under the Golden Miles Loans total \$8,481,950.

- 4.16 Prior to the commencement of these Proceedings, on application by Skymark, by an order issued on October 1, 2021, the Court appointed KSV Restructuring Inc. (“**KSV**”) as receiver and manager (the “**Mahal Receiver**”) of the assets, undertakings and properties of MVCI and Golden Miles owned or used in connection with the flour mill located on the Mahal Property (the “**MVCI/Golden Miles Receivership Proceedings**”).
- 4.17 On November 15, 2021, the Mahal Receiver filed an assignment in bankruptcy on behalf of MVCI and Golden Miles under the *Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3* (“**BIA**”), pursuant to which KSV was appointed as the trustee in bankruptcy of MVCI and Golden Miles (the “**Bankruptcy**”).
- 4.18 Detailed information with respect to the MVCI/Golden Miles Receivership Proceedings and the Bankruptcy can be found on the Mahal Receiver’s website at: <https://www.ksvadvisory.com/experience/case/mahal-venture-capital-inc>.
- 4.19 On April 11, 2022, the Court granted an order approving the sale of all or substantially all of the assets of MVCI and Golden Miles to 12175622 Canada Inc. (the “**Mahal Purchaser**”), a company owned or controlled by the principal of MVCI and Golden Miles, Mr. Santokh Mahal.
- 4.20 The sale to the Mahal Purchaser (the “**Mahal Transaction**”) closed on May 18, 2022. The aggregate net proceeds totaled \$18.47 million, \$16 million of which was allocated to

the Mahal Property (the “**Mahal Proceeds**”) and \$2.47 million of which was allocated to the personal property owned by Golden Miles (the “**Personal Property Proceeds**”).

- 4.21 The Receiver understands that Skymark is entitled to a priority distribution from the Personal Property Proceeds of approximately \$177,000 (subject to reduction on account of accrued and expected costs of the Mahal Receiver). The Receiver expects that it may also receive additional distributions from the Personal Property Proceeds in the Bankruptcy as it appears that a substantial portion of the Personal Property Proceeds are unencumbered.
- 4.22 The Receiver understands that it will also be entitled to a meaningful distribution from the Mahal Proceeds, but the amount is not yet known as there are a number of priority claims in respect of those amounts which are yet to be determined.
- 4.23 A motion in respect of an interim distribution of the Mahal Proceeds and the Personal Property Proceeds has not yet been scheduled.
- 4.24 The Receiver has been monitoring the MVCI/Golden Miles Receivership Proceedings and the Bankruptcy, and will continue to do so, to ensure that Skymark’s interest in the Mahal Proceeds and the Personal Property Proceeds are protected.

## 5.0 RECEIVER'S ACTIVITIES TO DATE

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### General Overview

- 5.1 On March 6, 2023, the Receiver commenced taking possession and control of the Property.
- 5.2 The Receiver has spent considerable time at the Skymark/Merk premises to obtain an understanding of the Property and Assets, including the Non-Core Loans discussed above. As described in greater detail below, the Receiver now has sufficient familiarity with the Property and Assets to allow it to run the SISP to attempt to maximize value for creditors.
- 5.3 The Receiver's activities since its appointment include, among other things:
- reviewing and commenting on Court materials filed in the context of the motion to appoint the Receiver;
  - carrying out the Receiver's duties and responsibilities in accordance with the Appointment Order, including overseeing the Companies' operations during the period since the date of the Appointment Order;
  - engaging with the Receiver's counsel on various receivership matters;
  - freezing and administering the Companies' known bank accounts and opening new trust bank accounts in the name of the Receiver;
  - conducting a preliminary review of the Companies' bank records and transfer activity;

- managing employee related matters, including convening employee meetings at the Companies' premises, arranging for the ongoing employment with Skymark of its employees and contractors, arranging for the continuation of employee health benefits and making certain cost-sharing arrangements with a related company not party to these Proceedings in respect of certain employee-related and other costs;
- attending at the Companies' Premises on a regular basis;
- communicating with the Bridging Receiver to provide status updates in respect of these Proceedings;
- liaising with the principal of the related company that is the sublessor of the Premises to arrange for an allocation of the rental costs as between the Companies and the other related entities that occupy the Premises;
- arranging for the Companies' accounting records to be updated through the date of the Receiver's appointment;
- preparing and coordinating the mailing of the Notice and Statement of Receiver required pursuant to subsections 245(1) and 246(1) of the BIA;
- coordinating and reviewing various searches of real property and registering a copy of the Appointment Order on title to certain properties subject to mortgages in favour of Skymark;



- monitoring the MVCI/Golden Miles Receivership Proceedings and the Bankruptcy, including: (i) liaising with the Mahal Receiver with respect to status updates on the Mahal Receivership; and (ii) attending to observe a contested motion between the Mahal Receiver and Santkoh Mahal with respect to a priority claim being asserted by Mr. Mahal to the Personal Property Proceeds;
- drafting of this First Report and the motion materials in respect of the SISP Approval Motion;
- coordinating the development of and posting of relevant documents to the Case Website;
- responding to stakeholder and other enquiries; and
- addressing all other matters pertaining to the administration of these Proceedings.

5.4 In addition to the matters set out above, and as discussed in greater detail below, the Receiver has spent time assessing and addressing various claims that have been asserted against Skymark and/or Merk.

### **HST Obligations**

5.5 Prior to the commencement of the Proceedings, on February 2, 2023, the Canada Revenue Agency (“**CRA**”) issued a Requirement to Pay Notice (the “**RTP Notice**”) to The Bank of Nova Scotia (“**Scotiabank**”) in respect of outstanding HST obligations owed by Skymark. Skymark’s accounts at Scotiabank were used to receive payments from customers to which Skymark has advanced Consumer Loans.

- 5.6 At the time of the RTP Notice, the CRA claimed an amount owing of approximately \$184,702. Pursuant to the RTP Notice, Scotiabank was required to remit, among other things, all funds held on behalf of Skymark to the CRA as payment against Skymark's HST obligations.
- 5.7 As the RTP Notice was issued prior to the Appointment Order, the Receiver consulted with its legal counsel and determined that the amounts claimed under the RTP Notice have priority to the funds held in Skymark's Scotiabank accounts as of the date of the Appointment Order. As of the date of the Appointment Order, Skymark was holding approximately \$66,637 in its Scotiabank accounts.
- 5.8 Accordingly, on March 14, 2023, Scotiabank remitted \$66,637, being the full balance of funds held in Skymark's accounts at Scotiabank, to CRA as payment against Skymark's HST obligations. The Scotiabank accounts were subsequently closed by the Receiver, and as such, no further funds will flow through those accounts or be paid under the RTP Notice.
- 5.9 Skymark's most recent HST statement from CRA dated February 28, 2023 indicates that Skymark's remaining outstanding HST obligation for the period up to December 31, 2022 was \$212,876.
- 5.10 In addition, at the time of the Receiver's appointment, Skymark had not yet filed or remitted any HST in respect of amounts incurred and owing in 2023. Accordingly, since that time, the Receiver has arranged for Skymark to bring its HST filings current to the date of the Receiver's appointment. For the period January 1 to March 5, 2023, Skymark

has an unremitted HST obligation of approximately \$45,494. As such, the outstanding pre-filing balance owing to the CRA for outstanding HST obligations is approximately \$191,733 (after taking into account the funds remitted by Scotiabank to the CRA).

- 5.11 However, based on the Receiver's review of the books and records of Skymark, it has subsequently discovered that Skymark's HST obligations may have been overstated, as the HST filings include HST payable for amounts that were not actually collected by Skymark and which relate to uncollected bad debts and doubtful accounts. The Receiver is currently investigating this matter in order to determine the period impacted by these overstated returns and to quantify the impact on Skymark's outstanding HST obligations.

### **Orr Litigation**

- 5.12 Skymark and Merk, among other defendants, are defendants in an action commenced by 7539088 Canada Inc. and 1989474 Ontario Inc., which are corporations owned or controlled by Michael Orr (collectively, the "**Orr Plaintiffs**"), bearing court file number CV-22-00686234-00CL (the "**Orr Claim**").
- 5.13 The Orr Plaintiffs have asserted, among other allegations, that they advanced funds to Merk and Skymark for the purpose of making investments in various mortgages that Merk and/or Skymark were offering to borrowers. The Orr Plaintiffs further claim that the amounts that they advanced are held in trust by Merk and/or Skymark pursuant to trust declarations. The Orr Plaintiffs allege that the defendants caused the mortgages to be discharged without notice to the Orr Plaintiffs and that Merk and/or Skymark failed to repay the investment that the Orr Plaintiffs made in those mortgages. Among other relief,

the Orr Plaintiffs are seeking a Court order that those amounts are to be held in trust for the benefit of the Orr Plaintiffs.

- 5.14 The Orr Plaintiffs have raised similar claims and allegations in the MVCI/Golden Miles Receivership Proceedings in respect of mortgages held in the name of Skymark and/or Merk, and have asserted a trust claim to approximately \$3 million of the Mahal Proceeds. The Receiver understands that the Orr Plaintiffs' priority claim will need to be determined in the MVCI/Golden Miles Receivership Proceedings.
- 5.15 The Receiver continues to investigate the Orr Claims as those claims will need to be addressed in the MVCI/Golden Miles Receivership Proceedings, and the Orr Plaintiffs have advised that they intend to raise similar priority claims to any proceeds realized in these receivership Proceedings.
- 5.16 In addition, prior to the Appointment Order, Justice Osborne issued an order, among other things, requiring the defendants in the Orr Claim to provide certain documentary productions to the Orr Plaintiffs (the "**Production Order**"). Attached as Schedule "B" is a copy of the Production Order.
- 5.17 The Orr Plaintiffs have contacted the Receiver to request that the Receiver provide it with the documents set out in the Production Order. The Orr Claim as against Skymark and Merk is stayed as a result of the Appointment Order. In the Receiver's view, the stay applies to any obligations Skymark and Merk may have under the Production Order. Notwithstanding the fact that the Orr Claim against Skymark and Merk is stayed, the

Receiver has engaged in various correspondence and discussions with legal counsel to the Orr Plaintiffs and is considering the production requests made by the Orr Plaintiffs.

- 5.18 Among other considerations, the Receiver must consider the cost to the estate of complying with the Orr Plaintiffs' production requests and how it might minimize those costs. The Receiver continues to engage with legal counsel to the Orr Plaintiffs on these issues.

### **Other Litigation Claims**

- 5.19 Skymark is a party to approximately 71 Small Claims Court actions with various customers, as either plaintiff or defendant. These claims are in different stages. The Receiver has dealt with various requests in connection with those claims as they arise, and will continue to do so as necessary. The Receiver is considering the merits and will determine an appropriate course in each such action in due course.

## 6.0 THE PROPOSED SISP

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6.1 The SISP provides for the solicitation of interest in: (a) a purchase of, or investment in, all or part of Skymark’s portfolio of leases and loans to residential and commercial consumer borrowers primarily in respect of water systems, HVAC systems, and smart home improvements (the “**Consumer Portfolio**”); and/or (b) a purchase of, or investment in, any or all of Skymark’s Assets or Business (collectively, the “**Opportunity**”). The SISP will be conducted in three stages:

- i. Pre-Marketing: preparing marketing materials, assembling due diligence materials, establishing a data room, and preparing a list of Known Potential Bidders;
- ii. Marketing: advertising the Opportunity, contacting Known Potential Bidders, responding to requests for information from and disseminating marketing materials to Known Potential Bidders who have signed an NDA; and
- iii. Offer Submission and Evaluation: soliciting, reviewing, and negotiating Bids received from Bidders, the evaluation and qualification of Bids by the Receiver, the conduct of an Auction (if the Receiver deems it desirable), and the acceptance of the Successful Bid(s), if any.

6.2 The SISP and the procedures governing it are outlined in detail in Schedule “A” (the “**SISP Document**”) to the proposed SISP Approval Order and are summarized below. The description of the SISP provided herein is for summary purposes only and reference should be made to the SISP Document for its actual terms.

### **Pre-Marketing Stage**

6.3 As soon as practicable, but in any event by no later than June 2, 2023 (the “**Pre-Marketing Completion Date**”), the Receiver will:

- i. prepare (a) a process summary (“**Teaser Letter**”) describing the Opportunity, outlining the SISP and inviting expressions of interest, and (b) a non-disclosure agreement (“**NDA**”);
- ii. gather due diligence material to be provided to interested parties via the Data Room; in particular, the Receiver will prepare, using Skymark’s information in respect of the Consumer Portfolio, a document summarizing the details of each of the leases and loans comprising the Consumer Portfolio and will make available, upon request by a Known Potential Bidder, Skymark’s supporting hard copy documentation in respect of those leases and loans; and
- iii. prepare a list of Known Potential Bidders, including parties that have approached Skymark, the Receiver or other stakeholders indicating an interest in the Opportunity, as well as local, national and international strategic and financial parties who the Receiver believes may be interested in the Opportunity.

### **Marketing Stage**

6.4 As soon as reasonably practicable following the Pre-Marketing Completion Date, the Receiver will:

- i. arrange for the publication of a notice (the “**Notice**”) of the SISP to be published in the *Globe & Mail (National Edition)*, the *Insolvency Insider*, and any other industry publication, website, newspaper, or journals as the Receiver may consider appropriate; and
- ii. distribute the Teaser Letter and NDA to all Known Potential Bidders and to any other party who responds to the Notice.

6.5 Any Known Potential Bidder who has executed and delivered an NDA to the Receiver, as well as a letter setting forth their identity, contact information and the direct and indirect principals of that party, and who the Receiver has determined has a reasonable prospect of submitting a Proposal and completing a transaction contemplated thereunder (“**Transaction**”) will be provided with the opportunity to commence diligence and will be provided with access to the Data Room.

**Offer Submission and Evaluation Stage**

- 6.6 Bids are required to be submitted to the Receiver in writing by the Bid Deadline of 5:00 pm (Toronto time) on July 10, 2023. Subject to the SISP Approval Order, the Receiver shall have the authority to extend the Bid Deadline, or any other target date contemplated in the SISP, as the Receiver deems desirable.
- 6.7 Known Potential Bidders who choose to submit a Bid will be asked to submit Bids which comply in all respects with the Bid criteria set forth in the SISP Document. The Receiver will assess the Bids received and may designate those that meet the criteria and that are the most competitive as Qualified Bids. If one or more Qualified Bids are received, the



Receiver may: (a) select one or more of the most favourable Qualified Bids for acceptance as the Successful Bid(s); or (b) at the Receiver's discretion, invite the Bidders who submitted such Qualified Bids to participate in an Auction.

- 6.8 The Receiver may, subject to Court approval: (a) accept any bid that does not meet the criteria set out above, (b) accept any bid prior to the Bid Deadline, or (c) accept any bid submitted after the Bid Deadline, and the Receiver shall have the right to adopt such other procedures or rules for the SISP as it considers appropriate.
- 6.9 If the Receiver is in receipt of two or more Qualified Bids and decides to conduct an Auction, the Receiver will notify and provide instructions to each Qualified Bidder regarding the Auction. Each Qualified Bidder will subsequently be required to inform the Receiver whether it intends to participate in the Auction by the Auction Opt-In Deadline of 5:00 pm (Toronto time) on July 19, 2023.
- 6.10 The Auction will be carried out in accordance with the Auction procedures detailed in the SISP Document. At the conclusion of the Auction, the Receiver will identify the highest or otherwise best Qualified Bid(s) or Overbid(s) as the Successful Bid(s).
- 6.11 The SISP provides that the Receiver will consult with the Bridging Receiver as it considers appropriate and in accordance with the SISP, including with respect to Bids received. To protect the integrity of the SISP, the SISP provides that, if the Bridging Receiver submits a Bid, it will no longer be provided with consultation rights or otherwise be entitled to review the Bids received, unless and until it has been notified by the Receiver that its Bid has not been selected as the Successful Bid.

- 6.12 As set forth in the SISP Document, the Receiver shall be under no obligation to: (a) designate the highest or otherwise best Bid, or any Bid, as a Qualified Bid; (b) accept the highest or best Bid, or any Bid, as the Successful Bid(s); or (c) conduct an Auction in any circumstance.
- 6.13 The Receiver will make a motion to the Court to obtain approval of the Transaction contemplated by the Successful Bid(s) as soon as practicable after the selection of the Successful Bid(s).
- 6.14 The Receiver recommends that the Court issue the proposed SISP Approval Order for the following reasons:
- i. it is the Receiver's view that the SISP is commercially reasonable;
  - ii. the Receiver is of the view that the information expected to be made available will be sufficient for an interested party to make an informed decision and to prepare a bid in respect of the Opportunity;
  - iii. it is the Receiver's view that the SISP, while expedited, is sufficient to allow interested parties to perform diligence and submit offers. Many of the parties that will be contacted by the Receiver during the SISP are familiar with this Opportunity given their operational history in this industry or history as a competitor of Skymark and should not require a prolonged diligence period to determine whether they would like to submit an offer;
  - iv. an expedited process is required as the Receiver does not have access to sufficient funding to support the costs associated with conducting a prolonged SISP; and

- v. the Bridging Receiver, as the Companies' senior secured lender and possibly the only stakeholder with an economic interest in the SISP, has approved of the SISP, including the target dates for the key milestones thereof.

## 7.0 RECEIVER'S RECEIPTS AND DISBURSEMENTS

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- 7.1 A summary of the Receiver's receipts and disbursements for the period March 6 to May 10, 2023 (the "**Reporting Period**") is set out below:

Skymark Finance Corporation Receiver's Summary Receipts and Disbursements for the Period March 6 to May 10, 2023	
	Amount (CAD\$)
<b>Receipts</b>	
Company funds on hand	67,165
Consumer loan/lease monthly payments	208,579
Consumer loan/lease prepayments	221,244
Interest	784
<b>Total Receipts</b>	<b>497,773</b>
<b>Disbursements</b>	
Wages, benefits and source deductions	65,692
HST remitted	13,616
Rent and utilities	6,015
Legal, paralegal and security discharge costs	8,850
General and administration	2,637
<b>Total Disbursements</b>	<b>96,810</b>
<b>Net Cash Flows</b>	<b>400,962</b>

- 7.2 As of the date of the Appointment Order, Skymark had two bank accounts at The Toronto-Dominion Bank ("**TD Bank**") and two bank accounts at Scotiabank. Since that time, the Receiver has arranged for the balance in one of the TD Bank accounts to be deposited to the Receiver's trust account for Skymark and for that account to be closed, as well as for the closure of the two bank accounts held at Scotiabank (as described in Section 5 above). The second TD Bank account has been kept open as discussed below.

- 7.3 The Skymark receipts for the Reporting Period are comprised predominantly of: (a) cash on hand as of the date of the Appointment Order (excluding the funds that were remitted to the CRA as described above); and (b) monthly lease and loan payments (the “**Consumer Loan Payments**”) collected in respect of the Consumer Portfolio during the Reporting Period.
- 7.4 The Consumer Loan Payments are collected: (a) from Enbridge, which on Skymark’s behalf, invoices and collects payments from Skymark’s consumer debtors and remits the funds collected to Skymark, net of administration fees; and (b) directly from consumer debtors through automated electronic funds transfers (“**EFTs**”). Given the timing and complexity of setting up the EFT reporting function, the Receiver has maintained Skymark’s existing TD Bank account for the purpose of reporting and collecting the monthly EFT collections. Upon collection, the Receiver transfers those funds from the TD Bank account to the Receiver’s trust account.
- 7.5 Skymark’s receipts also include amounts remitted directly by consumer debtors who choose to payout their Consumer Loan(s) in full prior to the maturity date (the “**Prepayments**”). Where Prepayments have been made during the Reporting Period, the Receiver has arranged for the discharge of the corresponding NOSI.
- 7.6 The disbursements to date largely relate to the costs associated with operating the Consumer Loans business. The Premises occupied by the Companies are shared with other entities affiliated with the principals of the Companies, namely Skylark. Prior to the date of the Appointment Order, certain operating costs were co-mingled among the Companies and those related entities, including rent, certain utilities and certain general

and administration costs. The Receiver has since made cost sharing arrangements with Skylark for such costs. Disbursements for the Reporting Period include only Skymark's share of such costs.

- 7.7 Merk's net cash flows during the Reporting Period total approximately \$700 and are comprised predominantly of the cash balance on hand in Merk's bank account as of the date of the Appointment Order less the OSB filing fee. These funds are being held in a separate Receiver's trust account for Merk.
- 7.8 The Appointment Order authorizes the Receiver to borrow up to \$500,000 pursuant to Receiver's Certificates. These advances, if any, would be granted a charge on the Assets subject only to the Receiver's Charge (as defined in the Appointment Order). As of the date of this First Report, the Receiver has not required any borrowings.

## 8.0 CONCLUSIONS AND RECOMMENDATIONS

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- 8.1 Based on the foregoing, the Receiver respectfully recommends that the Court make an order granting the relief sought on the SISP Approval Motion and detailed in Section 1.3 of this First Report.

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All of which is respectfully submitted,

**Alvarez & Marsal Canada Inc.,  
in its capacity as Receiver and Manager of  
Skymark Finance Corporation and Merk Investments Ltd.  
and not in its personal capacity.**



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Per: Greg Karpel, Senior Vice-President

# APPENDIX A





Court File No. CV-22-00692309-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

*IN THE MATTER OF Section 101 of the Courts of Justice Act, R.S.O. 1990 c.C.43, as amended,  
and in the matter of Section 243(1) of the Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3,  
as amended*

THE HONOURABLE MR.

)

MONDAY, THE 6<sup>TH</sup>

)

JUSTICE MICHAEL A. PENNY

)

DAY OF MARCH, 2023

**B E T W E E N:****PRICEWATERHOUSECOOPERS INC.**

(solely in its capacity as court-appointed receiver and manager of  
Bridging Finance Inc. and certain related entities and investment funds)

Applicant

- and -

**SKYMARK FINANCE CORPORATION and MERK INVESTMENTS LTD.**

Respondents

**ORDER  
(Appointing Receiver)**

**THIS APPLICATION** made by PricewaterhouseCoopers Inc., in its capacity as court-appointed receiver and manager of Bridging Finance Inc. and certain related entities and investment funds (in such capacity, the “**Applicant**”) for an Order pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the “**BIA**”) and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended (the “**CJA**”), appointing

Alvarez & Marsal Canada Inc. (“**A&M**”) as receiver and manager (in such capacity, the “**Receiver**”), without security, of all of the assets, undertakings and properties of each of Skymark Finance Corporation and Merk Investments Ltd. (together, the “**Respondents**”), was heard this day by videoconference in Toronto, Ontario, in accordance with the Guidelines to Determine Mode of Proceeding in Civil Proceedings, effective April 19, 2022.

**ON READING** the Affidavit of Christine Sinclair sworn December 30, 2022 and the Exhibits thereto, and on hearing the submissions of counsel for the Applicant, counsel for the proposed Receiver, and such other parties listed on the counsel slip, no one else appearing although duly served as appears from the Affidavit of Service of Adam Driedger sworn March 3, 2023, and on reading the consent of A&M to act as the Receiver,

#### **SERVICE**

1. **THIS COURT ORDERS** that the time for service of the Notice of Application and the Application Record herein is hereby abridged and validated such that this Application is properly returnable today, hereby dispenses with further service thereof, and authorizes substituted service thereof via electronic mail.

#### **APPOINTMENT**

2. **THIS COURT ORDERS** that pursuant to section 243(1) of the BIA and section 101 of the CJA, A&M is hereby appointed Receiver, without security, of all of the present and future assets, undertakings, and properties of the Respondents acquired for, or used in relation to the business carried on by the Respondents and all proceeds thereof (the “**Property**”).

## RECEIVER'S POWERS

3. **THIS COURT ORDERS** that the Receiver is hereby empowered and authorized, but not obligated, to act at once in respect of the Respondents and the Property and, without in any way limiting the generality of the foregoing, the Receiver is hereby expressly empowered and authorized to do any of the following where the Receiver considers it necessary or desirable:

- (a) to take possession of and exercise control over the Property and any and all proceeds, receipts and disbursements arising out of or from the Property;
- (b) to receive, preserve, and protect the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the relocating of Property to safeguard it, the engaging of independent security personnel, the taking of physical inventories of the Property, accessing and taking control of the Respondents' bank accounts and the placement of such insurance coverage as may be necessary or desirable;
- (c) to manage, operate, and carry on the business of the Respondents (the "**Business**"), including the powers to enter into any agreements, incur any obligations in the ordinary course of business, cease to carry on all or any part of the Business, or disclaim or cease to perform any contracts of the Respondents or in respect of the Property;
- (d) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, insurance brokers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the

Receiver's powers and duties, including without limitation those conferred by this Order;

- (e) to purchase or lease such machinery, equipment, inventories, supplies, premises or other assets to continue the Business of the Respondents or any part or parts thereof;
- (f) to receive and collect all monies and accounts now owed or hereafter owing to the Respondents and to exercise all remedies of the Respondents in collecting such monies, including, without limitation, to enforce any security held by the Respondents;
- (g) to settle, extend or compromise any indebtedness owing to the Respondents;
- (h) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Receiver's name or in the name and on behalf of the Respondents, for any purpose pursuant to this Order;
- (i) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Respondents, the Property or the Receiver, and to settle or compromise any such proceedings. The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;
- (j) to market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate;

- (k) to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business as follows:
  - (i) without the approval of this Court in respect of any transaction not exceeding \$100,000, provided that the aggregate consideration for all such transactions does not exceed \$500,000; and
  - (ii) with the approval of this Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out in the preceding clause;and in each such case notice under subsection 63(4) of the Ontario *Personal Property Security Act*, or section 31 of the Ontario *Mortgages Act*, as the case may be, shall not be required;
- (l) to apply for any vesting order or other orders necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;
- (m) to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver deems appropriate on all matters relating to the Property and the receivership, and to share information, subject to such terms as to confidentiality as the Receiver deems advisable;
- (n) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;

- (o) to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof for and on behalf of and, if thought desirable by the Receiver, in the name of the Respondents;
- (p) to enter into agreements with any trustee in bankruptcy appointed in respect of the Respondents, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any Property owned or leased by the Respondents;
- (q) to exercise any shareholder, partnership, joint venture or other rights which the Respondents may have; and
- (r) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations,

and in each case where the Receiver takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons, including the Respondents, and without interference from any other Person.

#### **DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER**

4. **THIS COURT ORDERS** that: (i) the Respondents; (ii) all of their current and former directors, officers, employees, agents, accountants, legal counsel, financial advisors, and shareholders, and all other persons acting on their instructions or behalf; and (iii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being “**Persons**” and each being a “**Person**”) shall forthwith advise the Receiver of the existence of any Property in such Person’s possession or

control, shall grant immediate and continued access to the Property to the Receiver, and shall deliver all such Property to the Receiver upon the Receiver's request.

5. **THIS COURT ORDERS** that all Persons shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the Business, the Property, or the affairs of the Respondents, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the "**Records**") in that Person's possession or control, and shall provide to the Receiver or permit the Receiver to make, retain and take away copies thereof and grant to the Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 5 or in paragraph 6 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Receiver due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

6. **THIS COURT ORDERS** that if any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to the Receiver for the purpose of allowing the Receiver to recover and fully copy all of the information contained therein whether by way of printing the information onto paper or making copies of computer disks or such other manner of retrieving and copying the information as the Receiver in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Receiver. Further, for the purposes of this paragraph, all Persons shall provide the Receiver with all such assistance in gaining immediate

access to the information in the Records as the Receiver may in its discretion require including providing the Receiver with instructions on the use of any computer or other system and providing the Receiver with any and all access codes, account names and account numbers that may be required to gain access to the information.

7. **THIS COURT ORDERS** that the Receiver shall provide each of the relevant landlords with notice of the Receiver's intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes the Receiver's entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and the Receiver, or by further Order of this Court upon application by the Receiver on at least two (2) days notice to such landlord and any such secured creditors.

#### **NO PROCEEDINGS AGAINST THE RECEIVER**

8. **THIS COURT ORDERS** that no proceeding or enforcement process in any court or tribunal (each, a "**Proceeding**"), shall be commenced or continued against the Receiver except with the written consent of the Receiver or with leave of this Court.

#### **NO PROCEEDINGS AGAINST THE RESPONDENTS OR THE PROPERTY**

9. **THIS COURT ORDERS** that no Proceeding against or in respect of the Respondents or the Property shall be commenced or continued except with the written consent of the Receiver or with leave of this Court and any and all Proceedings currently under way against or in respect of



the Respondents or the Property are hereby stayed and suspended pending further Order of this Court.

### **NO EXERCISE OF RIGHTS OR REMEDIES**

10. **THIS COURT ORDERS** that all rights and remedies against the Respondents, the Receiver, or affecting the Property, are hereby stayed and suspended except with the written consent of the Receiver or leave of this Court, provided however that this stay and suspension does not apply in respect of any “eligible financial contract” as defined in the BIA, and further provided that nothing in this paragraph shall: (i) empower the Receiver or the Respondents to carry on any business which the Respondents is not lawfully entitled to carry on; (ii) exempt the Receiver or the Respondents from compliance with statutory or regulatory provisions relating to health, safety, or the environment; (iii) prevent the filing of any registration to preserve or perfect a security interest; or (iv) prevent the registration of a claim for lien.

### **NO INTERFERENCE WITH THE RECEIVER**

11. **THIS COURT ORDERS** that no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Respondents, without written consent of the Receiver or leave of this Court.

### **CONTINUATION OF SERVICES**

12. **THIS COURT ORDERS** that all Persons having oral or written agreements with the Respondents or statutory or regulatory mandates for the supply of goods and/or services, including without limitation, all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to

the Respondents are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Receiver, and that the Receiver shall be entitled to the continued use of the Respondents' current telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Receiver in accordance with normal payment practices of the Respondents or such other practices as may be agreed upon by the supplier or service provider and the Receiver, or as may be ordered by this Court.

#### **RECEIVER TO HOLD FUNDS**

13. **THIS COURT ORDERS** that all funds, monies, cheques, instruments, and other forms of payments received or collected by the Receiver from and after the making of this Order from any source whatsoever, including without limitation the sale of all or any of the Property and the collection of any accounts receivable in whole or in part, whether in existence on the date of this Order or hereafter coming into existence, shall be deposited into one or more new accounts to be opened by the Receiver (the "**Post Receivership Accounts**") and the monies standing to the credit of such Post Receivership Accounts from time to time, net of any disbursements provided for herein, shall be held by the Receiver to be paid in accordance with the terms of this Order or any further Order of this Court.

#### **EMPLOYEES**

14. **THIS COURT ORDERS** that any employees of the Respondents shall remain the employees of the Respondents until such time as the Receiver, on the Respondents' behalf, may terminate the employment of any such employees. The Receiver shall not be liable for any

employee-related liabilities, including any successor employer liabilities as provided for in section 14.06(1.2) of the BIA, other than such amounts as the Receiver may specifically agree in writing to pay, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*.

## **PIPEDA**

15. **THIS COURT ORDERS** that, pursuant to clause 7(3)(c) of the Canada *Personal Information Protection and Electronic Documents Act*, the Receiver may disclose personal information of identifiable individuals to prospective purchasers or bidders for the Property and to their advisors, but only to the extent desirable or required to negotiate and attempt to complete one or more sales of the Property (each, a “**Sale**”). Each prospective purchaser or bidder to whom such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evaluation of the Sale, and if it does not complete a Sale, shall return all such information to the Receiver, or in the alternative destroy all such information. The purchaser of any Property shall be entitled to continue to use the personal information provided to it, and related to the Property purchased, in a manner which is in all material respects identical to the prior use of such information by the Respondents, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.

## **LIMITATION ON ENVIRONMENTAL LIABILITIES**

16. **THIS COURT ORDERS** that nothing herein contained shall require the Receiver to occupy or to take control, care, charge, possession or management (separately and/or collectively, “**Possession**”) of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of

a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the Ontario *Environmental Protection Act*, the *Ontario Water Resources Act*, or the Ontario *Occupational Health and Safety Act* and regulations thereunder (the “**Environmental Legislation**”), provided however that nothing herein shall exempt the Receiver from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Receiver shall not, as a result of this Order or anything done in pursuance of the Receiver’s duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

#### **LIMITATION ON THE RECEIVER’S LIABILITY**

17. **THIS COURT ORDERS** that the Receiver shall incur no liability or obligation as a result of its appointment or the carrying out the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*. Nothing in this Order shall derogate from the protections afforded the Receiver by section 14.06 of the BIA or by any other applicable legislation.

#### **RECEIVER’S ACCOUNTS**

18. **THIS COURT ORDERS** that the Receiver and counsel to the Receiver shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, unless otherwise ordered by the Court on the passing of accounts, and that the Receiver and counsel to the Receiver shall be entitled to and are hereby granted a charge (the “**Receiver’s Charge**”) on the

Property and any funds held by the Receiver on account of the Receiver's Borrowings (as defined below), as security for such fees and disbursements, both before and after the making of this Order in respect of these proceedings, and that the Receiver's Charge shall form a first charge on the Property in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person (collectively, "**Encumbrances**"), but subject to sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

19. **THIS COURT ORDERS** that the Receiver and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Receiver and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

20. **THIS COURT ORDERS** that prior to the passing of its accounts, the Receiver shall be at liberty from time to time to apply reasonable amounts, out of the monies in its hands, against its fees and disbursements, including legal fees and disbursements, incurred at the standard rates and charges of the Receiver or its counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

#### **FUNDING OF THE RECEIVERSHIP**

21. **THIS COURT ORDERS** that the Receiver be at liberty and it is hereby empowered to borrow by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable (the "**Receiver's Borrowings**"), provided that the outstanding principal amount does not exceed \$500,000 (or such greater amount as this Court may by further Order authorize) at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by this Order, including interim expenditures and the fees and

expenses of the Receiver and its counsel. The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the “**Receiver’s Borrowings Charge**”) as security for the payment of the Receiver’s Borrowings, together with interest and charges thereon, in priority to all Encumbrances, but subordinate in priority to the Receiver’s Charge and the charges as set out in sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

22. **THIS COURT ORDERS** that neither the Receiver’s Borrowings Charge nor any other security granted by the Receiver in connection with the Receiver’s Borrowings under this Order shall be enforced without leave of this Court.

23. **THIS COURT ORDERS** that the Receiver is at liberty and authorized to issue certificates substantially in the form annexed as **Schedule “A”** hereto (the “**Receiver’s Certificates**”) for any Receiver’s Borrowings pursuant to this Order.

24. **THIS COURT ORDERS** that the Receiver’s Borrowings from time to time borrowed by the Receiver pursuant to this Order or any further order of this Court and any and all Receiver’s Certificates evidencing the same or any part thereof shall rank on a *pari passu* basis, unless otherwise agreed to by the holders of any prior issued Receiver’s Certificates.

## **SERVICE AND NOTICE**

25. **THIS COURT ORDERS** that the Guide Concerning Commercial List E-Service (the “**Protocol**”) is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at <https://www.ontariocourts.ca/scj/practice/practice-directions/toronto/eservice-commercial/>) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to

Rule 3.01(d) of the Rules of Civil Procedure and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol with the following URL: [www.alvarezandmarsal.com/skymark](http://www.alvarezandmarsal.com/skymark).

26. **THIS COURT ORDERS** that if the service or distribution of documents in accordance with the Protocol is not practicable, the Receiver is at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by email, ordinary mail, courier, personal delivery or facsimile transmission to the Respondents' creditors or other interested parties at their respective addresses as last shown on the records of the Respondents and that any such service or distribution by courier, personal delivery or facsimile transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

#### **GENERAL**

27. **THIS COURT ORDERS** that the Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

28. **THIS COURT ORDERS** that nothing in this Order shall prevent the Receiver from acting as a trustee in bankruptcy of the Respondents.

29. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Receiver and its 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 Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

30. **THIS COURT ORDERS** that the Receiver be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Receiver is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

31. **THIS COURT ORDERS** that the Applicant shall have its costs of this application, up to and including entry and service of this Order, provided for by the terms of the Applicant's security or, if not so provided by the Applicant's security, then on a substantial indemnity basis to be paid by the Receiver from the Respondents' estate with such priority and at such time as this Court may determine.

32. **THIS COURT ORDERS** that any interested party may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to the Receiver, the Applicant, and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

33. **THIS COURT ORDERS** that the Receiver, its counsel and counsel for the Applicant may serve or distribute this Order, or any other materials and orders as may be reasonably required in these proceedings, including any notices, or other correspondence, by forwarding true copies thereof by electronic message to the creditors or any other stakeholders or other interested parties



of the Respondents and their advisors (if any). For greater certainty, any such distribution or service shall be deemed to be in satisfaction of a legal or juridical obligation, and notice requirements within the meaning of clause 3(c) of the *Electronic Commerce Protection Regulations*, Reg. 81000-2-175 (SOR/DORS).

A handwritten signature in blue ink is positioned above a horizontal line. The signature is stylized and appears to read "Ray J.". The line extends across the width of the signature.

**SCHEDULE “A”**  
**Receiver’s Certificate**

CERTIFICATE NO. \_\_\_\_\_

AMOUNT \$ \_\_\_\_\_

1. THIS IS TO CERTIFY that Alvarez & Marsal Canada Inc., the receiver and manager (the “**Receiver**”) of the assets, undertakings and properties of each of Skymark Finance Corporation and Merk Investments Ltd. (together, the “**Respondents**”), acquired for, or used in relation to a business carried on by the Respondents (the “**Property**”), appointed by Order of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) dated the 6<sup>th</sup> day of March, 2023 (the “**Order**”) made in an application having Court File No. CV-22-00692309-00CL, has received as such Receiver from the holder of this certificate (the “**Lender**”) the principal sum of \$►, being part of the total principal sum of \$► which the Receiver is authorized to borrow under and pursuant to the Order.

2. The principal sum evidenced by this certificate is payable on demand by the Lender with interest thereon calculated and compounded [daily][monthly not in advance on the \_\_\_\_\_ day of each month] after the date hereof at a notional rate per annum equal to the rate of \_\_\_\_\_ per cent above the prime commercial lending rate of Bank of \_\_\_\_\_ from time to time.

3. Such principal sum with interest thereon is, by the terms of the Order, together with the principal sums and interest thereon of all other certificates issued by the Receiver pursuant to the Order or to any further order of the Court, a charge upon the whole of the Property, in priority to the security interests of any other person, but subject to the priority of the charges set out in the

Order and in the *Bankruptcy and Insolvency Act*, and the right of the Receiver to indemnify itself out of such Property in respect of its remuneration and expenses.

4. All sums payable in respect of principal and interest under this certificate are payable at the main office of the Lender at Toronto, Ontario.

5. Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the Receiver to any person other than the holder of this certificate without the prior written consent of the holder of this certificate.

6. The charge securing this certificate shall operate so as to permit the Receiver to deal with the Property as authorized by the Order and as authorized by any further or other order of the Court.

7. The Receiver does not undertake, and it is not under any personal liability, to pay any sum in respect of which it may issue certificates under the terms of the Order.

DATED the \_\_\_\_\_ day of MONTH, 2023.

Alvarez & Marsal Canada Inc., solely in its capacity as  
Receiver of the Property, and not in its personal  
capacity

Per:

\_\_\_\_\_  
Name:

Title:

<i>IN THE MATTER OF Section 101 of the Courts of Justice Act, R.S.O. 1990 c.C.43, as amended, and in the matter of Section 243(1) of the Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3, as amended</i>			
<b>PRICEWATERHOUSECOOPERS INC.</b> (solely in its capacity as court-appointed receiver and manager of Bridging Finance Inc. and certain related entities and investment funds)	- and -	<b>SKYMARK FINANCE CORPORATION and MERK INVESTMENTS LTD.</b>	Respondents
Applicant		Court File No. CV-22-00692309-00CL	
		<b>ONTARIO SUPERIOR COURT OF JUSTICE (COMMERCIAL LIST)</b>  Proceedings commenced at Toronto, Ontario	
		<b>ORDER (Appointing Receiver)</b>	
		<b>Thornton Grout Finnigan LLP</b> TD West Tower, Toronto-Dominion Centre 3200 –100 Wellington Street West Toronto, ON M5K 1K7  <b>John L. Finnigan</b> (LSO# 24040L) Email: <a href="mailto:jfinnigan@tgf.ca">jfinnigan@tgf.ca</a>  <b>Grant B. Moffat</b> (LSO# 32380L) Email: <a href="mailto:gmoffat@tgf.ca">gmoffat@tgf.ca</a>  <b>Adam Driedger</b> (LSO# 77296F) Email: <a href="mailto:adriedger@tgf.ca">adriedger@tgf.ca</a>  Tel: 416-304-1616  Lawyers for the Applicant	

# APPENDIX B

**APPENDIX B**

Court File No. CV-22-00686234-00CL

*ONTARIO*  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)

THE HONOURABLE	)	FRIDAY, THE 2 <sup>nd</sup>
	)	
JUSTICE OSBORNE	)	DAY OF DECEMBER, 2022

B E T W E E N:

7539088 CANADA INC. and 1989474 ONTARIO INC.

Plaintiffs

and

MICHAEL SLATTERY, MERK INVESTMENTS LTD.  
and SKYMARK FINANCE CORPORATION

Defendants

**ORDER**

**THIS MOTION** for an Order requiring the defendants to disclose records and information, and for certain other relief, was heard this day at 330 University Avenue, Toronto, Ontario, M5G 1R7.

**ON READING** the plaintiffs' notice of motion, the affidavits of Michael Orr sworn September 9, 2022 and November 15, 2022, the affidavit of Andrew Sahai sworn November 28, 2022, the affidavits of Michael Slattery sworn November 11 and 22, 2022, and the affidavit of Betty Lau sworn November 30, 2022, and on reading and hearing the submissions of counsel for the plaintiffs and the defendants,

1. **THIS COURT ORDERS** that Merk Investments Ltd. ("Merk") and Skymark Finance Corporation ("Skymark"), in accordance with their obligations as trustees and as required by this Order, shall by no later than January 6, 2023 provide to the plaintiffs all of the following documents, records, communications and information relating to mortgages in respect of the particular properties listed at Schedule "A" to this Order (the "Mortgages"):

- (a) the timing of, circumstances giving rise to, reason for, fact of and all details relating to any discharge of any of the Mortgages or any deregistration of any of the Mortgages from title to the properties listed at Schedule "A" to this Order, and any communication, notice or agreement regarding any such discharge or deregistration that was provided to or made with the plaintiffs or Michael Orr;
- (b) without limiting the foregoing, the timing of, circumstances giving rise to, reasons for, fact of and all details relating to any discharge of any of the Mortgages or any deregistration of any of the Mortgages from title to the properties listed at Schedule "A" to this Order arising or resulting from any power of sale, insolvency, receivership or similar process, and any communication, notice or agreement regarding any such discharge or deregistration that was provided to or made with the plaintiffs or Michael Orr;
- (c) all payments of principal amounts made to Merk or Skymark by borrowers, whether voluntarily or otherwise, in connection with the Mortgages including, without limitation, all bank statements, cheque copies, wire confirmations and/or other financial documents or records evidencing or recording any such payments, and any communication, notice or agreement regarding any such payments that was provided to or made with the plaintiffs or Michael Orr;
- (d) all repayments or applications of principal amounts made by Merk or Skymark to or for the benefit of the plaintiffs or Michael Orr in connection with the Mortgages, all bank statements, cheque copies, wire confirmations and/or other financial documents or records evidencing or recording any such repayments or applications, and any communication, notice or agreement regarding any such payments or applications that was provided to or made with the plaintiffs or Michael Orr;
- (e) the timing of, circumstances giving rise to, reason for, fact of and all details relating to any subordination, modification or change of any kind in respect of the interest or priority of any of the Mortgages, and any communication, notice or agreement regarding any such subordination, modification or change that was provided to or made with the plaintiffs or Michael Orr; and
- (f) in the event of any subordination, modification or change of any kind in respect of the interest or priority of the Mortgages, any agreement, contract, commitment or loan document detailing the parties to and details, including the term, amount and applicable interest rate, of any mortgage that came to rank higher than or stood in priority to the Mortgages as a result of such subordination, modification or change.

2. **THIS COURT ORDERS** that, although all documents, records, communications and information to be produced to the plaintiffs in accordance with paragraph 1 herein shall be produced by the defendants by no later than January 6, 2023, the defendants are to make such productions earlier if they can and, where appropriate, on a piecemeal basis.

3. **THIS COURT ORDERS** that the documents, records, communications and information to be produced to the plaintiffs in accordance with paragraph 1 herein shall be produced by the defendants in a manner that is organized and readily-usable in an accessible and usable format such that they can be, if produced electronically, readily identified and located.

4. **THIS COURT ORDERS** that, to the extent that any document, record, communication or information to be produced to the plaintiffs in accordance with paragraph 1 herein does not exist or cannot be located, the defendants shall provide clear and unequivocal confirmation of that fact to the plaintiffs and provide to the plaintiffs the particulars of the information the defendants have as to whether the document, record, communication or information ever existed and, if so, what became of it, by no later than January 6, 2023.

5. **THIS COURT ORDERS** that, as beneficiaries of the trust relationships in respect of the Mortgages and as otherwise entitled by this Order, the plaintiffs shall be permitted to make reasonable inquiries of the defendants concerning the plaintiffs' investments in the Mortgages, and the defendants shall respond to such inquiries within 21 days of thereof.

6. **THIS COURT ORDERS** that, to the extent that Merk or Skymark (or anyone acting on their behalf) are currently holding or receive outstanding or future interest or principal payments from borrowers in connection with the Mortgages, Merk and Skymark shall forthwith remit such amounts to the plaintiffs' new trustee in respect of those investments, The Equity Shoppe Inc.

7. **THIS COURT ORDERS** that the entitlement to and quantum of costs of this motion are deferred to the trial judge.

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**SCHEDULE “A”**

1. 28 Stowe Terrace, Brantford, Ontario
2. 160 Burnet Street, Oakville, Ontario
3. 1455 Dufferin Street, Toronto, Ontario
4. 81 River Street, Parry Sound, Ontario
5. 1705 Pegg's Mountain Road, Parry Sound, Ontario
6. 1393 Graham's Lane, Burlington, Ontario
7. 155 Adams Boulevard, Brantford, Ontario
8. 6820 Crystal Hill Road, North Little Rock, Arkansas
9. 190 Harding Boulevard West, Unit 158, Richmond Hill, Ontario
10. 855 Centre Road, Hamilton, Ontario
11. 310 Towanda Boulevard, Blenheim, Ontario
12. 1534 Dranoel Road, Bethany, Ontario
13. 30 Roser Crescent, Clarington, Ontario
14. 155208 7th Line, R.R. #2, Markdale, Ontario
15. 150 George Street, Brantford, Ontario
16. 151 Prospect Street, Port Dover, Ontario
17. 27 Farm Lane, Britt, Ontario
18. 77 Still River Road, Britt, Ontario
19. 65 George Street, Toronto, Ontario

7539088 CANADA INC. AND 1989474 ONTARIO INC.  
Plaintiffs

- and -

MICHAEL SLATTERY ET AL.  
Defendants

Court File No. CV-22-00686234-00CL

*ONTARIO*  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)

PROCEEDING COMMENCED AT TORONTO

**ORDER**

BENNETT JONES LLP  
3400 One First Canadian Place  
P.O. Box 130  
Toronto, ON M5X 1A4

Lincoln Caylor (#37030L)  
Email: [caylorl@bennettjones.com](mailto:caylorl@bennettjones.com)  
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Andrew N. Sahai (#80460D)  
Email: [sahaia@bennettjones.com](mailto:sahaia@bennettjones.com)  
Telephone: 416.777.6249

Lawyers for the Plaintiffs

# TAB 3

**SERVICE LIST**  
**(as of May 17, 2023)**

<b>TO:</b>	<p><b>THORNTON GROUT FINNIGAN LLP</b> TD West Tower, Toronto-Dominion Centre 100 Wellington Street West, Suite 3200 Toronto, ON M5K 1K7 Fax: (416) 304-1313</p> <p><b>John L. Finnigan</b> Email: jfinnigan@tgf.ca Tel: (416) 304-0558</p> <p><b>Grant B. Moffat</b> Email: gmoffat@tgf.ca Tel: (416) 304-0599</p> <p><b>Adam Driedger</b> Email: adriedger@tgf.ca Tel: (416) 304-1152</p> <p>Lawyers for the Applicant, PricewaterhouseCoopers Inc. in its capacity as Court-appointed receiver and manager of Bridging Finance Inc. and certain related entities and investment funds</p>
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<b>AND TO:</b>	<p><b>PRICEWATERHOUSECOOPERS INC.</b> 18 York Street, Suite 2600 Toronto, ON M5J 0B2</p> <p><b>Michael McTaggart</b> Email: michael.mctaggart@pwc.com Tel: (416) 687-8924</p> <p><b>Christine Sinclair</b> Email: christine.l.sinclair@pwc.com Tel: (416) 687-8938</p> <p><b>Tyler Ray</b> Email: tyler.ray@pwc.com Tel: (416) 687-8200</p> <p>Court-appointed receiver and manager of Bridging Finance Inc. and certain related entities and investment funds</p>
<b>AND TO:</b>	<p><b>LAX O’SULLIVAN LISUS GOTTLIEB LLP</b> Suite 2750, 145 King Street West Toronto, ON M5H 1J8 Fax: (416) 598-3730</p> <p><b>Matthew Gottlieb</b> Email: mgottlieb@lolg.ca Tel: (416) 644-5353</p> <p><b>Shaun Laubman</b> Email: slaubman@lolg.ca Tel: (416) 360-8481</p> <p><b>David Ionis</b> Email: dionis@lolg.ca Tel: (416) 956-0117</p> <p>Lawyers for the Respondents</p>

<b>AND TO:</b>	<p><b>FASKEN MARTINEAU DUMOULIN LLP</b> Bay Adelaide Centre 333 Bay Street, Suite 2400 Toronto, ON M5H 2T6</p> <p><b>Dylan Chochla</b> Email: dchochla@fasken.com Tel: (416) 862-4204</p> <p><b>Mitch Stephenson</b> Email: mstephenson@fasken.com Tel: (416) 868-3502</p> <p>Lawyers for Alvarez &amp; Marsal Canada Inc. as Court-appointed Receiver</p>
<b>AND TO:</b>	<p><b>ALVAREZ &amp; MARSAL CANADA INC.</b> Royal Bank Plaza, South Tower 200 Bay Street, Suite 2900 Toronto, ON M5J 2J1 Fax: (416) 847-5201</p> <p><b>Greg Karpel</b> Email: gkarpel@alvarezandmarsal.com Tel: (416) 847-5170</p> <p><b>Melanie Mackenzie</b> Email: mmackenzie@alvarezandmarsal.com Tel: (416) 847-5158</p> <p>Court-appointed Receiver</p>
<b>AND TO:</b>	<p><b>ENBRIDGE GAS INC. and ENBRIDGE GAS INC. O/A UNION GAS</b> 500 Consumers Road North York, ON M2J 1P8</p> <p><b>Armanda Pinho</b> <i>Associate General Counsel</i> Email: armanda.pinho@enbridge.com</p> <p><b>Scott Wallace</b> <i>Senior Legal Counsel</i> Email: scott.wallace@enbridge.com</p> <p>PPSA registrant with respect to Skymark Finance Corporation</p>

<b>AND TO:</b>	<b>BNY TRUST COMPANY OF CANADA</b> 320 Bay Street, P.O. Box 1 Toronto, ON M5H 4A6  <b>Eleonore Morris</b> <i>Managing Counsel, Vice-President</i> Email: eleonore.morris@bnymellon.com  PPSA registrant with respect to Skymark Finance Corporation
<b>AND TO:</b>	<b>ENLIGHTENED FUNDING CORPORATION</b> 1100 Burloak Drive, Suite 702 Burlington, ON L7L 6B2  <b>Eamonn Glavey</b> <i>Managing Partner</i> Email: eg@enlightenedcapital.net Email: info@enlightenedcapital.net  PPSA registrant with respect to Skymark Finance Corporation
<b>AND TO:</b>	<b>AUTO ONE GROUP LIMITED</b> 150 Oakdale Road Toronto, ON M3N 1V9  Email: hello@autoone.ca  PPSA registrant with respect to Merk Investments Ltd.
<b>AND TO:</b>	<b>DEPARTMENT OF JUSTICE (CANADA)</b> Ontario Regional Office 120 Adelaide Street West, Suite 400 Toronto, ON M5H 1T1  <b>Diane Winters</b> Email: diane.winters@justice.gc.ca

<b>AND TO:</b>	<p><b>MINISTER OF FINANCE INSOLVENCY UNIT</b> 6th Floor, 33 King Street West Oshawa, ON L1H 8H5</p> <p><b>Leslie Crawford</b> Tel: (905) 433-5657 Email: leslie.crawford@ontario.ca</p> <p><b>Insolvency Unit</b> Email: insolvency.unit@ontario.ca</p>
<b>AND TO:</b>	<p><b>BENNETT JONES LLP</b> 3400 One First Canadian Place, P.O. Box 130 Toronto, ON M5X 1A4</p> <p><b>Lincoln Caylor</b> Tel: (416) 777-6121 Email: CaylorL@bennettjones.com</p> <p><b>Raj Sahni</b> Tel: (416) 777-4804 Email: SahniR@bennettjones.com</p> <p><b>Nathan Shaheen</b> Tel: (416) 777-7306 Email: ShaheenN@bennettjones.com</p> <p>Lawyers for 7539088 Canada Inc. and 1989474 Ontario Inc.</p>
<b>AND TO:</b>	<p><b>LAX O'SULLIVAN LISUS GOTTLIEB LLP</b> Suite 2750, 145 King St W Toronto ON M5H 1J8</p> <p><b>Shaun Laubman</b> Tel: (416) 360-8481 Email: slaubman@lolg.ca</p> <p>Lawyers for 2581150 Ontario Inc.</p>



<b>AND TO:</b>	<p><b>CANADA REVENUE AGENCY</b> 1 Front Street West Toronto, ON M5J 2X6</p> <p><b>Pat Confalone</b> Tel: (416) 954-6514 Email: pat.confalone@cra-arc.gc.ca</p> <p><b>Kay Singh</b> Tel: (416) 954-6514 Email: kay.singh@cra-arc.gc.ca</p>
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**EMAIL SERVICE LIST**  
**(as of May 17, 2023)**

jfinnigan@tgf.ca; gmoftat@tgf.ca; adriedger@tgf.ca; michael.mctaggart@pwc.com;  
christine.l.sinclair@pwc.com; tyler.ray@pwc.com; mgottlieb@lolg.ca; slaubman@lolg.ca;  
dionis@lolg.ca; dchochla@fasken.com; mstephenson@fasken.com;  
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armanda.pinho@enbridge.com; scott.wallace@enbridge.com; eleonore.morris@bnymellon.com;  
eg@enlightenedcapital.net; info@enlightenedcapital.net; hello@autoone.ca;  
diane.winters@justice.gc.ca; leslie.crawford@ontario.ca; insolvency.unit@ontario.ca;  
CaylorL@bennettjones.com; SahniR@bennettjones.com; ShaheenN@bennettjones.com;  
slaubman@lolg.ca; pat.confalone@cra-arc.gc.ca; kay.singh@cra-arc.gc.ca

# TAB 4

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

THE HONOURABLE

)

THURSDAY, THE 25TH

JUSTICE KIMMEL

)

DAY OF MAY, 2023

)

B E T W E E N:

**PRICEWATERHOUSECOOPERS INC.**

(solely in its capacity as court-appointed receiver and manager of Bridging Finance Inc. and certain related entities and investment funds)

Applicant

- and -

**SKYMARK FINANCE CORPORATION and MERK INVESTMENTS LTD.**

Respondents

APPLICATION UNDER Section 101 of the *Courts of Justice Act*, R.S.O. 1990 c.C.43, as amended, and Section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended

**ORDER  
(SISP Approval)**

**THIS MOTION** made by Alvarez & Marsal Canada Inc. (“**A&M**”) in its capacity as court-appointed receiver and manager (in such capacity, the “**Receiver**”), without security, of all of the assets, undertakings, and properties of each of Skymark Finance Corporation (“**Skymark**”) and Merk Investments Ltd. (“**Merk**”, and together with Skymark, the “**Respondents**”) for an order, among other things, approving the sale and investment solicitation process in respect of

Skymark (the “**SISP**”) set out and described in Schedule “A” to this Order (the “**SISP Document**”) was heard this day by videoconference at 330 University Avenue, Toronto, Ontario.

**ON READING** the Notice of Motion and the first report of the Receiver dated May 17, 2023 (the “**First Report**”), and on hearing the submissions of counsel for the Receiver and such other counsel as were present as indicated on the counsel slip, no one else appearing for any other person on the service list although duly served as appears from the affidavit of service of Mitchell Stephenson, sworn May 17, 2023, filed,

### **SERVICE AND DEFINITIONS**

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

2. **THIS COURT ORDERS** that capitalized terms used in this Order and not otherwise defined herein shall have the meanings given to them in the SISP Document.

### **REPORT AND ACTIVITIES OF THE RECEIVER**

3. **THIS COURT ORDERS** that the First Report, and the conduct and activities of the Receiver described therein, be and are hereby approved, provided, however, that only the Receiver, in its personal capacity and only with respect to its own personal liability, shall be entitled to rely upon or utilize in any way such approval.

### **APPROVAL OF THE SISP**

4. **THIS COURT ORDERS** that the SISP be and is hereby approved and the Receiver is hereby authorized to implement the SISP pursuant to the terms thereof, subject to such amendments made in accordance with the SISP and the terms of this Order.

5. **THIS COURT ORDERS** that the Receiver is hereby authorized and directed to perform its obligations under the SISP and this Order, and is hereby authorized and directed to take such steps and execute such documentation as the Receiver considers necessary or desirable in carrying out such obligations, provided that prior approval of this Court shall be obtained before the completion of any transaction(s) under the SISP.

6. **THIS COURT ORDERS** that the Receiver and its affiliates, partners, directors, employees, advisors, agents, counsel, and controlling persons (collectively, the “**Assistants**”) shall have no liability with respect to any and all losses, claims, damages, or liabilities of any nature or kind to any person in connection with or as a result of performing their duties under the SISP, except to the extent that such losses, claims, damages, or liabilities are a direct result of the gross negligence or wilful misconduct of the Receiver as determined by this Court.

#### **REGULATORY COMPLIANCE**

7. **THIS COURT ORDERS** that the Receiver and its Assistants are at liberty to serve or distribute this Order, the SISP, and any other materials, orders, communication, correspondence, or other information as may be necessary or desirable in connection with the SISP to any Known Potential Bidders or other potentially interested party (collectively, the “**Recipients**”) that the Receiver considers appropriate. For greater certainty, any such distribution, communication, or correspondence shall be deemed to be in satisfaction of a legal or juridical obligation and to provide

notice within the meaning of clause 3(c) of the Electronic Commerce Protection Regulations, S.O.R./2013-221.

8. **THIS COURT ORDERS** that, pursuant to clause 7(3)(c) of the *Personal Information Protection and Electronic Documents Act*, S.C. 2000, c. 5, the Receiver and its Assistants are hereby authorized and permitted to disclose and transfer to the Recipients and their advisors personal information of identifiable individuals, including, without limitation, all lessee and/or borrower information in respect of the leases and loans comprising the Consumer Portfolio, and all human resources and payroll information in Skymark's records pertaining to Skymark's past and current employees, but only to the extent desirable or required to carry out the SISP and to negotiate or attempt to complete a transaction pursuant to the SISP (a "**Transaction**"). Each Recipient to whom such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evaluation of the Transaction, and if it does not complete a Transaction, shall return all such information to the Receiver, or in the alternative, destroy all such information. The Successful Bidder(s) shall maintain and protect the privacy of such information and, upon the closing of the Transaction(s) contemplated in the Successful Bid(s), shall be entitled to use the personal information provided to it that is related to the Assets and/or Business that forms the subject matter of the Transaction(s) in a manner which is in all material respects identical to the prior use of such information by Skymark, and shall return all other personal information to the Receiver or, in the alternative, ensure that it is destroyed.

#### **GENERAL**

9. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory, or administrative body having jurisdiction in Canada, the United States, or any other

jurisdiction, to give effect to this Order and to assist the Receiver and its 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 Receiver, as an officer of this Court, and its agents as may be necessary or desirable to give effect to this Order, to grant representative status to the Receiver in any foreign proceeding, or to assist the Receiver and its agents in carrying out the terms of this Order.

10. **THIS COURT ORDERS** that the Receiver be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory, or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Receiver is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

11. **THIS COURT ORDERS** that the Receiver may from time to time apply to this Court to amend, vary, or supplement this Order or to seek advice or directions regarding the discharge of its powers and duties under the SISIP and this Order.

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# **SCHEDULE A**

## SCHEDULE “A” SALE AND INVESTMENT SOLICITATION PROCESS

### INTRODUCTION

On March 6, 2023, upon application by PricewaterhouseCoopers Inc., in its capacity as Court-appointed receiver and manager of Bridging Finance Inc. and certain related entities and investment funds (in such capacity, the “**Applicant**”), the Ontario Superior Court of Justice (Commercial List) in Toronto (the “**Court**”) granted an order (the “**Receivership Order**”), pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended, appointing Alvarez & Marsal Canada Inc. (“**A&M**”) as receiver and manager (in such capacity, the “**Receiver**”), without security, of all of the assets, undertakings and properties (the “**Assets**”) of Skymark Finance Corporation (“**Skymark**”) and Merk Investments Ltd. (“**Merk**”, and together with Skymark, the “**Respondents**”).

On May 25, 2023, the Court issued an order (the “**SISP Approval Order**”) approving among other things, a sale and investment solicitation process (the “**SISP**”) as set forth in this document (the “**SISP Document**”). The SISP is intended to solicit interest in a purchase of, or investment in, all or part of the Consumer Portfolio (as defined below) and/or a purchase of, or investment in, any or all of Skymark’s Assets or business (the “**Business**”).

This SISP Document outlines the SISP, which will be conducted in three stages: (1) pre-marketing, (2) marketing, and (3) offer submission and evaluation.

### OVERVIEW

1. The SISP provides for the solicitation of interest in: (a) a purchase of, or investment in, all or part of Skymark’s portfolio of leases and loans to residential and commercial consumer borrowers primarily in respect of water systems, HVAC systems, and smart home improvements (the “**Consumer Portfolio**”); and/or (b) a purchase of, or investment in, any or all of Skymark’s Assets or Business (collectively, the “**Opportunity**”).
2. Any proposals to purchase and/or invest in all or part of the Consumer Portfolio and/or any of the Assets or Business of Skymark, including by way of a proposal to restructure, reorganize, recapitalize, or refinance Skymark (each a “**Proposal**”) shall be made in accordance with the SISP.
3. Any transaction consummated in connection with one or more Proposals (each a “**Transaction**”) will be on an “as is, where is” basis and without surviving representations or warranties of any kind, nature, or description by Skymark, the Receiver, their agents, advisors, estates, or any of them.
4. In the event of an asset sale pursuant to the SISP, the Receiver will seek an order from the Court pursuant to which all of the right, title, and interest of Skymark and the Receiver in and to the purchased Assets will be sold free and clear of all pledges, liens, security interests, encumbrances, claims, charges, options, and interests therein and thereon, subject

to approval by the Court, except for any such encumbrances or liabilities that the Receiver and Successful Bidder(s) (as defined below) agree shall be assumed by the Successful Bidder(s) pursuant to a definitive sale agreement.

5. Solicitations of interest in the Opportunity, and for Proposals in respect thereof, will be on an unpriced basis, and no minimum set asking price will be stipulated.
6. As discussed further below, the SISP will have three stages:
  - (a) **Pre-Marketing:** preparing marketing materials, assembling due diligence materials, establishing a data room, and preparing a list of potential buyers and investors (“**Known Potential Bidders**”);
  - (b) **Marketing:** advertising the Opportunity, contacting Known Potential Bidders, responding to requests for information from and disseminating marketing materials to Known Potential Bidders who have signed a NDA (as defined below); and
  - (c) **Offer Submission and Evaluation:** soliciting, reviewing, and negotiating offers (“**Bids**”) received from Known Potential Bidders who choose to submit a Bid (“**Bidders**”); the evaluation and qualification of Bids by the Receiver; the conduct of an auction (if the Receiver deems it desirable); and the acceptance of the most favourable Bid or Bids as determined by the Receiver (the “**Successful Bid(s)**”, with “**Successful Bidder(s)**” having the corresponding meaning).
7. For clarity, the Offer Submission and Evaluation stage of the SISP will be conducted in one phase, “**Phase 1**”, being the submission of Bids in the form of formal binding offers by Bidders, the evaluation and qualification of those Bids by the Receiver, and the acceptance of the Successful Bid or Bids by the Receiver, which may take place with or without an auction. The decision to conduct an auction shall be at the Receiver’s sole discretion, and the Receiver shall not be obligated to conduct an auction in any circumstance.
8. The Receiver shall be under no obligation to accept or qualify the highest or best Bid, or any Bid, and the Receiver shall have no obligation to select a Successful Bid(s), and the Receiver reserves the right to reject any or all Bids at any time during the SISP and to terminate the SISP at any time.

## KEY MILESTONES

9. The following table sets out the key milestones under the SISP:<sup>1</sup>

Milestone	Target Dates
Pre-Marketing Completion Date	Friday, June 2, 2023
Bid Deadline	Monday, July 10, 2023 at 5:00 pm
Qualification Deadline	Friday, July 14, 2023

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<sup>1</sup> All references to time are to Toronto time.

Auction Opt-In Deadline (if required)	Wednesday, July 19, 2023 at 5:00 pm
Initial Bid Notice Deadline (if required)	Thursday, July 20, 2023 at 5:00 pm
Auction Date (if required)	Friday, July 21, 2023
Closing Date & Transaction Approval	As soon as practicable after the selection of the Successful Bid or Bids

## STAGE 1: PRE-MARKETING

10. As soon as reasonably practicable, but, in any event, by no later than Friday, June 2, 2023 (the “**Pre-Marketing Completion Date**”), the Receiver will:
- (a) prepare: (i) a process summary (the “**Teaser Letter**”) describing the Opportunity, outlining the process under the SISP, and inviting recipients of the Teaser Letter to express their interest in the Opportunity pursuant to the SISP; and (ii) a non-disclosure agreement in form and substance satisfactory to the Receiver (“**NDA**”);
  - (b) gather the due diligence materials to be provided to interested parties and establish a secure, electronic data room (the “**Data Room**”), which will be maintained and administered by the Receiver during the SISP; and
  - (c) prepare a list of Known Potential Bidders, including: (i) parties that have approached Skymark, the Receiver, or other stakeholders indicating an interest in the Opportunity;<sup>2</sup> and (ii) local, national and international strategic and financial parties who the Receiver believes may be interested in making a Proposal pursuant to the SISP.
11. None of Skymark, the Receiver, or its advisors make any representation or warranty as to, and none shall have any responsibility or liability in respect of, the accuracy or completeness of the information contained in the Teaser Letter, the Data Room (as defined below), or otherwise made available pursuant to the SISP or otherwise, except to the extent expressly set forth in a definitive sale or investment agreement with the Successful Bidder(s) executed and delivered by the Receiver and approved by the Court.

## STAGE 2: MARKETING

12. As soon as reasonably practicable following the Pre-Marketing Completion Date, the Receiver will:
- (a) cause a notice of the SISP (and such other relevant information as the Receiver considers appropriate) (the “**Notice**”) to be published in the Globe & Mail (National Edition), the Insolvency Insider, and any other industry publication, website, newspaper, or journal as the Receiver may deem desirable; and
  - (b) cause the Teaser Letter and NDA to be sent to all Known Potential Bidders and to any other party who responds to the Notice or press release as soon as reasonably practicable after such request or identification, as applicable.

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<sup>2</sup> All communications with Known Potential Bidders are to comply with the terms of this SISP document.

13. The Receiver will grant access to the Data Room to those parties who have executed and delivered a NDA to the Receiver as soon as reasonably practicable after such execution and delivery.
14. Requests for information and access will be directed to the representative of the Receiver, at the contact information provided immediately below.

**TO THE RECEIVER:**

Alvarez & Marsal Canada Inc.  
Royal Bank Plaza, South Tower  
200 Bay Street, Suite 2900  
P.O. Box 22  
Toronto, ON M5J 2J1

Attention: Melanie MacKenzie  
Direct: +1 416 847 5158  
Email: mmackenzie@alvarezandmarsal.com

15. Any Known Potential Bidder who wishes to participate in the SISP must, prior to being given any additional information and access to the Data Room, provide to the Receiver a NDA executed by it, which shall inure to the benefit of any ultimate Successful Bidder(s) who close a Transaction in connection with the SISP, and a letter setting forth the identity of the Known Potential Bidder, the contact information for such Known Potential Bidder, and full disclosure of the direct and indirect principals of the Known Potential Bidder.
16. If it is determined by the Receiver, in its sole discretion, that a Known Potential Bidder has delivered an executed NDA and the information contemplated in paragraph 16 above, and that the Known Potential Bidder has a reasonable prospect of submitting a Proposal and completing a Transaction, then such Known Potential Bidder will be permitted to participate in the SISP and will be granted access to the Data Room and such other access and information as it reasonably requires to assess the Opportunity.
17. Without limiting the generality of any term or condition of any NDA signed by a Known Potential Bidder or Bidder, no Known Potential Bidder or Bidder shall be permitted to have any discussions with (a) any counterparty to any contract with Skymark, any secured creditor of Skymark, any current or former director, manager, shareholder, officer, member, or employee of Skymark, other than in the normal course of business and wholly unrelated to the SISP, and (b) any other Known Potential Bidder, Bidder, or Qualified Bidder (as defined below) regarding the SISP or any Bids submitted or contemplated to be submitted pursuant thereto. Notwithstanding the foregoing, such communications may take place with the consent of the Receiver and in the presence of the Receiver.
18. Known Potential Bidders, Bidders, and Qualified Bidders (as defined below) must rely solely on their own independent review, investigation and/or inspection of all information and of the Consumer Portfolio, Assets, and Business in connection with their participation in the SISP and any potential Transaction that may arise therefrom.

19. The Receiver will coordinate all reasonable requests for additional information and due diligence access from Known Potential Bidders who have signed a NDA. Selected due diligence materials may be withheld from Known Potential Bidders if the Receiver determines such information to represent proprietary, privileged, or sensitive competitive information.

### **STAGE 3: OFFER SUBMISSION AND EVALUATION**

#### **Bid Deadline**

20. All Bids submitted in connection with the SISP must be submitted in writing to and be received by the Receiver at Royal Bank Plaza, South Tower, 200 Bay Street, Suite 2900, Toronto ON M5J 2J1, Attention: Melanie MacKenzie or by email to mmackenzie@alvarezandmarsal.com, by 5:00 p.m. (Toronto time) on Monday, July 10, 2023 (the “**Bid Deadline**”).

#### **Bid Requirements**

21. Each Bid must meet the following criteria:
- (a) it must be received by the Bid Deadline;
  - (b) it must be submitted in writing;
  - (c) it must be a binding offer to purchase and/or invest in all or part of the Consumer Portfolio and/or all or part of Skymark’s Assets or Business;
  - (d) it must contain a duly authorized and executed definitive sale or investment agreement;
  - (e) it must contain a description of the property that is expected to be subject to the Transaction and any of the property expected to be excluded;
  - (f) it must contemplate any purchase of property on an “as is, where is” basis;
  - (g) it must include the purchase price or investment amount in Canadian dollars, including details of any liabilities to be assumed and any key assumptions supporting the valuation;
  - (h) it must identify the Bidder and the representatives thereof who are authorized to act on its behalf;
  - (i) it must be accompanied by a non-refundable deposit (the “**Deposit**”) by way of certified cheque or wire transfer in an amount not less than 10% of the aggregate consideration payable under the Bid;
  - (j) it must not include any request for or entitlement to any break or termination fee, expense reimbursement, or similar type of payment;

- (k) it must include a letter which states that the Bid is irrevocable and capable of acceptance by the Receiver until the Transaction contemplated in the Successful Bid(s), as defined in the SISP Document, is approved by the Court;
  - (l) it must not contain any contingency relating to due diligence or financing or any other material conditions precedent to the Bidder's obligation to complete the Transaction contemplated by the Bid if selected as the Successful Bidder;
  - (m) it must include acknowledgements and representations that the Bidder:
    - (i) has, to its satisfaction, had an opportunity to conduct any and all due diligence regarding the Consumer Portfolio, the Assets, and the Business, as applicable, prior to making its Bid;
    - (ii) it has relied solely upon its own independent review, investigation and/or inspection of any documents and the Consumer Portfolio, the Assets, and the Business, as applicable, in making its Bid; and
    - (iii) it did not rely upon any written or oral statements, representations, warranties, or guarantees whatsoever, whether express, implied, statutory or otherwise, regarding the Consumer Portfolio, the Assets, or the Business, as applicable, or the completeness of any information provided in connection therewith, except as may be expressly stated in the definitive sale or investment agreement executed and delivered by the Receiver and approved by the Court;
  - (n) it must be accompanied by written evidence of a commitment for financing or other evidence of the Bidder's ability to consummate the Transaction contemplated by the Bid;
  - (o) it must contemplate closing the Transaction as soon as the Court may approve the Transaction contemplated by the Bid; and
  - (p) it must contain such other information as may be reasonably requested by the Receiver.
22. Notwithstanding the foregoing, the Receiver may, subject to the Court's approval of the ultimate Transaction, accept any Bid that does not meet all of these criteria, accept any Bid prior to the Bid Deadline, and may accept a Bid submitted after the Bid Deadline.
23. The Receiver shall be entitled to discuss and negotiate Bids with Bidders prior to the Bid Deadline for the purposes of amending or clarifying the terms and form thereof.

### **Qualifying Bids**

24. Following the Bid Deadline, the Receiver will assess the Bids received in consultation with the Applicant. The Receiver, in consultation with the Applicant, may designate the most competitive Bids that comply with the requirements set out herein to be **"Qualified**

**Bid(s)**", with "**Qualified Bidder(s)**" having the corresponding meaning. The Receiver shall be under no obligation to designate the highest or otherwise best Bid, or any Bid, as a Qualified Bid. Only Bidders whose Bids have been designated as Qualified Bids shall be eligible to participate in the Auction (as defined below) and/or be selected as the Successful Bidder(s).

25. The Receiver may waive strict compliance with any one or more of the requirements set out herein and deem a non-compliant Bid to be a Qualified Bid.
26. The Receiver may aggregate separate Bids from unaffiliated Bidders to create one Qualified Bid.
27. The Receiver shall cause each Bidder to be notified in writing as to whether its Bid constitutes a Qualified Bid on or before Friday, July 14, 2023 (the "**Qualification Deadline**"). At the same time, the Receiver shall notify the Qualified Bidder(s) if an Auction (as defined below) will be held to select the Successful Bid(s).
28. Following the Bid Deadline, the Receiver specifically reserves the right to negotiate with any Qualified Bidder with respect to any provision of its Bid or to request or agree to any changes in any such Bid. The Receiver may choose to take such steps with respect to one or more Qualified Bidders, but the Receiver shall have no obligation to negotiate identical terms with, or extend identical terms to, each Qualified Bidder. The Receiver reserves its right to request some, but not all, Qualified Bidders submit a revised Bid reflecting improved terms or other amendments requested by the Receiver. The Receiver will be under no obligation to provide to each Qualified Bidder the opportunity to improve the terms of any Bid submitted to the Receiver following the Bid Deadline.

### **Evaluation of Competing Bids**

29. The criteria utilized by the Receiver to evaluate a Bid may include, but are not limited to, the following: (a) the purchase price and the net value of the consideration provided by such Bid (with the value of any non-cash consideration being determined by the Receiver), (b) the identity, circumstances, and ability of the Bidder to successfully complete the Transaction contemplated by its Bid, (c) the proposed definitive sale or investment agreement, (d) factors affecting the speed, certainty, and value of the Transaction, (e) the assets and liabilities included or excluded from the Bid, (f) any related restructuring costs, (g) the likelihood and timing of consummating such Transaction, each as determined by the Receiver in consultation with the Applicant.
30. At any stage of the SISP, the Receiver may ascribe monetary values to non-monetary terms in any Bid, Qualified Bid, Initial Bid (as defined below), or Overbid (as defined below) for the purposes of assessing and/or valuing such Bids, including without limitation, the value to be ascribed to any liabilities or contracts to be assumed or not assumed.
31. If the Receiver receives one or more Bids that are designated as Qualified Bids, the Receiver may, in consultation with the Applicant:



- (a) select one or more of such Qualified Bids as the Successful Bid(s) with or without negotiation of such Qualified Bids with Qualified Bidders; or
- (b) direct such Qualified Bidders to participate in an auction to be conducted and administered by the Receiver, with the assistance of its advisors, in accordance with the terms of the SISP (the “**Auction**”).

## **Auction Procedures**

- 32. The Receiver will determine whether the Auction will be held by the Qualification Deadline, and if the Auction is to be held, the Receiver will notify and provide instructions to participate in the Auction to each Qualified Bidder on that date.
- 33. Only Qualified Bidders shall be eligible to participate in the Auction. Each Qualified Bidder must inform the Receiver whether it intends to participate in the Auction by no later than 5:00 p.m. (Toronto time) on Wednesday, July 19, 2023 (the “**Auction Opt-In Deadline**”). The Receiver will promptly thereafter inform in writing, or cause to be informed in writing, each Qualified Bidder who has expressed its intent to participate in the Auction (the “**Auction Participants**”) of the identity of all other Qualified Bidders that have indicated their intent to participate in the Auction and of the details of the Initial Bid (as defined below).
- 34. The Auction shall be governed by the following procedures:
  - (a) **Participation at the Auction.** Only the Receiver, the Auction Participants, and each of their respective advisors will be entitled to attend the Auction, and only the Auction Participants will be entitled to make any subsequent Overbids (as defined below) at the Auction. The Receiver shall provide all Auction Participants with the details of the Initial Bid (as defined below) by no later than 5:00 p.m. (Toronto Time) on Thursday, July 20, 2023 (the “**Initial Bid Notice Deadline**”);
  - (b) **No Collusion.** Each Auction Participant shall be required to confirm on the record at the Auction that: (i) it has not engaged in any collusion with respect to the Auction and the SISP; and (ii) its Qualified Bid and each subsequent Overbid is a good-faith offer, which, if accepted by the Receiver on the record of the Auction forms a binding agreement between the parties, and that the Auction Participant intends to consummate the Transaction it proposes if selected as the Successful Bidder;
  - (c) **Minimum Overbid.** The Auction shall begin with the Qualified Bid(s) that represents the highest or otherwise best Qualified Bid(s) as determined by the Receiver (the “**Initial Bid**”), and any Bid made at the Auction by an Auction Participant subsequent to the Receiver’s announcement of the Initial Bid (each, an “**Overbid**”), must proceed in minimum additional increments of CAD 25,000.00, or as otherwise declared by the Receiver during the Auction;
  - (d) **Bidding Disclosure.** The Auction shall be conducted such that all Overbids will be made and received in one group video-conference, on an open basis, and all Auction

Participants will be entitled to be present for all bidding with the understanding that the true identity of each Auction Participant will be fully disclosed to all other Auction Participants and that all material terms of each Overbid will be fully disclosed to all other Auction Participants throughout the entire Auction; provided, however, that the Receiver, in its discretion, may establish separate video conference rooms to permit interim, technical, or clarifying discussions between the Receiver and individual Auction Participants with the understanding that all formal Overbids will be delivered in one group video conference, on an open basis;

- (e) **Bidding Conclusion.** The Auction shall continue in one or more rounds and will conclude after each Auction Participant has had and refused the opportunity to submit an Overbid with full knowledge of the then-existing highest Qualified Bid(s) or Overbid(s), at which time the Receiver will declare the Auction to be concluded;
- (f) **No Post-Auction Bids.** No Overbids will be considered for any purpose after the Receiver has declared the Auction to be concluded; and
- (g) **Auction Procedures.** The Receiver shall be at liberty to modify or to set additional procedural rules for the Auction as it sees fit.

35. During the Auction, the Receiver will, in consultation with the Applicant:

- (a) review Qualified Bids and Overbids, as the case may be, considering the factors set out in paragraph 29, among other things; and
- (b) identify the highest or otherwise best Qualified Bid(s) or Overbid(s) received at any given time during the Auction, with the highest or otherwise best such Bid or Bids at the conclusion of the Auction being the Successful Bid(s), and the Qualified Bidder(s) making such Bid being the Successful Bidder(s).

#### **COURT APPROVAL OF THE SUCCESSFUL BID**

- 36. Notwithstanding anything to the contrary in this SISP Document, the Receiver shall be under no obligation to accept or qualify the highest or best Bid, or any Bid, and the Receiver shall have no obligation to select a Successful Bid(s), and the Receiver reserves the right to reject any or all Bids at any time during the SISP and to terminate the SISP at any time.
- 37. The Receiver will make a motion to the Court to obtain approval of the Transaction contemplated by the Successful Bid(s) as soon as practicable after the selection of the Successful Bid(s) (the “**Sale Approval Motion**”).
- 38. The Successful Bidder(s) shall complete and execute all agreements, contracts, instruments or other documents evidencing and containing the terms and conditions upon which the Successful Bid(s) was made within two (2) business days of the Successful Bid(s) being selected as such, unless additional time is granted by the Receiver.

39. All Bids other than the Successful Bid(s), if any, shall be deemed to be rejected by the Receiver on and as of the date of approval of the Successful Bid(s) by the Court.

#### **CONFIDENTIALITY, COMMUNICATION, AND ACCESS TO INFORMATION**

40. The Receiver may, as it deems appropriate, consult with stakeholders of Skymark throughout the SISP upon such assurances as to confidentiality as the Receiver may require. To the extent any stakeholder is or is related to a Known Potential Bidder, the Receiver shall not provide such stakeholder with information that might create an unfair advantage or jeopardize the integrity of the SISP unless such stakeholder irrevocably confirms in writing to the Receiver that it shall not submit or participate directly or indirectly in the submission of a Bid. Except as set forth in this paragraph, nothing in this SISP shall prohibit a stakeholder of Skymark (a) from participating as a Bidder in the SISP, or (b) committing to bid any secured debt in the SISP.
41. All discussions regarding any Bids submitted pursuant to the SISP should be directed to the Receiver. Under no circumstances should any of Skymark's stakeholders be contacted directly without the prior consent of the Receiver. Any such unauthorized contact or communication could result in exclusion of the interested party from the SISP. For greater certainty, nothing herein shall prevent a stakeholder from contacting Known Potential Bidders with the agreement of the Receiver to advise that the Receiver has commenced a SISP and that they should contact the Receiver if they are interested in the Opportunity.
42. If it is determined by the Receiver that it would be worthwhile to facilitate a discussion between a Known Potential Bidder, Bidder, or Qualified Bidder and a stakeholder or other third party, as a consequence of a condition to closing, or potential closing condition identified by such Bidder, the Receiver may provide such bidder with the opportunity to meet with the relevant stakeholder or third party to discuss such condition or potential condition, with a view to enabling such Bidder to seek to satisfy the condition or assess whether the condition is not required or can be waived. Any such meetings or other form of communication will take place on terms and conditions considered appropriate by the Receiver. The Receiver must be provided the opportunity to be present at all such communications or meetings.

#### **MODIFICATIONS TO SISP**

43. Subject to the SISP Approval Order, the Receiver shall have the right to adopt such other procedures and rules for the SISP as the Receiver deems desirable without the consent or approval of any other person. Without limiting the generality of the foregoing, the Receiver may, in its sole discretion, modify the date of any milestone set forth herein, including, without limitation, the Bid Deadline and Auction Date (if required).

#### **APPLICANT**

44. If the Applicant submits a Bid, it shall not be entitled to any consultation or consent rights in favour of the Applicant provided for herein, and shall not be entitled to review any of the other Bids received unless and until it has been notified by the Receiver that its Bid has not been selected as the Successful Bid.

## **GENERAL**

45. All Deposits shall be retained by the Receiver in a non-interest-bearing bank account. A Deposit paid by a Successful Bidder(s) shall be dealt with in accordance with the definitive documents for the transactions contemplated by the Successful Bid. Deposits paid by Bidders not selected as the Successful Bidder(s) shall be returned to such Bidder within three business days of being advised that it is not a Successful Bidder.
46. Consistent with paragraph 17 of the Receivership Order, the Receiver and its advisors shall have no liability whatsoever to any person or party, including, without limitation, any Known Potential Bidder, Bidder, Qualified Bidder, or Successful Bidder, or the Respondents or Applicant, or any other creditor or other stakeholder of Skymark, for any act or omission related to the process contemplated by this SISP Document or the SISP generally save and except for those liabilities which may arise as a direct result of the gross negligence or wilful misconduct on their part. Subject to the foregoing, by participating in this SISP in any capacity, every person or party shall be deemed to have agreed that it has no claim against the Receiver or its advisors for any reason whatsoever in connection with the SISP save and except for those claims which may arise as a direct result of the gross negligence or wilful misconduct of the Receiver.
47. This SISP does not, and will not be interpreted to create any contractual or other legal relationship between the Receiver and any Known Potential Bidder, Bidder, Qualified Bidder, or Successful Bidder or any other party, other than as specifically set forth in a definitive sale or investment agreement that may be entered pursuant to the SISP.
48. Participants in the SISP are responsible for all costs, expenses, and liabilities incurred by them in connection with the submission of Bids, due diligence activities, and any further negotiations, or other actions whether or not they lead to the consummation of a Transaction.
49. At any time during the SISP, the Receiver may apply to the Court for advice and directions aspect Approval Order or the SISP or the discharge of its powers and duties thereunder.
50. Except as otherwise provided in an order of the Court, the Court shall retain jurisdiction to hear and determine all matters arising from or relating to the implementation of the SISP Approval Order and the SISP.

APPLICATION UNDER Section 101 of the *Courts of Justice Act*, R.S.O. 1990 c.C.43, as amended, and Section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended  
PRICEWATERHOUSECOOPERS INC.  
-and- SKYMARK FINANCE CORPORATION and MERK INVESTMENTS LTD.  
(solely in its capacity as court-appointed receiver and manager of Bridging Finance Inc. and certain related entities and investment funds)

Applicant

Respondents

Court File No. CV-22-00692309-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

**Proceeding commenced at  
Toronto**

**ORDER  
(SISP Approval)**

**FASKEN MARTINEAU DUMOULIN LLP**

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-and- SKYMARK FINANCE CORPORATION and MERK  
INVESTMENTS LTD.

Applicant

Respondents

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**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

**Proceeding commenced at  
Toronto**

**MOTION RECORD OF THE RECEIVER  
(SISP Approval)**

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