

District of: Ontario  
Division No.: 09 - Toronto  
Court No.: 31-2978830  
Estate No.: 31-2978830

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

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

**SECOND REPORT OF THE PROPOSAL TRUSTEE  
ALVAREZ & MARSAL CANADA INC.**

**OCTOBER 4, 2023**

**TABLE OF CONTENTS**

**1.0 INTRODUCTION .....1**

**2.0 PURPOSE OF THIS REPORT .....3**

**3.0 TERMS OF REFERENCE AND DISCLAIMER .....4**

**4.0 CASH FLOW RESULTS .....5**

**5.0 SECURITY REVIEW SUMMARY .....7**

**6.0 SISP UPDATE.....8**

**7.0 ST. LOUIS PURCHASE AGREEMENT .....13**

**8.0 REQUEST FOR EXTENSION .....18**

**9.0 ACTIVITIES OF THE PROPOSAL TRUSTEE .....18**

**10.0 CONCLUSION AND RECOMMENDATIONS.....20**

**APPENDICES**

**Appendix A – First Report (without Appendices)**

**Appendix B – SISP Teaser Letter**

**Confidential Appendix 1 – Bid Summary**

## 1.0 INTRODUCTION

- 1.1 On August 23, 2023 (the “**Filing Date**”), Whyte’s Foods Inc. (“**Whyte’s**”, the “**Company**” or the “**Applicant**”) filed a Notice of Intention to Make a Proposal (“**NOI**”) pursuant to Section 50.4(1) of the *Bankruptcy and Insolvency Act (Canada)*, R.S.C. 1985, c. B-3 (the “**BIA**”) and Alvarez & Marsal Canada Inc. (“**A&M**”) was appointed as Proposal Trustee of the Company (the “**Proposal Trustee**”).
- 1.2 Whyte’s is a privately held Canadian company that carries on business as a leading producer of pickled and fermented food products in Canada. The Company offers a diverse product portfolio to widely recognized Canadian private label and consumer packaged goods companies along with its own brands, including Strub’s, Coronation, Mrs. Whyte’s, Whyte’s and Saroli.
- 1.3 The Company’s head office is located in Mississauga, Ontario, and it currently owns and operates two manufacturing facilities located in Wallaceburg, Ontario (the “**Wallaceburg Facility**”) and Saint-Louis, Quebec (the “**St. Louis Facility**”). The Company also operates a leased warehouse and distribution facility in Sainte-Thérèse, Quebec (the “**Ste. Thérèse Facility**”).
- 1.4 These NOI proceedings (the “**NOI Proceedings**”) were initiated by the Company to create a stabilized environment for Whyte’s to continue to operate in the ordinary course, while allowing the Company the opportunity to conduct a Court-supervised sale process.
- 1.5 In connection with the NOI Proceedings, the Proposal Trustee filed and served the First Report of the Proposal Trustee dated August 30, 2023 (the “**First Report**”) and the Update to the First Report of the Proposal Trustee dated September 14, 2023 (the “**First Report Update**”) and together with the First Report, the “**Prior Reports**”). The Prior Reports and other Court-filed documents in the NOI Proceedings are available on the Proposal Trustee’s case website at

- <https://www.alvarezandmarsal.com/whytes> (the “**Case Website**”). A copy of the First Report (without appendices) is attached hereto as **Appendix “A”**.
- 1.6 On August 31, 2023, the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) granted an order (the “**Initial Order**”) which, among other things, (i) approved a sale and investment solicitation process (“**SISP**”) for a sale of or investment in the Company’s Business or Property (each as defined in the First Report) and the engagement of Kroll Corporate Finance Canada Limited, (“**Kroll**” or the “**Financial Advisor**”) as financial advisor to the Company in respect of the SISP; (ii) authorized and empowered the Applicant to obtain and borrow under a debtor-in-possession financing facility (the “**DIP Facility**”) provided by Wells Fargo Capital Finance Corporation Canada (“**Wells Fargo**”) pursuant to the Forbearance and Third Amendment to the Credit Agreement (the “**DIP Facility Agreement**”); and (iii) extended the time for the Applicant to file a proposal, and the corresponding stay of proceedings, until and including October 10, 2023 (the “**Stay Period**”).
- 1.7 The Prior Reports provided information regarding a dispute involving the purported termination by Smucker Foods of Canada Corp. (“**Smucker**”) of its supply agreement dated November 27, 2019 (the “**Supply Agreement**”) with the Company and demands for amounts allegedly owing by the Company to Smucker as a result of alleged breaches of the Supply Agreement.
- 1.8 Smucker was the Company’s largest customer. As of the Filing Date, Smucker owed the Company approximately \$5.0 million in accounts receivable under the Supply Agreement (the “**Smucker Receivable**”). The Smucker Receivable represented over 60% of the Company’s trade receivables from customers.
- 1.9 On September 7, 2023, a settlement agreement was reached between the Company and Smucker (the “**Smucker Settlement Agreement**”) which provided for, among other things, the termination of the Supply Agreement on October 10, 2023.

## 2.0 PURPOSE OF THIS REPORT

2.1 The purpose of this report (the “**Second Report**”) is to provide the Court with information, and where applicable, the Proposal Trustee’s views on:

- a) the Company’s cash flow results for the five-week period ended September 24, 2023;
- b) updates in respect of the SISP;
- c) an order sought by the Applicant (the “**Approval and Vesting Order**”) seeking among other things:
  - i. approval of the asset purchase agreement dated September 29, 2023 (the “**St. Louis Purchase Agreement**”) between 9498-8995 Québec Inc. and 9498-8938 Québec Inc. (together, the “**St. Louis Purchasers**”), as purchasers, Aliments Putters Inc. (“**Putters**”), as guarantor, and Whyte’s, as seller;
  - ii. vesting title to the St. Louis Purchased Assets (as defined herein) in the St. Louis Purchasers, free and clear of claims and encumbrances, other than claims and encumbrances specifically provided for in the St. Louis Purchase Agreement;
  - iii. sealing of Confidential Appendix 1 (as described herein) until further order of this Court; and
  - iv. extending the time for the Applicant to file a proposal, and the corresponding stay of proceedings, until and including October 13, 2023 (the “**Stay Period**”);
- d) a Notice of Application (the “**WF Receivership Application**”) brought forth by Wells Fargo to seek the appointment of Ernst & Young Inc. (“**EY**”) as receiver of the Wells Fargo Security (as defined herein) and an order to, among other things, appoint EY as trustee in lieu of A&M; and

- e) the Proposal Trustee’s activities and its recommendations in connection with the foregoing.

### **3.0 TERMS OF REFERENCE AND DISCLAIMER**

- 3.1 In preparing this Second Report, the Proposal Trustee has relied upon unaudited financial information prepared by the Company’s representatives, its books and records, discussions with the Company’s representatives and its legal counsel (collectively, the “**Information**”).
- 3.2 The Proposal Trustee has reviewed the Information for reasonableness, internal consistency and use in the context in which it was provided. However, the Proposal Trustee 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* (the “**CPA Handbook**”), and accordingly, the Proposal Trustee expresses no opinion or other form of assurance contemplated under CASs in respect of the Information.
- 3.3 Some of the information referred to in this Second Report consists of forecasts and projections. An examination or review of the financial forecasts and projections, as outlined in the CPA Handbook, has not been performed. Future oriented financial information referred to in this First Report was prepared based on the Company’s estimates and assumptions. Readers are cautioned that since projections are based upon assumptions about future events and conditions that are not ascertainable, actual results will vary from the projections, even if the assumptions materialize, and the variations could be significant.
- 3.4 This Second Report should be read in conjunction with the affidavit of Ms. Elizabeth Kawaja, sworn October 2, 2023 (the “**Second Kawaja Affidavit**”). The Second Kawaja Affidavit contains further background in respect of the Company, the SISP and additional details in respect of the relief sought by the Applicant.

Capitalized terms used but not defined in this Second Report shall have the meanings given to such terms in the Second Kawaja Affidavit.

3.5 Unless otherwise stated, all monetary amounts contained herein are expressed in Canadian dollars.

#### **4.0 CASH FLOW RESULTS**

4.1 Actual receipts and disbursements for the five-week period from August 21, 2023 to and including September 24, 2023 (the “**Reporting Period**”), as compared to the “Updated Cash Flow Forecast” attached as Appendix “A” to the First Report Update, are summarized in the following table:

<b>Cash Flow Variance Report</b>			
<b>\$000's</b>			
	<b>Budget</b>	<b>Actual</b>	<b>Variance</b>
<b>Receipts</b>			
Accounts receivable collections	3,951	5,340	1,389
Sales tax receivable collections	-	141	141
<b>Operating Disbursements</b>			
Payroll & benefits	(1,515)	(1,391)	124
Inventory	(2,537)	(2,414)	123
Facilities	(435)	(267)	168
Logistics	(432)	(402)	30
Warehouse	(56)	(70)	(15)
Administrative	(86)	(7)	79
Sales tax	(211)	(53)	158
<b>Net Operating Cash Flow</b>	<b>(1,321)</b>	<b>876</b>	<b>2,196</b>
Professional fees	(1,031)	(1,160)	(129)
Interest	(218)	(81)	137
DIP Fee	(75)	(75)	-
<b>Net Cash Flow</b>	<b>(2,645)</b>	<b>(441)</b>	<b>2,204</b>
Cash balance, opening	-	-	-
Net Cash Flow	(2,645)	(441)	2,204
Combined ABL and DIP Draw	2,645	441	2,204
<b>Ending Cash Balance</b>	<b>-</b>	<b>-</b>	<b>-</b>

4.2 During the Reporting Period:

- a) the positive variance in accounts receivable of approximately \$1.4 million is primarily due to timing variances, which are expected to reverse in future periods;

- b) the positive variance in payroll is a result of lower than forecast overtime and manufacturing hours; and
- c) other variances in disbursements are considered by Management to be timing-related which are expected to reverse in future periods.

## **5.0 SECURITY REVIEW SUMMARY**

5.1 Searches of records maintained under the laws of the Provinces of Ontario and Quebec disclose that the following parties have registered one or more security interests in the Company's Property:

- a) Wells Fargo, which is owed approximately \$8.9 million under the ABL Facility (as defined in the First Report) and the DIP Facility (together with the ABL Facility, the "**Wells Fargo Facilities**") as of the date of this Second Report;
- b) Farm Credit Canada ("**FCC**"), which is owed approximately \$34.3 million under facilities pursuant to the FCC Credit Agreement (as defined in the First Report) (the "**FCC Facilities**") as of the date of this Second Report;
- c) EJJ Capital Inc. ("**EJJ**"), a party related to the Company, which is owed approximately \$3.8 million as of the date of this Second Report; and
- d) Investissement Quebec ("**IQ**"), which is owed approximately \$234,000 as of the date of this Second Report.

5.2 The Proposal Trustee requested that its counsel, Fasken Martineau DuMoulin LLP ("**Fasken**") conduct an independent review of the security granted by the Applicant to Wells Fargo and FCC (the "**Senior Secured Creditors**").

5.3 The security granted by the Company to Wells Fargo for amounts owing in respect of the Wells Fargo Facilities includes (i) a Canadian guarantee and security agreement dated as of October 14, 2022, (ii) a deed of hypothec dated as of October

11, 2022 and (iii) an intellectual property security agreement dated as of October 14, 2022 (collectively, the “**Wells Fargo Security**”), among other security.

- 5.4 The security granted by the Company to FCC for amounts owing in respect of the FCC Facilities includes (i) a mortgage of the Wallaceburg Facility and underlying land registered on May 19, 2020, as amended by an agreement amending mortgage, notice of which was registered on April 19, 2023, (ii) an assignment of rents, notice of which was registered on May 19, 2020, (iii) a security agreement dated May 20, 2020, (iv) a deed of hypothec dated May 14, 2020 (which includes both a movable hypothec and an immovable hypothec with respect to the St. Louis Property) and (v) a deed of hypothec dated April 17, 2023 (collectively, the “**FCC Security**”), among other security.
- 5.5 Subject to customary qualifications and assumptions, Fasken has provided to the Proposal Trustee written opinions that the Wells Fargo Security and the FCC Security constitute valid security perfected by registration, which security is enforceable in accordance with its terms under the laws of Ontario and Quebec (as applicable).

## **6.0 SISP UPDATE**

### Prior Sale Process

- 6.1 As further described in the First Report, in February 2023, the Company engaged Kroll to run a process to canvas the market for a sale of or investment into the Company. Kroll’s target list included strategic buyers and financial sponsors that focus on food manufacturing and turnaround situations (the “**Prior Sale Process**”).
- 6.2 The Company and Kroll invested significant time and effort to explore strategic transaction opportunities. In the Prior Sale Process, Kroll launched a marketing process to 156 prospective buyers. Ultimately, the outreach led to two different letters of intent signed by the Company with extensive diligence conducted,

- however the Company was not able to implement a transaction prior to the Filing Date.
- 6.3 Also as described in the First Report, on July 21, 2023, the Company entered into interim arrangements with Putters in respect of the St. Louis Facility (the “**Interim St. Louis Arrangements**”), whereby Whyte’s would produce certain products on behalf of Putters. The Interim St. Louis Arrangements provided for the purchase of ingredients and contribution towards various other production and operating costs directly by Putters. The resulting inventory is segregated from and does not form part of the Company’s Property. This arrangement permitted the Company to continue operations at the St. Louis Facility through September, ensuring that local growers supplying crop did not encounter any delay in payment for their ongoing supply.
- 6.4 The Interim St. Louis Arrangements also provided for a period of exclusivity for the Company and Putters to negotiate the terms of a transaction in respect to the sale of the St. Louis Facility and related equipment. The Company was not able to finalize a sale agreement with Putters prior to the Filing Date.
- 6.5 In the face of an impending liquidity shortfall and in consultation with the Senior Secured Lenders, the Company determined that the best path to maximize stakeholder value and preserve the Company as a going concern was to commence the NOI Proceedings and complete the SISP with the assistance of the Proposal Trustee and the Financial Advisor.

#### SISP Update

- 6.6 Pursuant to the Initial Order, the Company was authorized to continue and complete the Prior Sale Process within the SISP. The material terms of the SISP were summarized in the First Report.
- 6.7 Capitalized terms in this section not otherwise defined have the meanings attributed to such terms in the SISP.

- 6.8 The goal of the SISP was to complete a transaction on an expedited basis as, (i) when evaluated in conjunction with the significant and rigorous sale process conducted as part of the Prior Sale Process, the truncated timeline would be sufficient to allow interested parties to continue their diligence and submit offers and (ii) an expedited process was required as the Company did not have access to sufficient funding to support the costs associated with conducting a prolonged SISP.
- 6.9 The following provides an overview of the steps taken by the Proposal Trustee and the Financial Advisor in connection with the SISP:
- a) posted the SISP to the Case Website on September 1, 2023;
  - a) prepared a list of potential bidders, including, (i) parties that have approached the Company, Proposal Trustee or Kroll indicating an interest in the Opportunity, or in one or more of the Company’s assets; (ii) parties that submitted an indication of interest or letter of intent in the Prior Sale Process; (iii) parties that did not submit any indication of interest, but actively participated in the Prior Sale Process, including conducting due diligence; and (iv) select competitors (collectively, the “**Known Potential Bidders**”);
  - b) prepared and circulated to all Known Potential Bidders a process summary (the “**Teaser Letter**”) describing the Opportunity, outlining the process under the SISP and inviting the recipients to express their interest pursuant to the SISP. A copy of the Teaser Letter is attached hereto as **Appendix “B”**;
  - c) engaged with 42 Known Potential Bidders including:
    - (i) 30 parties contacted directly by the Financial Advisor (of which 27 are parties who participated in the Prior Sale Process); and

- (ii) 12 new parties who contacted the Financial Advisor and/or Proposal Trustee as a result of the notices issued through the SISP and the NOI Proceedings;
- d) provided access to a virtual data room (the “VDR”), which was created to provide available information to the 37 Known Potential Bidders that executed a non-disclosure agreement (an “NDA”), either during the SISP or during the Prior Sale Process;
- e) promptly uploaded relevant documents to the VDR for access by all Potential Bidders, as appropriate;
- f) uploaded the template purchase and sale agreement to the VDR on September 7, 2023;
- g) participated in meetings between the Company’s management and certain Potential Bidders, both virtually and on site with six onsite tours facilitated by the Financial Advisor and the Company;
- h) participated in meetings between certain Potential Bidders and Smucker; and
- i) participated in meetings between certain Potential Bidders and the Senior Secured Lenders.

6.10 While the St. Louis Facility and related equipment were included as part of the overall SISP, negotiations with Putters continued alongside the SISP. As described in the Second Kawaja Affidavit, no Potential Bidders expressed an interest in the St. Louis Facility prior to the Bid Deadline.

6.11 As described further below, ultimately, an agreement to sell the St. Louis Facility, as well as the majority of the equipment located at the St. Louis Facility and certain equipment located at the Ste. Therese Facility (collectively, the “**St. Louis Purchased Assets**”) to Putters was reached on September 29, 2023.

- 6.12 By the Bid Deadline on September 21, 2023, four Potential Bidders (each a “**Bidder**” and collectively the “**Bidders**”) submitted bids for various assets to the Proposal Trustee (the “**Bids**”). A summary of the Bids were as follows:
- a) two going concern proposals involving the acquisition of the entirety of the Business and Property, excluding the St. Louis Purchased Assets, providing for consideration in the form of cash and restructured debt with Senior Secured Lenders (together, the “**Going Concern Bids**”);
  - b) a cash bid for all of the Company’s operating lines and equipment at the Wallaceburg Facility (the “**Equipment Bid**”). Subsequent to the Bid Deadline, the Equipment Bid was further expanded to incorporate additional equipment at the Ste. Therese Facility; and
  - c) a cash bid for the Company's brands and intellectual property as well as certain equipment located at the Ste. Therese Facility.
- 6.13 After the Bid Deadline, an additional cash bid was received for the brands, intellectual property and certain inventory of the Company (the “**IP and Inventory Bid**”).
- 6.14 Neither Going Concern Bid was immediately acceptable to both of the Senior Secured Lenders.
- 6.15 Following the Bid Deadline, the Company, the Proposal Trustee and the Financial Advisor engaged in numerous discussions with certain Bidders and the Senior Secured Lenders in an effort to negotiate an agreement that may be acceptable to all stakeholders.
- 6.16 As of the date of this Second Report, the Going Concern Bids have been determined to be unacceptable to the stakeholders due to, among other things, (i) significant concessions required by the Senior Secured Lenders and (ii) additional concerns regarding the speed, certainty, funding sources and value of the transactions.

- 6.17 Notwithstanding their unacceptability, as of the date of this Second Report, negotiations with certain Bidders are ongoing and the Company is not in the position to finalize or seek approval of a transaction at this time, other than the St. Louis Purchase Agreement referred to herein.
- 6.18 To assist the Court, the Financial Advisor and the Proposal Trustee, together, have prepared a summary of the Bids received during the SISP (the “**Bid Summary**”), a copy of which is attached hereto as **Confidential Appendix “1”**. While not included in the motion materials served by the Company to date, the Proposal Trustee understands that the Company will request that the Bid Summary be sealed pending completion of all transactions sourced through the SISP. The Proposal Trustee supports the sealing of Confidential Appendix “1” as disclosure of the Bid Summary could potentially impair efforts to maximize the value of Whyte’s Business and Property.
- 6.19 As discussed further below, the Senior Secured Lenders have each indicated an intention to seek the appointment of a receiver over the collateral in respect of which they have priority. The Proposal Trustee anticipates that such receivers, if appointed, may seek to reach agreement with certain Bidders on the terms of one or more transactions.

## **7.0 ST. LOUIS PURCHASE AGREEMENT**

- 7.1 Following lengthy negotiations between the Company, Putters and their respective advisors, in consultation with the Proposal Trustee and the Senior Secured Lenders, the St. Louis Purchase Agreement was executed on September 29, 2023.
- 7.2 A copy of the St. Louis Purchase Agreement is attached as **Exhibit “D”** to the Second Kawaja Affidavit. Key terms are summarized in the following table:

<b>St. Louis Purchase Agreement</b> (Capitalized terms have the meaning ascribed thereto in the St. Louis Purchase Agreement)	
Purchasers	9498-8995 Québec Inc. and 9498-8938 Québec Inc.

<b>St. Louis Purchase Agreement</b> (Capitalized terms have the meaning ascribed thereto in the St. Louis Purchase Agreement)	
Guarantor	Ailments Putters Inc.
Purchase Price	\$7,450,000 in cash
Deposit	\$745,000, held by the Proposal Trustee
Purchased Assets	<ul style="list-style-type: none"> <li>• <u>Land</u>: Lot number 3 218 551 of the Cadastre of Quebec, Registration Division of Richelieu;</li> <li>• <u>Building</u>: All buildings erected on the Land, including the building bearing civic address 196 rue Saint-Martin, Saint-Louis, Quebec</li> <li>• <u>Furniture</u>: All office furniture owned by the Vendor and located in the Building as at the date of the Agreement</li> <li>• <u>Certain Equipment and Other Assets</u>: Certain equipment located at the St. Louis Facility and the Ste. Therese Facility and other assets related to the Vendor's operations at the Building</li> </ul>
Excluded Assets	<ul style="list-style-type: none"> <li>• Cash on Close</li> <li>• Whyte's Inventory located at St. Louis Facility</li> <li>• the benefit of any refundable Taxes payable or paid by the Vendor net of any amounts withheld by any taxing authority, and any claim or right of the Vendor to such refund, rebate, or credit of Taxes</li> <li>• certain Used Assets (barrels, pallets, plastic bins and wood boxes located at St. Louis Facility which are at least partially filled and/or used by the Vendor in the normal course of business as at the Closing Date)</li> <li>• all Contracts to which the Vendor is a party</li> <li>• certain machinery, equipment and other property located at St. Louis and Ste. Therese Facilities, not listed as a Purchased Asset</li> <li>• IT Systems</li> <li>• the Vendor's rights under or pursuant to this Agreement and any ancillary agreements entered into pursuant to this Agreement</li> <li>• the minute books and corporate records of the Vendor</li> <li>• all right, title and interest of the Vendor in and to the Intellectual Property owned by or licensed to the Vendor or used by the Vendor in connection with the business or the Purchased Assets</li> </ul>
Inventory Storage	The Agreement provides for the Whyte's Inventory to remain on site at the St. Louis Facility through December 31, 2023 at no additional cost

<b>St. Louis Purchase Agreement</b> (Capitalized terms have the meaning ascribed thereto in the St. Louis Purchase Agreement)	
Closing	The date that all of the conditions under Section 7.1, Section 7.2 and Section 7.3 have been satisfied or waived, except for those conditions that by their nature can only be satisfied on the Closing Date, or such earlier or later date as agreed to by the Parties
Employees	The Purchaser will offer employment to certain Designated Employees of the Vendor by way of a written employment contract on terms and conditions that are substantially similar to those existing immediately prior to the execution of the Agreement, including any Employee Plans
Key Conditions to Closing	<ul style="list-style-type: none"> <li>• the Court granting the Approval and Vesting Order</li> <li>• the Proposal Trustee delivering its certificate confirming the satisfaction of all conditions under the Agreement and payment of the Purchase Price (the “<b>Proposal Trustee Certificate</b>”)</li> <li>• no action or proceeding be pending or threatened by any Person (other than the Proposal Trustee, the Vendor or the Purchaser) and no order or notice from any Governmental Entity, to (or seeks to) enjoin, restrict or prohibit, on a temporary or permanent basis any of the transactions contemplated by this Agreement or imposing any terms or conditions on the transactions contemplated by the Agreement</li> </ul>

7.3 Pursuant to the proposed Approval and Vesting Order, the Applicant is seeking the approval of the transaction contemplated by the St. Louis Purchase Agreement and the vesting of the St. Louis Purchased Assets in and to the St. Louis Purchasers free and clear of any security, charge or other restriction, other than claims and encumbrances specifically provided for in the St. Louis Purchase Agreement with such vesting being effective upon the delivery of the Proposal Trustee Certificate to the St. Louis Purchasers.

Proposal Trustee Recommendation

7.4 The Proposal Trustee respectfully recommends that the Court approve the St. Louis Purchase Agreement for the following reasons:

- a) the terms of the St. Louis Purchase Agreement are the result of extensive negotiations between the Company, Putters and their respective advisors

and represents the best transaction available to the Company for the purchased assets in the circumstances;

- b) the terms provide for storage of Whyte's Inventory which would otherwise involve additional effort and costs;
- c) the transaction preserves the continued employment of the Designated Employees. The Proposal Trustee also understands that when the St. Louis Purchasers are ready to commence operations at the St. Louis Facility, they will consider additional offers of employment to approximately 15 remaining employees currently employed at the St. Louis Facility; and
- d) the Proposal Trustee understands that the Senior Secured Lenders support the St. Louis Purchase Agreement.

7.5 The St. Louis Purchase Agreement was executed and the deposit thereunder was paid in the expectation that these NOI Proceedings would continue with sufficient funding to reach closing of the transaction contemplated thereby. The Proposal Trustee's recommendations in support of that transaction are premised on this expectation being realized.

#### Proposed Receivership Orders

7.6 On October 3, 2023, Wells Fargo brought the WF Receivership Application to seek the appointment of EY as receiver of the Wells Fargo Security.

7.7 The WF Receivership Application contemplates the continuation of these NOI Proceedings until closing of the transactions contemplated in the St. Louis Purchase Agreement and that EY's appointment as receiver would take effect upon the earlier of (i) delivery by the Proposal Trustee of the Proposal Trustee's Certificate or (ii) October 12, 2023 at 5pm (the "**Receivership Date**").

7.8 While not included in the WF Receivership Application, the Proposal Trustee understands that Wells Fargo will request that the Court grant an order, among other

things, (i) terminating the period in which a proposal is to be filed with the Official Receiver in these NOI Proceedings and (ii) appointing EY as trustee in lieu of A&M.

7.9 It is the view of the Proposal Trustee that:

- a) if one or more receivers are appointed such that the Company no longer has possession or control of its business or property, there will be no prospect of the Company making a proposal; and
- b) the replacement of A&M with EY as trustee would be appropriate as it would be duplicative and inefficient to have different entities serving as trustee and receiver, each interacting separately with creditors and the Superintendent of Bankruptcy (the “**Superintendent**”), and commonality in the roles would streamline dealing with such duties as required notices to creditors and the Superintendent, fulfilling obligations in accordance to the *Wage Earner Protection Program Act* (“**WEPPA**”) and dealing with tax authorities.

7.10 The Proposal Trustee further understands that FCC intends to seek the appointment of a receiver over the FCC Security. Although, at the time of filing this Second Report, no court materials have been served by FCC, the Proposal Trustee understands that such receivership application, when brought, will be similar in form to the WF Receivership Application.

7.11 As the Proposal Trustee understands that FCC is entitled to receive the value generated from the St. Louis Purchased Assets up to the indebtedness owing thereto in priority to other secured creditors, the Proposal Trustee expects that an order granted in respect of an FCC receiver will include a provision requiring the net proceeds from the St. Louis Transaction to be remitted to the proposed FCC receiver.

## **8.0 REQUEST FOR EXTENSION**

8.1 As part of the Approval and Vesting Order, the Company is seeking an extension of the time required to file a proposal to October 13, 2023.

8.2 The Proposal Trustee understands that Wells Fargo, in its capacity as DIP Lender, has confirmed that funding under the DIP Facility Agreement will continue to the completion of the NOI Proceedings, including for any agreed upon amounts accrued but unpaid at the time of the Receivership Date (including payroll). The Proposal Trustee is currently working with EY to reconcile such amounts.

8.3 The Proposal Trustee supports the extension request for the following reasons:

- a) the continuation of the NOI Proceedings provides optionality to realize on the Company's Property either through the NOI Proceedings or a subsequent insolvency proceeding and preserves the going concern value of the Company's business as negotiations continue with the Bidders;
- b) the extension is required to complete the transaction contemplated by the St. Louis Purchase Agreement;
- c) the Company continues to operate with good faith and due diligence;
- d) the Proposal Trustee does not believe any creditor will be materially prejudiced if the extension is granted;
- e) the Company is expected to have sufficient liquidity through the extension period; and
- f) the Proposal Trustee understands that the Senior Secured Lenders support the extension request.

## **9.0 ACTIVITIES OF THE PROPOSAL TRUSTEE**

9.1 Since the First Report, the Proposal Trustee has engaged in the following activities:

- a) maintaining the Case Website;
- b) assisting the Company with matters related to the Smucker Dispute;
- c) assisting the Company in the preparation of the Updated Cash Flow Forecast;
- d) monitoring the Company's receipts and disbursements against the Updated Cash Flow Forecast;
- e) assisting the Company in its communications to employees, suppliers and customers;
- f) attending calls and reviewing correspondence related to the SISP;
- g) assisting with and providing oversight to the Applicant and Financial Advisor with respect to the SISP;
- h) reviewing the Bids and assisting in discussions regarding same;
- i) creating an information request list for the Company in respect to potential claims pursuant to WEPPA;
- j) attending calls and exchanging email correspondence with the Senior Secured Lenders and their advisors;
- k) preparing the First Report Update;
- l) preparing this Second Report; and
- m) attending calls and exchanging email correspondence with the Company, the Company's legal counsel and Fasken regarding all matters in these NOI Proceedings.

## **10.0 CONCLUSION AND RECOMMENDATIONS**

10.1 Based on the foregoing, the Proposal Trustee respectfully requests that the Court make an order granting the relief sought by the Applicant's motion as described in paragraph 2.1 of this Second Report.

All of which is respectfully submitted this 4<sup>th</sup> day of October 2023.

**ALVAREZ & MARSAL CANADA INC.,  
solely in its capacity as Trustee *in re* the Proposal of  
Whyte's Foods Inc.,  
and not in its corporate or personal capacity**



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**Per: Stephen Ferguson  
Senior Vice-President**

# Appendix “A”

District of: Ontario  
Division No.: 09 - Toronto  
Court No.: 31-2978830  
Estate No.: 31-2978830

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

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

**FIRST REPORT OF THE PROPOSAL TRUSTEE  
ALVAREZ & MARSAL CANADA INC.**

**AUGUST 30, 2023**

## TABLE OF CONTENTS

<b>1.0</b>	<b>INTRODUCTION .....</b>	<b>1</b>
<b>2.0</b>	<b>TERMS OF REFERENCE AND DISCLAIMER .....</b>	<b>3</b>
<b>3.0</b>	<b>BACKGROUND INFORMATION .....</b>	<b>4</b>
<b>4.0</b>	<b>ASSETS.....</b>	<b>7</b>
<b>5.0</b>	<b>CREDITORS.....</b>	<b>8</b>
<b>6.0</b>	<b>SISP .....</b>	<b>13</b>
<b>7.0</b>	<b>DIP FACILITY.....</b>	<b>18</b>
<b>8.0</b>	<b>CRITICAL SUPPLIERS .....</b>	<b>21</b>
<b>9.0</b>	<b>CHARGES.....</b>	<b>22</b>
<b>10.0</b>	<b>CASH FLOW FORECAST .....</b>	<b>24</b>
<b>11.0</b>	<b>OTHER MATTERS .....</b>	<b>26</b>
<b>12.0</b>	<b>REQUEST FOR EXTENSION .....</b>	<b>27</b>
<b>13.0</b>	<b>ACTIVITIES OF THE PROPOSAL TRUSTEE .....</b>	<b>28</b>
<b>14.0</b>	<b>CONCLUSION AND RECOMMENDATIONS.....</b>	<b>29</b>

## APPENDICES

<b>Appendix A –</b>	Cash Flow Forecast
<b>Appendix B –</b>	Management’s Report on the Cash Flow Forecast
<b>Appendix C –</b>	Proposal Trustee’s Report on the Cash Flow Forecast

## 1.0 INTRODUCTION

- 1.1 On August 23, 2023 (the “**Filing Date**”), Whyte’s Foods Inc. (“**Whyte’s**”, the “**Company**” or the “**Applicant**”) filed a Notice of Intention to Make a Proposal (“**NOI**”) pursuant to Section 50.4(1) of the *Bankruptcy and Insolvency Act (Canada)*, R.S.C. 1985, c. B-3 (the “**BIA**”) and Alvarez & Marsal Canada Inc. (“**A&M**”) was appointed as Proposal Trustee of the Company (the “**Proposal Trustee**”).
- 1.2 These NOI proceedings (the “**NOI Proceedings**”) were initiated by the Company to create a stabilized environment for Whyte’s to continue to operate in the ordinary course, while allowing the Company the opportunity to restructure its financial affairs and conduct a Court-supervised sale process.
- 1.3 The purpose of this report (the “**First Report**”) is to provide the Court with information, and where applicable, the Proposal Trustee’s views on:
- a) background information with respect to Whyte’s and events leading to the NOI Proceedings;
  - b) the Company’s cash flow for the period August 21, 2023 to October 8, 2023 (the “**Cash Flow Forecast**”);
  - c) the relief sought by the Applicant as part of the proposed Initial Order, including with respect to:
    - i. approval of the proposed sale and investment solicitation process (“**SISP**”) for a sale or investment of the Company’s right, title and interest in and to all assets, undertakings and properties acquired or used for and otherwise related to its operations and business (the “**Business**”), or any portion thereof (collectively, the “**Property**”), including approval of the engagement of Kroll Corporate Finance Canada Limited (“**Kroll**” or the “**Financial Advisor**”) as financial advisor to the Applicant in respect of the SISP;

- ii. approval of the proposed debtor-in-possession financing facility (the “**DIP Facility**”) and the Forbearance and Third Amendment to the Credit Agreement (the “**DIP Facility Agreement**”) entered into on August 22, 2023 between Wells Fargo Capital Finance Corporation Canada (“**Wells Fargo**”), as lender (in such capacity, the “**DIP Lender**”) and Whyte’s, as borrower;
- iii. authorizing the Applicant, with the consent of the Proposal Trustee and in accordance with the Cash Flow Forecast and DIP Facility, to make certain pre-filing payments on account of goods or services to suppliers that are critical to the Applicant’s business (the “**Critical Suppliers**”);
- iv. approval of the Charges (as defined below) and the proposed priority of same including:
  - A. a charge in the amount of \$250,000 over the Property to secure the fees and disbursements of the Company’s legal counsel, as well as the fees and disbursements of the Proposal Trustee and its counsel (the “**Administration Charge**”);
  - B. an aggregate charge in the amount of \$700,000 over the Property in favour of the directors and officers of the Company (the “**Director’s Charge**”); and
  - C. a charge in the amount of \$2.7 million over the DIP Property (as defined below) in favour of the DIP Lender (the “**DIP Charge**” and collectively with the Administration Charge and the Director’s Charge, the “**Charges**”);
- v. authorizing the Applicant to continue to utilize its cash management system;

vi. extending the time for the Applicant to file a proposal, and the corresponding stay of proceedings, until and including October 10, 2023 (the “**Stay Period**”); and

d) the Proposal Trustee’s activities and its recommendations in connection with the foregoing.

1.4 Further information about the Company and copies of materials filed in these proceedings are available on the Proposal Trustee’s case website at: [www.alvarezandmarsal.com/whytes](http://www.alvarezandmarsal.com/whytes) (the “**Case Website**”).

## **2.0 TERMS OF REFERENCE AND DISCLAIMER**

2.1 In preparing this First Report, the Proposal Trustee has relied upon unaudited financial information prepared by the Company’s representatives, its books and records, discussions with the Company’s representatives and its legal counsel (collectively, the “**Information**”).

2.2 The Proposal Trustee has reviewed the Information for reasonableness, internal consistency and use in the context in which it was provided. However, the Proposal Trustee 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* (the “**CPA Handbook**”), and accordingly, the Proposal Trustee expresses no opinion or other form of assurance contemplated under CASs in respect of the Information.

2.3 Some of the information referred to in this First Report consists of forecasts and projections. An examination or review of the financial forecasts and projections, as outlined in the CPA Handbook, has not been performed. Future oriented financial information referred to in this First Report was prepared based on the Company’s estimates and assumptions. Readers are cautioned that since projections are based upon assumptions about future events and conditions that are not ascertainable,

actual results will vary from the projections, even if the assumptions materialize, and the variations could be significant.

- 2.4 This First Report should be read in conjunction with the affidavit of Ms. Elizabeth Kawaja, sworn August 28, 2023 (the “**Kawaja Affidavit**”). The Kawaja Affidavit contains further background in respect of the Company including events leading up to these NOI Proceedings and additional details in respect of the relief sought by the Applicants. Capitalized terms used but not defined in this First Report shall have the meanings given to such terms in the Kawaja Affidavit.
- 2.5 Unless otherwise stated, all monetary amounts contained herein are expressed in Canadian dollars.

### **3.0 BACKGROUND INFORMATION**

- 3.1 A more extensive background of the Company’s business and operations is set out in the Kawaja Affidavit. Certain key points are summarized below.
- 3.2 Whyte’s is a privately held Canadian company that carries on business as a leading producer of pickled and fermented food products in Canada. The Company offers a diverse product portfolio to widely recognized Canadian private label and consumer packaged goods (“**CPG**”) companies along with its own brands, including Strub’s, Coronation, Mrs. Whyte’s, Whyte’s and Saroli (together, the “**Brands**”).
- 3.3 The Company’s head office is located in Mississauga, Ontario, and it currently owns and operates two manufacturing facilities located in Wallaceburg, Ontario (the “**Wallaceburg Facility**”) and Saint-Louis, Quebec (the “**St. Louis Facility**”). The Company also operates a leased warehouse and distribution facility in Sainte-Thérèse, Quebec (the “**Ste. Thérèse Facility**”).
- 3.4 As further described in the Kawaja Affidavit, the Company has experienced sustained operational and liquidity challenges due in part to construction and expansion of the Wallaceburg Facility, altered crop cycles due to environmental

changes as well as supply chain, customer demand and labour shortages and other issues stemming from the COVID-19 pandemic. The Company's liquidity challenges have impacted its ability to source ingredients and produce the level of inventory necessary to service its customers' demands on a consistent basis.

3.5 The Company's income statements for fiscal years 2020, 2021, 2022, and 2023 and the six months ending July 31, 2023 are summarized below:

<b>\$000's</b>	<b>FY 2020</b>	<b>FY 2021</b>	<b>FY 2022</b>	<b>FY 2023</b>	<b>YTD July 31</b>
	<b>Audited</b>	<b>Audited</b>	<b>Audited</b>	<b>Unaudited</b>	<b>Unaudited</b>
Revenue	78,552	83,167	90,101	89,285	27,787
EBITDA	(149)	2,612	1,050	205	(4,240)
Net Loss	(3,263)	(2,725)	(5,341)	(6,473)	(7,532)

3.6 As reflected above, the Company incurred losses of approximately \$25.3 million since FY 2020.

3.7 Despite the significant operational and financial challenges encountered by the Company, during FY 2023<sup>1</sup> and FY 2024 the Company took a number of steps to improve its liquidity position, including:

- a) completing the sale of its manufacturing and warehousing facility in Sainte-Rose, Quebec ("**Ste. Rose**");
- b) implementing the Prior Sales Process (as defined below);
- c) completing the sale of its Cheese Tariff Rate Quota;

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<sup>1</sup> The Company maintains a January 31<sup>st</sup> year end. Therefore, FY 2023 relates to the 12 months ended January 31, 2023.

- d) refinancing its Business Development Bank of Canada (“**BDC**”) loans with Farm Credit Canada (“**FCC**”);
- e) arranging for a \$2.2 million cash injection from EJJ Capital Inc., (“**EJJ**”), a related party; and
- f) assigning its lease in respect of the Ste. Thérèse Facility to Care Real Estate Holdings ULC (“**Care**”), a related party, whereby Care has paid and continues to pay rental payments directly to the ultimate landlord of the Ste. Thérèse Facility, at no cost to the Company.

3.8 In addition, on July 21, 2023, the Company entered into interim arrangements with Aliments Putters Inc. (“**Putters**”) in respect of the St. Louis Facility (the “**Interim St. Louis Arrangements**”), whereby Whyte’s produces certain products on behalf of Putters. The Interim St. Louis Arrangements provided for the purchase of ingredients and contribution towards various other production and operating costs by Putters. The resulting inventory is segregated from and does not form part of the Company’s Property. The Interim St. Louis Arrangements permits the Company to continue operations at the St. Louis Facility through September and ensures that local growers supplying crop do not encounter any delay in payment for their production.

3.9 The Interim St. Louis Agreement also provides for a period of exclusivity for the Company to complete the negotiations of a purchase agreement between the Company and Putters for the St. Louis Facility and related equipment. As described in the Kawaja Affidavit, negotiations are in process. If no viable agreement is reached, the St. Louis Facility and related equipment will be included in the proposed SISP.

3.10 The current filing and commencement of these NOI Proceedings stem from the Company’s need for additional capital to address its imminent liquidity crisis. The NOI Proceedings are intended to allow the Company the flexibility and breathing space required to: (a) secure and access additional financing under the DIP Facility;

(b) ensure the Company can continue to operate in the ordinary course; (c) preserve the going-concern value of the Company; (d) build on the work completed in the Prior Sale Process and complete the SISP and execute a value-maximizing sale or investment transaction(s) for the benefit of the Company and its stakeholders.

#### 4.0 ASSETS

4.1 An estimate of the Company’s assets as at the Filing Date is provided below:

<b>Assets (\$'000s)</b>	<b>Amount</b>
Capital assets	30,286
Accounts receivable	9,830
Inventories	9,194
Intangible assets	2,288
Advances to related entities	1,852
Prepays	750
Investments	30
<b>Total Assets</b>	<b>54,230</b>

- a) *Capital Assets*: largely represents the Wallaceburg Facility and St. Louis Facility, equipment housed within the facilities and certain remaining equipment from the Ste. Rose facility;
- b) *Accounts Receivable*: largely represents trade receivables from the Company’s customers, approximately 85% of which are owed from Whyte’s top five customers and over 60% of which is owed from Whyte’s largest customer, Smucker Foods of Canada Corp (“**Smucker**”). Refer to section 11 below for a discussion regarding an ongoing dispute between the Company and Smucker (the “**Smucker Dispute**”);
- c) *Inventory*: consists of raw materials, packaging, work-in-progress goods and finished goods stored at the Wallaceburg Facility, the St. Louis Facility and the Ste. Thérèse Facility;
- d) *Intangible Assets*: largely represents intellectual property related to the Company’s Brands;

- e) *Advances to Related Entities*: represents advances made to related parties; and
- f) *Prepays*: largely represent prepaid amounts to suppliers to procure materials for production.

## 5.0 CREDITORS

### Wells Fargo ABL Facility

- 5.1 On October 14, 2022, Whyte’s and Maison Gourmet Inc. (“**Maison Gourmet**”), as borrowers (collectively, the “**WF Borrowers**”), and Wells Fargo, as lender, entered into a credit agreement (as amended from time to time, the “**WF Credit Agreement**”). A copy of the WF Credit Agreement is attached as Exhibit “E” to the Kawaja Affidavit.
- 5.2 The WF Borrowers’ obligations under the WF Credit Agreement are guaranteed by each of Triak Capital Inc. (“**Triak**”) and Mario Saroli Sales Inc. (“**Mario Saroli**”) (collectively, the “**WF Guarantors**”, and together with the WF Borrowers, the “**WF Loan Parties**”).
- 5.3 It is the Proposal Trustee’s understanding that, as of the Filing Date, Maison Gourmet and the WF Guarantors do not have material assets and are not parties to this or any NOI proceedings.
- 5.4 Facilities provided by the WF Credit Agreement include the following:
  - a) revolving loans up to a maximum aggregate principal amount of \$25 million, subject to applicable borrowing bases (the “**ABL Facility**”); and
  - b) term loans up to a maximum aggregate principal amount of \$1.5 million at (the “**WF Term Facility**”).

- 5.5 As of the Filing Date, the total indebtedness outstanding under the ABL Facility is approximately \$8.1 million and no amounts have been advanced under the WF Term Facility.
- 5.6 As described in the Kawaja Affidavit, the WF Loan Parties are in default under the terms of the WF Credit agreement. To address these defaults and allow for ongoing funding to Whyte's, the WF Loan Parties negotiated and formalized a forbearance agreement dated April 19, 2023 (the "**WF Forbearance Agreement**"). A copy of the WF Forbearance Agreement is attached as Exhibit "I" to the Kawaja Affidavit.
- 5.7 As described in the Kawaja Affidavit, the WF Loan Parties were unable to meet certain covenants under the terms of the WF Forbearance Agreement, which expired on July 31, 2023.
- 5.8 In conjunction with this NOI Proceeding, the WF Loan Parties negotiated and formalized a DIP Facility Agreement with Wells Fargo dated August 22, 2023, which provides for, among other things, (a) a further forbearance period until October 10, 2023 and (b) a DIP Facility which will allow over advances not exceeding \$2.7 million provided by Wells Fargo, as the DIP Lender. The DIP Facility Agreement and DIP Facility is further discussed in section 7.

#### FCC Facilities

- 5.9 On May 20, 2020, Whyte's, as borrower, and Farm Credit Canada ("**FCC**" and together with Wells Fargo, the "**Senior Secured Lenders**"), as lender, entered into a credit agreement, which provided for two real property loans in the aggregate amount of \$18.3 million.
- 5.10 Pursuant to an amended and restated credit agreement dated April 11, 2023 (the "**FCC Credit Agreement**"), FCC established additional credit facilities to refinance certain loans extended by BDC in favour of Whyte's. Among other things, the FCC Credit Agreement provided for two new credit facilities ("**FCC Refinancing Facilities**"):

- a) a real property loan in the principal amount of \$10 million; and
  - b) a real property loan in the principal amount of \$7.3 million;
- 5.11 A copy of the FCC Credit Agreement is attached as Exhibit “G” to the Kawaja Affidavit.
- 5.12 The obligations of Whyte’s under the FCC Credit Agreement are guaranteed by (i) each of Triak, Mario Saroli and Maison Gourmet on an unlimited basis, and (ii) Ms. Kawaja, on a limited basis (together with Whyte’s, the “**FCC Loan Parties**”).
- 5.13 As of the Filing Date, the total indebtedness outstanding under the FCC Credit Agreement total approximately \$34.4 million.
- 5.14 As described in the Kawaja Affidavit, the FCC Loan Parties are in default under the terms of the FCC Credit agreement. Pursuant to a forbearance agreement signed August 23, 2023 (“**FCC Forbearance Agreement**”), FCC has agreed to forbear from enforcing its rights and exercising its remedies under the FCC Credit Agreement subject to the terms described within.

#### EJJ Loans

- 5.15 As a condition of both the FCC Credit Agreement and the Wells Forbearance, the Company was required to obtain an additional cash injection from a related party to assist in general working capital. On March 15, 2023, Whyte’s issued a promissory note to EJJ, promising to pay approximately \$2.2 million on demand subject to interest calculated at the prime rate plus 1% (the “**EJJ Loan**”).
- 5.16 As part of the EJJ Loan, EJJ was granted security against the Property in respect of the EJJ Loan and prior advances for a total of approximately \$3.8 million. The Proposal Trustee understands that the EJJ Loan ranks subordinate to the secured obligations owing to Wells and FCC.
- 5.17 Searches of the Ontario Personal Property Security Registration System (the “**OPPSRS**”) and the Quebec Register of Personal and Movable Real Rights (the

“QRPMRR”) show that the EJJ Loan was registered against Whyte’s on April 19, 2023.

#### Other Secured Obligations

5.18 Pursuant to recent searches of registrations in the OPPSRS and the QRPMRR, aside from registrations by Wells Fargo, FCC and EJJ for obligations described above, the following parties have a registered interest in the Company’s Property:

- a) Investissement Quebec (“IQ”) has a registered interest in the Company’s Property and Securities (as defined in the QRPMRR Results). A copy of the loan offer from IQ executed December 5, 2012 is attached as Exhibit “K” to the Kawaja Affidavit; and
- b) BDC has registrations against Whyte’s Property. As described above, obligations to BDC has been refinanced through the FCC Refinancing Facilities.

5.19 The Proposal Trustee is not aware of any other secured creditors.

5.20 Copies of the results from the OPPSRS and QRPMRR searches against Whyte’s ran on August 23, 2023 and August 24, 2023 respectively are attached to the Kawaja Affidavit as Exhibit “M” and “N”.

5.21 Counsel to the Proposal Trustee is in the process of obtaining and reviewing the security documents held by all secured creditors referenced in this section.

#### Unsecured Creditors

5.22 Based on the Company’s books and records, as at the Filing Date, amounts payable to unsecured trade creditors located across Canada, U.S. and Europe were approximately \$13 million, owing primarily to third-party suppliers of raw materials used in the manufacturing process, packaging, logistics and other general goods and services.

5.23 As of the Filing Date, the Company owes approximately \$4.9 million to Agriculture and Agri-Food Canada in connection with the Agri-Innovate Program (“**Agri-Innovate**”) pursuant to a Repayable Contribution Agreement dated February 27, 2019. Agri-Innovate is a government program that provides repayable contributions to incentivize business to invest in increasing agricultural and agri-food section competitiveness and sustainability benefits. A copy of the Repayable Contribution Agreement is attached to the Kawaja Affidavit as Exhibit “**O**”

### Employees

5.24 The Company currently employs approximately 283 employees, of which 39 are salaried employees, 29 are contract employees and 215 are hourly employees.

5.25 The Company’s payroll is processed by Nethris, a third-party payroll processor and paid through the Company’s Cash Management System (as defined below). In addition, the Company sponsors an employee benefits plan, which provides health and other benefits for eligible employees. The Company does not maintain any pension plans.

5.26 The Proposal Trustee understands that the Company is current in all of its funding obligations in respect of payroll and related costs (with the exception of amounts owing to CNESST<sup>2</sup>), and that during these NOI Proceedings, the Company intends to continue funding payroll, benefits and all other employee related costs in the normal course.

5.27 As of the date of this First Report, the Company’s books and records reflect accrued vacation pay of approximately \$448,000.

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<sup>2</sup> As of the Filing Date, the Company owes approximately \$264,000 payable to La Commission des normes, de l'équité, de la santé et de la sécurité du travail (“CNESST”), the Quebec authority for providing workplace safety related services.

## 6.0 SISP

### Prior Sale Process

- 6.1 In February 2023, the Company engaged Kroll to run a process to canvas the market for a sale of or investment into the Company. Kroll’s target list included strategic buyers and financial sponsors that focus on food manufacturing and turnaround situations (the “**Prior Sale Process**”).
- 6.2 A summary of steps taken by Kroll in the Prior Sale Process (and related outcomes) include:
- a) launching a marketing process to 156 prospective buyers. From the parties contacted, 72 non-disclosure agreements were signed, and confidential information memorandums and access to a virtual data room (“**VDR**”) were provided to those parties in order to review the opportunity and assess their level of interest.
  - b) setting an Indication of Interest (“**IOI**”) deadline of March 15, 2023 for initial bids (whereby six IOIs were received) and moving forward with four of the parties.
  - c) setting a Letter of Intent (“**LOI**”) deadline of May 10, 2023 for non-binding bid submissions.
- 6.3 Ultimately, two LOIs were signed by the Company and extensive diligence was conducted, however the Company was not able to implement a transaction prior to the Filing Date.

### Proposed SISP

- 6.4 The Company is seeking approval for the continuation and completion of the Prior Sale Process within the proposed SISP. As described in the Kawaja Affidavit, the Company has determined that the best path to maximize stakeholder value and preserve the Company as a going concern is to commence these NOI Proceedings

and complete the proposed SISP with the assistance of the Proposal Trustee and the Financial Advisor.

6.5 A copy of the proposed SISP is attached as Exhibit “Q” to the Kawaja Affidavit and is summarized below. The description of the SISP provided herein is for summary purposes only and reference should be made to the SISP for actual terms.

<b>Summary of Certain Key Terms of the SISP</b>	
Capitalized terms not otherwise defined have the meanings attributed to such terms in the SISP	
<b>Opportunity</b>	<ul style="list-style-type: none"> <li>• A sale or investment of the Company’s Business or Property, as a going concern or otherwise on an “as is, where is” basis and without surviving representations or warranties (the “<b>Opportunity</b>”)</li> </ul>
<b>Process and Timeline</b>	<ul style="list-style-type: none"> <li>• The Proposal Trustee and Kroll, in consultation with the Company, shall oversee and conduct the SISP</li> <li>• <u>Bid Deadline</u>: Bids must be submitted in accordance with the SISP by no later than 5pm EST on September 21, 2023</li> <li>• <u>Evaluation of Bids</u>: Following the Bid Deadline, Bids received will be evaluated in accordance with the SISP on or before noon on September 25, 2023</li> <li>• <u>Sale Approval Motion</u>: Company shall seek court approval to consummate the Successful Bid(s) on or before October 2, 2023 (the “<b>Sale Approval Motion</b>”)</li> </ul>
<b>Notice</b>	<ul style="list-style-type: none"> <li>• The Proposal Trustee and Kroll will prepare a list of potential bidders, including parties who have previously indicated interest or has been active in the Prior Sale Process and select additional competitors (the “<b>Known Potential Bidders</b>”)</li> </ul>
<b>Formal Binding Offers</b>	<ul style="list-style-type: none"> <li>• The Bid must be a <b>binding offer</b> and include a duly authorized and executed definitive transaction document contemplating closing on or before the Outside Date, October 10, 2023, in the form of a Sale Proposal or Investment Proposal.</li> <li>• A Bid must include, among other things as listed out in the SISP: <ul style="list-style-type: none"> <li>○ Description of total consideration (Sale Proposal) or proposed structure of the investment, description of non-</li> </ul> </li> </ul>

	<p>cash considerations and the aggregate amount of equity and or debt investment (Investment Proposal);</p> <ul style="list-style-type: none"> <li>○ Description of the Property contemplated by the transaction and assumed liabilities and obligations, if any;</li> <li>○ a letter stating that the Bidder’s offer is irrevocable until approval of the Success Bid(s) by the Court and if the Successful Bidder, its offer shall remain irrevocable until the closing of the transaction contemplated by such Bid;</li> <li>○ written evidence of a firm, irrevocable commitment for financing or evidence of the Bidder’s ability to consummate the proposed transaction; and</li> <li>○ payment of a deposit not less than 10% of the purchase price offered, to be provided with the submission of the Bid (deposit to be held by the Proposal Trustee in trust)</li> </ul>
<p><b>Evaluation of Competing Bids, Selection</b></p>	<ul style="list-style-type: none"> <li>● The Proposal Trustee, Kroll, and/or the Company are entitled to discuss and negotiate the Bid(s) prior to or after the Bid Deadline, in consultation with the Senior Secured Lenders</li> <li>● Bids shall be evaluated based several factors, including without limitation, (a) total consideration; (b) ability of the Bidder to complete the transaction; (c) proposed transaction documents; (d) factors affecting the speed, certainty and value of the transaction; (e) assets and liabilities included or excluded; and (f) related restructuring costs</li> <li>● The Proposal Trustee, Kroll, and/or the Company, in consultation with the Senior Secured Lenders may select one or more Successful Bids, with or without negotiation, in consultation with the Senior Secured Lenders</li> <li>● The Proposal Trustee, Kroll, and/or the Company shall be under no obligation to designate the higher or otherwise best Bid or any Bid as the Successful Bid</li> </ul>
<p><b>Potential Stalking Horse Bid</b></p>	<ul style="list-style-type: none"> <li>● The Company, in consultation or with the approval of the Proposal Trustee, Kroll and the Senior Secured Lenders may attempt to negotiate a Stalking Horse Bid prior to the Bid Deadline to provide certainty</li> <li>● Any Stalking Horse Bid shall be subject to approval to the Court</li> </ul>

6.6 The following table sets out the key milestones under the SISP:

<b>Key Milestones</b>	
Capitalized terms not otherwise defined have the meanings attributed to such terms in the SISP	
Company to obtain Initial Order including approval of (i) Kroll’s engagement; and (ii) SISP	August 31, 2023
Publish notice of SISP on the Proposal Trustee’s website	Two business days following date of the Initial Order
Deliver Teaser Letter and NDA to Known Potential Bidders and set up of a VDR	Two business days following the date of the Initial Order
Template purchase and sale agreement to be posted in the VDR	Seven calendar days following date of the Initial Order
Bid Deadline	5:00 p.m. (EST) on September 21, 2023
Proposal Trustee, Kroll and the Company (in consultation with the Senior Secured Lenders) to (i) review submitted Bids; (ii) seek clarification of Bids; (iii) select Successful Bid(s); and (iv) negotiate final agreements	On or before 12:00 pm (EST) on September 25, 2023
Hearing of the Sale Approval Motion	October 2, 2023
Target closing date for sale and/or investment transactions	October 6, 2023
Outside closing date for sale and/or investment transactions	October 10, 2023

Engagement of Financial Advisor

6.7 The proposed Initial Order seeks approval of Kroll’s engagement as Financial Advisor of the Company for the purposes of assisting the Company and the Proposal Trustee with conducting the SISP.

- 6.8 To align with the proposed SISP, a revised engagement letter with Kroll (the “**Kroll Engagement Letter**”) was negotiated and signed August 22, 2023. The Kroll Engagement Letter is summarized in and attached to the Kawaja Affidavit as Exhibit “**P**”.
- 6.9 As described and defined in the Kroll Engagement Letter, Whyte’s agrees to pay to Kroll a Transaction Fee calculated as 3.25% of the Gross Proceeds. The Transaction Fee shall not be less than \$750,000 if a Transaction for substantially all of the Property is completed.

Proposal Trustee Recommendation

- 6.10 The Proposal Trustee respectfully recommends that the Court approve the SISP and Kroll as Financial Advisor for the following reasons:
- a) it is the Proposal Trustee’s view that the SISP is commercially reasonable;
  - b) Kroll conducted an expansive Prior Sale Process which adequately canvassed the market for interested parties and was structured in a manner consistent to how the Proposal Trustee might conduct or oversee a SISP within a formal court proceeding;
  - c) Kroll’s prior experience in assisting Whyte’s with the Prior Sale Process makes it well suited to act as Financial Advisor in the SISP as they would be both well versed in the Opportunity as well as the history surrounding each of the Known Potential Bidders;
  - d) the fee arrangement and other terms were negotiated by the Company in consultation with the Proposal Trustee the Senior Secured Lenders. The Proposal Trustee has reviewed the fees in comparable formal restructuring proceedings of a similar scale and is of the view that the Transaction Fee provided for in the Kroll Engagement Letter is reasonable in the circumstances;

- e) when evaluated in conjunction with the Prior Sale Process, it is the Proposal Trustee's view that the information made or will be made available will be sufficient for an interested party to make an informed decision and prepare a Bid;
- f) it is the Proposal Trustee's view that the SISP, while expedited, when evaluated in conjunction with the Prior Sale Process, is sufficient to allow interested parties to continue their diligence and submit offers. The Known Potential Bidders that will be contacted during the SISP are familiar with the Opportunity and should not require a prolonged diligence period to determine whether they would like to submit an offer;
- g) As previously noted, the Interim St. Louis Arrangements provides for a period of exclusivity for the Company to complete the negotiation of terms of purchase agreement relating to St. Louis Facility and related Equipment with Putters. The Company is currently in discussions to determine if there is a viable agreement to be reached, failing which the St. Louis Facility and related equipment will be included in the proposed SISP;
- h) an expedited process is required as the Company does not have access to sufficient funding to support the costs associated with conducting a prolonged SISP; and
- i) As described below, obtaining Court approval of the SISP in these NOI Proceedings is a condition to the DIP Lender providing the Company access to a DIP Facility. It is the Proposal Trustee's understanding that the Senior Secured Lenders are in agreement with the terms of the SISP, including the target dates for the key milestones thereof.

## **7.0 DIP FACILITY**

- 7.1 As outlined in the Cash Flow Forecast, the Company requires financing during the NOI Proceedings to provide the liquidity necessary to maintain their business as a

going concern, preserve value of their assets for their stakeholders and to pursue and implement any transactions resulting from the SISP.

7.2 In order to obtain access to such liquidity, the Company negotiated the terms of the DIP Facility Agreement with Wells Fargo, as DIP Lender, and the DIP Facility contemplated therein. The DIP Facility Agreement and the process undertaken by Whyte’s to secure the DIP Facility are described in greater detail in the Kawaja Affidavit.

7.3 Key terms and components of the DIP Facility include the following:

<b>DIP Facility</b> (Capitalized terms have the meaning ascribed thereto in the DIP Facility Agreement)	
<b>Parties</b>	<ul style="list-style-type: none"> <li>Whyte’s and Maison Gourmet, as borrowers, Triak and Mario Saroli as guarantors, and Wells Fargo as the DIP Lender</li> </ul>
<b>Maximum Availability</b>	<ul style="list-style-type: none"> <li>\$2.7 million</li> </ul>
<b>Interest</b>	<ul style="list-style-type: none"> <li>Annual interest rate equivalent to what is charged under the ABL Facility, plus 2% per annum (equivalent to the Default Rate, as defined in the Wells Fargo Credit Agreement)</li> </ul>
<b>Fees</b>	<ul style="list-style-type: none"> <li>DIP Fee of \$75,000 payable upon granting of the Initial Order</li> </ul>
<b>Use of Funds</b>	<ul style="list-style-type: none"> <li>Proceeds of the DIP Loan are to be used for the Company’s working capital, operating and restructuring purposes</li> </ul>
<b>Maturity</b>	<ul style="list-style-type: none"> <li>The earlier of (i) October 10, 2023; and (ii) occurrence of a Terminating Event</li> </ul>
<b>Certain Key Conditions Precedent</b>	<ul style="list-style-type: none"> <li>Conditions precedent to advances under the DIP Facility include: (i) Filing of NOI by no later than August 23, 2023; (ii) Initial hearing before the Ontario Superior Court of Justice (Commercial List) on or before August 28, 2023, or as soon as possible thereafter that week; (iii) obtaining the Initial Order including approval of the Charges, the SISP, the engagement of Kroll and certain pre-filing permissions for Critical Suppliers</li> </ul>

<b>Financial Covenants</b>	<ul style="list-style-type: none"> <li>• Set out in Section 7.1 and 7.2 of the DIP Facility Agreement</li> <li>• waives application of certain financial covenants under the Credit Agreement related for Minimum EBITDA, Fixed Charge Coverage Ratio and Minimum Excess Availability</li> </ul>
<b>Events of Default</b>	<ul style="list-style-type: none"> <li>• Events of default include: (i) failure to make payment of principal, interest, fees or other obligations; (ii) failure to perform certain covenants; (iii) judgments, orders or awards in excess of the Material Amount; (iv) insolvency; (v) defaults under other agreements; (vi) untrue representations; (vii) invalidity of loan documents; (viii) change of control</li> </ul>

Proposal Trustee Recommendation

7.4 The Proposal Trustee respectfully recommends that the Court approve the DIP Facility Agreement for the following reasons:

- (i) the terms of the DIP Facility are the result of extensive negotiations as between the Company, the Senior Secured Lenders and their respective advisors, and represents the best that the Company could negotiate in the circumstances in seeking a going concern outcome for its business;
- (ii) The Proposal Trustee understands that FCC, the other Senior Secured Lender, is in agreement with the terms and quantum of the proposed DIP Facility; and
- (iii) as discussed in section 10, the DIP Facility, together with cash generated from ongoing operations, is projected to provide the Company with sufficient liquidity during these NOI Proceedings to allow the Company to continue to operate in the normal course and implement the process contemplated by the SISP.

### Cash Management System

- 7.5 As described in the Kawaja Affidavit, the Company's cash management system is operated through various accounts with TD Bank Canada (the "**Cash Management System**").
- 7.6 The DIP Facility Agreement provides that the existing Cash Management System will continue to apply for the DIP Lender to manage and monitor its collateral position. The Company intends to continue using its existing Cash Management System in substantially the same manner as before the commencement of these NOI Proceedings and is seeking approval of the Court to do so.
- 7.7 Given the scale and nature of the Company's operations and the volume of transactions that are processed daily within the Cash Management System, the Proposal Trustee is of the view that the continued use of the existing Cash Management System is required and appropriate during these NOI Proceedings.

### **8.0 CRITICAL SUPPLIERS**

- 8.1 As part of the proposed Initial Order, the Company is seeking authorization to pay certain pre-filing arrears to vendors whose products and/or services are essential to the Company's ongoing operations and/or also may be critical to implementing the contemplated sale or other restructuring alternatives in these NOI Proceedings ("**Critical Suppliers**").
- 8.2 The proposed Initial Order provides that the Proposal Trustee will oversee any payments of pre-filing amounts made to the Critical Suppliers. Payments will only be made with the express authorization of the Proposal Trustee, and only to Critical Suppliers that the Proposal Trustee agrees are essential to the Company's business operations and such payments are provided for in the Cash Flow Forecast.

## 9.0 CHARGES

9.1 The proposed Initial Order seeks the granting of the Administration Charge and the Director's Charge over the Property, as well as the DIP Charge over the DIP Property (defined below).

9.2 The priorities of the Charges are proposed to be as follows:

- (i) the Administration Charge (to the maximum amount of \$250,000);
- (ii) the Director's Charge (to the maximum amount of \$350,000 as against the DIP Property);
- (iii) the DIP Lender's Charge (to the maximum amount of \$2,700,000), as against the DIP Property; and
- (iv) the balance of the Director's Charge of \$350,000 as against the FCC Collateral (as defined below).

### Administration Charge

9.3 The proposed Initial Order provides for an Administration Charge in an amount not to exceed \$250,000 in favour of the Proposal Trustee, counsel to the Proposal Trustee, and counsel to the Applicant.

9.4 The Proposal Trustee assisted the Company with the calculation of the Administration Charge and is of the view that the amount of the charge is reasonable and appropriate in the circumstances, having regard to the nature of the proceedings, the anticipated professional costs incurred during these NOI Proceedings, and the size of charges approved in similar proceedings.

### Director's Charge

- 9.5 The proposed Initial Order provides that the Applicant will indemnify its current and future directors and officers against obligations and liabilities that they may incur in their capacity as directors and officers of the Applicant from the commencement of these NOI Proceedings, except to the extent that any obligation or liability was incurred as a result of gross negligence or wilful misconduct. The proposed Initial Order provides for an Director's Charge in the aggregate amount of \$700,000; \$350,000 of which would rank in priority to the DIP Property and \$350,000 of which would rank in priority to the FCC Collateral<sup>3</sup>.
- 9.6 The Proposal Trustee understands that the Company does not have a directors' and officers' insurance policy that would otherwise provide coverage for certain obligations during these NOI Proceedings.
- 9.7 The amount of the Director's Charge was estimated by the Company, in consultation with the Proposal Trustee, taking into consideration the Applicant's ongoing payroll, vacation pay and statutory employee obligations during these NOI Proceedings.
- 9.8 The Proposal Trustee is of view that the Director's Charge is reasonable and appropriate given the potential exposure to personal liability.

### DIP Charge

- 9.9 The DIP Credit Agreement provides that the DIP Charge of \$2.7 million will apply to all Property of the Company but will not prime the FCC Collateral (the "**DIP Property**").

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<sup>3</sup> Pursuant to the proposed Initial Order, the DIP Charge shall not rank in priority to any of the security interests, liens, charges and encumbrances granted by the Applicant in favour of Farm Credit Canada over the Non-trade Personal Property (as defined in the Amended and Restated Intercreditor Agreement dated as of April 19, 2023 by and among, inter alia, the DIP Lender, FCC and the Applicant) (the "**FCC Collateral**").

9.10 As outlined in the Kawaja Affidavit, the DIP Lender, Wells Fargo, already benefits from a first ranking security interest over the DIP Property. The Proposal Trustee is not aware of any material prejudice to any other existing creditor of the Company should the Court approve the proposed DIP Charge. As such, the Proposal Trustee is of view that the DIP Charge is reasonable and appropriate given the circumstances.

## **10.0 CASH FLOW FORECAST**

10.1 The Company, with the assistance of the Proposal Trustee, has prepared a weekly cash flow forecast (the “**Cash Flow Forecast**”) for the 7-week period from August 21, 2023 to October 8, 2023 (the “**Cash Flow Period**”).

10.2 A copy of the Cash Flow Forecast, together with a summary of assumptions (the “**Cash Flow Assumptions**”); management’s report on the Cash Flow Forecast required by section 50.4(2)(c) of the BIA and the Proposal Trustee’s Report on the Cash Flow Forecast as required by section 50.4(2)(b) of the BIA are attached hereto as **Appendices “A”, “B” and “C”**, respectively.

10.3 The following table provides a summary of the Cash Flow Forecast:

<b>Cash Flow Forecast</b>		<b>\$000's</b>
		<b>7-Week Total</b>
		<i>Oct 8</i>
		<hr/>
<b>Receipts</b>		
Accounts receivable collections		7,903
Sales tax and other collections		131
		<hr/>
		<b>8,034</b>
<b>Operating Disbursements</b>		
Payroll & benefits		(1,721)
Inventory		(6,956)
Facilities		(768)
Logistics		(501)
Warehouse		(130)
Administrative		(171)
Sales tax		(353)
		<hr/>
<b>Net Operating Cash Flow</b>		<b>(2,566)</b>
Professional fees		(1,144)
Interest		(285)
DIP Fee		(75)
		<hr/>
<b>Net Cash Flow</b>		<b>(4,069)</b>
Cash balance, opening		-
Net Cash Flow		(4,069)
Combined ABL and DIP Draw		4,069
		<hr/>
<b>Ending Cash Balance</b>		<b>-</b>
		<hr/>

10.4 The Proposal Trustee notes the following with respect to the Cash Flow Forecast:

- (i) the Cash Flow Forecast assumes that the Company will continue to operate in the normal course;

- (ii) during the 7-Week Period, net cash flows are projected to be negative \$4.1 million, projected to be sufficiently funded by combined draws on the ABL Facility of \$1.4 million and the DIP Facility of \$2.7 million; and
- (iii) the Cash Flow Forecast is consistent with the cash flow forecast referenced and attached to the DIP Facility Agreement.

## **11.0 OTHER MATTERS**

- 11.1 The Company and Smucker are party to a supply agreement effective November 27, 2019 (the “**Supply Agreement**”).
- 11.2 On August 24, 2023, through a telephone conversation, Whyte’s informed Smucker of the commencement of these NOI Proceedings. On August 27, 2023, Smucker sent the Company a letter purporting to terminate the Supply Agreement and demanding amounts allegedly owing by the Company to Smucker as a result of alleged breaches of the Supply Agreement.
- 11.3 Legal counsel to the Proposal Trustee responded on August 28, 2023 with a letter (the “**August 28<sup>th</sup> Letter**”), among other things, raising the effect of these NOI Proceedings and the BIA on Smucker’s purported termination and demand, advising of the SISP for which approval is being sought and indicating that the Proposal Trustee will provide assistance to the Company and Smucker in arriving at a mutually agreeable path forward. Following delivery of the August 28<sup>th</sup> Letter, via email, Smucker informed the Company that no further product was to be delivered to Smucker by the Company as it would not be paid for.
- 11.4 The Company disputes the validity of Smucker’s purported termination of the Supply Agreement, both under the terms of the Supply Agreement and as a violation of the stay in these NOI Proceedings.

- 11.5 The Cash Flow Forecast and the quantum and terms of the DIP Facility are built on the assumption that Smucker would continue to take delivery of product and pay accounts receivable under the Supply Agreement without set-off or deduction during the Stay Period. If that assumption turns out to be incorrect, the Company may not have sufficient liquidity to fund their operations through the end of the current or proposed Stay Period.
- 11.6 The Company and Smucker are in discussions with respect to the purported termination. It is hoped that those discussions will result in a resolution which, among other things, assures the continuation of supply and payment consistent with the assumptions underlying the Cash Flow Forecast and the DIP Facility Agreement. Depending on the results of such discussions, a material update to the Cash Flow Forecast and DIP Facility Agreement may be required.
- 11.7 The Proposal Trustee will advise the Court if a resolution is reached prior to the hearing of the Company's motion for the Initial Order, and will in any event provide a status update at that hearing.

## **12.0 REQUEST FOR EXTENSION**

- 12.1 The Company is seeking as part of an Initial Order, an extension of the time required to file a proposal to October 10, 2023.
- 12.2 The Proposal Trustee supports the extension request for the following reasons:
- (i) it will provide the Company with the stability necessary to continue and complete the SISP;
  - (ii) assuming adequate resolution of the Smucker Dispute, the Company is projected to have sufficient liquidity to fund their operations, as reflected in the Cash Flow Forecast, through to the end of the proposed Stay Period;

- (iii) the Proposal Trustee does not believe any creditor will be prejudiced if the extension is granted;
- (iv) the Company is acting in good faith and with due diligence; and
- (v) as discussed in above, if the Company, in consultation with the Senior Secured Lenders, is not able to come to a satisfactory arrangement in respect of Smucker Dispute, further relief may be sought on an urgent basis.

### **13.0 ACTIVITIES OF THE PROPOSAL TRUSTEE**

13.1 Since the Filing Date, the Proposal Trustee has engaged in the following activities:

- a) preparing and mailing a creditors package to all known creditors notifying them of these NOI Proceedings;
- b) creating and maintaining the Case Website;
- c) assisting the Company in the preparation of the Cash Flow Forecast;
- d) monitoring the Company's receipts and disbursements against the Cash Flow Forecast;
- e) assisting the Company in its communications to employees, suppliers and customers;
- f) attending calls and reviewing correspondence related to the SISP;
- g) attending calls and email correspondence with the Senior Secured Lenders and their advisors;
- h) assisting the Company with matters related to the Smucker Dispute;
- i) preparing this First Report; and

- j) attending calls and email correspondence with the Company, the Company's legal counsel and Fasken Martineau DuMoulin LLP, the Proposal Trustee's counsel, regarding all matters in these NOI Proceedings.

#### **14.0 CONCLUSION AND RECOMMENDATIONS**

- 14.1 Based on the foregoing, the Proposal Trustee respectfully requests that the Court make an order granting the relief sought by the Applicant's motion as described in paragraph 1.3 of this First Report.

All of which is respectfully submitted this 30<sup>th</sup> day of August 2023.

**ALVAREZ & MARSAL CANADA INC.,  
solely in its capacity as Trustee *in re* the Proposal of  
Whyte's Foods Inc.,  
and not in its corporate or personal capacity**



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**Per: Stephen Ferguson  
Senior Vice-President**

# Appendix “B”

## OPPORTUNITY TO PURCHASE ASSETS OF WHYTE'S FOODS INCORPORATED

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On August 23, 2023, Whyte's Foods Inc. ("**Whyte's**" or the "**Company**") filed a Notice of Intention ("**NOI**") to Make a Proposal pursuant to Section 50.4(1) of the Bankruptcy and Insolvency Act (Canada), R.S.C. 1985, c. B-3. Pursuant to the NOI, among other things, Alvarez & Marsal Canada Inc. was appointed as trustee (the "**Proposal Trustee**").

On August 31, 2023, Whyte's obtained an order (the "**Initial Order**") from the Ontario Superior Court of Justice (Commercial List) approving a sale and investment solicitation process ("**SISP**") and approving the retention of Kroll Corporate Finance Canada Limited as the Company's sell-side M&A financial advisor (the "**Financial Advisor**").

The SISP is intended to solicit interest in all or a portion of the Whyte's assets, undertakings and properties used for and otherwise related to its operations and business (the "**Business**") including its wholly-owned subsidiary Mario Saroli Sales Inc., (collectively, the "**Opportunity**").

A summary of key dates pursuant to the SISP and criteria for a Formal Binding Offer are provided herein. Formal Binding Offers must be delivered to the Financial Advisor and the Proposal Trustee by the deadline, being **September 21, 2023 at 5:00pm EDT**.

Full details of the SISP are available on the Proposal Trustee's website at [www.alvarezandmarsal.com/whytes](http://www.alvarezandmarsal.com/whytes).

If you are interested in the Opportunity, a non-disclosure agreement ("**NDA**") is attached for your review. Following execution of the NDA (or if one has already been executed) we will provide you with access to a virtual data room with more detailed information on the Opportunity.

Sincerely,

**Kroll Corporate Finance Canada Limited**  
**Financial Advisor to Whyte's Foods Inc.**

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***All transaction communication should be addressed to the  
Kroll Corporate Finance Canada Limited professionals listed below:***

U.S. & Canadian Contacts		Canadian Contact	
<b>Dr. Howard Johnson</b> Managing Director +1 416 597 4500 howard.johnson@kroll.com	<b>Devin Kennealy</b> Director +1 416 361 6749 devin.kennealy@kroll.com	<b>Jake Newman</b> Vice President +1 416 813 4472 jake.newman@kroll.com	<b>John Stoyan</b> Analyst +1 416 643 3575 john.stoyan@kroll.com



Canadian Food Manufacturer of Pickled Products and Condiments,  
Servicing the Retail, Food Service and Co-Packing Channels

### OPPORTUNITY OVERVIEW

Whyte's Foods is a family-owned Canadian producer of pickled foods and condiments with a portfolio of popular in-house brands, private label offerings for retail / food service and co-packing services. The Company sells a variety of SKUs that range from pickles, relish, olives, maraschino cherries and sauces for some of Canada's top grocery chains, CPGs and restaurants.

Whyte's currently operates two owned manufacturing plants, one located in Wallaceburg, Ontario, Canada and one in St. Louis, Quebec, Canada and a leased distribution centre located in Sainte Thérèse, Quebec, Canada. The manufacturing plants house a strong asset base of new, specialized and highly-automated pickling equipment. Whyte's currently has ~200 employees and is non-unionized.

### ACQUISITION MERITS

- **Canada's Leading Provider of Pickled Products** – Few competitors in Canada
- **Portfolio of Iconic Canadian Brands** – Including Strub's and Coronation
- **Strong Customer Revenue Mix** – Leading grocers, CPGs, big box stores and food distributors
- **Manufacturing Plants & Production Equipment** – High-end, automated pickling equipment
- **Long-Standing Supplier Relationships** – Local and international crop growers
- **Dedicated Employee Base** – Tenured employees with extensive industry experience

### MANUFACTURING LOCATIONS



Wallaceburg, ON (Owned) – 150,000 s.f.



St. Louis, QC (Owned) – 90,000 s.f.

### IN-HOUSE BRANDS



### SELECT PRODUCTS





Canadian Food Manufacturer of Pickled Products and Condiments,  
Servicing the Retail, Food Service and Co-Packing Channels

**FINANCIAL OVERVIEW (in C\$M)**



**PROCESS OVERVIEW**

**SISP HIGHLIGHTS**

<b>Commencement of SISP</b>	August 31, 2023
<b>Transaction Details</b>	<ul style="list-style-type: none"> <li>• APA draft to be provided in the virtual data room</li> <li>• Specify assets willing to purchase;                             <ul style="list-style-type: none"> <li>- Wallaceburg facility, St. Louis facility, machinery &amp; equipment, inventory, trade accounts receivable</li> </ul> </li> <li>• Form of consideration;                             <ul style="list-style-type: none"> <li>- Cash and/or assumed liabilities</li> </ul> </li> </ul>
<b>Transaction Structure &amp; Formal Binding Offers</b>	<ul style="list-style-type: none"> <li>• Binding bid in the form of a marked up executed APA</li> <li>• Payment of a deposit not less than 10% of purchase price provided with submission of Bid; strongly prefer all cash consideration</li> <li>• Submissions must be made to Kroll Corporate Finance Canada Limited</li> <li>• <b>Bid Deadline:</b> September 21, 2023 at 5:00pm ET</li> <li>• <b>Sale Approval Motion:</b> On or before October 2, 2023</li> <li>• <b>Outside Closing Date:</b> October 10, 2023</li> </ul>

M&A advisory and capital raising services in Canada are provided by Kroll Corporate Finance Canada Limited, a registered Exempt Market Dealer in the provinces of Alberta, British Columbia, Ontario, and Québec. M&A advisory, capital raising and secondary market advisory services in the United States are provided by Kroll Securities, LLC (member FINRA/SIPC). This document shall not constitute an offer to sell, nor shall there be any sale of the securities, in any jurisdiction in which such offer, solicitation or sale would be unlawful prior to registration, qualification or exemption of the securities laws of such jurisdiction. © 2023 Kroll, LLC. All rights reserved.

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

Estate / Court File No. 2978830

Applicant

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

Proceeding commenced at TORONTO

**SECOND REPORT OF THE PROPOSAL TRUSTEE**

**FASKEN MARTINEAU DuMOULIN LLP**

Barristers and Solicitors  
333 Bay Street, Suite 2400  
Bay Adelaide Centre, Box 20  
Toronto ON M5H 2T6

**Stuart Brotman (LSO: 43430D)**

sbrotman@fasken.com  
Tel: 416 865 5419

**Daniel Richer (LSO: 75225G)**

driche@fasken.com  
Tel: 416 865 4445

Lawyers for the Proposal Trustee