

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

IN THE MATTER OF THE *COMPANIES' CREDITORS  
ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF SUNGARD AVAILABILITY  
SERVICES (CANADA) LTD./SUNGARD, SERVICES DE  
CONTINUITE DES AFFAIRES (CANADA) LTEE

APPLICATION OF SUNGARD AVAILABILITY SERVICES  
(CANADA) LTD./SUNGARD, SERVICES DE CONTINUITE DES  
AFFAIRES (CANADA) LTEE UNDER SECTION 46 OF THE  
*COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-  
36, AS AMENDED

**SECOND REPORT OF THE INFORMATION OFFICER**

**ALVAREZ & MARSAL CANADA INC.**

**JULY 14, 2022**

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**Appendix “A” – KERP Order**

## 1.0 INTRODUCTION

- 1.1 On April 11, 2022 (the “**Filing Date**”), Sungard Availability Services (Canada) Ltd./Sungard, Services de Continuite des Affaires (Canada) Ltee (“**Sungard AS Canada**” or the “**Foreign Representative**”), and 11 affiliated companies (each a “**Debtor**” and collectively, the “**Debtors**”,<sup>1</sup> and together with their direct and indirect non-Debtor affiliates, the “**Company**”), commenced voluntary reorganization proceedings (the “**Chapter 11 Proceedings**”) pursuant to Chapter 11 of the U.S. Bankruptcy Code with the United States Bankruptcy Court for the Southern District of Texas (the “**U.S. Court**”).
- 1.2 Also on April 11, 2022, Sungard AS Canada brought an application before the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) and obtained certain interim relief (including an interim stay of proceedings) pursuant to the *Companies’ Creditors Arrangement Act* (the “**CCAA**”, and these proceedings the “**CCAA Recognition Proceedings**”, and together with the Chapter 11 Proceedings, the “**Restructuring Proceedings**”).
- 1.3 On April 12, 2022, the U.S. Court granted various orders in the Chapter 11 Proceedings (the “**First Day Orders**”), including an order authorizing Sungard AS Canada to act as foreign representative in the Chapter 11 Proceedings (the “**U.S. Foreign Representative Order**”).

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<sup>1</sup> “**Debtors**” means the following entities that are “debtors” in the Chapter 11 Proceedings: InFlow LLC; Sungard AS New Holdings, LLC; Sungard AS New Holdings II, LLC; Sungard AS New Holdings III, LLC; Sungard Availability Network Solutions Inc.; Sungard Availability Services (Canada) Ltd./Sungard, Services de Continuite des Affaires (Canada) Ltee; Sungard Availability Services Holdings (Canada), Inc.; Sungard Availability Services Holdings (Europe), Inc.; Sungard Availability Services Holdings, LLC; Sungard Availability Services Technology, LLC; Sungard Availability Services, LP; and Sungard Availability Services, Ltd.

- 1.4 On April 14, 2022, this Court made two orders (the “**Initial Recognition Order**” and the “**Supplemental Order**”) that, among other things: (a) recognized the Chapter 11 Proceedings as a “foreign main proceeding” under the CCAA; (b) recognized Sungard AS Canada as the “foreign representative” of the Debtors; (c) stayed all proceedings against Sungard AS Canada and the Guarantor Debtors (as defined in the Supplemental Order); (d) appointed Alvarez & Marsal Canada Inc. (“**A&M Canada**”) as the information officer (the “**Information Officer**”) in respect of the CCAA Recognition Proceedings; (e) recognized and gave effect in Canada to certain of the First Day Orders; and (f) granted the Administration Charge and the DIP Agents’ Charges (each as defined in the Supplemental Order).
- 1.5 On May 16, 2022, this Court made an order recognizing and giving effect in Canada to four orders of the U.S. Court, being the Final DIP Order, Final Cash Management Order, Bidding Procedures Order and Bar Date Order (each as defined and described in the First Report, as defined below).
- 1.6 On June 2, 2022, this Court made an order recognizing and giving effect in Canada to two orders of the U.S. Court, being the Lease Rejection Order and De Minimis Asset Sales Order (each as defined and described in the Second Supplement, as defined below).
- 1.7 A&M Canada, in its capacity as Proposed Information Officer, filed with this Court a report dated April 13, 2022 (the “**Pre-Filing Report**”). The Information Officer also filed with this Court a report dated May 10, 2022 (the “**First Report**”) and two supplemental reports to the First Report dated May 16, 2022 (the “**First Supplement**”) and May 30, 2022 (the “**Second Supplement**”). Each of these reports are available on the Information Officer’s

case website at: [www.alvarezandmarsal.com/SungardASCanada](http://www.alvarezandmarsal.com/SungardASCanada) (the “**Case Website**”), together with other Court-filed documents in these CCAA Recognition Proceedings.<sup>2</sup>

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

2.1 In preparing this Second Report, the Information Officer has relied solely on information and documents provided by the Foreign Representative, its Canadian legal counsel, the other Debtors, and their U.S.-based restructuring advisor, FTI Consulting, Inc. (“**FTI**”) (collectively, the “**Information**”).

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

2.3 This Second Report should be read in conjunction with the Affidavit of Michael K. Robinson, sworn on July 12, 2022 (the “**Fourth Robinson Affidavit**”). Capitalized terms that are used in this Second Report but not otherwise defined herein have the meanings ascribed to them in the Fourth Robinson Affidavit.

2.4 Unless otherwise stated, all monetary amounts contained herein are expressed in USD.

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<sup>2</sup> Copies of documents filed in the Chapter 11 Proceedings can be found on the case website maintained by Kroll at: <https://cases.ra.kroll.com/sungardAS/>

### **3.0 PURPOSE OF THIS REPORT**

3.1 The purpose of this Second Report is to provide this Court with information regarding the following:

- (a) the two orders that the Foreign Representative is seeking to have recognized and given effect in Canada by this Court pursuant to the CCAA, being the KERP Order, which was granted by the U.S. Court on July 13, 2022, and the Omnibus Objection Procedures Order, which may be granted without a hearing if no objections are filed with the U.S. Court by July 15, 2022 (each as defined and described below);
- (b) a brief update on the Sale Process (as defined below); and
- (c) a summary of the activities of the Information Officer since the date of the First Report (May 10, 2022).

3.2 The U.S. Court was originally scheduled to hear a motion by the Debtors to approve the Disclosure Statement Order (as defined in the Fourth Robinson Affidavit) on June 29, 2022. On June 23, 2022, the Foreign Representative served a motion record on the Canadian service list, together with an affidavit of Michael K. Robinson, in support of the recognition of the Disclosure Statement Order, should it be granted at the U.S. hearing. Prior to the Disclosure Statement Motion being heard by the U.S. Court, the Debtors filed a notice with the U.S. Court adjourning the motion to August 3, 2022. The Information Officer understands that the Foreign Representative has rescheduled the recognition motion to be heard before this Court to August 10, 2022. Accordingly, the relief sought in the Disclosure Statement Order is not addressed in this Second Report. The Information

Officer will file a subsequent report prior to the Canadian recognition hearing for the Disclosure Statement Order.

#### **4.0 RECOGNITION OF THE KERP ORDER**

- 4.1 On June 29, 2022, the Debtors filed a motion with the U.S. Court seeking entry of the *Order (I) Approving the Debtors' Key Employee Retention Program; (II) Authorizing the Debtors to Honor and Pay Certain Compensation Obligations; and (III) Granting Related Relief*, (the "**KERP Order**") and on July 11, 2022, filed a supplement to the initial motion revising the form of order. A copy of the Initial KERP Motion and the Supplement are attached to the Fourth Robinson Affidavit as Exhibit "A" and Exhibit "B", respectively. On July 13, 2022, the U.S. Court granted the KERP Order in the Chapter 11 Proceedings. A copy of the entered KERP Order is attached hereto as Appendix "A". The order is in the form attached to the Supplement. Judge Jones noted when granting the KERP Order that the Debtors' proposed KERP and the Chapter 11 Proceedings presented the precise set of facts and circumstances in which he believes employee retention programs are appropriate.
- 4.2 As described in the Fourth Robinson Affidavit, the Company has experienced an increase in employee resignations, both prior to and during the Restructuring Proceedings. To mitigate further depletion of its workforce and to encourage the retention of its employees during the Restructuring Proceedings and the ongoing Sale Process, the Debtors have developed a Key Employee Retention Program (the "**KERP**").
- 4.3 The KERP currently contemplates approximately 115 employees (the "**KERP Participants**"), comprised of cloud engineers, recovery service experts and other key personnel. The KERP Participants include 80 individuals employed by a Debtor entity and

35 individuals employed by non-Debtor entities. A small group of the KERP Participants are employed by Sungard AS Canada and are being included in the KERP on the same basis as the other KERP Participants. As described in the Fourth Robinson Affidavit, the KERP Participants and the specific allocations are subject to adjustment.

- 4.4 The aggregate maximum payout under the KERP is up to \$4 million. The amount that a KERP Participant may receive is based on a percentage of the employee's salary and a combination of considerations, including technical skill set, managerial function and the cost of replacing such skill set. The average KERP payment is approximately \$35,000 per employee, representing an average of 24% of each KERP Participant's base salary.
- 4.5 Amounts under the KERP are to vest with the KERP Participant and be paid shortly thereafter on the earlier of: (a) March 31, 2023; (b) 90 days after the Debtors' emergence from Chapter 11; or (c) upon a Qualifying Termination.<sup>3</sup>
- 4.6 In addition to the KERP, as part of the KERP Order, the Debtors are also seeking authority to: (a) modify certain of their current sales commission and prepetition retention plans to allow for non-recoverable draws against future target commissions; and (b) pay certain prepetition amounts owing to employees on account of sales commissions, project-based retention agreements and non-insider severance costs (collectively, the "**Compensation Obligations**"). In aggregate, the Compensation Obligations total approximately \$362,000.

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<sup>3</sup> Pursuant to the Initial KERP Motion, if a KERP Participant's employment with the applicable Debtor or non-Debtor is terminated on or prior to the KERP Vesting Date by the applicable Debtor or non-Debtor for any reason other than a "Disqualifying Reason" (each, a "**Qualifying Termination**"), the Proposed KERP Payment will fully vest and be paid to such KERP Participant in cash shortly after the occurrence of the Qualifying Termination, subject to the KERP Participant's timely execution of a general release of claims in favor of the Company.

- 4.7 Similar to the KERP, the modified sales commission plan is designed to promote employee retention during the Restructuring Proceedings by allowing certain employees to receive early payment against future target commissions. As described in the Fourth Robinson Affidavit, the Debtors estimate that the acceleration of these commission payments will be approximately \$154,000 per month for the remainder of the Chapter 11 Proceedings.
- 4.8 There is a small group of Canadian employees that are eligible for and would receive the benefit of the modified sales commission plan, and there is a single former Canadian employee who, under this plan, would receive a severance payment.
- 4.9 The Information Officer supports the recognition of the KERP Order as it: (i) will provide stability to the business by encouraging key employees to remain with the Company to assist in a successful completion of the Sale Process and the Debtors' emergence from the Chapter 11; (ii) the terms of the KERP and the quantum of the payouts appear reasonable to the Information Officer, both in the circumstances and when compared to other key employee retention and incentive plans approved in Chapter 11 proceedings and by this Court in past CCAA proceedings; and (iii) the KERP is supported by the Debtors' lenders who are expected to bear its economic cost.

## **5.0 RECOGNITION OF THE OMNIBUS OBJECTION PROCEDURES ORDER**

- 5.1 On June 24, 2022, the Debtors filed a motion with the U.S. Court seeking entry of the *Order (I) Approving Omnibus Claims Objection Procedures; and (II) Authorizing the Debtors to File Substantive Omnibus Objections to Claims Pursuant to Bankruptcy Rule 3007* (the "**Omnibus Objection Procedures Order**").

- 5.2 Unless the U.S. Court determines that a hearing is required or objections are filed by July 15, 2022, the Omnibus Objection Procedures Order is anticipated to be granted by the U.S. Court without a hearing. A copy of the proposed Omnibus Objection Procedures Order is attached to the Fourth Robinson Affidavit as Exhibit “C”.
- 5.3 The Bar Date Order, which was recognized by this Court on May 16, 2022 and described in the First Report, established the General Bar Date of June 22, 2022, and the Governmental Bar Date of October 10, 2022. As described in the Fourth Robinson Affidavit, to date, the Debtors have received 342 proofs of claim, for a total of 940 scheduled or filed Claims, with an aggregate claim value that is anticipated to be in excess of \$135 million.
- 5.4 The Debtors expect that a significant number of these proofs of claims will need to be reconciled and the Debtors may need to file a large number of objections to certain of the claims. Absent further order of the U.S. Court, the Bankruptcy Rules provide that the Debtors may only assert omnibus objections based on certain limited grounds.
- 5.5 The relief requested in the Omnibus Objection Procedures Order will expand the grounds on which the Debtors may dispute claims and create an organized process for objecting to multiple claims in omnibus objections. This process is intended to streamline the claims process and accelerate the consummation of the Debtors’ plan of reorganization and distributions to creditors.
- 5.6 For additional information regarding the Omnibus Objection Procedures Order, readers are directed to the Fourth Robinson Affidavit. In particular, paragraph 38 specifies the expanded grounds on which the Debtors may file omnibus objections, and paragraph 41

describes the key aspects of the proposed objection procedures the Debtor will be required to complete.

- 5.7 The Information Officer supports the recognition of the Omnibus Objection Procedures Order, if granted by the U.S. Court, as it will result in greater efficiency – including cost efficiency – for the Debtors in completing the Restructuring Proceedings.

## **6.0 SALE PROCESS UPDATE**

- 6.1 As described in the First Report, the Restructuring Proceedings were commenced to implement the restructuring support agreement (the “**RSA**”) entered into by the Debtors and an ad hoc group of secured term loan lenders (the “**Required Consenting Stakeholders**”). The terms of the RSA include a sale process (the “**Sale Process**”) that contemplates two potential restructuring scenarios: (a) a “**Sale Scenario**”, which would be one or multiple transaction(s) resulting from the Sale Process, either with one or more third-parties, or alternatively, through a credit bid transaction; or (b) an “**Equitization Scenario**”, which would be implemented by equitizing outstanding funded debt.

- 6.2 As part of the Sale Process, the Required Consenting Creditors agreed to set a Reserve Price in connection with a potential credit bid transaction. This Reserve Price structure was developed to attempt to maximize the value of the Company’s business and assets through a competitive auction process, while backstopping the Sale Process with a going concern credit bid transaction.

- 6.3 On June 27, 2022, the Required Consenting Stakeholders established that the Reserve Price would be \$200 million. As such, the Required Consenting Stakeholders will not use credit bid consideration in excess of \$200 million in connection with the sale of the Assets.
- 6.4 The Final Bid Deadline (as defined in the Bidding Procedures Order) passed on July 7, 2022. On July 8, 2022, the Debtors filed a notice with the U.S. Court, which announced:
- (a) the date of Auction (as defined in the Bidding Procedures Order) will be rescheduled from July 11, 2022 to August 1, 2022;
  - (b) the deadline for Adequate Assurance Objections and any objections to the identity of the Successful Bidder(s) (each as defined in the Bidding Procedures Order) will be rescheduled from July 13, 2022 to August 2, 2022; and
  - (c) the Sale Motion, which was previously scheduled to be heard July 14, 2022, will be adjourned until August 3, 2022 (to be heard together with the rescheduled Disclosure Statement Motion discussed above).
- 6.5 At the hearing in respect of the KERP Order, the Debtors' U.S. counsel advised the U.S. Court that the Debtors are working to review the bids received and clear any conditions to closing one or more potential transactions.

## **7.0 ACTIVITIES OF THE INFORMATION OFFICER**

- 7.1 The activities of the Information Officer since the date of the First Report have included:
- (a) maintaining the Case Website ([www.alvarezandmarsal.com/SungardASCanada](http://www.alvarezandmarsal.com/SungardASCanada)) by making available copies of the orders granted in the CCAA Recognition

Proceedings as well as other relevant motion materials, reports and information. In addition, the Case Website provides a link to the Debtors' restructuring website maintained by Kroll (the "**Kroll Website**") that includes copies of the U.S. Court motions and orders, petitions, notices and other materials;

- (b) monitoring the Kroll Website for activity in the Chapter 11 Proceedings;
- (c) responding to stakeholder inquiries regarding the Restructuring Proceedings;
- (d) discussions with the Debtors' Canadian legal counsel and advisors regarding matters relevant to the Restructuring Proceedings and Sale Process;
- (e) reviewing and commenting on the Debtors' draft motion materials and orders in the Chapter 11 Proceedings; and
- (f) preparing this Second Report and reviewing draft materials of the Foreign Representative in connection with the CCAA Recognition Proceedings.

## **8.0 RECOMMENDATIONS**

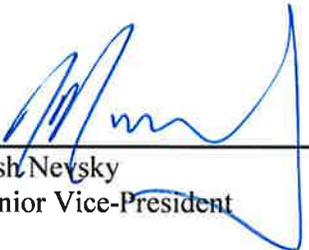
8.1 The Information Officer and its legal counsel have reviewed the KERP Order and the Omnibus Objection Procedures Order and believe that the recognition of each order is reasonable and appropriate in the circumstances, provided that the Omnibus Objection Procedures Order is granted by the U.S. Court. Based on the foregoing, the Information Officer respectfully recommends that this Court grant the relief requested by the Foreign Representative.

All of which is respectfully submitted to this Court this 14<sup>th</sup> day of July, 2022.

**ALVAREZ & MARSAL CANADA INC.**

**Information Officer of Sungard Availability Services (Canada) Ltd./Sungard, Services de  
Continuite des Affaires (Canada) Ltee, and not in its personal or corporate capacity**

Per:   
\_\_\_\_\_  
Alan J. Hutchens  
Senior Vice-President

Per:   
\_\_\_\_\_  
Josh Nevsky  
Senior Vice-President

**Appendix “A”**

**KERP Order**



that the Debtors' notice of the Motion and opportunity for a hearing on the Motion were appropriate under the circumstances and no other notice need be provided; and this Court having reviewed the Motion and having heard the statements in support of the relief requested therein at a hearing before this Court (the "Hearing"); and this Court having determined that the legal and factual bases set forth in the Motion and at the Hearing establish just cause for the relief granted herein; and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor, it is HEREBY ORDERED THAT:

1. Pursuant to Bankruptcy Code sections 363(b) and 503(c), the KERP is hereby approved.

2. The Debtors are authorized, but not directed, to take all actions necessary to implement the KERP and make the payments contemplated thereunder at the times specified in the Motion without the need for further Court approval.

3. If any award under the KERP is forfeited by a KERP Participant as described in the Motion, the Debtors are authorized to: (i) re-grant the value of a such forfeited award to other non-insider key employees, provided that such forfeited Proposed KERP Payment be allocated to an employee providing similar services to the Company; and (ii) grant the Proposed KERP Payments to additional KERP Participants using any remaining, unallocated amounts under the KERP Budget, as described in the Motion and in only accordance with the terms of this Order.

4. The Debtors are authorized to implement the Modified Sales Commission Program, which Modified Sales Commission Program shall be effective retroactively to May 1, 2022.

5. The Debtors are authorized to honor and make payments in the ordinary course on account of the Compensation Obligations, including payments on account of (i) Overdue Sales

Commissions, (ii) the Project-Based Retention Agreements and (iii) Prepetition Severance Obligations.

6. The Debtors shall maintain a schedule of amounts paid related to the Compensation Obligations made pursuant to this Order, including the following information: (a) the name of the payee; (b) the date and amount of the payment; (c) the category or type of payment; and (d) the Debtor or non-Debtor that made the payment. The Debtors shall provide a copy of such schedule to the U.S. Trustee, the advisors to the DIP Lenders and the advisors to the Creditors' Committee on the 12th of every month.

7. The Debtors shall not make any payments on account of the Compensation Obligations to any Insiders (as such term is defined in Bankruptcy Code section 101(31)) without further order of this Court.

8. Notwithstanding the relief granted in this Order and any actions taken pursuant to such relief, nothing in this Order shall be deemed: (a) an admission as to the amount of, basis for or validity of any claim against a Debtor entity under the Bankruptcy Code or other applicable nonbankruptcy law; (b) a waiver of the Debtors', or any other party in interest's, right to dispute any claim on any grounds; (c) a promise or requirement to pay any claim; (d) an implication or admission that any particular claim is of a type specified or defined in the Motion or any order granting the relief requested by the Motion or a finding that any particular claim is an administrative expense claim or other priority claim; (e) a request or authorization to assume, adopt or reject any agreement, contract or lease pursuant to Bankruptcy Code section 365; (f) an admission as to the validity, priority, enforceability or perfection of any lien on, security interest in or other encumbrance on property of the Debtors' estates; (g) a waiver or limitation of the Debtors', or any other party in interest's, rights under the Bankruptcy Code or any other applicable

law; or (h) a concession by the Debtors that any liens (contractual, common law, statutory or otherwise) that may be satisfied pursuant to the relief requested in the Motion are valid, and the rights of all parties in interest are expressly reserved to contest the extent, validity or perfection or to seek avoidance of all such liens.

9. Notwithstanding anything in this Order to the contrary, any payment to be made, or any authorization contained hereunder, shall be subject to the terms of any orders authorizing debtor in possession financing or the use of cash collateral approved by this Court in these chapter 11 cases (including with respect to any budget governing or relating to such use), including, without limitation, the *Final Order (I) Authorizing the Debtors to Obtain Postpetition Financing, (II) Authorizing the Debtors to Use Cash Collateral, (III) Authorizing the Debtors to Repay Certain Prepetition Secured Indebtedness, (IV) Granting Liens and Providing Superpriority Administrative Expense Status, (V) Granting Adequate Protection, (VI) Modifying the Automatic Stay and (VII) Granting Related Relief* [Docket No. 220] (as each order may be amended or become final in accordance with the terms thereof, the “DIP Order”) and the Approved Budget (as defined in the DIP Order); and to the extent there is any inconsistency between the terms of such DIP Order and any action taken or proposed to be taken hereunder, the terms of such DIP Order and the Approved Budget shall control.

10. Notice of the Motion satisfies the requirements of Bankruptcy Rule 6004(a), and the Bankruptcy Local Rules are satisfied by such notice.

11. Notwithstanding Bankruptcy Rule 6004(h), the terms and conditions of this Order are immediately effective and enforceable upon entry.

12. The Debtors are authorized to take all actions necessary to effectuate the relief granted in this Order in accordance with the Motion.

13. This Court retains exclusive jurisdiction with respect to all matters arising from or related to the implementation, interpretation and enforcement of this Order.

**Signed: July 13, 2022.**



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**DAVID R. JONES**  
**UNITED STATES BANKRUPTCY JUDGE**

**IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED** Court File No.:CV-22-00679628-00CL

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF SUNGARD AVAILABILITY SERVICES (CANADA) LTD./SUNGARD, SERVICES DE CONTINUITE DES AFFAIRES (CANADA) LTEE**

**APPLICATION OF SUNGARD AVAILABILITY SERVICES (CANADA) LTD./SUNGARD, SERVICES DE CONTINUITE DES AFFAIRES (CANADA) LTEE UNDER SECTION 46 OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED**

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

Proceeding commenced at Toronto

**SECOND REPORT OF THE  
INFORMATION OFFICER**

**BENNETT JONES LLP**

One First Canadian Place  
Suite 3400, P.O. Box 130  
Toronto, Ontario  
M5X 1A4

**Sean Zweig** (LSO# 57307I)

Tel: (416) 777-6254

Email: [zweigs@bennettjones.com](mailto:zweigs@bennettjones.com)

**Jesse Mighton** (LSO# 62291J)

Tel: (416) 777-6255

Email: [mightonj@bennettjones.com](mailto:mightonj@bennettjones.com)

**Thomas Gray** (LSO# 82473H)

Tel: (416) 777-7924

Email: [grayt@bennettjones.com](mailto:grayt@bennettjones.com)

Counsel for Alvarez & Marsal Canada Inc., solely in its capacity as the Information Officer and not in its personal or corporate capacity