

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

THE HONOURABLE	)	WEDNESDAY, THE 18 <sup>th</sup>
	)	
REGIONAL SENIOR JUSTICE	)	DAY OF NOVEMBER, 2015
	)	
MORAWETZ	)	

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR  
ARRANGEMENT OF TARGET CANADA CO., TARGET  
CANADA HEALTH CO., TARGET CANADA MOBILE GP  
CO., TARGET CANADA PHARMACY (BC) CORP.,  
TARGET CANADA PHARMACY (ONTARIO) CORP.,  
TARGET CANADA PHARMACY CORP., TARGET  
CANADA PHARMACY (SK) CORP., and TARGET  
CANADA PROPERTY LLC (collectively the "Applicants")

**ORDER**

(Amending the October 30 Order and Certain Related Relief)

THIS MOTION, made by Alvarez & Marsal Canada Inc. in its capacity as Monitor ("Monitor") in the within proceedings, pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. c-36 , as amended, for an order amending the Order issued by Regional Senior Justice Morawetz on October 30, 2015 (the "**October 30 Order**") was heard this day at 330 University Avenue, Toronto, Ontario.

ON HEARING the submissions of counsel for Alvarez & Marsal Canada Inc., in its capacity as Monitor, and counsel for the Applicants, no one else appearing and making submissions although duly served as appears from the Affidavit of Service of Jesse Mighton sworn November 13, 2015.

1. THIS COURT ORDERS that the time for service of the Monitor's Motion Record and the Notice of Motion therein is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof.
2. THIS COURT ORDERS that the Consultative Committee Protocol attached hereto as Schedule "A" be and is hereby approved.
3. THIS COURT ORDERS that sub-paragraphs 6 (d) and (e) of the October 30 Order, and all of the sub-sub-paragraphs therein, be and are hereby deleted in their entirety.

  
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ENTERED AT / INSCRIT A TORONTO  
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LE / DANS LE REGISTRE NO.:

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## REVISED CONSULTATIVE COMMITTEE PROTOCOL

DATED as of November 18, 2015

### RECITALS

- A. On January 15, 2015, Target Canada Co., Target Canada Health Co., Target Canada Mobile GP Co., Target Canada Pharmacy (BC) Corp., Target Canada Pharmacy (Ontario) Corp., Target Canada Pharmacy Corp., Target Canada Pharmacy (SK) Corp., and Target Canada Property LLC, among others, (collectively, the “**Target Canada Entities**”) commenced proceedings under the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA Proceedings**”) before the Ontario Superior Court of Justice [Commercial List] (the “**Court**”).
- B. Alvarez & Marsal Canada Inc., was appointed as monitor of the Target Canada Entities in the CCAA Proceedings (the “**Monitor**”).
- C. Pursuant to Appendix A to the Order for Advice and Directions of the Honourable Regional Senior Justice Morawetz made May 12, 2015 (the “**Order**”) the Monitor was ordered to constitute and convene a consultative committee (the “**Consultative Committee**”) and consult with the Consultative Committee in connection with the “Claims Process”. The Order also provided that the Monitor would consult with the Consultative Committee in connection with the “Intercompany Claims and Intercreditor Dispute Process”.
- D. The following individuals were appointed by the Monitor, in their capacity as counsel to certain stakeholders of the Target Canada Entities and not in their personal capacity:
- Lou Brzezinski, *Blaney McMurtry LLP*
  - Mel Solmon, *Solmon Rothbart Goodman LLP*
  - Richard Orzy, *Bennett Jones LLP*
  - Linda Galessiere, *McLean & Kerr LLP*
  - Linc Rogers, *Blake, Cassels & Graydon LLP*
  - Jeffrey Carhart, *Miller Thomson LLP*
  - Yannick Katirai, *Stikeman Elliott LLP*
  - David Ullmann, *Minden Gross LLP*\*

(each individual listed above together with any lawyers at such individual’s law firm assisting such individual in connection with his or her role as a member of the Consultative Committee is referred to herein as a “**Member**” and “**Members**” means all of them).

\* David Ullmann was appointed to the Consultative Committee in June, 2015.

The Members were identified and selected by the Monitor because in the Monitor's view the Members represented clients which formed a cross-section of stakeholders of the Target Canada Entities (all such stakeholders, the "**Stakeholders**"), including landlords, inventory suppliers and service providers, which had been active and engaged in the CCAA Proceedings.

- E.** Shortly after constitution, the Consultative Committee and Monitor prepared an operating protocol (the "**Initial Protocol**") to govern the calling and conduct of meetings of the Consultative Committee. The Initial Protocol provided, among other things, that participation as a Member:
- (i) would not in any way prevent or limit a Member or the client of any Member from pursuing any rights or remedies of such client, including, without limitation, exercising (or omitting to exercise) or seeking (or omitting to seek) to enforce or protect any of its rights as a Stakeholder in the CCAA Proceedings as it may deem appropriate or limit or interfere with the Member's representation of such client; and
  - (ii) would not result in a Member owing a duty to any party other than such Member's existing clients and a Member's appointment to the Consultative Committee would not create a solicitor client relationship with any Stakeholder, the Monitor, the Target Canada Entities or any other party.
- F.** The initial role of the Consultative Committee was to consider the draft claims procedure order and provide the Monitor with comments and consultation in relation thereto, with a view to reaching a consensus on the claims process. The Consultative Committee carried out this function and on June 11, 2015, the Court approved a motion brought forth by the Monitor, on a consensual basis, for approval of a Claims Procedure Order (the "**Claims Procedure Order**").
- G.** Pursuant to paragraph 30 of the Claims Procedure Order, the role of the Consultative Committee was expanded to consult with the Monitor prior to the allowance of any claims against the Target Canada Entities in excess of \$5 million (the "**\$5 Million Claims**"). On July 30, 2015, the Honourable Regional Senior Justice Morawetz reviewed the Initial Protocol and issued an Endorsement requiring the Target Canada Entities to pay each Member \$5,000 plus HST per month commencing May 2015 and ending September 2015, subject to further arrangements on further order of the Court.
- H.** During the months of June, July and August of 2015, the Consultative Committee periodically met with the Monitor to provide consultation in relation to the Claims Procedure Order and the Monitor's Intercompany Claims Report.
- I.** On August 31, 2015, in accordance with the Claims Procedure Order, the Monitor filed the Monitor's Intercompany Claims Report. The initial deadline for any creditors to object to intercompany claims was September 30, 2015, which was subsequently extended by Court Order to October 30, 2015, with the ability to further extend this deadline upon agreement between the Monitor and the Consultative Committee. The deadline was further extended by agreement to November 30, 2015 or such later date as

may be agreed between the Monitor and the Consultative Committee.

- J. On September 22, 2015, the Consultative Committee met with representatives of the Target Canada Entities, Target Corporation (“**Target US**”) and the Monitor to discuss proposed indicative terms for a plan of compromise or arrangement to be put forward by the Target Canada Entities, with the support of Target US, and seek feedback on issues related to a potential consensual resolution (a “**Consensual Resolution**”).
- K. On October 30, 2015, the Court granted an Order (the “**October 30 Order**”) providing certain relief with respect to the Consultative Committee, namely, the continuation of the payment arrangements described in Recital G for the months of October and November, 2015, subject to further arrangements on further Order of the Court, and the granting of certain protections, with the confidentiality provisions of the Order to be reconsidered on an advice and directions motion scheduled for November 18, 2015 where the Monitor will seek guidance on Consultative Committee matters, including a protocol;
- L. Set out below are revised provisions of the Initial Protocol (the “**Revised Protocol**”). For greater certainty, as with the Initial Protocol, this Revised Protocol is not intended to replace but to supplement ongoing dialogue and consultation between the Monitor and the Stakeholders, including the Members.

## REVISED PROTOCOL

The Consultative Committee and the Monitor shall be governed by the following Revised Protocol:

1. **Definitions.** Capitalized terms used but not defined herein shall have the meaning ascribed to such terms in the Order.
2. **Resignations.** A Member may resign from the Consultative Committee at any time by notifying the Monitor and the other Members, by e-mail. A Member will cease to be a Member if he or she no longer represents a Stakeholder. The Monitor may replace such departing Member or add new Members at its discretion.
3. **Multiple Views.** It is recognized and understood that the cross-section of Stakeholders represented by clients of the Members may have divided interests and accordingly, consensus on feedback regarding a potential Consensual Resolution may not be achievable. Where a consensus cannot be reached, the Members may provide more than one view on a potential Consensual Resolution for the Monitor’s and the Target Canada Entities’ consideration or decline to provide any view.
4. **Good Faith.** For purposes of his or her participation in the Consultative Committee, each Member agrees that he or she will participate in good faith, and will have appropriate regard for the legitimate interests of all other Stakeholders.
5. **No Fiduciary Relationship or Other Duty.** Notwithstanding the above or anything contained herein (other than the confidentiality provisions set out in

Section 11 below), no Member, as a result of his or her participation in the Consultative Committee, owes a duty to any party other than such Member's existing clients and neither anything contained herein nor participation as a Member shall:

- (i) give rise to any duty or solicitor and client or fiduciary relationship between any Member and any party other than such Member's existing clients;
  - (ii) in any way prevent or limit a Member or the client of any Member from pursuing any rights or remedies of such client, including, without limitation, exercising (or omitting to exercise) or seeking (or omitting to seek) to enforce or protect any of its rights as a Stakeholder in the CCAA Proceedings as such Stakeholders may deem appropriate;
  - (iii) limit or interfere with the Member's representation of his or her client(s) in any way; or
  - (iv) provide any authority for any Member to bind any party without such party's consent.
6. **No Liability.** No Member shall incur any liability to any party arising solely from such Members' participation on the Consultative Committee or as a result of any suggestion or feedback such Member may provide to the Monitor, the Target Canada Entities or Target US.
7. **Compensation.** Subject to Court approval, each Member shall be paid the sum of \$5,000.00 plus HST for the months of October and November, 2015 by the Target Canada Entities or shall be paid such alternate compensation as may be agreed to by all Members, the Monitor and the Target Canada Entities or by further order of the Court, as a cost of administration in the CCAA Proceedings.
8. **Chair.** A representative of the Monitor shall be the chair of the meetings of the Consultative Committee.
9. **Calling Meetings.** The Monitor, at the request of a Member or at its own instance, may call meetings of the Consultative Committee on reasonable advance written notice to the Members of the Consultative Committee, which written notice may be by e-mail and the Monitor may provide such written materials as it considers appropriate and reasonable. Members and the Monitor are at liberty to have informal meetings as amongst themselves, or any subgroup of Members, from time to time and the Monitor and/or the Target Canada Entities may also have informal meetings with any Members, individually or collectively, or with any subgroup of Members.
10. **Minutes.** The Monitor's counsel shall act as secretary of the meetings of the Consultative Committee and keep minutes. Where issues of disagreement among the Members arise, the minutes will reflect such disagreements. Such minutes

shall be confidential and shared with Members only. Minutes are for administrative record keeping purposes only and are not intended to be binding or conclusive in any way.

11. **Confidentiality.**

- (i) Without the consent of each Member and the Monitor, the Monitor and the Members will not discuss with or disclose the content of their discussions in Consultative Committee Meetings with any party, including the media, the Target Canada Entities or Target US;
- (ii) Subject to clause (iv) below, without the consent of each Member, the Monitor and the Target Canada Entities or Target US, as applicable, a Member will not provide or disclose to any party any documents or other information or data provided to a Member by the Monitor, the Target Canada Entities or Target US that is confidential in nature, at least until such time as such documents or other information or data becomes publicly disclosed by the Monitor, the Target Canada Entities or Target US;

(such discussions, documents and other information, collectively, the "**Confidential Information**").

- (iii) Notwithstanding 11(i) and (ii) above and subject to clause (iv) below, any Member may disclose Confidential Information to his or her respective clients provided that such Member advises such clients that the Confidential Information must be kept confidential by them and such client agrees to keep the Confidential Information confidential; provided, however, that no Member shall disclose Confidential Information to any party, including any client of the Member or the Member's firm, that is in the business of acquiring claims in insolvency proceedings or other distressed situations or any other party the Member is aware may seek to acquire claims of creditors in the CCAA Proceedings;
- (iv) If any \$5 Million Claims or any information or data in relation thereto is provided to Members in accordance with the consultation process contemplated by paragraph 30 of the Claims Procedure Order (the "**Claimant Information**"), each Member shall keep such Claimant Information strictly confidential and not reveal or disclose such information to any party, including the Member's clients, without further order of the Court or consent of the applicable claimant and the Monitor;
- (v) A Member shall continue to be bound by these obligations of confidentiality, notwithstanding the resignation of such Member; and
- (vi) For greater certainty, neither Section 5 or 6 above or any similar provision in the October 30 Order shall in any way limit or affect the confidentiality obligations set out herein.

12. **Additional Rules and Guidelines.** The Monitor and the Members may adopt such reasonable procedural rules and guidelines regarding the governing of Consultative Committee meetings as the Monitor and the Members may from time to time agree.



IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF TARGET  
CANADA CO., TARGET CANADA HEALTH CO., TARGET CANADA MOBILE GP  
CO., TARGET CANADA PHARMACY (BC) CORP., TARGET CANADA PHARMACY  
(ONTARIO) CORP. TARGET CANADA PHARMACY CORP., TARGET CANADA  
PHARMACY (SK) CORP., AND TARGET CANADA PROPERTY LLC.

Court File No.: CV-15-10832-00CL

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**COMMERCIAL LIST**  
Proceeding commenced at Toronto

**ORDER**  
**(Amending the October 30 Order and Certain Related Relief)**

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