

**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

**NOTICE OF MOTION
(Recognition of Foreign Orders)
(Returnable September 15, 2022)**

The applicant, Sungard Availability Services (Canada) Ltd./Sungard, Services de Continuité des Affaires (Canada) Ltée ("**Sungard AS Canada**"), in its capacity as foreign representative (the "**Foreign Representative**") of itself, as well as the other Debtors (as defined below), will make a motion to a Judge presiding over the Commercial List on September 15, 2022, at 11:00 a.m., or as soon after as the motion can be heard.

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

THE MOTION IS FOR:

1. An order recognizing and giving full force and effect in all provinces and territories of Canada pursuant to section 49 of the *Companies' Creditors Arrangement Act*, R.S.C., 1985, c. C-36, as amended (the "**CCAA**") the following orders which have been or may be granted by the United States Bankruptcy Court for the Southern District of Texas (the "**U.S. Bankruptcy Court**") in the cases (the "**Chapter 11 Cases**") commenced by the Debtors (as defined below) under Chapter 11, title 11 of the United States Code (the "**Bankruptcy Code**"):

- (a) Order (I) Conditionally Approving the Disclosure Statement; (II) Approving the Combined Hearing Notice; (III) Approving the Solicitation and Notice Procedures;

(IV) Approving the Forms of Ballots and Notices; (V) Approving Certain Dates and Deadlines in Connection with the Solicitation and Confirmation of the Plan and (VI) Scheduling a Combined Hearing on (A) Final Approval of the Disclosure Statement and (B) Confirmation of the Plan (the “Disclosure Statement Order”);

(b) Order (I) Approving the Sale of Debtors’ Assets Free and Clear of Liens, Claims, Interests and Encumbrances; (II) Approving the Assumption and Assignment of Executory Contracts and Unexpired Leases in Connection Therewith; and (III) Granting Related Relief (the “365 Sale Order”); and

(c) Order (I) Approving the Sale of Debtors’ Assets Free and Clear of Liens, Claims, Interests and Encumbrances; (II) Approving the Assumption and Assignment of Executory Contracts and Unexpired Leases in Connection Therewith; and (III) Granting Related Relief (the “11:11 Sale Order”).

2. An Order abridging the time for service and filing of this Notice of Motion and the Motion Record and dispensing with service thereof on any interested party other than those served within these proceedings; and
3. Such further and other relief as this Honourable Court may deem just.

THE GROUNDS FOR THIS MOTION ARE:

Background

4. For over 40 years, Sungard AS Canada and 11 of its US-based affiliates (collectively, the “**Debtors**”) and their non-Debtor affiliates (the “**Company**”) have established and maintained resilient and recoverable information technology environments for myriad businesses, including financial institutions, healthcare, manufacturing, logistics, transportation, and general services. In Canada, services are provided through Sungard AS Canada.
5. On April 11, 2022, the Debtors filed voluntary petitions for relief under the Bankruptcy Code in the U.S. Bankruptcy Court, and Sungard AS Canada commenced proceedings (the “**Canadian Proceedings**”) under Part IV of the CCAA.
6. On the same date, Justice Conway of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) granted an interim stay of proceedings in respect of Sungard AS Canada as well as Sungard AS New Holdings III, LLC and Sungard Availability Services LP, pending the hearing by this Court of the Foreign Representative’s initial application to, among other things, recognize Sungard AS Canada’s Chapter 11 Case as a foreign main proceeding.

7. On April 12, 2022, the U.S. Bankruptcy Court entered various orders in the Chapter 11 Cases, including an order authorizing Sungard AS Canada to act as the Foreign Representative of itself and the other Debtors in any proceedings in Canada.
8. On April 14, 2022, the Court granted an order, as requested by the Foreign Representative, (a) recognizing Sungard AS Canada as the Foreign Representative of itself and the other Debtors in respect of the Chapter 11 Cases; (b) recognizing the United States of America as the centre of main interests for Sungard AS Canada; and (c) recognizing Sungard AS Canada's Chapter 11 Case as a "foreign main proceeding". On the same day, the Court granted a second order (the "**Supplemental Order**"), among other things, (a) recognizing certain orders entered by the U.S. Bankruptcy Court in the Chapter 11 Cases; (b) granting two charges with respect to interim financing over the property of Sungard AS Canada in Canada and an administration charge; and (c) appointing Alvarez & Marsal Canada Inc. as the information officer (in such capacity, the "**Information Officer**") in the Canadian Proceedings.
9. Following a hearing on May 13, 2022, on May 16, 2022, the Court granted recognition of four additional orders from the U.S. Bankruptcy Court, as requested by the Foreign Representative, including (i) an order approving bidding procedures (the "**Bidding Procedures Order**"); (ii) an order setting bar dates for filing proofs of claim (the "**Bar Date Order**"); and (iii) an order approving the post-petition financing on a final basis (the "**Final DIP Order**"). As described in detail in the Plan and Disclosure Statement, the Final DIP Order included a Global Settlement pursuant to which the Debtors resolved certain objections of the Committee¹. The Foreign Representative has requested, and the Court has granted, additional recognition orders from time to time during these proceedings, including orders approving the rejection of leases associated with two Workplace Recovery locations in Canada.
10. On June 3, 2022, the Debtors filed the *Debtors' Motion for Entry of an Order (I) Conditionally Approving the Disclosure Statement; (II) Approving the Combined Hearing Notice; (III) Approving the Solicitation and Notice Procedures; (IV) Approving the Forms of Ballots and Notices; (V) Approving Certain Dates and Deadlines in Connection with the Solicitation and Confirmation of the Plan and (VI) Scheduling a Combined Hearing on (A) Final Approval of*

¹ "Committee" means the official committee of unsecured creditors appointed in the Chapter 11 Cases on April 25, 2022 by the U.S. Trustee, as may be reconstituted from time to time.

the Disclosure Statement and (B) Confirmation of the Plan (the “**Disclosure Statement Motion**”) with the U.S. Bankruptcy Court to authorize the *Combined Disclosure Statement and Joint Chapter 11 Plan of Sungard AS New Holdings LLC and its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code* (as applicable and as amended from time to time, the “**Disclosure Statement**”, the “**Plan and Disclosure Statement**” or the “**Plan**”).

Background on the Additional U.S. Orders

11. The Debtors initially filed their Plan and Disclosure Statement on June 3, 2022 and scheduled a hearing for conditional approval of the Plan and Disclosure Statement before the U.S. Bankruptcy Court for June 29, 2022. The Foreign Representative served a motion record on June 23, 2022 to seek recognition of the Disclosure Statement Order, should it be granted by the U.S. Bankruptcy Court at the June 29, 2022 hearing. However, the hearing before the U.S. Bankruptcy Court in respect of the Disclosure Statement Motion was adjourned a number of times as the Debtors continued to revise the documents and progress the sales described below.
12. On August 1, 2022, the Debtors filed a *Notice of (I) Successful Bid and Sale Hearing and (II) Hearing on Conditional Approval of the Disclosure Statement* with the U.S. Bankruptcy Court, which disclosed the details of a sale of certain of the Debtors’ assets to 365 SG Operating Company LLC (“**365 Data Centers**”) on the terms set out in the asset purchase agreement with 365 Data Centers (the “**365 APA**”). On August 31, 2022, the U.S. Bankruptcy Court entered the 365 Sale Order.
13. On August 24, 2022, the Debtors filed a *Notice of Successful Bid and Sale Hearing* with the U.S. Bankruptcy Court, which, among other things, disclosed details related to the sale of the Debtors’ cloud management system (“**CMS**”) assets to 11:11 Systems, Inc. (“**11:11 Systems**”) on the terms set out in the asset purchase agreement with 11:11 Systems (the “**11:11 APA**”). A hearing in respect of the 11:11 Sale Order before the U.S. Bankruptcy Court is currently scheduled for September 14, 2022. A copy of the 11:11 Sale Order, if granted, will be provided to the Court in a supplemental affidavit before the hearing of the Foreign Representative’s motion.
14. On September 2, 2022, the Debtors filed a revised version of the Plan and Disclosure Statement. The revised Plan and Disclosure Statement reflects the results of the sales process conducted under the Bidding Procedures Order and, among other things, further details regarding the 365 APA and the 11:11: APA. A hearing for the entry of the Disclosure

Statement Order was heard on September 7, 2022. On that same date, the U.S. Bankruptcy Court entered the Disclosure Statement Order.

The Disclosure Statement Order

15. The Disclosure Statement Order grants the following relief:

- (a) *Disclosure Statement*. Conditional approval of the adequacy of the information provided in the Plan and Disclosure Statement;
- (b) *Combined Hearing Notice*. Approval of the Combined Hearing Notice in respect of the combined hearing on the adequacy of the Disclosure Statement and confirmation of the Plan (the “**Combined Hearing**”);
- (c) *Solicitation Procedures*. Approval of the solicitation procedures for providing notice and soliciting votes to accept or reject the Plan;
- (d) *Solicitation Packages*. A finding that the packages to be sent to the holders of claims entitled to vote on the Plan are in compliance with the applicable local rules governing service and notice;
- (e) *Ballots*. Approval of the forms of ballots voting to accept or reject the Plan;
- (f) *Other Notices*. Approval of the forms of (i) presumed to accept notice, (ii) presumed to reject notice, (iii) assumption notice applicable to counterparties to executory contracts and unexpired leases; and
- (g) *Confirmation Dates*. Establishing dates and deadlines with respect to the Plan’s confirmation schedule, subject to modification as necessary, as set out below:

<u>Event</u>	<u>Date</u>
Voting Record Date	September 6, 2022
Solicitation Date	September 9, 2022
Deadline to Mail Assumption Notices	September 16, 2022
Plan Supplement Filing Deadline	September 19, 2022
Voting Deadline	September 26, 2022 at 4:00 p.m. (prevailing Central Time)
Plan and Disclosure Statement Objection Deadline	September 26, 2022 at 4:00 p.m. (prevailing Central Time)
Deadline to File Voting Report	September 30, 2022

Combined Hearing on Disclosure Statement and Plan	October 3, 2022 at 2:00 p.m. (prevailing Central Time)
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16. Although the Debtors sought and received conditional approval of the disclosure in the Plan and Disclosure Statement, the Debtors did not request that the U.S. Bankruptcy Court approve the substance of the Plan in the Disclosure Statement Order at this time. Instead, the U.S. Bankruptcy Court has approved, on a conditional basis, the adequacy of the information provided to claimants to allow them to vote on the Plan.
17. As set out in detail in the Affidavit of Michael K. Robinson sworn September 9, 2022, the only class of creditors voting on the Plan are holders of claims under the Debtors' first lien secured credit facility.
18. Under the proposed Plan, Canadian-based creditors will be permitted to vote on the Plan and to receive recoveries on the same basis as U.S.-based creditors; there is no separate process established for Canadian creditors under the Plan.

The 365 Sale Order

19. In accordance with the Bidding Procedures Order, the Debtors determined that the bid submitted by 365 Data Centers, and memorialized in the 365 APA, constitutes the highest and best offer for the asset described in the 365 APA. The purchased assets are the assets associated with the Bravo business (being the colocation & network services business noted above) and certain workplace recovery assets as further described in the 365 APA. The assets are primarily associated with eight data centers located in the United States.
20. Pursuant to the 365 APA and consistent with the Bidding Procedures Order, the Debtors filed a list of contracts to be assumed and assigned on August 26, 2022. In finalizing the list of contracts to be assumed and assets to be transferred, the Debtors discovered that three of the customer contracts to be assigned are contracts with Sungard AS Canada. Although the customer's primary services are provided in the United States, due to the history of the customer relationships, Sungard AS Canada is the contracting party and certain limited services have been provided to these customers in Canada, as well as currently in the U.S. Similarly, the final list of assets to be transferred includes some network assets in Canada such as routers, network switches and cards, given that 365 Data Centers will be providing network services in both Canada and the U.S.

21. Notice to counterparties to the Sungard AS Canada contracts was provided pursuant to the Bidding Procedures Order. The customers received email or overnight notice of the list of contracts to be assumed and assigned to 365 Data Centers and have not objected to the transfer.
22. Pursuant to the 365 APA, 365 Data Centers, the Debtors, and parties that may acquire the CMS or the Eagle businesses (being the CMS and recovery businesses respectively as described above) will enter into transition services agreements (the “**365 Transition Services Agreement**”) on the 365 Closing Date, whereby the foregoing parties will provide certain services for a transition period following the date of closing. The limited Canadian services to be provided to the customers will be addressed in the 365 Transition Services Agreement and, if applicable, a subsequent, longer term managed services agreement.
23. The Sale Transaction to 365 Data Centers is a key component of the Debtors’ ability to emerge from these insolvency proceedings and the proceeds of this transaction will fund a portion of the Plan distributions.

Recognition of the 11:11 Order

24. The Debtors have also accepted an offer for the purchase of the assets associated with the CMS business. The Debtors have determined that sale on the terms set out in the 11:11 APA was the best and highest offer, taking into account, among other things: (i) the assumption of liabilities associated with the contracts to be assigned to 11:11 Systems; and (ii) the need to provide continued services to customers in order to maintain the value of the Debtors’ other business units.
25. The 11:11 APA includes the assumption and assignment of certain contracts. Pursuant to the Bidding Procedures Order and the 11:11 APA, a notice attaching the list of contracts to be assumed and assigned was filed on September 7, 2022 (the “**11:11 Notice**”). The 11:11 Notice also reset the hearing from September 13, 2022 to September 14, 2022.
26. The 11:11 Purchased Assets in Canada (the “**11:11 Canadian Purchased Assets**”) include certain limited contracts with Sungard AS Canada, as well as certain limited network and internet, and information technology systems-related equipment. In addition, the 11:11 APA provides for the transfer of Canadian-registered intellectual property owned by Sungard Availability Services, LP specifically including one Canadian patent.

27. Sufficient notice to Canadian contract counterparties has been provided pursuant to the Bidding Procedures Order. The contract counterparties received email or overnight notice of the list of contracts to be assumed and assigned to 11:11 Systems.
28. The patent to be transferred to 11:11 Systems is owned by Sungard Availability Services, LP, which is a “Guarantor Debtor” under the terms of the Supplemental Order. The Supplemental Order does not restrict the ability of Sungard Availability Services, LP to transfer the patent, the charges granted in the Supplemental Order extend to the property of the Guarantor Debtors, including Sungard Availability Services, LP. Relief is therefore necessary from this court to ensure that the patent can be transferred free and clear.
29. The hearing on the 11:11 Sale Order is scheduled for September 14, 2022. In the event that there are objections or modifications to the proposed relief, I understand that the Foreign Representative or the Information Officer intend to advise this Court accordingly.

Other Grounds

30. The provisions of the CCAA, including Part IV thereof;
31. The provisions of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, including Rules 1.04, 1.05, 2.03, 3.02, 16 and 37 thereof; and
32. Such further and other grounds as the lawyers may advise and this Honourable Court may permit.

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

33. The Robinson Affidavit and the exhibits attached thereto;
34. The Affidavit of William Onyeaju, to be sworn, and the exhibits attached thereto, to be filed;
35. The Fourth Report of the Information Officer, to be filed; and
36. Such further and other evidence as the lawyers may advise and this Honourable Court may permit.

September 9, 2022

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TO: SERVICE LIST

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APPLICATION OF SUNGARD AVAILABILITY SERVICES (CANADA) LTD./SUNGARD, SERVICES DE CONTINUITE DES AFFAIRES (CANADA) LTEE
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Court File No. CV-22-00679628-00CL

**ONTARIO
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PROCEEDING COMMENCED AT TORONTO

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