



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

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

THE HONOURABLE

)

THURSDAY, THE 25TH

JUSTICE KIMMEL

)

DAY OF MAY, 2023

)

B E T W E E N:

PRICEWATERHOUSECOOPERS INC.

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

Applicant

- and -

SKYMARK FINANCE CORPORATION and MERK INVESTMENTS LTD.

Respondents

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

**ORDER
(SISP Approval)**

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

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

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

SERVICE AND DEFINITIONS

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

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

REPORT AND ACTIVITIES OF THE RECEIVER

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

APPROVAL OF THE SISP

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

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

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

REGULATORY COMPLIANCE

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

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

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


GENERAL

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

jurisdiction, to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory, and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, and its agents as may be necessary or desirable to give effect to this Order, to grant representative status to the Receiver in any foreign proceeding, or to assist the Receiver and its agents in carrying out the terms of this Order.

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

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

 Digitally signed
by Jessica Kimmel
Date: 2023.05.25
15:29:25 -04'00'

SCHEDULE A

SCHEDULE “A” SALE AND INVESTMENT SOLICITATION PROCESS

INTRODUCTION

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

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

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

OVERVIEW

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

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

KEY MILESTONES

9. The following table sets out the key milestones under the SISP:¹

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

¹ All references to time are to Toronto time.

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

STAGE 1: PRE-MARKETING

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

STAGE 2: MARKETING

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

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

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

TO THE RECEIVER:

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

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

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

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

STAGE 3: OFFER SUBMISSION AND EVALUATION

Bid Deadline

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

Bid Requirements

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

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

Qualifying Bids

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

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

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

Evaluation of Competing Bids

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

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

Auction Procedures

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

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

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

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

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

COURT APPROVAL OF THE SUCCESSFUL BID

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

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

CONFIDENTIALITY, COMMUNICATION, AND ACCESS TO INFORMATION

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

MODIFICATIONS TO SISP

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

APPLICANT

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

GENERAL

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

APPLICATION UNDER Section 101 of the <i>Courts of Justice Act</i> , R.S.O. 1990 c.C.43, as amended, and Section 243(1) of the <i>Bankruptcy and Insolvency Act</i> , R.S.C. 1985, c. B-3, as amended PRICEWATERHOUSECOOPERS INC. (solely in its capacity as court-appointed receiver and manager of Bridging Finance Inc. and certain related entities and investment funds)		Respondent SKYMARK FINANCE CORPORATION and MERK INVESTMENTS LTD.	
Applicant		Court File No. CV-22-00692309-00CL	
		ONTARIO SUPERIOR COURT OF JUSTICE (COMMERCIAL LIST)	
		Proceeding commenced at Toronto	
		ORDER (SISP Approval)	
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