



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

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

THE HONOURABLE	)	WEDNESDAY, THE 18TH
	)	
JUSTICE STEELE	)	DAY OF DECEMBER, 2024

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-

**2305145 ONTARIO INC. and MERK INVESTMENTS LTD.**

Respondents

**ORDER  
(Interim Distribution, VTBN Assignment, and Ancillary Relief)**

**THIS MOTION**, made by Alvarez & Marsal Canada Inc. ("**A&M**"), in its capacity as the court-appointed receiver and manager (in such capacity, the "**230 Receiver**"), without security, of all of the assets, undertakings, and properties of each of 2305145 Ontario Inc. (formerly Skymark Finance Corporation) ("**230 Ontario**") and Merk Investments Ltd. (together with 230, the "**Companies**"), for an order, among other things:

- (a) authorizing and directing the 230 Receiver to make the Interim Distribution (as defined below) to PricewaterhouseCoopers Inc. ("**PwC**") in its capacity as the

court-appointed receiver and manager (in such capacity the “**Bridging Receiver**”) of Bridging Finance Inc. and certain related entities and investment funds (collectively, “**Bridging**”);

- (b) authorizing and approving an assignment, assumption and consent agreement dated as of December 10, 2024 (“**VTBN Assignment Agreement**”) between, among others, the 230 Receiver for and on behalf of 230 Ontario, as assignor, and the Bridging Receiver for and on behalf of Bridging, as assignee; and

- (c) certain ancillary relief,

was heard by video conference at the courthouse, 330 University Avenue, Toronto, Ontario.

**ON READING** the Motion Record of the 230 Receiver dated December 10, 2024, the fifth report of the 230 Receiver dated December 10, 2024 (the “**Fifth Report**”), and on hearing the submissions of counsel for the 230 Receiver and counsel for the other parties listed on the participant information form, no one appearing for any other person on the service list, although properly served as appears from the Lawyer’s Certificate of Service of Julia Chung dated December 10, 2024, filed:

## **SERVICE AND DEFINITIONS**

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

3. **THIS COURT ORDERS** that any capitalized terms used but not defined herein have the meanings given to them in the Fifth Report.

#### **INTERIM DISTRIBUTION**

4. **THIS COURT ORDERS** that the 230 Receiver (a) is hereby authorized and directed to distribute an amount in cash of up to \$6.9 million to the Bridging Receiver, or as the Bridging Receiver may otherwise direct the 230 Receiver in writing, from the funds described in Section 5.0 of the Fifth Report and (b) may distribute such further amounts to the Bridging Receiver that the 230 Receiver determines to be appropriate, without further order of this Court, provided that the aggregate distributions to the Bridging Receiver do not exceed the aggregate value of 230 Ontario's secured obligations to Bridging and that the 230 Receiver retains such amounts that are required to address any claims that rank in priority to 230 Ontario's secured obligations to Bridging (collectively, the "**Interim Distribution**").

5. **THIS COURT ORDERS** that the Interim Distribution shall be a payment to the Bridging Receiver in respect of 230 Ontario's obligations to Bridging to be applied in reduction of said obligations by the Bridging Receiver in accordance with the provisions of the Loan Agreement and related documents and applicable law.

6. **THIS COURT ORDERS** that the 230 Receiver is hereby authorized and directed to take any further steps that it may deem necessary or desirable to complete the Interim Distribution.

7. **THIS COURT ORDERS** that the Holdback described in Section 5.0 of the Fifth Report is hereby approved and the 230 Receiver shall retain funds in an amount sufficient to satisfy the

Holdback, subject to the 230 Receiver's authority to make further distributions that it determines are appropriate pursuant to paragraph 4(b) of this Order.

8. **THIS COURT ORDERS** that that the Interim Distribution shall not constitute a "distribution" by the 230 Receiver (or any director, officer, employee, agent or other representative of the 230 Receiver), and the 230 Receiver shall not constitute a "legal representative", "representative", or a "responsible representative" of the Companies or "other person" for purposes of Section 159 of the *Income Tax Act* (Canada), Section 117 of the *Taxation Act*, 2007 (Ontario), Section 270 of the *Excise Tax Act* (Canada), Sections 46 and 86 of the *Employment Insurance Act* (Canada), Section 22 of the *Retail Sales Tax Act* (Ontario), Section 107 of the *Corporations Tax Act* (Ontario), or any other similar federal, provincial, state, or territorial tax legislation (collectively, the "**Statutes**"), and the 230 Receiver in causing or assisting the Companies to make the Interim Distribution in accordance with this Order is not "distributing", nor shall it be considered to have "distributed", such funds for the purposes of the Statutes, and the 230 Receiver shall not incur any liability under the Statutes for causing or assisting the Companies in making the Interim Distribution in accordance with this Order or failing to withhold amounts, ordered or permitted hereunder, and A&M and the 230 Receiver shall not have any liability for any of the Companies' tax liabilities regardless of how or when such liabilities may have arisen, and are hereby forever released, remised and discharged from any claims against the 230 Receiver under or pursuant to the Statutes or otherwise at law arising as a result of the Interim Distribution, and any claims of such nature are hereby forever barred.

#### **VTBN ASSIGNMENT AGREEMENT**

9. **THIS COURT ORDERS** that the VTBN Assignment Agreement (and the reduction of the 230 Indebtedness as contemplated therein) is hereby authorized and approved, and the 230

Receiver and the Bridging Receiver are authorized and directed to take all steps necessary to give effect to the terms of the VTBN Assignment Agreement (the “**VTBN Assignment**”).

## **DISTRIBUTION AND ASSIGNMENT FINAL**

10. **THIS COURT ORDERS** that, notwithstanding:

- (a) the pendency or termination of these proceedings;
- (b) any bankruptcy proceedings commenced in respect of the Companies; and
- (c) the provisions of any federal, provincial or other statute,

the Interim Distribution and VTBN Assignment made pursuant to this Order shall each be final and irreversible and shall be binding on any trustee in bankruptcy or receiver that has been or may be appointed in respect of the Companies or their respective property, and shall not be void or voidable by creditors of the Companies, nor shall the Interim Distribution or VTBN Assignment or any part of either of them constitute nor be deemed to be fraudulent preferences, assignments, fraudulent conveyances, transfers at undervalue, or other reviewable transaction under the *Bankruptcy and Insolvency Act* (Canada), or any other applicable federal, provincial, state or territorial legislation, nor shall the Interim Distribution or VTBN Assignment or any part of either of them constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal, provincial, state, or territorial legislation and shall, upon receipt of the Interim Distribution or the property subject to the VTBN Assignment, as applicable, by the recipients pursuant to this Order, be free and clear of any and all security interests (whether contractual, statutory, or otherwise), mortgages, trusts, or deemed trusts (whether contractual, statutory, or otherwise), liens, executions,

levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered, or filed, and whether secured, unsecured, or otherwise.

### **REPORT AND ACTIVITIES OF THE 230 RECEIVER**

11. **THIS COURT ORDERS** that the Fifth Report and the conduct and activities of the 230 Receiver as described therein, be and are hereby approved, provided, however, that only the 230 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.

### **STATEMENT OF RECEIPTS & DISBURSEMENTS**

12. **THIS COURT ORDERS** that the 230 Receiver's statement of receipts and disbursements for the period from March 6, 2023 to November 30, 2024, as set out in Section 10.0 of the Fifth Report be and are hereby approved.

### **APPROVAL OF FEES & DISBURSEMENTS**

13. **THIS COURT ORDERS** that the fees and disbursements of the 230 Receiver for the period from February 1, 2024 to November 30, 2024 in the total amount of \$321,215.09 (inclusive of fees, disbursements, and HST), as set out in the Fifth Report and the Karpel Affidavit attached as Appendix "C" thereto, be and are hereby approved.

14. **THIS COURT ORDERS** that the fees and disbursements of the 230 Receiver's legal counsel, Fasken Martineau DuMoulin LLP, for the period from February 1, 2024 to November 30, 2024 in the total amount of \$303,501.88 (inclusive of fees, disbursements, and HST), as set out in

the Stephenson Affidavit attached as Appendix “D” to the Fifth Report, be and are hereby approved.

## GENERAL

15. **THIS COURT ORDERS** that the 230 Receiver may from time to time apply to this Court for advice and directions with respect to any matters arising from or under this Order.

16. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the 230 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 230 Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the 230 Receiver and its agents in carrying out the terms of this Order.

Jana  
Steele

Digitally signed  
by Jana Steele  
Date: 2024.12.19  
14:41:36 -05'00'

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

-and- **2305145 ONTARIO INC. et al.**

Applicant

Respondents

CV-22-00692309-00CL

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

**Proceeding commenced at**  
**Toronto**

**ORDER**  
**(Interim Distribution, VTBN Assignment, and Ancillary Relief)**

**FASKEN MARTINEAU DuMOULIN LLP**

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

**Dylan Chochla (LSO: 62137I)**  
dchochla@fasken.com  
Tel: 416 868 3425

**Mitch Stephenson (LSO: 73064H)**  
mstephenson@fasken.com  
Tel: 416 868 3502

**Julia Chung (LSO: 90012D)**  
jchung@fasken.com  
Tel: 416 868 3409

Lawyers for the 230 Receiver,  
Alvarez & Marsal Canada Inc.