



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

ONTARIO

SUPERIOR COURT OF JUSTICE

(COMMERCIAL LIST)

THE HONOURABLE MADAM

)

TUESDAY, THE 26<sup>TH</sup> DAY

)

JUSTICE CONWAY

)

OF SEPTEMBER, 2023

BETWEEN:

**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

**APPROVAL AND VESTING ORDER**

**THIS MOTION**, made by Alvarez & Marsal Canada Inc. in its capacity as the Court-appointed receiver and manager (in such capacity, the “**Receiver**”) of the undertaking, property and assets of each of Skymark Finance Corporation (“**Skymark**”) and Merk Investments Ltd. for an order approving the sale transaction (the “**Transaction**”) contemplated by an agreement of

purchase and sale (the “**Purchase Agreement**”) between the Receiver and 5051802 Ontario Inc. (the “**Purchaser**”), dated August 23, 2023, and appended to the Second Report of the Receiver, dated September 15, 2023 (the “**Second Report**”), and vesting in the Purchaser all right, title and interest in and to the assets described in the Purchase Agreement (the “**Purchased Assets**”), was heard this day by judicial videoconference.

**ON READING** the Second Report and on hearing the submissions of counsel for the Receiver, counsel for the Purchaser, and counsel for the other parties listed on the counsel slip, no one appearing for any other person on the service list, although properly served as appears from the affidavit of service of Montana Licari, sworn September 15, 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 herein but not otherwise defined have the meanings given to them in the Purchase Agreement

### **APPROVAL OF THE TRANSACTION**

3. **THIS COURT ORDERS** that the Transaction is hereby approved, and the execution of the Purchase Agreement by the Receiver is hereby authorized and approved, with such minor amendments as the Receiver may deem necessary. The Receiver is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction and for the conveyance of the Purchased Assets to the Purchaser.
4. **THIS COURT ORDERS** that this Order shall constitute the only authorization required by the Receiver to proceed with the Transaction and that no shareholder or other approvals shall be required in connection therewith.

## VESTING OF THE PURCHASED ASSETS

5. **THIS COURT ORDERS** that upon the delivery of a Receiver's certificate to the Purchaser substantially in the form attached as **Schedule "A"** (the "**Receiver's Certificate**"), all right, title and interest in and to the Purchased Assets described in the Purchase Agreement shall vest absolutely in the Purchaser, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, 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 (collectively, the "**Claims**") including, without limiting the generality of the foregoing: (a) any encumbrances or charges created by the Order of this Court, dated March 6, 2023, made in this proceeding; (b) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal property registry system (all of which are collectively referred to as the "**Encumbrances**", which term shall not include the permitted encumbrances, listed on **Schedule "B"**, attached) and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Purchased Assets are hereby expunged and discharged as against the Purchased Assets.

6. **THIS COURT ORDERS** that for the purposes of determining the nature and priority of Claims, the net proceeds from the sale of the Purchased Assets shall stand in the place and stead of the Purchased Assets, and that from and after the delivery of the Receiver's Certificate all Claims and Encumbrances shall attach to the net proceeds from the sale of the Purchased Assets with the same priority as they had with respect to the Purchased Assets immediately prior to the sale, as if the Purchased Assets had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale.

7. **THIS COURT ORDERS AND DIRECTS** the Receiver to file with the Court a copy of the Receiver's Certificate, forthwith after the delivery thereof to the Purchaser.

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

- (a) the pendency of these proceedings;

- (b) any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) in respect of Skymark and any bankruptcy order issued pursuant to any such applications; and
- (c) any assignment in bankruptcy made in respect of Skymark;

the vesting of the Purchased Assets in the Purchaser pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of Skymark and shall not be void or voidable by creditors of Skymark, nor shall it constitute nor be deemed to be a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the *Bankruptcy and Insolvency Act* (Canada) or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

#### **CORPORATE NAME CHANGE**

9. **THIS COURT ORDERS** that, notwithstanding the provisions of subsection 171(3) of the *Business Corporations Act* (Ontario) (the “**OBCA**”), the Receiver be and is hereby authorized and directed, upon filing of the Receiver’s Certificate, to complete, execute and file articles of amendment for and on behalf of each of Skymark and any officer or director of Skymark (such articles of amendment to be deemed to have been signed by a director or an officer of Skymark and executed in accordance with the OBCA when so signed by the Receiver as directed by this Court) for the sole purpose of changing the corporate name of Skymark to 2305145 Ontario Inc. (and such amendment shall be deemed to have been duly authorized by Section 168 of the OBCA without any shareholder or director resolution approving such amendments being required), and this Court hereby directs the Director (as defined in the OBCA) to endorse thereon certificates of amendment upon receipt from the Receiver of two duplicate originals of such articles of amendment together with the prescribed fees and any other required documents under the OBCA (which the Receiver be and is hereby authorized and directed to complete, execute and file for and on behalf of Skymark and any officer and director

of Skymark, if and as required) except for any such documents in respect of which the completion, execution or filing thereof has been dispensed with or otherwise dealt with pursuant to the deeming provisions contained herein.

10. **THIS COURT ORDERS** that upon (a) the official change of the legal name of Skymark as described in paragraph 9 hereof and (b) the Receiver's delivering written notice of such change to the service list and the Court Registrar, the name "Skymark Finance Corporation" in the title of these Proceedings shall be deleted and replaced with "2305145 Ontario Inc.", such that the title of these Proceedings, as hereby amended, shall read as set forth in the attached **Schedule "C"**.

#### **SEALING ORDER**

11. **THIS COURT ORDERS** that Confidential Appendices "C" and "E" to the Second Report, being (a) a summary of the offers received during and in connection with the SISP, and (b) an unredacted copy of the Purchase Agreement, respectively, are hereby sealed and shall not form part of the public record, subject to further order of this Court.

#### **AID & RECOGNITION**

12. **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 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, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

  
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**Schedule “A” – Form of Receiver’s Certificate**

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

**ONTARIO**

**SUPERIOR COURT OF JUSTICE**

**(COMMERCIAL LIST)**

BETWEEN:

**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

**RECEIVER’S CERTIFICATE**

**RECITALS**

A. Pursuant to an Order of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) dated March 6, 2023, Alvarez & Marsal Canada Inc. was appointed the receiver and manager (in such capacity, the “**Receiver**”) of the undertaking, property and assets of each of Skymark Finance Corporation (“**Skymark**”) and Merk Investments Ltd.

B. Pursuant to an Order of the Court dated September 26, 2023, the Court approved the agreement of purchase and sale made as of August 23, 2023 (the “**Purchase Agreement**”) between the Receiver and 5051802 Ontario Inc. (the “**Purchaser**”) and provided for the vesting in the Purchaser of all right, title and interest in and to the Purchased Assets, which vesting is to be effective with respect to the Purchased Assets upon the delivery by the Receiver to the Purchaser of a certificate confirming (a) the payment by the Purchaser of the Purchase Price for the Purchased Assets in accordance with the Purchase Agreement; (b) that the conditions to Closing as set out in Article 5 of the Purchase Agreement have been satisfied or waived by the Receiver and/or the Purchaser, as applicable; and (c) the Transaction has been completed to the satisfaction of the Receiver.

C. Unless otherwise indicated herein, capitalized terms have the meanings given to them in the Purchase Agreement.

**THE RECEIVER CERTIFIES** the following:

1. The Purchaser has paid and the Receiver has received the Purchase Price for the Purchased Assets payable on the Closing Date in accordance with the Purchase Agreement;
2. The conditions to Closing as set out in Article 5 of the Purchase Agreement have been satisfied or waived by the Receiver and/or the Purchaser, as applicable; and
3. The Transaction has been completed to the satisfaction of the Receiver.
4. This Certificate was delivered by the Receiver at \_\_\_\_\_ [TIME] on September \_\_\_\_\_, 2023.

**ALVAREZ & MARSAL CANADA INC., in its capacity as receiver and manager of the undertaking, property and assets of Skymark Finance Corporation and Merk Investments Ltd., and not in any other capacity**

Per: \_\_\_\_\_

Name: Greg Karpel

Title: Senior Vice President

**Schedule “B” – Permitted Encumbrances  
(unaffected by the Approval and Vesting Order)**

1. The Vendor Take-Back Security as defined in the Purchase Agreement



**Schedule “C” – Amended Title of These Proceedings**

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(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

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  
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