

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 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

APPLICANTS

MOTION RECORD OF THE APPLICANTS

(Plan Sanction Hearing)

May 26, 2016

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CCAA Proceedings of Target Canada Co.et al, Court File No. CV-15-10832-00CL

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ADDITIONAL SERVICE PARTY FOR PLAN SANCTION HEARING

<u>PARTY</u>	<u>CONTACT</u>
Ministry of Finance (Ontario) Office of Legal Services 33 King Street West, 6th Floor Oshawa, ON L1H 8H5	Kevin J. O'Hara Tel: 905.433.6934 Email: <u>kevin.ohara@fin.gov.on.ca</u>

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TAB 1

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

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 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**

APPLICANTS

NOTICE OF MOTION

The Applicants will make a motion before a judge of the Ontario Superior Court of Justice (Commercial List) on June 2, 2016 at 9:30 a.m., or as soon after that time as the motion can be heard, at 330 University Avenue, Toronto, Ontario.

PROPOSED METHOD OF HEARING: The motion is to be heard orally

THE MOTION IS FOR:

1. An Order substantially in the form attached at Tab 3 of the Motion Record, *inter alia*:
 - (a) if necessary, abridging the time for service of this Notice of Motion and the Motion Record and dispensing with service on any person other than those served;
 - (b) declaring that the Creditors' Meeting¹ held on May 25, 2016 was duly convened and held, all in accordance with the Meeting Order;

¹ All capitalized terms that are not otherwise defined herein have the meaning given to them in the Second Amended and Restated Joint Plan of Compromise and Arrangement dated May 19, 2016 (the "**Amended Plan**").

- (c) sanctioning and approving the Amended Plan;
- (d) authorizing and directing the Target Canada Entities and the Monitor to take all steps and actions necessary or appropriate to implement the Amended Plan;
- (e) vesting all of the Target Canada Entities' rights, title and interest in and to the IP Assets in Target Corporation (or its designee);
- (f) extending the Stay Period (as defined in paragraph 17 of the Initial Order) until and including September 23, 2016; and
- (g) extending the Notice of Objection Bar Date (defined at paragraph 3(aa) of the Claims Procedure Order) to the Plan Implementation Date and ordering that the Notice of Objection Bar Date will expire on the Plan Implementation Date; and

2. Such further and other Relief as this Honourable Court may deem just.

THE GROUNDS FOR THE MOTION ARE:

- (a) The Target Canada Entities were granted protection from their creditors under the CCAA pursuant to the Initial Order of the Ontario Superior Court of Justice (Commercial List) dated January 15, 2015 (as amended and restated, the "**Initial Order**");
- (b) Alvarez & Marsal Canada Inc. was appointed in the Initial Order to act as the Monitor in these CCAA proceedings;
- (c) On April 13, 2016, the Court granted the Meeting Order, *inter alia*: (i) accepting the Amended Plan (in its then-current form) for filing; (ii) authorizing the Applicants to convene the Creditors' Meeting; and (iii) establishing the procedures for the conduct of the Creditors' Meeting;
- (d) The Target Canada Entities, with the consent of the Monitor and the Plan Sponsor, made minor plan modifications of a technical and administrative nature on May 19, 2016 (and, on the same day, the Target Canada Entities notified the Service List and the Monitor posted a copy of these plan modifications on its website);

- (e) The Creditors' Meeting was held in Toronto, Ontario on May 25, 2016 in accordance with the procedures in the Meeting Order;
- (f) The Target Canada Entities have achieved the required statutory "double majority" needed to approve the Amended Plan. The Affected Creditors holding Proven Claims that were present in person or by proxy and voting (or were deemed to vote) at the Creditors' Meeting voted unanimously to approve the Resolution in favour of the Amended Plan;
- (g) Sanction of the Amended Plan is a crucial and necessary step toward the resolution of these CCAA proceedings;
- (h) If the Amended Plan is sanctioned and the other conditions precedent to closing are satisfied or waived, the Amended Plan will:
 - (i) complete the controlled and orderly wind down of the Target Canada Entities in a timely manner without costly litigation and delay;
 - (ii) effect a compromise, settlement and payment of all Proven Claims in the near term;
 - (iii) grant releases in favour of the Target Canada Entities and others, including Target Corporation (other than in respect of the Landlord Guarantee Claims); and
 - (iv) comply with paragraph 19A of the Initial Order, the Claims Procedure Order and the Court's January 15 Endorsement.
- (i) It is just and convenient and in the interests of the Target Canada Entities and their stakeholders that the Sanction Order be granted;
- (j) There has been strict compliance with all statutory requirements;
- (k) Nothing has been done or purported to be done that is not authorized by the CCAA;
- (l) The Amended Plan is fair and reasonable;
- (m) The Monitor views the Amended Plan as fair and reasonable and supports this motion;

Extension of Stay Period and Notice of Objection Bar Date

- (n) The Initial Order granted a stay of proceedings until February 13, 2015;
- (o) The Court subsequently extended the Stay Period eight times – most recently, on April 13, 2016, the Court extended the Stay Period to June 6, 2016;
- (p) The Target Canada Entities have been acting and continue to act in good faith and with due diligence in these CCAA proceedings;
- (q) It is just and convenient and in the interests of the Target Canada Entities and their respective stakeholders that the requested Order be granted and the Stay Period extended;
- (r) It is also proposed that the Court extend the Notice of Objection Bar Date to the Plan Implementation Date – and that the Notice of Objection Bar Date expire on the Plan Implementation Date – so that parties do not need to incur unnecessary expenses if the Amended Plan is sanctioned by the Court and implemented;
- (s) The proposed extension of the Stay Period is supported by the Monitor;
- (t) The provisions of the CCAA and the inherent and equitable jurisdiction of this Honourable Court;
- (u) Rule 1.04, 1.05, 2.03, 3.02, 16 and 37 of the Ontario *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, as amended, and section 106 of the Ontario *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended; and
- (v) Such further and other grounds as counsel may advise.

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

- (a) The Affidavit of Mark J. Wong sworn May 26, 2016 and the exhibits attached thereto;

- (b) The Monitor's Twenty-Seventh Report (dated May 11, 2016), Supplement to the Monitor's Twenty-Seventh Report (dated May 24, 2016) and Twenty-Eighth Report (to be filed);
- (c) The Initial Order and the Meeting Order; and
- (d) Such further and other evidence as counsel may advise and this Honourable Court may permit.

May 26, 2016

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Lawyers for the Applicants

TO: **SERVICE LIST**

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., *et al.*

Applicants

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

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

PROCEEDING COMMENCED AT
TORONTO

NOTICE OF MOTION

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Lawyers for the Applicants

Matter No. 1159785

TAB 2

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

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 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**

APPLICANTS

AFFIDAVIT OF MARK J. WONG
(Sworn May 26, 2016)

(Sanction Hearing)

I, Mark J. Wong, of the City of Mississauga, in the Province of Ontario, General Counsel and Secretary for the Applicant Target Canada Co. ("**TCC**"), MAKE OATH AND SAY:

1. I am General Counsel and Secretary of TCC. I am a director and/or officer of each of the other Applicants. As such, I have personal knowledge of the matters deposed to herein. Where I have relied on other sources for information, I have specifically referred to such sources and verily believe them to be true. In preparing this Affidavit, I consulted with legal advisors to TCC and representatives of Alvarez & Marsal Canada Inc. (the "**Monitor**").

2. I swear this Affidavit in support of the Target Canada Entities' motion seeking an Order sanctioning the Second Amended and Restated Joint Plan of Compromise and Arrangement dated May 19, 2016 (the "**Amended Plan**") and authorizing the Target Canada Entities and the Monitor to implement it. A copy of the Amended Plan is attached as Exhibit "A".¹

3. The Target Canada Entities, with the assistance of the Monitor and many others, have negotiated a global, consensual resolution to these CCAA proceedings that will complete the orderly wind down and maximize distributions to its creditors. The Target Canada Entities believe that the Amended Plan accomplishes these objectives, is fair and reasonable, and is the best available resolution in the circumstances. The Monitor, the Landlords and the Consultative Committee of creditors support the Amended Plan.

4. The Creditors' Meeting was held on May 25, 2016. The Target Canada Entities have achieved the required statutory "double majority" needed to approve the Amended Plan. According to the Monitor's tabulation, the Affected Creditors holding Proven Claims that were present in person or by proxy and voting (or were deemed to vote) at the Creditors' Meeting **voted unanimously to approve the Resolution** in favour of the Amended Plan.

5. Based on updated information from the Monitor as at May 6, 2016, and subject to the important caveats and limitations below,² the expected recovery for Affected Creditors has increased to approximately **71% to 80%** of Affected Claims that are Proven Claims. This is an

¹ Capitalized terms that are not otherwise defined in this Affidavit have the meaning given to them in the Amended Plan.

² These expected recoveries are subject to those important assumptions and qualifications set out in certain of the Monitor's reports, including the Monitor's Twenty-Third, Twenty-Sixth and Twenty-Seventh Reports and in the Meeting Order Affidavit (defined below).

increase of approximately **2% to 3%** since the Meeting Order was granted, primarily due to the resolution of several large Claims.

6. If the Amended Plan is sanctioned and the closing conditions are satisfied, the implementation of the Amended Plan will complete the orderly wind down of the Target Canada Entities and resolve these CCAA proceedings.

Background

7. The background to, and mechanics of, the Amended Plan, are described in my Affidavit sworn April 6, 2016 (the “**Meeting Order Affidavit**”). A copy of the Meeting Order Affidavit, without exhibits, is attached as Exhibit “B”.

8. When I swore the Meeting Order Affidavit, several large Claims had not been finalized for distribution purposes. The Monitor, in consultation with the Target Canada Entities, has continued to work diligently to resolve those Claims – and has successfully resolved the majority of the large Claims filed in the Claims Process. The two largest categories of Claims that remain unresolved are:

- (a) The CRA Claims: The Canada Revenue Agency (the “**CRA**”) filed Claims for unliquidated or unknown amounts. Representatives of the Target Canada Entities and the Monitor have had frequent discussions with the CRA and the Department of Justice with respect to these Claims, in an effort to reach a resolution on a final amount for each Claim. The Monitor has filed the Supplemental Report to the Twenty-Seventh Report of the Monitor, which outlines the current results of this effort. The Monitor concludes that based on guidance provided by the CRA

(based on current information), the CRA Claims will not have a materially negative impact on the recoveries under the Amended Plan. This guidance includes May 20, 2016, letters sent by the CRA to the Target Canada Entities summarizing and proposing certain adjustments to corporate income tax returns as filed by the Target Canada Entities, together with additional proposed assessments of tax, for all periods other than the 2015 and 2016 taxation years of the applicable Target Canada Entities.

The Target Canada Entities have also received guidance from the CRA regarding the tax position of a Target Canada Entity for the 2015 taxation year, based on submissions made to the CRA, and also the provision of a draft tax return. Finally, the CRA has indicated that it will release TCC from certain derivative liabilities it may have had for tax liabilities of affiliates of TCC that are not Target Canada Entities, when such taxes are paid or when acceptable security is provided for such amounts on behalf of such affiliates. Target Corporation has indicated that it will pay, cause to be paid, post security or cause security to be posted in respect of these derivative liabilities. The discussions between representatives of the Target Canada Entities and the Monitor and the CRA and the Department of Justice with respect to the CRA Claims, to both resolve any Claims for the 2015 and 2016 taxation years, and further resolve (i.e., reduce) the May 20, 2016 letter Claims for prior periods, are ongoing.

- (b) The Pharmacist Franchisees' Claims: On May 3, 2016, the Claims Officer issued an order that, *inter alia*, resolved the list of the common issues applicable to the

determination of the pharmacist franchisees' Claims, and set a two-stage process for resolving common issues between the parties. The schedule will see the parties argue the agreed threshold issues as the first stage before the Claims Officer during the week of June 6, 2016.

9. The Monitor, in consultation with the Target Canada Entities, is continuing to work to resolve all other unresolved Claims.

The Amended Plan

10. The mechanics and effect of the Amended Plan are described in detail in the Meeting Order Affidavit and will not be repeated herein, except in summary. In accordance with the Amended Plan:

- (a) The Target Canada Entities will use all of their cash – together with cash contributed by Target Corporation – to establish the applicable cash pools and cash reserves.
- (b) The majority of the Intercompany Claims, including Propco's Intercompany Claim against TCC, will be subordinated.³
- (c) Distributions will be made to Affected Creditors in respect of Proven Claims, as described below.

³ In addition, in accordance with the Amended Plan, Target Corporation will re-contribute to TCC some of the funds that Target Corporation would otherwise have been paid from Intercompany Claims against Propco.

- (d) The Target Canada Entities and others, including Target Corporation, will be granted releases, as described below.
- (e) All CCAA Charges⁴ will be discharged, except for the Directors' Charge and Administration Charge.
- (f) The Target Canada Entities will transfer the remaining IP Assets to Target Corporation's designee and the Pharmacy Shares to the Pharmacy Purchaser.
- (g) The Employee Trust will be terminated and any surplus funds returned to Target Corporation.

11. If this Court sanctions the Amended Plan, the Plan Implementation Date will be the date on which all conditions precedent are satisfied or, if permitted, waived.⁵ The Target Canada Entities are currently targeting June 28, 2016 as the Plan Implementation Date and July 6, 2016 as the Initial Distribution Date.

12. On May 19, 2016, the Target Canada Entities, with the consent of the Monitor and the Plan Sponsor, made several minor Plan Modifications that are of a technical and administrative nature. The Consultative Committee was consulted with respect to the Plan Modifications. On May 19, 2016, the Target Canada Entities notified the Service List of these

⁴ These include the Financial Advisor Subordinated Charge, the KERP Charge, the DIP Lender's Charge and the Liquidation Agent's Charge and Security Interest. The Directors' Charge and Administration Charge will continue to attach against the Propco Cash Pool, the TCC Cash Pool, and the Cash Reserves.

⁵ The Amended Plan, the Landlord Guarantee Creditor Settlement Agreement, and the Landlord Non-Guarantee Creditor Consent and Support Agreements each require that the Plan Implementation Date occur within seven days from the date on which the Sanction and Vesting Order becomes a Final Order.

Plan Modifications and the Monitor posted a copy of the Plan Modifications on its website. The Plan Modifications are:

- (a) **Section 1.1:** The Initial Distribution Date will occur within *five* (rather than *two*) Business Days after the Plan Implementation Date. After discussions with TCC's banks, the Monitor and others, it became clear that this brief extension is needed to ensure orderly and accurate initial distributions.
- (b) **Article 5:** To provide for flexibility in making distributions, TCC will have the option to make distributions by wire transfer.
- (c) **Section 6.3(r):** The Target Canada Entities are now seeking to use a stand-alone Approval and Vesting Order to vest all, right, title and interest in the Pharmacy Shares in the Pharmacy Purchaser (rather than including such vesting in the Sanction and Vesting Order for the Amended Plan). The draft Order will be included in a separate motion record.
- (d) **Section 7.1(b):** The Amended Plan has been clarified to provide for a release of affiliates of the Monitor.
- (e) **Section 8.2(x):** The Administration Charge and the Directors' Charge – which will continue during the pendency of the Plan in accordance with Section 6.3(g) – will be released upon delivery of the Monitor's Plan Completion Certificate.
- (f) **Schedule B:** The schedule of domain names was updated to add one omitted domain name and to delete three domain names due to lapsed registrations.

13. A blackline comparison showing the changes is attached as Exhibit “C” to this Affidavit. As these are discrete changes, we have only attached the sections of the Amended Plan that have changed.

Distributions under the Amended Plan

(a) *Initial Distributions*

14. On the Initial Distribution Date, TCC will make the following distributions to creditors from the applicable cash pools in accordance with the Amended Plan:⁶

Creditor Type	Distribution
Propco Unaffected Creditors (other than Intercompany Claimants)	Proven Claims against Propco
Property LP Unaffected Creditors	Proven Claims against Property LP
Intercompany Claims against Propco	Pro Rata Shares of Propco’s residual Cash in partial satisfaction of these Intercompany Claims
TCC Unaffected Creditors	Proven Secured Claims and Cash Management Claims
Convenience Class Creditors	Convenience Class Claims
Landlord Guarantee Creditors	Landlord Guarantee Creditor Base Claim Amounts ⁷ and Landlord Guarantee Enhancement Amounts ⁸
Non-Landlord Guarantee Creditors	Landlord Non-Guarantee Creditor Equalization Amounts (in addition to the distributions for Proven Claims)
Affected Creditors with Proven Claims (other than Convenience Class Creditors and Landlord Guarantee Creditors)	Pro Rata Shares of the Cash in the TCC Cash Pool Account (after distributing TCC Unaffected Creditor Claims and Convenience Class Claims)

(b) *Subsequent Distributions*

15. A small number of Claims will likely not be finally determined for distribution purposes on the Initial Distribution Date. The Amended Plan therefore requires that TCC

⁶ The distribution mechanics are described in the Meeting Order Affidavit at paragraphs 57 to 67.

⁷ As agreed between each Landlord Guarantee Creditor, TCC and the Monitor.

⁸ As agreed between Target Corporation and each Landlord Guarantee Creditor.

maintain disputed claims reserves – one for disputed Claims of Propco Unaffected Creditors and Property LP Unaffected Creditors, and another for Disputed Claims of all other Affected Creditors – for eventual distribution in accordance with the Amended Plan. The Amended Plan provides that no distributions will be made with respect to all or any portion of a Disputed Claim unless and only to the extent that such Disputed Claim has become a Proven Claim.

16. If a disputed Claim becomes a Proven Claim in whole or in part, then TCC will make distributions to the applicable Creditors in accordance with the Plan.⁹ These subsequent distributions will occur on dates determined by the Monitor.

(c) ***Withholding Taxes***

17. TCC will deduct, withhold and remit from any distribution such amounts as are required by applicable law, including the *Income Tax Act* (Canada), for payment to the applicable Taxing Authority (*e.g.*, the CRA). In some circumstances, as required by applicable law, payments made to non-residents of Canada pursuant to the Amended Plan will be paid net of applicable withholding taxes.

Releases under the Amended Plan

18. Article 7.1 of the Amended Plan provides that various parties will receive releases, as summarized below, except in respect of their obligations under the Amended Plan and certain related agreements. The Sanction and Vesting Order that the Target Canada Entities are seeking would enjoin the prosecution of, *inter alia*, any claim released, discharged, compromised or terminated pursuant to the Amended Plan.

⁹ These distributions are described in the Meeting Order Affidavit at paragraphs 59, 63 & 64.

19. The Released Parties have been essential, and have contributed in tangible and material ways, to the orderly wind down of the Target Canada Entities' businesses. Moreover, without the releases in the Amended Plan, it is unlikely that certain of the Released Parties would have been prepared to support the Amended Plan. The releases are a significant part of the various compromises that were required to achieve the Amended Plan, in recognition of the contributions that such Released Parties have made, and are a necessary element of the global, consensual resolution to these CCAA proceedings.

(a) ***The Target Canada Entities, the Monitor and Others***

20. Sections 7.1(a) and (b) of the Amended Plan provide that on the Plan Implementation Date, the following parties will be released and discharged from, *inter alia*, any claims that any Person may be entitled to assert that are in any way relating to the Claims, the Business, the Amended Plan, the CCAA Proceedings, or any Claim that has been barred or extinguished by the Claims Procedure Order:

- (a) the Target Canada Entities, NE1, the Monitor, A&M, and their respective directors, officers, current and former employees, advisors, legal counsel and agents (including the Liquidation Agent, Lazard and Northwest), and
- (b) Pharmacists' Representative Counsel, the Consultative Committee Members, and counsel to the Directors.

21. Section 7.1(d) provides that upon the delivery of the Employee Trust Termination Certificate, the following parties will receive substantially the same release that is described in the previous paragraph:

(a) the Employee Trust Administrator and its current and former directors, officers and employees, the Employee Trust Trustee, Employee Representative Counsel, the Employee Representatives and all of their respective advisors, legal counsel and agents.

(b) ***Target Corporation, the HBC Entities and Others***

22. Section 7.1(c) provides that on the Plan Implementation Date, the Plan Sponsor, the Plan Sponsor Subsidiaries, the HBC Entities and their current and former directors, officers and employees and their respective advisors, legal counsel and agents will be released and discharged from, *inter alia*, any claims or proceedings which any Person (excluding a Landlord Guarantee Creditor in respect of its Landlord Guarantee Claim) may be entitled to assert that are in any way relating to the Claims, the Business, the Amended Plan, the CCAA Proceedings, or any Claim that has been barred or extinguished by the Claims Procedure Order. None of these “Plan Sponsor Released Parties” will be released by the Amended Plan from Landlord Guarantee Claims.¹⁰ Nor will Target Corporation be released under the Amended Plan from any indemnity or guarantee in favour of any Director, Officer or employee.

23. The Target Canada Entities believe that this release of the Plan Sponsor and others is necessary and justified by the many significant contributions that Target Corporation has made in these CCAA proceedings and will make if the Amended Plan is sanctioned and implemented. These will collectively include, *inter alia*:

¹⁰ Instead, as described in the Meeting Order Affidavit, the Landlord Guarantee Creditors have agreed to contractually release Target Corporation and others from the Landlord Guarantee Claims outside of the Amended Plan pursuant to the Landlord Guarantee Creditor Settlement Agreement.

- (a) subordinating (or permitting the subordination of), *inter alia*, the following Intercompany Claims against TCC:¹¹
- (i) the NE1 Intercompany Claim which was filed against TCC in an amount of **\$3,068,729,438** (and not adjusted by the Monitor in the Intercompany Claims Report);
 - (ii) the Propco Intercompany Claim which was filed against TCC in an amount of **\$1,911,494,242** (and proposed to be adjusted downwards by the Monitor in the Intercompany Claims Report to an amount of **\$1,356,756,051**);
 - (iii) the Propco (Pre-filing TCC) Intercompany Claim which was filed against TCC in a net¹² amount of **\$27,254,109** (and proposed to be adjusted upwards by the Monitor in the Intercompany Claims Report to a net amount of **\$34,232,528**); and
 - (iv) the Propco (Post-filing TCC) Intercompany Claim which was filed against TCC in a net¹³ amount of **\$37,347,552** (and proposed to be adjusted downwards by the Monitor in the Intercompany Claims Report to a net amount of **\$36,559,823**);

¹¹ Based on information from the Monitor as at April 1, 2016, it is estimated that the subordination of the Subordinated Intercompany Claims (not including the NE1 Intercompany Claim) will have a direct economic benefit of approximately **\$375 million** to the Affected Creditors. The Affected Creditors include related parties in respect of Intercompany Claims in the amount of approximately \$131 million, which are not being subordinated. The Monitor's estimate uses the approximate mid-point of recovery ranges as at April 1, 2016 and is subject to the important assumptions and qualifications set out in certain of the prior Monitor's reports, including the Monitor's Twenty-Third Report.

¹² I.e., after netting the TCC (Pre-filing Propco) Intercompany Claim.

- (b) partially subordinating (or permitting the subordination of) various other Intercompany Claims in accordance with the Amended Plan;
- (c) a cash contribution of approximately **\$25.451 million** towards the aggregate Landlord Guarantee Enhancement Amount and foregone recovery on any subrogated claim in respect of such amount;
- (d) a net cash contribution of approximately **\$4.1 million** to fund the Landlord Non-Guarantee Creditor Equalization Amount;
- (e) a cash contribution of **\$700,000** towards costs of certain Landlord Guarantee Creditors;
- (f) funding the Employee Trust in the amount of **\$95 million**;
- (g) making available DIP financing to TCC to allow TCC to meet payroll and other obligations; and
- (h) providing ongoing shared services to facilitate the orderly wind down for which Target Corporation will not be fully compensated.

24. The Target Canada Entities believe that Target Corporation's involvement as Plan Sponsor, and the resulting release, is essential to achieving a successful Plan because Target Corporation's contributions will significantly enhance recoveries of the Affected Creditors, will prevent litigation, and will enable timely distributions.

¹³ I.e., after netting the TCC (Post-filing Propco) Intercompany Claim.

Conditions Precedent

25. The implementation of the Amended Plan is conditional upon the fulfilment or waiver, where applicable, of various conditions precedent. The Target Canada Entities' current expectation is that all conditions precedent will have been satisfied or waived by the anticipated Plan Implementation Date of June 28, 2016. The conditions precedent include, *inter alia*:

- (a) the Landlord Guarantee Creditor Settlement Agreement and each of the Landlord Non-Guarantee Creditor Consent and Support Agreements shall be in full force and effect;
- (b) the Meeting Order shall have been granted by the Court and shall have become a Final Order;
- (c) the Creditors' Meeting to consider and vote on the Plan shall have been convened;
- (d) the Target Canada Entities shall have satisfied their respective Post-Filing Trade Payables in the ordinary course or provision shall have been made in respect thereof in the Administrative Reserve to the satisfaction of the Monitor;
- (e) all material consents or approvals of or by any Governmental Authority as may be considered necessary by the Target Canada Entities, the Plan Sponsor and the Monitor in respect of the Plan Transaction Steps shall have been obtained;
- (f) the Plan shall have been approved by the Required Majority of the Affected Creditors forming the Unsecured Creditors' Class at the Creditors' Meeting;
- (g) the Sanction and Vesting Order shall have been granted by the Court by **June 6, 2016**, or such later date as shall be acceptable to TCC, in consultation with the

Monitor, in form satisfactory to the Target Canada Entities, the Plan Sponsor and the Monitor, and shall have become a Final Order; and

- (h) the Plan Implementation Date shall have occurred by the date that is seven days from the date on which the Sanction and Vesting Order becomes a Final Order, which in no event shall be later than **July 29, 2016**.

Mailing of the Meeting Notice and Meeting Materials

26. To the knowledge of the Target Canada Entities, the Target Canada Entities and the Monitor have complied with all of the requirements in the Meeting Order to disseminate materials concerning the Amended Plan and the Creditors' Meeting to the Affected Creditors and all other interested persons.

27. I am advised by the Monitor that it caused copies of the Meeting Materials to be sent to each Affected Creditor and posted on the Monitor's website,¹⁴ and published notice of the Creditors' Meeting in *The Globe and Mail* (National Edition), *La Presse* and *The Wall Street Journal*.¹⁵

28. The Meeting Materials included Target Canada's letter to creditors – a copy of which is attached as Exhibit "D" – which provided an overview of the Amended Plan.

¹⁴ The Meeting Materials were posted to the Monitor's website and served on the Service List on April 15, 2016 and, with the assistance of TCC's noticing agent, sent to each Affected Creditor on April 19, 2016. The Meeting Materials include the Notice of Creditors' Meeting, the Proxy, the Convenience Class Claim Election, the Resolution, the Plan, Target Canada's Letter to Creditors and a copy of the Meeting Order.

¹⁵ They were published in *The Globe and Mail* and *The Wall Street Journal* on April 20 and 26, 2016, and in *La Presse* on April 23 and 30, 2016.

29. I am advised by the Monitor that it also facilitated the delivery of a letter from the Consultative Committee – a copy of which is attached as Exhibit “E” – to Affected Creditors and posted the letter on the Monitor’s website. The letter states that the Consultative Committee supports the Amended Plan and recommends that creditors vote in favour of it.

The Creditors’ Meeting

30. The Creditors’ Meeting was held on May 25, 2016 at the Toronto Board of Trade in Toronto, Ontario. In accordance with the Meeting Order, Mr. Doug McIntosh of the Monitor acted as the Chair. Other representatives of the Monitor acted as scrutineers.

31. Each Affected Creditor was permitted to attend the Creditors’ Meeting in person or appoint another person to attend as proxyholder. I am advised by the Monitor that the quorum requirement was satisfied.¹⁶ The Chair declared that the meeting was properly constituted.

32. I am advised by the Monitor that the Required Majority¹⁷ voted in favour of the Resolution and therefore approved the Amended Plan. According to the Monitor’s tabulation, 1246 Affected Creditors representing approximately \$554 million in value voted (or were deemed to vote pursuant to the Meeting Order) at the Creditors’ Meeting. I am advised by the Monitor that, before this motion is heard, the Monitor will deliver a report describing the conduct and the outcome of the Creditors’ Meeting.

¹⁶ The Meeting Order provided that the quorum was one Affected Creditor with a Voting Claim present in person or by Proxy.

¹⁷ The Meeting Order required the Resolution be approved by that number of Affected Creditors representing at least a majority in number of Voting Claims, whose Affected Claims represent at least two-thirds in value of the Voting Claims of Affected Creditors who validly vote (in person or by Proxy) on the Resolution at the Creditors’ Meeting or were deemed to vote on the Resolution as provided for in the Meeting Order.

Vesting of IP Assets

33. The Amended Plan provides that the IP Assets will be transferred and assigned on the Plan Implementation Date, and will be vested in Target Corporation's designees¹⁸ (3293849 Nova Scotia Company or Target Brands Inc., as applicable) free and clear of any Encumbrances. The IP Assets consist entirely of the domain names listed at Schedule "B" of the Amended Plan.¹⁹ I am advised by Andrea Lockhart of Osler, Hoskin & Harcourt LLP that updated PPSA searches were run on May 16, 2016 and, to the best of their knowledge, there are no liens, charges or encumbrances against the IP Assets other than: (i) the Court-ordered charges; and (ii) a registration that was made by the Ministry of Finance (Ontario) against all assets of TCC after the commencement of these CCAA proceedings. Accordingly, beyond the Service List, the only entity that will be served with notice of this motion is the Ministry of Finance (Ontario).

Plan Sanction

34. The Amended Plan is the result of the Target Canada Entities' extensive negotiation and/or consultation with many stakeholders over many months. The Target Canada Entities sought to achieve a fair and reasonable balance between all Affected Creditors. Each of the Monitor, the Landlords and the Consultative Committee of creditors provided input on the drafting and development of the Amended Plan – and each supports the Amended Plan. As set out in the Monitor's Twenty-Seventh Report, the Monitor views the Amended Plan as fair and reasonable.

¹⁸ As stated in the Amended Plan, this is in partial consideration for the Plan Sponsor contributing to the Landlord Guarantee Enhancement Cash Pool and the Plan Sponsor's subordination of the Subordinated Intercompany Claims and the re-contribution of the Property LP (Propco) Intercompany Claim in excess of the Contributed Claim Amount.

¹⁹ As described in the Twenty-Seventh Report of the Monitor, a third party valuation firm engaged by the Monitor indicated that the domain names have an approximate aggregate value of not greater than \$50,000.

35. The Amended Plan presents significant benefits to the Target Canada Entities' stakeholders, including that it will result in significant, timely recoveries without costly litigation and delay. The Target Canada Entities believe that all stakeholders will benefit more from the implementation of the Amended Plan than from a bankruptcy.

36. The fairness and reasonableness of the Amended Plan is shown by the Affected Creditors' overwhelming, **unanimous approval** at the Creditors' Meeting. This reinforces the Target Canada Entities' belief that the Amended Plan is the most reasonable and fair resolution in these circumstances.

37. Throughout the course of this CCAA proceeding, the Target Canada Entities have acted in good faith and with due diligence. The Amended Plan complies with the requirements under the CCAA and the Orders of this Court. The Target Canada Entities believe that the sanction of this Amended Plan is fair and reasonable.

Extending the Notice of Objection Bar Date

38. On April 13, 2016, the Court extended the Notice of Objection Bar Date²⁰ to 28 days following June 6, 2016 or such later date as the Court may Order. As the Amended Plan, if sanctioned and implemented, will resolve all issues related to Intercompany Claims, the draft Sanction and Vesting Order seeks to extend the Notice of Objection Bar Date to the Plan Implementation Date. This extension will avoid the need for parties to incur costs that may ultimately be unnecessary.


²⁰ The Notice of Objection Bar Date is the deadline in the Claims Procedure Order by which any Claimant may, *inter alia*, file objections including in respect of the Intercompany Claims set out in the Monitor's Intercompany Claims Report by filing a Notice of Objection with the Monitor.

Stay Extension

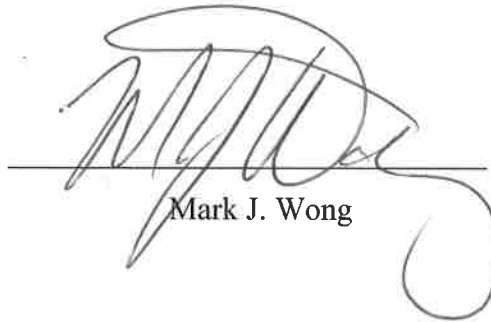
39. The Target Canada Entities are seeking to extend the Stay Period (as defined in paragraph 17 of the Initial Order) up to and including September 23, 2016. I am advised by the Monitor that the Target Canada Entities have sufficient cash resources to meet their post-filing obligations beyond that date. I understand that the Monitor will file an updated cash position with the Court prior to the hearing of this motion.

40. I believe that the Target Canada Entities have acted, and continue to act, in good faith and with due diligence in pursuing the controlled and orderly wind down of their businesses. I am informed by the Monitor that it supports the request to extend the Stay Period to September 23, 2016.

SWORN BEFORE ME at the City of Mississauga, on the 26th day of May, 2016.



Commissioner for taking Affidavits



Mark J. Wong

**Michael Adam Schoenborn,
a Commissioner, etc., Province of
Ontario, while a Student-at-Law.
Expires April 5, 2019.**

SCHEDULE A**Partnerships**

1. Target Canada Pharmacy Franchising LP
2. Target Canada Mobile LP
3. Target Canada Property LP