

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

**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
(Motion returnable November 18, 2015)**

November 12, 2015

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TAB

1

**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

(Motion for Amending Order and Related Relief)

The Monitor will make a motion before a judge of the Ontario Superior Court of Justice (Commercial List) on November 18, 2015 at 8:30 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 contained in the Monitor's Motion Record at Tab 3 (the "**Order Amending the October 30 Order and Related Relief**"):
 - (a) approving the proposed protocol of the Consultative Committee attached as Schedule "A" to the Order Amending the October 30 Order and Related Relief;
 - (b) amending the Order Amending the Claims Procedure Order and Certain Related Relief granted October 30, 2015 (the "**October 30 Order**") to remove certain

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language that, if approved, would be superseded and replaced by the Proposed Consultative Committee Protocol (as defined below); and

2. such further and other relief as this Court may deem just.

THE GROUNDS FOR THE MOTION ARE:

- (a) The Applicants were granted protection in the form of a stay of proceedings and other relief under the CCAA pursuant to the Initial Order dated January 15, 2015, as amended and restated as of February 11, 2015 (the “**Initial Order**”);¹
- (b) Alvarez & Marsal Canada Inc. was appointed in the Initial Order to act as the Monitor in these CCAA Proceedings (the “**Monitor**”), including to assist with the Orderly Wind-down of the Target Canada Entities’ business and operations;
- (c) on May 12, 2015, this Court granted an advice and directions order (the “**Advice and Directions Order**”) outlining the process and consultations the Monitor was to undertake in developing the Claims Process;
- (d) in accordance with the Advice and Directions Order, the Monitor constituted and convened a consultative committee of creditors (the “**Consultative Committee**”) and an operating protocol was developed to govern the calling and conduct of meetings of the Consultative Committee, which protocol was reviewed by this Court on July 30, 2015;
- (e) the mandate of the Consultative Committee includes:

¹ Capitalized terms used but not defined herein have the meaning given to them in the Initial Order or in prior reports of the Monitor, as applicable.

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- (i) pursuant to paragraph 30 of the Claims Procedure Order, as amended, consulting with the Monitor in connection with Claims the Monitor proposes to allow in excess of \$5,000,000; and
 - (ii) pursuant to paragraph 9 of Appendix “A” to the Advice and Directions Order, consulting with the Monitor regarding the Intercompany Claims and Intercreditor Dispute Process;
- (f) the Monitor met with the Consultative Committee throughout the period from June to August, 2015 to consult with them regarding the Monitor’s Intercompany Claims Report;
- (g) on September 22, 2015, the Monitor met with the Consultative Committee and representatives from the Target Canada Entities, Target Corporation, and their respective legal counsel to discuss proposed indicative terms for a plan of compromise or arrangement to be put forward by the Target Canada Entities, with the support of Target Corporation, and seek feedback on issues related to a potential consensual resolution, and has continued discussions with them;
- (h) the Consultative Committee proposed a revised protocol to the Monitor and, following comments from the Monitor, the Monitor is requesting Court approval of the revised protocol attached as Schedule “A” to the Order Amending the October 30 Order and Related Relief (the “**Proposed Consultative Committee Protocol**”);
- (i) pursuant to the Court’s endorsement made October 30, 2015 (the “**October 30 Endorsement**”), the October 30 Order was granted on the understanding that certain portions of the October 30 Order would be reconsidered in the present motion;

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- (j) the confidentiality provisions contained in the Proposed Consultative Committee Protocol are intended to replace and supersede those set out in sub-paragraphs 6 (d) and (e) of the October 30 Order;
- (k) paragraph 73 of the Initial Order;
- (l) the October 30 Order;
- (m) the October 30 Endorsement;
- (n) the provisions of the CCAA and the inherent and equitable jurisdiction of this Court;
- (o) Rules 2.03, 3.02, 16 and 37 of the Ontario *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, as amended; and
- (p) such further and other grounds as counsel may advise and this Court may permit.

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

1. The Twenty-Second Report of the Monitor, filed; and
2. such further and other evidence as counsel may advise and this Court may permit.

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November 12, 2015

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

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**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**

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

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

PROCEEDING COMMENCED AT
TORONTO

**NOTICE OF MOTION
(Returnable November 18, 2015)**

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TAB

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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

TWENTY-SECOND REPORT OF THE MONITOR
ALVAREZ & MARSAL CANADA INC.

NOVEMBER 12, 2015

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1.0 INTRODUCTION

- 1.1 On January 15, 2015, Target Canada Co. (“**TCC**”) and those companies listed in Appendix “A” (collectively, the “**Applicants**”), together with the Partnerships also listed in Appendix “A”(the “**Partnerships**”, and collectively with the Applicants, the “**Target Canada Entities**”), applied for and were granted protection by the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) under the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”). Pursuant to an Order of this Court dated January 15, 2015, Alvarez & Marsal Canada Inc. (“**A&M**”) was appointed Monitor of the Target Canada Entities in the CCAA proceedings (the “**Monitor**”). The proceedings commenced by the Applicants under the CCAA are referred to herein as the “**CCAA Proceedings**”.
- 1.2 On February 11, 2015, this Court issued the “**Amended and Restated Initial Order**” (hereinafter, unless the context otherwise requires, the “**Initial Order**”), which incorporates certain changes to the Initial Order granted January 15, 2015 that were described in the Second Report of the Monitor dated February 9, 2015.
- 1.3 In connection with the CCAA Proceedings, the Monitor has provided to this Court twenty-one reports and one supplementary report (the “**Supplementary Report**”, and collectively, the “**Monitor’s Reports**”). A&M has also provided to this Court the Pre-Filing Report of the Proposed Monitor (the “**Pre-Filing Report**”) dated January 14, 2015 (together with the Monitor’s Reports, the “**Prior Reports**”). The Prior Reports, the Initial Order and other Court-filed documents and notices in these CCAA Proceedings are available on the Monitor’s website at alvarezandmarsal.com/targetcanada.

1.4 The purpose of this Twenty-Second Report of the Monitor (the “**Twenty-Second Report**”) is to provide this Court with:

- (i) information regarding the following:
 - (a) the revised proposed protocol of the Consultative Committee; and
 - (b) the Monitor’s motion seeking:
 - (1) approval of the Proposed Consultative Committee Protocol; and
 - (2) to amend the Order Amending the Claims Procedure Order and Certain Relief granted October 30, 2015 (the “**October 30 Order**”) to remove certain language that would be superseded and replaced by the Proposed Consultative Committee Protocol, if approved; and
- (ii) the Monitor’s conclusions and recommendations with respect to the foregoing.

2.0 TERMS OF REFERENCE AND DISCLAIMER

2.1 In preparing this Twenty-Second Report, the Monitor has been provided with, and has relied upon, unaudited financial information, books and records and financial information prepared by the Target Canada Entities and Target Corporation, and discussions with management of the Target Canada Entities and Target Corporation (collectively, the “**Information**”).

2.2 The Monitor has reviewed the Information for reasonableness, internal consistency and use in the context in which it was provided. However, the Monitor has not audited or

otherwise attempted to verify the accuracy or completeness of the Information in a manner that would wholly or partially comply with Canadian Auditing Standards (“CASs”) pursuant to the *Chartered Professional Accountants Canada Handbook* and, accordingly, the Monitor expresses no opinion or other form of assurance contemplated under CASs in respect of the Information.

2.3 Capitalized terms not otherwise defined in this Twenty-Second Report are as defined in the Prior Reports and the Initial Order.

2.4 Unless otherwise stated, all monetary amounts contained in this Twenty-Second Report are expressed in Canadian dollars.

3.0 CONSULTATIVE COMMITTEE

Background

3.1 As previously reported to the Court in:

- (i) the Monitor’s Fifteenth and Eighteenth Reports: in accordance with the Court’s direction, a Consultative Committee representing a cross-section of creditor interests has been constituted. The Monitor met with the Consultative Committee several times throughout the period from June to August, 2015 to consult with them regarding the Claims Process and the Monitor’s Intercompany Claims Report; and
- (ii) the Monitor’s Twenty-First Report:

- (a) on September 22, 2015, representatives of the Target Canada Entities attended a meeting with the Monitor, Target Corporation and the Consultative Committee to discuss proposed indicative terms for a plan of compromise or arrangement to be put forward by the Target Canada Entities, with the support of Target Corporation, and seek feedback on issues related to a potential consensual resolution. Following that meeting, the Monitor has met with the Consultative Committee as a whole and, given the divergent interests represented by the committee members, with individual Consultative Committee members. The Monitor is continuing these discussions. The Monitor understands that the Target Canada Entities are continuing to explore and develop a potential consensual resolution through a plan of compromise and arrangement; and
- (b) as contemplated by the Claims Procedure Amending Order, the Monitor sought and obtained consent of the Consultative Committee to an extension of the Notice of Objection Bar Date to November 30, 2015.

3.2 On July 30, 2015, the Court issued an Endorsement directing the Applicants to pay to each member of the Consultative Committee a monthly fee in the amount of \$5,000 plus HST commencing May 2015 and ending September 2015, subject to further arrangements on further order of the Court. These arrangements were further extended pursuant to the October 30 Order, as described below.

3.3 The Monitor understands that counsel to the Target Canada Entities has met and will meet with members of the Consultative Committee, individually or in sub-groups, as well

as other stakeholders, to discuss the framework of a plan of compromise and arrangement and to receive and consider feedback as the Target Canada Entities continue to refine the terms of the plan.

October 30 Order

3.4 The October 30 Order provided for the following with respect to the Consultative Committee:

- (i) the Applicants were authorized and directed to pay members of the Consultative Committee \$5,000 plus HST per month for each of October and November, 2015, subject to further arrangements on further order of the Court;
- (ii) no member of the Consultative Committee, as a result of his or her participation in the Consultative Committee, shall owe a duty to any party other than such member's existing clients and participation as a member of the Consultative Committee shall not:
 - (a) give rise to any duty or solicitor and client or fiduciary relationship between any member and any party other than such member's existing clients;
 - (b) in any way prevent or limit a member or the client of any member from pursuing any rights or remedies of such client, including, without limitation, exercising (or omitting to exercise) or seeking (or omitting to seek) to enforce or protect any of its rights as a stakeholder in the CCAA Proceedings as such stakeholders may deem appropriate;

- (c) limit or interfere with the member's representation of his or her clients in any way; or
 - (d) provide any authority for any member to bind any party without such party's consent;
- (iii) no member of the Consultative Committee shall incur any liability to any party arising solely from such member's participation on the Consultative Committee or as a result of any suggestion or feedback such member may provide to the Monitor, the Target Canada Entities or Target Corporation;
- (iv) without the consent of each member of the Consultative Committee and the Monitor:
 - (a) the Monitor and the Consultative Committee members will not discuss with or disclose the content of their discussions in Consultative Committee meetings with any party including the media, the Target Canada Entities or Target Corporation; and
 - (b) and without the consent of the Target Canada Entities or Target Corporation, as applicable, a Consultative Committee member will not provide to any party any documents or other information or data provided to him or her by the Monitor, the Target Canada Entities or Target Corporation that is confidential in nature, at least until such time as such documents or other information or data becomes publicly disclosed by the Monitor, the Target Canada Entities or Target Corporation;

(such discussions, documents and other information, collectively, the “**Confidential Information**”); and

- (v) notwithstanding the foregoing:
 - (a) any Consultative Committee member may disclose Confidential Information to his or her respective clients provided that such member advises such clients that the Confidential Information must be kept confidential by them and such client agrees to keep the Confidential Information confidential;
 - (b) a Consultative Committee member, however, shall not be entitled to disclose Confidential Information to any party, including any client of the member or the member’s firm, that is in the business of acquiring claims in insolvency proceedings or other distressed situations or any other party the member is aware may seek to acquire claims of creditors in the CCAA Proceedings; and
 - (c) a Consultative Committee member shall continue to be bound by these obligations of confidentiality, notwithstanding the resignation of such member from the Consultative Committee.

3.5 Pursuant to the Court’s endorsement made October 30, 2015 (the “**October 30 Endorsement**”), the October 30 Order was granted on the understanding that certain provisions of the October 30 Order would be reconsidered at the Court hearing scheduled for November 18, 2015.

Extension of Notice of Objection Bar Date

- 3.6 As set out in the Monitor's Twenty-First Report, on September 21, 2015, this Court issued an Order (Amending the Claims Procedure Order) (the "**Claims Procedure Amending Order**"), amending the definition of the "Notice of Objection Bar Date" in the Claims Procedure Order to extend such date to October 30, 2015, or such later date as may be agreed to by the Monitor and the Consultative Committee. On October 20, 2015, the Monitor notified the service list that the Notice of Objection Bar Date had been further extended to November 30, 2015, and notice of such extension was posted to the Monitor's website and served on the service list.
- 3.7 On November 12, 2015, in accordance with Claims Procedure Amending Order, with the agreement of the Consultative Committee, the Notice of Objection Bar Date has been further extended to December 31, 2015. Notice of this extension has been posted to the Monitor's website and served on the service list.

4.0 CONSULTATIVE COMMITTEE PROTOCOL

- 4.1 The Consultative Committee proposed a revised protocol to the Monitor and, following comments from the Monitor, the Monitor is requesting Court approval of the Consultative Committee Protocol attached as Appendix "B" to this Twenty-Second Report (the "**Proposed Consultative Committee Protocol**").
- 4.2 The Proposed Consultative Committee Protocol governs the composition and conduct of the Consultative Committee, and also includes protections and confidentiality provisions relating to discussions among the Consultative Committee and documents and

information provided to the Consultative Committee. For example, in accordance with paragraph 30 of the Claims Procedure Order, the Monitor is to consult with the Consultative Committee before it allows any claims in excess of \$5 million and the Consultative Committee is provided with an opportunity to object, while certain claims have been filed with the Monitor on a confidential basis or may contain confidential information.

- 4.3 To address the interaction between paragraph 30 of the Claims Procedure Order and confidentiality considerations, a provision has been included in the Proposed Consultative Committee Protocol requiring that if information is provided to the Consultative Committee in accordance with the consultation process contemplated by paragraph 30 of the Claims Procedure Order, each member of the Consultative Committee shall keep such information strictly confidential and will not reveal or disclose such information to any party, including the clients of each member, without further order of the Court or consent of the applicable Claimant and the Monitor.

5.0 AMENDMENTS TO THE OCTOBER 30 ORDER

- 5.1 In accordance with the October 30 Endorsement, the confidentiality provisions set out in sub-paragraphs 6 (d) and (e) of the October 30 Order were reconsidered, resulting in the terms that are embodied in the Proposed Consultative Committee Protocol for which the Monitor is seeking approval in the present motion. As these provisions in the Proposed Consultative Committee Protocol are intended to replace those set out in the October 30 Order, sub-paragraphs 6 (d) and (e) of the October 30 Order will be superseded by the


approval of the Proposed Consultative Committee Protocol, and the Monitor is requesting that the October 30 Order be amended to delete those provisions.

6.0 MONITOR'S CONCLUSIONS AND RECOMMENDATIONS

- 6.1 For the reasons set out herein, the Monitor recommends that this Court make an Order:
- (a) approving the Proposed Consultative Committee Protocol; and (b) amending the October 30 Order to delete sub-paragraphs 6 (d) and (e).

All of which is respectfully submitted to this Court this 12th day of November, 2015.

**Alvarez & Marsal Canada Inc., in its capacity
as Monitor of Target Canada Co., and
the other Applicants listed on Appendix "A"**

Per: 

Name: Douglas R. McIntosh
Title: President

Per: 

Name: Alan J. Hutchens
Title: Senior Vice-President

APPENDIX “A”**Applicants**

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 (SK) Corp.

Target Canada Pharmacy Corp.

Target Canada Property LLC

Partnerships

Target Canada Pharmacy Franchising LP

Target Canada Mobile LP

Target Canada Property LP

APPENDIX "B"
CONSULTATIVE COMMITTEE PROTOCOL

[SEE ATTACHED]

REVISED CONSULTATIVE COMMITTEE PROTOCOL

DATED as of November 18, 2015

RECITALS

- A.** On January 15, 2015, 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, among others, (collectively, the “**Target Canada Entities**”) commenced proceedings under the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA Proceedings**”) before the Ontario Superior Court of Justice [Commercial List] (the “**Court**”).
- B.** Alvarez & Marsal Canada Inc., was appointed as monitor of the Target Canada Entities in the CCAA Proceedings (the “**Monitor**”).
- C.** Pursuant to Appendix A to the Order for Advice and Directions of the Honourable Regional Senior Justice Morawetz made May 12, 2015 (the “**Order**”) the Monitor was ordered to constitute and convene a consultative committee (the “**Consultative Committee**”) and consult with the Consultative Committee in connection with the “Claims Process”. The Order also provided that the Monitor would consult with the Consultative Committee in connection with the “Intercompany Claims and Intercreditor Dispute Process”.
- D.** The following individuals were appointed by the Monitor, in their capacity as counsel to certain stakeholders of the Target Canada Entities and not in their personal capacity:
- Lou Brzezinski, *Blaney McMurtry LLP*
 - Mel Solmon, *Solmon Rothbart Goodman LLP*
 - Richard Orzy, *Bennett Jones LLP*
 - Linda Galessiere, *McLean & Kerr LLP*
 - Linc Rogers, *Blake, Cassels & Graydon LLP*
 - Jeffrey Carhart, *Miller Thomson LLP*
 - Yannick Katirai, *Stikeman Elliott LLP*
 - David Ullmann, *Minden Gross LLP**

(each individual listed above together with any lawyers at such individual’s law firm assisting such individual in connection with his or her role as a member of the Consultative Committee is referred to herein as a “**Member**” and “**Members**” means all of them).

The Members were identified and selected by the Monitor because in the Monitor’s view the Members represented clients which formed a cross-section of stakeholders of the

Target Canada Entities (all such stakeholders, the “**Stakeholders**”), including landlords, inventory suppliers and service providers, which had been active and engaged in the CCAA Proceedings.

- E.** Shortly after constitution, the Consultative Committee and Monitor prepared an operating protocol (the “**Initial Protocol**”) to govern the calling and conduct of meetings of the Consultative Committee. The Initial Protocol provided, among other things, that participation as a Member:
- (i) would not in any way prevent or limit a Member or the client of any Member from pursuing any rights or remedies of such client, including, without limitation, exercising (or omitting to exercise) or seeking (or omitting to seek) to enforce or protect any of its rights as a Stakeholder in the CCAA Proceedings as it may deem appropriate or limit or interfere with the Member’s representation of such client; and
 - (ii) would not result in a Member owing a duty to any party other than such Member’s existing clients and a Member’s appointment to the Consultative Committee would not create a solicitor client relationship with any Stakeholder, the Monitor, the Target Canada Entities or any other party.
- F.** The initial role of the Consultative Committee was to consider the draft claims procedure order and provide the Monitor with comments and consultation in relation thereto, with a view to reaching a consensus on the claims process. The Consultative Committee carried out this function and on June 11, 2015, the Court approved a motion brought forth by the Monitor, on a consensual basis, for approval of a Claims Procedure Order (the “**Claims Procedure Order**”).
- G.** Pursuant to paragraph 30 of the Claims Procedure Order, the role of the Consultative Committee was expanded to consult with the Monitor prior to the allowance of any claims against the Target Canada Entities in excess of \$5 million (the “**\$5 Million Claims**”). On July 30, 2015, the Honourable Regional Senior Justice Morawetz reviewed the Initial Protocol and issued an Endorsement requiring the Target Canada Entities to pay each Member \$5,000 plus HST per month commencing May 2015 and ending September 2015, subject to further arrangements on further order of the Court.
- H.** During the months of June, July and August of 2015, the Consultative Committee periodically met with the Monitor to provide consultation in relation to the Claims Procedure Order and the Monitor’s Intercompany Claims Report.
- I.** On August 31, 2015, in accordance with the Claims Procedure Order, the Monitor filed the Monitor’s Intercompany Claims Report. The initial deadline for any creditors to object to intercompany claims was September 30, 2015, which was subsequently extended by Court Order to October 30, 2015, with the ability to further extend this deadline upon agreement between the Monitor and the Consultative Committee. The deadline was further extended by agreement to November 30, 2015 or such later date as may be agreed between the Monitor and the Consultative Committee.
- J.** On September 22, 2015, the Consultative Committee met with representatives of the Target Canada Entities, Target Corporation (“**Target US**”) and the Monitor to discuss proposed indicative terms for a plan of compromise or arrangement to be put forward by the Target Canada Entities, with the support of Target US, and seek feedback on issues

related to a potential consensual resolution (a “**Consensual Resolution**”).

- K.** On October 30, 2015, the Court granted an Order providing certain relief with respect to the Consultative Committee, namely, the continuation of the payment arrangements described in Recital G for the months of October and November, 2015, subject to further arrangements on further Order of the Court, and the granting of certain protections, with the confidentiality provisions of the Order to be reconsidered on an advice and directions motion scheduled for November 18, 2015 where the Monitor will seek guidance on Consultative Committee matters, including a protocol;
- L.** Set out below are revised provisions of the Initial Protocol (the “**Revised Protocol**”). For greater certainty, as with the Initial Protocol, this Revised Protocol is not intended to replace but to supplement ongoing dialogue and consultation between the Monitor and the Stakeholders, including the Members.

REVISED PROTOCOL

The Consultative Committee and the Monitor shall be governed by the following Revised Protocol:

1. **Definitions.** Capitalized terms used but not defined herein shall have the meaning ascribed to such terms in the Order.
2. **Resignations.** A Member may resign from the Consultative Committee at any time by notifying the Monitor and the other Members, by e-mail. A Member will cease to be a Member if he or she no longer represents a Stakeholder. The Monitor may replace such departing Member or add new Members at its discretion.
3. **Multiple Views.** It is recognized and understood that the cross-section of Stakeholders represented by clients of the Members may have divided interests and accordingly, consensus on feedback regarding a potential Consensual Resolution may not be achievable. Where a consensus cannot be reached, the Members may provide more than one view on a potential Consensual Resolution for the Monitor’s and the Target Canada Entities’ consideration or decline to provide any view.
4. **Good Faith.** For purposes of his or her participation in the Consultative Committee, each Member agrees that he or she will participate in good faith, and will have appropriate regard for the legitimate interests of all other Stakeholders.
5. **No Fiduciary Relationship or Other Duty.** Notwithstanding the above or anything contained herein, no Member, as a result of his or her participation in the Consultative Committee, owes a duty to any party other than such Member’s existing clients and neither anything contained herein nor participation as a Member shall:
 - (i) give rise to any duty or solicitor and client or fiduciary relationship between any Member and any party other than such Member’s existing clients;
 - (ii) in any way prevent or limit a Member or the client of any Member from

pursuing any rights or remedies of such client, including, without limitation, exercising (or omitting to exercise) or seeking (or omitting to seek) to enforce or protect any of its rights as a Stakeholder in the CCAA Proceedings as such Stakeholders may deem appropriate;

- (iii) limit or interfere with the Member's representation of his or her client(s) in any way; or
 - (iv) provide any authority for any Member to bind any party without such party's consent.
6. **No Liability.** No Member shall incur any liability to any party arising solely from such Members' participation on the Consultative Committee or as a result of any suggestion or feedback such Member may provide to the Monitor, the Target Canada Entities or Target US.
7. **Compensation.** Subject to Court approval, each Member shall be paid the sum of \$5,000.00 plus HST for the months of October and November, 2015 by the Target Canada Entities or shall be paid such alternate compensation as may be agreed to by all Members, the Monitor and the Target Canada Entities or by further order of the Court, as a cost of administration in the CCAA Proceedings.
8. **Chair.** A representative of the Monitor shall be the chair of the meetings of the Consultative Committee.
9. **Calling Meetings.** The Monitor, at the request of a Member or at its own instance, may call meetings of the Consultative Committee on reasonable advance written notice to the Members of the Consultative Committee, which written notice may be by e-mail and the Monitor may provide such written materials as it considers appropriate and reasonable. Members and the Monitor are at liberty to have informal meetings as amongst themselves, or any subgroup of Members, from time to time and the Monitor and/or the Target Canada Entities may also have informal meetings with any Members, individually or collectively, or with any subgroup of Members.
10. **Minutes.** The Monitor's counsel shall act as secretary of the meetings of the Consultative Committee and keep minutes. Where issues of disagreement among the Members arise, the minutes will reflect such disagreements. Such minutes shall be confidential and shared with Members only. Minutes are for administrative record keeping purposes only and are not intended to be binding or conclusive in any way.
11. **Confidentiality.**
- (i) Without the consent of each Member and the Monitor, the Monitor and the Members will not discuss with or disclose the content of their discussions in Consultative Committee Meetings with any party, including the media, the Target Canada Entities or Target US;
 - (ii) Without the consent of each Member, the Monitor and the Target Canada Entities or Target US, as applicable, a Member will not provide or disclose to any party any documents or other information or data provided to a

Member by the Monitor, the Target Canada Entities or Target US that is confidential in nature, at least until such time as such documents or other information or data becomes publicly disclosed by the Monitor, the Target Canada Entities or Target US;

(such discussions, documents and other information, collectively, the “**Confidential Information**”).

- (iii) Notwithstanding 11(i) and (ii) above, any Member may disclose Confidential Information to his or her respective clients provided that such Member advises such clients that the Confidential Information must be kept confidential by them and such client agrees to keep the Confidential Information confidential; provided, however, that no Member shall disclose Confidential Information to any party, including any client of the Member or the Member’s firm, that is in the business of acquiring claims in insolvency proceedings or other distressed situations or any other party the Member is aware may seek to acquire claims of creditors in the CCAA Proceedings;
- (iv) If any \$5 Million Claims or any information or data in relation thereto is provided to Members in accordance with the consultation process contemplated by paragraph 30 of the Claims Procedure Order (the “**Claimant Information**”), each Member shall keep such Claimant Information strictly confidential and not reveal or disclose such information to any party, including the Member’s clients, without further order of the Court or consent of the applicable claimant and the Monitor; and
- (v) A Member shall continue to be bound by these obligations of confidentiality, notwithstanding the resignation of such Member.

12. **Additional Rules and Guidelines.** The Monitor and the Members may adopt such reasonable procedural rules and guidelines regarding the governing of Consultative Committee meetings as the Monitor and the Members may from time to time agree.

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

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceeding commenced at Toronto

**TWENTY-SECOND REPORT OF THE
MONITOR**

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

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE)	WEDNESDAY, THE 18th
)	
REGIONAL SENIOR JUSTICE)	DAY OF NOVEMBER, 2015
)	
MORAWETZ)	

**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 (collectively the “Applicants”)**

ORDER

(Amending the October 30 Order and Certain Related Relief)

THIS MOTION, made by Alvarez & Marsal Canada Inc. in its capacity as Monitor (“**Monitor**”) in the within proceedings, pursuant to the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. c-36 , as amended, for an order amending the Order issued by Regional Senior Justice Morawetz on October 30, 2015 (the “**October 30 Order**”) was heard this day at 330 University Avenue, Toronto, Ontario.

ON HEARING the submissions of counsel for Alvarez & Marsal Canada Inc., in its capacity as Monitor, counsel for the Applicants, ●, no one else appearing and making submissions although duly served as appears from the Affidavit of Service of Jesse Mighton sworn November ●, 2015.

1. THIS COURT ORDERS that the time for service of the Monitor's Motion Record and the Notice of Motion therein 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 the Consultative Committee Protocol attached hereto as Schedule "A" be and is hereby approved.

 3. THIS COURT ORDERS that sub-paragraphs 6 (d) and (e) of the October 30 Order, and all of the sub-sub-paragraphs therein, be and are hereby deleted in their entirety.
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SCHEDULE "A"

**Consultative Committee Protocol
(see attached)**

REVISED CONSULTATIVE COMMITTEE PROTOCOL

DATED as of November 18, 2015

RECITALS

- A.** On January 15, 2015, 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, among others, (collectively, the “**Target Canada Entities**”) commenced proceedings under the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA Proceedings**”) before the Ontario Superior Court of Justice [Commercial List] (the “**Court**”).
- B.** Alvarez & Marsal Canada Inc., was appointed as monitor of the Target Canada Entities in the CCAA Proceedings (the “**Monitor**”).
- C.** Pursuant to Appendix A to the Order for Advice and Directions of the Honourable Regional Senior Justice Morawetz made May 12, 2015 (the “**Order**”) the Monitor was ordered to constitute and convene a consultative committee (the “**Consultative Committee**”) and consult with the Consultative Committee in connection with the “Claims Process”. The Order also provided that the Monitor would consult with the Consultative Committee in connection with the “Intercompany Claims and Intercreditor Dispute Process”.
- D.** The following individuals were appointed by the Monitor, in their capacity as counsel to certain stakeholders of the Target Canada Entities and not in their personal capacity:
- Lou Brzezinski, *Blaney McMurtry LLP*
 - Mel Solmon, *Solmon Rothbart Goodman LLP*
 - Richard Orzy, *Bennett Jones LLP*
 - Linda Galessiere, *McLean & Kerr LLP*
 - Linc Rogers, *Blake, Cassels & Graydon LLP*
 - Jeffrey Carhart, *Miller Thomson LLP*
 - Yannick Katirai, *Stikeman Elliott LLP*
 - David Ullmann, *Minden Gross LLP**

(each individual listed above together with any lawyers at such individual’s law firm assisting such individual in connection with his or her role as a member of the Consultative Committee is referred to herein as a “**Member**” and “**Members**” means all of them).

The Members were identified and selected by the Monitor because in the Monitor’s view the Members represented clients which formed a cross-section of stakeholders of the

* David Ullmann was appointed to the Consultative Committee in June, 2015.

Target Canada Entities (all such stakeholders, the “**Stakeholders**”), including landlords, inventory suppliers and service providers, which had been active and engaged in the CCAA Proceedings.

- E.** Shortly after constitution, the Consultative Committee and Monitor prepared an operating protocol (the “**Initial Protocol**”) to govern the calling and conduct of meetings of the Consultative Committee. The Initial Protocol provided, among other things, that participation as a Member:
- (i) would not in any way prevent or limit a Member or the client of any Member from pursuing any rights or remedies of such client, including, without limitation, exercising (or omitting to exercise) or seeking (or omitting to seek) to enforce or protect any of its rights as a Stakeholder in the CCAA Proceedings as it may deem appropriate or limit or interfere with the Member’s representation of such client; and
 - (ii) would not result in a Member owing a duty to any party other than such Member’s existing clients and a Member’s appointment to the Consultative Committee would not create a solicitor client relationship with any Stakeholder, the Monitor, the Target Canada Entities or any other party.
- F.** The initial role of the Consultative Committee was to consider the draft claims procedure order and provide the Monitor with comments and consultation in relation thereto, with a view to reaching a consensus on the claims process. The Consultative Committee carried out this function and on June 11, 2015, the Court approved a motion brought forth by the Monitor, on a consensual basis, for approval of a Claims Procedure Order (the “**Claims Procedure Order**”).
- G.** Pursuant to paragraph 30 of the Claims Procedure Order, the role of the Consultative Committee was expanded to consult with the Monitor prior to the allowance of any claims against the Target Canada Entities in excess of \$5 million (the “**\$5 Million Claims**”). On July 30, 2015, the Honourable Regional Senior Justice Morawetz reviewed the Initial Protocol and issued an Endorsement requiring the Target Canada Entities to pay each Member \$5,000 plus HST per month commencing May 2015 and ending September 2015, subject to further arrangements on further order of the Court.
- H.** During the months of June, July and August of 2015, the Consultative Committee periodically met with the Monitor to provide consultation in relation to the Claims Procedure Order and the Monitor’s Intercompany Claims Report.
- I.** On August 31, 2015, in accordance with the Claims Procedure Order, the Monitor filed the Monitor’s Intercompany Claims Report. The initial deadline for any creditors to object to intercompany claims was September 30, 2015, which was subsequently extended by Court Order to October 30, 2015, with the ability to further extend this deadline upon agreement between the Monitor and the Consultative Committee. The deadline was further extended by agreement to November 30, 2015 or such later date as may be agreed between the Monitor and the Consultative Committee.
- J.** On September 22, 2015, the Consultative Committee met with representatives of the Target Canada Entities, Target Corporation (“**Target US**”) and the Monitor to discuss proposed indicative terms for a plan of compromise or arrangement to be put forward by the Target Canada Entities, with the support of Target US, and seek feedback on issues

related to a potential consensual resolution (a “**Consensual Resolution**”).

- K.** On October 30, 2015, the Court granted an Order providing certain relief with respect to the Consultative Committee, namely, the continuation of the payment arrangements described in Recital G for the months of October and November, 2015, subject to further arrangements on further Order of the Court, and the granting of certain protections, with the confidentiality provisions of the Order to be reconsidered on an advice and directions motion scheduled for November 18, 2015 where the Monitor will seek guidance on Consultative Committee matters, including a protocol;
- L.** Set out below are revised provisions of the Initial Protocol (the “**Revised Protocol**”). For greater certainty, as with the Initial Protocol, this Revised Protocol is not intended to replace but to supplement ongoing dialogue and consultation between the Monitor and the Stakeholders, including the Members.

REVISED PROTOCOL

The Consultative Committee and the Monitor shall be governed by the following Revised Protocol:

1. **Definitions.** Capitalized terms used but not defined herein shall have the meaning ascribed to such terms in the Order.
2. **Resignations.** A Member may resign from the Consultative Committee at any time by notifying the Monitor and the other Members, by e-mail. A Member will cease to be a Member if he or she no longer represents a Stakeholder. The Monitor may replace such departing Member or add new Members at its discretion.
3. **Multiple Views.** It is recognized and understood that the cross-section of Stakeholders represented by clients of the Members may have divided interests and accordingly, consensus on feedback regarding a potential Consensual Resolution may not be achievable. Where a consensus cannot be reached, the Members may provide more than one view on a potential Consensual Resolution for the Monitor’s and the Target Canada Entities’ consideration or decline to provide any view.
4. **Good Faith.** For purposes of his or her participation in the Consultative Committee, each Member agrees that he or she will participate in good faith, and will have appropriate regard for the legitimate interests of all other Stakeholders.
5. **No Fiduciary Relationship or Other Duty.** Notwithstanding the above or anything contained herein, no Member, as a result of his or her participation in the Consultative Committee, owes a duty to any party other than such Member’s existing clients and neither anything contained herein nor participation as a Member shall:
 - (i) give rise to any duty or solicitor and client or fiduciary relationship between any Member and any party other than such Member’s existing clients;
 - (ii) in any way prevent or limit a Member or the client of any Member from

pursuing any rights or remedies of such client, including, without limitation, exercising (or omitting to exercise) or seeking (or omitting to seek) to enforce or protect any of its rights as a Stakeholder in the CCAA Proceedings as such Stakeholders may deem appropriate;

- (iii) limit or interfere with the Member's representation of his or her client(s) in any way; or
 - (iv) provide any authority for any Member to bind any party without such party's consent.
6. **No Liability.** No Member shall incur any liability to any party arising solely from such Members' participation on the Consultative Committee or as a result of any suggestion or feedback such Member may provide to the Monitor, the Target Canada Entities or Target US.
7. **Compensation.** Subject to Court approval, each Member shall be paid the sum of \$5,000.00 plus HST for the months of October and November, 2015 by the Target Canada Entities or shall be paid such alternate compensation as may be agreed to by all Members, the Monitor and the Target Canada Entities or by further order of the Court, as a cost of administration in the CCAA Proceedings.
8. **Chair.** A representative of the Monitor shall be the chair of the meetings of the Consultative Committee.
9. **Calling Meetings.** The Monitor, at the request of a Member or at its own instance, may call meetings of the Consultative Committee on reasonable advance written notice to the Members of the Consultative Committee, which written notice may be by e-mail and the Monitor may provide such written materials as it considers appropriate and reasonable. Members and the Monitor are at liberty to have informal meetings as amongst themselves, or any subgroup of Members, from time to time and the Monitor and/or the Target Canada Entities may also have informal meetings with any Members, individually or collectively, or with any subgroup of Members.
10. **Minutes.** The Monitor's counsel shall act as secretary of the meetings of the Consultative Committee and keep minutes. Where issues of disagreement among the Members arise, the minutes will reflect such disagreements. Such minutes shall be confidential and shared with Members only. Minutes are for administrative record keeping purposes only and are not intended to be binding or conclusive in any way.
11. **Confidentiality.**
- (i) Without the consent of each Member and the Monitor, the Monitor and the Members will not discuss with or disclose the content of their discussions in Consultative Committee Meetings with any party, including the media, the Target Canada Entities or Target US;
 - (ii) Without the consent of each Member, the Monitor and the Target Canada Entities or Target US, as applicable, a Member will not provide or disclose to any party any documents or other information or data provided to a

Member by the Monitor, the Target Canada Entities or Target US that is confidential in nature, at least until such time as such documents or other information or data becomes publicly disclosed by the Monitor, the Target Canada Entities or Target US;

(such discussions, documents and other information, collectively, the “**Confidential Information**”).

- (iii) Notwithstanding 11(i) and (ii) above, any Member may disclose Confidential Information to his or her respective clients provided that such Member advises such clients that the Confidential Information must be kept confidential by them and such client agrees to keep the Confidential Information confidential; provided, however, that no Member shall disclose Confidential Information to any party, including any client of the Member or the Member’s firm, that is in the business of acquiring claims in insolvency proceedings or other distressed situations or any other party the Member is aware may seek to acquire claims of creditors in the CCAA Proceedings;
- (iv) If any \$5 Million Claims or any information or data in relation thereto is provided to Members in accordance with the consultation process contemplated by paragraph 30 of the Claims Procedure Order (the “**Claimant Information**”), each Member shall keep such Claimant Information strictly confidential and not reveal or disclose such information to any party, including the Member’s clients, without further order of the Court or consent of the applicable claimant and the Monitor; and
- (v) A Member shall continue to be bound by these obligations of confidentiality, notwithstanding the resignation of such Member.

12. **Additional Rules and Guidelines.** The Monitor and the Members may adopt such reasonable procedural rules and guidelines regarding the governing of Consultative Committee meetings as the Monitor and the Members may from time to time agree.

For Discussion Purposes Only
DRAFT: 1 - November 12, 2015 - 5:13 PM

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.

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**MOTION RECORD
(Motion returnable November 18, 2015)**

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