



Citation: 2021 BCSECCOM 154

**Partial Revocation Order**

**Sunniva Inc.**

**Under the securities legislation of British Columbia and Ontario  
(the Legislation)**

**Background**

- ¶ 1 Sunniva Inc. (the Issuer) is subject to a failure-to-file cease trade order (the FFCTO) issued by the regulator or securities regulatory authority in each of British Columbia (the Principal Regulator) and Ontario (each a Decision Maker) respectively on June 22, 2020.
- ¶ 2 The Issuer has applied to each of the Decision Makers for a partial revocation order of the FFCTO.
- ¶ 3 This order is the order of the Principal Regulator and evidences the decision of the Decision Maker in Ontario.

**Interpretation**

- ¶ 4 Terms defined in National Instrument 14-101 *Definitions* or in National Policy 11-207 *Failure-to-File Cease Trade Orders and Revocations in Multiple Jurisdictions* have the same meaning if used in this order, unless otherwise defined.

**Representations**

- ¶ 5 This decision is based on the following facts represented by the Issuer:
- (a) The Issuer was incorporated on August 11, 2014 by Certificate of Incorporation issued pursuant to the *Canada Business Corporations Act* (Canada).
  - (b) The Issuer is a reporting issuer in the provinces of Alberta, British Columbia and Ontario.
  - (c) The authorized share capital of the Issuer is comprised of an unlimited number of common shares without par value (Common Shares) of which, as of the date hereof, there are 39,935,298 Common Shares issued and outstanding.
  - (d) The Issuer also has outstanding, as at the date hereof, 3,958,285 stock options, each exercisable to acquire one Common Share, at a weighed average exercise price of \$4.98, and 16,065,817 Common Share purchase warrants, each



exercisable to acquire one Common Share, at a weighted average exercise price of \$3.48.

- (e) The Issuer also has outstanding, as at the date hereof, \$29,294,489 principal amount of convertible unsecured debentures bearing interest at a rate of 8% to 10% annually, which are convertible into Common Shares at conversion prices of \$4.60 to \$5.27, and \$25,936,073 principal amount of unsecured notes bearing interest at a rate of 10% annually. Issuer has no other outstanding securities (including debt securities).
- (f) The FFCTO was issued by the Decision Makers due to the failure of the Issuer to file its annual audited financial statements, annual management's discussion and analysis and certification of annual filings for the year ended December 31, 2019 (the CD Materials).
- (g) The failure to file the CD Materials arose as a consequence of financial hardship following which the Issuer was unable to pay the fees of various service providers, including its auditors.
- (h) In connection with the FFCTO, on June 22, 2020, the Canadian Securities Exchange (the CSE) suspended trading of the Common Shares. The securities of the Issuer are not listed or quoted on any other exchange or marketplace in Canada or elsewhere, other than the OTC Pink Sheets in the United States.
- (i) In addition to the CD Materials, the Issuer has subsequently failed to file its interim unaudited financial statements, interim management's discussion and analysis and certificates of interim filings, for the interim period ended March 31, 2020, the interim period ended June 30, 2020, and the interim period ended September 30, 2020.
- (j) In light of difficult financial circumstances, the Issuer was unable to obtain additional financing to repay amounts owing on its loan obligations and there was no reasonable expectation that the Issuer's financial condition would improve without a deleveraging of its capital structure. The Issuer was, therefore, insolvent and determined it was in the best interest of the Issuer and its stakeholders to file for protection under the *Companies' Creditors Arrangement Act* (Canada) (the CCAA).
- (k) The Issuer and its Canadian subsidiaries were granted protection from their creditors pursuant to an initial order made by the Supreme Court of British Columbia (the Court) on October 9, 2020, which was amended and restated on October 19, 2020 (the Initial Order). Pursuant to Orders made November 27, 2020, December 11, 2020 and January 15, 2020 and February 12, 2021, the Court has extended the relief under the Initial Order, which is currently extended to July 30, 2021.



- (l) The Initial Order also appointed Alvarez & Marsal Canada Inc. as monitor under the CCAA (in such capacity, the Monitor).
- (m) Among other things, the Initial Order stayed all proceedings and claims against the Issuer for the purpose of allowing the Issuer and its Canadian subsidiaries time to develop and implement a plan of compromise and arrangement.
- (n) The Issuer is seeking a partial revocation of the FFCTO in order to issue Common Shares (the Proposed Transaction) to up to 272 unsecured creditors (the Unsecured Creditors) of the Issuer and its Canadian subsidiaries, as part of the settlement of their claims pursuant to an Amended Consolidated Plan of Compromise and Arrangement (the Plan) under the CCAA.
- (o) On January 15, 2021, the Court granted a meeting order, inter alia, accepting the Plan for filing and scheduling a meeting of the Unsecured Creditors on February 5, 2021 (the Meeting) to consider and vote on the Plan.
- (p) According to the Plan, the Unsecured Creditors will be issued Common Shares in full settlement of their claims against the Issuer. The Unsecured Creditors will be issued securities under section 2.11 of National Instrument 45-106 *Prospectus Exemptions*. Unsecured Creditors that are, by statute, prohibited from receiving or holding securities will receive a *pro rata* distribution from a cash fund established for creditors that are, by law, unable to hold or receive shares.
- (q) Upon completion of the Proposed Transaction, all equity plans, outstanding warrants or options for unissued Common Shares, restricted share units or other equity-based instruments issued by the Issuer and its Canadian subsidiaries as of the effective date of the Proposed Transaction shall be terminated and cancelled.
- (r) Pursuant to the CCAA, the Plan was approved by Unsecured Creditors at the Meeting. 182 Unsecured Creditors were present in person, by proxy in person or by proxy at the Meeting. Of those Unsecured Creditors, 180 voted in favour of the Plan, representing \$56,602,292.62 in debt, and 2 voted against the Plan, representing \$740,695.16 of debt. On a percentage basis, of the Unsecured Creditors that voted in person or by proxy, the Plan was approved by 98.9% in number and 98.7% in value.
- (s) On February 12, 2021, the Court made an order which, among other things, sanctioned the Plan in accordance with the CCAA and authorized the Issuer to complete the Proposed Transaction and implement the Plan, subject to the conditions of the Plan. In making this Order, the Court found that the plan was substantively and procedurally fair and reasonable.
- (t) As the Proposed Transaction will involve trades in securities of the Issuer, the Proposed Transaction cannot be completed without a variation of the FFCTO, as it applies to the Issuer.



- (u) Given the significant amounts owed to Unsecured Creditors, and the limited funds available for distribution, the Plan contemplates creditors receiving shares in full satisfaction of the amounts owed to them. The Monitor has provided a report which, among other things, estimates the probable recovery for the Unsecured Creditors if the Plan were not implemented and the Issuer were to become bankrupt. In the Monitor's Fourth Report dated January 13, 2021, the Monitor estimated that if the cash were distributed among the creditors, the Unsecured Creditors would recover in the range of 2.0 to 2.7 percent. For illustrative purposes, in a distribution, an Unsecured Creditor owed \$50,000 would likely recover between \$1,000 and \$1,350 and suffer a shortfall of between \$49,000 and \$48,650.
- (v) The Issuer's securities, including the Common Shares issued under the Proposed Transaction as permitted by this partial revocation order, will remain subject to the FFCTO.
- (w) The Issuer will provide written notice to the Unsecured Creditors that all of the Issuer's securities, including the Common Shares issued to the Unsecured Creditors, will remain subject to the FFCTO.
- (x) The Issuer's SEDAR and SEDI profiles are up to date.
- (y) The Issuer reasonably expects that effecting the Proposed Transaction will free up sufficient working capital to bring its continuous disclosure up to date and to apply for a full revocation of the FFCTO and pay all outstanding related fees.
- (z) Within a reasonable time following the completion of the Proposed Transaction, the Issuer intends to apply for a full revocation of the FFCTO.
- (aa) Upon issuance of this order and completion of the necessary filings for the Proposed Transaction with the CSE, the Issuer will issue a press release announcing the order and the intention to complete the Proposed Transaction. Upon completion of the Proposed Transaction, the Issuer will issue a press release and file a material change report. As other material events transpire, the Issuer will issue appropriate press releases and material change reports as applicable.

## **Order**

- ¶ 6 Each of the Decision Makers is satisfied that a partial revocation order of the FFCTO meets the test set out in the Legislation for the Decision Maker to make the decision.
- ¶ 7 The decision of the Decision Makers under the Legislation is that the FFCTO is partially revoked as it applies to the Issuer solely to permit the Proposed Transaction, provided that



- (a) prior to completion of the Proposed Transaction, each Unsecured Creditor will receive:
  - (i) a copy of the FFCTO;
  - (ii) a copy of this Partial Revocation Order; and
  - (iii) written notice from the Issuer, to be acknowledged by each Unsecured Creditor in writing, that all of the Issuer's securities, including the securities issued in connection with the Proposed Transaction, will remain subject to the FFCTO until such orders are revoked and that the issuance of the partial revocation order does not guarantee the issuance of a full revocation in the future.
- (b) the Issuer undertakes to make available a copy of the written acknowledgements to staff of the Decision Makers on request.

¶ 8 This order will terminate on the earlier of:

- (a) the completion of the Proposed Transaction; and
- (b) 90 days from the date hereof.

April 26, 2021

***Allan Lim***

Allan Lim, CPA, CA  
Manager  
Corporate Finance



TO:

Salvador Pimentel  
1200 Waterfront Centre  
200 Burrard Street  
P.O Box 48600  
Vancouver BC V7X 1T2  
Email: SPimentel@blg.com