

**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 THE  
CASH STORE FINANCIAL SERVICES INC., THE CASH STORE INC., TCS CASH STORE  
INC., INSTALOANS INC., 7252331 CANADA INC., 5515433 MANITOBA INC., 1693926  
ALBERTA LTD DOING BUSINESS AS "THE TITLE STORE"

APPLICANTS

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**MOTION RECORD OF THE APPLICANTS  
(Alberta Securities Commission  
Potential Privilege Review)**

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October 10, 2014

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# TAB 1

Court File No. CV-14-10518-00CL

**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 THE  
CASH STORE FINANCIAL SERVICES INC., THE CASH STORE INC., TCS CASH STORE  
INC., INSTALOANS INC., 7252331 CANADA INC., 5515433 MANITOBA INC., 1693926  
ALBERTA LTD. DOING BUSINESS AS "THE TITLE STORE"

APPLICANTS

**NOTICE OF MOTION**

**THE APPLICANTS**, The Cash Store Financial Services Inc. ("Cash Store Financial") and its affiliated companies The Cash Store Inc., TCS Cash Store Inc., Instaloans Inc., 7252331 Canada Inc., 5515433 Manitoba Inc., and 1693926 Alberta Ltd. doing business as "The Title Store" (collectively "**Cash Store**" or the "**Applicants**"), will make a motion to the Court, on October 15, 2014, at 8:30 a.m. or as soon after that time as the motion can be heard, at 330 University Avenue, 8<sup>th</sup> floor, 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 as Appendix A:
  - (a) Abridging the time for service of this Notice of Motion and Motion Record and dispensing with service on any person other than those served;

- (b) Approving the Alberta Securities Commission (“ASC”) record production proposal letter dated October 8, 2014 attached as Exhibit “A” to the affidavit of William E. Aziz sworn on October 10, 2014 (the “ASC Proposal”);
- (c) Authorizing and directing the Chief Restructuring Officer of the Applicants (the “CRO”) to implement the ASC Proposal on behalf of Cash Store;
- (d) Authorizing the appointment of a member or members of the ASC’s Evidence Management team as a designee of Cash Store for the purpose of conducting the “Potential Privilege Review” described in the ASC Proposal;
- (e) Declaring that there shall be no waiver of privilege in providing certain documents to the ASC Evidence Management team for the Potential Privilege Review in accordance with the ASC Proposal; and
- (f) Such further and other relief as this Honourable Court may deem just.

**THE GROUNDS FOR THE MOTION ARE:**

1. Cash Store has been subject to an ongoing confidential investigation by the ASC which began in September 2013, before the commencement of these CCAA proceedings;
2. The ASC has ordered Cash Store to produce a significant amount of documents in connection with its confidential investigation;
3. The ASC has also issued a notice to the CRO compelling him to produce certain information, documents and records in his possession or control;

4. Cash Store has gathered the relevant documents for production and has reviewed and produced a subset of those documents; however, the remaining 657 gigabytes of documents have not yet been reviewed in order to screen out privileged communications;
5. A full scale review of the relevant documents by the CRO and its counsel will be costly and will negatively impact the ultimate asset recovery value that may be available to Cash Store's stakeholders;
6. There is an urgent need for the ASC to receive all of the outstanding requested records so that its investigation is not jeopardized or rendered moot through the passage of time;
7. The ASC has proposed a co-operative solution whereby Cash Store would work with a member or members of the ASC's Evidence Management team as Cash Store's designee to conduct an initial electronic review of the full set of email records that are responsive to the ASC's Production Order in order to identify any potentially privileged documents (the **"Potential Privilege Review"**);
8. The CRO, with the assistance of counsel, would review the potentially privileged documents and make the final decision as to which potentially privileged documents were actually privileged;
9. The person or persons on the Evidence Management team who communicate with the CRO's counsel and apply the software to conduct the Potential Privilege Review would be subject to an ethical wall that would prevent them from discussing matters related to the Potential Privilege Review with anyone else at the ASC;

10. The ASC Proposal is in the best interests of Cash Store as it:
  - (a) ensures that Cash Store does not waive privilege over potentially privileged documents (unless the CRO elects to do so with the concurrence of this Honourable Court);
  - (b) allows the privilege review to be conducted in an efficient and cost-effective manner; and
  - (c) allows Cash Store to comply with the ASC's Production Order;
11. Section 45 of the *Securities Act*, R.S.A. 2000, c. S-4 provides that the ASC investigation is confidential and must not be divulged, except where authorized by the Executive Director of the ASC or as permitted by Alberta securities laws;
12. The Executive Director of the ASC has authorized the CRO to divulge information relating to the Cash Store Investigation Order and any orders or notices requiring the production of records in connection with the Cash Store Investigation in the context of the Cash Store CCAA proceedings in the Ontario Superior Court;
13. The Applicants have brought this motion within the CCAA proceedings to obtain the authority necessary to implement the ASC Proposal and to ensure that privilege over the documents provided to the ASC for the Potential Privilege Review is not waived;
14. The provisions of the CCAA, including section 11, and the inherent and equitable jurisdiction of this Honourable Court;



15. Rules 2.03, 3.02, and 16 of the Ontario *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, as amended and sections 106 and 137(2) of the Ontario *Courts of Justice Act*, R.S.O. 1990, c. C.43 as amended; and

16. Such further and other grounds as counsel may advise and this Honourable Court may permit.

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

17. The Affidavit of William E. Aziz sworn October 10, 2014 and attached exhibits; and

18. Such further and other materials as counsel may advise and this Honourable Court may permit.

October 10, 2014

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**TO:** THE SERVICE LIST



Appendix A

Court File No. CV-14-10518-00CL

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

THE HONOURABLE REGIONAL ) FRIDAY, THE 15<sup>TH</sup>  
)  
SENIOR JUSTICE MORAWETZ ) DAY OF October, 2014

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 THE  
CASH STORE FINANCIAL SERVICES INC., THE CASH STORE INC., TCS CASH STORE  
INC., INSTALOANS INC., 7252331 CANADA INC., 5515433 MANITOBA INC., 1693926  
ALBERTA LTD. DOING BUSINESS AS "THE TITLE STORE"

APPLICANTS

**ORDER  
(Alberta Securities Commission Potential Privilege Review)**

THIS MOTION, made by the Applicants pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "CCAA") was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the affidavit of William E. Aziz sworn October 10, 2014 and the Exhibits thereto (the "**Aziz ASC Affidavit**"), and on hearing the submissions of counsel for BlueTree Advisors Inc. in its capacity as the Court-appointed Chief Restructuring Officer (the "**CRO**") of the Applicants, the DIP Lenders (as defined in the Order of this Court dated September 29, 2014), the Monitor, the Ad Hoc Committee and such other counsel present, no other person appearing although duly served as appears from the affidavit of service of ● sworn October 10, 2014,

1. THIS COURT ORDERS that the time for service of the Notice of Motion and the Motion Record is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof.
2. THIS COURT ORDERS that the Alberta Securities Commission (“ASC”) record production proposal letter dated October 8, 2014 attached as Exhibit “A” to Aziz ASC Affidavit (the “ASC Proposal”) is hereby approved.
3. THIS COURT ORDERS that the CRO is hereby authorized and directed to implement the ASC Proposal on behalf of Cash Store.
4. THIS COURT ORDERS that the appointment of a member or members of the ASC’s Evidence Management team to conduct, for and on behalf of Cash Store as its designee, the Potential Privilege Review described in the ASC Proposal is hereby authorized.
5. THIS COURT HEREBY DECLARES that there shall be no waiver of privilege in providing certain documents to the ASC Evidence Management team for the Potential Privilege Review in accordance with the ASC Proposal.
6. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, or regulatory or administrative body having jurisdiction in Canada, the United Kingdom, or in the United States, to give effect to this Order and to assist the Applicants, the CRO, the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Applicants and the CRO and Monitor, as officers of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in

any foreign proceeding, or to assist the Applicants, the CRO and the Monitor and their respective agents in carrying out the terms of this Order.

7. THIS COURT ORDERS that each of the Applicants and the Monitor be at liberty and is hereby authorized and empowered to apply to any court, tribunal, or regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Monitor is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

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**IN THE MATTER OF the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended**

Court File No: CV-14-10518-00CL

**AND IN THE MATTER OF a plan of compromise or arrangement of The Cash Store Financial Services Inc., The Cash Store Inc., TCS Cash Store Inc., Instalogs Inc., 7252331 Canada Inc., 5515433 Manitoba Inc., 1693926 Alberta Ltd. doing business as "The Title Store"**

***Ontario***  
**SUPERIOR COURT OF JUSTICE**  
**COMMERCIAL LIST**

Proceeding commenced at Toronto

**ORDER**  
**(Alberta Securities Commission**  
**Potential Privilege Review)**

**OSLER, HOSKIN & HARCOURT LLP**  
1 First Canadian Place  
P.O. Box 50  
Toronto, ON M5X 1B8

**Marc Wasserman** LSUC#44066M  
Tel: (416) 862-4908

**Jeremy Dacks** LSUC# 41851R  
Tel: (416) 862-4923  
Fax: (416) 862-6666

Counsel for the Chief Restructuring Officer of the Applicants

**IN THE MATTER OF the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended**

Court File No: CV-14-10518-00CL

**AND IN THE MATTER OF a plan of compromise or arrangement of The Cash Store Financial Services Inc., The Cash Store Inc., TCS Cash Store Inc., Instalogs Inc., 7252331 Canada Inc., 5515433 Manitoba Inc., 1693926 Alberta Ltd. doing business as "The Title Store"**

*Ontario*  
**SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

Proceeding commenced at Toronto

**NOTICE OF MOTION  
(Alberta Securities Commission  
Potential Privilege Review)**

**OSLER, HOSKIN & HARCOURT LLP**  
1 First Canadian Place  
P.O. Box 50  
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Tel: (416) 862-4908

**Jeremy Dacks** LSUC# 41851R  
Tel: (416) 862-4923  
Fax: (416) 862-6666

Counsel to the Chief Restructuring Officer of the Applicants

# TAB 2



Court File No. CV-14-10518-00CL

**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 THE  
CASH STORE FINANCIAL SERVICES INC., THE CASH STORE INC., TCS CASH STORE  
INC., INSTALOANS INC., 7252331 CANADA INC., 5515433 MANITOBA INC., 1693926  
ALBERTA LTD. DOING BUSINESS AS "THE TITLE STORE"

APPLICANTS

**AFFIDAVIT OF WILLIAM E. AZIZ**  
**(Sworn October 10, 2014)**

I, William E. Aziz, of the Town of Oakville, in the Province of Ontario, MAKE  
OATH AND SAY:

***Introduction***

1. This Affidavit is made in support of a motion by The Cash Store Financial Services, Inc. ("**Cash Store Financial**") and its affiliates The Cash Store Inc., TCS Cash Store Inc., Instaloans Inc., 7252331 Canada Inc., 5515433 Manitoba Inc., and 1693926 Alberta Ltd. doing business as "The Title Store" (collectively "**Cash Store**" or the "**Applicants**") for an Order:

- (a) approving the Alberta Securities Commission ("**ASC**") record production proposal letter dated October 8, 2014 attached to this affidavit as Exhibit "A" (the "**ASC Proposal**");
- (b) authorizing and directing the Chief Restructuring Officer to implement the ASC Proposal on behalf of Cash Store;

- (c) authorizing the appointment of a member or members of the ASC's Evidence Management team as designees of Cash Store for the purpose of conducting the Potential Privilege Review described in the ASC Proposal; and
- (d) declaring that there shall be no waiver of privilege in providing certain documents to the ASC Evidence Management team for processing in compliance with the ASC Proposal.

2. I am the President of BlueTree Advisors Inc. ("**BlueTree**"), which has been retained by Cash Store Financial to provide my services as Chief Restructuring Officer ("**CRO**") to Cash Store. I was retained pursuant to an Engagement Letter dated April 14, 2014, which was subsequently amended by a letter dated July 17, 2014. BlueTree was appointed as CRO of the Applicants pursuant to paragraph 23 of the Amended and Restated Initial Order of Justice Morawetz dated April 15, 2014 (the "**Initial Order**").

3. As Cash Store's CRO, and in accordance with the Initial Order, I have the authority to direct the operations and management of Cash Store and its restructuring, and Cash Store's officers (including its executive management team) report to me. As such, I have personal knowledge of the matters deposed to herein, except where otherwise stated. I have spoken with certain of the officers, advisors and/or employees of Cash Store as well as the Monitor, as necessary, and where I have relied on information from such discussions, I believe such information to be true.

### ***The ASC Investigation***

4. Shortly after my appointment as CRO, I became aware that Cash Store was subject to an ongoing confidential investigation by the ASC, and the ASC provided me with certain

confidential documents as set out below. Personally and through my counsel, I have engaged with the ASC during these CCAA proceedings to ensure that the Applicants and I are taking whatever steps are necessary and reasonable in the circumstances to comply with the ASC's pre-existing confidential investigation.

5. On September 26, 2013, the ASC appointed certain individuals to:

[M]ake an investigation into any and all matters related to The Cash Store Financial Services Inc., The Cash Store Australia Holdings Inc., 1396309 Alberta Ltd., Assistive Financial Corp., 367463 Alberta Ltd., and each of their predecessors, related entities and affiliates; and Gordon John Reykdal, subsequent to July 1, 2011 related to potential contraventions of sections 92 (4.1) and 146 of the [*Securities Act*, R.S.A. 2000, c. S-4] in respect of prohibitions respecting representations and continuous disclosure obligations.

A copy of the September 26, 2013 Investigation Order is attached to this affidavit as Exhibit "B". A copy of the Amended Investigation Order dated June 13, 2014 is attached to this affidavit as Exhibit "C".

6. On January 7, 2014, the ASC issued an order under s. 40(2) of the *Securities Act*, R.S.A. 2000, c. S-4 (the "*Act*") requiring the production of a significant number of documents. A copy of the January 7, 2014 production order (the "**Production Order**") is attached to this affidavit as Exhibit "D".

7. Cash Store's former counsel, Cassels Brock & Blackwell LLP ("**Cassels Brock**"), was initially tasked by former management with helping Cash Store respond to the investigation. Cassels Brock gathered documents pursuant to the Production Order and commenced a review of those documents. In March 2014, Cassels Brock provided an initial production of certain documents to the ASC. However, in May 2014, after the commencement of these CCAA proceedings, Cassels Brock resigned as counsel for Cash Store. Since that time, my counsel,

Osler, Hoskin & Harcourt LLP (“Osler”) has been assisting Cash Store in gathering additional documents for production to the ASC.

8. On June 20, 2014, the ASC issued a notice to me, in my position as CRO of Cash Store Financial, compelling me to produce certain information, documents and records in my possession or under my control by July 18, 2014, including:

- (a) Forensically captured images from the cellular phones of Gordon Reykdal, Kevin Paetz, Halldor Kristjansson, Barret Reykdal, Michael Thompson and Bill Johnson (individuals who formerly worked at Cash Store); and
- (b) All documents gathered in relation to the Senior Secured Notes of Cash Store Financial.

A copy of the June 20, 2014 Notice Compelling Production By A Witness is attached to this affidavit as Exhibit “E”.

9. On July 31, 2014, my counsel provided the ASC with a production of additional non-email documents in response to the Production Order and a production of documents in response to the Notice Compelling Production By A Witness. The documents that were produced on July 31 were reviewed to screen out privileged documents.

10. To date, over 4,800 documents have been identified and produced to the ASC as responsive to the Production Order. However, approximately 657 gigabytes of emails (equivalent to hundreds of thousands of emails) that are responsive to the Production Order have not been produced because they have not been reviewed for privilege.

### ***Cost and Timing Concerns Regarding Privilege Review***

11. Since my appointment as CRO, I have focused on Cash Store's restructuring process, including the pursuit of a going concern sale of the business. I have also made efforts to ensure that Cash Store's business complies with applicable regulatory requirements. Additionally, as part of the restructuring efforts, I have sought various ways to minimize costs to Cash Store's business to ensure the maximum possible recovery for Cash Store's stakeholders as part of these CCAA proceedings.

12. As CRO, I have engaged in several conversations in person and by email with the ASC concerning the Production Order, and I have made the ASC aware of Cash Store's limited cash resources and the cost implications of conducting a full scale review of hundreds of thousands of electronic documents to identify any privileged documents. Such a review would cost at least several hundred thousands of dollars. Any such costly review by me and my counsel will negatively impact the ultimate asset recovery value that may be available to Cash Store's stakeholders.

13. At the same time, the ASC has informed me, and I am aware, that there is an urgent need for the ASC to receive all of the outstanding requested records (some requests which have been outstanding now for approximately eight months) so that its investigation is not jeopardized or rendered moot through the passage of time.

14. Furthermore, I am aware that the ASC's record demands have the same force as a record summons in the Court of Queen's Bench of Alberta and I wish to comply fully with such order, subject only to the practical issue of how to reasonably screen for privilege in the context of

these CCAA proceedings. The ASC has also acknowledged that it is not entitled to, and has made no demand to receive, privileged records, unless such privilege is voluntarily waived.

### ***The ASC Executive Director's Authorization Order***

15. I was also advised by the ASC and my counsel and believe that section 45 of the *Act* provides that the ASC investigation is confidential and must not be divulged, except where authorized by the Executive Director of the ASC or as permitted by Alberta securities laws. As set out in the Initial ASC Proposal, "On or about January 7, 2014, we served a s. 40(2) order upon Cash Store, requiring numerous records to be produced to us. For convenience, a copy of this order is attached. As you know, such orders are confidential and are not to be disclosed generally, in order to preserve the integrity of our investigations (among other reasons)".

16. On September 20, 2014, the Director, Enforcement of the ASC issued an Authorization Order pursuant to section 45(b) of the *Act*, authorizing the CRO and the CRO's counsel to divulge information relating to the Cash Store Information Order and any orders or notices requiring the production of records in connection with the Cash Store Investigation, in the context of the Cash Store CCAA proceedings in the Ontario Superior Court. A copy of the Authorization Order is attached to this affidavit as Exhibit "F".

### ***The Proposed Solution***

17. On July 29, 2014, I travelled to Calgary, Alberta, to meet with my counsel and the ASC for a second time to determine whether we could work co-operatively to achieve a solution that would minimize costs, ensure timely production, and preserve Cash Store's valid claims for privilege, as appropriate.

18. In its letter dated July 31, 2014 (attached to this affidavit as Exhibit "G", the "**Initial ASC Proposal**"), the ASC proposed that Cash Store work with a member or members of the ASC's Evidence Management team as Cash Store's designee to conduct an initial review of the email records that are responsive to the ASC's Production Order to identify any potentially privileged documents (the "**Potential Privilege Review**"). This proposal was discussed in broad terms at our July 29, 2014 meeting.

19. As set out in greater detail in the ASC Proposal, the ASC Evidence Management team uses modern, sophisticated software as a tool for record processing, cataloguing and analysis *before* any investigative review is carried out by the ASC. As such, the Evidence Management team has a separate function from the ASC lawyers and other personnel who conduct the substantive investigative review. The ASC would impose an ethical wall separating the person or persons on the Evidence Management team who communicate with my counsel and apply the software to conduct the initial Potential Privilege Review from the ASC investigative team.

20. Also as set out in the ASC Proposal, the software tools which the ASC Evidence Management team uses are routinely used by law firms and other parties to manage large scale document production in a manner that is comprehensive, time-efficient, and cost-efficient. The software can screen large electronic databases for specific search terms, characteristics, and other features that may indicate that a document is privileged. For example, law firm domain names, individual lawyer names (or email addresses, phone numbers, topics, and so forth) can all be used to isolate records that trigger a privilege concern. I am advised by the ASC and my counsel that the ASC has previously used the ASC Evidence Management team to apply such "potentially privileged" screens in situations where the ASC was concerned that no privilege review may have been conducted by parties who provided records.

21. The ASC proposes that Cash Store provide the full set of electronic files containing emails responsive to the Production Order to the Evidence Management team, who would house this information on a separate, secured database not accessible to any ASC investigators. The Evidence Management team would work with Cash Store and Osler to develop a confidential list of search terms to be used to screen for privileged documents. This confidential list would not be included in the investigative file or shared in any manner with others at the ASC without the my prior consent.

22. Once the Evidence Management team applies the search terms to identify and filter out potentially privileged documents, all documents not filtered out as potentially privileged would be provided to the ASC investigators.

23. The potentially privileged documents would then be provided to me and my counsel for further review. My counsel would assist me in making the decision as to which potentially privileged documents were actually privileged. The potentially privileged subset of documents will most likely be a much smaller subset of the documents responsive to the Production Order, thus significantly reducing the cost of the review and lessening the impact on the potential recovery for Cash Store's stakeholders, while ensuring that a proper privilege review is completed. My counsel would then provide me with a list of the potentially privileged documents that have been determined, in fact, not to be privileged so that these documents can also be provided to the ASC.

24. Once the privilege review has been completed, the ASC Evidence Management team will delete the secured database that contains the larger group of materials provided for the



Potential Privilege Review. The members of the Evidence Management team subject to the ethical wall would be precluded from sharing information about:

- (a) The full set of electronic records provided;
- (b) The list of search terms;
- (c) The resultant potentially privileged set of records;
- (d) Communications with me or my counsel relating to the Potential Privilege Review; and
- (e) Other details as might be required.

25. In return for this assistance, the ASC proposes that I commit in my capacity as CRO and on behalf of Cash Store Financial:

- (a) not to subsequently object to the proposed review process or to allege that ASC staff acted inappropriately in conducting such a screening process; and
- (b) in the event that a claim of privilege is subsequently made respecting any records that are ultimately included in the ASC's "case database" (*i.e.*, that are not screened out by the Potential Privilege Review), I will not take any position that the investigation or the investigators involved are tainted or otherwise precluded from continuing.

26. I have considered the ASC Proposal and consulted with my counsel and the Monitor, and I have concluded that the ASC Proposal is in the best interests of Cash Store and its stakeholders. It will ensure that Cash Store does not waive privilege over potentially privileged

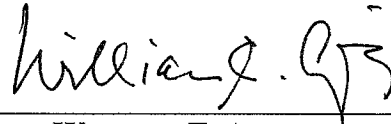
documents (unless I, in my capacity as CRO, elect to waive privilege, with the concurrence of this Honourable Court); it allows the privilege review to be conducted in an efficient and cost-effective manner; and it allows Cash Store to comply with the ASC's Production Order. I have therefore instructed my counsel to bring the within motion in these CCAA proceedings to obtain the authority necessary to implement the ASC Proposal.

SWORN BEFORE ME at the City of Toronto, in the Province of Ontario this 10<sup>th</sup> day of October, 2014.



COMMISSIONER FOR TAKING AFFIDAVITS

Mary Paterson



WILLIAM E. AZIZ

# TAB A

THIS IS EXHIBIT "A" TO THE AFFIDAVIT OF  
WILLIAM E. AZIZ SWORN BEFORE ME  
THIS 10<sup>TH</sup> DAY OF OCTOBER, 2014



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Commissioner for Taking Affidavits

*Mary Peterson*




---

OFFICE OF THE DIRECTOR, ENFORCEMENT  
LORENZ BERNER, ENFORCEMENT COUNSEL

DIRECT LINE: 403.355.3889  
DIRECT FAX: 403.297.2210  
E-MAIL: lorenz.berner@asc.ca

October 8, 2014

**Osler, Hoskin & Harcourt LLP**  
Toronto and Calgary – via email

Attention: Marc S. Wasserman ([mwasserman@osler.com](mailto:mwasserman@osler.com))  
Jeremy Dacks ([jdacks@osler.com](mailto:jdacks@osler.com))  
Tristram J. Mallett ([tmallett@osler.com](mailto:tmallett@osler.com))

Dear Sirs:

**Re: Cash Store Financial Services Inc. et al -- Record Production**

I am writing to follow up on our discussions regarding the production of Cash Store Financial email records. I understand that you, as counsel for the Chief Restructuring Officer of Cash Store Financial, propose to appear before the Honourable Regional Senior Justice Morawetz in the CCAA proceedings, to address the proposal we discussed, which is set out below in more detail.

First, some brief background: The Alberta Securities Commission is conducting an investigation into potential breaches of Alberta securities laws relating to Cash Store Financial Services Inc. ("Cash Store") and related entities and individuals. Under sections 40 and 42 of the *Alberta Securities Act*, the ASC has broad powers to compel production of records by certain parties and witnesses, in order to facilitate thorough investigations.

On or about January 7, 2014, we served a s.40(2) order upon Cash Store, requiring numerous records to be produced to us. For convenience, a copy of this order is attached. As you know, such orders are generally confidential and are not to be disclosed without authorization, in order to preserve the integrity of our investigations (among other reasons).

Prior to the Chief Restructuring Officer's involvement, Cash Store did not produce the required records (notwithstanding our repeated pressing of the matter with Cash Store's legal counsel). Since the appointment of the Chief Restructuring Officer in mid-April, many of the required records have been provided – with one significant exception. We have not received the required "email" items (including related records such as electronic calendar items and contact directories) from Cash Store corporate computer systems.

We understand that the Chief Restructuring Officer has arranged for these to be compiled, that he is able and willing to provide them to us in compliance with the s.40(2) Production Order, but

- 2 -

that these records have not been reviewed by either the Chief Restructuring Officer or counsel to filter out records that are protected by a legal privilege. (We readily acknowledge that we are not entitled to, and we make no demand to receive, privileged records, unless such privilege is voluntarily waived.)

We understand that the Chief Restructuring Officer is concerned that the cost to perform a full privilege review of the hundreds of thousands of email records will impact the ultimate asset recovery value that may be available to Cash Store stakeholders. At the same time, we are extremely concerned that the ASC investigation relating to Cash Store will be jeopardized if our receipt of these records is delayed any further – and particularly so in view of the sale process underway in the CCAA context. As we have indicated before, ASC record demands have essentially the same force as a record summons in the Court of Queen’s Bench of Alberta, and it is imperative that all non-privileged email records be provided.

We offer a solution to this problem.

The ASC’s Evidence Management team uses modern, sophisticated software as a tool for record processing, cataloguing and analysis. The software allows the evidence management analysts to review or screen electronic databases for specific search terms, characteristics, and other features in a manner that is comprehensive, time-efficient, and cost-efficient. Such screening can of course be useful in sifting for relevance, but is also at least as valuable in sifting for specific privilege triggers. For example, law firm domain names, individual lawyer names (or email addresses, phone numbers, topics, dates, and so forth) can all be used to identify and isolate records that “trigger” a potential privilege concern. This type of software (and process) is routinely used by large law firms, specialized electronic evidence consultants, and governmental bodies to manage document production and disclosure in commercial and regulatory litigation, as well as other contexts.

Generally, our Evidence Management team handles investigative records using these tools before any investigative review is conducted. This creates an opportunity to filter out material that is, for example, clearly irrelevant to an investigation, or that is potentially privileged. We have had the Evidence Management team apply just such “potentially privileged” screens in situations where we were concerned that no privilege review may have been conducted by parties who provided records.

What we propose is that we utilize the ASC’s Evidence Management team (or one member of that team) to conduct an initial “potential privilege” review on the full set of email (.pst) records that are responsive to our production orders. This would work as follows:

- Your office would provide the full set of .pst files directly to the designated ASC Evidence Management Specialist (“EMS”), forthwith.
- Your office would simultaneously provide that EMS with a confidential list of identifying features (domain names, email addresses, law firm and lawyer names, issues on which legal advice was likely sought/received, etc.) that would indicate records which might be subject to privilege. (Some dialogue between your office or the Chief Restructuring

- 3 -

Officer and the EMS (partially based on sampling the data) is likely necessary, to ensure that the list is practical.) This list would not become part of any investigative file or shared in any manner with others at the ASC, without the Chief Restructuring Officer's consent.

- The EMS would load the full set of .pst files into a separate database to house the .pst files, with security in place that will not allow any investigators access to the database ("Original .pst Database").
- The EMS would apply the "potentially privileged" list as a screen. This process likely will require some interaction with the Chief Restructuring Officer or counsel on his behalf, to refine searches and ensure maximum effectiveness. This Original .pst Database will remain intact, but the potentially privileged items would be tagged.
- The items that are not identified as potentially privileged (and only those items at this stage) will be copied and added to the investigation case database.
- The EMS will provide counsel for the Chief Restructuring Officer with a load file and electronic copies of the records identified through the screening process as "potentially privileged".
- The Chief Restructuring Officer or counsel on his behalf would, as soon as possible thereafter, conduct a review of the "potentially privileged" subset of .pst records, to determine whether they are indeed subject to privilege. (The expectation is that this subset will be relatively small, greatly lessening the time/cost burden on the Chief Restructuring Officer and ultimately the impact on the net value of the Cash Store assets.)
- The Chief Restructuring Officer or counsel on his behalf would then provide the EMS with a list of any records from the "potentially privileged" subset that were determined not to be privileged in fact. Copies of these records would then be made from the Original .pst Database and added to the investigative case database.
- The EMS would then delete the Original .pst Database from the ASC's servers, and the original electronic storage medium on which the .pst files were provided to the EMS would be returned to counsel for the Chief Restructuring Officer.
- In terms of the legal commitments necessary to make such a process work, I suggest that the ASC would need to (and would be willing to) commit in writing to impose an "ethical wall" around the EMS who communicates with your firm and applies a privilege screen to the full set of .pst records. That EMS, for example, would be precluded from sharing information about the full set of .pst records provided, the list of screen parameters, the resultant "potentially privileged" set of records, communications with your office or the Chief Restructuring Officer relating to the screen, and other details as might be required. We would agree only to enter into our investigative case database the post-filtered subset of records provided (and any records subsequently provided by you after a follow up review).

- 4 -

- From the ASC's perspective, what we would require from the Chief Restructuring Officer, on his own behalf and on behalf of Cash Store, is a commitment,
  - not to subsequently object to the proposed review process or to allege that ASC staff acted inappropriately in conducting such a screening process; and
  - in the event that a claim of privilege is subsequently made respecting any records that are ultimately included in our "case database" (ie. that are not screened out by the potentially privileged filtering process), the Chief Restructuring Officer will not take any position that the investigation or the investigators involved are tainted or otherwise precluded from continuing.

We understand that the Chief Restructuring Officer would like to seek approval of the court supervising the CCAA process before proceeding with any such proposal. To facilitate this, we have obtained an Authorization Order pursuant to s.45 of the *Securities Act*, allowing the exceptional step of disclosing the ASC investigation and, if necessary, the s.40(2) Production Order, in the context of an application before Justice Morawetz.

I would be pleased to discuss this proposal further with you, and if appropriate to participate in any application before the Honourable Justice Morawetz.

Yours truly,



Lorenz Berner  
Enforcement Counsel

cc: Elaine Balestra  
Nicole Chute



**VCD'D''**

THIS IS EXHIBIT "B" TO THE AFFIDAVIT OF  
WILLIAM E. AZIZ SWORN BEFORE ME  
THIS 10<sup>TH</sup> DAY OF OCTOBER, 2014



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Commissioner for Taking Affidavits

*Mary Peterson*

ORO-002544  
ENF-009610 - 13 -

**ALBERTA SECURITIES COMMISSION**

**SECTION 41(1) INVESTIGATION ORDER**

**Docket: ENF- 009610**

*Securities Act, R.S.A. 2000, c. S-4 (Act)*

WHEREAS section 41(1) of the *Act* empowers the Executive Director of the Commission to appoint a person to make investigations that the Executive Director considers necessary in respect of the administration of the *Act* and the Rules, or into any matter relating to trading in securities;

AND WHEREAS the Director, Enforcement is authorized to do any act or thing required or permitted to be done by the Executive Director;

AND WHEREAS the Director, Enforcement considers it necessary to make the following investigation;

**THEREFORE IT IS ORDERED THAT:**

Gus Gallucci, Louise Panneton, Kimberly Scarff and Nicole Chute are hereby appointed to make an investigation into any and all matters related to The Cash Store Financial Services Inc., The Cash Store Australia Holdings Inc., 1396309 Alberta Ltd., Assistive Financial Corp., 367463 Alberta Ltd., and each of their predecessors, related entities and affiliates; and Gordon John Reykdal, subsequent to July 1, 2011 related to potential contraventions of sections 92 (4.1) and 146 of the *Act* in respect of prohibitions respecting representations and continuous disclosure obligations.

Dated at the City of Calgary in the  
Province of Alberta this 26<sup>th</sup>  
day of September, 2013.

) ALBERTA SECURITIES COMMISSION  
)  
)  
)  
)  
) W. E. Brett Code  
) W.E. Brett Code, Q.C.  
) Director, Enforcement

# TAB C

THIS IS EXHIBIT "C" TO THE AFFIDAVIT OF  
WILLIAM E. AZIZ SWORN BEFORE ME  
THIS 10<sup>TH</sup> DAY OF OCTOBER, 2014



---

Commissioner for Taking Affidavits

*Mary Paterson*

Docket: ENF-009610

## ALBERTA SECURITIES COMMISSION

**AMENDED INVESTIGATION ORDER**  
SECTION 41(1)

*Securities Act, R.S.A. 2000, c. S-4, as amended (Act)*

WHEREAS section 41(1) of the *Act* empowers the Executive Director of the Alberta Securities Commission (Commission) to appoint a person to make investigations that the Executive Director considers necessary in respect of the administration of the *Act* and the Rules, or into any matter relating to trading in securities;

AND WHEREAS the Director, Enforcement is authorized to do any act or thing required or permitted to be done by the Executive Director;

AND WHEREAS the Director, Enforcement or Executive Director made an order dated September 26, 2013 in relation to The Cash Store Financial Services Inc., The Cash Store Australia Holdings Inc., 1396309 Alberta Ltd., Assistive Financial Corp., 367463 Alberta Ltd., and each of their predecessors, related entities and affiliates; and Gordon John Reykdal;


AND WHEREAS the Director, Enforcement considers it necessary to make the following investigation;

**THEREFORE IT IS ORDERED THAT:**

David Elzinga, Gus Gallucci, Nicole Chute, Louise Panneton, Tyler Hynnes and Sean Bonazzo are hereby appointed to make an investigation into any and all matters related to The Cash Store Financial Services Inc., The Cash Store Australia Holdings Inc., 1396309 Alberta Ltd., Assistive Financial Corp., 367463 Alberta Ltd., and each of their predecessors, related entities and affiliates; and Gordon John Reykdal, subsequent to July 1, 2011 related to potential contraventions of sections 92(4.1), 93(b), 146, 147, 221.1 of the *Act* and National Instruments 52-107 and 52-109 in respect of prohibitions respecting representations, fraud, disclosure generally, insider trading and disclosure of a material fact or change with respect to the reporting issuer that has not been generally disclosed, misleading information, acceptable accounting principles and officer certification.

Dated at the City of Calgary in the )  
Province of Alberta this 13<sup>th</sup> day of )  
June, 2014 )

ALBERTA SECURITIES COMMISSION

  
Cynthia J. Campbell  
Director, Enforcement

4876338

**VCD'F''**

THIS IS EXHIBIT "D" TO THE AFFIDAVIT OF  
WILLIAM E. AZIZ SWORN BEFORE ME  
THIS 10<sup>TH</sup> DAY OF OCTOBER, 2014



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Commissioner for Taking Affidavits

*Mary Paterson*



**ALBERTA SECURITIES COMMISSION****SECTION 40(2) ORDER****Docket: ENF-009610***Securities Act, R.S.A. 2000, c. S-4 (Act)*

WHEREAS The Cash Store Financial Services Inc. is a reporting issuer and is therefore a party pursuant to Section 40(1)(c) of the *Act*;

AND WHEREAS the Executive Director of the Commission is permitted to issue an order under Section 40(2) of the *Act*;

AND WHEREAS the undersigned is authorized to do any act or thing required or permitted to be done by the Executive Director under Section 40 of the *Act*;

AND WHEREAS it is necessary for a purpose related to the administration of the *Act* or regulation that The Cash Store Financial Services Inc. provide certain information, documents and records;

**IT IS HEREBY ORDERED** pursuant to Section 40(2) of the *Act* that The Cash Store Financial Services Inc. ("Cash Store") provide the Executive Director of the Alberta Securities Commission with copies of the following information, documents and records for the period of **July 1, 2011 to present**.

1. Names of all individuals (Directors, Officers, employees and all support staff as well as former Directors, Officers, employees and support staff), associated with Cash Store. Indicate the position they hold or held, the dates of employment as well as all home addresses, including any summer/recreation and/or part-time home addresses of such individuals.
2. All final signed minutes and resolutions for the Audit Committee and the Board of Directors.
3. Information packages, and all attachments/appendices, provided to the members of Audit Committee and Board of Directors.
4. Current and archived Microsoft Outlook .pst files (or Lotus Notes .nsf files if applicable) for the emails accounts of Gordon Reykdal, Cathalin Burke, Cameron Schiffner, Stefan William Johnson, Nancy Bland, Sandy Timmer, Michael Zvonkovic, Carlo Galloro, Michael Thompson, William C. Dunn, Edward C. McClelland, Robert Gibson, Albert Mondor, Ronald Chicoyne, Jerry Roczkowsky, Craig Warnock, Kevin Paetz, Mario Volpe and Steve Carlstrom provided in digital format (DVD-read only). Please ensure

the pst files (or Lotus Notes files, if applicable) include all contents but not limited to the "Inbox, Sent Items, all subfolders and any Deleted items".

5. The list of all the third-party lenders with whom Cash Store has been doing business with ("Third-Party Lenders").
6. All financier-broker agreements and funding agreements with each of the Third-Party Lenders including but not limited to all amendments, extensions, letters, renewals, and exchanges entered into in writing, verbally, via email, text or messaging.
7. All the Towers Watson Reports (uncollected loans).
8. All service agreements, including but not limited to all amendments, renewals, exchanges between Cash Store and The Cash Store Australia Holdings Inc. including any other related entities.
9. All organizational charts of Cash Store.
10. All the Loan Portfolio Purchase Agreements, Asset Purchase Agreements, Non-Competition Agreements including but not limited all amendments, extensions, letters, renewals, and exchanges entered into in writing, verbally, via email, text or messaging.
11. All documentation including but not limited to all agreements, amendments, extensions, letter renewals, and exchanges entered into in writing, verbally, via email, text or messaging with each of the Third-Party Lenders regarding the intangibles, proprietary knowledge and supplier relationships.
12. The Final Offer Circular for the Senior Notes of January 31, 2012.
13. The Pricing Supplement.
14. The Fairness Opinion and all reports issued by Canaccord Genuity Corp.
15. The Portfolio Valuation Reports of Management of Cash Store.
16. Copy of the Ernst & Young LLP portfolio valuation reports of the loan portfolio and intangibles (include all drafts and updated reports).
17. KPMG LLP's Purchase Price Allocation Summary.
18. All documents, including but not limited to all amendments, promissory notes, extensions, letters, renewals, and exchanges entered into in writing, verbally, via email, text or messaging, related to break fees with regards to Third-Party Lenders.
19. All documents, agreements, contracts, letters, exchanges, notes, emails, texts, messages and other exchanges in relation to retention payments made or to be made by Cash Store and its affiliates and related entities to Third-Party Lenders.

20. All agreements, including but not limited to binding letter agreements, funding extension agreements, documents, contracts, notes, letters, emails, texts, messages and other exchanges between Assistive Financial Corp. and Cash Store and all affiliates and related entities in regards to funds advanced by Assistive Financial Corp for brokerage services.
21. All documents, including but not limited to agreements, contracts, letters, emails, texts, messages and other exchanges, in relation to the acquisition from Third-Party Lenders in January 2012, of loans receivable and other assets between Cash Store and the Third-Party Lenders.
22. Lender reconciliations in Excel form showing the amounts of capital contributed by the Third-Party Lenders to Cash Store and its affiliates and related entities.
23. The USB stick with information and emails put on this USB stick by Ms. Cathalin Burke and left at Cash Store.
24. Documentation of the Disclosure Controls and Procedures (**DC&P**) in effect for the audited consolidated annual financial statements for the year ended December 31, 2011; unaudited interim consolidated financial statements for the period ended March 31, 2012; unaudited interim consolidated financial statements for the period ended June 30, 2012 and unaudited interim consolidated financial statements for the period ended September 30, 2012 (**collectively, the consolidated Annual and consolidated Interim Financial Statements**).
25. Documentation of the Internal Controls over Financial Reporting (**ICFR**) in effect for the consolidated Annual and consolidated Interim Financial Statements.
26. Documentation for the testing, evaluation and certification of the DC&P and the ICFR in effect for the consolidated Annual and consolidated Interim Financial Statements.

IT IS FURTHER ORDERED that the above information, documents and records be delivered to the attention of Louise Panneton at the offices of the Alberta Securities Commission, located at Suite 600, 250- 5<sup>th</sup> Street S.W., Calgary, Alberta, T2P 0R4 no later than February 28<sup>th</sup>, 2014.

Dated at the City of Calgary in the Province of Alberta this 7<sup>th</sup> day of January 2014.

) ALBERTA SECURITIES COMMISSION

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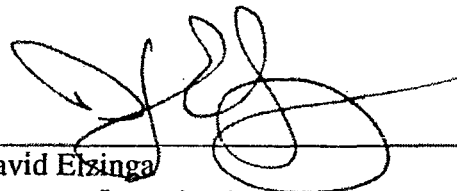
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David Elzinga  
Manager, Investigation



# TAB E

THIS IS EXHIBIT "E" TO THE AFFIDAVIT OF  
WILLIAM E. AZIZ SWORN BEFORE ME  
THIS 10<sup>TH</sup> DAY OF OCTOBER, 2014



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Commissioner for Taking Affidavits

*Mary Paterson*

Docket: ENF-009610

## ALBERTA SECURITIES COMMISSION

**NOTICE COMPELLING PRODUCTION BY A WITNESS**  
SECTION 42

*Securities Act, R.S.A. 2000, c. S-4, as amended (Act)*

**TO: William E. Aziz**  
**Chief Restructuring Officer, The Cash Store Financial Service Inc.**  
**BlueTree Advisors**  
**email: baziz@bluetreeadvisors.com**

WHEREAS THE Director, Enforcement of the Alberta Securities Commission (the Commission) issued an Amended Investigation Order pursuant to section 41 of the *Act* dated June 13, 2014;


AND WHEREAS Dave Elzinga, Gus Gallucci, Nicole Chute, Louise Panneton, Tyler Hynnes and Sean Bonazzo have been appointed to make an investigation pursuant to such Investigation Order;

AND WHEREAS it has been determined that William E. Aziz of BlueTree Advisors, may be a witness in proceedings in relation to the Investigation Order;

TAKE NOTICE that in accordance with section 42(1)(c) of the *Act*, you are hereby compelled to produce the following information, documents and records in your possession or under your control to Nicole Chute at the offices of the Commission located at Suite 600, 250 - 5<sup>th</sup> Street S.W., Calgary, Alberta, T2P 0R4, no later than the 18th day of July, 2014;

1. The forensically captured images from the cellular phones of Gordon Reykdal, Kevin Paetz, Halldor Kristjansson, Barret Reykdal, Michael Thompson and Bill Johnson.
2. All documents gathered in relation to the Senior Secured Notes of Cash Store Financial Services Inc.

Dated at the City of Calgary in the  
Province of Alberta this 20th day of  
June, 2014.

) ALBERTA SECURITIES COMMISSION  
)  
)  
)   
) \_\_\_\_\_  
) Nicole Chute, CA  
) Investigative Accountant

**VCD'H'**

THIS IS EXHIBIT "F" TO THE AFFIDAVIT OF  
WILLIAM E. AZIZ SWORN BEFORE ME  
THIS 10<sup>TH</sup> DAY OF OCTOBER, 2014



---

Commissioner for Taking Affidavits

*Mary Paterson*



Docket: ENF-009217

## ALBERTA SECURITIES COMMISSION

AUTHORIZATION ORDER  
SECTION 45(b)*Securities Act, R.S.A. 2000, c. S-4, as amended*

## WHEREAS:

1. Anything acquired and all information or evidence obtained pursuant to an investigation is confidential and shall not be divulged except where authorized by the Executive Director of the Alberta Securities Commission (**Commission**).
2. The Director, Enforcement is authorized to do any act or thing required or permitted to be done by the Executive Director.
3. Staff of the Commission (**Staff**) are conducting an investigation (the **Investigation**) concerning potential breaches of Alberta securities laws relating to The Cash Store Financial Services Inc. (**Cash Store**) and others, and have served on Cash Store and others orders and notices requiring the production of records.
4. Pursuant to an Amended and Restated Order of the Ontario Superior Court of Justice dated April 15, 2014, in the context of *Companies' Creditors Arrangement Act (CCAA)* proceedings, Blue Tree Advisors Inc. was appointed to be Chief Restructuring Officer (**CRO**) of Cash Store, with authority to direct the operations and management of Cash Store.
5. Neither Cash Store nor the CRO of Cash Store have, to date, provided Staff with all of the records required under the orders and notices served pursuant to the Investigation. The CRO of Cash Store has indicated his willingness to comply with the orders and notices, but that he seeks to ensure a reasonable process to protect any solicitor-client and litigation privilege which may attach to any of the records within the ambit of the orders and notices. Some others who have received orders or notices compelling production of records from Staff have also indicated their concern about protecting potential solicitor-client and litigation privilege in favour of Cash Store.
6. The CRO of Cash Store proposes to bring an application before the Honourable Regional Senior Justice Morawetz in the Ontario Court Superior Court of Justice, seeking approval of processes to either review records for potential privilege, or to waive privilege.
7. The CRO of Cash Store advises that it appears likely that Justice Morawetz would require any such application to be brought on notice to all parties who may be affected by the application, including all parties on the CCAA "service list" with respect to Cash Store.
8. Staff are of the view that, in the present circumstances, divulging the contents of the Investigation Order respecting Cash Store and any orders or notices issued pursuant to the

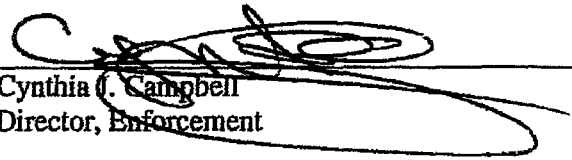
investigation that have not yet been fulfilled, will not jeopardize the integrity of the investigation and will not harm the reputation of any persons named therein, and accordingly that it is in the public interest to divulge such information in the CCAA proceedings.

IT IS HEREBY ORDERED THAT:

Staff, the CRO, and the CRO's legal counsel are each authorized to divulge information relating to the Cash Store Investigation Order and any orders or notices requiring the production of records in connection with the Cash Store Investigation, in the context of the Cash Store CCAA proceedings in the Ontario Superior Court.

Dated at the City of Calgary in the )  
Province of Alberta this 20<sup>th</sup> day of )  
September, 2014. )  
)  
)

ALBERTA SECURITIES COMMISSION

  
Cynthia J. Campbell  
Director, Enforcement

# TAB G

THIS IS EXHIBIT "G" TO THE AFFIDAVIT OF  
WILLIAM E. AZIZ SWORN BEFORE ME  
THIS 10<sup>TH</sup> DAY OF OCTOBER, 2014



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Commissioner for Taking Affidavits

*Mary Paterson*

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OFFICE OF THE DIRECTOR, ENFORCEMENT  
LORENZ BERNER, ENFORCEMENT COUNSEL

DIRECT LINE: 403.355.3889  
DIRECT FAX: 403.297.2210  
E-MAIL: [lorenz.berner@asc.ca](mailto:lorenz.berner@asc.ca)

July 31, 2014

**Osler, Hoskin & Harcourt LLP**  
Toronto and Calgary – via email

Attention: Marc S. Wasserman ([mwasserman@osler.com](mailto:mwasserman@osler.com))  
Tristram J. Mallett ([tmallett@osler.com](mailto:tmallett@osler.com))

Dear Sirs:

**Re: Cash Store Financial Services Inc. et al -- Record Production**

I am writing to follow up on our meeting of July 29. I understand that you, as counsel for the Chief Restructuring Officer of Cash Store Financial Services Inc., propose to appear before the Honourable Regional Senior Justice Morawetz in the CCAA proceedings, to address the issue we discussed.

First, some brief background: The Alberta Securities Commission is conducting an investigation into potential breaches of Alberta securities laws relating to Cash Store Financial Services Inc. ("Cash Store") and related entities and individuals. Under sections 40 and 42 of the *Alberta Securities Act*, the ASC has broad powers to compel production of records by certain parties and witnesses, in order to facilitate thorough investigations.

On or about January 7, 2014, we served a s.40(2) order upon Cash Store, requiring numerous records to be produced to us. For convenience, a copy of this order is attached. As you know, such orders are confidential and are not to be disclosed generally, in order to preserve the integrity of our investigations (among other reasons).

The compelled records have not yet been provided, although we have been advised that a significant proportion of them will be delivered to us by today. We recognize that the Chief Restructuring Officer has only been in place since mid-April, but at the same time stress that there is an urgent need for us to receive all of the records in issue so that our investigation is not jeopardized or rendered moot through the passage of time.

The compelled records include various "email" items (including related records such as electronic calendar items and contact directories) from Cash Store corporate computer systems. We understand that the Chief Restructuring Officer has arranged for these to be compiled, that he is able and willing to provide them to us, but that these records have not been reviewed by either the Chief Restructuring Officer or counsel, to filter out records that are protected by a legal

privilege. (We readily acknowledge that we are not entitled to, and we make no demand to receive, privileged records, unless such privilege is voluntarily waived.) We understand that the Chief Restructuring Officer is concerned that the cost to perform a full privilege review of the hundreds of thousands of email records will impact the ultimate asset recovery value that may be available to Cash Store stakeholders. At the same time, we understand that the Chief Restructuring Officer understands that our record demands have the same force as a record summons in the Court of Queen's Bench of Alberta, and that he wishes to comply fully, subject only to the practical issue of how to (reasonably) screen for privilege.

We offer a potential solution.

The ASC's Evidence Management team uses modern, sophisticated software as a tool for record processing, cataloguing and analysis. The software allows the evidence management analysts to review or screen electronic databases for specific search terms, characteristics, and other features in a manner that is comprehensive, time-efficient, and cost-efficient. Such screening can of course be useful in sifting for relevance, but is also at least as valuable in sifting for specific privilege triggers. For example, law firm domain names, individual lawyer names (or email addresses, phone numbers, topics, dates, and so forth) can all be used to identify and isolate records that "trigger" a potential privilege concern. This type of software (and process) is routinely used by large law firms, specialized electronic evidence consultants, and governmental bodies to manage document production and disclosure in commercial and regulatory litigation, as well as other contexts.

Generally, our Evidence Management team handles investigative records using these tools before any investigative review is conducted. This creates an opportunity to filter out material that is, for example, clearly irrelevant to an investigation, or that is potentially privileged. We have had the Evidence Management team apply just such "potentially privileged" screens in situations where we were concerned that no privilege review may have been conducted by parties who provided records.

What we propose is that we utilize the ASC's Evidence Management team (or one member of that team) to conduct an initial "potential privilege" review on the full set of email (.pst) records that are responsive to our production orders. This would work as follows:

- Your office would provide the full set of .pst files directly to the designated ASC Evidence Management Specialist ("EMS"), forthwith.
- Your office would simultaneously provide that EMS with a confidential list of identifying features (domain names, email addresses, law firm and lawyer names, issues on which legal advice was likely sought/received, etc.) that would indicate records which might be subject to privilege. (Some dialogue between your office or the Chief Restructuring Officer and the EMS (partially based on sampling the data) is likely necessary, to ensure that the list is practical.) This list would not become part of any investigative file or shared in any manner with others at the ASC, without the Chief Restructuring Officer's consent.

- The EMS would load the full set of .pst files into a separate database to house the .pst files, with security in place that will not allow any investigators access to the database (“Original .pst Database”).
- The EMS would apply the “potentially privileged” list as a screen. This process likely will require some interaction with the Chief Restructuring Officer or counsel on his behalf, to refine searches and ensure maximum effectiveness. This Original .pst Database will remain intact, but the potentially privileged items would be tagged.
- The items that are not identified as potentially privileged (and only those items at this stage) will be copied and added to the investigation case database.
- The EMS will provide counsel for the Chief Restructuring Officer with a load file and electronic copies of the records identified through the screening process as “potentially privileged”.
- The Chief Restructuring Officer or counsel on his behalf would, as soon as possible thereafter, conduct a review of the “potentially privileged” subset of .pst records, to determine whether they are indeed subject to privilege. (The expectation is that this subset will be relatively small, greatly lessening the time/cost burden on the Chief Restructuring Officer and ultimately the impact on the net value of the Cash Store assets.)
- The Chief Restructuring Officer or counsel on his behalf would then provide the EMS with a list of any records from the “potentially privileged” subset that were determined not to be privileged in fact. Copies of these records would then be made from the Original .pst Database and added to the investigative case database.
- The EMS would then delete the Original .pst Database from the ASC’s servers, and the original electronic storage medium on which the .pst files were provided to the EMS would be returned to counsel for the Chief Restructuring Officer.
- In terms of the legal commitments necessary to make such a process work, I suggest that the ASC would need to (and would be willing to) commit in writing to impose an “ethical wall” around the EMS who communicates with your firm and applies a privilege screen to the full set of .pst records. That EMS, for example, would be precluded from sharing information about the full set of .pst records provided, the list of screen parameters, the resultant “potentially privileged” set of records, communications with your office or the Chief Restructuring Officer relating to the screen, and other details as might be required. We would agree only to enter into our investigative case database the post-filtered subset of records provided (and any records subsequently provided by you after a follow up review).
- From the ASC’s perspective, what we would require from the Chief Restructuring Officer, on his own behalf and on behalf of Cash Store, is a commitment,

- not to subsequently object to the proposed review process or to allege that ASC staff acted inappropriately in conducting such a screening process; and
- in the event that a claim of privilege is subsequently made respecting any records that are ultimately included in our “case database” (ie. that are not screened out by the potentially privileged filtering process), the Chief Restructuring Officer will not take any position that the investigation or the investigators involved are tainted or otherwise precluded from continuing.

I would be pleased to discuss this proposal further with you, and if appropriate to participate in any application before Justice Morawetz.

Yours truly,



Lorenz Berner  
Enforcement Counsel

cc: Elaine Balestra  
Nicole Chute



**IN THE MATTER OF the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended**

Court File No: CV-14-10518-00CL

**AND IN THE MATTER OF a plan of compromise or arrangement of The Cash Store Financial Services Inc., The Cash Store Inc., TCS Cash Store Inc., Instalogs Inc., 7252331 Canada Inc., 5515433 Manitoba Inc., 1693926 Alberta Ltd. doing business as "The Title Store"**

***Ontario***  
**SUPERIOR COURT OF JUSTICE**  
**COMMERCIAL LIST**

Proceeding commenced at Toronto

**AFFIDAVIT OF WILLIAM E. AZIZ**  
**(Alberta Securities Commission**  
**Potential Privilege Review)**

Osler, Hoskin & Harcourt LLP  
1 First Canadian Place  
P.O. Box 50  
Toronto, ON M5X 1B8

Marc Wasserman LSUC#44066M  
Tel: (416) 862-4908

Jeremy Dacks LSUC# 41851R  
Tel: (416) 862-4923  
Fax: (416) 862-6666

Counsel for the Chief Restructuring Officer

**IN THE MATTER OF the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended**

Court File No: CV-14-10518-00CL

**AND IN THE MATTER OF a plan of compromise or arrangement of The Cash Store Financial Services Inc., The Cash Store Inc., TCS Cash Store Inc., Instaloans Inc., 7252331 Canada Inc., 5515433 Manitoba Inc., and 1693926 Alberta Ltd Doing Business as "The Title Store"**

*Ontario*  
**SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

Proceeding commenced at Toronto

**MOTION RECORD OF THE APPLICANTS  
(Alberta Securities Commission  
Potential Privilege Review)**

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Toronto, ON M5X 1B8

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Counsel for the Chief Restructuring Officer