

**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 PRISZM INCOME FUND, PRISZM CANADIAN OPERATING TRUST,  
PRISZM INC. AND KIT FINANCE INC.

(the "Applicants")

**FACTUM OF THE APPLICANTS**

(returnable June 29, 2011)

**(Re Extension of Stay Period, Approval of DIP Extension, Amendment to  
CRO Arrangements, Authority to Dispose of Non-Material Assets, Approval of  
Monitor Reports, and Approval of D&O Claims Solicitation Procedure)**

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TO: **SERVICE LIST**

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PRISZM INC. AND KIT FINANCE INC.**

(the "Applicants")

**SERVICE LIST  
(as at June 23 2011)**

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Monitor Reports, and Approval of D&O Claims Solicitation Procedure)**

**PART I - INTRODUCTION**

1. On March 31, 2011, Prizm Income Fund ("**Prizm Fund**"), Prizm Canadian Operating Trust ("**Prizm Trust**"), Prizm Inc. ("**Prizm GP**"), and KIT Finance Inc. ("**KIT Finance**") were granted protection from their creditors pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**") by order of the Honourable Mr. Justice Morawetz, as amended and restated by the order of the Honourable Madam Justice Mesbur on April 29, 2011 (the "**Initial Order**"). The stay of proceedings and other benefits of the Initial Order were extended to Prizm LP. Prizm Fund, Prizm Trust, Prizm GP, Prizm LP and Kit Finance will be referred to collectively herein as the "**Prizm Entities**". FTI

Consulting Canada Inc. was appointed as monitor of the Prizm Entities (the "Monitor") in the CCAA proceeding.

2. On this motion, the Prizm Entities are seeking the following relief:

(a) An order (the "Stay Extension Order") substantially in the form of the draft Order at Tab 3 of the Motion Record, *inter alia*:

- (i) extending the Stay Period (as defined below) until September 30, 2011;
- (ii) approving the DIP Extension Amendment (as defined below);
- (iii) approving an amendment to the Papernick CRO Agreement;
- (iv) approving the Robertson CRO Agreement (as defined below);
- (v) authorizing the Prizm Entities to dispose of redundant or non-material assets, and to sell assets or operations not exceeding \$100,000 in any one transaction or \$1,000,000 in the aggregate, subject to the prior consent of the Monitor; and
- (vi) approving the pre-filing Report of FTI Consulting Canada Inc. in its capacity as the proposed monitor of the Prizm Entities dated March 31, 2011, the First Report of the Monitor dated April 26,

2011 and the Second Report of the Monitor dated May 27, 2011 and the activities of the Monitor described therein; and

(b) An order (the "**D&O Claims Solicitation Procedure Order**") substantially in the form of the draft Order at Tab 4 of the Motion Record approving the proposed D&O Claims Solicitation Procedure (as defined below).

## **PART II - THE FACTS**

3. The facts with respect to this Motion are more fully set out in the affidavit of Deborah Papernick sworn June 23, 2011 (the "**June 23 Affidavit**"). All capitalized terms used but not defined herein shall have the meaning ascribed to them in the June 23 Affidavit.

June 23 Affidavit, Motion Record of the Applicants (the "**Motion Record**"), Tab 2.

4. Prizm LP is a franchisee of Yum! Restaurants International (Canada) Company (the "**Franchisor**") and is an independent quick service restaurant operator of KFC, Taco Bell and Pizza Hut restaurants.

June 23 Affidavit, Motion Record, Tab 2 at paras. 5 and 7.

5. In 2009 and 2010, the Prizm Entities experienced deteriorating financial performance and breached or otherwise defaulted on various obligations to their creditors, including, among other things, a covenant under the Prizm Entities'

senior secured indebtedness to Prudential Investment Management Inc., and each Prudential affiliate party thereto (collectively, "**Prudential**"). Ultimately, the Prizm Entities sought and received protection from their creditors under the CCAA.

June 23 Affidavit, Motion Record, Tab 2 at paras 7-8.

6. Pursuant to the Initial Order, a stay of proceedings was granted up to and including April 30, 2011 (the "**Stay Period**"). The Stay Period was subsequently extended to June 30, 2011.

June 23 Affidavit, Motion Record, Tab 2 at para 3.

7. Among other things, the Initial Order approved a debtor-in-possession facility (the "**DIP Facility**") provided by Prudential (in this capacity, the "**DIP Lender**") in the maximum amount of \$3 million pursuant to the DIP Amendment and granted a charge (the "**DIP Charge**") in favour of Prudential as security for same.

June 23 Affidavit, Motion Record, Tab 2 at paras. 27-28.

8. The Initial Order also approved an indemnity in favour of the current and former directors and officers of the Prizm Entities, Deborah Papernick and 2279549 Ontario Inc. in its capacity as CRO of the Prizm Entities (collectively, the "**Directors and Officers**") against any obligations and liabilities that they may incur as directors, officers or CRO of the Prizm Entities, whichever is applicable (the "**Indemnity**"). The Indemnity is secured by a charge over the Property (as defined in the Initial

Order) of the Prizm Entities to a maximum aggregate amount of \$9.8 million (the "D&O Charge").

June 23 Affidavit, Motion Record, Tab 2 at para. 45.

9. Since the commencement of the CCAA proceedings, the Prizm Entities have continued operating their business as a going concern.

June 23 Affidavit, Motion Record, Tab 2 at para 9.

10. On May 30, 2011, Justice Morawetz granted an Approval and Vesting Order with respect to the sale of 204 of the Prizm Entities' restaurant outlets in Ontario, British Columbia and Quebec to Soul Restaurants Canada Inc. (the "**Soul Transaction**"), which closed on June 1, 2011. The Prizm Entities continue to manage their post-sale obligations as contemplated by the Soul Transaction.

June 23 Affidavit, Motion Record, Tab 2 at paras 11-12.

11. On or about February 1, 2011, the Prizm Entities commenced a sales process in respect of their restaurants in Alberta, Manitoba, New Brunswick, Nova Scotia and Quebec (the "**Remaining Restaurants**") which did not originally form part of the Soul Transaction (the "**Sales Process**"). The Sales Process was approved, *nunc pro tunc*, on May 30, 2011.

June 23 Affidavit, Motion Record, Tab 2 at paras 13-14.

12. The Prizm Entities, in conjunction with the Monitor and Canaccord Genuity Corp. ("**Canaccord Genuity**"), and in consultation with Prudential, continue to work

towards completing the Sales Process and expect to return to Court for approval of one or more transactions in the near future. The Prizm Entities continue to explore other opportunities to maximize returns for creditors and to preserve ongoing operations for the benefit of their stakeholders.

June 23 Affidavit, Motion Record, Tab 2 at para. 15-20.

13. Deborah Papernick has informed the Prizm Entities that she will be resigning as Chief Financial Officer of Prizm GP effective June 30, 2011. She also informed the Prizm Entities of her intention to resign as Chief Restructuring Officer ("CRO"). The Prizm Entities, Prudential and Ms. Papernick, with assistance from the Monitor, have agreed subject to court approval to amend the Papernick CRO Agreement to facilitate the wind down and termination of Ms. Papernick's engagement as CRO effective July 31, 2011, with the agreement that she will continue her duties as CRO for the period from July 1, 2011 until July 31, 2011 on a part-time basis to transition the role to Jim Robertson.

June 23 Affidavit, Motion Record, Tab 2 at paras. 35-39.

14. On August 1, 2011, Mr. Robertson will, subject to Court approval, take over the full CRO responsibilities. Mr. Robertson has been employed by Prizm GP for over four years, has served in his capacity as Chief Operating Officer of Prizm GP since December 2009 and is intimately familiar with the operations and business of the Prizm Entities.

June 23 Affidavit, Motion Record, Tab 2 at paras. 40-43.

**PART III - ISSUES AND THE LAW**

15. The issues on this motion are as follows:
- (a) Should the Court grant an extension of the Stay Period?
  - (b) Should the Court approve the DIP Extension Amendment?
  - (c) Should the Court approve the amendments to the CRO arrangements?
  - (d) Should the Court grant the Prizm Entities authorization to dispose of non-material or redundant assets?
  - (e) Should the Court approve the D&O Claims Solicitation Procedure?

***The Court should Extend the Stay Period to September 30, 2011***

16. The Stay Period currently expires on June 30, 2011. An extension of the Stay Period up to and including September 30, 2011 is necessary to give the Prizm Entities time to complete the Sales Process and continue to explore opportunities to maximize returns for creditors and to preserve ongoing operations for the benefit of their stakeholders.

June 23 Affidavit, Motion Record, Tab 2 at paras. 20-21.

17. Pursuant to s. 11.02 of the CCAA, the Court may extend the stay of proceedings with respect to a debtor company where (a) circumstances exist that

make the order appropriate; and (b) the applicant has acted and is acting in good faith and with due diligence.

CCAA, s. 11.02(2), 11.02(3)

18. In *Re Canwest Global Communications Corp.*, Justice Pepall granted an extension of the stay of proceedings where she found that, *inter alia*, the cash flow forecast indicated that the debtors had sufficient cash resources to operate throughout the extension of the stay period, the monitor supported the extension and there was a lack of opposition to the motion.

*Re Canwest Global Communications Corp.*, [2009] O.J. No. 4788 (S.C.J.) ("**Canwest Global**"), at para. 43, Applicants' Book of Authorities, Tab 1.

19. The Prizm Entities, with the assistance of the Monitor, have prepared a consolidated cash flow forecast (the "**Cash Flow Forecast**") for the period from June 20, 2011 to September 30, 2011 which indicates that the Prizm Entities will have sufficient cash resources through to September 30, 2011.

June 23 Affidavit, Motion Record, Tab 2 at paras. 22-23.

20. While the Cash Flow Forecast indicates that the Prizm Entities will not require any additional financing prior to September 30, 2011, the Prizm Entities propose to enter into a DIP Extension Amendment, described below, which provides an added measure of stability in case of variances in timing, forecast sales and other factors.

June 23 Affidavit, Motion Record, Tab 2 at para. 24.



21. The Prizm Entities continue to act in good faith and with due diligence as evidenced by the successful closing of the Soul Transaction and continued efforts towards finding a going concern solution for the Remaining Restaurants through the Sales Process. The Prizm Entities do not believe that any creditor will suffer any material prejudice if the Stay Period is extended to September 30, 2011.

June 23 Affidavit, Motion Record, Tab 2 at para. 25.

22. The Monitor and Prudential support the motion to extend the Stay Period.

June 23 Affidavit, Motion Record, Tab 2 at para. 26.

23. For the foregoing reasons, it is respectfully submitted that the Stay Period should be extended to September 30, 2011.

***The Court should Approve the DIP Extension Agreement***

24. The DIP Facility expired on May 20, 2011 and the Prizm Entities and the DIP Lender were unable to finalize the terms of a DIP extension in time to have it approved at the motion heard on May 30, 2011.

June 23 Affidavit, Motion Record, Tab 2 at para. 29.

25. The parties continued the negotiation of the terms of an extension of the DIP Facility. Pursuant to Amendment No. 12 to Note Purchase And Private Shelf Agreement and Forbearance Agreement dated June 22, 2011 (the "**DIP Extension Amendment**"), the DIP Lender has agreed to renew and extend the DIP Facility to the Prizm Entities until September 30, 2011.

June 23 Affidavit, Motion Record, Tab 2 at para. 30.

26. The DIP Extension Amendment contemplates an extension fee to be paid by the Prizm Entities to the DIP Lender on or before June 30, 2011 in the aggregate amount of US\$100,000. The remaining terms of the DIP Extension Amendment are substantially similar to the terms of the DIP Amendment.

June 23 Affidavit, Motion Record, Tab 2 at para. 31.

27. The Prizm Entities are proposing that the DIP Extension Amendment and advances made pursuant to same be secured by the DIP Charge, as set out in paragraphs 41-51 of the Initial Order, and that the DIP Extension Amendment should be subject to the same rights, limitations and protections as were provided pursuant to the Initial Order, including the security under the DIP Charge.

Stay Extension Order, Motion Record, Tab 3 at para. 5

28. Section 11.2 of the CCAA provides express jurisdiction for this Court to grant a charge in favour of a person who agrees to provide interim financing to the company. The DIP Charge in the Initial Order was granted pursuant to s. 11.2.

CCAA, s. 11.2.

29. In *Re Canwest Global Communications Corp.*, Justice Pepall approved a DIP facility and DIP charge, noting that interim financing provided for under s. 11.2 benefits all stakeholders. Justice Pepall found that the factors enumerated in s. 11.2(4) of the CCAA had been met, which require the court to consider, among other things:

- (a) the period during which the company is expected to be subject to proceedings under the CCAA;
- (b) how the company's business and financial affairs are to be managed during the proceedings;
- (c) whether the company's management has the confidence of its major creditors;
- (d) whether the loan would enhance the prospects of a viable compromise or arrangement being made in respect of the company;
- (e) the nature and value of the company's property;
- (f) whether any creditor would be materially prejudiced as a result of the security or charge; and
- (g) the monitor's report.

CCAA, s. 11.2(4).

*Re Canwest Global Communications Corp.*, [2009] O.J. No. 4286 (S.C.J.), at paras. 31-36, Applicants' Book of Authorities, Tab 2.

30. As regards the Prizm Entities, the factors listed under s. 11.2(4) were considered in the granting of the DIP Charge. These factors also support the approval of the DIP Extension Agreement and the extension of the DIP Charge over funds advanced pursuant to the DIP Extension Agreement. The DIP Extension Agreement and the extension of the DIP Charge over the DIP Extension Agreement should be granted, as:

- (a) the Prizm Entities continue to operate as a going concern during the proceedings;

- (b) the stability added by a DIP Facility will ensure that confidence is maintained as among the Prizm Entities' creditors, employees and suppliers;
- (c) the Monitor supports the extension of the DIP Facility to September 30, 2011; and
- (d) all secured creditors that will be affected by the extension of the DIP Facility have been given notice of this motion.

June 23 Affidavit, Motion Record, Tab 2 at paras. 9, 32-34.  
CCAA, s. 11.2(4).

31. For the foregoing reasons, it is respectfully submitted that the DIP Extension Amendment should be approved.

***The Court should Approve the Amendments to the CRO Arrangements***

32. As Deborah Papernick has notified the Prizm Entities of her intention to resign as CRO, the Prizm Entities are seeking an Order approving amendment to the Papernick CRO Agreement and approving the agreement between 2289500 Ontario Inc. and the Prizm Entities dated June 23, 2011 (the "**Robertson CRO Agreement**") pursuant to which Jim Robertson will assume the role of CRO, effective August 1, 2011.

June 23 Affidavit, Motion Record, Tab 2 at para. 40.

33. The approval of a CRO of the Prizm Entities is within the inherent jurisdiction of this Court. In *Re ICR Commercial Real Estate (Regina) Ltd. v. Bricore Land Group Ltd.*, Justice Koch held that it is sometimes necessary to appoint an officer to oversee the restructuring of an insolvent company and that those professionals should be entitled to protection from liability in the execution of their duties.

*Re ICR Commercial Real Estate (Regina) Ltd. v. Bricore Land Group Ltd.* (2007), 33 C.B.R. (5th) 39 (Sask. Q.B.), at para. 19, aff'd 2007 SKCA 72, Applicants' Book of Authorities, Tab 3.

34. In the current proceedings, a CRO will continue to provide the knowledge of and experience with the Prizm Entities' business needed in their continued efforts to complete the Sales Process and continue to explore other opportunities to maximize returns for creditors and to preserve ongoing operations for the benefit of their stakeholders.

35. As stated above, Mr. Robertson is intimately familiar with the operations and business of the Prizm Entities. He is considered by Deborah Papernick to be the best person to assume the responsibilities of CRO going forward.

June 23 Affidavit, Motion Record, Tab 2 at para. 37.

36. The proposed amendment to the Papernick CRO Agreement is designed to provide the Prizm Entities with a smooth transition to Jim Robertson acting as CRO.

37. It is respectfully submitted that the approval of the Robertson CRO Agreement and the Amending Agreement will benefit the Prizm Entities by

ensuring the smooth transition of the CRO role and ensuring that there is executive authority to direct the Prizm Entities at least until September 5, 2011 and likely beyond at no additional cost to the Prizm Entities.

38. For the foregoing reasons, it is respectfully submitted that the Robertson CRO Agreement and the amendment to the Papernick CRO Agreement should be approved.

***The Court Should Grant the Prizm Entities Authorization to Dispose of Redundant or Non-Material Assets***

39. As a result of the sale and closing of some of the Prizm Entities' restaurant outlets, the Prizm Entities are in possession of a number of redundant or non-material assets. In order to realize value from these assets for the benefit of their stakeholders, the Prizm Entities are seeking authority to dispose of such redundant or non-material assets subject to certain thresholds and the prior consent of the Monitor.

40. Section 36 of the CCAA provides that "*a debtor company in respect of which an order has been made under this Act may not sell or otherwise dispose of assets outside the ordinary course of business unless authorized to do so by a court.*" In deciding whether to grant such authorization, the Court is to consider the following factors, among others:

- (a) *the process leading to the proposed sale or disposition was reasonable in the circumstances;*
- (b) *whether the monitor approved the process leading to the proposed sale or disposition;*
- (c) *whether the monitor filed with the court a report stating that in their opinion the sale or disposition would be more beneficial to the creditors than a sale or disposition under a bankruptcy;*
- (d) *the extent to which the creditors were consulted;*
- (e) *the effects of the proposed sale or disposition on the creditors and other interested parties; and*
- (f) *whether the consideration to be received for the assets is reasonable and fair, taking into account their market value.*

CCAA, s. 36.

41. In *Canwest Global*, Justice Pepall stated the following regarding section 36 of the CCAA:

*The CCAA is remedial legislation designed to enable insolvent companies to restructure. As mentioned by me before in this case, the amendments do not detract from this objective. In discussing section 36, the Industry Canada Briefing Book on the amendments states that "The reform is intended to provide the debtor company with greater flexibility in dealing with its property while limiting the possibility of abuse. [emphasis added]*

*Canwest Global* at para. 32, Applicants' Book of Authorities, Tab 1.

42. The ability to dispose of redundant or non-material assets will provide the Prizm Entities with the flexibility to deal with their property in a cost-effective and efficient manner to the benefit of all stakeholders. The proposed limits on the value of property to be so disposed (\$100,000 in any one transaction or \$1,000,000 in the

aggregate) and the requirement to obtain the prior consent of the Monitor provides reasonable protection for the Prizm Entities' creditors as it removes any risk of the possibility of abuse.

43. All creditors likely to be affected by the requested relief have received notice of this motion. The Monitor and Prudential support the granting of the requested relief.

44. Accordingly, it is respectfully submitted that the Prizm Entities should be granted authority to dispose of redundant or non-material assets not exceeding \$100,000 in any one transaction or \$1,000,000 in the aggregate, subject to the prior consent of the Monitor.

***The Court should Approve the Proposed D&O Claims Solicitation Procedure***

45. As stated above, the Initial Order approves the Indemnity in favour of the Directors and Officers against any obligations and liabilities that they may incur as directors, officers or CRO of the Prizm Entities and the D&O Charge to secure the Prizm Entities' obligations under the Indemnity. In order to be in a position to distribute proceeds to its creditors in the future it is necessary to determine the scope of the obligations and liabilities, if any, which may be covered by the D&O Charge. Accordingly, the Prizm Entities are seeking approval of a claims procedure (the "**D&O Claims Solicitation Procedure**") to solicit claims against the Directors and



Officers. The D&O Claims Solicitation Procedure was developed in consultation with, and is supported by, the Monitor.

June 23 Affidavit, Motion Record, Tab 2 at paras. 46-47 and 52.

46. Section 11 of the CCAA affords the Court the jurisdiction to make any order it considers appropriate in the circumstances, subject to the restrictions set out in the CCAA itself, which jurisdiction includes the ability to approve a process to solicit and/or determine claims against the debtor company and/or its directors and officers.

CCAA, s. 11.

47. The Court's authority to approve a process to solicit claims against a debtor company and/or its directors and officers has been described as "well accepted" in Canada. In *Re ScoZinc Ltd.*, Justice Beveridge noted that, in the context of a claims procedure, "the practice has arisen for the court to create by order a claims process that is both flexible and expeditious".

*Re ScoZinc Ltd.* (2009), 53 C.B.R. (5th) 96 (N.S. S.C.) at paras. 23 and 25, Applicants' Book of Authorities, Tab 4.

48. It is respectfully submitted that the D&O Claims Solicitation Procedure proposed by the Prizm Entities is flexible, expeditious and provides for reasonable deadlines and procedures for submitting claims (as described in greater detail in the June 23 Affidavit) that are appropriate in the circumstances of this case.

49. For the foregoing reasons, it is respectfully submitted that the D&O Claims Solicitation Procedure should be approved.

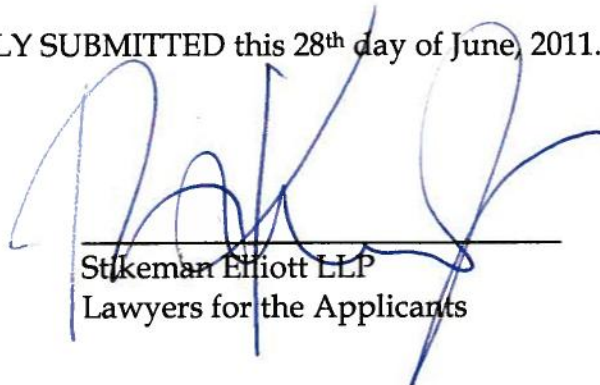
**PART IV - ORDER REQUESTED**

50. For the reasons set forth above, the Prizm Entities request orders:

- (i) extending the Stay Period until September 30, 2011;
- (ii) approving the DIP Extension Amendment;
- (iii) approving the amendments to the Papernick CRO Agreement;
- (iv) approving the Robertson CRO Agreement;
- (v) authorizing the Prizm Entities to dispose of redundant or non-material assets, and to sell assets or operations not exceeding \$100,000 in any one transaction or \$1,000,000 in the aggregate, subject to the prior consent of the Monitor;
- (vi) approving the proposed D&O Claims Solicitation Procedure; and
- (vii) approving the pre-filing Report of FTI Consulting Canada Inc. in its capacity as the proposed monitor of the Prizm Entities dated March 31, 2011, the First Report of the Monitor dated April 26, 2011 and the

Second Report of the Monitor dated May 27, 2011 and the activities of  
the Monitor described therein.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 28<sup>th</sup> day of June, 2011.



Stikeman Elliott LLP  
Lawyers for the Applicants

**SCHEDULE "A"**  
**LIST OF AUTHORITIES**

1. *Re Canwest Global Communications Corp.*, [2009] O.J. No. 4788 (S.C.J.)
2. *Re Canwest Global Communications Corp.*, [2009] O.J. No. 4286 (S.C.J.)
3. *Re ICR Commercial Real Estate (Regina) Ltd. v. Bricore Land Group Ltd.* (2007), 33 C.B.R. (5th) 39 (Sask. Q.B.)
4. *Re ScoZinc Ltd.* (2009), 53 C.B.R. (5th) 96 (N.S. S.C.)

**SCHEDULE "B"**  
**RELEVANT STATUTES**

*Companies' Creditors Arrangement Act*  
R.S.C. 1985, c. C-36

**General power of court**

11. Despite anything in the Bankruptcy and Insolvency Act or the Winding-up and Restructuring Act, if an application is made under this Act in respect of a debtor company, the court, on the application of any person interested in the matter, may, subject to the restrictions set out in this Act, on notice to any other person or without notice as it may see fit, make any order that it considers appropriate in the circumstances.

**Stays, etc. – other than initial application**

11.02 (2) A court may, on an application in respect of a debtor company other than an initial application, make an order, on any terms that it may impose,

(a) staying, until otherwise ordered by the court, for any period that the court considers necessary, all proceedings taken or that might be taken in respect of the company under an Act referred to in paragraph (1)(a);

(b) restraining, until otherwise ordered by the court, further proceedings in any action, suit or proceeding against the company; and

(c) prohibiting, until otherwise ordered by the court, the commencement of any action, suit or proceeding against the company.

**Burden of proof on application**

(3) The court shall not make the order unless

(a) the applicant satisfies the court that circumstances exist that make the order appropriate; and

(b) in the case of an order under subsection (2), the applicant also satisfies the court that the applicant has acted, and is acting, in good faith and with due diligence.

**Interim financing**

11.2 (1) On application by a debtor company and on notice to the secured creditors who are likely to be affected by the security or charge, a court may make an order declaring that all or part of the company's property is subject to a security or charge

— in an amount that the court considers appropriate — in favour of a person specified in the order who agrees to lend to the company an amount approved by the court as being required by the company, having regard to its cash-flow statement. The security or charge may not secure an obligation that exists before the order is made.

**Priority — secured creditors**

(2) The court may order that the security or charge rank in priority over the claim of any secured creditor of the company.

**Priority — other orders**

(3) The court may order that the security or charge rank in priority over any security or charge arising from a previous order made under subsection (1) only with the consent of the person in whose favour the previous order was made.

**Factors to be considered**

(4) In deciding whether to make an order, the court is to consider, among other things,

(a) the period during which the company is expected to be subject to proceedings under this Act;

(b) how the company's business and financial affairs are to be managed during the proceedings;

(c) whether the company's management has the confidence of its major creditors;

(d) whether the loan would enhance the prospects of a viable compromise or arrangement being made in respect of the company;

(e) the nature and value of the company's property;

(f) whether any creditor would be materially prejudiced as a result of the security or charge; and

(g) the monitor's report referred to in paragraph 23(1)(b), if any.

**Restriction on disposition of business assets**

36. (1) A debtor company in respect of which an order has been made under this Act may not sell or otherwise dispose of assets outside the ordinary course of business unless authorized to do so by a court. Despite any requirement for shareholder

approval, including one under federal or provincial law, the court may authorize the sale or disposition even if shareholder approval was not obtained.

**Notice to creditors**

(2) A company that applies to the court for an authorization is to give notice of the application to the secured creditors who are likely to be affected by the proposed sale or disposition.

**Factors to be considered**

(3) In deciding whether to grant the authorization, the court is to consider, among other things,

(a) whether the process leading to the proposed sale or disposition was reasonable in the circumstances;

(b) whether the monitor approved the process leading to the proposed sale or disposition;

(c) whether the monitor filed with the court a report stating that in their opinion the sale or disposition would be more beneficial to the creditors than a sale or disposition under a bankruptcy;

(d) the extent to which the creditors were consulted;

(e) the effects of the proposed sale or disposition on the creditors and other interested parties; and

(f) whether the consideration to be received for the assets is reasonable and fair, taking into account their market value.

**Additional factors – related persons**

(4) If the proposed sale or disposition is to a person who is related to the company, the court may, after considering the factors referred to in subsection (3), grant the authorization only if it is satisfied that

(a) good faith efforts were made to sell or otherwise dispose of the assets to persons who are not related to the company; and

(b) the consideration to be received is superior to the consideration that would be received under any other offer made in accordance with the process leading to the proposed sale or disposition.

**Related persons**

(5) For the purpose of subsection (4), a person who is related to the company includes

(a) a director or officer of the company;

(b) a person who has or has had, directly or indirectly, control in fact of the company; and

(c) a person who is related to a person described in paragraph (a) or (b).

**Assets may be disposed of free and clear**

(6) The court may authorize a sale or disposition free and clear of any security, charge or other restriction and, if it does, it shall also order that other assets of the company or the proceeds of the sale or disposition be subject to a security, charge or other restriction in favour of the creditor whose security, charge or other restriction is to be affected by the order.

**Restriction – employers**

(7) The court may grant the authorization only if the court is satisfied that the company can and will make the payments that would have been required under paragraphs 6(4)(a) and (5)(a) if the court had sanctioned the compromise or arrangement.



IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED

Court File No: CV-11-9159-00CL

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT  
OF PRISZM INCOME FUND, PRISZM CANADIAN OPERATING TRUST, PRISZM INC. AND KIT FINANCE INC.

**ONTARIO  
SUPERIOR COURT OF JUSTICE -  
COMMERCIAL LIST**

Proceeding commenced at Toronto

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(RETURNABLE MAY 30, 2011)**

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