

Court File No. CV-10-8647-00CL
Court File No. CV-10-8651-00CL
Court File No. CV-10-8657-00CL
Court File No. CV-10-8658-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE MR.) FRIDAY, THE 9TH
JUSTICE MORAWETZ) DAY OF APRIL, 2010

**IN THE MATTER OF THE RECEIVERSHIP OF SKYSERVICE AIRLINES INC.,
Of the City of Toronto, in the Province of Ontario**

AND IN THE MATTER OF AN APPLICATION pursuant to Section 9 of the *Airport Transfer (Miscellaneous Matters) Act*, S.C. 1992, c. 5 (Application by the Greater Toronto Airports Authority)

AND IN THE MATTER OF AN APPLICATION pursuant to Section 9 of the *Airport Transfer (Miscellaneous Matters) Act*, S.C. 1992, c. 5 (Application by the Ottawa Macdonald-Cartier International Airport Authority)

AND IN THE MATTER OF AN APPLICATION pursuant to Section 56 of the *Civil Air Navigation Services Commercialization Act*, S.C. 1996, Chapter 20, as amended (Application by NAV Canada)

ORDER

THIS MOTION, made by Thomson Airways Limited, Celestial Aviation Trading 23 Limited, IAI V, Inc., MCAP Europe Limited, ORIX Aviation Systems Limited, C.I.T. Leasing Corporation and International Lease Finance Corporation (collectively the "**Lessors**") for advice and direction and related relief in connection with a proposed protocol for the release of certain aircraft from seizure claims pending a final determination of a dispute between the Lessors, and NAV Canada, the Greater Toronto Airports Authority, the Winnipeg Airports Authority, Inc. and the Ottawa Macdonald-Cartier International Airport Authority (collectively, the "**Airport Authorities**"), was heard on April 9, 2010 at the Court House, 330 University Avenue, Toronto, Ontario.

UPON READING the notice of motion and the schedule thereto, all filed herein and upon hearing the submissions of counsel for each of the Lessors and counsel for each of the Airport Authorities and counsel for FTI Consulting Canada Inc. in its capacity as Court appointed receiver of Skyservice Airlines Inc. (the "**Receiver**") and Thomas Cook Canada Inc.,

1. **THIS COURT ORDERS** that the time for service and the method of service of this Notice of Motion in support of this Motion 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 following aircraft (collectively with any engines, auxiliary power units, equipment and parts on such aircraft, the "**Aircraft**"), as more fully described in Schedule "A" to the Protocol attached as Appendix "1" to this order (the "**Protocol**"), be released from the Seizure Claims in respect of the Unpaid Amounts (as such terms are defined in the Protocol) in accordance with the Protocol:

Lessor	Aircraft (By Registration Marks)
Thomson Airways Limited	C-FLOX; C-FLEU; C-FOBH; C-GTDG
Celestial Aviation Trading 23 Limited	C-GTBB
IAI V, Inc.	C-GTSJ
MCAP Europe Limited	C-FRAA
ORIX Aviation Systems Limited	C-GTDH
C.I.T. Leasing Corporation	C-GMYH
International Lease Finance Corporation	C-GTDP

3. **THIS COURT ORDERS** that without leave of this Court, no person shall commence or continue any proceedings, including, without limiting the generality of the foregoing, extra-judicial proceedings, self-help remedies, court proceedings, private

seizure, enforcement processes or other remedies against the Aircraft, save and except for proceedings taken in accordance with the Protocol or the aircraft seizure proceeding brought by the Winnipeg Airports Authority, Inc. in the Manitoba Court of Queen's Bench (only as against the Security (as defined in the Protocol) and to the extent determined to be valid), or the registration of any liens or any financing statements in respect of such liens in accordance with applicable law.

4. **THIS COURT ORDERS** that any party seeking the Court's leave to commence or continue proceedings against the Aircraft in accordance with paragraph 3 of this Order shall do so on 3 business days' notice to each of the Lessors, the Airport Authorities, the Receiver, Thomas Cook Canada Inc. and any other person known to have an interest in the Aircraft.

5. **THIS COURT ORDERS** that any Security, which is paid to the Receiver (or otherwise in accordance with the Protocol), shall stand charged with a fixed and specific charge as security for the payments required under the Protocol without any need to register any financing statement or other document in respect thereof or otherwise take any steps to perfect such charge and shall have priority over all present and future encumbrances, interests, liens, charges, security interests and claims against such Security or against the person who deposited such Security or against any person for whose benefit such Security was posted and shall not be affected by any insolvency proceedings in respect of any such person.

6. **THIS COURT ORDERS** that the Receiver is authorized and directed to receive payment of the amounts set out in the Protocol in accordance with paragraph 9 of such Protocol and may seek advice and direction from the Court with respect to the ultimate disposition of any such funds, in accordance with the Protocol.

7. **THIS COURT ORDERS** that the Receiver, in holding and distributing the funds constituting the Security, will be entitled to all of the rights and protections afforded to it as a court officer and pursuant to the Receivership Order (as defined in the Protocol) and the *Bankruptcy and Insolvency Act* (Canada). The only duties and obligations of the Receiver in respect of the Seizure Applications (as defined in the Protocol) and the

funds and any letters of credit held by it as Security are those expressly set out in the Protocol. The Receiver may pay the Security into Court, on notice to the Lessors and Airport Authorities, at any time it considers it necessary to do so (including, without limitation, to facilitate its discharge).

A handwritten signature in black ink, appearing to be "A. J. ...", written over a horizontal line.

ENTERED AT / INSCRIT A TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO.:

APR 09 2010

PER / PAR: 

APPENDIX 1
PROTOCOL
AIRPORT AUTHORITIES

This protocol (the "**Protocol**") shall govern the release of the Aircraft from the Seizure Claims (as such terms are defined below).

A. Background

1. Skyservice Airlines Inc. ("**Skyservice**") operated as an airline and is currently shown with Transport Canada as registered owner of the Aircraft set out in Schedule "A" hereto (collectively, "**the Aircraft**" and individually, "**an Aircraft**").
2. By Order issued by the Ontario Superior Court of Justice (the "**Court**") on March 31, 2010 (the "**Receivership Order**"), FTI Consulting Canada Inc. was appointed as receiver, without security, of all of the assets, undertakings and properties of Skyservice, acquired for, or used in relation to a business carried on by Skyservice (the "**Receiver**").
3. The parties set out in Schedule "B" hereto (collectively, the "**Lessors**") have an interest in the Aircraft through leases, financing arrangements or other documents creating an interest in the Aircraft (collectively, the "**Leases**").
4. (a) The Airport Authorities listed in Schedule "C" hereto (collectively, the "**Airport Authorities**") have each brought applications to the Court (the "**Ontario Seizure Applications**") or to the Manitoba Court (as defined below) (the "**Manitoba Seizure Applications**", together with the Ontario Seizure Applications, the "**Seizure Applications**") orders authorizing the seizure of the Aircraft with respect to unpaid amounts owing to the Airport Authorities from Skyservice (the "**Unpaid Amounts**") and/or for orders lifting the stay of proceedings (to the extent necessary) to permit the bringing of such Seizure Applications (all seizure rights and remedies asserted in such Seizure Applications or otherwise for the Unpaid

Amounts, collectively, the "**Seizure Claims**"). In the case of the Winnipeg Airports Authority Inc. (the "**WAA**"), an *ex parte* order was obtained in the Manitoba Court of Queen's Bench (the "**Manitoba Court**") on March 31, 2010 (the "**Manitoba Order**") and the Aircraft located at the Winnipeg James Armstrong Richardson International Airport (as set out in Schedule "A" hereto) were seized by the WAA. The Manitoba Order, and the seizure of such Aircraft are contested by Thomson Airways Limited ("**Thomson**") and the Receiver on various grounds and it is the position of those contesting parties that the Manitoba Order should not have been granted and should now be set aside, that the seizure should be declared improper and that all matters in respect of the Aircraft subject to the Manitoba Order and any claim of the WAA should be transferred and/or dealt with in the Court in the proceedings involving Skyservice and as provided for in this Protocol. The consent of the WAA to this Protocol is without prejudice to any rights it may wish to assert arising from the granting of the Manitoba Order, other than as provided for in this Protocol.

- (b) In the event a Final Seizure Order (as defined below) is obtained by either the Greater Toronto Airports Authority (the "**GTAA**") or the Ottawa Macdonald-Cartier International Airport Authority (the "**OMAA**"), the Manitoba Order shall be deemed to be a Final Seizure Order for purposes of this Protocol, except the Lessors will retain the right to challenge the quantum payable pursuant to such deemed Final Seizure Order.

In the event the Seizure Applications of the GTAA and the OMAA are dismissed on their merits, and the Manitoba Order is subsequently set aside by the Manitoba Court, the Seizure Application brought by the WAA shall be deemed to have been dismissed.

5. The Lessors are contesting the Seizure Applications, including, without limitation, with respect to the Lessors of Aircraft bearing registration marks C-GTBB, C-GTSJ, C-

FRAA and C-GTDH (the "**Cassels Aircraft**"), on the basis that the applicable Leases of such Cassels Aircraft were terminated.

6. On March 31, 2010, the Court ordered that the Ontario Seizure Applications be heard by the Court on April 12, 2010 (or such other date on which the Court may order the Ontario Seizure Applications be heard being the "**Hearing Date**").

7. In advance of the Hearing Date, the Lessors wish to obtain the release of the Aircraft from the Seizure Claims by posting the Security (as defined below) in substitution for the Aircraft subject to the Seizure Applications and to adjourn the Ontario Seizure Applications.

B. Purpose and Goals

8. The purpose of this Protocol is to provide for the release of the Aircraft from the Seizure Claims prior to the final determination of the Seizure Applications and to provide alternative security for the Unpaid Amounts claimed by the Airport Authorities to be owing to them by Skyservice and for payment to an Airport Authority of same if a Final Seizure Order is made in favour of an Airport Authority, to the extent of such Airport Authority's Unpaid Amount, plus applicable interest and costs (as provided for below).

C. Release of Claims

9. (a) Subject to paragraph 10, upon receipt by the Receiver of an amount equal to 110% of the Unpaid Amounts claimed by each of the Airport Authorities (in relation to each Airport Authority, the "**Security Amount**"), as set out in Schedule "C" hereto, plus \$100,000.00 to secure any costs incurred by the Airport Authorities (as provided for below) in excess of the Security Amounts (the "**Costs Fund**", together with all Security Amounts, the "**Security**"), which Security shall be transferred as soon as possible to and held in a segregated interest bearing account and shall stand in lieu and in place of the Aircraft or any of them and shall be paid out by the Receiver strictly in accordance with paragraph 13 below, the Aircraft shall, on notice to the Airport Authorities by the Receiver that the Security has been

received, be released from the Seizure Claims and any and all other claims of the Airport Authorities, which claims shall be secured and fully enforceable against the Security, in accordance with the terms of this Protocol and the order approving this Protocol.

- (b) If one or more Lessors do not pay their "**Total Contribution Amount**" (as set out in Schedule "D" hereto) to the Receiver by April 13, 2010 at 5:00 p.m. Toronto time (the "**Non-paying Lessors**"), any one or more of the Lessors shall be entitled to pay to the Receiver the remaining portion of the Non-paying Lessors' Total Contribution Amount (the "**Contributed Amount**"). If one or more Lessors (the "**Covering Lessors**") pay the Contributed Amount, the applicable Non-paying Lessors' Aircraft shall not be released to any party until all Covering Lessors have been reimbursed the amount of their contributions to the Contributed Amount. The Covering Lessors shall also be entitled to interest actually earned on the Contributed Amount held by the Receiver, on a pro rata basis, to the date of reimbursement.

10. Notwithstanding that the entire Security may not have been deposited with the Receiver as contemplated by paragraph 9, provided that the Receiver receives from Thomson the Total Contribution Amount Per Aircraft (as set out in Schedule "D" hereto) for Aircraft bearing registration marks C-FLOX, C-FLEU, C-FOBH, C-GTDG, C-GTDH and C-GTBB (collectively, the "**Thomson Aircraft**"), each of the Thomson Aircraft, except for the Aircraft bearing registration mark C-GTDG (the "**Remaining Thomson Aircraft**"), will be released from the Seizure Claims and any and all other claims of the Airport Authorities, pursuant to the terms of this Protocol. If the option set out in this paragraph 10 is exercised by Thomson, the Seizure Claims of the WAA, if valid, shall attach to the Remaining Thomson Aircraft, to the extent of the unpaid portion of the Security attributable to the WAA. Upon receipt by the Receiver of the balance of the Security, the Remaining Thomson Aircraft will be released from the Seizure Claims and any and all other claims of the Airport Authorities, pursuant to the terms of this Protocol.

11. A Lessor shall be entitled to replace the cash payment made to the Receiver constituting Security with a letter of credit in favour of the Receiver in the same amount as such cash payment, with the prior consent of the Receiver and the Airport Authorities, acting reasonably, or upon further order of the Court. Upon the posting of such letter of credit as substituted Security, the funds previously paid in cash by that Lessor to the Receiver constituting such Security shall be returned to the Lessor by the Receiver.

12. Following release of the Aircraft, each applicable Lessor shall comply with the ordinary course operational and airport security requirements of the Airport Authority where the relevant Aircraft is located.

13. The Receiver shall pay:

- (a) to each Airport Authority from the Security held for each such Airport Authority, plus the interest earned on such Security while held by the Receiver:
 - (i) the Unpaid Amounts applicable to such Airport Authority, or such lesser amount as may be ordered by the Court or the Manitoba Court, as applicable, in respect of the Unpaid Amounts claimed by such Airport Authority (a "**Proven Amount**"), plus interest at the rate applicable for the Proven Amount by contract, regulation or statute ("**Interest**"), upon the making of a final order in favour of such Airport Authority providing for the seizure and detention of the Aircraft, or any of them, from which all rights of appeal in respect of any Aircraft have expired or been exhausted by way of final disposition (a "**Final Seizure Order**"); and
 - (ii) in the event that a Final Seizure Order is obtained by an Airport Authority in respect of any Aircraft, the reasonable legal costs incurred by such Airport Authority in bringing its Seizure Application before the Court or the Manitoba Court, as applicable (including,

without limitation, its reasonable legal costs incurred in connection with the negotiation and approval of this Protocol), subject to assessment, irrespective of whether such costs are awarded by the Court or the Manitoba Court, as applicable (a "**Costs Amount**"). If the total of the Proven Amount, the Interest and the Costs Amount with respect to an Airport Authority exceed 110% of the Proven Amount for that Airport Authority, plus interest actually earned and paid on the Proven Amount while held by the Receiver, any such excess Costs Amount of that Airport Authority will be paid from the Costs Fund. If the total amount claimed by the Airport Authorities from the Costs Fund exceeds the amount of the Costs Fund, the respective amount to be paid to each Airport Authority shall be allocated by agreement between the affected Airport Authorities or by order of the Court.

In the event of any appeal of the decision of the court hearing the Seizure Application, an Airport Authority shall only be entitled to be paid its legal costs in connection with the appeal from the applicable Security if such appellate court awards costs to such Airport Authority. For greater certainty, any amount paid to an Airport Authority in respect of its costs shall not preclude such Airport Authority from seeking to enforce any costs award made against one or more of the Lessors if the amount of such costs award is not satisfied by the payment to such Airport Authority from the applicable Security. The amounts payable to an Airport Authority pursuant to this paragraph 13(a) shall constitute an "**Awarded Amount**"; or

(b) to the Lessors:

(i) upon the making of a final order dismissing the Seizure Application of the applicable Airport Authority in its entirety, from which all

rights of appeal have expired or been exhausted by way of final disposition, the amount of each Lessor's payment on account of the relevant Security Amount for such Airport Authority, plus interest actually earned and paid thereon while held by the Receiver, or otherwise as the Lessors may agree between themselves; or

- (ii) upon the making of a Final Seizure Order in favour of an Airport Authority which orders payment to an Airport Authority of an Awarded Amount which is less than the relevant Security Amount for such Airport Authority, the difference between the Security Amount and the Awarded Amount, plus interest actually earned and paid thereon while held by the Receiver, *pro rata* in accordance with the Lessors' respective contributions to the applicable Security Amount or otherwise as the Lessors may agree between themselves.

In any case, no payments contemplated by this paragraph 13 will be made without the written request and direction of the Lessors and the applicable Airport Authority, or in accordance with a Final Seizure Order or other order of the Court.

For greater certainty, the Airport Authorities shall not be limited to calling only upon an amount posted as Security with the Receiver by a particular Lessor with respect to a particular Aircraft but shall be able to call upon the full Security Amount paid to the Receiver in favour of such Airport Authority upon a Final Seizure Order made in respect of the Aircraft or any of them and any allocation of liability for payment of a Security Amount among the Lessors *inter se* shall not be binding upon or prejudice the Airport Authorities. In the event of an appeal by a Lessor, at least NAV Canada shall respond to such an appeal.

14. The release of the Aircraft from the Seizure Claims and the posting of the Security by the Lessors and the acceptance thereof by the Airport Authorities shall be without prejudice to any point of fact or law or any position that any of the Lessors or the

Airport Authorities may wish to bring forward in the Seizure Applications and any subsequent appeals.

15. Subject to the proviso in favour of the WAA set out in paragraph 4 hereof, the Seizure Claims and any cross motions brought by the Lessors shall be decided by the Court, subject to any appeals, regardless of the current location of the Aircraft in Canada, without prejudice to the ability of any party to raise before the Court any issue or defence (other than the jurisdiction of the Court as the appropriate forum) which it could have raised had the Seizure Applications or any cross motion been brought in the Superior Court of the province where the Aircraft is located or was located on any date determined by the Court to be a relevant date for the determination of seizure rights.

16. An Airport Authority shall only be entitled to call or realize on the Security in the event that such Airport Authority shall have first exhausted its recourse against any surety bonds, letters of credit, guarantees, cash collateral or like instruments posted with such Airport Authority specifically for Unpaid Amounts claimed by such Airport Authority to be owing to it, unless such recourse is stayed and such stay is not lifted. In the event an Airport Authority recovers any amounts in respect of the foregoing, including any amounts for which such Airport Authority has access because the stay is lifted, the liability, if any, found to attach to the Aircraft in which each Lessor has an interest shall be reduced pro rata in accordance with the "Percentage Allocation Per Aircraft" as set out in Schedule "D" hereto.

17. In the event that the Security or any part thereof is paid by the Receiver to an Airport Authority in accordance with the terms of this Protocol and it is determined that the Cassels Aircraft, or any one of them, is not subject to a Final Seizure Order, but other Aircraft are subject to a Final Seizure Order, each Lessor (other than the Lessors of the Cassels Aircraft not subject to a Final Seizure Order or any Non-Paying Lessor) shall contribute its pro rata share (based on the "Percentage Allocation Per Aircraft" to the Security as provided in Schedule "D" hereto) to the applicable Lessors of the Cassels Aircraft in order to reimburse them for the amount of the Security posted by them for the Cassels Aircraft not subject to a Final Seizure Order.

18. To the extent the Security or any part thereof is paid by the Receiver to an Airport Authority, the applicable Lessors shall receive an assignment of or be fully subrogated to all such claims of such Airport Authority against Skyservice, and such Airport Authority shall not waive, compromise or settle any claim it has against Skyservice to the extent that such waiver, compromise or settlement would prejudice the subrogation rights or assignment rights of any Lessor under this paragraph 18. Any funds received by any Airport Authority on account of claims against Skyservice secured by the Security after such Airport Authority has received payment of any portion of the Security pursuant to paragraph 13 of this Protocol shall be held by the recipient Airport Authority in trust for the applicable Lessors and forthwith paid to such Lessors.

D. Effectiveness and Modification

19. This Protocol shall become effective only upon its approval by the Court.

20. This Protocol may not be supplemented, modified, terminated or replaced in any manner except by an order of the Court. Notice of any proceeding to supplement, modify, terminate or replace this Protocol shall be given to all parties on the service list for the proceedings in this matter, at least three days' prior to the return date for such motion.

Schedule "A"

Registration Marks of Aircraft	Location of Aircraft	Aircraft Serial No.
C-FLOX	Winnipeg	26158
C-FLEU	Toronto	29941
C-FOBH	Winnipeg	29944
C-GTDG	Toronto	1571
C-GTBB	Toronto	32447
C-GTSJ	Toronto	24772
C-FRAA	Toronto	1411
C-GTDH	Toronto	1605
C-GMYH	Toronto	25053
C-GTDP	Toronto	1780

Schedule "B"

LESSORS

Lessor	Registration Marks of Aircraft in Canada	Location of Aircraft	Aircraft Serial No.
Thomson Airways Limited	C-FLOX	Winnipeg	26158
Thomson Airways Limited	C-FLEU	Toronto	29941
Thomson Airways Limited	C-FOBH	Winnipeg	29944
Thomson Airways Limited	C-GTDG	Toronto	1571
Celestial Aviation Trading 23 Limited	C-GTBB	Toronto	32447
IAI V, Inc.	C-GTSJ	Toronto	24772
MCAP Europe Limited	C-FRAA	Toronto	1411
ORIX Aviation Systems Limited	C-GTDH	Toronto	1605
C.I.T. Leasing Corporation	C-GMYH	Toronto	25053
International Lease Finance Company	C-GTDP	Toronto	1780

Schedule "C"

AIRPORT AUTHORITIES AND SECURITY AMOUNTS

Airport Authorities	Security Amounts
NAV Canada	\$1,210,617.94 (\$1,100,561.76 x 110%)
Greater Toronto Airports Authority	\$324,585.75 (\$295,077.95 x 110%)
Ottawa Macdonald-Cartier International Airport Authority	\$257,305.32 (\$233,913.93 x 110%)
Winnipeg Airports Authority, Inc.	\$590,140.65 (\$536,491.50 x 110%)

Schedule "D"

SECURITY ALLOCATION

Name of Lessor	Registration Mark	Percentage Allocation Per Aircraft	Percentage Allocation Per Lessor	Allocation of Unpaid Amounts Per Aircraft	Allocation of Unpaid Amounts Per Lessor	110% of Allocation of Unpaid Amounts Per Aircraft	110% of Allocation of Unpaid Amounts Per Lessor	Allocation of Costs Fund Per Aircraft	Allocation of Costs Fund Per Lessor	Total Contribution Amount Per Aircraft	Total Contribution Amount Per Lessor
Thomson Airways Limited	C-FLOX	4.90%		\$106,136.21		\$116,749.83		\$4,900.00		\$121,649.83	
Thomson Airways Limited	C-FLEU	14.26%	42.53%	\$308,878.04	\$921,219.00	\$339,765.84	\$1,013,340.90	\$14,260.00	\$42,530.00	\$354,025.84	\$1,055,870.90
Thomson Airways Limited	C-FOBH	15.00%		\$324,906.77		\$357,397.45		\$15,000.00		\$372,397.45	
Thomson Airways Limited	C-GTDG	8.37%		\$181,297.98		\$199,427.78		\$8,370.00		\$207,797.78	
Celestial Aviation Trading 23 Limited	C-GTBB	10.96%	10.96%	\$237,398.55	\$237,398.55	\$261,138.40	\$261,138.40	\$10,960.00	\$10,960.00	\$272,098.40	\$272,098.40
IAI V, Inc.	C-GTSJ	3.91%	3.91%	\$84,692.36	\$84,692.36	\$93,161.60	\$93,161.60	\$3,910.00	\$3,910.00	\$97,071.60	\$97,071.60
MCAP Europe Limited	C-FRAA	12.94%	12.94%	\$280,286.24	\$280,286.24	\$308,314.87	\$308,314.87	\$12,940.00	\$12,940.00	\$321,254.87	\$321,254.87
ORIX Aviation Systems Limited	C-GTDH	9.37%	9.37%	\$202,958.43	\$202,958.43	\$223,254.27	\$223,254.27	\$9,370.00	\$9,370.00	\$232,624.27	\$232,624.27
C.I.T. Leasing Corporation	C-GMYH	13.90%	13.90%	\$301,080.27	\$301,080.27	\$331,188.30	\$331,188.30	\$13,900.00	\$13,900.00	\$345,088.30	\$345,088.30
International Lease Finance Company	C-GTDP	6.39%	6.39%	\$138,410.28	\$138,410.28	\$152,251.31	\$152,251.31	\$6,390.00	\$6,390.00	\$158,641.31	\$158,641.31

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ONTARIO
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COMMERCIAL LIST
Proceeding Commenced at Toronto

ORDER

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