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

THE CASH STORE FINANCIAL SERVICES INC. AND RELATED APPLICANTS

SECOND REPORT TO THE COURT SUBMITTED BY FTI CONSULTING CANADA INC., IN ITS CAPACITY AS MONITOR

April 27, 2014

Court File No. 14-CL-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., AND 1693926 ALBERTA LTD DOING BUSINESS AS "THE TITLE STORE"

APPLICANTS

SECOND REPORT TO THE COURT SUBMITTED BY FTI CONSULTING CANADA INC. IN ITS CAPACITY AS MONITOR

INTRODUCTION

1. On April 14, 2014, Regional Senior Justice Morawetz granted an Initial Order (the "**Initial Order**") pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c.C-36, as amended (the "**CCAA**") to The Cash Store Financial Services Inc. ("**Cash Store Financial**"), 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, the "**Applicants**") providing protections to the Applicants under the CCAA, including a stay of proceedings until May 14, 2014, and appointing FTI Consulting Canada Inc. (the **Monitor**") as CCAA monitor.

2. On April 15, 2014, the Court granted an Amended and Restated Initial Order (the "**Amended & Restated Initial Order**") which, among other things, approved an

interim CCAA credit facility (the "**DIP**") by Coliseum Capital LP, Coliseum Capital Partners II LP and Blackwell Partners LLC (collectively "**Coliseum**") and appointed Blue Tree Advisors Inc. as Chief Restructuring Officer of the Applicants (the "**CRO**"). The proceedings commenced by the Applicants under the CCAA are referred to herein as the "**CCAA Proceedings**".

3. The Amended & Restated Initial Order provides that the date for the come-back hearing is April 28, 2014.

4. The purpose of this Second Report of the Monitor is to provide the following information to this Honourable Court:

   (i) An update on the Applicants' efforts to obtain additional DIP financing;

   (ii) A summary of the issues to be resolved at the come-back hearing (as they currently exist), the Monitor's proposal that a hearing of the issues to be resolved be scheduled for May 5, 2014 rather than April 28, 2014, and an outline of proposed steps relevant to the adjournment; and

   (iii) The Monitor's initial observations with respect to certain third party lending arrangements and requests for relief by certain third party lenders (the "**TPLs**").

TERMS OF REFERENCE

5. In preparing this report, the Monitor has relied upon unaudited financial information of the Applicants, the Applicants' books and records, certain financial information prepared by the Applicants and discussions with the Applicants' management and advisers. The Monitor has not audited, reviewed or otherwise attempted to verify the accuracy or completeness of the information. Accordingly, the Monitor expresses no opinion or other form of assurance on the information contained in this report or relied on in its preparation. Future oriented financial information reported or relied on in preparing this report is based on

management's assumptions regarding future events; actual results may vary from forecast and such variations may be material.

6. Unless otherwise stated, all monetary amounts contained herein are expressed in Canadian Dollars.

ADDITIONAL DIP FINANCING

7. As summarized in the Monitor's First Report and referenced in the endorsement of Senior Regional Justice Morawetz in this matter dated April 23, 2014, the Applicants received two competing DIP proposals prior to the Amended & Restated Initial Order from each of Coliseum and a committee of certain holders of the Applicants' 11.5% senior secured notes (the "**Ad Hoc Committee**").

8. In the Amended & Restated Initial Order, the Court approved the Coliseum DIP facility in the amount of $8.5 million. At the time, cash projections set out in the cashflow forecast provided to the Court by the Applicants (the "**Cashflow Forecast**") estimated that the Applicants would require more than $8.5 million in cumulative funding by week three of the proceedings. Therefore, it was contemplated that further DIP financing would be required and that the initial $8.5 million available under the Coliseum DIP facility was of a very short-term nature only.

9. The April 28, 2014 come-back hearing date was provided for in the Amended & Restated Initial Order at the request of Coliseum in order to provide clarity regarding the maturity date of the short-term DIP, which referenced the come-back hearing date. In addition, it was anticipated that the Applicants would be back on April 28, 2014, the start of the third week of the CCAA Proceedings, to seek approval of further DIP financing to meet its projected cash needs.

10. Given the anticipated need for additional DIP financing, the Applicants, through Rothschild Inc. ("**Rothschild**"), requested proposals for additional DIP financing from each of Coliseum and the Ad Hoc Committee. At the same time, the

Applicants, with the assistance of the CRO and the Monitor, explored with Coliseum and the Ad Hoc Committee the possibility of a joint facility in which both parties would participate in the proposed additional financing.

11. The Monitor was pleased that, after a series of discussions, this process resulted in an agreement between Coliseum and the Ad Hoc Committee to offer additional interim financing to the Applicants on a joint basis. At this stage, the parties are continuing to 'paper' this arrangement and have agreed to seek approval of such additional DIP facility on May 5, 2014 rather than April 28, 2014, to provide time to complete this documentation and provide sufficient notice to interested parties and the Court.

12. In part due to receipt of a significant tax refund that was not anticipated within the first two weeks of the CCAA Proceedings, the Applicants are now projected to have sufficient cash to fund their operations through to May 5, 2014 without further financing. In particular, the cash-on-hand as of April 25, 2014 was approximately $9.6 million, an approximate $5.9 million increase over the projected cash-on-hand for that date of $3.7 million. This increase is largely due to receipt of a $2.7 million tax refund that was not expected in this timeframe as well as other timing differences.

13. The Monitor will report further regarding the terms of the proposed, consensual additional DIP financing in advance of the May 5, 2014 hearing.

OTHER ISSUES FOR "COME-BACK" HEARING

14. The Monitor is aware of the following issues or potential issues for the come-back hearing:

    (a) 0678786 B.C. Ltd. (formerly the McCann Family Holding Corporation) ("**McCann**"), a TPL that did not participate in the discussions and consensual resolution of the protections provided to the TPLs in the Initial Order and the Amended & Restated

Initial Order (the "**TPL Protections**") and did not attend at the hearings in relation to the Initial Order and Amended & Restated Initial Order, seeks relief at the come-back hearing in the form of amendments to the Amended & Restated Initial Order chiefly relating to the TPL Protections and treatment of new third party brokered loans. The relief requested by McCann is set out at paragraph 63 of its factum, which was served on Friday, April 25, 2014 at 12:21 p.m. by counsel for McCann.

(b) Trimor Annuity Focus Limited Partnership #5 ("**Trimor**"), the TPL that participated in discussions and negotiations regarding the TPL Protections and that consented to the Initial Order and the Amended & Restated Initial Order, has also indicated an intention to seek relief relating to the TPL Protections. Trimor has not specified the relief it is seeking and it is unclear if Trimor is seeking the same relief as McCann notwithstanding its consent to the terms of the Initial Order and the Amended & Restated Initial Order. However, Trimor has indicated a concern with respect to the application of the concept of "capital protection" provided for in the Amended & Restated Initial Order at paragraph 35.

(c) Counsel for Computershare Trust Company N.A., in its capacity as Indenture Trustee, and Computershare Trust Company of Canada, in its capacity as Collateral Trustee and Indenture Trustee ("**Computershare**") contacted the Monitor to request inclusion in the protective provisions for payment of professional fees in paragraphs 42 and 44 of the Amended & Restated Initial Order and provided a letter to the Monitor in this regard on April 25, 2014. However, counsel for Computershare has indicated its support for an adjournment of the come-back hearing to May 5, 2014, described further below; therefore, the Monitor understands this will not be an issue before the Court on April 28, 2014.

15. As described further below, the Monitor proposed an adjournment of the come-back hearing to May 5, 2014 (or another date suitable to the Court) to, among other things, provide time for the relevant parties to meet to discuss these issues and attempt to resolve them (the Monitor has proposed to host a meeting on April 28, 2014 at the offices of McCarthy Tétrault). An adjournment would also allow time for a more organized and scheduled process to be followed in respect of these outstanding issues, including identifying the specific relief sought, providing sufficient notice to the responding parties, some of whom have indicated an interest in cross-examining on affidavits served, delivering of facta, providing sufficient time for the Monitor and CRO to review and comment, and providing sufficient notice to the Court.

16. The Monitor asked parties to contact the Monitor if they had a different view. The Monitor was contacted by counsel to McCann and Trimor, who oppose an adjournment, and by counsel to the CRO, the Applicants, Coliseum, the Ad Hoc Committee and Computershare who support an adjournment.

TPL Steps Post-Initial Order

17. Because counsel to McCann did not attend the hearings in respect of the Initial Order and the Amended & Restated Initial Order, counsel for the Monitor reached out to counsel for McCann on April 16, 2014 and had an initial telephone call with counsel for McCann on April 18, 2014. At that time, the Monitor understood that counsel for McCann was reviewing the Amended & Restated Initial Order, arranging for PWC (as adviser to McCann and Trimor) to visit the Applicants' premises to review its books and records, and arranging for a cross-examination of Steven Carlstrom on his April 14, 2014 affidavit in support of the initial CCAA application. Counsel for the Monitor suggested that it would be useful to discuss the TPL Protections in the Amended & Restated Initial Order at the same time as McCann was pursuing these other activities. However, counsel for McCann was of the view that it was difficult for McCann to take a view on the TPL Protections prior to PWC's review and the cross-examination.

18. PWC commenced its review of the Applicants' books and records on April 22, 2014. The Monitor understands that this was a cooperative process and is not aware of any issues or disputes regarding access by PWC (after such access was provided).

19. On April 22, 2014, counsel to McCann served an affidavit of Sharon Fawcett and an affidavit of Murray McCann.

20. Also on April 22, 2014, the cross-examination of Mr. Carlstrom was completed.

21. Since April 22, 2014, efforts were made, bearing in mind the very limited time remaining until the April 28 come-back hearing, to ascertain whether McCann was content with the TPL Provisions or had specific changes it wanted to propose, and if so, to engage the relevant parties (including the Applicants, Coliseum and the Ad Hoc Committee) to see if a consensual resolution could be achieved.

22. By April 24, 2014, the Monitor was concerned that there had not been sufficient identification of issues relating to the TPL Protections and discussion of those issues among the relevant parties to either resolve them or have them determined by the Court on April 28, 2014. As a result, counsel to the Monitor raised the possibility of arguing the issues relating to the TPL Protections on May 5, 2014 instead of April 28, 2014 to give the parties time to meet and attempt to come to a resolution.

23. In furtherance of that suggestion, on April 25 at 12:21 p.m. Ms Meredith wrote to counsel to McCann and Trimor as follows:

> "Further to my discussions yesterday with Brett and Raj, the Monitor will be sending a note to the service list shortly advising that the Applicants do not intend to seek any relief on April 28, 2014 and intend to seek approval of additional interim financing on May 5, 2014. Given the current circumstances with respect to the third party lender issues, the Monitor is also of the view that any arguments with respect to the TPL protections (or other relief you may wish to seek) should be brought at the May 5th hearing as well. First, the Monitor believes that the parties would benefit from having time to discuss these matters directly and will be asking you, Goodmans, Norton Rose and Oslers to participate in a meeting at our offices

on April 28, 2014 to attempt to reach a resolution with respect to the capital protection concept and any other remaining issues. Second, to the extent you wish to raise issues with the Court regarding the third party protections in the Initial Order (or seek any other relief), a proper process should be followed, including that the specific relief sought should be identified to the other parties, cross-examinations completed if required, supporting material including any facta should be served and filed, responding facta should be served and filed, the Monitor should be given an opportunity to review and comment and – most importantly – the Court should be given sufficient notice to review these materials. Those steps cannot occur by Monday April 28, 2014.

We, together with FTI, will be in contact with each of you today to discuss the next steps and any concerns you may have."

24. Also on April 25, 2014 at 12:21 p.m., counsel to McCann served a factum particularizing the relief sought by McCann at paragraph 63 of the factum.

25. On April 25 at 12:37, Ms Meredith wrote to the service list:

"As you know, the Amended & Restated Initial Order (the "Initial Order") in this matter states that there is a come-back hearing scheduled for April 28, 2014. The Applicants previously indicated an intention to seek approval of additional interim financing and a priming charge in respect of such financing. We now understand that the Applicants will not be seeking such relief on April 28, 2014 but rather intend to seek that relief on May 5, 2014 at 8:30 a.m. before Regional Senior Justice Morawetz. Accordingly, we understand that the Applicants do not intend to seek any relief on April 28, 2014.

The Monitor asks that any other party that intends to seek relief at the come-back hearing, please advise as soon as possible and provide to the Monitor a description of the specific relief sought. Given the time, the need to provide sufficient notice to the Court, and the fact that the Applicants will not be seeking relief on April 28, 2014, the Monitor is of the view that any other relief sought in relation to the Initial Order come-back hearing should be sought on May 5, 2014 as well. Should any party have a different view, please contact us promptly today to discuss."

26. On April 25, 2014 at 1:47 p.m., Mr. Staley wrote to the service list that his client (McCann) intends to proceed at the come-back hearing on Monday and does not consent to an adjournment to May 5th.

27. On April 25, 2014 at 2:10 p.m. Mr. Staley wrote to Ms Meredith:

> To be clear, we disagree with you 100%. We do not consent to an adjournment of Monday's attendance. Our clients have come-back rights that they intend to fully exercise on Monday. You are free to make these submissions on Monday before Justice Morawetz. We are available today, and over the weekend, if parties want to engage with a view to seeking a consensual resolution of issues.

28. On April 25, 2014 at 2:25 p.m., counsel for Trimor served a draft report of PWC.

29. On April 25, 2014 at 2:59 p.m., counsel for Trimor served the affidavit of Don MacLean, which attached the PWC report.

30. On April 26, 2014, counsel for Trimor served a redacted version of the PWC report.

31. Counsel for McCann indicated to the Monitor that it is not interested in an adjournment. Counsel for Trimor indicated that it would consider an adjournment if it was satisfied there was no risk of prejudice during the adjournment. Each of counsel for the CRO, Coliseum, the Ad Hoc Committee and Computershare wrote to support an adjournment noting, among other things:

    (a) Concern for giving proper notice to the Court;

    (b) The need to allow the company and its stakeholders to consider and properly respond to issues raised;

    (c) The CRO's desire to consider the matters and provide a proper response;

    (d) The relief sought only being articulated in the factum, served mid-day on Friday, April 25, 2014;

    (e) Delivery of the draft PWC report on the afternoon of April 25, 2014;

    (f) The seriousness of certain allegations made in respect of the conduct of the Applicants; and

(g) A desire to cross-examine the TPL affiants.

THIRD PARTY LENDING ARRANGEMENTS

32. The TPL lending arrangements are somewhat unusual in that they are unlike a typical credit facility. Further, based on the descriptions of the arrangements provided by the Applicants and the TPLs, respectively, when compared to the actual terms of the Broker Agreements, it appears that some aspects of the arrangements are not reflected in the written agreements. Further, certain positions taken by the TPLs are based on communications they say that they had with the Applicants or aspects not expressly reflected in the Broker Agreements. For example:

(i) Under the terms of the Broker Agreement, the TPL is to receive a "loan participation fee" of 59% per annum of the principal of all loans repaid during the agreed term of the loan. However, it appears that what the TPLs actually received was an amount equivalent to about 17.5% per annum on the total amount of capital provided to the Applicants, whether or not such amounts once loaned were repaid by customers and/or redeployed as new loans.

(ii) Under the terms of the Broker Agreement, the TPL is responsible for loan losses (unless such losses are a result of the failure of the Applicants to properly perform their services) and yet Cash Store, at least since Mr. Carlstrom has been with the company, says that it voluntarily provided "capital protection" as described in the Carlstrom Affidavit to protect the TPLs from loan losses.

(iii) At least in the case of McCann, trust obligations are being asserted, whereas it does not appear that they are any express trust obligations in the Broker Agreements.

33. These differences may be contributing to disagreements among the TPLs, on the one hand, and the Applicants and their other stakeholders, on the other hand,

regarding the appropriate way to treat TPL Funds, including Restricted Cash and post-filing brokered loan receivables, in the context of a CCAA proceeding where the interests of all stakeholders must be taken into account. It does not seem to be sufficient to resort solely to the written agreements to resolve the disputes regarding the third party lending arrangements, which has further complicated matters.

TPL PROTECTIONS

34. McCann and Trimor appear to acknowledge that the proprietary entitlement to the TPL Funds that they claim can only be determined at a later date by the Court on a full evidentiary record. McCann expresses at paragraph 45 of its factum that, in the interim, it seeks relief that "will, at minimum, preserve the TPLs' monies that have not yet been misappropriated by the Applicants to ensure that the TPLs are not further unjustly prejudiced."

35. The TPL Protections provided in paragraphs 30-35 of the Amended & Restated Initial Order provide (at a high level) as follows:

(a) With respect to cash-on-hand at the effective time of the Initial Order: a charge in favour of the TPLs ranking *pari passu* with the DIP Charge in the amount of Cash Stores' cash-on-hand as of the effective time of the Initial Order, as security for any valid trust or other proprietary claim of a TPL to such cash-on-hand (based on the positions of the parties as of the effective time of the Initial Order);

(b) With respect to TPL Brokered Loans in existence at the effective time of the Initial Order:

(i) an obligation for Cash Store to keep sufficiently detailed records of all receipts and disbursements in connection with TPL Brokered Loans after the effective time of the Initial Order (the "**TPL Post-**

Filing Receipts") separate and apart from receipts received in connection with company owned loans (and related reporting and access to information requirements);

(ii) a requirement that Cash Store use TPL Post-Filing Receipts for the sole purpose of making new brokered loans;

(iii) a declaration that the TPL's entitlement to TPL Brokered Loans in existence at the effective time of the Initial Order is to be determined based on the legal rights as they existed immediately prior to the effective time and that post-filing treatment of receipts is not relevant to determination of the TPL's alleged entitlement to or ownership and will not prevent the TPLs from arguing that segregation would have been require by them, but for the Initial Order;

(iv) an obligation to maintain on deposit in its general bank account an amount not less than the TPL Post-Filing Receipts less any TPL Post-Filing Receipts that are redeployed as new TPL Brokered Loans (the "**TPL Net Receipt Minimum Balance**");

(v) a declaration that, to the extent the TPLs are able to make a valid proprietary claim to the TPL Brokered Loans in existence at the effective time of the Initial Order (and/or Post-Filing TPL Receipts), the TPL Net Receipt Minimum Balance and then-existing TPL Brokered Loans will be available to satisfy such claim and will not form property of Cash Store for the purposes of the other charges in the Amended & Restated Initial Order; and

(vi) TPLs will receive a 17.5% retention payment post-filing on TPL Brokered Loans that are repaid and available for redeployment from and after the Initial Order date and any capital protection (as described in the Carlstrom Affidavit).

36. On or about April 22, 2014, Trimor raised the question of how "capital protection" referenced in paragraph 35 is applied. The Monitor understands that at the end of each month, the Applicants intend to assess the losses to each TPL arising from brokered loans in their name that remain unpaid after 90 days and, approximately 10 days after month end, to credit the relevant TPL with a book entry payment in the amount of such losses. The Monitor understands this is consistent with the "capital protection" set out in paragraph 84(2)(a) of the Carlstrom Affidavit and therefore consistent with paragraph 35 of the Amended & Restated Initial Order, which provides as follows:

> "THIS COURT ORDERS that the Applicants shall continue to ensure that TPLs receive a return of approximately 17.5% per year (or such lesser amount as may be agreed to) with respect to TPL Brokered Loans that are repaid and available for redeployment from and after the Initial Order date and **any capital protection (as described in the Carlstrom Affidavit)**" [emphasis added]

37. Trimor has raised the concern as to what would happen if there is insufficient cash to satisfy such book entry payment and whether the book entry payment would be a priority payment or paid subsequent to other creditors. The Monitor notes as follows in that regard:

(a) The priority of such payments appears to be disputed. The Monitor understands that Trimor alleges that its capital (either all TPL Brokered Loans in existence immediately prior to the effective time of the Initial Order or all TPL Brokered Loans that are repaid and available for redeployment from and after the Initial Order date (per paragraph 35 of the Amended & Restated Initial Order)) should be protected and it should not bear the risk of loan losses going forward. The Monitor further understands that other parties including Coliseum are of the view that such "capital protections" were, at their highest, unsecured obligations and should continue as such and therefore not receive priority protection post-filing. In the Monitor's view there is complexity to

these issues and it is important to hear submissions from both sides with respect to these arguments.

(b) As it relates to the adjournment request, based on the Initial Order and past practice, no "capital protection" payment would be payable in any event between April 28, 2014 and May 5, 2014 and the present cashflow projections show that there will be approximately $6.7 million in available cash in addition to projected cash requirements during that adjournment period (of which $3 million must be held in accordance with the terms of the DIP);

(c) The Applicants advise that loan losses vary from month to month but on average represent approximately 5% for loans outside Ontario;

(d) On April 14, 2014, Trimor had TPL Brokered Loans with a book value of approximately $16.8 million of which approximately $5.5 million were in Ontario. As of April 24, 2014, the Applicants held a Net Receipt Minimum Balance in cash of $500,000 in relation to Trimor. Between April 14, 2014 and April 24, 2014, the approximate receipts on Trimor TPL Brokered Loans were approximately $2.4 million and the approximate aggregate amount of new TPL Brokered Loans in Trimor's name were $1.9 million (this is approximately $1.7 million of receipts and $1.3 million of new loans per week);

(e) On April 14, 2014, McCann had TPL Brokered Loans with a book value of approximately $5.7 million of which approximately $5.3 million were in Ontario. As of April 24, 2014, the Applicants held a Net Receipt Minimum Balance in cash of $146,000 in relation to McCann. Between April 14, 2014 and April 24, 2014, the approximate receipts on McCann's TPL Brokered Loans were

approximately $146,000 and the approximate aggregate amount of new TPL Brokered Loans in Trimor's name was $0 (this is approximately $102,000 of receipts per week, with no new loans). The Monitor understands that no new TPL Brokered Loans have been issued in the name of McCann since April 14, 2014. The Monitor is advised that, by McCann's request, brokered loans were not made in the name of McCann as lender but rather were made by another TPL (typically Trimor) and later transferred to McCann. Therefore, no new TPL Brokered Loans are made in McCann's name unless and until the Applicants transfer existing brokered loans to McCann, which the Monitor understands is done (based on past practice) shortly after month-end reconciliation, which typically occurs approximately 10 days after month-end. Until such time, all receipts on the McCann TPL Brokered Loans in existence at the effective time of the Initial Order will be maintained in cash protected by the Net Receipt Minimum Balance.

Potential Issues Relevant to Requests by McCann

38. The Monitor understands that McCann challenges the quantum and priority of the TPL Charge, which is *pari passu* with the DIP Charge. In that regard, the Monitor notes:

(a) The TPL Charge relates to the cash-on-hand immediately prior the effective date of the Initial Order. As noted above, to the extent the TPL can establish a proprietary interest in any TPL Brokered Loans and/or Post-Filing TPL Receipts, such loans and receipts do not form Property of the Applicants and the Charges set out in the Amended & Restated Initial Order do not apply to such amounts pursuant to paragraph 34 of the Amended & Restated Initial Order;

(b) The ranking of the charges was negotiated among the parties who consented to the original Amended & Restated Initial Order, including Trimor;

(c) The requested relief would constitute an event of default under the DIP term sheet;

(d) McCann argues that there is no principled basis for other charges to rank above or pari passu with the TPL Charge. It appears McCann alleges its entitlement to funds in priority to the other Charges is based on its view that a constructive trust ought to be awarded to McCann and imposed on the property of the Applicants in the amount of the TPL Loans. McCann notes in its factum that in order for a Court to exercise this equitable jurisdiction, it must be satisfied that it would not be unjust in the circumstances, having regard to the interests of intervening creditors, which must be protected. As Charges are also granted based on equitable considerations, the impact upon other creditors, including secured creditors with existing security interests in the same property, may be a relevant consideration.

39. The Monitor also understands that McCann has requested that all available cash on hand be paid into a segregated account and that the Applicants be prevented from redeploying any TPL Funds as new brokered loans, as contemplated in the Broker Agreement and the Amended & Restated Initial Order. They provide a number of different reasons, including:

(a) the TPL Funds are the property of McCann or, alternatively, held in trust by Cash Store for the benefit of McCann – The Monitor notes that this is an important issue to be determined and it appears that all parties agree that this should be determined at a later date. The TPL Protections were designed to maintain the *status quo* pending a resolution of this issue;

(b) McCann has no obligation to advance additional money or credit – In this regard, the Monitor notes that to the extent the TPL owns the brokered loans, it appears the TPL is extending credit to broker customers and not to Cash Store. In addition, it will have to be determined whether McCann is making a "further advance of money or credit" (the terms used in section 11.01(b) of the CCAA) when it is not required to extend additional monies but rather prevented from taking back monies already advanced. In that regard, the terms of the Broker Agreements, the effect of the stay of proceedings, case law regarding subsection 11.01(b) of the CCAA and other considerations may be relevant.

40. The Monitor is also of the view that it would be useful to have argument regarding:

(a) McCann's assertion that the TPLs did not agree to allow their funds to be loaned by an insolvent entity – The Monitor notes it will be important to consider the terms of the Broker Agreements, which appear to provide representations and deemed representations to this effect but no express funding conditions or events of default relating to insolvency, as well as the impact of the stay of proceedings;

(b) The proper characterization of the TPL-Cash Store relationship - Given that Cash Store is in the business of providing cash to consumers, the TPLs appear to be providing Cash Store with the product that it offers in the marketplace. Since the cash "supplied" by the TPL is loaned, repaid and then re-loaned to Cash Store's customers, it has a unique character. To the extent that it would be appropriate to characterize the TPLs as suppliers to Cash Store, the Monitor notes that it is common for suppliers to have their contract termination rights stayed while receiving payment for the

continued supply of goods or services or use of their property post-filing. As another alternative, if the TPL's are not properly considered suppliers to the business but instead are characterized as lenders to Cash Store, the Monitor notes that it would not be typical for a lender to be able to dictate post-filing how its debtor uses funds advanced pre-filing, although it would likely be able to refuse to provide further credit not already drawn. The TPLs have also suggested there is an analogy to be drawn to a securities firm. Finally, the TPLs have also advanced proprietary and equitable trust arguments.

(c) The assignment of company-owned loans to TPLs (notionally or in fact) as a form of "capital protection" - The Monitor notes that the practice of providing this form of capital protection raises a number of potential issues, including enforceability (and priority) of such assignments pursuant to PPSA or similar legislation, whether such transactions may be impugned as voidable transactions, and whether the TPL would nevertheless have a claim against Cash Store if the assignment is not an effective transfer of the loan receivable;

(d) Termination rights, Defaults and Impact of Stay of Proceedings - the use and reuse by Cash Store of the TPL Funds is contemplated by the Broker Agreement for as long as the agreement is in force. Discretion is given to Cash Store to make brokered loans as it sees fit, provided pre-agreed loan criteria are met and aggregate loan limits are not exceeded. There do not appear to be any events of default in the agreement or any express rights to reclaim the TPL funds, only a right to reduce the aggregate loan limit on 120 days' notice.

41. The Monitor has not had an opportunity to explore and consider the factual background underlying these issues. The Court may benefit from submissions in relation to some or all of these issues in considering whether to grant the relief sought by the TPLs.

CONCLUSION

42. As McCann has acknowledged, a judicial determination will be required in order to determine whether the TPLs, including McCann, have a proprietary, trust or other priority claim to the Restricted Cash and/ or whether they are entitled to terminate their arrangements with Cash Store. In the interim, with the TPL protections in place under the oversight of the Monitor and CRO, and in light of the anticipated cash on hand significantly exceeding the projected loan losses (and indeed the projected value of all new TPL Brokered Loans for the week) for the proposed adjournment period – and in light of the complexity of the issues to be argued - the Monitor recommends that the come-back hearing in respect of the relief sought by the TPLs be adjourned to May 5, 2014 (or another date suitable to the Court). If the adjournment is granted, the Monitor will renew its request that the parties meet in person as soon as possible to discuss a possible resolution of these issues and, if such a resolution cannot be reached, then the Monitor will assist the parties in developing a timetable for resolution of these matters.

The Monitor respectfully submits to the Court this Second Report.

Dated this 27th day of April, 2014.

FTI Consulting Canada Inc.
The Monitor of
The Cash Store Financial Services Inc.
and Related Applicants

Greg Watson
Senior Managing Director