

**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")

**MOTION RECORD
(Returnable September 14, 2011)**

September 9, 2011

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**Lawyers for the Monitor, FTI Consulting
Canada Inc.**

TO: SERVICE LIST

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

**IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,
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(the "Applicants")

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TAB 1

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

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

(the "**Applicants**")

**NOTICE OF MOTION
(Returnable September 14, 2011)**

FTI Consulting Canada Inc., the Court-appointed Monitor of the Applicants (collectively, with Prizm LP, the "**Prizm Entities**") will make a motion before a judge of the Ontario Superior Court of Justice (Commercial List) on Wednesday, September 14, 2011 at 10:00 a.m. or as soon after that time as the motion can be heard, at 330 University Avenue, Toronto, Ontario.

PROPOSED METHOD OF HEARING:

The motion is to be heard orally.

THE MOTION IS FOR:

1. An Order, substantially in the form attached to the Motion Record at Tab 2, among other things:
 - (a) Abridging the time for service of the Notice of Motion and Motion Record in respect of this motion and dispensing with further service thereof;

- (b) Approving the Third Report of the Monitor dated June 24, 2011, the Fourth Report of the Monitor dated September 9, 2011, and the action, conduct and authorities of the Monitor described in the Third Report and the Fourth Report; and
 - (c) Providing for the discharge of FTI Consulting Canada Inc. as the Court-appointed Monitor of the Applicants;
2. Such further and other relief as this Court deems just.

THE GROUNDS FOR THE MOTION ARE:

1. On March 31, 2011, the Prizm Entities were granted protection from their creditors pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended, pursuant to the Initial Order of the Honourable Justice Morawetz of the Ontario Superior Court of Justice (Commercial List) dated March 31, 2011, as amended and restated by the Honourable Madam Justice Mesbur on April 29, 2011;
2. The Prudential Insurance Company of America, Pruco Life Insurance Company and Prudential Retirement Insurance and Annuity Company have brought a motion returnable September 14, 2011 to appoint RSM Richter Inc. as receiver, without security, of all of the assets, undertakings and properties of the Prizm Entities;
3. Rules 1.04, 1.05, 2.03, 3.02 and 37 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, as amended; and
4. Such further grounds as counsel may advise and this Court may see fit.

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

1. The Affidavit of Jim Robertson sworn September 8, 2011;

2. The Fourth Report of the Monitor dated September 9, 2011, to be filed;
3. The Affidavit of Paul Procyk sworn September 9, 2011; and
4. Such further and other materials as counsel may advise and this Honourable Court may permit.

September 9, 2011

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Canada Inc.**

TO: SERVICE LIST

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,
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OF PRISZM INCOME FUND, PRISZM CANADIAN OPERATING TRUST,
PRISZM INC. AND KIT FINANCE INC.

(the "Applicants")

**SERVICE LIST
APPROVAL OF FMI ATLANTIC INC. TRANSACTIONS AND THE 184 APA**

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

Court File No: CV-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

**NOTICE OF MOTION
(RETURNABLE SEPTEMBER 14, 2011)**

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**Lawyers for the Monitor, FTI Consulting
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TAB 2

Court File No. 11-CL-9159-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE MR.)	WEDNESDAY, THE 14 TH
)	
JUSTICE MORAWETZ)	DAY OF SEPTEMBER, 2011

**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.**

TERMINATION AND DISCHARGE ORDER

THIS MOTION made by FTI Consulting Canada Inc., in its capacity as Court-appointed monitor (the “**Monitor**”) of Priszm Income Fund, Priszm Canadian Operating Trust, Priszm Inc. and Kit Finance Inc. (collectively, the “**Applicants**” and along with Priszm LP, the “**Priszm Entities**”) for an order *inter alia* (a) providing for the termination of the proceeding of the Applicants under the CCAA (the “**CCAA Proceedings**”); and (b) providing for the discharge and release of the Monitor, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Notice of Motion of the Monitor returnable September 14, 2011, the Fourth Report of the Monitor dated September 9, 2011 (the “**Fourth Report**”), the affidavit of Jim Robertson sworn September 8, 2011, the affidavit of Paul Procyk sworn September 9, 2011, the Motion Record of the Applicants for a Motion returnable September 14, 2011, all filed, and on hearing the submissions of counsel to the Monitor, the Priszm Entities, The Prudential Insurance Company of America, Pruco Life Insurance Company and Prudential

Retirement Insurance and Annuity Company, 2289500 Ontario Inc. and Jim Robertson, ●, and YUM! Restaurants International (Canada) Company, no other parties appearing although duly served as appears from the affidavit of service, filed.

SERVICE

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Motion Record herein is hereby abridged so that this Motion is properly returnable today and any further service thereof is hereby dispensed with.

DEFINITIONS

2. **THIS COURT ORDERS** that all capitalized terms used but not defined in this Order shall have the meaning given in the Amended and Restated Initial Order of the Honourable Justice Mesbur dated April 29, 2011 (the “**Amended and Restated Initial Order**”).

APPROVAL OF ACTIVITIES

3. **THIS COURT ORDERS** that the Third Report of the Monitor dated June 24, 2011 (the “**Third Report**”), the Fourth Report and the actions, conduct and activities of the Monitor described in the Third Report and the Fourth Report be and are hereby approved.

4. **THIS COURT ORDERS AND DECLARES** that the Monitor has duly and properly discharged and performed its obligations, liabilities, responsibilities and duties in its capacity as Monitor pursuant to the Amended and Restated Initial Order, any other Order of this Court in the CCAA Proceedings, the CCAA or otherwise.

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TERMINATION OF CCAA PROCEEDING

5. **THIS COURT ORDERS** that, except as expressly provided in this Order or in the Order granted by this Court of even date appointing RSM Richter Inc. (the “**Receiver**”) as receiver of the assets, properties and undertakings of the Prizm Entities (the “**Receivership Order**”), the CCAA Proceedings shall be and are hereby terminated effective at 12:01 a.m. on the business day after the Monitor’s filing with this Court of the Monitor’s certificates (the “**Vesting Certificates**”) contemplated by and appended to the Approval and Vesting Orders granted by this Court of even date, in respect of the two asset purchase agreements with FMI Atlantic Inc., as purchaser, and FMI Ontario Inc., as guarantor, dated July 29, 2011 and August 23, 2011, respectively.

6. **THIS COURT ORDERS AND DIRECTS** that the Monitor transfer all amounts held by the Monitor, except for an amount equal to the Administration Charge Reserve (as defined below), to the Receiver forthwith upon the Receiver providing the Monitor with wire transfer instructions for its bank account opened in connection with the Receivership Order.

7. **THIS COURT ORDERS** that the Charges shall have the priority and rank set out in the Receivership Order.

DISCHARGE OF THE MONITOR

8. **THIS COURT ORDERS** that, immediately upon the Monitor’s filing with this Court of the Vesting Certificates, the Monitor be and is hereby discharged and relieved from any further obligations, liabilities, responsibilities or duties in its capacity as Monitor pursuant to the Amended and Restated Initial Order, any other Order of this Court in the CCAA Proceedings, the CCAA or otherwise, provided that the Monitor shall not be discharged in respect of the

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Outstanding Matters set out in paragraph 12 below until the filing of the Monitor certificate referred to in paragraph 13 below.

9. **THIS COURT ORDERS** that, in addition to the protections in favour of the Monitor as set out in the Amended and Restated Initial Order, in any other Order of this Court in the CCAA Proceedings or the CCAA, the Monitor shall not be liable for any act or omission on the part of the Monitor, including with respect to any reliance thereof, including without limitation, with respect to any information disclosed, any act or omission pertaining to the discharge of the Monitor's duties in the CCAA Proceedings or with respect to any other duties or obligations of the Monitor under the CCAA or otherwise, save and except for any claim or liability arising out of any gross negligence or wilful misconduct on the part of the Monitor. Subject to the foregoing and in addition to the protections of the Monitor as set out in the Orders of this Court in the CCAA Proceedings, any claims against the Monitor in connection with the performance of its duties as Monitor are hereby released, stayed, extinguished and forever barred and the Monitor shall have no liability in respect thereof.

10. **THIS COURT ORDERS** that no action or other proceeding shall be commenced against the Monitor in any way arising from or related to its capacity or conduct as Monitor except with prior leave of this Court and on prior written notice to the Monitor and such further order securing, as security for costs, the full indemnity costs of the Monitor in connection with any proposed action or proceeding as the Court hearing the motion for leave to proceed may deem just and appropriate.

11. **THIS COURT ORDERS** that, notwithstanding any provision of this Order, nothing contained in this Order shall affect, vary, derogate from or amend any of the rights, approvals and protections in favour of the Monitor pursuant to the Amended and Restated Initial

Order, any other Order of this Court in the CCAA Proceedings, the CCAA or otherwise, all of which are expressly continued and confirmed.

12. **THIS COURT ORDERS** that, notwithstanding any provision of this Order, the Monitor shall be authorized, directed and empowered from and after the date of this Order to:

- (a) retain \$1.5 million in cash from the amounts held by the Monitor as a reserve to satisfy any and all claims of the beneficiaries (other than 2289500 Ontario Inc. (the “**CRO**”) as Chief Restructuring Officer of the Prizm Entities) under the Administration Charge (the “**Administration Charge Reserve**”). Following receipt of written confirmation from each of the beneficiaries (other than the CRO) of the Administration Charge that such beneficiary has no further claims that would be secured by the Administration Charge, the Monitor shall forthwith distribute the remaining amounts in the Administration Charge Reserve, if any, to the Receiver; and
- (b) provide promptly the Receiver with copies of any and all Initial D&O Claims (as defined in the D&O Claims Solicitation Procedure Order granted by the Honourable Justice Morawetz on June 29, 2011 (the “**D&O Claims Solicitation Procedure Order**”)) received by the Monitor on the FTI Claims Site (as defined in the D&O Claims Solicitation Procedure Order) or otherwise (collectively, (a) and (b) above, the “**Outstanding Matters**”).

13. **THIS COURT ORDERS AND DIRECTS** the Monitor to, within one (1) business day following the completion of the final Outstanding Matter, file a Monitor’s certificate with this Court certifying that the Outstanding Matters have been completed.

PROCEEDINGS AGAINST DIRECTORS AND OFFICERS

14. **THIS COURT ORDERS** that the Stay Period be extended only in respect of the Directors and Officers (as defined in the D&O Claims Solicitation Procedure Order) until the completion of the D&O Claims Solicitation Procedure (as defined in the D&O Claims Solicitation Procedure Order) and the resolution of any and all D&O Claims (as defined in the D&O Claims Solicitation Procedure Order) and, except in respect of Proceedings alleging claims contemplated by subsection 11.03(2) of the CCAA, no Proceeding may be commenced or continued against any of the Directors and Officers with respect to any claim against such Directors and Officers that arose before the date of the commencement of the CCAA Proceedings and that relates to any obligations of the Prizm Entities whereby the Directors and Officers are alleged under any law to be liable in their capacity as Directors and Officers for the payment or performance of such obligations, or against any employee of the Prizm Entities that is a party to an action involving the Prizm Entities.

GENERAL

15. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada, the United States of America or elsewhere to give effect to this Order and to assist the Monitor and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to the Order or to assist the Monitor and its agents in carrying out the terms of this Order.

Draft

**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.**

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

Ontario

**SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceeding commenced at Toronto

TERMINATION AND DISCHARGE ORDER

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**MOTION RECORD
(RETURNABLE SEPTEMBER 14, 2011)**

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