

COURT FILE NO. 2501-06120  
COURT COURT OF KING'S BENCH OF ALBERTA  
JUDICIAL CENTRE CALGARY  
APPLICANT(S) **IN THE MATTER OF THE *COMPANIES'*  
*CREDITORS ARRANGEMENT ACT, R.S.C.*  
*1985, c. C-36, AS AMENDED***

Clerk's  
Stamp

**AND IN THE MATTER OF A PLAN OF  
COMPROMISE OR ARRANGEMENT OF  
SUNTERRA FOOD CORPORATION,  
TROCHU MEAT PROCESSORS LTD.,  
SUNTERRA QUALITY FOOD MARKETS  
INC., SUNTERRA FARMS LTD.,  
SUNWOLD FARMS LIMITED,  
SUNTERRA BEEF LTD., LARIAGRA  
FARMS LTD., SUNTERRA FARM  
ENTERPRISES LTD., SUNTERRA  
ENTERPRISES INC.**

DOCUMENT **BENCH BRIEF OF THE APPLICANTS**

ADDRESS FOR SERVICE **Goodmans LLP**  
AND CONTACT Bay Adelaide Centre  
INFORMATION OF PARTY 333 Bay Street, Suite 3400  
FILING THIS DOCUMENT Toronto, ON M5H 2S7

Attn: Robert J. Chadwick / Caroline  
Descours / Andrew Harmes / Gurratan Gill  
Tel: 416.597.4285 / 416.597.6275 /  
416.849.6923 / 416.849.6975  
Fax: 416.979.1234

Email: [rchadwick@goodmans.ca](mailto:rchadwick@goodmans.ca)  
[cdescours@goodmans.ca](mailto:cdescours@goodmans.ca)  
[aharmes@goodmans.ca](mailto:aharmes@goodmans.ca)  
[ggill@goodmans.ca](mailto:ggill@goodmans.ca)

**APPLICATION TO BE HEARD BY THE HONOURABLE JUSTICE M.J. LEMA  
April 28, 2026 AT 9:30 A.M. (M.T.)**

## I. INTRODUCTION<sup>1</sup>

1. The Applicants<sup>2</sup> are members of a diversified group of related companies that operate across multiple sectors of the agricultural and food distribution industries. On April 22, 2025, the Applicants obtained relief under the *Companies' Creditors Arrangement Act* (Canada) (the “**CCAA**”) pursuant to an Initial Order from this Court and are pursuing two parallel paths in an effort to implement a comprehensive, value-maximizing restructuring solution: (i) the Plan / Restructuring Path; and (ii) the Transaction Path.<sup>3</sup>
2. In furtherance of such efforts, the Applicants are seeking:
  - (a) an Order (the “**SISP Approval Order**”), among other things, approving the sale and investment solicitation process (the “**SISP**”) attached as Schedule “A” to the SISP Approval Order;
  - (b) an Order (the “**Chief Restructuring Advisor Appointment Order**”), among other things, appointing Neil Narfason Professional Corporation (“**NNPC**”) as the Court-appointed Chief Restructuring Advisor of the Applicants (in such capacity, the “**Chief Restructuring Advisor**”) and granting certain authorizations in favour of the Chief Restructuring Advisor, including the sole and exclusive authority to oversee and advance the SISP;
  - (c) an Order (the “**Second ARIO**”) amending and restating the Amended and Restated Initial Order of this Court granted on April 28, 2025 (the “**ARIO**”) to, among other things,
    - (i) approve KPMG as the Sale Advisor in connection with the SISP;
    - (ii) authorize the Applicants to enter into an engagement letter with KPMG to act as the Sale Advisor in connection with the SISP, with the consent of the Monitor, on terms substantially consistent with the terms described in the Narfason Affidavit, and authorize the Applicants to pay the fees and expenses of the Sale Advisor, including, without limitation, the Work Fee and the Transaction Fee (each as defined below) (the “**Sale Advisor Fees**”);

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<sup>1</sup> Capitalized terms that are not defined herein have the meanings given to them in the affidavit of Neil Narfason sworn April 21, 2026 (the “**Narfason Affidavit**”) or the affidavit of Arthur Price sworn April 21, 2026 (the “**Price Affidavit**”), as applicable.

<sup>2</sup> The Applicants consist of Sunterra Food Corporation, Trochu Meat Processors Ltd., Sunterra Quality Food Markets Inc., Sunterra Farms Ltd. (“**Sunterra Farms**”), Sunwold Farms Limited (“**Sunwold Farms**”), Sunterra Beef Ltd., Lariagra Farms Ltd., Sunterra Farm Enterprises Ltd., and Sunterra Enterprises Inc. (“**Sunterra Enterprises**”).

<sup>3</sup> Price Affidavit at para 7; Narfason Affidavit at para 4.

- (iii) grant a charge on the Property of the Applicants (the “**Sale Advisor Charge**”) in favour of the Sale Advisor as security for the Sale Advisor Fees, which charge shall rank *pari passu* with the Administration Charge;
  - (iv) amend the Administration Charge to add the Chief Restructuring Advisor as a beneficiary thereof in respect of its Monthly Fee and disbursements;
  - (v) prohibit the set-off of pre-filing obligations; and
  - (vi) extend the Stay Period to and including October 30, 2026; and
- (d) such further and other relief as counsel may request and this Court deems just.<sup>4</sup>
3. For the reasons set out herein, the Applicants respectfully submit that the relief requested is in the best interests of the Applicants and their stakeholders and that it is fair, reasonable and appropriate for the Court to grant the requested SISP Approval Order, the Chief Restructuring Advisor Appointment Order, and the Second ARIO.

## II. THE FACTS

### (i) *Overview*

4. The Applicants commenced these CCAA proceedings to stabilize their operations and to evaluate and advance potential options and alternatives that would enable repayment of certain secured funded debt obligations in light of certain events and disputes with applicable lenders. The primary secured lenders of the Applicants are National Bank of Canada (“**NBC**”) and Farm Credit Canada (“**FCC**”).<sup>5</sup>
5. On January 27, 2026, this Court issued a decision (the “**Banking Claims Decision**”) in respect of certain claims of Compeer Financial, PCA (“**Compeer**”), consisting of (i) judgment against Sunterra Farms, Sunwold Farms and Ray Price, and (ii) judgment against Sunterra Enterprises. The Applicants’ application for leave to appeal the Banking Claims Decision was recently dismissed by the Alberta Court of Appeal.<sup>6</sup>
6. In light of the Banking Claims Decision and its material impact on the CCAA proceedings, the Applicants re-evaluated the projected path of these proceedings. The Applicants retained Goodmans LLP (“**Goodmans**”) as counsel and NNPC as restructuring advisor, pursuant to the ARIO, to provide the Applicants with support, advice and assistance in connection with advancing potential restructuring options, including the Plan / Restructuring Path and the Transaction Path.<sup>7</sup>

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<sup>4</sup> Price Affidavit at para 4; Narfason Affidavit at para 12.

<sup>5</sup> Price Affidavit at para 8.

<sup>6</sup> Price Affidavit at para 9 and 16.

<sup>7</sup> Price Affidavit at para 10; Narfason Affidavit at para 4.

7. NNPC and Goodmans have been instructed by the Applicants to assist on and lead the restructuring efforts on behalf of the Applicants, and are working to advance such matters on behalf of the Applicants. In furtherance of these efforts, NNPC and Goodmans have engaged extensively with the Monitor and key stakeholders, including NBC, FCC and Compeer (the “**Consultation Stakeholders**”), in an effort to facilitate stakeholder support.<sup>8</sup>
  - (ii) *The SISP*
8. In furtherance of the Transaction Path, NNPC and Goodmans have developed the proposed SISP, which is intended to enable a broad canvassing of the market to identify potential transactions that would maximize value for the benefit of all stakeholders. NNPC and Goodmans engaged with the Monitor and the Consultation Stakeholders and their respective counsel regarding the SISP in order to consider and implement feedback, all in an effort to facilitate stakeholder support.<sup>9</sup>
9. The SISP provides a comprehensive, two-phase process designed to solicit interest in, and subsequent bids in respect of: (i) an investment in, restructuring, recapitalization, refinancing or other form of reorganization of the Applicants or their business operations (collectively, the “**Business**”) as a going concern, including by way of a plan of compromise or arrangement pursuant to the CCAA (“**Investment Proposals**”); (ii) a sale of all, substantially all, or certain of the Property of the Applicants or the Business (“**Sale Proposals**”); and (iii) a combination of Investment Proposals and/or Sale Proposals.<sup>10</sup>
10. Non-binding LOIs are to be submitted in accordance with the SISP requirements by June 25, 2026, with binding offers to follow by the deadline determined by the Sale Advisor, the Chief Restructuring Advisor and the Monitor. The Chief Restructuring Advisor, with assistance from the Sale Advisor and under the supervision of the Monitor, will conduct the SISP, including marketing the assets, preparing a confidential information memorandum, establishing a data room, and evaluating bids.<sup>11</sup>
11. The SISP provides for the Chief Restructuring Advisor, in consultation with the Sale Advisor and the Monitor, to determine Qualified Bidders, evaluate Binding Offers, conduct an auction if appropriate, and identify Successful Bids. The Chief Restructuring Advisor may also propose alternative transactions, including pre-emptive or stalking-horse bids, for Court approval. All transactions identified through the SISP are subject to Court approval.<sup>12</sup>
12. The Applicants believe that proceeding with the SISP is appropriate and in the best interests of all stakeholders to implement a broad marketing process with a view to identifying

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<sup>8</sup> Narfason Affidavit at paras 5–7.

<sup>9</sup> Narfason Affidavit at paras 5–7.

<sup>10</sup> Narfason Affidavit at para 32.

<sup>11</sup> Narfason Affidavit at para 6 and 35.

<sup>12</sup> Narfason Affidavit at para 35.

potential value-maximizing transaction options. The Applicants have begun taking preliminary preparation steps so that the SISP can be advanced expeditiously, if approved by the Court. This includes preparing a draft non-disclosure agreement, collecting relevant documents and information, and beginning to populate a data room for prospective bidders.<sup>13</sup>

13. Pursuant to the SISP, and subject to any limitations or qualifications set out therein, the Chief Restructuring Advisor, Sale Advisor and Monitor may consult with the Applicants and, where appropriate, the Consultation Stakeholders regarding the conduct and implementation of the SISP. The Consultation Stakeholders will, if and as determined appropriate by the Chief Restructuring Advisor or the Monitor, receive updates on a bi-weekly basis or as otherwise determined by the Chief Restructuring Advisor and the Monitor. Prior to being entitled to any information and/or consultation rights under the SISP, the Consultation Stakeholders shall have executed confidentiality agreements and confirmed they will not participate as bidders.<sup>14</sup>

*(iii) Appointment of NNPC as Chief Restructuring Advisor*

14. The Applicants retained NNPC in late February 2026 to provide restructuring advisory services pursuant to the ARIO. The principal of NNPC, Neil Narfason, is a well-respected corporate financing, insolvency and restructuring practitioner with over 20 years of experience as a Partner at Ernst & Young Canada, including serving as the practice leader of its turnaround and restructuring services group. Mr. Narfason's experience includes acting as Court-appointed monitor, receiver, trustee in bankruptcy and proposal trustee in numerous companies, including food, farm and agricultural businesses. In these roles, Mr. Narfason has gained extensive experience conducting and overseeing sale processes.<sup>15</sup>
15. The Applicants are now seeking Court approval of NNPC's engagement as Chief Restructuring Advisor. Under the proposed Chief Restructuring Advisor Appointment Order, NNPC would have primary responsibility for advancing restructuring efforts on behalf of the Applicants, including negotiations with stakeholders and the development and implementation of restructuring, sale, investment or refinancing alternatives, including the SISP. The proposed Order also includes customary protections in favour of the Chief Restructuring Advisor, including protections from personal liability, clarification that it is not acting as a director or officer of the Applicants and a stay of proceedings absent leave of the Court.<sup>16</sup>
16. Pursuant to the engagement agreement entered into with NNPC (the "**Chief Restructuring Advisor Engagement Letter**"), the Chief Restructuring Advisor is entitled to payment of a fee of \$125,000 per month (the "**Monthly Fee**"), payable in advance, plus reimbursement of reasonable out-of-pocket expenses and disbursements. The Applicants have also agreed

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<sup>13</sup> Narfason Affidavit at paras 27–39.

<sup>14</sup> Narfason Affidavit at paras 10 and 34.

<sup>15</sup> Price Affidavit at paras 18–19; Narfason Affidavit at paras 14–17.

<sup>16</sup> Price Affidavit at paras 22–24.

to consider a discretionary bonus, after consultation with the Monitor and stakeholders, and subject to Court approval, payable only upon implementation of a plan or sale of substantially all assets. The proposed Second ARIO also amends the Administration Charge to include the Chief Restructuring Advisor as a beneficiary thereof to secure payment of its Monthly Fee and disbursements.<sup>17</sup>

*(iv) Approval of KPMG as the Sale Advisor and Granting of the Sale Advisor Charge*

17. NNPC and Goodmans consulted with key stakeholders, including the Consultation Stakeholders, regarding the engagement of a sale advisor. The engagement of a sale advisor is necessary and appropriate in the circumstances to maximize value through the SISP. A dedicated sale advisor will provide specialized expertise in marketing the Applicants' assets, conducting a competitive sale process, and effectively canvassing the market.<sup>18</sup>
18. NNPC engaged with several potential sale advisors, reviewed their qualifications, and obtained fee proposals. After careful consideration, including considering the views and comments of the applicable stakeholders, NNPC recommended to the Applicants and the stakeholders the engagement of KPMG as Sale Advisor, subject to Court approval.<sup>19</sup>
19. KPMG is a nationally recognized corporate finance advisory firm with significant experience conducting sale and investment solicitation processes, including in the agriculture and agri-business sectors and in the context of CCAA proceedings. KPMG is also currently engaged by a non-applicant affiliate of the Sunterra Group in respect of sale efforts involving that entity, and has worked with certain members of the Applicants' management in that context. The Applicants believe KPMG is well-qualified to act in this role.<sup>20</sup>
20. Pursuant to the proposed engagement, KPMG will receive a work fee of \$60,000 per month (the "**Work Fee**") and a standard market percentage transaction fee payable upon completion of a transaction under the SISP (the "**Transaction Fee**"), which shall be a minimum of \$500,000. Fifty percent of the Work Fees paid will be credited against the Transaction Fee. The Monitor and the Consultation Stakeholders support the selection of KPMG and the agreed fee structure.<sup>21</sup>
21. The Applicants seek Court approval to enter into an engagement letter with KPMG, with the consent of the Monitor and on terms substantially consistent with the terms described in the Narfason Affidavit, and to pay the Sale Advisor Fees. In addition, the Applicants request that the Court grant the Sale Advisor Charge over the Property as security for the

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<sup>17</sup> Price Affidavit at paras 25–27; Narfason Affidavit at para 44.

<sup>18</sup> Narfason Affidavit at para 21.

<sup>19</sup> Narfason Affidavit at paras 22 and 26.

<sup>20</sup> Narfason Affidavit at para 23.

<sup>21</sup> Narfason Affidavit at para 25.

Sale Advisor Fees, with such charge ranking *pari passu* with the Administration Charge and in priority to the Directors' Charge.<sup>22</sup>

(v) *Amendment to the Administration Charge*

22. The Court granted a charge (the “**Administration Charge**”) over the Property of the Applicants pursuant to the Initial Order, which was maintained pursuant to the ARIO, to secure the payment of the professional fees and disbursements of, among others, the Monitor, counsel to the Monitor, the proposal trustee and its counsel, and counsel to the Applicants.<sup>23</sup>
23. The Applicants are requesting amendments to the Administration Charge to add the Chief Restructuring Advisor as a beneficiary of the Administration Charge in respect of the Monthly Fee and disbursements payable pursuant to the Chief Restructuring Advisor Engagement Letter. The Applicants are also seeking clarifying revisions to the Administration Charge to confirm that Goodmans, as replacement restructuring counsel, is a beneficiary of the Administration Charge.<sup>24</sup>

(vi) *Prohibiting the Set-Off of Pre-Filing Obligations*

24. The proposed Second ARIO includes a clarifying provision that, during the stay of proceedings, no party may assert rights of set-off in respect of any obligations owing before the commencement of these CCAA proceedings without an order of the Court. This provision is required to ensure that the Applicants can continue to operate in the ordinary course and that no set-off rights will be exercised in a way that will disrupt the Applicants' restructuring efforts.<sup>25</sup>

(vii) *Extension of the Stay Period*

25. The Stay Period currently expires on May 1, 2026. The Applicants are requesting an extension of the Stay Period pursuant to the Second ARIO to and including October 30, 2026.<sup>26</sup>
26. The extension of the Stay Period is necessary in order to maintain the status quo and continued stability while the Applicants pursue a comprehensive restructuring solution. In particular, the extension is required to provide sufficient time for the Applicants to implement the SISP, including receiving and evaluating Phase 1 Qualified Bids and further advancing the SISP with a view to identifying a value-maximizing transaction. The

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<sup>22</sup> Narfason Affidavit at paras 45–47.

<sup>23</sup> Narfason Affidavit at para 43.

<sup>24</sup> Narfason Affidavit at para 44.

<sup>25</sup> Price Affidavit, Exhibit “A” at para 34.

<sup>26</sup> Narfason Affidavit at para 38.

extension will also permit the Applicants to concurrently advance the Plan / Restructuring Path.<sup>27</sup>

27. The Applicants have acted and continue to act in good faith and with due diligence throughout these CCAA proceedings. The Monitor has received ongoing updates with respect to the Applicants' business operations, the progress in developing the SISP, and other key developments.<sup>28</sup>

### **III. ISSUES AND THE LAW**

28. The issues to be considered on this application are whether the Court should:
- (a) grant the SISP Approval Order approving the SISP;
  - (b) grant the Chief Restructuring Advisor Appointment Order appointing NNPC as the Court-appointed Chief Restructuring Advisor and grant the authorizations sought pursuant to the Chief Restructuring Advisor Appointment Order; and
  - (c) grant the Second ARIO (i) approving KPMG as the Sale Advisor in connection with the SISP and authorizing the Applicants to enter into an engagement letter with the Sale Advisor with the consent of the Monitor; (ii) granting the Sale Advisor Charge; (iii) amending the Administration Charge to add the Chief Restructuring Advisor as a beneficiary thereto; (iv) prohibiting the set-off of pre-filing obligations; and (v) extending the Stay Period to and including October 30, 2026.

#### **A. THE SISP APPROVAL ORDER SHOULD BE GRANTED**

*(i) The SISP is Appropriate and Should be Approved*

29. The remedial nature of the CCAA confers broad powers to facilitate a restructuring, including the power to approve a sale and investment solicitation process in relation to a CCAA debtor's business and assets.<sup>29</sup> In particular, Section 11 of the CCAA provides the Court with the authority to approve arrangements that facilitate a restructuring under the CCAA.<sup>30</sup>
30. In approving sale and investment solicitation processes, Courts have considered, among other things, the following factors: (i) whether a sale process is warranted at this time; (ii) whether a sale process would benefit the whole "economic community"; (iii) whether

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<sup>27</sup> Narfason Affidavit at paras 38–40.

<sup>28</sup> Narfason Affidavit at para 42; Price Affidavit at para 17.

<sup>29</sup> *Nortel Networks Corp. (Re)* (2009), [55 C.B.R. \(5th\) 229](#), 2009 CanLII 39492 (Ont. S.C.J. [Commercial List]) at paras [24–48](#) [*Nortel*] [**BOA Tab 2**].

<sup>30</sup> CCAA, [Section 11](#) [**BOA Tab 1**]; *9354-9186 Québec inc. v. Callidus Capital Corp.*, [2020 SCC 10](#) at paras [48](#), [67–68](#) [**BOA Tab 3**].

any of the debtors' creditors have a *bona fide* reason to object; and (iv) whether there is a better viable alternative.<sup>31</sup>

31. Courts have also considered the following additional factors in approving CCAA sale and investment solicitation processes: (i) the fairness, transparency and integrity of the proposed process; (ii) the commercial efficacy of the proposed process in light of the specific circumstances; and (iii) whether the sales process will, in the circumstances, optimize the chances of securing the best possible price for the assets for sale.<sup>32</sup>
32. The Applicants believe that, in the circumstances, it is in the best interests of the Applicants and their stakeholders to proceed with the SISP given, among other things:
  - (a) in light of the Banking Claims Decision and its material impact on the CCAA proceedings, the Applicants re-evaluated the projected path of these proceedings and decided to proceed concurrently with both the Plan / Restructuring Path and the Transaction Path. Accordingly, and in furtherance of the Transaction Path, the SISP is warranted at this time to canvass the market and identify potential transaction options;
  - (b) the SISP is designed to benefit the whole “economic community” by providing a fair and proper process to solicit interest and identify potential transactions that would maximize value for all stakeholders. The SISP allows for a broad range of bids including Investment Proposals, Sale Proposals or combinations thereof, and is structured to optimize the chances of identifying any type of value-maximizing transaction, including through a broad canvassing of strategic and financial parties;
  - (c) the Applicants, through NNPC and Goodmans, have consulted with key stakeholders in the development of the proposed SISP;
  - (d) the SISP will help these CCAA proceedings move forward and can be advanced concurrently with efforts to explore and advance the Plan / Restructuring Path;
  - (e) the proposed SISP provides for a structured two-phase process with clearly defined timelines, bid requirements, and evaluation criteria; and
  - (f) the structure of the proposed SISP is appropriate in light of the specific circumstances of this case, in particular, among other things:
    - (i) the SISP will be conducted by NNPC, as the Court-appointed Chief Restructuring Advisor, with the assistance of KPMG as Sale Advisor and under the supervision of the Monitor;

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<sup>31</sup> *Nortel*, supra note 29 at para [49](#) [BOA Tab 2]; *Re Brainhunter Inc.*, [2009 CarswellOnt 8207](#) (Ont. S.C.J. [Commercial List]) at paras [13-17](#) [BOA Tab 4].

<sup>32</sup> *Tacora Resources Inc. (Re)*, [2023 ONSC 6126](#) at paras [165-166](#) [BOA Tab 5].

- (ii) pursuant to the Chief Restructuring Advisor Appointment Order, the Chief Restructuring Advisor has the sole and exclusive authority to oversee and advance the SISP on behalf of the Applicants; and
  - (iii) the SISP permits each of the Chief Restructuring Advisor, the Sale Advisor, and the Monitor to consult with the Consultation Stakeholders and the Applicants (in each case, subject to the terms of the SISP).<sup>33</sup>
33. The Applicants believe that the implementation of the SISP will advance the Applicants' overall restructuring efforts and provide the best opportunity to identify potential value-maximizing transaction opportunities.
34. This Court has approved sale and investment solicitation processes in other recent CCAA cases.<sup>34</sup>
- (ii) *The Approval of the Sale Advisor and Authorization to Enter into an Engagement Letter with the Sale Advisor is Appropriate*
35. The Applicants are seeking Court approval of KPMG as Sale Advisor and authorization to enter into an engagement letter with the Sale Advisor.
36. The Court has the statutory authority under Section 11 of the CCAA to appoint KPMG as the Sale Advisor.<sup>35</sup> In the context of approving sale or financial advisor engagements, Courts consider the following factors, among others: (i) whether the applicants and the Monitor believe the quantum and nature of the remuneration are fair and reasonable; (ii) whether the advisor has industry experience and/or familiarity with the business of the debtor; (iii) whether any proposed success fee is necessary to incentivize the advisor; and (iv) the complexity of the applicants' businesses, and whether that complicates any monetization or restructuring efforts.<sup>36</sup> CCAA courts have, on numerous occasions, approved the engagement of sale or financial advisors by debtor companies.<sup>37</sup>
37. The Applicants submit that the above-noted factors are met in light of the fact that:
- (a) the Applicants' businesses involve multiple assets, operational segments and considerations, requiring the specialized and sophisticated expertise of a dedicated sale advisor;

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<sup>33</sup> Price Affidavit at paras 10– 11 and 13; Narfason Affidavit at paras 5, 7, 22, 34–35, 39 and 48.

<sup>34</sup> *Bellatrix Exploration Ltd (Re)*, (October 9, 2019) Alta. Q.B. Court File No. 1901-13767 ([Strategic Process Approval Order](#)) at para 3 [BOA Tab 6]; *Canacol Energy Ltd (Re)*, (January 26, 2026) Alta. K.B. Court File No. 2501-18462 ([Sales Process Approval and Other Relief Order](#)) at paras 4–5 [*Canacol*] [BOA Tab 7].

<sup>35</sup> CCAA, [Section 11](#) [BOA Tab 1]; *Hudson's Bay Company*, [2025 ONSC 1804](#) at para 15 [*HBC*] [BOA Tab 8].

<sup>36</sup> *HBC*, supra note 35 at paras 15–16 [BOA Tab 8].

<sup>37</sup> *HBC*, supra note 35 at paras 16–22 [BOA Tab 8]; *In the Matter of a Plan of Compromise or Arrangement of Sandvine Corporation et al.*, [2024 ONSC 6199](#) at paras 58–61 [BOA Tab 9]; *Target Canada Co., Re*, [2015 ONSC 303](#) at para 72 [BOA Tab 10]; *Canacol*, supra note 34 at para 6 [BOA Tab 7].

- (b) KPMG is a nationally recognized corporate finance advisory firm with extensive experience in mergers and acquisitions and CCAA sale processes, including in agriculture and agri-business, and has acted as sale advisor in numerous insolvency proceedings across Canada;
  - (c) KPMG is currently engaged by a non-applicant affiliate of the Sunterra Group in respect of sale efforts involving that entity, and has worked with certain management of the Applicants as part of this process;
  - (d) the engagement of KPMG as Sale Advisor was recommended by NNPC following a review of multiple candidates, their qualifications, stakeholder input, and proposed fees;
  - (e) the proposed compensation structure, including a monthly work fee of \$60,000 (fifty percent of which will be credited against the Transaction Fee) and a standard market Transaction Fee payable upon completion of a transaction under the SISP, being a minimum of \$500,000, are reasonable in light of the scope and complexity of the SISP; and
  - (f) the proposed Transaction Fee provides an appropriate incentive to KPMG to maximize value under the SISP and dedicate resources and attention to identifying value-maximizing transactions.<sup>38</sup>
38. The Applicants believe that the appointment of KPMG as Sale Advisor is fair, reasonable and in the best interests of the Applicants and their stakeholders.

**B. THE CHIEF RESTRUCTURING ADVISOR APPOINTMENT ORDER SHOULD BE GRANTED**

- (i) *Appointment of the Chief Restructuring Advisor is Appropriate*
39. The Court has the statutory authority under Section 11 of the CCAA to grant an order appointing NNPC as the Chief Restructuring Advisor.<sup>39</sup> CCAA courts have held that the appointment of a chief restructuring officer or advisor was appropriate where such expertise would assist the applicants in achieving the objectives of the CCAA, which objectives include advancing potential restructuring solutions.<sup>40</sup>
40. While there is no exhaustive or prescribed list of factors governing such appointments, courts have considered, among other things: (i) the expertise of the proposed restructuring

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<sup>38</sup> Price Affidavit at para 6; Narfason Affidavit at paras 21–26.

<sup>39</sup> CCAA, [Section 11](#) [BOA Tab 1].

<sup>40</sup> *Boreal Capital Partners Ltd et al. (Re)*, [2021 ONSC 7802](#) at paras [31–33](#) [*Boreal*] [BOA Tab 11]; *Walter Energy Canada Holdings Inc., Re*, [2016 BCSC 107](#) at paras [27](#), [30–31](#) [*Walter*] [BOA Tab 12]; *Mizrahi Commercial (The One) LP et al.*, [2025 ONSC 2672](#) at para [37](#) [*The One*] [BOA Tab 13]; *DCL Corporation (Re)*, (20 December 2022), Ont. S.C.J. [Commercial List] CV-22-00691990-00CL ([Endorsement of Justice Conway](#)) at para 9 [*DCL*] [BOA Tab 14].

advisor; (ii) the importance of the advisor to the debtor's efforts to restructure and whether the appointment will help to maximize value for stakeholders; and (iii) whether the Monitor supports the appointment.<sup>41</sup>

41. The Applicants submit that the appointment of NNPC as Chief Restructuring Advisor is appropriate in the circumstances. With respect to the factors referenced above: (i) Mr. Narfason has over 20 years of restructuring experience at Ernst & Young Canada, including leading its turnaround and restructuring services group, holds multiple professional designations, and has extensive experience conducting and overseeing sale and investment solicitation processes in complex restructurings, including in the food, farm and agricultural industries; (ii) the expertise and assistance of NNPC will help to advance the Applicants' restructuring efforts by enabling productive negotiations to proceed with the Applicants' key stakeholders; and (iii) the Applicants understand that the Monitor is supportive of the appointment.<sup>42</sup>

### C. THE SECOND ARIO SHOULD BE GRANTED

#### (i) *The Sale Advisor Charge Should be Granted*

42. The Applicants seek approval of the Sale Advisor Charge to secure the Work Fee and Transaction Fee payable to KPMG pursuant to the terms of its proposed engagement as Sale Advisor, as described above, with the Sale Advisor Charge proposed to rank *pari passu* with the Administration Charge and ahead of the Directors' Charge.<sup>43</sup>
43. Section 11.52 of the CCAA provides the court with the jurisdiction to grant a priority charge over a debtor company's assets for professional fees and disbursements on notice to affected secured creditors.<sup>44</sup> Courts have recognized that, unless professional advisor fees are protected with the benefit of an administration charge, the objectives of the CCAA would be frustrated as it is not reasonable to expect professionals to take the risk of not being paid for their services.<sup>45</sup>
44. The factors to be considered are well established in the caselaw. Courts have considered: (i) the size and complexity of the business being restructured; (ii) the proposed role of the beneficiaries of the charge; (iii) whether there is an unwarranted duplication of roles; (iv) whether the quantum of the proposed charge appears to be fair and reasonable; (v) the

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<sup>41</sup> *Boreal*, supra note 40 at paras [31–33](#) [BOA Tab 11]; *Walter*, supra note 40 at paras [27, 30–31](#) [BOA Tab 12]; *The One*, supra note 40 at para [37](#) [BOA Tab 13]; *DCL*, supra note 40 at para 9 [BOA Tab 14]; *Re: Mobilicity Group*, [2013 ONSC 6167](#) at paras [46–48](#) [BOA Tab 15]; *Phoena Holdings Inc.*, [2023 ONSC 2118](#) at para [21–23](#) [BOA Tab 16].

<sup>42</sup> Price Affidavit at para 18; Narfason Affidavit at paras 14–20 and 29.

<sup>43</sup> Price Affidavit at paras 45–46.

<sup>44</sup> CCAA, [Section 11.52](#) [BOA Tab 1].

<sup>45</sup> *Timminco Limited (Re)*, [2012 ONSC 506](#) at para [66](#) [BOA Tab 17].

position of the secured creditors likely to be affected by the charge; and (vi) the position of the Monitor.<sup>46</sup>

45. The Applicants submit that the Sale Advisor Charge satisfies the applicable factors: (i) the Applicants operate a large and complex business across multiple sectors of the agricultural and food distribution industries, requiring specialized expertise; (ii) KPMG's role as Sale Advisor is to advance the SISP, including marketing the Applicants' assets and business and facilitating a competitive sale process; (iii) KPMG will bring specialized expertise in marketing assets and conducting competitive sale processes and will allow for an effective canvassing of the market, with the Chief Restructuring Advisor and the Monitor providing oversight while the day-to-day execution of the SISP is carried out by the Sale Advisor, avoiding any unwarranted duplication of roles; (iv) the proposed Sale Advisor Charge would secure the Work Fee and any Transaction Fee; and (v) NNPC and Goodmans have consulted with the Monitor and the Consultation Stakeholders on the engagement of KPMG and the terms thereof, and understand that the Monitor and the Consultation Stakeholders are supportive of the selection of KPMG and the proposed fee structure.<sup>47</sup>
46. The granting of the Sale Advisor Charge is consistent with the granting of the Administration Charge and is required to ensure that the Sale Advisor has appropriate protection for its fees and disbursements.

*(ii) The Administration Charge Should be Amended*

47. As referenced above, the Court granted the Administration Charge pursuant to the Initial Order, which was maintained pursuant to the ARIO. The services provided by the Chief Restructuring Advisor are critical to the advancement of the Applicants' restructuring efforts, and it is appropriate that its professional fees and disbursements be secured by the Administration Charge to ensure the uninterrupted provision of these services.<sup>48</sup>
48. The Applicants respectfully submit that it is appropriate for the Court to amend the Administration Charge, pursuant to Section 11.52 of the CCAA, to add the Chief Restructuring Advisor as a beneficiary.<sup>49</sup>

*(iii) Set-Off of Pre-Filing Obligations Should be Prohibited*

49. The Supreme Court of Canada in *Montreal (City) v Deloitte Restructuring Inc.* confirmed that Sections 11 and 11.02 of the CCAA authorize a court to stay rights held by creditors,

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<sup>46</sup> *Canwest Publishing Inc.*, [2010 ONSC 222](#) at para 54 [BOA Tab 18].

<sup>47</sup> Price Affidavit at para 6; Narfason Affidavit at paras 21–26 and 47.

<sup>48</sup> Price Affidavit at paras 20 and 29.

<sup>49</sup> CCAA, [Section 11.52](#) [BOA Tab 1].

including rights to effect set-off pre-filing and post-filing obligations, if the exercise of those rights could jeopardize the restructuring process.<sup>50</sup>

50. The ability of the Applicants to advance their restructuring efforts depends on their ability to continue to operate in the ordinary course. Any attempt by creditors to exercise pre-post set-off risks interfering with the Applicants' restructuring efforts to the detriment of the Applicants and their stakeholders.<sup>51</sup>
51. Accordingly, the Applicants respectfully submit that it is appropriate in the circumstances for this Court to include a clarifying provision in the Second ARIO consistent with the Supreme Court of Canada's guidance in *Montreal (City) v Deloitte Restructuring Inc.* stating that no party may assert set-off rights in respect of any obligations owing before the commencement of these CCAA proceedings without a Court order.
52. Courts in CCAA proceedings have included such clarifying provision in orders granted in other recent CCAA cases.<sup>52</sup>
  - (iv) *The Stay Period Should be Extended*
53. Section 11.02(2) of the CCAA provides the Court discretion to make an Order extending the stay of proceedings granted in an initial order.<sup>53</sup>
54. In order to make an order pursuant to Section 11.02(2), the Court must be satisfied that: (i) circumstances exist that make the order appropriate; and (ii) the applicant has acted, and is acting, in good faith and with due diligence.<sup>54</sup>
55. The Applicants submit that an extension of the Stay Period to and including October 30, 2026, is appropriate in the circumstances given, among other things:
  - (a) the Applicants have acted, and continue to act, in good faith and with due diligence throughout these CCAA proceedings, including by engaging extensively with key stakeholders, developing the SISP, and advancing potential restructuring solutions;
  - (b) the extension is necessary to provide sufficient time for the implementation of the SISP, including receiving and evaluating Phase 1 Qualified Bids by June 25, 2026, and further advancing the SISP through Phase 2;

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<sup>50</sup> *Montreal (City) v Deloitte Restructuring Inc.*, [2021 SCC 53](#) at para [62](#) [BOA Tab 19]; *Carillion Canada Inc.*, [2022 ONSC 4617](#) at para [29](#) [BOA Tab 20].

<sup>51</sup> Price Affidavit, Exhibit "A" at para 34.

<sup>52</sup> See e.g., *In Re Hudson's Bay Company*, [2025 ONSC 1530](#) at paras [49–51](#) [BOA Tab 21]; *LoyaltyOne, Co. (Re)*, (March 20, 2023) Ont. S.C.J. [Commercial List] Court File No. CV-23-00696017-00CL ([Endorsement of Madam Justice Conway](#)) at para 10 [BOA Tab 22].

<sup>53</sup> CCAA, Section [11.02\(2\)](#) [BOA Tab 1].

<sup>54</sup> CCAA, Section [11.02\(3\)](#) [BOA Tab 1]; *U.S. Steel Canada Inc., Re*, [2016 ONSC 3106](#) at para [2](#) [BOA Tab 23].

- (c) the extension will enable NNPC and Goodmans to continue discussions with key stakeholders and the Monitor regarding potential structures and alternatives for a restructuring plan and the satisfaction of claims against the Sunterra Group in furtherance of the Plan / Restructuring Path;
- (d) the Monitor will be filing an updated cash flow forecast, which is expected to demonstrate that the Applicants will have sufficient liquidity to continue operations during the contemplated extension of the Stay Period; and
- (e) no creditor or stakeholder will suffer material prejudice as a result of the proposed extension, and the Applicants are not aware of any party opposed to the requested extension.<sup>55</sup>

56. Accordingly, the Applicants respectfully submit that it is appropriate in the circumstances for this Court to extend the Stay Period to and including October 30, 2026.

ALL OF WHICH IS RESPECTFULLY SUBMITTED, this 24<sup>th</sup> day of April, 2026.

**Goodmans LLP**

GOODMANS LLP

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Robert J. Chadwick / Caroline Descours /  
Andrew Harmes / Gurratan Gill  
Counsel to the Applicants

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<sup>55</sup> Narfason Affidavit at paras 38–42.

## TABLE OF AUTHORITIES

<b>TAB</b>	<b>STATUTE</b>
1.	<i>Companies' Creditors Arrangement Act</i> , <a href="#">RSC 1985, c C-36</a> , at Sections <a href="#">11</a> , <a href="#">11.02(2)</a> , <a href="#">11.02(3)</a> , <a href="#">11.52(1)</a>
<b>TAB</b>	<b>CASE LAW</b>
2.	<i>Nortel Networks Corp. (Re)</i> (2009), <a href="#">55 C.B.R. (5th) 229</a> , 2009 CanLII 39492 (Ont. S.C.J. [Commercial List])
3.	<i>9354-9186 Québec inc. v. Callidus Capital Corp.</i> , <a href="#">2020 SCC 10</a>
4.	<i>Re Brainhunter Inc.</i> , <a href="#">2009 CarswellOnt 8207</a> (Ont. S.C.J. [Commercial List])
5.	<i>Tacora Resources Inc. (Re)</i> , <a href="#">2023 ONSC 6126</a>
6.	<i>Bellatrix Exploration Ltd (Re)</i> , (October 9, 2019) Alta. Q.B. Court File No. 1901-13767 ( <a href="#">Strategic Process Approval Order</a> )
7.	<i>Canacol Energy Ltd (Re)</i> , (January 26, 2026) Alta. K.B. Court File No. 2501-18462 ( <a href="#">Sales Process Approval and Other Relief Order</a> )
8.	<i>Hudson's Bay Company</i> , <a href="#">2025 ONSC 1804</a>
9.	<i>In the Matter of a Plan of Compromise or Arrangement of Sandvine Corporation et al.</i> , <a href="#">2024 ONSC 6199</a>
10.	<i>Target Canada Co., Re</i> , <a href="#">2015 ONSC 303</a>
11.	<i>Boreal Capital Partners Ltd et al. (Re)</i> , <a href="#">2021 ONSC 7802</a>
12.	<i>Walter Energy Canada Holdings Inc., Re</i> , <a href="#">2016 BCSC 107</a>
13.	<i>Mizrahi Commercial (The One) LP et al.</i> , <a href="#">2025 ONSC 2672</a>
14.	<i>DCL Corporation (Re)</i> , (20 December 2022), Ont. S.C.J. [Commercial List] CV-22-00691990-00CL ( <a href="#">Endorsement of Justice Conway</a> )
15.	<i>Re: Mobilicity Group</i> , <a href="#">2013 ONSC 6167</a>
16.	<i>Phoena Holdings Inc.</i> , <a href="#">2023 ONSC 2118</a>
17.	<i>Timminco Limited (Re)</i> , <a href="#">2012 ONSC 506</a>
18.	<i>Canwest Publishing Inc.</i> , <a href="#">2010 ONSC 222</a>

19.	<i>Montreal (City) v Deloitte Restructuring Inc.</i> , <a href="#">2021 SCC 53</a>
20.	<i>Carillion Canada Inc.</i> , <a href="#">2022 ONSC 4617</a>
21.	<i>In Re Hudson's Bay Company</i> , <a href="#">2025 ONSC 1530</a>
22.	<i>LoyaltyOne, Co. (Re)</i> , (March 20, 2023) Ont. S.C.J. [Commercial List] Court File No. CV-23-00696017-00CL ( <a href="#">Endorsement of Madam Justice Conway</a> )
23.	<i>U.S. Steel Canada Inc., Re</i> , <a href="#">2016 ONSC 3106</a>