

Court of Queen's Bench of New Brunswick  
Practice Direction

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Model Orders for Commercial Matters

Introduction

The New Brunswick Court of Queen's Bench and the Law Society of New Brunswick established a Commercial Law Bench and Bar Committee (the "**Committee**") to, among other things: i) research New Brunswick Court practices in relation to commercial matters; ii) research the practice in other Canadian jurisdictions; and iii) report on possible improvements to current practice.

The Committee determined that the commercial practice in New Brunswick would benefit from model orders for receiverships and proceedings under the *Companies' Creditors Arrangement Act* (the "**CCAA**"). The Committee also worked with the superior courts of the Atlantic Provinces at developing model orders for all of Atlantic Canada. The model orders developed by the Committee are as follows:

1. Receivership Order,
2. Initial Order under the CCAA, and
3. A charging order under the CCAA.

(collectively, the "**Model Orders**")

The Model Orders are in the process of being implemented across Atlantic Canada with the appropriate variations for local practice and provincial legislation. However, there will remain a high degree of consistency among the four jurisdictions.

Practice

The Model Orders are not to be used verbatim in all receivership or CCAA proceedings. Rather, the Model Orders are a starting point from which any additions, amendments or deletions can be made to fit the facts of any particular case. Further, just because a provision is in the Model Order does not mean that it is appropriate for every case and the Model Orders in no way limit the Court's broad discretion to make orders that it deems appropriate. Counsel will continue to have the duty to satisfy the Court that each provision of their proposed order is appropriate.

The Model Orders must be used as the starting point by counsel in any application for the appointment of a receiver or for protection under the CCAA in New Brunswick. On any application Counsel are to:

- i) file a draft of the order sought at the time that they file their notice of application or notice of motion; and
- ii) file a copy of the order sought blacklined to the applicable Model Order indicating all variations sought by Counsel.

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Model Orders for Commercial Matters

Attached as Schedule "A" are explanatory notes for the Receivership Order and attached as Schedule "B" are explanatory notes for the CCAA Model Orders. The notes only address certain portions of the Model Orders. As well, the Model Orders themselves also contain footnotes that address certain parts of the applicable Model Order and points of practice. Counsel should familiarize themselves with the Model Orders and the explanatory notes in their entirety.

Conclusion

The Model Orders will be updated from time to time but it is the responsibility of Counsel to keep apprised of any statutory changes or Court decisions. Where there has been a change to the applicable law that requires a change to a provision of the applicable Model Order, Counsel are to bring this to the attention of the Court on any application and to the attention of the Committee.

**SCHEDULE "A" to**  
Court of Queen's Bench of New Brunswick Practice Direction  
**Explanatory Notes Model Receivership Order**

These notes are to be read in conjunction with the model receivership order (the "**Receivership Order**") form developed for the Court of Queen's Bench of New Brunswick and the associated Practice Direction.

**Introduction**

The goal of creating the Receivership Order is to streamline the process for both submitting and considering receivership applications. Further, it should assist in avoiding redundancies and inconsistencies in practice. The Receivership Order creates a common starting point for those requesting the appointment of a court-appointed receiver.

By purposefully drawing attention to changes – both additions and deletions – made to the Receivership Order, applicants can assist the Court in focusing on the particularities of the argument being made for the case at hand, as well as on any specific issues which may require greater attention. It should be noted, however, that the Receivership Order form in no way attempts to settle any substantive legal issues that ought to be heard in Court.

**Parties and Service of Notice**

Rule 41.04 (2) of the New Brunswick Rules of Court provides that notice must be given to all persons who may have an interest in the property being subjected to receivership unless otherwise directed by the Court.

The moving party should notify as many interested parties as possible of their receivership application. The identities and the appearance or non-appearance of parties served with notice should be clearly set out to the Court. The moving party should identify in their material all parties having a registered interest in the property to form part of the Receivership.

**Receiver's Powers**

While it may be simpler to provide the receiver with a single, broadly worded mandate to take all necessary and reasonable steps required to carry out the receivership, receivers find it helpful, if not essential, to have a detailed list of specifically enumerated powers in their appointment order. This is so that they can more easily demand compliance on the part of the debtor and to prove to third parties that they have the power to act on behalf of the debtor. Therefore, the Receivership Order has attempted to identify the most essential and least controversial receiver powers and to clearly word those powers so that there is no ambiguity surrounding their exercise.

**Duty to Provide Access and Co-operation to the Receiver**

Receivership orders often contain injunctions against those who are not formally party to the order to ensure their compliance and co-operation with the receiver and his or her requests. The level of co-operation required from the debtor and its board of directors, management, employees, shareholders, etc... and the level of co-operation required from third parties differs. The debtor, those

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who are affiliated with the debtor, and all those who were provided notice of the order are required to grant the receiver immediate access to any of the debtor's property that is in their possession or under their control.

Third parties are required to advise the receiver of its existence of property and either provide the receiver with access or allow the receiver to make and retain copies of any such property. The receiver is not entitled to access any kind of information that is either privileged or protected by a statutory provision prohibiting its disclosure.

The receiver is granted certain rights to access and/or obtain copies of any electronic documentation held by third parties or otherwise. Those in possession of such electronic records shall not alter, erase, or destroy them without the prior written consent of the receiver. They shall also provide the receiver with any instructions or information that may be required to gain access to the electronic documentation.

**The Stay**

The Receivership Order provides for: (a) a prohibition against proceedings against the receiver as well as the debtor and the property; (b) prevents the exercise of rights or remedies against the receiver, the debtor, and the property; (c) precludes interference with the receiver; and (d) mandates the continuation of services by all persons with whom the debtor has agreements. In particular, it restrains the rights and remedies of any party with whom the debtor has an arrangement or agreement for the lease or rental of personal property. It also provides the receiver with the authority to return any such property to its owner on such terms that the receiver considers reasonable and appropriate.

It should be noted, the Receivership Order provides for two particularly important exceptions to the general stay of rights and remedies against the receiver, the debtor, and the property. The Receivership Order provides that nothing prevents "the filing of any registration to preserve or perfect a security interest" or "the registration of a claim for lien and the related filing of an action to preserve the right of a lien holder..." Lien claimants do, however, still require the consent of the receiver or leave of the Court in order to commence an action to enforce lien rights.

The Receivership Order also prevents third parties with whom the debtor has previous agreements from altering, terminating, or ceasing to perform any right, renewal right, contract, agreement, licence, or permit to which the debtor – and therefore the receiver – is entitled to.

While certain suppliers may attempt to secure preferential payment of pre-insolvency claims, a receiver is authorized to maintain the supply of goods and services from third parties by paying only normal prices and charges in accordance with the normal payment practices of the debtor. The receiver is also authorized to, but is not obligated to, open new accounts or establish new payment arrangements in its own name with suppliers.

**Personal Information Protection and Electronic Documents Act**

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Personal information held by the debtor relating to employees, customers, and suppliers is often very important to the receiver's ability to run or sell the debtor's business. The *Personal Information Protection and Electronic Documents Act* contains a reasonableness standard which is meant to guide the use and dissemination of personal information. It also contains a provision – clause 7(3)(c) – which allows a receiver to disclose the personal information of employees, customers, and suppliers to prospective purchasers or bidders insofar as it is desirable or required to negotiate and complete a sale. Together, these elements limit the need for a receiver to obtain express consent from individuals to release their personal information. This ability to release personal information without express consent is of utmost importance to a receiver who is, often under urgent circumstances, attempting to keep a business from failing. The Receivership Order requires that any prospective purchasers or bidders for property are to sign appropriate confidentiality agreements which limit their ability to make further use of the personal information obtained from the debtor via the receiver.

**Limitation on Liability**

The Receivership Order ensures that a receiver will not face challenges from creditors with respect to every exercise of their discretionary powers by limiting their liability except for in instances of negligence, breach of contract, or actionable misconduct.

**Funding the Receivership**

The Receivership Order creates three Court-ordered charges that take priority over all existing security interests (provided such parties have notice of the application). The first is the Administrative Charge, which guarantees that the receiver and his or her counsel will be paid their reasonable fees and disbursements by granting them a charge on the debtor's property up to a certain amount.

The second Court-ordered charge is the Receiver's Indemnity Charge, which grants the receiver a charge on the debtor's property as security for the obligations they incurred throughout the receivership. It does not, however, extend to cover any obligations that arise from liability incurred on the part of the receiver as a result of their negligence or actionable misconduct.

The third Court-ordered charge is the Receiver's Borrowing Charge, which grants the receiver a charge on the debtor's property as security for the payment of any money they borrowed in the course of the receivership, as well as any interest incurred.

The Court-ordered charges are given priority as follows in the Receivership Order:

1. Administrative Charge
2. Receiver's Indemnity Charge
3. Receiver's Borrowing Charge

The order of priority as is all other provisions, not mandatory and should be adjusted as required for any particular case.

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**Conclusion**

In conclusion, it is important to recall that the Receivership Order is not meant to be used verbatim in all receivership applications. Rather, the Receivership Order is meant to serve as a starting point from which any additions, amendments or deletions can be brought to the attention of the Justice from whom the order is sought. Furthermore, while these explanatory notes endeavor to highlight substantive and other legal issues that may be relevant to each provision, they in no way amount to legal advice. If you have any questions or concerns regarding the Receivership Order or its application to your circumstances, you should contact an insolvency professional and/or lawyer.

**SCHEDULE "B" to**  
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**Explanatory Notes CCAA Model Orders**

These notes are to be read in conjunction with the model initial order (the "Initial Order") and the model charging order (the "Charging Order") under the *Company's Creditors Arrangement Act* (the "CCAA") developed for the Court of Queen's Bench in New Brunswick and the associated Practice Direction.

**Introduction**

The goal of creating the Initial Order and the Charging Order (collectively, the "Model CCAA Orders") is to streamline the process for both submitting and considering CCAA applications. Further, it should assist in avoiding redundancies and inconsistency in practice. These Model CCAA Orders create a common starting point for those requesting Court protection in the powers of the CCAA to assist insolvent companies to restructure.

*The Commercial Law Bench and Bar Committee*

The Committee made a conscious decision to separate relief related to granting a charge against the Company's property into a separate order from that which provides the initial protection as contained in the Initial Order. The Committee determined that given the effect of Court ordered charges on the rights of various parties, special attention should be given to the relief being requested by the applicant Company. While the granting of charges is commonplace, the Company should be prepared to review of the charges being sought, the rights of the parties being affected, the necessity of the quantum for each of the individual charges and the appropriateness of all of the charges in the overall context of the proposed proceedings.

1. Initial Order/Charging Order

The Initial Order is intended to be able stand on its own, with the possible addition of administrative charge provisions, or as supplemented by a Charging Order. A Charging Order is either granted at the same time as the Initial Order or at a later date when the Court directs a second or "comeback" hearing.

The Initial Order contains the essential provisions required to give the Company some respite so as to be able to concentrate on either becoming solvent on its own or on negotiating an agreement or compromise with its creditors.

The Court may grant a series of charges under the CCAA against the Company's property in favor of, amongst others, the Monitor, the Monitor's counsel, the Company's counsel, directors and officers, Critical Suppliers and Debtor in Possession Lenders. The charges rank in such priority as the Court may permit but in practice they will rank in advance of secured creditors and any other party with notice of the charge being sought.

The following commentary only addresses some of the provisions of the Model Orders of what would be considered.

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**2. The Court's Inherent Jurisdiction vs Its Broad S.11 Jurisdiction Model Orders**

The CCAA is remedial legislation and is to be given a liberal interpretation to facilitate its objectives. The Court has broad inherent jurisdiction and broad jurisdiction under s. 11 of the CCAA.

A Court's Inherent jurisdiction is the jurisdiction granted to the Court as a Superior Court of law:

"It embodies the authority of the judiciary to control its own process and the lawyers and other officials connected with the court and its process, in order "to uphold, to protect and to fulfill the judicial function of administering justice according to law in a regular, orderly and effective manner" <sup>1</sup> [emphasis added]

There is however a distinction between the Court's process with respect to restructuring, which is to be governed by the Court's inherent jurisdiction, and the Company's process, which is governed by the judge's discretion under s.11 of the CCAA. The Court supervises the latter process "through its ability to stay, restrain or prohibit proceedings against the Company during the plan negotiation period "on such terms as it may impose."<sup>2</sup> Additionally, given that the CCAA establishes a statutory framework which extends protection to a Company so that it has structured environment from which to address insolvency, it is the s. 11 discretion that drives this broad and flexible statutory scheme.<sup>3</sup> Therefore, for the most part, the s.11 discretion supplants the need to resort to inherent jurisdiction when the Court is supervising a CCAA proceeding.<sup>4</sup>

**Review of the CCAA Initial Order and Charging Order**

*Service [Paragraph 1 in Both Order]*

The Initial Order contemplates that the initial application will be made by the Company via Notice of Application to be served in accordance with the New Brunswick *Rules of Court*, N.B. Reg. 82-73.

Where service is required, s.38.05 (1) of the *Rules of Court* require that all parties to that proceeding be served. The CCAA also imposes certain requirements on who is to be served before a Court can grant certain relief. This includes all affected secured creditors in relation to a request for interim financing, an Administrative Charge, a directors and officers charge or for the ability for the Company to dispose of property.

*Plan of Arrangement [Paragraph 3 of the Initial Order]*

Paragraph 3 authorizes the Company to file a plan of compromise or arrangement. The CCAA does not define what is a plan of compromise or arrangement (the "**Plan**"). The broad wording of this

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<sup>1</sup> *Re Stelco Inc*, [2005] OJ No 1171, 138 ACWS (3d) 222 at para 34 (ON CA).

<sup>2</sup> *Ibid* at para 38.

<sup>3</sup> *Ibid* at para 36.

<sup>4</sup> *Ibid* at para 36.

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paragraph is reflective of the CCAA and as such the terms and conditions of any Plan are left up for negotiation between the Company and its shareholders.

*Possession of Property and Operations [Paragraphs 4-9 of the Initial Order]*

Paragraph 4 authorizes the Applicant to remain in possession of its assets, to continue to carry on its business, to continue the employment of its employees and to supplement its staff as necessary or desirable in the ordinary course of business. These provisions reflect that the status quo is maintained while the Company process through the CCAA.

*Expenses [Paragraphs 5 to 9 of the Initial Order]*

Paragraph 5 permits the payment of a prescribed series of expenses incurred before or after the making of the Initial Order. The permitted payments are intentionally limited, so as to treat pre Initial Order claims/ creditors equally pending the filing and approval of a Plan. This typically means that payments on pre-Initial Order liabilities are suspended until the Plan is approved, and then upon approval such payments are then made only in accordance with the approved Plan.

The payments relate to outstanding wages and benefits payable to employees who continue to provide services after the Initial Order. Notwithstanding the stay of proceedings provided in the Initial Order, the payment of these pre-Initial Order liabilities are permitted so as to prevent operating issues which would otherwise arise from ceasing payments for regular and frequent payments, such as wages, to facilitate the continuation of the business and to maintain the status quo.

Paragraph 6 permits the Company to pay all reasonable expenses incurred in carrying on business in the ordinary course after the Order. These expenses include capital expenditures and are considered to be "necessary expenses to 'keep the lights on.'"<sup>5</sup>

Paragraph 7 requires the Company to remit or pay statutory deemed trust amounts in favour of the Crown, sales taxes, and any amounts payable to the Crown or other taxation authority in respect of municipal or other taxes ranking ahead of secured creditors. This paragraph applies only to obligations that arose or were to be remitted after the Order.

Paragraph 8 requires the Company to pay rent, for the period commencing on and after the date of the Initial Order, under real property leases, until such time as the lease is disclaimed or resiliated.

Paragraph 9 directs the Company to make no payments to any of its creditors as of the date of the Order, except as specifically permitted in the Order. The Applicant is similarly prevented from granting security interests in respect of any of its property and from granting credit or incurring liabilities, except in the ordinary course of business.

In certain situations, more extensive payment of pre-filing claims, or charges for the payment of

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<sup>5</sup> *Re Nortel Networks Corp*, 2012 ONSC 5653, 16 CCLI (5th) 150 at para 82.

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pre-filing and post-filing claims of critical suppliers, are needed to facilitate a successful CCAA restructuring in the best interests of the stakeholders as a whole. In that event, counsel can insert and black-line a provision to this effect for the Court's consideration.

*Restructuring [Paragraph 10 of the Initial Order and Paragraph 3 of the Charging Order]*

The Initial Order grants the Company very broad powers to restructure its affairs. The Company may permanently or temporarily, cease, downside or shut down the business, terminate or temporarily lay off employees where it deems appropriate and pursue all avenues of refinancing the business subject to prior approval of the court.

In both Initial and Charging Orders, the Company is entitled to dispose of redundant or non-material assets if it is in the ordinary course of business. The ability to dispose of those assets is capped by a prescribed dollar amount.

*Stay of Proceeding [Paragraphs 11-16 of the Initial Order]*

The stay provisions are in the Initial Order similar to those found in the template Receivership Order except that the Initial Order also contains paragraph 16 which is a stay of proceedings protecting officers and directors from the commencement, continuation and enforcement of proceedings against them. The stay in favour of officers and directors is included in the CCAA as unlike in a Receivership, officers and directors generally remain in their positions during a CCAA proceeding.

Therefore to keep competent directors and officers after the Initial Order, it is important to protect directors and officers during CCAA proceedings.

Paragraphs 11 and 12 provides for an initial stay period of a maximum of 30 days ("**Stay Period**"), subject to extension by further order, preventing the commencing, continuation or enforcement of any proceeding against the Company or the Monitor, or affecting the business or the Company's property.

Paragraph 13 maintains the status quo by requiring that during the Stay Period, no person can discontinue, terminate or cease to perform etc any renewal right, contract, agreement, license in favor of the Company without written consent of the Company and the Monitor or with leave of the Court.

Similarly, paragraph 14 requires parties, having contracts with the Company for the provision of goods and services, to fulfil their obligations after the granting of the Initial Order so long as they are paid for goods and services provided after the Initial Order in accordance with the Company's normal payment practices.

Paragraph 15 echoes s.11.01 of the CCAA. Paragraph 15 is a reminder that the stay of proceedings only applies to liabilities and obligations incurred prior to the Initial Order and that persons are entitled to require immediate payment for goods, services, use of lease or licensed property provided on or after the Initial Order. Furthermore, the paragraph explains that nothing in these orders obligates any person to advance or re-advance monies or extend credit to the Company.

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*Appointing the Monitor [Paragraphs 17 – 23 of the Initial Order]*

Paragraph 17 appoints the Monitor as an officer of the Court to monitor the business and financial affairs of the Company. The Company’s property and conduct of its business in accordance with the CCAA and the terms of the order is also subject to the Monitor’s supervision.

Furthermore, the Company, its officers, directors and employees are required to advise the Monitor of all material steps taken by the Company pursuant to the order, and to co-operate with the Monitor so as to aid him/her in the completion of his/her duties.

Paragraph 18 grants the Monitor a broad range of powers that are not otherwise specifically enumerated in the CCAA. The Monitor in a CCAA proceeding serves a crucial role as it observes and reports on the management and governance of the Company to the Court.

Paragraph 19 clarifies that the Monitor is a 'monitor' in the true sense of the word. While it has full rights to material information, it does not have the power to take possession or control of the Company's business, nor partake in the management or supervision of the management of the business.

Paragraph 20 reiterates, in the context of protections afforded to Monitors, that in the event that the Initial Order is inconsistent with the law, in particular the CCAA, the law and the CCAA take precedents.

Paragraph 21 requires the Monitor to pass along information provided by the Company, as opposed to collect information independently, in response to reasonable requests for information from creditors. The paragraph further provides that the Monitor will not be responsible nor liable with respect to the information so disseminated. Furthermore, the paragraph provides that in fulfilling its obligations, the Monitor must not disseminate confidential information.

Paragraph 22 requires that the Monitor and counsel to the Monitor and Company be paid their reasonable fees and disbursements, calculated at their standard rate and charge. The Company is also required to pay these fees and disbursements on a regular basis as part of the costs associated with the proceedings. Furthermore, the provision permits the payment of a retainer in favor of the Monitor or the counsel to be held as a security.

Paragraph 23 requires that the Monitor and its legal counsel refer their accounts to the Clerk of the Court of Queen’s Bench in New Brunswick from time to time for taxation.

**The Charges**

1. Generally and With Respect to Validity and Priority

The Charging Order can grant security or a charge (the “**Charge**”) in favour of Monitors, Monitor’s

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counsel, the Company's counsel, directors and officers of the Applicant, Debtor in Possession Lenders ("Lenders"), and critical suppliers. There is no requirement to register the Charging Order under any registration system such as the Personal Property Registry under the New Brunswick *Personal Property Security Act*.

The Charging Order rank the Charges in priority to all other encumbrances listed in the Order. The CCAA provides that the Charges can have super priority over any secured creditor provided the CCAA is complied with. With multiple Charges being permitted under the Charging Order, a ranking amongst the Charges is necessary. The Charging Order sets out a ranking of the Charges but this is not meant to be determinative and can be the subject of negotiations between the affected parties.

The Charges are intended to ensure, upon giving notice to the affected secured creditors, that the debtor company is fully staffed and equipped so as to have the best chance of maintaining the business as a going concern; avoiding the liquidation of the business and bankruptcy proceedings.

Both the Initial Order and the Charging Order preclude the Company from granting a charge or security equal to or greater in priority than the Charges. Furthermore, the Charging Order at paragraph 23 also states that the Charges will not be limited or impaired as a result of, amongst other things, the pendency of the proceedings. This protection is in accordance with the purpose of the CCAA as if there was any uncertainty with respect to the validity of the Charges, it would disincentives prospective Chargees from continuing to deal with the Company.

2. Administrative Charge [Paragraphs 24, 26 and 27 in the Initial Order and Paragraph 7 of the Charging Order]

The Administrative Charge entitles the Monitors, Monitor's counsel, and the Company's counsel, to a charge up to a prescribed amount, for professional fees and disbursements.

The Committee contemplates that the Charging Order will be sought on the same date as the Initial Order. Notwithstanding this expectation, if a Charging Order is not sought at the time of the initial application, the draft Initial Order provides for the granting of an administrative charge until a comeback hearing. The draft provisions provide that the administrative charge under the Initial Order shall rank in advance of only specific secured creditors who have received notice as required by the CCAA.

The Administrative Charge does not need to be included in the Initial Order if the Charging Order is issued at the same time. However, where the Charging Order will not be granted or the Court directs that a comeback hearing is appropriate, the Initial Order provides draft language for an interim Administrative Charge. The Initial Order also provides that the Company and the recipients of the Administrative Charge are entitled to, upon giving notice to parties likely affected, to seek an expansion of the ranking of the Administrative Charge so that it is in priority to secured claims not listed in the Initial Order.

3. Directors and Officer's Charge [Paragraphs 4-6 of the Charging Order]

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In order to give the Company the best chance of success it is essential that it have competent directors and officers to guide the restructuring.

The CCAA now permits the inclusion of a limited indemnification and a charge in favour of directors and officers. The charge relates to obligations and liabilities that the directors and officers may incur after the commencement of the CCAA proceeding.

The Court may not grant this type of Order where, in its opinion, adequate indemnification insurance could be obtained at reasonable cost.

4. Debtor in Possession ("DIP") Financing [Paragraphs 8-13 of the Charging Order]

Debtor In Possession – ("DIP") financing in CCAA proceedings has become common and necessary in most circumstances, interim financing is an exceptional remedy. The DIP Charge severely impacts the rights of existing secured parties given the super-priority afforded to DIP lenders.

The Charging Order allows for interim financing up to a pre-determined maximum amount. The Model Orders contemplates the filing of a Commitment Letter so that the Court and the affected parties can understand the details of the proposed interim financing agreement ("**DIP Term Sheet**").

The Charging Order also exempts the DIP lender from the stay of proceedings, in the event of a default by the Company. However, given the seriousness of this exemption, leave has to be sought from the Court and notice must be given to both the Company and the Monitor before the DIP lender can exercise its rights and remedies. The terms of the Debtor in Possession financing charge provided in the Charging Order should be reviewed against the DIP Term Sheet to ensure there is no inconsistency.

5. Critical Suppliers [Paragraphs 14-18 of the Charging Order]

These paragraphs authorize the court to determine who is a Critical Supplier, to require the Critical Supplier to continue to provide the goods or services, and, as consideration for that requirement, require the Company to make prompt payment for the goods and services and grant the Critical Supplier with a charge having the priority set out in the Charging Order.

The use of a Critical Supplier Charge may be limited given the requirement of parties to continue to do business with the Company under the provisions of the Initial Order.

*Service and Notice [Paragraphs 30-32 of the Initial Order and Paragraph 27 of the Charging Order]*

The service and publication requirements are listed in Paragraphs 30 to 32 of the Initial Order. The Charging Order adopts those requirements in Paragraph 27.

Paragraph 30 of the Initial Order requires the Monitor to publish prescribed information in a

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newspaper, make the Order publically available, send a notice to every known creditor that has a claim against the Applicant exceeding \$1000 and prepare a list showing the names and addresses, as well as the estimated amounts of each creditors claims.

*General 33-37 (Paragraphs 33-37 of the Initial Order and Paragraphs 28-30 of the Charging Order)*

These paragraphs contain duplications as Paragraphs 35 to 38 of the Initial Order correspond with paragraphs 28 to 31 of the Charging Order.

In the Initial Order, the Company and the Monitor are expressly allowed to ask for advice and seek direction from the Court regarding the discharge of its powers and duties. Furthermore, the Monitor is entitled to act as an interim receiver, a receiver and manager, and a trustee in bankruptcy of the applicant, the Business or the Property.

In both the Initial and Charging Orders, the Monitor is granted broad powers to seek recognition in both domestic or foreign jurisdictions, and request the aid of all courts, tribunals, regulatory and administrative bodies.

Paragraphs 37 and 30, of the Initial Order and Charging order respectively, provide for a comeback order allowing, upon giving the notice required in the Rules of Court, the Company and the Monitor to vary or amend the Initial or the Charging Order.

**Conclusion**

In conclusion, it is important to recall that the CCAA Initial and Charging Orders are not meant to be used verbatim in all CCAA applications. Rather, the CCAA Initial Order and Charging Orders are meant to serve as a starting point from which any additions, amendments or deletions can be brought to the attention of the Justice from whom the order is sought. Furthermore, while these explanatory notes endeavor to highlight substantive and other legal issues that may be relevant to each provision, they in no way amount to legal advice. If you have any questions or concerns regarding the Model CCAA Orders or their application to your circumstances, you should contact an insolvency professional and/or lawyer.

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