

**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 AND ARRANGEMENT INVOLVING  
OLYMPUS UNITED FUNDS CORPORATION / CORPORATION DE FONDS UNIS  
OLYMPUS**

**OLYMPUS UNITED FUNDS CORPORATION / CORPORATION DE FONDS UNIS  
OLYMPUS, BY ITS RECEIVER, RSM RICHTER INC.**

**APPLICANT**

**FACTUM OF THE RECEIVER AND THE MONITOR**

April 23, 2025

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**TO: THE SERVICE LIST**

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## PART I - OVERVIEW

1. The Receiver and the Monitor are seeking an order: (a) extending the stay of proceedings up to and including October 31, 2025; (b) approving the Joint Report of the Receiver and Monitor dated April 17, 2025 (the “**Joint Report**”), and the Receiver’s and Monitor’s activities, decisions and conduct set out therein; and (c) approving the Receiver’s R&D Statement (as defined in the Joint Report).<sup>1</sup>
2. The relief sought on this motion will advance the administration of these CCAA Proceedings and facilitate the steps required to make additional distributions to creditors of the Norshield Companies holding Proven Claims.
3. The Receiver anticipates that additional funds will be received from the liquidations of three foreign entities that were part of the Norshield investment structure and that are subject to court supervised liquidation proceedings in the Bahamas and Barbados.
4. The Receiver and the Monitor had intended to carry out one final distribution to the creditors of the Norshield Companies holding Proven Claims following receipt of such additional funds. However, since the timing of receipt of those funds remains uncertain, the Receiver is taking the steps necessary to carry out an interim distribution to Proven Creditors of substantially all of the funds in the possession of the Receiver. Once funds are received from the liquidation proceedings in the Bahamas, the Monitor intends to carry out a final distribution to Proven Creditors and terminate these CCAA Proceedings.

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<sup>1</sup> Capitalized terms used herein that are not otherwise defined shall have the meaning ascribed to them in the Joint Report.

5. In the circumstances, the Receiver and the Monitor have determined that it is appropriate to extend the stay of proceedings for six months for the purpose of carrying out the foregoing steps. Maintaining the CCAA Proceedings will be more cost effective to carry out a final distribution to Proven Creditors than doing so within the Receivership Proceeding. There would be no prejudice to the Applicant's creditors if the stay is extended.

## PART II - THE FACTS

### A. Background

6. By orders dated June 29, 2005 (the "**Appointment Order**"), July 14, 2005 (the "**Continuation Order**") and September 9, 2005 and October 14, 2005 (together, the "**Additional Appointment Orders**"), the Court appointed RSM Richter Inc. (now Richter Inc.) ("**Richter**") as the receiver (the "**Receiver**") of Olympus United Funds Corporation/Corporation de Fonds Unis Olympus (the "**Applicant**" or the "**Company**") and certain other related entities (collectively, the "**Norshield Companies**").<sup>2</sup>
7. By order dated February 7, 2006, the Court appointed Stikeman Elliott LLP as representative counsel ("**Representative Counsel**") to represent the interests of the class comprised of all individual natural persons who invested funds with or through the Norshield Companies.<sup>3</sup>

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<sup>2</sup> Joint Report at para. 1, Tab 2 of the Motion Record dated April 21, 2025 (the "**Motion Record**").

<sup>3</sup> Joint Report at para. 3, Tab 2 of the Motion Record.

8. As part of its Court-ordered mandate to identify and realize upon the assets of the Company, the Receiver determined that the Company had potential claims against KPMG LLP (“**KPMG**”), which reported upon certain of the audited financial statements of the Company.<sup>4</sup>
9. The Receiver and KPMG ultimately settled these claims without an admission of wrongdoing, whereby KPMG paid \$7.5 million to the Company (the “**Settlement Amount**”) for distribution to creditors of the Company holding Proven Claims (“**Proven Creditors**”).<sup>5</sup>
10. The settlement with KPMG was conditional upon, among other things, a full release of KPMG pursuant to a plan of compromise and arrangement to be filed by the Company pursuant to the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”).<sup>6</sup>
11. In accordance with the settlement between the Receiver and KPMG, the Receiver sought and obtained from the Court an Order (the “**Initial Order**”) granting the Company protection under the CCAA and appointing Richter as monitor (the “**Monitor**”). The Stay Period under the Initial Order has been periodically extended by the Court, most recently to April 30, 2025.<sup>7</sup>

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<sup>4</sup> Joint Report at para. 5, Tab 2 of the Motion Record.

<sup>5</sup> Joint Report at para. 6, Tab 2 of the Motion Record.

<sup>6</sup> Joint Report at para. 7, Tab 2 of the Motion Record.

<sup>7</sup> Joint Report at para. 8, Tab 2 of the Motion Record.

12. The Company's plan pursuant to the CCAA (the "**Plan**") was approved by the requisite majorities of creditors and was sanctioned by Order of the Court dated March 19, 2012.<sup>8</sup>
13. The Plan Conditions were satisfied on October 16, 2012. The Monitor distributed the Settlement Amount *pro rata* to all Proven Creditors, with the exception of several creditors who cannot be located by the Monitor despite efforts to do so.<sup>9</sup>
14. Pursuant to Section 5.5 of the Plan, the Monitor shall distribute to the Proven Creditors any amounts available from the receivership of the Company for distribution to the Proven Creditors.<sup>10</sup>
15. Pursuant to Section 10.1 of the Plan, the Plan Completion Date shall occur upon receipt by the Monitor of a notice from the Receiver confirming that there is no likelihood of additional funds becoming available for distribution to Proven Creditors. Upon the Plan Completion Date, the Monitor will be discharged and released from further obligations or responsibilities under the Plan.<sup>11</sup>

**B. Norshield Investment Structure**

16. At the time the Receiver was appointed, approximately 1900 Canadian retail investors ("**Retail Investors**"), a significant number of whom reside in Ontario, held investments in the Company in the amount of approximately \$159 million. The investment structure

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<sup>8</sup> Joint Report at para. 9, Tab 2 of the Motion Record.

<sup>9</sup> Joint Report at paras. 10-11, Tab 2 of the Motion Record.

<sup>10</sup> Joint Report at para. 12, Tab 2 of the Motion Record.

<sup>11</sup> Joint Report at para. 13, Tab 2 of the Motion Record.

employed by the Company and the other Norshield Companies was complex, costly to maintain and spanned Canada, Barbados and the Bahamas.<sup>12</sup>

17. The Company made significant investments in its wholly-owned subsidiary, Olympus Bank, which is domiciled in Barbados. Olympus Bank held investments in Olympus Uninvest Ltd. (“**Olympus Uninvest**”), which is domiciled in the Bahamas. These investments were then co-mingled in Olympus Uninvest with investments received from Canadian pensions funds, financial institutions and other individuals and entities.<sup>13</sup>
18. Olympus Uninvest held substantial investments in Mosaic Composite Limited (U.S.) Inc. (“**Mosaic**”), which was also domiciled in the Bahamas. Mosaic, in turn, held investments in both hedged and non-hedged assets.<sup>14</sup>
19. Given the structure and flow of investments within the Norshield investment structure, the Receiver determined that it would be necessary to take steps to safeguard the assets of Olympus Bank in Barbados and Olympus Uninvest and Mosaic in the Bahamas.<sup>15</sup>
20. In July 2005, the Central Bank of Barbados seized management and control of Olympus Bank. Richter and Brian F. Griffiths & Company, a Barbados accounting firm, were appointed Joint Custodians of Olympus Bank (the “**Joint Custodians**”) by Order of the Barbados High Court of Justice (the “**Barbados Court**”).<sup>16</sup>

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<sup>12</sup> Joint Report at para. 25, Tab 2 of the Motion Record.

<sup>13</sup> Joint Report at para. 26, Tab 2 of the Motion Record.

<sup>14</sup> Joint Report at para. 27, Tab 2 of the Motion Record.

<sup>15</sup> Joint Report at para. 28, Tab 2 of the Motion Record.

<sup>16</sup> Joint Report at para. 29, Tab 2 of the Motion Record.

21. Brian Griffiths, the principal of the Joint Custodian Brian F. Griffiths & Company, passed away in 2024. The impact on the Olympus Bank liquidation is discussed below.<sup>17</sup>
22. Raymond Massi, then a partner at Richter, and G. Clifford Culmer (“**Culmer**”), a partner at a Bahamas accounting firm, were subsequently appointed by the Bahamas Court as joint official liquidators of each of Olympus Uninvest and Mosaic (the “**JOLs**”).<sup>18</sup>
23. In addition to the inherent difficulties posed by the complexity of the Norshield investment structure, the task of identifying and realizing upon the assets of the Norshield Companies, Olympus Bank, Olympus Uninvest and Mosaic has been compounded by incomplete financial records, missing financial information and, in certain cases, the destruction of key books and records.<sup>19</sup>
24. The Receiver and/or the JOLs have conducted examinations of key individuals involved with the Norshield investment structure. While those examinations have assisted with the recovery of certain assets, the Receiver has been unable to fully and adequately determine transactions that occurred during the period leading up to the Appointment Order.<sup>20</sup>

### **C. Claims Process**

25. The Receiver conducted a Court-authorized claims process (the “**Claims Process**”) in respect of the Norshield Companies, other than Olympus Bank. The claims process for Olympus Bank is being administered pursuant to the laws of Barbados.<sup>21</sup>

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<sup>17</sup> Joint Report at para. 30, Tab 2 of the Motion Record.

<sup>18</sup> Joint Report at para. 31, Tab 2 of the Motion Record.

<sup>19</sup> Joint Report at para. 32, Tab 2 of the Motion Record.

<sup>20</sup> Joint Report at para. 32, Tab 2 of the Motion Record.

<sup>21</sup> Joint Report at para. 33, Tab 2 of the Motion Record.



26. Proofs of Investment and Proofs of Claim in the amount of approximately \$115,000,000 were delivered to the Receiver pursuant to the Claims Process.<sup>22</sup> Following the establishment of a second claims bar date and a late claims process in connection with these CCAA Proceedings, the Receiver received approximately \$5,400,000 of additional claims which were admitted as Proven Claims.<sup>23</sup>

**D. Receiver's Statement of Receipts and Disbursements**

27. The Receiver's Statement of Receipts and Disbursements for the period June 29, 2005 to October 17, 2024 (the "**Prior R&D Statement**") was approved pursuant to the October 24, 2024 stay extension order.
28. The Receiver's Statement of Receipts and Disbursements for the period June 29, 2005 to April 16, 2025 (the "**R&D Statement**") is attached as Exhibit "L" to the Joint Report and reflects only minor changes from the Prior R&D Statement: total receipts have increased by \$64,594 (interest received), additional disbursements of \$62,296 have been paid (primarily professional fees) and the net cash available has increased by \$2,297.

**E. Interim Distribution to Proven Creditors of the Company**

29. Additional funds should become available to the Monitor for distribution to Proven Creditors once distributions are made by the Mosaic JOL's to Olympus Uninvest, by the Olympus Uninvest JOL's to the creditors of Olympus Uninvest (including Olympus Bank) and finally by Olympus Bank to the Company.<sup>24</sup>

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<sup>22</sup> Joint Report at para. 37, Tab 2 of the Motion Record.

<sup>23</sup> Joint Report at paras. 40-41, Tab 2 of the Motion Record.

<sup>24</sup> Joint Report at para. 46, Tab 2 of the Motion Record.

30. In accordance with Orders of the Bahamas Court each dated August 6, 2014, the JOLs have conducted and completed claims processes for Olympus Uninvest and Mosaic.<sup>25</sup>
31. In Barbados, the approval of the Barbados Court must be obtained with respect to the treatment of the claims in the liquidation of Olympus Bank and the distribution of funds to its creditors.<sup>26</sup>
32. The majority of the funds which the Receiver and the Monitor anticipate will be available for distribution to Proven Creditors will originate from the Mosaic estate. There were significant challenges and delays in the efforts to monetize Mosaic's interest in its last remaining tangible asset.<sup>27</sup>
33. The Receiver has been working with Culmer to finalize the relative interests of the Norshield Companies, Olympus Uninvest and Mosaic in certain assets as well as the appropriate allocation of realization costs with respect to such assets, all of which must be resolved (and approved by the Bahamas Court) prior to any distribution from Mosaic. Additional time is required to resolve these issues and obtain the necessary approvals from the Bahamas Court.<sup>28</sup>
34. Since that timing remains uncertain, the Receiver and the Monitor, in conjunction with Richter as the sole remaining Joint Custodian, are taking the steps necessary to carry out an interim distribution as soon as possible from the funds on hand in the Receivership Proceeding. However, since a significant amount of these funds are proceeds of assets held

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<sup>25</sup> Joint Report at para. 47, Tab 2 of the Motion Record.

<sup>26</sup> Joint Report at para. 48, Tab 2 of the Motion Record.

<sup>27</sup> Joint Report at para. 49, Tab 2 of the Motion Record.

<sup>28</sup> Joint Report at para. 50, Tab 2 of the Motion Record.

in the name of Olympus Bank (“**OUBT Proceeds**”), the approval of the Barbados Court will be required in order to distribute such funds.<sup>29</sup>

35. The Receiver and the Monitor have engaged with the Joint Custodians’ local counsel in Barbados regarding the authorization required from the Barbados Court in order to distribute the OUBT Proceeds, as well as to address the passing of Brian Griffiths. In the course of those discussions, the Receiver and the Monitor learned that the Barbados *International Financial Services Act* (“**IFSA**”), under which Olympus Bank was licensed as an offshore bank, has been repealed and replaced via the Barbados *Financial Institutions (Amendment) Act 2018-51* (“**FI Amendment**”). In accordance with the FI Amendment, the Barbados *Financial Institutions Act Cap. 324A* (as amended) (the “**FIA**”) now governs entities that were formerly licenced under the IFSA.<sup>30</sup>
36. Neither the FIA nor the FI Amendment address whether the winding-up provisions of the IFSA continue to apply to liquidation proceedings commenced under the IFSA prior to its repeal. In order to address the applicable statutory process governing the treatment of creditor claims against Olympus Bank and distribution of the OUBT Proceeds, Richter, as the Remaining Joint Custodian, brought a motion before the Barbados Court seeking an order that the liquidation of Olympus Bank be completed in accordance with the relevant provisions of the IFSA, as though the IFSA is still in force. As part of that motion, Richter,

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<sup>29</sup> Joint Report at para. 51, Tab 2 of the Motion Record.

<sup>30</sup> Joint Report at para. 52, Tab 2 of the Motion Record

as the Remaining Joint Custodian, also sought an order that it shall act as the sole Custodian of Olympus Bank.<sup>31</sup>

37. The foregoing motion was heard by the Barbados Court on October 14, 2024 and the decision of the Barbados Court remains under reserve. Once the decision of the Barbados Court is issued, the Receiver will be in a better position to provide guidance on the steps required (and the anticipated timing) to carry out a distribution of the OUBT Proceeds.<sup>32</sup>
38. The Receiver and the Monitor have determined that it is appropriate to extend the Stay Period for a further six months in order to preserve the CCAA Proceedings for the purpose of carrying out an interim distribution and to provide additional time for completion of the distributions from Mosaic, Olympus Uninvest and Olympus Bank.<sup>33</sup>
39. The Monitor is of the view that maintaining the CCAA Proceedings will be more cost effective to carry out a final distribution to Proven Creditors than doing so within the Receivership Proceeding.<sup>34</sup>

### **PART III - THE ISSUES**

40. The issues on this motion are as follows:
- (a) whether this Court should grant the requested extension of the Stay Period; and
  - (b) whether this Court should approve the Joint Report and the activities of the Receiver and Monitor described therein.

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<sup>31</sup> Joint Report at para. 53, Tab 2 of the Motion Record

<sup>32</sup> Joint Report at para. 54, Tab 2 of the Motion Record.

<sup>33</sup> Joint Report at para. 55, Tab 2 of the Motion Record.

<sup>34</sup> Joint Report at para. 56, Tab 2 of the Motion Record.

## PART IV - THE LAW & ANALYSIS

### ISSUE 1: The Court Should Grant the Stay Extension

41. The Monitor and the Receiver seek an extension of the Stay Period up to and including October 31, 2025.<sup>35</sup>
42. Pursuant to section 11.02 of the CCAA, the Court may, on an application in respect of a debtor company other than an initial application, grant an extension of a stay of proceedings where: (i) the applicant satisfies the Court that an extension of the stay of proceedings is appropriate in the circumstances; and (ii) the applicant further satisfies the Court that it has acted, and is acting, in good faith and with due diligence.<sup>36</sup>
43. When deciding whether to grant an extension of the stay of proceedings, the Court will focus on whether the above CCAA requirements have been met and whether the extension will further the purposes of the CCAA.<sup>37</sup> The length of the stay extension to be granted is discretionary.
44. When determining the appropriate length of time for the stay of proceedings to be extended, one important consideration is the significant cost of continuous applications for an extension of the stay and the distraction that shorter stay extensions may cause, which will prejudice stakeholders of the debtor company.<sup>38</sup>

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<sup>35</sup> Joint Report at para. 58(i), Tab 2 of the Motion Record.

<sup>36</sup> [CCAA, s 11.02\(2\)-\(3\).](#)

<sup>37</sup> [Worldspan Marine Inc. \(Re\), 2011 BCSC 1758 at paras. 12-15.](#)

<sup>38</sup> [JTI-Macdonald Corp., Re, Court File No. CV-19-61582-00CL](#), endorsement of Justice McEwen released October 18, 2019 at p. 3.

45. In the present case, since the granting of the Initial Order, the Monitor is of the view that the Company, through the Receiver, has acted, and is continuing to act, in good faith and with due diligence.<sup>39</sup>
46. The proposed extension will permit the Company (through the Receiver), with the assistance of the Monitor, to take the necessary steps to carry out an interim distribution to the Company's Proven Creditors, as well as a final distribution once funds are received from the Mosaic and Olympus Uninvest liquidations.<sup>40</sup>
47. Maintaining the CCAA Proceedings will be more cost effective to carry out further distributions to the Company's Proven Creditors than doing so within the Receivership Proceeding.<sup>41</sup>
48. For these reasons, the Receiver and the Monitor respectfully submit that the Court should grant the proposed stay extension.

## **ISSUE 2: The Court Should Approve the Joint Report and Activities**

49. In *Target Canada*, the Court noted that a request to approve a Monitor's report is not unusual and that there are good policy and practical reasons to grant the approval of a Monitor's report and activities, including (a) allowing the Monitor to move forward with the next steps in the CCAA proceedings; (b) allowing the Monitor to bring its activities before the Court; (c) allowing an opportunity for the concerns of stakeholders to be

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<sup>39</sup> Joint Report at para. 57, Tab 2 of the Motion Record.

<sup>40</sup> Joint Report at para. 55, Tab 2 of the Motion Record.

<sup>41</sup> Joint Report at para. 56, Tab 2 of the Motion Record.

addressed and any problems rectified; (d) enabling the Court to satisfy itself that the Monitor's activities have been conducted in prudent and diligent manners; (e) providing protection for the Monitor not otherwise provided by the CCAA; and (f) protecting creditors from delay that may be caused by re-litigation of steps taken to date or potential indemnity claims by the Monitor.<sup>42</sup>

50. These principles were recently reaffirmed by Chief Justice Morawetz in *Laurentian University*.<sup>43</sup> These principles apply equally to receivership proceedings.<sup>44</sup>
51. The activities of the Receiver and Monitor set out in the Joint Report were necessary and undertaken in good faith pursuant to their duties and powers as set out in the Appointment Order, the Additional Appointment Orders, the Initial Order and other orders made in the Receivership Proceeding and the CCAA Proceedings. Approval of the activities of the Receiver and the Monitor will assist in completing the final phase of the Receivership Proceeding and the CCAA Proceedings, including carrying out further distributions to creditors of the Norshield Companies holding Proven Claims. The Receiver and the Monitor respectfully submit that the principles set out in *Target Canada* have been satisfied in this case.

## **PART V - RELIEF REQUESTED**

52. For the reasons outlined herein, the Receiver and the Monitor respectfully request that the Court grant the Order in substantially the form included at Tab 3 of the Motion Record.

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<sup>42</sup> *Re Target Canada Co.*, 2015 ONSC 7574 at [paras. 2, 22-23](#) [*Target Canada*].

<sup>43</sup> *Re Laurentian University of Sudbury*, 2022 ONSC 2927 at [paras. 13-14](#).

<sup>44</sup> *Re Hanfeng Evergreen Inc.*, 2017 ONSC 7161 at [para. 15](#).

**ALL OF WHICH IS RESPECTFULLY SUBMITTED** this 23rd day of April, 2025.



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**SCHEDULE “A”  
LIST OF AUTHORITIES**

1. [Worldspan Marine Inc. \(Re\), 2011 BCSC 1758](#)
2. [JTI-Macdonald Corp., Re, Court File No. CV-19-61582-00CL](#)
3. [Re Target Canada Co., 2015 ONSC 7574](#)
4. [Re Laurentian University of Sudbury, 2022 ONSC 2927](#)
5. [Re Hanfeng Evergreen Inc., 2017 ONSC 7161](#)

**SCHEDULE “B”  
RELEVANT STATUTES**

***Companies’ Creditors Arrangement Act, RSC 1985, c C-36***

**General power of court**

**11** Despite anything in the *Bankruptcy and Insolvency Act* or the *Winding-up and Restructuring Act*, if an application is made under this Act in respect of a debtor company, the court, on the application of any person interested in the matter, may, subject to the restrictions set out in this Act, on notice to any other person or without notice as it may see fit, make any order that it considers appropriate in the circumstances.

**Stays, etc. — other than initial application**

**11.02 (2)** A court may, on an application in respect of a debtor company other than an initial application, make an order, on any terms that it may impose,

- (a) staying, until otherwise ordered by the court, for any period that the court considers necessary, all proceedings taken or that might be taken in respect of the company under an Act referred to in paragraph (1)(a);
- (b) restraining, until otherwise ordered by the court, further proceedings in any action, suit or proceeding against the company; and
- (c) prohibiting, until otherwise ordered by the court, the commencement of any action, suit or proceeding against the company.

**Burden of proof on application**

**11.02 (3)** The court shall not make the order unless

- (a) the applicant satisfies the court that circumstances exist that make the order appropriate; and
- (b) in the case of an order under subsection (2), the applicant also satisfies the court that the applicant has acted, and is acting, in good faith and with due diligence.

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Court File No. CV-11-00009368-00CL

**ONTARIO  
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(COMMERCIAL LIST)**

Proceeding commenced at Toronto, Ontario

**FACTUM OF THE RECEIVER AND THE MONITOR**

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