

**2473304 ONTARIO INC.**

**REPORT OF RICHTER ADVISORY GROUP INC.,  
IN ITS CAPACITY AS PROPOSED MONITOR OF  
2473304 ONTARIO INC.**

**June 6, 2016**

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**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

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

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF  
2473304 ONTARIO INC.**

**PRE-FILING REPORT OF RICHTER ADVISORY GROUP INC.  
In its capacity as proposed Monitor of the Applicant**

**June 6, 2016**

**Introduction**

1. Richter Advisory Group Inc. ("**Richter**") understands that 2473304 Ontario Inc. (the "**Applicant**") which carries on business under the licensed trade name "Jones New York" in Canada intends to make an application to the Court for an order (the "**Initial Order**"), among other things, granting a stay of proceedings in favour of the Applicant until July 7, 2016 pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**").
2. The requested form of Initial Order contains provisions that Richter be appointed as monitor (the "**Proposed Monitor**") and if appointed "**Monitor**") of the Applicant in the CCAA proceedings.
3. Richter, in its capacity as the Proposed Monitor, has reviewed the Court materials to be filed by the Applicant in support of its application. The purpose of this limited scope report of the Proposed Monitor is to provide information to this Honourable Court regarding the following:
  - i. Richter's qualifications to act as Monitor (if appointed);
  - ii. A limited summary of certain background information about the Applicant and the CCAA proceedings;
  - iii. The objectives of the CCAA proceedings;
  - iv. The Applicant's consolidated statement of projected cash flow for the period from May 29, 2016 to July 16, 2016;
  - v. The Applicant's request to approve the Forbearance Agreements (as defined below) including the ability to continue to borrow and repay amounts under the ABL Credit Facility (as defined below);

- vi. The charges proposed in the Initial Order, including the ABL DIP Lender's Charge (for amounts advanced following the Initial Order under the ABL Credit Facility), the Administration Charge and the Directors' Charge;
- vii. The Applicant's motion for an Order approving the Agency Agreement (as defined below) to be heard at a hearing scheduled for June 13, 2016; and
- viii. The Proposed Monitor's conclusions and recommendations.

#### **Terms of Reference**

- 4. Unless otherwise stated, all monetary amounts noted herein are expressed in Canadian dollars.
- 5. Capitalized terms not otherwise defined herein are as defined in the Applicant's application materials, including the affidavit of Mark Sun sworn June 6, 2016 (the "**Sun Affidavit**") filed in support of the Applicant's application for relief under the CCAA. This report should be read in conjunction with the Sun Affidavit, as certain information contained in the Sun Affidavit has not been included herein in order to avoid unnecessary duplication.
- 6. The information contained in this report is based on unaudited financial information as well as discussions with representatives of the Applicant. The Proposed Monitor has not conducted an audit or other verification of such information and, accordingly, no opinion is expressed regarding the accuracy, reliability or completeness of the information contained herein. Future oriented financial information reported or relied on in preparing this report is based on management's assumptions regarding future events; actual results may vary from forecast and such variations may be material.

#### **Richter's Qualifications to Act as Monitor**

- 7. Richter Consulting Canada Inc. (the "**Consultant**"), an affiliate of the Proposed Monitor, was engaged by the Applicant on March 16, 2016 to provide consulting services relating to financial performance, liquidity management and to assist the Applicant and its parent Grafton-Fraser Inc. ("**Grafton**") in developing and assessing various strategic alternatives.
- 8. Richter is a trustee within the meaning of subsection 2(1) of the *Bankruptcy and Insolvency Act* (Canada). The senior Richter professional personnel with carriage of this matter have acquired knowledge of the Applicant and its business through the engagement of the Consultant. Richter is, therefore, in a position to immediately assist the Applicant in its CCAA proceedings. The current intention is for the Consultant to continue to act as consultant in respect of Grafton.

9. Richter is not subject to any of the restrictions on who may be appointed as Monitor set out in section 11.7(2) of the CCAA and, in particular, neither Richter nor any of its representatives has been at any time in the two preceding years;
  - i. A director, an officer or an employee of the Applicant;
  - ii. Related to the Applicant or to any director or officer of the Applicant; or
  - iii. The auditor of the Applicant.
10. Richter has consented to act as Monitor, should the Court grant the Applicant's request to commence the CCAA proceedings.

### **General Background to the Proposed CCAA Proceedings**

#### Applicant Overview

11. The Applicant is a women's clothing retailer and operates a chain of 37 retail stores in seven provinces with the majority of its locations in Ontario (23 stores) and Quebec (7 stores). All of its locations are leased.
12. The Applicant's head office and distribution center ("**Distribution Center**") operates out of leased premises in Vaughan, Ontario. The Distribution Center was also responsible for handling the e-commerce inventory of Grafton, although this is being phased out with the intention of relocating the inventory to another location over the course of the next three months.
13. The Applicant acquired the right to use the "Jones New York" brand in the sale of womenswear in Canada pursuant to a term sheet with ABG-Jones LLC ("**ABG**"). The term sheet with ABG is more fully described in the Sun Affidavit. As of May 20, 2016, the Applicant had approximately 300 employees of which approximately 70 are full time and 230 are part time employees.
14. As described in the Sun Affidavit, as a result of sustained losses, the Applicant is experiencing a liquidity crisis and, as set out in more detail below, has defaulted on various financial and other covenants with its two primary secured lenders, Canadian Imperial Bank of Commerce ("**CIBC**") and GSO Capital Partners, LP ("**GSO**").

15. The Applicant's business, affairs, financial performance and position, as well as the causes of its insolvency, are detailed in the Sun Affidavit and are, therefore, not repeated herein. The Proposed Monitor has reviewed the Sun Affidavit and discussed the business and affairs of the Applicant and the causes of insolvency with senior management personnel of the Applicant and is of the view that the Sun Affidavit provides a fair summary thereof.

Grafton-Fraser Inc.

16. The Applicant is a wholly owned subsidiary of Grafton, a privately held company that operates menswear retail stores in Canada under a variety of banners including Tip Top Tailors.
17. Grafton and the Applicant have the following inter-company service arrangements:
  - i. The Applicant has been providing logistics and warehousing services in support of Grafton's e-commerce business. Any merchandise of Grafton that is currently located in the Applicant's Distribution Center is identifiable (as it consists of menswear) and is segregated from the Applicant's inventory; and
  - ii. Grafton provides various financial, accounting, technology, buying and other services to the Applicant. In this respect, the Applicant has paid Grafton \$1.6 million for the period from July 2015 to April 2016. The Applicant will be unable to make the payment owing to Grafton for services provided in May 2016. Grafton has confirmed it will continue to provide these services during the restructuring period, and such payments will be calculated in a manner consistent with prior charges and are included in the Applicant's Cash Flow Forecast (as defined below).
18. In addition to the above inter-company services:
  - i. Grafton has guaranteed the obligations of the Applicant for the Contract Year 1 (as defined in the Sun Affidavit) pursuant to the term sheet with ABG;
  - ii. Grafton and the Applicant are jointly and severally liable for amounts owing under the ABL Credit Facility (as described in more detail below); and
  - iii. The Applicant has guaranteed Grafton's obligations to GSO and has granted security to GSO in respect of such obligations (as described in more detail below).

19. As well, prior to the full implementation of the ABL Credit Facility, the Applicant required financial assistance to pay for necessary inventory and Grafton paid certain amounts to the Applicant on an interim basis to permit it to acquire inventory. These amounts (approximately \$4.1 million) were repaid by the Applicant to Grafton on March 9, 2016 and are reflected in the financial statements as having been repaid at the end of February 2016.

### **Objective of CCAA Proceedings**

20. The primary objective of the Applicant's CCAA proceedings is to implement the transaction resulting from the SISP (as discussed below) which, as noted below, will result in an orderly liquidation of the Applicant's operations. In the Applicant's view, which the Proposed Monitor supports, an orderly liquidation is the most efficient way to maximize the value from the sale of the Applicant's assets for the benefit of all of the Applicant's stakeholders. In the Proposed Monitor's view, the orderly liquidation of the Applicant's assets will be more beneficial to the Applicant's creditors than a bankruptcy proceeding.

### **Creditors**

#### Secured Creditors

21. The Applicant was incorporated by Grafton in the summer of 2015 to acquire the right to operate the "Jones New York" brand in Canada. The Applicant has advised the Proposed Monitor that at that time, Grafton's existing secured operating lender was not interested in providing an operating credit facility for the Applicant and therefore Grafton and the Applicant sought and obtained an operating facility from CIBC. In order for Grafton and the Applicant to enter into the new credit facility with CIBC, the consent of GSO, as an existing secured creditor of Grafton, was required. The Proposed Monitor understands that as a condition of granting its consent to the new credit facilities, GSO required that the Applicant guarantee the existing debt owing by Grafton to GSO and grant security in respect of the same. GSO and CIBC also entered into an intercreditor agreement dated as of February 12, 2016 (the "**Intercreditor Agreement**"). These transactions were implemented in February of 2016.

22. Pursuant to the Intercreditor Agreement, as between CIBC and GSO, CIBC has a first priority security interest on the ABL Priority Collateral as defined in the Intercreditor Agreement, generally being the inventory, accounts receivable, bank accounts, cash and securities (to the extent they are not proceeds of the Term Priority Collateral as defined in the Intercreditor Agreement) of the Applicant and GSO has a first priority security interest on the Term Priority Collateral, generally being intellectual property, insurance proceeds (related to the Term Priority Collateral, but not related to the ABL Priority Collateral), furniture, fixtures and equipment of the Applicant.
23. Searches conducted on May 30, 2016 (with a file currency of May 29, 2016) of the Personal Property Security Registry in Ontario (and similar searches in British Columbia, Alberta, Saskatchewan, Manitoba, Quebec, and Nova Scotia conducted on May 30, 2016) show registrations against the Applicant in favour of CIBC, GSO and Xerox Canada Ltd. (in respect of specific equipment in Ontario).

#### CIBC

24. CIBC and the Applicant (along with Grafton as co-borrower) are parties to a credit agreement dated February 12, 2016 ("**ABL Credit Agreement**") pursuant to which CIBC provides a revolving asset-based loan facility available to the Applicant and Grafton (the "**ABL Credit Facility**"). As security for its obligations owing to CIBC, the Applicant has delivered a general security agreement and moveable hypothec each dated February 12, 2016 and security under Section 427 of the *Bank Act* (Canada) over all of its present and after-acquired property (the "**CIBC Security**").
25. The Proposed Monitor is advised that CIBC is owed approximately \$30.5 million as of May 20, 2016, comprised of approximately \$7.5 million related to borrowings by the Applicant and \$23 million related to borrowings by Grafton.
26. The Proposed Monitor has received an opinion from its independent legal counsel, Cassels Brock & Blackwell LLP ("**Cassels**") dated June 3, 2016 that, subject to the typical qualifications and assumptions, the CIBC Security with respect to the Applicant is valid and enforceable in the following jurisdictions: Ontario, British Columbia, Manitoba, Alberta and Nova Scotia. The Proposed Monitor has also received an opinion from LaPointe Rosenstein Marchand Melancon, LLP dated June 3, 2016 that, subject to typical qualifications and assumptions, the CIBC Security with respect to the Applicant is valid and enforceable in Quebec.

27. On April 21, 2016, the Applicant received a letter from CIBC (“**ROR Letter**”) pursuant to which CIBC notified the Applicant that various defaults had occurred under the ABL Credit Agreement thereby triggering various additional reporting requirements and operating constraints. CIBC reserved all of its rights and remedies against both the Applicant and Grafton. A further letter from CIBC on April 22, 2016 advised the Applicant that notwithstanding the ROR Letter, the obligations under the ABL Credit Agreement were not accelerated at that time.
28. On June 6, 2016, the Applicant, Grafton and CIBC agreed on the terms of a forbearance agreement (the “**ABL Forbearance Agreement**”), pursuant to which CIBC agreed to forbear, subject to certain terms and conditions, from enforcing its rights and remedies until the earlier of the Termination Date and the existence of any Terminating Event (each as defined therein).
29. The ABL Forbearance Agreement<sup>1</sup> also modifies and amends the existing ABL Credit Facility to (among other things) (i) separate the total commitment by CIBC between Grafton and the Applicant based on separate borrowing base calculations; (ii) provide additional financing to the Applicant during the CCAA Proceedings (subject to Court approval of the same, compliance with the Approved CCAA Cash Flow (as defined in the ABL Forbearance Agreement) and the granting of a priority charge (the “**ABL DIP Lender’s Charge**”) to secure such additional borrowings); and (iii) provide that Canadian Prime Rate Loans and Base Rate Loans to each of Grafton and the Applicant shall be made at the Canadian Prime Rate plus 1% per annum and the Base Rate plus 1% per annum, respectively; and (iv) provide that each of Grafton and the Applicant shall pay an unused Line Fee in the amount of 0.5% per annum and the Letter of Credit Fee was increased to 1.75% (for documentary letters of credit) and 2.5% (for standby letters of credit). A copy of the ABL Forbearance Agreement is attached to the Sun Affidavit.
30. As a condition of the ABL Forbearance Agreement, the Applicant must be granted an Initial Order in form and substance satisfactory to CIBC, which order shall include the ABL DIP Lender’s Charge. In addition, the Applicant is required to pay an amendment and forbearance fee in the aggregate amount of \$75,000.

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<sup>1</sup> Capitalized terms used in this paragraph and not otherwise defined have the meaning ascribed thereto in the ABL Forbearance Agreement.

31. It is required under the ABL Forbearance Agreement that amounts received by the Applicant following the date of the Initial Order be applied to reduce amounts owing to CIBC prior to the date of the Initial Order. Further borrowings will be available under the ABL Credit Facility such that the total commitment shall be \$8 million following the granting of the Initial Order. Following a distribution of proceeds to CIBC (to be requested by further Court Order) of the amount of the Initial Guaranty Payment (as defined in the Agency Agreement), less a holdback of \$500,000 to secure the Administration Charge (as defined below) (the “**Administration Holdback**”), the commitment in respect of the Applicant is to be reduced to \$2.2 million.
32. The ABL Forbearance Agreement also requires the payment by the Applicant of the expenses incurred by GSO and CIBC prior to and following the Applicant’s filing under the CCAA.
33. Under the ABL Forbearance Agreement, a Termination Date will occur on the earliest of:
  - i. two (2) days following the receipt by CIBC of written notice by the Applicant or Grafton of termination of any or all of the ABL Credit Facilities;
  - ii. the date of issuance of a demand by CIBC for repayment of any or all of the obligations upon the occurrence of a Default or an Event of Default (other than an Existing Default) (as those terms are defined in the ABL Forbearance Agreement);
  - iii. the implementation date of any plan of compromise and/or arrangement under the CCAA proceedings;
  - iv. the date on which the stay imposed under the CCAA proceedings is lifted, in whole or in part, is terminated or lapses without extension, unless CIBC consents thereto;
  - v. September 30, 2016 or such other date as may be agreed to by CIBC; and
  - vi. the occurrence or existence of any Terminating Event (as defined in the ABL Forbearance Agreement).
34. Terminating Events under the ABL Forbearance Agreement include (the following is not an exhaustive list):
  - i. Certain negative variances from the Approved CCAA Cash Flow or the GFI Cash Flow (as defined in the ABL Forbearance Agreement);

- ii. The granting of any court-ordered charges ranking in priority to the CIBC Security other than the Administration Charge, the Director's Charge and the Agent's Charge (each as defined below and in the Sun Affidavit);
  - iii. Termination of the CCAA proceedings, without the prior consent of CIBC;
  - iv. A report by the Monitor that there has been a material adverse change in respect of the Applicant or the CCAA proceedings;
  - v. A Terminating Event (as defined in the GSO Forbearance Agreement occurs); and
  - vi. Certain claims are made against Grafton or the Applicant which are not resolved or Grafton becomes subject to the CCAA proceedings.
35. Upon the earlier of a Terminating Event and the Termination Date, the form of requested Initial Order provides that CIBC will be entitled to immediately cease making advances to the Applicant, provided that CIBC will continue to fund payment by the Applicant of certain employee wage and priority payables for a period of 5 business days and will be entitled to immediately set off or consolidate amounts owing by CIBC to the Applicant against the obligations of the Applicant to CIBC (other than with respect to the Administration Holdback). Further, on not less than 5 business days notice to the Applicant, the Monitor and GSO, CIBC may exercise any and all additional rights and remedies against the Applicant.

#### GSO

36. As noted above, the Applicant executed a guarantee agreement on February 12, 2016 in favour of GSO in respect of the obligations of Grafton to GSO (as more fully set out in the Sun Affidavit) (the "**GSO Guarantee**"). The Proposed Monitor understands that as of May 20, 2016, the outstanding indebtedness owing by Grafton to GSO including accrued interest is approximately \$33.0 million.
37. As security for such Guarantee, the Monitor understands that the Applicant provided to GSO, among other things a general security agreement and a moveable hypothec, each dated February 12, 2016 (the "**GSO Security**"). The Monitor has not yet received an independent legal opinion regarding the validity and enforceability of the GSO Security.

38. The Monitor understands that there are a number of defaults under the GSO Credit Agreement, including the failure to pay interest in the amount of approximately \$375,000 on April 29, 2016 and May 31, 2016, as well as the filing of the CCAA proceedings by the Applicant, which defaults permit GSO to demand on the GSO Guarantee.
39. GSO has agreed to forbear from enforcing its rights and remedies as against Grafton and the Applicant pursuant to the terms of a forbearance agreement (the "**GSO Forbearance Agreement**" and together with the ABL Forbearance Agreement, the "**Forbearance Agreements**") between the Applicant, Grafton and GSO dated June 6, 2016. The GSO Forbearance Agreement provides such forbearance will continue to the earlier of November 30, 2016 and the occurrence or existence of a Terminating Event (as defined therein). The GSO Forbearance Agreement also amends the underlying credit agreement between GSO and Grafton to extend the maturity date of the obligations until January 31, 2017. Furthermore, from April 30, 2016 to the earlier of the Maturity Date and a Terminating Event, unless otherwise paid in cash, the interest due and owing will be capitalized and added to the principal amount of the debt. The interest will accrue going forward at the default rate (being 2% higher than the current interest rate which is 15%).
40. The GSO Forbearance Agreement mandates that the ABL DIP Lender's Charge cannot apply to the Term Priority Collateral.
41. The Applicant is also required to pay the expenses incurred by GSO prior to and following the Applicant's filing under the CCAA under the GSO Forbearance Agreement.
42. The Terminating Events and conditions precedent in respect of the GSO Forbearance Agreement are substantively similar to those in the ABL Forbearance Agreement. A Terminating Event under the ABL Forbearance Agreement is also a Terminating Event under the GSO Forbearance Agreement.
43. A copy of the GSO Forbearance Agreement is attached to the Sun Affidavit.

#### Unsecured Creditors

44. In addition to the amounts owed by the Applicant to CIBC and GSO, the Applicant estimates that it has accrued and unpaid unsecured obligations totaling approximately \$6.5 million (excluding intercompany and related party indebtedness of approximately \$293,000) as of May 20, 2016, as more fully detailed in the Sun Affidavit. The Applicant advises that it is current in respect of obligations to all landlords including rent for the month of June 2016 which was paid in the week ended May 28, 2016.

## Sales and Investment Solicitation Process

45. Following the retention of the Consultant, the Applicant determined that it was in the best interests of the Applicant including its various stakeholders to proceed with a sale and investment solicitation process (“SISP”).
46. As noted in the Sun Affidavit, a company related to Gordon Brothers Group (“GBG”) holds an interest in Grafton (the parent company of the Applicant). The Proposed Monitor has been advised by the Applicant that GBG and two directors of the Applicant closely connected to GBG were not involved in discussions or deliberations over the proposals received during the SISP.
47. Accordingly, with the assistance of the Consultant, an online data room managed by the Consultant was created, a teaser document was prepared and a list of potential interested parties was prepared consisting of retailers/strategic buyers, equity investors and liquidators. A copy of the teaser is attached as an Exhibit to the Sun Affidavit. The following timeline summarizes steps taken under the SISP:
  - i. April 11, 2016 – creation of online data room;
  - ii. April 21, 2016 – issuance of teaser by email to approximately 100 parties;
  - iii. April 22 – May 16, 2016 – execution of non-disclosure agreements with 9 parties;
  - iv. May 16, 2016 – a Request for Proposals (“RFP”) was posted to the data room as well as model asset purchase and agency agreements. A copy of the RFP is attached as an Exhibit to the Sun Affidavit. A deadline of 2:00pm ET on May 19, 2016 was set for the submission of offers by interested parties. At the request of various interested parties, this deadline was subsequently extended to 5:00pm ET on May 21, 2016. None of the interested parties indicated that this extension was insufficient or should have been longer;
  - v. May 21, 2016 – two bids were received by the revised bid deadline, both of which were from liquidators. A comparison of the two bids received is attached hereto as **Confidential Appendix A**. The Applicant has requested that this Confidential Appendix be sealed. If the transaction represented by the Agency Agreement does not close the Applicant may be required to return to the market, and the disclosure of the comparison of the bids will likely impact on the value to be received for the Applicant’s assets;

- vi. Following an analysis of the bids by the Applicant and the Consultant, the bid submitted by GA Retail Canada ULC ("**Great American**") was selected as the superior bid and negotiations to finalize that bid were undertaken;
- vii. June 6, 2016 – an agency agreement ("**Agency Agreement**") was entered into between the Applicant and Great American (the "**Agent**"). The Consultant assisted in the negotiation of the terms of the Agency Agreement. The Proposed Monitor understands that both CIBC and GSO understand that the Applicant is entering into the Agency Agreement, and it is a condition of each of the Forbearance Agreements that the Agency Agreement be approved by the Court. A redacted copy of the Agency Agreement is attached to the Sun Affidavit;

#### The Agency Agreement

48. The following summarizes certain key aspects of the Agency Agreement:
- i. The Agency Agreement is subject to approval of the Court in these CCAA proceedings (the "**Approval Order**"), to be obtained no later than June 13, 2016 or such other date as the Agent and the Applicant may agree;
  - ii. Great American has provided a net minimum guarantee ("**NMG**") based on the cost value of the Applicant's inventory with a potential upside should results be higher than forecast, the details of which are contained in a Confidential Exhibit to the Sun Affidavit;
  - iii. 85% of the NMG (the "**Initial Guaranty Payment**") is to be paid immediately following Court approval of the Agency Agreement with the remaining 15% to be paid following the final inventory reconciliation. The Agent is to provide a letter of credit to the Applicant to support, among other things, the remaining 15% of the NMG. The Proposed Monitor currently holds, as a deposit toward the Initial Guaranty Payment, the amount of approximately 10% of the NMG;
  - iv. The Agent is entitled to a fee (the "**Agent's Fee**"), being a percentage of the aggregate Cost Value of the Merchandise in the Closing Stores plus the cost of the Additional Merchandise (as those terms are defined in the Agency Agreement);
  - v. In the event that the net sale proceeds exceed the NMG, the Agent's Fee, and the expenses of the liquidation, the Applicant and the Agent will share the excess based on the terms set out in the Agency Agreement;

- vi. If directed by the Agent, and agreed to by the Applicant acting reasonably, the Applicant shall purchase additional merchandise of like nature and quality to include in the sale, at the Applicant's expense (to be reimbursed by the Agent), being Additional Merchandise;
- vii. The liquidation period will commence following approval of the Agency Agreement, with a final vacate date of no later than September 22, 2016. However, the Agent may, on at least seven days notice to the Applicant terminate the Sale in any Store and vacate the Store. The date on which the Agent will vacate will not be later than the 15<sup>th</sup> of the month or the Vacate Date (as defined in the Agency Agreement);
- viii. The Applicant will be required to provide various central services to the Agent throughout the liquidation including but not limited to information technology services, payroll services, store audit functions, etc;
- ix. Gross Sale Proceeds (as defined in the Agency Agreement) of the sale, less amounts owing for sales taxes (the "**Sales Tax Amount**"), will be remitted to the Agent, with the Agent then paying Expenses (as defined in the Agency Agreement). Expenses do not include the payment of any royalties or license fees which shall be the responsibility of the Applicant. In accordance with the ABL Forbearance Agreement, the Sales Tax Amount will be transferred to an account of the Monitor for the benefit of the Applicant and then returned to the Applicant to be remitted to the applicable taxing authorities in accordance with applicable legal requirements. Gross FF&E Proceeds (as defined in the Agency Agreement) will be dealt with as follows: Commission plus amounts owing for applicable sale taxes will be remitted to the Agent with the remaining proceeds transferred to an account of the Monitor for the benefit of the Applicant to be distributed by further Court Order. The Agent's out of pocket expenses related to the disposition of the Owned FF&E which are not duplicative of the Expenses are to be reimbursed by the Applicant;
- x. Reconciliation of Proceeds and Expenses shall take place weekly, with a final reconciliation taking place within 30 days of the Sale Termination Date (as defined in the Agency Agreement); and
- xi. The Agent shall have the exclusive right to dispose of Owned FF&E (as defined in the Agency Agreement) and the Agent shall be entitled to receive a commission, being a percentage of the sale proceeds, plus reimbursement of the Agent's out of pocket expenses related to such disposition, provided such have been mutually agreed to by the Agent and the Applicant.

49. The form of Approval Order requested by the Applicant in respect of the Agency Agreement includes provisions:
- i. That the Sale be conducted in accordance with Sales Guidelines attached to the Approval Order as is typical in Court-approved retail liquidations;
  - ii. Requiring that Gross Sale Proceeds and Gross FF&E Proceeds be deposited into certain designated accounts;
  - iii. Granting the Agent a priority charge over the Merchandise, Additional Merchandise, Proceeds and Gross FF&E Proceeds (to the extent of the FF&E Commission) and the proceeds from the sale of Merchant Consignment Goods (to the extent of the Agent's Commission) (all as defined in the Agency Agreement) to secure payment of amounts owing by the Applicant to the Agent under the Agency Agreement, provided however that the charge is subordinate to all other court-order charges and all encumbrances in favour of CIBC and GSO in respect of certain amounts that are payable to the Applicant under the Agency Agreement; and
  - iv. Treating the Agent as an unaffected creditor in any Plan.
50. Based on the experience of the Proposed Monitor with other retail insolvency liquidations, it is the view of the Proposed Monitor that overall, the terms and conditions of the Agency Agreement and the Approval Order are consistent with general market conditions. As noted above, it is the view of the Proposed Monitor that the liquidation of the Applicant's assets pursuant to the Agency Agreement will be more beneficial to the Applicant's creditors than they would receive under a bankruptcy proceeding.

#### **The Applicant's Cash Flow Statement**

51. The Applicant, with the assistance of the Proposed Monitor, has prepared a consolidated cash flow forecast of its receipts, disbursements and financing requirements for the period May 29, 2016 to July 16, 2016 (the "**Cash Flow Forecast**"). A copy of the Cash Flow Forecast is attached as **Appendix "A"** to this report and is summarized below:

<b>2473304 Ontario Inc.</b> <b>Cash Flow Forecast</b> <b>For the period May 29 - July 16, 2016</b> <b>(\$000's)</b>	
Gross Receipts (Sales)	\$ 9,386
Rent Recovery	334
	<b>9,720</b>
<b>Disbursements</b>	
Rent	(1,072)
Store Expenses & Other	(500)
Payroll	(708)
Sales Tax	(226)
Interest	(73)
Deposits	(100)
Professional Fees	(1,277)
Transfer to Monitor Escrow Acct	(500)
Net Revolver Paydown	(5,264)
	<b>(9,720)</b>
Net Cash Flow	<b>\$ -</b>
Opening Loan	6,925
Net Revolver Paydown	(5,264)
Ending Loan	<b>\$ 1,662</b>

52. The Cash Flow Forecast estimates that during the period of the projection, the additional financial support required by the Applicant will peak at approximately \$1.7 million during the week ended July 16, 2016. We provide the following comments in respect of the cash flow:
- i. Gross receipts/sales includes the collection of the Initial Guaranty Payment following the Approval Order (assuming such is granted by the Court);
  - ii. Disbursements include the distribution to CIBC of the Initial Guaranty Payment less the Administration Holdback following Court approval (to be requested separately) of same;
  - iii. Rent includes the payment of rent for the months of June and July 2016 net of rent recovery representing the Agent's estimated reimbursement of per diem rent during the cash flow period;
  - iv. Payroll includes payment of approximately \$121,000 of pre-filing accrued vacation pay; and
  - v. Professional fees include the payment of retainers to legal counsel for the Applicant, the Proposed Monitor and its legal counsel.

53. The Proposed Monitor has reviewed the Cash Flow Forecast to the standard required of a Court-appointed Monitor by section 23(1)(b) of the CCAA. Section 23(1)(b) requires a Monitor to review the debtor's cash flow statement as to its reasonableness and to file a report with the Court on the Monitor's findings. The Canadian Association of Insolvency and Restructuring Professionals' standards of professional practice include a standard for monitors fulfilling their statutory responsibilities under the CCAA in respect of a monitor's report on the Cash Flow Forecast.
54. Pursuant to this standard, the Proposed Monitor's review of the Cash Flow Forecast consisted of inquiries, analytical procedures and discussion related to information supplied to it by certain key members of management and employees of the Applicant. Since the probable and hypothetical assumptions need not be supported, the Proposed Monitor's procedures with respect to them were limited to evaluating whether they were consistent with the purpose of the Cash Flow Forecast. The Proposed Monitor also reviewed the support provided by the Applicant for the probable and hypothetical assumptions and the preparation and presentation of the Cash Flow Forecast.
55. Based on the Proposed Monitor's review, nothing has come to its attention that causes it to believe, in all material respects, that:
- i. The probable and hypothetical assumptions are not consistent with the purpose of the Cash Flow Forecast;
  - ii. As at the date of this report, the probable and hypothetical assumptions are not suitably supported and consistent with the plans of the Applicant or do not provide a reasonable basis for the Cash Flow Forecast, given the probable and hypothetical assumptions; or
  - iii. The Cash Flow Forecast does not reflect the probable and hypothetical assumptions.
56. Since the Cash Flow Forecast is based on assumptions regarding future events, actual results will vary from the information presented even if the probable and hypothetical assumptions occur, and the variation could be material. Accordingly, the Proposed Monitor expresses no assurance as to whether the Cash Flow Forecast will be achieved. In addition, the Proposed Monitor expresses no opinion or other form of assurance with respect to the accuracy of the financial information presented in the Cash Flow Forecast, or relied upon by the Proposed Monitor in preparing this report.
57. The Cash Flow Forecast has been prepared solely for the purpose described above, and readers are cautioned that it may not be appropriate for other purposes.

## **The Applicant's Request for Interim Financing**

58. As shown in the Cash Flow Forecast, it is estimated that for the period ending July 16, 2016, the Applicant will require additional financial support. Accordingly, the ability of the Applicant to borrow additional funds during the CCAA proceedings under the ABL Credit Facility, such additional borrowings to be secured by the requested ABL DIP Lender's Charge, is vital to providing stability to, and the necessary cash flow for, the Applicant to conduct an orderly liquidation of its assets for the benefit of all stakeholders.
59. The material terms of the ABL Forbearance Agreement were described above. As noted, the ABL Forbearance Agreement requires that the Applicant obtained an order of the court permitting CIBC to apply post-filing receipts to reduce amounts owing to CIBC under the ABL Credit Facility prior to the date of the Initial Order. Additional amounts required by the Applicant are to be advanced in accordance with the terms of the ABL Forbearance Agreement. The maximum amount available under the ABL Credit Facility for the Applicant will be \$8 million prior to a distribution to CIBC of the amount of the Initial Guaranty Payment less the Administration Holdback. Thereafter the maximum amount available to the Applicant will be \$2.2 million.
60. As noted above, the ABL Forbearance Agreement is conditional on the Initial Order being granted in form and substance acceptable to CIBC and GSO. Specifically it is required that the Initial Order approve certain blocked account arrangements as described in the Sun Affidavit as well as grant the ABL DIP Lender's Charge.
61. The Proposed Monitor has inquired into the marketing process for the interim financing and has been advised by the Applicant that the interim financing requirement was not marketed externally or to other potential lenders to fund ongoing operations. In its assessment, the Applicant considered the CIBC proposal as advantageous, as CIBC was already familiar with the Applicant's business and financial profile as well as its restructuring options as a result of its discussions with the Applicant and its advisors throughout the Applicant's strategic review process and as a result of their pre-existing relationship with the Applicant.
62. The Applicant is of the opinion that any offer from other lenders would have required a great deal of time and expense to pursue, and there was no commercial advantage to pursuing other options for interim financing. The Applicant has advised the Proposed Monitor that, in its view, the interim

financing provided for under the ABL Forbearance Agreement represents the only viable alternative to the Applicant to ensure the continuation of the Applicant's operations at this time.

63. The Proposed Monitor is of the view that, given the Applicant's current circumstances, the terms of the ABL Forbearance Agreement are commercially reasonable for the following reasons:
- i. The Applicant is facing an imminent liquidity crisis and short term funding is needed urgently in order to permit the Applicant to wind-down its operations in an orderly and efficient manner;
  - ii. Further delays sourcing alternative interim financing cannot be justified, as the Applicant's poor financial performance and highly levered balance sheet make it unlikely that the Applicant would be able to secure alternative interim financing and, even if they could, the funding would likely be insufficient and expensive; and
  - iii. The Proposed Monitor is of the view that, in the circumstances, the financial terms of the financing to be provided under the ABL Forbearance Agreement appear to be commercially reasonable and are consistent with other situations in which the Proposed Monitor has been involved.
64. In light of the foregoing, it is the Proposed Monitor's view that further time spent attempting to source alternative interim financing would: (i) not be in the interest of the Applicant and/or its stakeholders; (ii) not result in the finalization of alternative interim financing on better terms; (iii) reduce overall net realization for the Applicant; and (iv) would severely, and likely fatally, compromise the Applicant's ability to respect the terms of its Agency Agreement and wind-down its operations in an orderly fashion, which is in the best interests of all its stakeholders.

#### **Court Ordered Charges**

65. The proposed Initial Order provides for an Administration Charge, the ABL DIP Lender's Charge and a Directors' Charge (as defined below):

**i. Administration Charge**

66. The proposed Initial Order provides for a charge in the maximum amount of \$500,000 charging the assets of the Applicant to secure the fees and disbursements incurred in connection with services rendered to the Applicant both before and after the commencement of the CCAA proceedings by the following entities: the Monitor, the Monitor's legal counsel, legal counsel to the Applicant and legal counsel to the Directors and Officers (the "**Administration Charge**").
67. The quantum of the Administration Charge sought by the Applicant was determined in consultation with the Proposed Monitor. The creation of the Administration Charge is typical in CCAA proceedings as is the proposed priority of the Administration Charge as set out in the form of Initial Order filed with the Court.

**ii. ABL DIP Lender's Charge**

68. The Applicant requires immediate funding to operate and pursue an orderly wind-down during the CCAA proceedings, as evidenced by the Cash Flow Forecast.
69. As noted above, a condition of the ABL Forbearance Agreement is that CIBC receives the benefit of the ABL DIP Lender's Charge to the maximum amount of the aggregate of any and all advances by CIBC to the Applicant (provided that the ABL DIP Lender's Charge will not charge certain collateral and will not rank in priority to the Administration Charge and the Agent's Charge as described in the Sun Affidavit), subsequent to the granting of the Initial Order.

**iii. Directors' Charge**

70. The proposed Initial Order provides for a charge in the maximum amount of \$500,000 charging the assets of the Applicant to indemnify its directors and officers for liabilities incurred by the Applicant that result in post-filing claims against the directors and officers in their personal capacities (the "**Directors' Charge**").
71. The amount of the Directors' Charge was determined by taking into consideration employee payroll and related expenses (including source deductions), vacation pay and sales tax.
72. The Proposed Monitor has been advised that the Applicant's directors and officers have \$10 million in primary coverage directors and officers insurance indemnification as more fully set out in the Sun Affidavit.

73. However, the Proposed Monitor has been informed that due to the potential for personal liability, the directors and officers of the Applicant are unwilling to continue their services and involvement in the CCAA Proceedings without the protection of the Directors' Charge. As the Applicant will require the participation and experience of the Applicant's directors and officers to pursue a successful orderly liquidation, the Proposed Monitor believes that the Directors' Charge (both the amount and priority ranking) is required and reasonable in the circumstances. The Proposed Monitor understands that the current directors of the Applicant, all of whom would be given the benefit of the Director's Charge are James M. Dworkin, Matthew Kahn, David McGregor, Glenn A. Stonehouse and Frank Tworecke.

**iv. Agent's Charge**

74. The Agency Agreement, if approved, provides that the Agent will be granted a first ranking charge on certain specified property and assets of the Applicant as security for the obligations of the Applicant to the Agent under the Agency Agreement (subject to the subordination of the Agent's Charge in respect of certain entitlements as described in the Sun Affidavit).

**Summary and Proposed Ranking of the Court Ordered Charges**

75. It is contemplated that the priorities of the charges sought by the Applicant (collectively, the "Charges") will be as follows:

- a. First – the Administration Charge;
- b. Second – ABL DIP Lender's Charge; and
- c. Third – the Directors' Charge.

76. The Initial Order sought by the Applicant provides that the Charges will rank in priority to the security interests of CIBC and GSO (provided that the ABL DIP Lender's Charge will not prime the Term Priority Collateral). The Charges will be subordinate to the interests of Xerox Canada Ltd., which are secured by an existing *Personal Property Security Act* (Ontario) registration (being the only such current registration other than those in favour of CIBC and GSO) of which the Proposed Monitor is aware.

77. As noted above, the requested Approval Order contains an additional charge in favour of the Agent, which would have priority with respect to certain assets, over all of the above noted charges.

78. The Proposed Monitor believes that the Charges and rankings are required and reasonable in the circumstances of the CCAA proceedings in order to achieve an orderly and efficient liquidation of the Applicant's assets and accordingly, supports the granting and the proposed ranking of the Charges.

**Proposed Monitor's Conclusions and Recommendations**

79. The Proposed Monitor is of the view that, the Applicant is insolvent and that the relief requested by the Applicant, including the authorization to enter into the ABL Forbearance Agreement, and the GSO Forbearance Agreement, and the Agency Agreement is necessary, commercially reasonable and justified. The Proposed Monitor is also of the view that granting the relief requested will provide the Applicant the best opportunity to undertake an orderly liquidation of its assets under the CCAA proceedings thereby maximizing value for the benefit of the Applicant's stakeholders.

All of which is respectfully submitted this 6th day of June , 2016.

**Richter Advisory Group Inc.**  
**in its capacity as Proposed Monitor of**  
**2473304 Ontario Inc.**

Per:



Gilles Benchaya, CPA, CIRP



Andrew Adessky, CPA, MBA, CIRP

## **Appendix “A”**

**2473304 Ontario Inc.**  
**Cash Flow Forecast For the Period May 29 to July 16, 2016**

(\$000's)	04-Jun-16	11-Jun-16	18-Jun-16	25-Jun-16	02-Jul-16	09-Jul-16	16-Jul-16	Total
<b>Receipts</b>								
Gross Receipts	619	530	8,237	-	-	-	-	9,386
Rent Recovery	-	-	-	48	95	95	95	334
	<u>619</u>	<u>530</u>	<u>8,237</u>	<u>48</u>	<u>95</u>	<u>95</u>	<u>95</u>	<u>9,720</u>
<b>Disbursements</b>								
Rent	(536)	-	-	-	(536)	-	-	(1,072)
Store Expenses & Other	(94)	(46)	(11)	(75)	(238)	(25)	(11)	(500)
Payroll	(60)	(306)	(59)	(139)	(84)	-	(59)	(708)
Sales Tax	(76)	-	-	-	(150)	-	-	(226)
Interest	(29)	-	-	-	(44)	-	-	(73)
Deposits	-	(100)	-	-	-	-	-	(100)
Professional Fees	(435)	(231)	(152)	(102)	(149)	(119)	(90)	(1,277)
	<u>(1,229)</u>	<u>(683)</u>	<u>(221)</u>	<u>(317)</u>	<u>(1,202)</u>	<u>(144)</u>	<u>(160)</u>	<u>(3,956)</u>
<b>Net Cash Flow</b>	<b>\$ (610)</b>	<b>\$ (153)</b>	<b>\$ 8,015</b>	<b>\$ (269)</b>	<b>\$ (1,106)</b>	<b>\$ (49)</b>	<b>\$ (65)</b>	<b>\$ 5,764</b>
Opening Loan	6,925	7,535	7,688	7,696	7,965	1,548	1,597	6,925
Net Cash Flow	610	153	(8,015)	269	1,106	49	65	(5,764)
Transfer to/(from) Monitor Escrow Acct	-	-	8,023	-	(7,523)	-	-	500
<b>Revolver</b>	<b>\$ 7,535</b>	<b>\$ 7,688</b>	<b>\$ 7,696</b>	<b>\$ 7,965</b>	<b>\$ 1,548</b>	<b>\$ 1,597</b>	<b>\$ 1,662</b>	<b>\$ 1,662</b>
Opening Monitor Escrow Acct	-	-	-	8,023	8,023	500	500	-
Transfer in/(out)	-	-	8,023	-	(7,523)	-	-	500
<b>Monitor Escrow Acct - Closing</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ 8,023</b>	<b>\$ 8,023</b>	<b>\$ 500</b>	<b>\$ 500</b>	<b>\$ 500</b>	<b>\$ 500</b>

Mark Sun, CFO

2473304 ONTARIO INC.

REPORT OF RICHTER ADVISORY GROUP INC., IN ITS CAPACITY AS PROPOSED MONITOR OF 2473304 ONTARIO INC.

Court File No: \_\_\_\_\_

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**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)  
(IN BANKRUPTCY AND INSOLVENCY)**

Proceedings commenced at Toronto

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**REPORT OF THE MONITOR  
June 6, 2016**

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