

ONTARIO

SUPERIOR COURT OF JUSTICE

COMMERCIAL LIST

THE TORONTO-DOMINION BANK

Applicant

- and -

**GLOBEWAYS CANADA INC., CANPULSE FOODS LTD. AND
GLOBAL GRAIN CANADA LTD.**

Respondents

**APPLICATION UNDER SUBSECTION 243(1) OF THE *BANKRUPTCY AND INSOLVENCY ACT*,
R.S.C. 1985, c. B-3, AS AMENDED**

**FOURTH REPORT OF BDO CANADA LIMITED
IN ITS CAPACITY AS RECEIVER AND MANAGER OF
GLOBEWAYS CANADA INC., CANPULSE FOODS LTD. AND
GLOBAL GRAIN CANADA LTD.**

February 23, 2021

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INTRODUCTION AND PURPOSE OF THIS REPORT

Introduction and Background

1. This report dated February 23, 2021 (the "**Fourth Report**") is filed by BDO Canada Limited ("**BDO**") in its capacity as the receiver and manager (the "**Receiver**") over the property, assets and undertakings (collectively, the "**Assets**") of Globeways Canada Inc. ("**Globeways**"), Canpulse Foods Ltd. ("**Canpulse**") and Global Grain Canada Ltd. ("**Global Grain**") (collectively the "**Company**"). BDO was appointed as Receiver on November 19, 2020 on an application by The Toronto-Dominion Bank ("**TD**") pursuant to an order of the Honourable Madam Justice Conway (the "**Receivership Order**") of the Ontario Superior Court of Justice (the "**Court**").
2. Globeways purchased inventory from its subsidiaries Canpulse and Global Grain and sells the product domestically and internationally. Customers are located world-wide including countries in South America, the Middle East and Asia. Products sold include, but are not limited to, beans (kidney, pinto, black), lentils, and cranberries.
3. Canpulse and Global Grain own and operated grain processing plants in Kindersley, Saskatchewan ("**Kindersley Plant**") and Plum Coulee, Manitoba ("**Plum Coulee Plant**"), respectively (collectively the "**Plants**"). Neither Canpulse nor Global Grain grow the grains they sold to Globeways, the Plants instead clean and sort the various grains received from farmers. The Plum Coulee Plant predominately processed a variety of beans and cranberries and the Kindersley Plant predominately processed lentils, peas and canary seed.
4. As at the date of the Receiver's appointment, the primary Assets of the Company included the head office real estate (Mississauga) ("**Head Office Real Estate**"), the Plum Coulee Plant, the Kindersley Plant, inventory, accounts receivable and related party receivables. Pursuant to the Receivership Order, the Receiver is authorized to market, sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business, subject to the limits set out therein.
5. On December 14, 2020, Madam Justice Dietrich issued an order approving the sale of the Head Office Real Estate. Such sale closed on December 29, 2020.
6. On December 14, 2020, Madam Justice Dietrich also issued an order approving the Receiver's Sales Process for the sale of the Plants.
7. On January 4, 2021, Mr. Justice Cavanagh issued an order approving the sale of the inventory of Canpulse and Global Grain.

8. On February 9, 2021, Mr. Justice Haney issued an order approving the sale of the Kindersley Plant and authorized an interim distribution to TD. Such sale is scheduled to close on February 22, 2021.
9. The Receiver has also prepared and filed with the Court, subject to a request for a Sealing Order, a confidential supplemental report (the “**Confidential Supplemental Report**”), which should be read by the Court in conjunction with this Fourth Report and will assist the Court in considering the relief being sought by the Receiver herein.
10. This Fourth Report and all other court materials and orders issued and filed in these receivership proceedings are available on the Receiver’s case website at: <https://www.bdo.ca/en-ca/extranets/globeways/> and will remain available on the website for a period of six (6) months following the Receiver’s discharge.

Purpose of this Report

11. The purpose of the Receiver’s Fourth Report is to provide information to the Court with respect to:
 - a. approving this Fourth Report and the actions and activities of the Receiver described herein, including the Receiver’s interim statement of Receipts and Disbursements (the “**Interim R&D**”);
 - b. approving the sale of the Plum Coulee Plant to ETG Commodities Manitoba Inc. (“**ETG**” or the “**Purchaser**”);
 - c. sealing the Confidential Supplemental Report to this Fourth Report and the appendices thereto;
 - d. approving an interim distribution to Farm Credit Canada (“**FCC**”) and TD; and
 - e. approving the fees and disbursements of the Receiver and its counsel MLT Aikins LLP (“**MLT Aikins**”).

Disclaimer

12. This Fourth Report has been prepared for the use of this Court and the Company’s stakeholders to provide general information to assist the Court in making a determination on whether to grant the relief sought herein. Accordingly, the reader is cautioned that this Fourth Report may not be appropriate for any other purpose.

13. Except as otherwise described in this Fourth Report, the Receiver has not audited, reviewed or otherwise attempted to verify the accuracy or completeness of the information in a manner that would wholly or partially comply with Canadian Auditing Standards pursuant to the Chartered Professional Accountants of Canada Handbook. The Receiver expresses no opinion or other form of assurance with respect to such information except as expressly stated herein.
14. Capitalized terms used herein and not defined in this Fourth Report shall have the meaning ascribed to them in either the Receivership Order or the Receiver's First and Second Report.
15. All monetary amounts contained herein are expressed in Canadian dollars unless otherwise noted.

RECEIVER'S SALES PROCESS

16. The Sales Process and milestone dates were fully described in the Receiver's First Report and Third Report and are summarized below. Certain of the milestone dates required change to accommodate out-of-province and international purchasers who encountered challenges visiting the premises due to provincial COVID restrictions. All parties were advised of the revised dates.

Milestone	Revised Deadline
Non-Binding Expression of Interest Deadline	December 23, 2020
Binding APA Deadline	February 8, 2021
Selection of Successful Bidder	February 22, 2021
Sale Approval Motion	ASAP after selection of Successful Bidder
Closing Date	10 days after approval of the sale transaction

17. The Receiver implemented the Sales Process to invite offers to purchase, individually or together, the Kindersley Plant and the Plum Coulee Plant. As outlined in the Third Report, the Receiver:
 - (a) compiled a list of prospective purchasers (domestic and international entities) that may have an interest in acquiring the Plants. The Receiver initially contacted 128 prospective purchasers;
 - (b) prepared and distributed an initial offering summary (the "**Teaser**") to each of the prospective purchasers. The Teaser was posted on the Receiver's case website. The Receiver also followed up with the prospective purchasers by email and/or telephone;
 - (c) prepared a non-disclosure agreement ("**NDA**"), and distributed a copy of the NDA to each prospective purchaser that requested additional information regarding the Plants;

- (d) prepared an advertisement notifying the public of the Sale Process and arranged for its posting in the national edition of the Globe and Mail on December 15, 2020;
 - (e) in total, the Receiver received 49 executed NDAs from prospective purchasers who wished to participate in the Sale Process;
 - (f) prepared and distributed a confidential information memorandum ("**CIM**") to all parties who had executed NDAs. Copies of the form of NDA and CIM are included as Confidential Appendices to the Confidential Supplemental Report.
 - (g) prepared the electronic data room (the "**Data Room**") and assisted in organizing, compiling and reviewing the information to be included in the Data Room in order to facilitate the due diligence attributed to the Sale Process. The Data Room contained, among other things: (i) the Teaser and CIM, (ii) financial information related to Plants, and (iii) facility specific documentation such as lease documentation, appraisals and environmental site assessments, and (iv) relevant trademark information, and (v) a Template Agreement of Purchase and Sale ("**Template APA**");
 - (h) determined that there were 9 prospective purchasers who were interested in the Plum Coulee Plant;
 - (i) coordinated and assisted prospective purchasers with due diligence requests;
 - (j) participated in calls and discussions with stakeholders and answered inquiries from prospective purchasers with respect to the Sale Process and the Plants;
 - (k) solicited and assessed expressions of interest ("**EOI**");
 - (l) determined, in consultation with the stakeholders, which prospective purchasers, should be deemed "Phase 2 Bidders";
 - (m) coordinated site visits at the Plants for Phase 2 Bidders that requested visits; and
 - (n) assisted Phase 2 Bidders in completing other due diligence, including coordinating meetings, discussions and other communications between Phase 2 Bidders and relevant stakeholders, all with a view of submitting a Template APA on or before the Binding APA Deadline.
18. In determining which prospective purchasers should be deemed Phase 2 Bidders, the Receiver evaluated the EOI's based on several factors including, without limitation:
- (a) proposed Purchase Price;

- (b) conditions associated with such bid (if any);
- (c) other factors affecting the speed, financial ability and certainty of closing the transaction; and
- (d) the likelihood and timing of consummating such transactions.

PLUM COULEE BINDING APA RECEIVED

19. On February 5, 2021, ETG submitted an APA (the “**ETG APA**”). A copy of the unredacted ETG APA is attached as **Confidential Appendix “A”** attached to the Confidential Supplemental Report.
20. The Receiver accepted the ETG APA (subject to Court approval) having considered the following:
 - (a) ETG’s offer was the highest APA received;
 - (b) The ETG APA was conditional only upon: (i) a Phase 1 environmental report (“**Phase 1 Report**”) and a corresponding reliance letter (“**Reliance Letter**”) from the preparer of the Phase 1 Report and (ii) Court approval;
 - (c) Prior to the Receiver’s accepting the ETG APA the Phase 1 Report and the Reliance Letter were delivered to ETG. ETG signed a waiver indicating they were satisfied with the Reliance Letter;
 - (d) The Purchaser waived the requirement for a Phase 2 environmental report over the Plum Coulee, this was a key consideration both from a timing perspective and a cost perspective;
 - (e) a significant deposit was paid to the Receiver, and held in trust with the Receiver’s counsel; and
 - (f) TD and FCC, both of which hold security against the Plum Coulee Plant, are supportive of Receiver’s recommendation to enter into the ETG APA and conclude a sale, subject to the approval of this Court.
21. The Receiver has prepared a summary of the non-binding EOIs and APAs received for the Plum Coulee Plant (“**Offer Summary**”). A copy of the Offer Summary is appended to the Confidential Supplemental Report to this Fourth Report as **Confidential Appendix “B”**.
22. On February 12, 2021, the Receiver notified the Phase 2 Bidders who submitted APA’s in respect of the Plum Coulee Plant of its acceptance of a binding agreement with ETG.

PROPOSED TRANSACTION

23. The Purchaser will acquire, on an “as is, where is” basis, the Plum Coulee Plant as set out in section 2.2 of the ETG APA (the “**Plum Coulee Sale Transaction**”), which includes the following:
- (a) all Tangible Personal Property;
 - (b) the benefit of all of the Assigned Contracts;
 - (c) the Lands;
 - (d) the Warranty Rights; and
 - (e) all Books and Records.
24. Closing shall occur 11 days after the approval and vesting order (“**Closing Date**”) is obtained and the balance of the purchase price shall be paid on the Closing Date.
25. A copy of the redacted ETG APA is attached hereto as **Appendix “A”**.

RECEIVER’S RECOMMENDATION

26. The Receiver believes the Plum Coulee Sale Transaction is fair and reasonable for the recommends that the Court approve the Plum Coulee Sale Transaction for the following reasons:
- (a) the Plum Coulee Plant was widely marketing as part of a Court-approved Sale Process having contacted 128 potential purchasers;
 - (b) the Purchaser’s offer is unconditional except for obtaining Court approval and obtaining a satisfactory Reliance Letter, which the Receiver understands has been obtained;
 - (c) the Purchaser is an arms-length party;
 - (d) the Purchaser’s offer was higher than the next highest APA received and the Receiver is of the view it will result in the highest return to stakeholders; and
 - (e) the Purchaser has provided a significant non-refundable deposit.

PRIORITY CLAIMS

27. As reported in the Third Report:

- (a) The Company was current with source deductions and sales taxes. The Receiver is not aware of any amounts outstanding to Canada Revenue Agency for these priorities; and
- (b) Based upon the Company's payroll records, unpaid wages and vacation pay which are subject to a secured claim in the estate under s.81.4 of the Bankruptcy and Insolvency Act ("**BIA**") amount to \$57,607.

PROPOSED DISTRIBUTION TO FCC, TD BANK AND PRIORITY CLAIMS

- 28. FCC and TD are secured creditors in respect of the assets of Global Grain and together with Global Grain and Globeways entered into an Intercreditor Agreement dated July 6, 2020 (the "**Intercreditor Agreement**"). The Receiver understands that pursuant to that the Intercreditor Agreement the parties agreed that FCC would have priority in the Plum Coulee lands legally described as: (i) LOTS 2, 3 AND 4 BLOCK 1 Plan 649 MLTO IN THE NE 1/4 2-3-3 WPM; (ii) PARCEL 3 AND 4 PLAN 816 MLTO IN THE NW 1/4 1-3-3 WPM EXCEPTING THEREOUT FIRSTLY: ALL MINES AND MINERALS SECONDLY: WATER CONTROL WORKS PLAN 1522 MLTO; (iii) LOT 3 SS PLAN 492 MLTO IN N 1/2 1-3-3 WPM EXCEPTING THEREOUT - WATER CONTROL WORKS PLAN 1522 MLTO; and (iv) LOT 1 PLAN 2257 MLTO EXC ALL MINES AND MINERALS AS RESERVED IN TRANSFER 181610 IN NE 1/4 2-3-3 WPM, including all buildings thereon (together the "**Lands**") and, except for the Land (to the extent of the repayment in full of all obligation owing to FCC), TD would have priority in all present and after acquired real and personal property and undertaking of Global Grain.
- 29. FCC's security includes, a general security agreement dated July 3, 2020 (the "**FCC GSA**"), a mortgage in the principal amount of \$2,500,000 dated June 29, 2020 in respect of the Lands (the "**FCC Mortgage**" together with the FCC GSA the "**FCC Security**") and a postponement of registration in respect of the Lands dated July 2, 2020 by TD in favour of FCC (the "**Postponement**").
- 30. TD's security includes, a general security agreement dated February 15, 2017 (the "**TD GSA**"), a mortgage in the principal amount of \$10,500,000 dated February 15, 2017 in respect of the Lands (the "**TD Mortgage**") (the TD GSA, and the TD Mortgage are together the "**TD Security**").
- 31. The obligations of the Company to FCC, including interest charges to February 22, 2021 total approximately \$2,083,307.65 million as reflected in the statement provided by FCC to the Receiver attached as **Appendix "B"** plus \$7,000 and HST.
- 32. The obligations of the Company to TD, including interest charges to February 2, 2021 total approximately CDN\$8.9 million and USD\$2.2 million as reflected in the statement provided by TD to the Receiver attached as **Appendix "C"** (the "**Feb 2 Payout Statement**"). No repayments have

been made to TD since the Feb 2 Payout Statement and the balance plus per diem interest remains outstanding.

33. The Receiver requested MLT Aikins to provide an independent legal opinion as to the validity and enforceability of the FCC Security in respect of the assets subject to the Plum Coulee Plant sale. MLT Aikins has advised the Receiver that, subject to the usual qualifications and assumptions, it is of the opinion that: (i) the FCC Security comprises a valid security interest, enforceable with the terms thereof, which charges the general personal property of Global Grain, as well as the Lands in favour of FCC in respect of the Plum Coulee Plant and proceeds thereof; (ii) the Security was duly perfected by registration under *The Personal Property Security Act* (Manitoba) (the “**MB PPSA**”) and *The Real Property Act* (Manitoba) (the “**RPA**”); and (iii) FCC’s order of registration under the MB PPSA against Global Grain in respect of the security interest granted by Global Grain to FCC pursuant to the FCC GSA is second and in respect of the security interest granted by Global Grain to FCC pursuant to the FCC Mortgage is first.
34. The Receiver requested MLT Aikins to provide an independent legal opinion as to the validity and enforceability of the TD Security in respect of the assets subject to the Plum Coulee Plant sale. MLT Aikins has advised the Receiver that, subject to the usual qualifications and assumptions, it is of the opinion that: (i) the TD Security comprises a valid security interest, enforceable with the terms thereof; (ii) which charges the general personal property of Global Grain, as well as the Lands in favour of TD in respect of the Plum Coulee Plant and proceeds thereof, the Security was duly perfected by registration under the MB PPSA and the RPA; and (iii) TD’s order of registration under the MB PPSA against Global Grain in respect of the security interest granted by Global Grain to TD pursuant to the TD GSA is first and in respect of the security interest granted by Global Grain to TD pursuant to the TD Mortgage is second.
35. Accordingly, the Receiver recommends and requests approval to make an interim distribution equal to the sale of the Plum Coulee Plant proceeds less \$300,000 to FCC up to the full amount of its debt with the balance of the sale proceeds (if any) to be paid to TD. As presented in the Interim R&D (defined below), the cash currently in the Receiver’s trust account is sufficient to satisfy a reserve for potential priority payables and costs of administration. Payment of the proposed interim distribution on account of FCC’s and TD’s secured claims will reduce the amount of interest which is accruing thereon, which will be of benefit to all other economic stakeholders.
36. Accordingly, the Receiver seeks court approval to make interim distributions to TD and FCC.

INTERIM RECEIPTS AND DISBURSEMENTS

37. Attached as **Appendix "D"** is the Interim R&D. The Interim R&D reports net receipts over disbursements from the date of the Receiver's appointment to February 15, 2021. The net receipts over disbursements totals \$4,418,870 prior to the receipt of the balance of the proceeds from the respective purchasers in respect of the sale of the Plants.
38. The proceeds from the sale of the Kindersley Plant are to be paid the closing date which February 22, 2021.
39. The following table summarizes the Receiver's realizations to date which includes:
 - (a) Collection of accounts receivables - \$2,973,622
 - (b) Sale of inventory located at third party locations (not subject to elevator receipts) - \$600,000
 - (c) Sale of inventory located at the Plants - \$846,755
 - (d) Sale of Head Office Real Estate - \$726,000
 - (e) Miscellaneous realizations (sale of vehicles, HST refunds, petty cash, etc.) - \$166,157

FEES AND DISBURSEMENTS

40. Pursuant to paragraph 18 of the Receivership Order, any expenditure or liability which shall properly be made or incurred by the Receiver, including the fees and disbursements of the Receiver and the fees and disbursements of the Receiver's legal counsel, constitute part of the **"Receiver's Charge"**.
41. The Receiver's fees for the period January 16, 2021 to February 15, 2021 were \$95,361.50 and HST of \$12,397.00 for a total of \$107,758.50, as set out in the Affidavit of Josie Parisi sworn February 22, 2021, a copy of which is attached hereto as **Appendix "E"**.
42. MLT Aikins' fees for the period January 28, 2021 to February 21, 2021, 2021 were \$54,050.50 plus disbursements of \$575.34 and provincial sales taxes and GST of \$6,514.84, for a total of \$61,140.67, as set out in the affidavit of Peter Anandranistakis sworn 22, 2021, a copy of which is attached as **Appendix "F"**.
43. The Receiver respectfully submits that the Receiver's fees and disbursements, and those of MLT Aikins, are reasonable in the circumstances and have been validly incurred in accordance with the provisions of the Receivership Order.

SEALING ORDER

44. The Receiver is seeking a sealing order until further order of the Court in respect of the Confidential Supplemental Report and appendices thereto as they contain commercially sensitive information, the release of which prior to the completion of the transaction would be prejudicial to the stakeholders of the Company in the event that the transaction does not close.

SUMMARY AND RECOMMENDATIONS

45. Based on the foregoing, the Receiver respectfully requests that the Court grant an Order:
- (a) approving this Fourth Report and the actions and activities of the Receiver described herein;
 - (b) approving the APA between ETG and the Receiver dated February 5, 2021 and vesting title in the purchased assets to ETG free and clear of encumbrances;
 - (c) sealing the Confidential Supplemental Report to this Fourth Report and the appendices thereto;
 - (d) approving interim distributions to FCC and TD in amounts equal to the proceeds from the Plum Coulee Plant less \$300,000;
 - (e) approving the Receiver's Interim R&D; and
 - (f) approving the fees and disbursements of the Receiver and its legal counsel, MLT, as outlined herein and detailed in the supporting fee affidavits appended hereto, and authorizing the Receiver to pay all approved and unpaid fees and disbursements.

All of which is respectfully submitted this 23rd day of February 2021.

**BDO CANADA LIMITED,
in its capacity as the Proposed Court-appointed Receiver of
Globeways Canada Inc. Canpulse Foods Ltd. and Global Grain Canada
Ltd. and not in its personal or corporate capacity**

Per:



Name: Josie Parisi, CPA, CA, CBV, CIRP, LIT
Title: Senior Vice-President