

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**

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

August 27, 2021

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INTRODUCTION AND PURPOSE OF THIS REPORT

Introduction and Background

1. This report dated August 27, 2021 (the “**Fifth Report**”) is filed by BDO Canada Limited (“**BDO**”) in its capacity as the receiver and manager (the “**Receiver**”) over the property, assets and undertakings of Globeways Canada Inc. (“**Globeways**”), Canpulse Foods Ltd. (“**Canpulse**”) and Global Grain Canada Ltd. (“**Global Grain**”) (collectively the “**Company**” or the “**Debtors**”). 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 sold 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 owned 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 grew the grains they sold to Globeways, the Plants instead cleaned and sorted the various grains received from producers. 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 (the “**Inventory Sale Order**”) approving the sale of the inventory of Canpulse and Global Grain to Global Food & Ingredients Inc., GFI LP and

11567403 Canada Ltd (together the “**GFI Group**”) (see **Appendix “A”**). The Inventory Sale Order provided *inter alia* that for the purposes of determining the nature and priority of claims that the net proceeds stood in the place of the inventory and that all claims shall attach to the proceeds with the same priority.

8. On February 9, 2021, Mr. Justice Hailey issued an order approving the sale of the Kindersley Plant and authorized an interim distribution to TD. Such sale closed on February 22, 2021.
9. On March 2, 2021. Mr. Justice Koehnen issued an order approving the sale of the Plum Coulee Plant. Such sale closed on March 15, 2021 and authorized an interim distributions to TD and Farm Credit Canada (“**FCC**”).
10. The Receiver is also in receipt of funds comprising *inter alia* (a) collected accounts receivable of Globeways and Global Grain; (b) corporate income tax refund of Globeways; (c) Harmonized Sales Tax re refunds of each of the Debtors; and (d) insurance refunds Debtors’ (together with the proceeds from the above Orders the “**Receiver’s Proceeds**”).
11. To date the Receiver has made the following distributions to the Debtors’ secured creditors:
 - (a) an interim distribution from the proceeds of the sale of the Kindersley Plant and the Head Office Real Estate of \$6,250,000 to TD, authorized by Ancillary Order granted by the Court on February 9, 2021; and
 - (b) interim distributions from the proceeds of the sale of the Plum Coulee Plant to FCC in the amount of \$2,101,798 and to TD in the amount of \$798,000, authorized by Ancillary Order granted by the Court on March 2, 2021.
12. This Fifth 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

13. The purpose of the Receiver’s Fifth Report is to provide information to the Court with respect to:
 - a. approving this Fifth Report, the Supplemental Report to the Fifth Report (the “**Supplemental Report**”) and the actions and activities of the Receiver described herein, including the distributions set out herein and the Receiver’s interim statement of Receipts and Disbursements (the “**Interim R&D**”);

- b. authorizing and directing a joint distribution to Intact Insurance Company and the Guarantee of North America (together "**Intact**") in the amount of \$250,000 from the Inventory Proceeds (as hereinafter defined);
- c. authorizing and directing a distribution to certain producers (together the "**Producers**") in receipt of primary elevator receipts in accordance with paragraphs 29 to 30 herein and the Supplemental Report (to be filed) from the Inventory Proceeds (as hereinafter defined);
- d. following payment of the distributions set out above, authorizing and directing a distribution to TD up to the full amount of its debt;
- e. authorizing the Receiver to assign Globeways, Canpulse and Global Grain into bankruptcy and naming BDO as trustee in bankruptcy; and
- f. approving the fees and disbursements of the Receiver and its counsel MLT Aikins LLP ("**MLT Aikins**").

Disclaimer

- 14. This Fifth 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 Fifth Report may not be appropriate for any other purpose.
- 15. Except as otherwise described in this Fifth 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.
- 16. Capitalized terms used herein and not defined in this Fifth Report shall have the meaning ascribed to them in either the Receivership Order or the Receiver's prior reports.
- 17. All monetary amounts contained herein are expressed in Canadian dollars unless otherwise noted.

PROCEEDS OF SALE OF INVENTORY AND DISTRIBUTION TO INTACT AND PRODUCERS

- 18. As more fully described in the Receiver's Second Report, the Receiver sold the Global Grain and Canpulse grain inventory pursuant to a court-approved Inventory Sale Agreement to the GFI Group (the "**Inventory Sale**"). The proceeds of the Inventory Sale (the "**Inventory Proceeds**") were based

upon the market price for the grain, actual weight and grade, as determined by a certified third party, of the various types of inventory on hand at the date of the Receivership. The proceeds from the Inventory Sale were \$2,321,226 (inclusive of \$66,927 in respect of the claims for Excess Grain, as defined herein, (the “**Excess Grain Proceeds**”) more fully discussed below).

19. Canpulse and Global Grain’s primary business activity was sourcing grains from producers in Saskatchewan and Manitoba and cleaning, sizing, sorting and bagging such crops at its respective facilities pursuant to their respective primary elevator licences (“**Primary Elevator Licences**”) issued to each under the *Canada Grain Act* (Canada) (the “**CGA**”).
20. Upon receipt of the grains at the Plants, Canpulse and Global Grain issued either a cash purchase ticket (“**Cash Ticket**”) or a primary elevator receipt (“**Primary Elevator Receipt**”) to the producer. The Receiver understands that the Primary Elevator Receipts establish a proprietary interest in the grains in favour of the producer. Conversely, a Cash Ticket confirms a sale transaction between the parties.
21. Pursuant to the requirements of the Canada Grain Commission (“**CGC**”), the regulatory/licencing body, Canpulse and Global Grain were to provide security in respect of their obligations to the producers as a condition of their licences. The security obtained was in the form of insurance policies issued by Intact to each Canpulse and Global Grain.
22. On October 30, 2020 the CGC suspended the Debtors' respective Primary Elevator Licences. Following the suspensions, the Debtors were directed by the CGC to contact producers holding Primary Elevator Receipts and Cash Tickets and advise them of the licence suspensions (see **Appendix “B”**). Upon the licence suspensions, the Debtors were prohibited from returning grain to the producers without the CGC’s prior approval, as grain can only be returned when there be sufficient grain on hand to satisfy all producers who supplied the specific grain type (i.e. sufficient grade 2 red lentils to satisfy all producers holding Primary Elevator Receipts for grade 2 red lentils).
23. In a letter dated November 4, 2020 the CGC advised that following the licence suspension Global Grain returned grain to some producers without the CGC’s authorization. It is the Receiver’s understanding that Global Grain continued to return grain to producers up to the date of the Receivership Order. Further, based upon reports provided to the Receiver by the CGC, some producers received grain in excess of the grain set out in their respective Primary Elevator Receipts (“**Excess Grain**”).
24. Following the Receiver’s appointment it was issued a conditional licence by the CGC. The conditional licence prohibited the Receiver from attempting to recover the Excess Grain Receipts from the producers. Instead the Receiver entered an arrangement with the GFI Group whereby the GFI Group

recovered the Excess Grain and paid the Receiver 80% of the value as provided for in the Inventory Sale Agreement. To date GFI has negotiated the return of Excess Grain from certain producers and in accordance with Inventory Sale Agreement and has paid the sum of \$66,927 to the Receiver in respect of those amounts.

25. Canpulse and Global Grain failed to fully pay or return grain to certain producers holding Primary Elevator Receipts or Cash Tickets. The CGC prepared claims on behalf of producers holding Primary Elevator Receipts not older than 90 days who suffered shortfalls in grain returns. These claims were filed with Intact (the “**Insurance Claim**”). In respect of the Insurance Claim, Intact represented that it paid \$1,272,841.19 to producers in respect of the Canpulse inventory and \$697,724.18 to producers in respect of the Global Grain inventory.
26. A review of the Primary Elevator Receipts comprising the Insurance Claim and the Canpulse and Global Grain inventory discloses the following grain of the same kind, grade and quantity were subject to Primary Elevator Receipts. To the best of the Receiver's knowledge none of the Canpulse Inventory or the Global Grain Inventory was specially binned grain and the Primary Elevator Receipts were not subject extra conditions or waivers and in accordance with the *Canada Grain Regulations* (Canada). As presented in the table, at the Receivership date, there was insufficient grain on hand to satisfy all the Primary Elevator Receipts:

Like Grain on Hand At Receivership Date						
Grain type	Grade	Actual grain per weight and grading certificates (metric tons)	Elevator receipts for similar grain (metric tons)	Like Grain available for Elevator Receipts (metric tons)	Estimated grain value for elevator receipts* (\$)	
<i>Global Grain</i>						
Black Beans	1	49.89	49.99	49.89	39,598.87	
Black Beans	3	24.95	-	-	-	
Pinto	1	99.79	912.38	99.79	72,598.76	
Pinto	2	245.89	-	-	-	
Pinto	3	70.31	-	-	-	
Total - Global Grain		490.83	962.37	149.68	\$112,197.63	
<i>Canpulse Foods</i>						
Lrg Green Laird	1	25.60	82.70	25.60	19,435.12	
Lrg Green Laird	2	-	346.30	-	-	
Lrg Green Laird	3	8.40	54.70	8.40	3,619.74	
Red Lentils	2	75.30	23,118.20	75.30	45,491.47	
Red Lentils	3	-	-	-	-	
Total - Canpulse		109.40	23,601.80	109.40	\$68,546.33	
Total value of available grain for Primary Elevator Receipts (Canpulse + Global Grain)					\$180,743.96	

27. The Primary Elevator Receipts for grain of the same kind, grade and quantity which were at Canpulse and Global Grain at the Receivership date together with the Excess Grain Proceeds, before an allocation of costs totals \$180,743.96 and increases to \$247,670.96 when Excess Grain Receipts are considered.
28. In its correspondence with the Receiver, Intact has taken the position that producers have a proprietary interest in grain delivered to a primary elevator until such time as the producer surrenders the Primary Elevator Receipt issued to the producer and the elevator issues a cash purchase ticket to the producer and that Intact, by virtue of its payment to producers is entitled to claim that proprietary right. Intact has further taken the position that it is entitled to lesser grades of like grains on a bailment basis. In order to avoid lengthy litigation, the Receiver recommends and requests approval that a distribution of \$250,000 be paid to Intact from the Canpulse and Global Grain inventory proceeds. Intact and TD are supportive of this recommendation and the Receiver and Intact have entered into a Memorandum of Understanding to that effect (see **Appendix "C"**).
29. In addition, the Producers assert a claim for their Primary Elevator Receipts which were older than 90 days and did not comprise part of the Insurance Claim. A review of the Primary Elevator Receipts comprising the Producer Claim and the Canpulse and Global Grain inventory discloses the following grain of the same kind, grade and quantity may have been subject to Primary Elevator Receipts:
 - (a) JVT Farms Inc. (Canpulse) - \$1,419.07
 - (b) Joel Abraham (Canpulse) - \$10,377.07
 - (c) Gill Ventures (Canpulse) - \$189.13
 - (d) Hannon Farms (Canpulse) - \$852.86
30. To date, JVT Farms Inc. and Hannon Farms have provided the Receiver with the requisite Primary Elevator Receipts and the Receiver recommends and requests approval of distributions to JVT Farms Inc. and Hannon Farms in the respective amounts set out above. The Receiver has also received documentation from Joel Abraham; the Receiver will review his claim which requires clarification. Documentation in respect of Gill Ventures has not been received to date and the Receiver has provided this party with a deadline of August 30, 2021. The Receiver intends to further investigate the claim of Joel Abraham and will file a Supplemental Report following August 30, 2021 setting out its recommendation regarding a further distribution to the Producers (the "**Producer Distribution**").

PRIORITY CLAIMS

31. As reported in the Fourth 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. To date \$41,470 has been paid for actual claims filed with Service Canada.

PROPOSED DISTRIBUTION TO TD

32. For Global Grain, TD's security includes, a general security agreement dated February 15, 2017 (the "**TD GG GSA**"), a mortgage in the principal amount of \$10,500,000 dated February 15, 2017 in respect of the Global Grain Plant (the "**TD GG Mortgage**") (the TD GG GSA, and the TD GG Mortgage are together the "**TD GG Security**").
33. For Canpulse, TD's security includes, three general security agreements dated July 5, 2016 (the "**TD Canpulse Security**").
34. For Globeways, TD's security includes, a general security agreement dated July 5, 2016 (the "**TD Globeways Security**") and together with the TD GG Security and the TD Canpulse Security the "**TD Security**").
35. The obligations of the Company to TD, including interest charges to August 24, 2021 total approximately CDN\$1,955,834.10 million and USD\$2,261,393.40 million as reflected in the statement provided by TD to the Receiver attached as **Appendix "D"** (the "**August 24 Payout Statement**"). No repayments have been made to TD since the August 24 Payout Statement and the balance plus per diem interest remains outstanding.
36. The Receiver requested MLT Aikins and Robins Appleby LLP ("**R&A**") to provide independent legal opinions as to the validity and enforceability of the TD GG Security/the TD Canpulse Security and the TD Globeways Security, respectively. MLT Aikins has advised the Receiver that, subject to the usual qualifications and assumptions, it is of the opinion that: (i) the TD GG Security and the TD Canpulse Security comprises a valid security interest, enforceable with the terms thereof; (ii) which charges the general personal property of Global Grain and Canpulse, respectively, the TD GG Security was duly perfected by registration under *The Personal Property Security Act* (Manitoba) ("**MB PPSA**") *The*

Personal Property Security Act (Saskatchewan) ("**SK PPSA**"), respectively; and (iii) which charges the real property of Global Grain, the TD GG Security was duly perfected by registration in the Manitoba Land Titles Registry; (iv) TD's order of registration under the MB PPSA against Global Grain and under the SK PPSA against Canpulse in respect of the security interests granted by Global Grain and Canpulse to TD pursuant to the TD Security is first.

37. R&A has advised the Receiver that, subject to the usual qualifications and assumptions, it is of the opinion that: (i) the TD Globeways Security creates a security interest in favour of TD in the collateral described therein to which the PPSA applies to secure payment and performance of the obligations described in the TD Globeways Security as being secured thereby; (ii) TD's order of registration in the Ontario Personal Property Security Registration System against Globeways in respect of the security interest granted by Globeways to TD pursuant to the TD Globeways Security is first.
38. Accordingly, the Receiver recommends and requests approval to make a distribution to TD up to the full amount of its debt after payment of the Intact Distribution and the Producer Distribution from the Receiver's Proceeds and the Inventory Proceeds. Payment of the proposed distribution on account TD's secured claims will reduce the amount of interest which is accruing thereon, which will be of benefit to all other economic stakeholders. As presented in the Interim R&D, the cash currently in the Receiver's trust account is sufficient to satisfy a reserve for potential priority payables and costs of administration. Specifically, after making the distribution to TD, the Receiver will have in excess of \$1.5 million in its trust accounts.
39. Accordingly, the Receiver seeks court approval to make a distribution to TD up to the full amount of its debt.

INTERIM RECEIPTS AND DISBURSEMENTS

40. Attached as **Appendix "E"** is the Interim R&D. The Interim R&D reports net receipts over disbursements from the date of the Receiver's appointment to August 10, 2021. As at August 10, 2021 the net receipts over disbursements totals \$6,449,607.49.
41. The following table summarizes the Receiver's realizations to date which includes:
 - (a) Sale of Head Office Real Estate and the Plants - \$11,193,266
 - (b) Collection of accounts receivables - \$3,181,320
 - (c) Sale of inventory located at the Plants - \$1,721,226
 - (d) Sale of inventory located at third party locations (not subject to elevator receipts) - \$600,000

- (e) Miscellaneous realizations (sale of vehicles, HST refunds, petty cash, etc.) - \$744,416

ASSIGNMENT OF THE DEBTORS INTO BANKRUPTCY

42. Pursuant to the Endorsement of the Honourable Madam Conway dated November 19, 2020 (**Appendix “F”**) the Receiver was authorized to seek the right to assign the Debtors, or each of them, into bankruptcy upon two (2) days’ notice should the Receiver deem such to be advisable following its initial review of the Debtors’ affairs.
43. As indicated, the Receiver anticipates that there will be surplus funds available to the unsecured creditors after payment of the secured creditors and any prior ranking claims. The Receiver requests the authorization of this Court for the Receiver to assign each of Globeways, Canpulse and Global Grain into bankruptcy to allow for an efficient process for calling claims from unsecured creditors and the payment of dividends. The Receiver proposes to have BDO named as trustee in bankruptcy.

FEES AND DISBURSEMENTS

44. 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”**.
45. The Receiver’s fees for the period February 16, 2021 to July 31, 2021 were \$149,105.00, disbursements of \$1,370.70 and HST of \$19,561.84 for a total of \$170,037.54, as set out in the Affidavit of Josie Parisi sworn August 25, 2021, a copy of which is attached hereto as **Appendix “G”**.
46. MLT Aikins’ fees for the period February 22, 2021 to August 20, 2021, were \$99,732.00 plus disbursements of \$1,141.13 and provincial sales taxes and GST of \$12,024.90, for a total of \$112,898.03, as set out in the affidavit of Peter Anandranistakis sworn August 27, 2021, a copy of which is attached as **Appendix “H”**.
47. The Receiver respectfully submits that the Receiver’s fees and disbursements, and those of MLT Aikins, are fair and reasonable in the circumstances and have been validly incurred in accordance with the provisions of the Receivership Order.

SUMMARY AND RECOMMENDATIONS

48. Based on the foregoing, the Receiver respectfully requests that the Court grant an Order:
- (a) approving this Fifth Report, the Supplemental Report and the actions and activities of the Receiver described herein, including the Receiver’s Interim R&D;

- (b) authorizing a distribution to Intact in the amount of \$250,000 from the Inventory Proceeds;
- (c) authorizing a distribution to the Producers in accordance with paragraphs 29 to 30 herein and the Supplemental Report;
- (d) authorizing a distribution to TD up to the full amount of its debt;
- (e) authorizing the Receiver to assign Globeways, Canpulse and Global Grain into bankruptcy and naming BDO as trustee in bankruptcy; 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 27th day of August 2021.

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



Per:

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