

**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**

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

**December 28, 2020**

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## INTRODUCTION AND PURPOSE OF THIS REPORT

### Introduction

1. This report dated December 28, 2020 (the “**Second 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. This Second 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.
3. The purpose of this Second Report is to provide additional information to the Court with respect to the Receiver’s proposed sale of substantially all of the Company’s inventory (the “**Inventory**”) to a single purchaser. The Receiver previously reported to the Court of its intention to sell the Inventory in its Supplementary Report to the First Report. A copy of the Supplementary Report is attached hereto as **Appendix “A”**.

### Purpose of this Report

4. The purpose of the Receiver’s Second Report is to provide information to the Court with respect to:
  - a. approving this Second Report and the actions and activities of the Receiver described herein;
  - b. approving the sale of substantially all of the Company’s Inventory to Global Food and Ingredients Inc., GFI LP and 11567403 Canada Inc. (the general partner of GFI LP) (collectively the “**GFI Group**” or the “**Purchaser**”);
  - c. approving the Inventory Sale Agreement (“**ISA**”) between the Receiver as vendor and the GFI Group as Purchaser effective December 16, 2020 and the transaction contemplated therein (the “**Inventory Sale Transaction**”);

- d. assigning and vesting all right, title, and interest of Canpulse in and to the collateral mortgage (the “**Mortgage**”) granted in favour of Canpulse by 11567403 Canada Inc., dated November 26, 2019 and registered in the Saskatchewan Land Titles Registry in TD;
- e. directing the Saskatchewan Registrar of Titles to accept an application to assign Interest Register #123754248 and to effect a change in the interest holder from Canpulse to TD pursuant to section 109 of *The Land Titles Act*, 2000, S.S. 2000, c. L-5.1 and section 12 of *The Queen’s Bench Act*, 1998, S.S. 1998, c. Q-1.01; and
- f. authorizing the Receiver to effect the assignment to TD of any registrations (the “**PPR Registrations**”) in the Saskatchewan Personal Property Registry which name Canpulse as a secured party.

## **Disclaimer**

5. This Second 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 Second Report may not be appropriate for any other purpose.
6. Except as otherwise described in this Second 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.
7. Capitalized terms used herein and not defined in this Second Report shall have the meaning ascribed to them in either the Receivership Order or the Receiver’s First Report and corresponding Supplemental Report.
8. All monetary amounts contained herein are expressed in Canadian dollars unless otherwise noted.

## **BACKGROUND**

9. Globeways purchases 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.

10. Canpulse and Global Grain own and operate 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 sell to Globeways, the Plants instead clean and sort the various Grains received from farmers. The Plum Coulee Plant predominately processes a variety of beans and cranberries and the Kindersley Plant predominately processes lentils and canary seed.
11. The primary assets of the Company include the head office real estate (Mississauga) (subject to this Court’s sale approval order dated December 14, 2020), the Plum Coulee Plant, the Kindersley Plant, inventory and accounts receivable. Pursuant to the proposed Receivership Order, the Receiver is authorized to 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.
12. On December 14, 2020, Madam Justice Dietrich issued an order approving the Receiver’s proposed Sales Process for the sale of the Plants. Such Sales Process is described in the Receiver’s First Report and includes providing potential purchasers with a Bid Letter which sets out the following timeline. The Closing Date is anticipated to be in late February or early March 2021.

<b>Milestone</b>	<b>Deadline</b>
Non-Binding Expression of Interest Deadline	December 23, 2020
Binding APA Deadline	January 25, 2021
Selection of Successful Bidder	February 8, 2021
Sale Approval Motion	ASAP after selection of Successful Bidder
Closing Date	10 days after approval of the Sale transaction

#### **THE CANPULSE VENDOR TAKE BACK LOAN AND SETTLEMENT**

13. In November 2019 Canpulse together with its shareholders, Globeways and Hakan Agro DMCC, sold certain real properties to GFI LP and Global Food and Ingredients Inc. (the “**Canpulse Transaction**”). The agreement of purchase and sale was dated November 26, 2019 (the “**Canpulse Asset Purchase Agreement**”) and pertained to real properties located in Zealandia, Saskatchewan (the “**Zealandia Asset**”) and Lajord, Saskatchewan (the “**Lajord Asset**” and together with the Zealandia Asset, the “**Assets**”). Prior to the sale, the Assets formed part of TD’s security pursuant to loans advanced to the Company by TD (the “**TD Financing**”).
14. The Canpulse Asset Purchase Agreement included a vendor take back promissory note (the “**Note**”) dated November 26, 2019 between Canpulse and GFI LP in the amount of the unpaid portion of the

purchase price, \$3,000,000, for the Assets (the “**VTB Loan**”) and guarantee by Global Foods and Ingredients Inc. dated November 2019 (the “**Guarantee**”). As part of the Canpulse Transaction, 11567403 Canada Inc. granted a collateral mortgage dated November 26, 2019 to Canpulse to secure the payment and performance of the VTB Loan (the “**Mortgage**”), and a security agreement dated November 26, 2019 from GFI LP to Canpulse (the “**Security Agreement**”) and together with the Mortgage, the “**VTB Security**”). The Note, the Guarantee, the Mortgage and the Security Agreement are attached as **Appendices “B”, “C”, “D” and “E”**, respectively.

15. The TD Financing was secured by the granting of security interests by Canpulse over all of its present and after-acquired personal property which included the VTB Loan and the VTB Security. It was a condition of the TD Financing that Canpulse provide TD with a specific assignment of the VTB Loan and the VTB Security. On November 29, 2019 by way of an assignment, Canpulse assigned the VTB Loan and the VTB Security to TD (the “**VTB Assignment**”). The VTB Assignment is attached as **Appendix “F”**.
16. The Canpulse Transaction also included a toll processing agreement between GFI LP and Global Food and Ingredients Inc. Canpulse, Globeways and Hakan Agro DMCC dated November 26, 2019 (the “**TPA**”). The Toll Agreement is attached as **Appendix “G”**.
17. Payments are not due under the Note for 4 years from November 26, 2019 and the Note does not fully mature until 6 years thereafter, being approximately 5 years after the date of the receivership. The VTB Loan is subordinated to a first ranking mortgage (the “**FCC Mortgage**”) in favour of Farm Credit Canada (“**FCC**”). TD and FCC entered into a priority and standstill agreement dated July 6, 2020 (the “**Intercreditor Agreement**”) which prevent payment on the VTB Loan until the FCC Mortgage is fully repaid. The Intercreditor Agreement is attached as **Appendix “H”**.
18. On October 26, 2020, counsel to the GFI Group advised the Company that pursuant to the TPA Canpulse was required to pay the GFI Group approximately \$10.2 million to by the end of the term of the TPA which is November 26, 2024 (the “**October 26 Correspondence**”). The GFI Group further indicated that the payments under the TPA *“far exceeds the \$3 million payable by GFI to CanPulse under the Promissory Note dated November 26, 2019....GFI does not intend to apply its set-off rights under the Promissory Note until the balance payable by CanPulse under the TPA is reduced to \$3 million”*. A copy of the October 26 Correspondence is attached hereto as **Appendix “I”**.
19. On November 23, 2020 the GFI Group’s counsel wrote to the Receiver advising that under the TPA, Canpulse and Globeways agreed to *“indemnity GFI for all “Claims” arising from “any failure by Canpulse or a Guarantor to observe or perform any covenant or obligation contained in [the TPA] or any document delivered pursuant to this Agreement”* (the “**November 23 Correspondence**”). Included in the November 23 Correspondence was a calculation of the GFI Group’s estimated future

loss as a result of Canpulse's non-performance of the TPA. Such losses were estimated to be in the range of \$10,392,937.68 and \$10,738,975.68. A copy of the November 23 Correspondence is attached hereto as **Appendix "J"**.

20. The Company has 2,715.3 metric tons of unprocessed Inventory at the Plants and 305 metric tons of unprocessed Inventory at the GFI Group's locations. In addition, certain producers are in possession of approximately 489.5 metric tons of Inventory which is the property of Canpulse. Processing, selling and transporting the Inventory to potential purchasers would be require significant effort and cost on the part of the Receiver and could take a significant amount of time.
21. The GFI Group has agreed, subject to the approval of this Court, to purchase the Inventory from the Receiver at or above market prices in exchange for both the Inventory and a release of the VTB Security and has further agreed to process and move the Inventory at their own expense which saves the Receiver significant expense and ensures maximum recovery on Inventory as well as enables the closing of a sale transaction for the Plants to be occur without delay.
22. A condition of the GFI Group's offer was that TD discharge the Mortgage and any personal property registrations. The Receiver is advised that TD is prepared to release its interest in the VTB Security and discharge the mortgage should GFI assist by purchasing and removing the all Inventory at a favourable price and has entered into an escrow agreement ("**Escrow Agreement**") with the Purchaser to that effect. However, since the Receiver's last appearance before this Court the parties have learned that due to the way in which the assignment was registered in the Saskatchewan Land Titles neither TD nor the Receiver can discharge the Mortgage and for the reasons set out below there is not sufficient time to make alternate arrangements. A copy of the Escrow Agreement is attached as **Appendix "K"**.
23. The Receiver does not regard the VTB Security as having any realizable value because it is subject to a large claim for set off, it is not fully matured for another 5 years, and repayment is not permitted until such time as the first secured creditor of GFI LP and Global Food and Ingredients (being FCC) has been paid in full. The current holder of the mortgage, TD, has agreed with the Receiver that there would be no reasonable prospect of realizing any value for the VTB Security and has agreed to provide a discharge of that security to facilitate the Receiver's sale under the ISA for the benefit of all stakeholders. The Receiver understands that the discharge of the VTB Security is of benefit to the GFI Group in order to clean up its balance sheet and the title to its properties which provides incentive for them to complete their obligations under the ISA, which, for the reasons set out in this Second Report, is of benefit to the Receiver in the realization of the Inventory.

**SALE OF INVENTORY**

24. Effective December 16, 2020 (executed December 24, 2020) the Receiver entered into the ISA with the GFI Group for the sale of substantially all of the Company’s Inventory located at the Plum Coulee Plant, the Kindersley Plant and at the GFI Group’s facilities for \$2,750,000 (the “**Purchase Price**”). In addition, the ISA provides for the sale of Inventory currently at producers’ locations for additional consideration. Attached hereto as **Appendix “K”** is a copy of the ISA.
25. A summary of the quantum of Inventory at each location, book value and the Purchase Price is provided in the following table. The prices and allocation of the Purchase Price were negotiated between the Receiver and the GFI Group, with the input of TD. A more detailed schedule presenting the allocation of the Purchase Price by product and location is appended to the ISA. As shown in the table, the book value of the inventory is \$2,232,166. The Purchase Price of \$2,750,000 represents a mark-up of approximately 23% over the book value.

<b>Inventory Summary and Purchase Price</b>					
	<b>Weight (MT)</b>	<b>Book Value</b>	<b>Purchase Price</b>	<b>Mark up</b>	
Inventory at - GFI's Locations	305.00	\$ 535,052	\$ 750,000	140%	
Inventory located at - Kindersley	995.40	175,555	175,000	100%	
Inventory located at - Plum Coulee	1,719.90	1,521,559	1,825,000	120%	
<b>Total</b>	<b>3,020.30</b>	<b>\$ 2,232,166</b>	<b>\$ 2,750,000</b>	<b>123%</b>	

26. Salient terms of the ISA include:
- (a) As discussed above, the allocation of the Purchase Price is summarized in the table above and the prices were negotiated between the Receiver and the GFI Group. A schedule detailing the allocation of the Purchase Price by product and location is appended to the ISA.

**Inventory at GFI Locations**

- (b) The Purchase Price for the Inventory located at the GFI Group’s locations (\$750,000) shall be paid to the Receiver no later than 72 hours following the satisfaction of the conditions precedent to the ISA and title shall pass to GFI at the time of payment.
- (c) The Inventory at the GFI Group’s locations is purchased on an “as is where is” with no representations, warranties or purchase price adjustment for quantity, grade or otherwise.

**Inventory at Kindersley Location (the “Kindersley Inventory”)**

- (d) The Purchaser shall pay the Receiver the purchase price (\$175,000) for the Kindersley Inventory in two installments (the “**Kindersley Price**”). Specifically the Purchaser shall pay



the Receiver \$75,000 within 24 hours following the first shipment by the Purchaser and \$100,000 within 48 hours following the final shipment by the Purchaser.

- (e) Title to the Kindersley Inventory will pass to the Purchaser as payments are made.
- (f) The Kindersley Price is subject to price adjustments for weight and grade.
- (g) The Purchaser is responsible to manage the process of removing the Kindersley Inventory from the Kindersley Plant at its own cost and the Purchaser will use its best commercial efforts to remove all of the Kindersley Inventory for the Kindersley Location by January 29, 2021.

**Inventory at Plum Coulee Location (the “Plum Coulee Inventory”)**

- (h) The Purchaser shall pay the Receiver the purchase price (\$1,825,000) for the Plum Coulee Inventory in weekly installments (the “**Plum Coulee Price**”) based upon the amount of product removed from the Plum Coulee location. Specifically the Purchaser shall pay the Receiver each Wednesday for the Inventory removed from the Plum Coulee location during the previous week. The final payment shall be made to the Receiver within 72 hours following the final removal of the Plum Coulee Inventory from the Plum Coulee Plant.
- (i) The Plum Coulee Price is subject to price adjustments for weight and grade.
- (j) The Plum Coulee Inventory is to be cleaned and bagged at the Plum Coulee Plant by the Purchaser using the equipment at the facility. Processing the Inventory at the Plum Coulee Plant is necessary as transporting unprocessed/unbagged inventory can cause damage to the Inventory which degrades its market value.
- (k) If necessary the Receiver will attempt to temporarily recall the Company’s former employees to assist the Purchaser in processing the Inventory. This is seen as necessary as the Purchaser does not have either operations or employees in Manitoba and Manitoba has imposed COVID related travel restrictions which limits GFI’s ability to use its own employees who are based in Saskatchewan. The Purchaser has agreed to reimburse the Receiver for up to \$100,000 for all costs (including the cost of retaining the former employees), associated with cleaning, bagging and loading of the Plum Coulee Inventory.
- (l) Title to the Plum Coulee Inventory will pass to the Purchaser as and when each truck-load of the Plum Coulee Inventory is removed from Plum Coulee.
- (m) The Purchaser will use its best commercial efforts to remove all of the Plum Coulee Inventory from the Plum Coulee Plant by February 15, 2021 (the “**Inventory Removal Date**”). If

however, the Purchaser advises the Receiver that the Inventory cannot be removed by the Inventory Removal Date, then the Purchaser must remove the Plum Coulee Inventory by February 28, 2021 unless:

- (i) the closing date for the sale of the Plum Coulee facility is extended beyond February 28, 2021; or
- (ii) the Purchaser enters into an agreement with the purchaser of the Plum Coulee facility to allow for the Inventory to be removed after the date for removal in the ISA.

### **Non-Site Inventory**

- (n) Certain producers received inventory from Plum Coulee (the “**Non-Site Inventory**”) prior to the date of receivership in excess of the amounts of their respective elevator tickets. The amount of the Non-Site Inventory is estimated to be approximately 470,000 pounds of pinto beans and 19,500 pounds of black beans. The Receiver has agreed to provide the Purchaser with the information in its possession in respect of such producers and the Purchaser agrees to contact these producers and recover the Non-Site Inventory.
- (o) The Purchaser has agreed to purchase the Non-Site Inventory recovered and will pay to the Receiver, a price equal to 80% of the prices reflected in the Adjustment Schedule, within 72 hours of the Purchaser acquiring possession of the Non-Site Inventory.
- (p) The Purchaser is solely responsible for all costs associated with the recovery and acquisition of the Non-Site Inventory.

### **ASSIGNING AND VESTING THE MORTGAGE TO TD**

- 27. As set out above, the Receiver understands that Canpulse assigned the Mortgage and the PPR Registrations to TD as part of the TD Financing; however, because of the way in which the assignment was registered TD is not able to complete the discharge of the Mortgage without the assignment of Canpulse’s interest in the Mortgage to TD. The Receiver is further advised that assignment to TD is necessary as the Province of Saskatchewan does not have a mechanism to allow the Receiver to directly discharge the Mortgage.

### **ESCROW AGREEMENT**

- 28. The ISA authorizes certain payments to be held in escrow pending full completion of the terms of the ISA. Concurrent with the ISA, TD entered into an agreement the Escrow Agreement with GFI which includes the discharge of the Mortgage and the PPR Registrations.

29. TD has agreed to discharge the Mortgage and the PPR Registrations held by it subject to the terms of the Escrow Agreement and such discharge shall be held in escrow pending completion of the ISA. Upon full completion of the ISA and the discharge of the Mortgage and the PPR Registrations by TD, the amounts held in escrow shall be released to the Receiver.

#### **RECEIVER'S RECOMMENDATION**

30. The Receiver believes the Inventory Sale Transaction is fair and reasonable for the recommends that the Court approve the ISA and the assignment of the Mortgage and PPR Registrations for the following reasons:
- (a) The Purchaser's offer is unconditional except for obtaining Court approval;
  - (b) The Purchaser is an arms-length party;
  - (c) The Inventory Sale Transaction is fair and reasonable;
  - (d) The Inventory will be sold at or above prevailing published market prices to one purchaser without the necessity of shipping;
  - (e) The ISA contains price adjustment clauses that addresses Inventory weight and grade discrepancies;
  - (f) Pursuant to the ISA, the Purchaser is responsible for managing the processing and removal of the Inventory at its sole expense; and
  - (g) The Receiver is advised by TD, that it supports the Inventory sale transaction.

#### **SUMMARY AND RECOMMENDATIONS**

31. Based on the foregoing, the Receiver respectfully requests that the Court grant an Order:
- (a) approving this Second Report and the actions and activities of the Receiver described herein;
  - (b) approving the Inventory Sale Transaction between the Receiver and the Purchaser effective December 16, 2020 and the transaction contemplated in the ISA;
  - (c) assigning and vesting all right, title, and interest of Canpulse in and to the Mortgage granted in favour of Canpulse by 11567403 Canada Inc., dated November 26, 2019 and registered in the Saskatchewan Land Titles Registry in TD;

- (d) directing the Saskatchewan Registrar of Titles to accept an application to assign Interest Register #123754248 and to effect a change in the interest holder from Canpulse to TD pursuant to section 109 of The Land Titles Act, 2000, S.S. 2000, c. L-5.1 and section 12 of The Queen's Bench Act, 1998, S.S. 1998, c. Q-1.01; and
- (e) authorizing the Receiver to effect the assignment to TD of any PPR Registrations in the Saskatchewan Personal Property Registry which name Canpulse as a secured party.

All of which is respectfully submitted this 28 day of December, 2020.

**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:



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