

Court File No. 08-CL-7440

DATE: 20090114

ONTARIO

SUPERIOR COURT OF JUSTICE  
(Commercial List)

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

AND IN THE MATTER OF A PLAN OF COMPROMISE AND ARRANGEMENT Involving  
Metcalfé & Mansfield Alternative Investments II Corp., Metcalfé & Mansfield Alternative  
Investments III Corp., Metcalfé & Mansfield Alternative Investments V Corp., Metcalfé &  
Mansfield Alternative Investments XI Corp., Metcalfé & Mansfield Alternative Investments XII  
Corp., 6932819 Canada Inc. and 4446372 Canada Inc., Trustees of the Conduits Listed In  
Schedule "A" Hereto

**B E T W E E N:**

THE INVESTORS REPRESENTED ON  
THE PAN-CANADIAN INVESTORS  
COMMITTEE FOR THIRD-PARTY  
STRUCTURED ASSET-BACKED  
COMMERCIAL PAPER LISTED IN  
SCHEDULE "B" HERETO

Applicants

- and -

METCALFE & MANSFIELD  
ALTERNATIVE INVESTMENTS II CORP.,  
METCALFE & MANSFIELD  
ALTERNATIVE INVESTMENTS III  
CORP., METCALFE & MANSFIELD  
ALTERNATIVE INVESTMENTS V CORP.,  
METCALFE & MANSFIELD  
ALTERNATIVE INVESTMENTS XI  
CORP., METCALFE & MANSFIELD  
ALTERNATIVE INVESTMENTS XII  
CORP., 6932819 CANADA INC. AND  
4446372 CANADA INC., TRUSTEES OF  
THE CONDUITS LISTED IN SCHEDULE  
"A" HERETO

Respondents

- )
- )
- ) *B. Zarnett, F. Myers* for the Applicants
- )
- ) *Craig Hill* for the Monitor, Ernst & Young
- )
- )
- )
- )
- ) *Linda Plumpton* for National Bank of
- ) Canada
- ) *Peter Howard* for Asset Providers/Liquidity
- ) Providers
- ) *Jeff Carhart, Joe Marin* for Ad Hoc
- ) Committee of ABCP Holders
- ) *Aubrey Kauffman* for 4446372 Canada Inc.
- ) *Robin B. Schwill* for Coventree Capital Inc.,
- ) Coventree Administration Corp., Nereus
- ) Financial Inc.
- ) *Kevin McEicheran* for Bank of Montreal,
- ) Bank of Nova Scotia, CIBC, Royal Bank of
- ) Canada, Toronto Dominion Bank
- ) *Allan Sternberg* for Hy Bloom Inc. and
- ) Cardacian Mortgage Services Inc.
- ) *Graham Phoenix* for Miyai Issuer Trustees
- ) *John MacDonald* for Blackrock Canada
- ) *Mario Forte* for Caisse de Dépôt
- ) *G. Finlayson* for existing Note Indenture
- ) Trustees

) HEARD: January 12, 2009

## REASONS FOR DECISION

[1] This motion seeks approval of amendments to the Plan of Arrangement & Compromise relating to certain Asset Backed Commercial Paper ("ABCP") and for the authorization and directions concerning the implementation of what is termed the Third Amended Plan.

[2] As the Court is not aware of any opposition to the relief sought, it is tempting to simply recognize the extremely difficult and complex issues involved, approve the form of order sought, and thank those involved for their incredibly hard work.

[3] In view of the importance of the issue of releases accorded to various parties and the compromise to the return on their investment to the holders of ABCP under the Plan, further comments are in order.

[4] The economic events that have occurred since this matter was first before the Court underscores the complexity and inter-dependence of credit markets, not only in Canada but across the developed world.

[5] Those events also highlight the difficulty in ascribing a single or even multiple causes to imperil a market in instruments that were at one time not only understood, but accepted.

[6] This Court continues to be satisfied that the compromise of the claims of a small percentage of investors is justified in order to preserve an amended Plan that has the prospect of a greater and earlier return to all the holders of ABCP.

[7] What has happened since the initial Orders of this Court were affirmed on appeal is that the parties, particularly the Monitor and the advisers, have undertaken the extremely onerous task of analyzing and valuing the Synthetic and Hybrid Assets of the original Affected ABCP, as well as what have been defined as Eligible Assets.

[8] The analysis and valuation, which are described in some detail in the 18<sup>th</sup> Report of the Monitor (a difficult read for even the most interested) were necessary ingredients to the negotiation that followed.

[9] The Plan from its initial approval has anticipated that Affected ABCP would be exchanged for longer term Plan Notes designed to match the maturity of the underlying assets in order to reduce the risk of maturity defaults arising from the financing of long-term assets with short-term indebtedness.

[10] As described in the 18<sup>th</sup> Report of the Monitor and the Motion Record of the Applicants, the various assets backing the Affected ABCP have been pooled into new vehicles allowing eligible noteholders to participate in a fund appropriate both to the asset mix in their original Notes and to the pool of new notes in which they will participate.

[11] The uncertain economic circumstances that have occurred in the months since the initial Order have necessitated a re-negotiation of certain items and has resulted in among other things an addition of over \$4.5 billion of margin funding.

[12] As noted above, the sanction Order of June 5, 2008 anticipated amendments to the Plan. One of those amendments involves a commitment to the early payment of interest to noteholders, a welcome repayment, no doubt, to many.

[13] These changes clearly bring into focus the nature of the compromise inherent in a CCAA sanction Order. It has been described by Justice Blair, now of the Court of Appeal, in the *The Canadian Red Cross Society*, (2002) O.J. No. 2567 (S.C.J.) paragraph 12, as affirmed on appeal, and reiterated in the appeal in this very matter, 2008 ONCA 587 paragraph 63. The Plan is truly in substance a contract sanctioned by the Court based on the approval process.

[14] The circumstances that gave rise to the problem in the first place necessitated an innovative approach to consensus. The incredible effort of Mr. Purdy Crawford and those who have worked with and supported him in his arduous negotiations I hope will be remembered for a very long time. In these circumstances, the Court can do little more than congratulate and thank the participants for their efforts and congratulate them on the contract they have achieved, which is hereby approved.

[15] I think it is appropriate to note what this approval is not. Other than concluding that the overall effect of the Plan is fair and reasonable, the Court simply is not in a position to say that all the terms operate fairly to all investors.

[16] In particular, I recognize that taken alone, the fees of the Applicant, the advisers and counsel to the various participants might seem extraordinary. However, when one takes into account the difficult and time-consuming nature of the negotiations I can readily understand the fee agreement reached among the Plan participants. I also recognize that given the magnitude of small changes in the Plan as against a fluctuating financial market, final approval of details of the Plan of necessity will be on short notice to the Court and the parties. On this basis they are approved.

[17] One of the features that has proven difficult for the participants has been the negotiation of the triggers on the credit default swaps. One can only ask the question of how default swaps can form part of commercial paper in the first place. A following question that occurs is how does one understand the rating of notes with the swap element as part of the notes. I note that the Plan itself does not approve the note ratings.

[18] To say that the Court fully understands the details of the new Notes and their implications to all investors would be an overstatement. The Court accepts the agreement of the participants embodied in their contract, the Plan. Again, on an overall basis, the Contract (absent the issue of releases) has not been objected to by any appearing party on the basis of being unfair.

[19] One final comment that is simply an observation. I question how an investor, even one defined as a sophisticated investor, or for that matter a so-called sophisticated advisor, can truly say they understand in detail what they are buying or selling.

[20] Since the Court does not have jurisdiction to do so, it can only urge those who represent the various components of the financial industry, including regulators, to sort out what instruments should be available to what market participants and investors based on what information that may be considered appropriate. That there is some urgency to this endeavour is apparent from the continuing credit crisis in Canada and beyond.

[21] As I have noted above, there has been a prodigious amount of dedicated effort by many consummate professionals. While Mr. Crawford may be the most notable and public of those involved, I am sure he would be the first to acknowledge the input of many others to the achievement that is the Third Amended Plan.

[22] I recognize that beyond the approval embodied in the Order today, there may be some following in effect clean-up Orders. For the moment, I remain satisfied that the process and conclusion represent the best opportunity for recovery in a definable time by all investors.

  
C. CAMPBELL J.

RELEASED: *January 14, 2009*

**SCHEDULE "A"****CONDUITS**

Apollo Trust

Apsley Trust

Aria Trust

Aurora Trust

Comet Trust

Encore Trust

Gemini Trust

Ironstone Trust

MMAI-I Trust

Newshore Canadian Trust

Opus Trust

Planet Trust

Rocket Trust

Selkirk Funding Trust

Silverstone Trust

Slate Trust

Structured Asset Trust

Structured Investment Trust III

Symphony Trust

Whitehall Trust

**SCHEDULE "B"**

**APPLICANTS**

ATB Financial

Caisse de Dépôt et Placement du Québec

Canaccord Capital Corporation

Canada Post Corporation

Credit Union Central of Alberta Limited

Credit Union Central of British Columbia

Credit Union Central of Canada

Credit Union Central of Ontario

Credit Union Central of Saskatchewan

Desjardins Group

Magna International Inc.

National Bank Financial Inc./National Bank of Canada

NAV Canada

Northwater Capital Management Inc.

Public Sector Pension Investment Board

The Governors of the University of Alberta

Court File No. 07-CL-7054

Date: 20090114

ONTARIO  
SUPERIOR COURT OF JUSTICE

BETWEEN:

THE INVESTORS REPRESENTED ON THE  
PAN-CANADIAN INVESTORS COMMITTEE  
FOR THIRD-PARTY STRUCTURED ASSET-  
BACKED COMMERCIAL PAPER LISTED IN  
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METCALFE & MANSFIELD ALTERNATIVE  
INVESTMENTS II CORP., METCALFE &  
MANSFIELD ALTERNATIVE INVESTMENTS  
III CORP., METCALFE & MANSFIELD  
ALTERNATIVE INVESTMENTS V CORP.,  
METCALFE & MANSFIELD ALTERNATIVE  
INVESTMENTS XI CORP., METCALFE &  
MANSFIELD ALTERNATIVE INVESTMENTS  
XII CORP., 6932819 CANADA INC. AND  
4446372 CANADA INC., TRUSTEES OF THE  
CONDUITS LISTED IN SCHEDULE "A"  
HERETO

Respondents

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REASONS FOR DECISION

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C. CAMPBELL J.

Released: January 14, 2009