Court File No. & Estate No. CV-19-627184-00CL (31-2560674)
CV-19-627185-00CL (31-2560984)
and CV-19-627186-00CL (31-2560986)

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

IN THE MATTER OF THE BANKRUPTCY OF QUADRIGA FINTECH SOLUTIONS CORP., WHITESIDE CAPITAL CORPORATION AND 0984750 B.C. LTD. D/B/A QUADRIGA CX AND QUADRIGA COIN EXCHANGE

FACTUM OF ERNST & YOUNG IN ITS CAPACITY AS THE TRUSTEE IN BANKRUPTCY

January 19, 2021

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and not in its personal capacity

AND TO: **SERVICE LIST**

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PART I - OVERVIEW

1. Quadriga Fintech Solutions Corp., Whiteside Capital Corporation and 0984750 B.C. Ltd. d/b/a Quadriga CX and Quadriga Coin Exchange (collectively, the "**Companies**") were granted protection from their creditors under the *Companies' Creditors Arrangement Act* (the "**CCAA**") pursuant to an initial order of the Nova Scotia Supreme Court dated February 5, 2019 (the "**CCAA Date**"). Ernst & Young Inc. was appointed as the Monitor (the "**Monitor**") of the Applicants in the CCAA proceedings.

2. On February 28, 2019, the Nova Scotia Court issued an Order appointing Miller Thomson LLP and Cox & Palmer as Representative Counsel of the affected users of the Quadriga platform (the "**Affected Users**") except for certain individuals who opt-out of representative in accordance with the Rep Counsel Order (the "**Rep Counsel**").

3. On April 11, 2019, a Termination and Bankruptcy Assignment Order was issued by the Nova Scotia Court and on April 15, 2019 (the "**Date of Bankruptcy**"), each of the Applicants were assigned into bankruptcy under the *Bankruptcy and Insolvency Act* (the "**BIA**"). Ernst & Young Inc. was appointed as the Trustee-in-Bankruptcy (the "**Trustee**") of each bankrupt estate at the first meeting of creditors and five individuals were named as Estate Inspectors.

4. On June 27, 2019, the Nova Scotia Court granted an Order (the "**Claims Process Order**") approving a claims process pursuant to which Affected Users could have claims for Canadian dollar balances ("**CAD Claims**"), US dollar balances ("**USD Claims**"), or one or more of the six types of cryptocurrencies supported by Quadriga CX ("**Cryptocurrency Claims**"). Affected Users could have combinations of such claims. The Claims Process Order did not specify the date on which Cryptocurrency Claims would be converted into Canadian dollars. Distributions to Affected Users will be made in Canadian dollars and, as such, USD Claims and Cryptocurrency Claims need to be converted to Canadian dollars.

5. On September 10, 2019, the Nova Scotia Court granted an order transferring the Bankruptcy Proceedings to the Ontario Superior Court of Justice (Commercial List).

6. This factum is filed by the Trustee in connection with its motion originally returnable December 1, 2020, for an Order that directs the Trustee to use the prevailing exchange rate on the Date of Bankruptcy to convert the USD Claims and Cryptocurrency Claims into Canadian dollars. Prior to the original return date of the motion, one Affected User, BlockCAT Technologies Inc. ("**BlockCAT**"), filed a response to the Trustee's motion requesting that this Court fix the valuation and conversion date for Cryptocurrency Claims as at the CCAA Date (February 5, 2019) and not the Date of Bankruptcy (April 15, 2019).

7. Following BlockCAT's filing of a response to the Trustee's motion, the motion was adjourned to January 26, 2021. Since then, the Trustee has reviewed the arguments and case law put forward by BlockCAT and, for the reasons outlined below, maintains that the appropriate date for valuing and converting the Cryptocurrency Claims is as at the Date of Bankruptcy. In the Trustee's view, the applicable provisions of and guidance from the BIA, as well as the principles of efficiency and economy underlying determination of claims under the

BIA, dictate that the Date of Bankruptcy should be chosen as the date to assess the Cryptocurrency Claims.

8. The Trustee believes that BlockCAT's submissions have two key flaws:

(a) First, the Cryptocurrency Claims are liquidated claims and not contingent or unliquidated claims as submitted by BlockCAT;

(b) Second, if BlockCAT's argument is accepted, that the Cryptocurrency Claims are unliquidated claims and mitigation obligations are relevant, then the logical conclusion would be that the date for valuation of each of the Cryptocurrency Claims may not be the CCAA Date but different dates unique to each individual Affected User's claim scenario.

9. The Trustee understands that Rep Counsel and all other Affected Users do not take a position on this motion.

PART II - THE FACTS

10. The facts with respect to this motion are more fully set out in the Seventh Report of the Trustee dated November 5, 2020 (the "**Seventh Report**") and Supplementary Report dated January 19, 2021. Capitalized terms used herein but not otherwise defined have the meanings ascribed to them in Seventh Report.

A. BACKGROUND

11. The Companies were involved in the business of operating a platform for cryptocurrency exchange. The platform allowed the Affected Users to deposit, store, buy, sell and withdraw various cryptocurrencies through Quadriga's website at www.quadrigacx.com.

> Fifth Report of the Monitor (the "**Fifth Report**") at paras 14-15, Trustee's Supplemental Report dated January 19, 2021 (the "**Supplemental Report**") at Appendix A.

12. Affected Users would deposit either Canadian dollars, U.S. dollars or cryptocurrency which were credited towards the Affected User's account with Quadriga. Following verification of the receipt of the funds or cryptocurrency, Affected Users could then place buy or sell orders through Quadriga's platform to trade the funds or cryptocurrency. If a counterparty for an order was found within the platform, a trade would occur and the Affected Users' respective account holdings would be debited and/or credited with the relevant funds or cryptocurrency, less any transaction fees.

Fifth Report at paras 14-15, Supplemental Report at Appendix A.

13. Quadriga was intended to operate like a traditional securities brokerage institution insomuch as Affected Users could view their individual account holdings but their funds and cryptocurrency were maintained in the custody of Quadriga in general pooled accounts pending further Affected User transactions. However, as set out in greater detail below, Quadriga did not segregate Affected Users' funds and Quadriga funds, and Affected Users' funds were used for various purposes beyond funding withdrawals to Affected Users, including funding operating expenses and payments to related parties.

Fifth Report at paras 10 and 24, Supplemental Report at Appendix A.

14. The Companies' chief executive officer, Gerald Cotten, died on December 9, 2018. The website and platform were shut down on January 28, 2019. Subsequently, certain Affected Users began to organize with the intention of bringing lawsuits against the Companies. On February 5, 2019, the Companies sought and were granted protection from their creditors under the CCAA.

Pre-Filing Report of the Proposed Monitor dated January 31, 2019 at paras 4 and 37, BlockCAT Motion Record at Tab 1C.

BlockCAT's Motion Record at Tab 2.

15. At or about the time of the application for protection under the CCAA, it was believed and reported that Quadriga was "missing" approximately $190 million of cryptocurrency (based on prevailing market prices at that time) and a significant amount of cash. In addition to the solvency issues, the bank for one of Quadriga's third party payment processors froze approximately C$25.7 million of funds held on behalf of Quadriga, which remained frozen on the CCAA date.

Pre-Filing Report of the Monitor at paras 32-33, BlockCAT Motion Record at Tab 1C.

Supplemental Report at para 11.

16. Following the commencement of the CCAA proceedings, the Monitor (now Trustee) commenced an investigation of the Companies' business and affairs pursuant to s. 23(1)(c) of the CCAA. The Monitor discovered a series of concerning conduct, including:

(a) a lack of basic corporate or accounting records;

(b) significantly flawed financial reporting infrastructure and operational controls;

(c) no segregation of assets owned by Quadriga and those held on behalf of the platform's users;

(d) extensive reliance on the use of third party payment processors with limited governance arrangements, oversight or reporting functions in relation to currency maintained by third parties;

(e) significant transfers of cryptocurrency from Quadriga's platform to competitor exchanges in the name of Mr. Cotten and personal accounts controlled by Mr. Cotten;

(f) accounts on the Quadriga platform that were created by Mr. Cotten and funded with artificial deposits that were then used to withdraw cryptocurrency from Quadriga's platform;

(g) significant "cash" transactions that the Monitor was unable to verify; and

(h) missing fiat funds and cryptocurrency reserves.

Fifth Report at para 10, Supplemental Report at Appendix A.

17. Based on the Trustee's review of Quadriga's internal records and correspondence, the Companies have been unable to complete certain withdrawal requests beginning in early 2018 due to liquidity issues arising from the trading activities of Mr. Cotten and/or Quadriga as well as the freezing of the funds referenced above in paragraph 15.

Supplementary Report at paras 10-11.

18. Based on the Monitor's investigation, Quadriga's assets likely never matched the liabilities owed to Affected Users. In its report on the Quadriga platform (the "**OSC Quadriga Report**"), the Ontario Securities Commission ("**OSC**") also concluded that there was always significant discrepancies between Quadriga's assets and liabilities and "Quadriga was unlikely to return to a solvent financial position."

Ontario Securities Commission, QuadrigaCX: A Review by Staff of the Ontario Securities Commission (April 14, 2020) at 23, Supplemental Report at Appendix B (OSC Website) [**OSC Quadriga Report**].

Seventh Report at para 23, Trustee's Motion Record at Tab 2.

19. Further, all fiat currency and cryptocurrency were provided to Quadriga on the basis that it would be traded using the Quadriga platform. These funds were commingled with all of Quadriga's available reserves and in many instances either disbursed to an Affected User with a queued withdraw request or transferred to entities not controlled by Quadriga or directly to Mr. Cotten. In such circumstances, the commingled assets available for distribution are not traceable to any particular Affected User.

Seventh Report at para 23, Trustee's Motion Record at Tab 2.

20. The Trustee has noted in its Seventh Report and seeks a declaration disallowing any priority claims by Affected Users, and declaring all Affected Users rank *pari passu*. No Affected Users, including BlockCAT, oppose this relief.

Seventh Report at paras 24-25, Trustee's Motion Record at Tab 2.

B. QUADRIGA'S CLAIMS PROCESS

21. The Companies were assigned into bankruptcy on April 11, 2019. As part of the bankruptcy, the Trustee has to date recovered approximately C$1.4 million of cryptocurrency (based on prevailing market prices as at the date of the Seventh Report) and approximately US$662,000. In total, a maximum of approximately $41 million may be available for distribution. Asset recoveries have generally been obtained in Canadian dollars from funds recovered from third party payment processors and by monetizing assets that came from a settlement with the estate of Mr. Cotten and his spouse. The Trustee plans to convert all funds in its possession in US dollars and cryptocurrency into Canadian dollars. To distribute *pro-rata* to all of the Affected Users, each claim needs to be converted to a Canadian dollar equivalent.

Seventh Report at para 23, Trustee's Motion Record at Tab 2.

22. The claims process approved by the Nova Scotia Court is substantially consistent with the process set out in the BIA, subject to certain modifications to reflect the nature of Quadriga's business being a cryptocurrency exchange. Notably, the proof of claim form approved by the Nova Scotia Court (the "**Claim Form**") provided that Affected Users could assert claims against Quadriga as at the Date of Bankruptcy in one or more of Canadian dollars, United States dollars or cryptocurrency units (Bitcoin, Bitcoin Cash SV, Bitcoin Cash, Bitcoin Gold, Litecoin and Ethereum).

Seventh Report at paras 16, Trustee's Motion Record at Tab 2.

23. In the aggregate, the Trustee has received 17,053 completed Claim Forms, many of which include multiple currency and cryptocurrency components.

Seventh Report at para 18, Trustee's Motion Record at Tab 2.

24. Cryptocurrency prices were highly volatile and fluctuated significantly between February 5, 2019, the CCAA Date, and April 15, 2019, the Date of Bankruptcy. Most cryptocurrencies traded within the Quadriga platform rose in price during this time period. A graph showing the price change of Bitcoin and Ethereum (the two most commonly held cryptocurrencies on the Quadriga platform) is included in the Supplemental Report.

Supplementary Report at para 13.

25. The following is a chart summarizing the Canadian dollar equivalent[1] claim composition of all claims received through September 11, 2020, sorted by currency type and valued using exchange rates as of the CCAA date and the Date of Bankruptcy:

		Exchange Rate (FX/Cdn)		Cdn Dollar Equivalent	
	Units	**5-Feb-19**	**15-Apr-19**	**5-Feb-19**	**15-Apr-19**
Bitcoin	24,427.04	$ 4,550.25	$ 6,739.08	$ 111,149,157.70	$ 164,615,804.77
Bitcoin Cash SV	7,098.01	$ 80.55	$ 78.84	$ 571,744.66	$ 559,607.06
Bitcoin Cash	7,723.03	$ 153.88	$ 419.37	$ 1,188,419.35	$ 3,238,805.72
Bitcoin Gold	17,934.03	$ 12.58	$ 22.14	$ 225,610.16	$ 397,059.53
Litecoin	87,031.29	$ 44.95	$ 104.84	$ 3,912,056.65	$ 9,124,360.83
Etherium	65,457.60	$ 140.62	$ 223.45	$ 9,204,647.48	$ 14,626,500.35
Cdn Dollars	$ 90,184,260.91	$ 1.00	$ 1.00	$ 90,184,260.91	$ 90,184,260.91
US Dollars	$ 6,016,960.35	$ 1.31	$ 1.34	$ 7,882,218.05	$ 8,062,726.86
Total				$ 224,318,114.96	$ 290,809,126.04

Allocation of Fiat Claims to Total	44%	34%
Allocation of Crypto Claims to Total	56%	66%

Seventh Report at para 34, Trustee's Motion Record at Tab 2.

26. Regardless of what date is used for conversion of the Cryptocurrency Claims, the pool of assets available for distribution remains the same. The only difference between one conversion date and another date (or multiple dates) is how funds from that fixed pool are allocated to Affected Users. If the Date of Bankruptcy is used to convert Cryptocurrency

[1] Source of cryptocurrency prices: https://www.coingecko.com/. Source U.S. exchange rate: https://www.bankofcanada.ca/rates.

Claims to Canadian dollars, then Affected Users with primarily Cryptocurrency Claims will benefit from the strengthening market values of those cryptocurrencies from the CCAA Date to the Date of Bankruptcy. If the CCAA Date is used, then the Affected Users with fiat claims will benefit from the lower amounts that would be allocated to Cryptocurrency Claims.

Seventh Report at para 34, Trustee's Motion Record at Tab 2.

27. BlockCAT's only claim against Quadriga is a CAD Claim. The arguments it raises are in respect of claims or valuation methods that may apply to the Cryptocurrency Claims filed by *other* Affected Users. Should BlockCAT persuade this Court that Cryptocurrency Claims held by others should be valued at the CCAA Date, the relative share of the pool to be paid in respect of the Affected Users with CAD Claims would increase.

Affidavit of Ben Stevens sworn December 14, 2020 (the "**Stevens Affidavit**") at para 4, BlockCat's Motion Record at Tab 2.

PART III - ISSUES

28. The only issue before this Court is the appropriate date for valuing the Cryptocurrency Claims in Canadian dollars.

PART IV - THE LAW

A. OVERVIEW OF DETERMINATION OF CLAIMS UNDER THE BIA

29. The matter before this Court involves a novel question. No bankruptcy court in Canada has previously been asked to determine as at what date claims made in cryptocurrency should be valued in Canadian dollars. Given the novelty of this question, this factum first addresses the principles and procedures underlying claims processes generally before applying these principles to the specific issue at hand.

i. The BIA provides for the distribution of property including cryptocurrency

30. The BIA provides an orderly mechanism for the distribution of a debtor's property to satisfy creditor claims according to predetermined priority rules.

Re Ted Leroy Trucking [Century Services] Ltd, 2010 SCC 60 at para 15 (CanLII).

31. Subsection 67(1) of the BIA sets out what property of a bankrupt is divisible among the bankrupt's creditors. With certain narrow exceptions, "all property wherever situated of the bankrupt at the date of the bankruptcy or that may be acquired by or devolve on the bankrupt before their discharge" is available for the benefit of the bankrupt's creditors.

BIA, s. 67(1).

32. The Supreme Court of Canada has embraced a broad definition of "property", writing that to understand the scope of "property", it is necessary to consider the overall purpose of the BIA, which is to regulate the orderly administration of the bankrupt's affairs and maintain a balance between the rights of creditors and the desirability of giving a bankrupt a clean break. Potential inclusions in the definition of property are far reaching and may evolve. For example, the SCC held that a valuable commercial asset like a fishing licence bears much more similarity to "property" as captured by s. 67(1) as opposed to assets that are exempt from distribution.

BIA, s. 67(1) and 71(2).

Saulnier (Receiver of) v Saulnier, 2008 SCC 58 at paras 17 and 23 [***Saulnier***] (CanLII).

33. Outside of the insolvency context, Canadian courts have recognized a proprietary nature in cryptocurrency. Beyond the broad definition of property, the manner in which cryptocurrency is considered inside and outside bankruptcy continues to evolve. Legislators, financial and security regulators, tax authorities and others have applied various labels to cryptocurrencies, including: currency, commodity, security, virtual asset, and digital asset. As set out further below, the Trustee does not believe the Court needs to conclude or limit the nature of the cryptocurrency labels for purposes of determining the motion before it. The Trustee believes there is sufficient guidance to be taken by the BIA and the treatment of claims related to similar assets may inform the Court's decision.

See e.g. *Shair.Com Global Digital Services Ltd v Arnold*, 2018 BCSC 1512 at para 8 (CanLII); *Copytrack Pte Ltd v Wall*, 2018 BCSC 1709 at paras 3-4 (CanLII).

34. The Trustee is of the view that the definition of "property" in s. 67(1) of the BIA is broad enough to include cryptocurrency. Since the beginning of this bankruptcy proceeding, the Trustee has treated Quadriga's cryptocurrency assets as property of the Estates. Like the commercial fishing license in *Saulnier*, the cryptocurrency assets held by the Companies are valuable assets; to exempt them from the Estates' distributable property would run contrary to the purpose of the BIA, given that such an exclusion would result in real-world value being removed from the creditors.

Saulnier, *supra* at para 17 (CanLII).

35. The Trustee understands that BlockCAT does not take issue with the premise that cryptocurrency constitutes property under the BIA.

ii. The nature of claims that can be made in a bankruptcy

36. The claims made by creditors in a bankruptcy are governed by s. 121 of the BIA. Subsection 121(1) provides that all debts and liabilities, present or future, to which the bankrupt is subject on the day on which the bankrupt becomes bankrupt or to which the bankrupt may become subject before the bankrupt's discharge by reason of any obligation incurred before the day on which the bankrupt becomes bankrupt are claims provable in bankruptcy.

BIA, s. 121(1).

37. Subsection 121(2) of the BIA addresses contingent and unliquidated claims, which are to be treated in accordance with s. 135 of the BIA. Among other things, s. 135 of the BIA provides that a trustee is to assess whether contingent or unliquidated claims are claims provable and, if so, authorizes the trustee to value them.

BIA, s. 121(2).

38. Liquidated and unliquidated claims are not defined in the BIA. Canadian Courts, however, have established that liquidated claims are ascertained or capable of being ascertained by calculation or fixed by any scale of charges or other positive data; their valuation is a mere matter of arithmetic. Unliquidated claims, in contrast, depend "upon the circumstances of the case and [are] fixed by opinion or by assessment or by what might be judged reasonable". Contingent claims materialize upon the occurrence of some event; these claims may or may not ever ripen into a debt, depending on the occurrence of a future event.

> *Citibank Canada v Confederation Life Insurance Co (Liquidator of)*, 1996 CanLII 8269 (Gen Div) at para 48 (CanLII), aff'd 1998 CanLII 955 (ONCA) (CanLII).
>
> *Nalcor Energy v Grant Thornton Poirier Ltd*, 2015 NBQB 20 at paras 39-41, 49-52 [***Nalcor***] (CanLII).

39. By way of example, if a bankrupt is found liable for damages in a civil action and the quantum of damages is assessed and final, then a claim arising from that action is a liquidated claim. If, however, the bankrupt is found liable but the quantum of damages has not yet been assessed or the quantum of damages is the subject of an appeal, then any claim arising from that action is an unliquidated claim until the quantum of damages is determined. Finally, a claim arising from a pending action that has not yet resulted in a finding or liability or an awarding of damages would be a contingent claim.

> See generally *Nalcor*, *supra* at paras 39-52 (CanLII); *Telemark Inc (Re)*, 2003 CanLII 29156 (SC) at para 8 (CanLII); *Johnson v Erdman (Trustee of)*, 2006 SKQB 280 (CanLII).

iii. Valuing claims in bankruptcy

40. There are two instances in which the BIA explicitly prescribes a date for valuing claims. In both of those instances the date to be used is the date of bankruptcy.

41. Section 215.1 of the BIA provides that in a bankruptcy, claims made in a currency other than Canadian currency are to be converted "as of the date of the bankruptcy".

BIA, s. 215.1.

42. Similarly, Part XII of the BIA, which governs the bankruptcies of securities firms, provides that the assets distributable to the customers of the securities firms are to be allocated to customers in proportion to their net equity, where the net equity is the market value of the securities purchased by and held for customers if they were liquidated on "the date of bankruptcy" (after accounting for certain deductions).

BIA, s. 215.1 and Part XII.

43. Section 121 of the BIA also suggests (albeit not explicitly) that claims should be valued on the date of bankruptcy:

> **121 (1)** All debts and liabilities, present or future, to which the bankrupt is subject ***on the day on which the bankrupt becomes bankrupt*** or to which the bankrupt may become subject before the bankrupt's discharge by reason of any obligation incurred before the day on which the bankrupt becomes bankrupt shall be deemed to be claims provable in proceedings under this Act. (emphasis added)

BIA, s. 121(1).

44. BlockCAT asks the Court to look to an earlier valuation date, specifically the CCAA Date. The BIA specifically provides a defined term of "date of initial bankruptcy event" for referencing the date of an initial CCAA proceeding or notice of intention to make a proposal that precedes a date of bankruptcy. However, this expression is not used for the purposes of determining claims. The date of initial bankruptcy event is used for (a) reviewing where the debtor carried on business for purpose of determining the locality of the debtor (s. 2, "locality of the debtor"); (b) the period for which an employee's claim for wages may be secured (s. 81.3); and (c) the various look back periods for purposes of reviewable transactions under the BIA (s. 95, 96 and 101).

BIA, s. 2, 81.3, 95, 96, and 101.

45. Unliquidated and contingent claims are valued in accordance with s. 121(2) and 135 of the BIA. No specific valuation method is prescribed; rather, the valuation of such claims is left to the trustee. Case law shows that a trustee has discretion when valuing a contingent or unliquidated claim. In exercising its discretion, the trustee is to consider all the relevant circumstances and arrive at what the trustee believes is a fair and reasonable valuation.

> BIA, s. 121(2) and 135.
> *Johnson v Erdman*, *supra* at para 32 (CanLII).

46. The Trustee searched more generally for instances where CCAA proceedings and other insolvency proceedings were converted into bankruptcy proceedings under the BIA to determine when claims were valued; however, the Trustee was unable to find any cases that dealt with this issue.[2]

iv. Claims are to be administered in the most efficient and expeditious manner

47. Bankruptcy courts routinely refer to the BIA's objective of enabling "parties to have their rights and claims determined in an expeditious fashion" and the Supreme Court of Canada has emphasized that legislative policy favours an "expeditious, efficient and economical clean-up of the aftermath of a financial collapse".

> *Eagle River International Ltd, Re*, 2001 SCC 92 at para 27 (CanLII).
> *Credifinance Securities Ltd, Re*, 2011 ONCA 160 at para 26 (CanLII).

48. The need to efficiently administer the bankrupt estate is crucial to the hopes of creditors receiving even a small fraction of the amounts that they are due. For the reasons described in greater detail below, BlockCAT's arguments, if taken to their logical conclusion, could result in the need for the Trustee to individually assess each of the Cryptocurrency Claims filed. This

[2] See para 64 below which details the only guidance found by the Trustee in cases where securities firms have entered insolvency proceedings and subsequently were assigned into bankruptcy.

would create an immensely time consuming and costly burden on the Companies' Estates that will erode creditor recoveries.

B. CRYPTOCURRENCY CLAIMS SHOULD BE CONVERTED AS OF THE DATE OF BANKRUPTCY

49. The Trustee is of the view that the Cryptocurrency Claims are liquidated claims that can and should be valued as of the Date of Bankruptcy. The Trustee believes that this is the most principled approach to the issue because:

(a) the Cryptocurrency Claims are analogous to debts in a currency other than Canadian currency, which s. 215.1 of the BIA provides are to be converted as of the date of bankruptcy;

(b) the exchange platform and subsequent Quadriga bankruptcy can be analogized to the bankruptcy of a securities firm as captured by Part XII of the BIA, and cryptocurrency can be analogized to a security and/or customer pool fund, which Part XII of the BIA provides are to be, in certain circumstances, valued on a pooled basis as of the date of bankruptcy; and

(c) valuing the Cryptocurrency Claims by assessing the claims as of the Date of Bankruptcy provides an efficient method of valuing these claims in line with the principles underlying bankruptcy claims processes.

i. The Cryptocurrency Claims are liquidated claims

50. The Cryptocurrency Claims are liquidated claims that are not captured by s. 121(2) of the BIA. Cryptocurrency Claims, which arise from proven obligations owing by the Companies to the claimants, can be easily ascertained "as a mere matter of arithmetic". All that is required to determine the value of the Cryptocurrency Claims in Canadian dollars is to multiply the

readily determinable quantum of cryptocurrency in question by the prevailing exchange rate for the applicable cryptocurrency.

51. The value of the Cryptocurrency Claims does not change based on the circumstances of the case, opinion, or by what might be judged reasonable, as would be the case with an unliquidated claim. Neither is there a contingency that would suddenly crystalize an obligation or liability, as would be the case with a contingent claim.

52. The prevailing exchange rate for a cryptocurrency can be easily ascertained by reference to the market. Websites such as Coingecko.com aggregate prices from cryptocurrency markets and exchanges and post current and historic cryptocurrency exchange rates that are free and accessible to the public. The Trustee in its Seventh Report references and recommends referring Coingecko.com for the relevant exchange rate, and BlockCAT agrees.

Stevens Affidavit at para 18, BlockCat's Motion Record at Tab 1.

ii. Cryptocurrencies are analogous to "currency" and should be valued as such

53. Section 215.1 of the BIA provides that a claim for a debt that is payable in a currency other than Canadian currency is to be converted to Canadian currency as of the date of the bankruptcy. Neither the BIA nor the federal *Interpretation Act* define the term "currency", making it unclear whether cryptocurrency constitutes a "currency" for the purposes of s. 215.1. No bankruptcy court has previously addressed this issue.

54. It is possible that "currency" as used in s. 215.1 of the BIA includes cryptocurrency. Indeed, including cryptocurrency within the category of "currency" would be consistent with how the government and the public at large refers to cryptocurrency, using terms such as "crypto*currency*", "virtual *currency*", or "digital *currency*". Cryptocurrencies have attributes that are similar to currency, including that they are designed to be used as a means of

exchange—as money—and would certainly appear to be at least "currency-like", if not outright currency.

> See e.g. Financial Consumer Agency of Canada, Digital Currency (Ottawa: Financial Consumer Agency of Canada, 2018), available at https://www.canada.ca/en/financial-consumer-agency/services/payment/digital-currency.html, Trustee's Book of Authorities at Tab 1 ("Digital currency is electronic money."); Canada Revenue Agency, Virtual Currency, (Ottawa: Canada Revenue Agency, 2019), available at https://www.canada.ca/en/revenue-agency/programs/about-canada-revenue-agency-cra/compliance/digital-currency.html Trustee's Book of Authorities at Tab 2 ("Virtual currency is [a] digital asset…"); Canada Energy Regulator, Market snapshot: Crypto-currency mining is booming in Canada. Here is why, (Ottawa: Canada Energy Regulator, 2018), available at https://www.cer-rec.gc.ca/en/data-analysis/energy-markets/market-snapshots/2018/market-snapshot-crypto-currency-mining-is-booming-in-canada-here-is-why.html Trustee's Book of Authorities at Tab 3 ("A crypto-currency is a form of virtual money…").

55. While it is possible that cryptocurrency is "currency" for the purposes of s. 215.1 of the BIA, such a determination by this Court is unnecessary for the purposes of the within motion. Rather, for the purposes of this motion it is only necessary to draw an analogy between "currency" as treated in s. 215.1 of the BIA and cryptocurrency.

56. Calculating the value of a claim made in cryptocurrency is no more complicated than calculating a claim made in any other currency; indeed, the same process is used by multiplying an exchange rate by a quantum of currency. Just like with US dollars, Euros and Yen, the exchange rates for cryptocurrencies are widely disseminated and publicly available. The markets for the major cryptocurrencies, primarily Bitcoin and Ethereum which were the two primary cryptocurrencies owed to Affected Users, are highly liquid and have significant trading volume. It logically follows that cryptocurrencies should be treated similarly to other currencies and converted as of the Date of Bankruptcy.

> See e.g. Bitwise, Bitcoin Trade Volume (undated), available at https://www.bitcointradevolume.com/, Trustee's Book of Authorities at Tab 4.

iii. Cryptocurrencies are analogous to "securities" and Quadriga is comparable to a "securities firm"

57. The other BIA provisions that inform the Trustee's view that the Date of Bankruptcy is the applicable date for valuing the claims in issue are the provisions governing the bankruptcies of and claims against securities firms.

58. Section 253 of the BIA provides that a "securities firm" means "a person who carries on the business of buying and selling securities from, to or for a customer," subject to certain terms and conditions. While a "security" is broadly defined by the BIA, there is no specific category for cryptocurrencies in the definition of "security", and there is no case law assessing whether cryptocurrency is a "security" for the purposes of the BIA.

> BIA, s. 253.
>
> See also Janis Sarra and Louise Gullifer, "Crypto-claimants and bitcoin bankruptcy: Challenges for recognition and realization" (2019) 28 Int Insol Rev. 233 (Wiley), Trustee's Book of Authorities at Tab 5.

59. Canadian securities regulators have not definitively settled on how cryptocurrencies should be characterized. Canadian provincial securities laws may apply to cryptocurrencies to the extent that they are considered securities or derivatives for the purposes of such laws, such as the *Securities Act* (Ontario). Depending on how a cryptocurrency is structured and used, among other things, it may fall into the category of an "investment contract" for the purposes of the *Securities Act* and therefore be subject to regulation as a security.

> *Securities Act*, RSO 1990, c S.5 [***Securities Act***].
>
> Canadian Securities Administrators and Investment Industry Regulatory Organization of Canada, Consultation Paper 21-402 – Proposed Framework for Crypto-Asset Trading Platforms (Canadian Securities Administrators and Investment Industry Regulatory Organization of Canada, 2019) [**CSA Paper 21-402**], Trustee's Book of Authorities at Tab 6 (OSC Website).
>
> Canadian Securities Administrators, Staff Notice 46-308 – Securities Law Implications for Offerings of Tokens (Canadian Securities Administrators, 2018), Trustee's Book of Authorities at Tab 7 (OSC Website).

60. The Canadian Securities Administrators (CSA) and Investment Industry Regulatory Organization of Canada (IIROC) have acknowledged that some of the well-established cryptocurrencies that function as a form of payment or means of exchange on a decentralised network, such as Bitcoin, are not currently in and of themselves, securities or derivatives and have features that are analogous to commodities such as currencies and precious metals.

> CSA Paper 21-402, *supra*, Trustee's Book of Authorities at Tab 6 (OSC Website).

61. A determination of whether cryptocurrency is a "security" within the meaning of the BIA is not necessary to determine the issue raised in this motion. Rather, like with "currency" and s. 215.1 of the BIA, the Trustee is drawing an analogy between "security" and "securities firm" and cryptocurrency and the Quadriga cryptocurrency exchange platform and is of the view that the principles underlying the determination of claims against securities firms provide useful guidance in respect of the determination of cryptocurrency claims against a cryptocurrency exchange platform.

62. The OSC Quadriga Report concluded that cryptocurrency exchange platforms may be subject to securities regulations:

> …if a platform retains possession and control of the crypto assets being traded on the platform, securities law may apply. In accordance with the recent guidance in the Staff Notice, in our view, platforms that hold and control clients' platform assets and only deliver a client's assets after the client requests their withdrawal will generally involve securities or derivatives under Ontario securities law.
>
> OSC Quadriga Report, *supra* at 29, Supplemental Report at Appendix B.

63. The OSC Quadriga Report further concluded that, with respect to Quadriga, the assets being traded on the Quadriga platform were "securities" or "derivatives":

> In our assessment, this custody model—whereby Quadriga retained custody, control and possession of its clients' crypto assets and only delivered assets to clients following a withdrawal

> request—meant that clients' entitlements to the crypto assets held by Quadriga constituted securities or derivatives. In making this assessment we have relied on CSA Staff Notice 21-327 *Guidance on the Application of Securities Legislation to Entities Facilitating the Trading of Crypto Assets* (the **Staff Notice**), which was published by the Canadian Securities Administrators (**CSA**) in January 2020. Quadriga did not consider its business to involve securities and it did not register with any securities regulator.
>
> OSC Quadriga Report, *supra* at 11, Supplemental Report at Appendix B.

64. If the Quadriga bankruptcy proceeding was subject to Part XII of the BIA as a "securities firm", then the cash and securities (or cryptocurrencies in Quadriga's case) held by the Companies would be addressed in a customer pool fund basis, and allocated to customers (or Affected Users) in proportion to their net equity. "Net equity" is the value of a customer's account as of the date of bankruptcy.[3] Valuing the Cryptocurrency Claims as of the Date of Bankruptcy is therefore consistent with Part XII of the BIA.

> BIA, s. 253, 261(2)(a), and 262(1)(b).

C. RESPONSE TO BLOCKCAT'S ARGUMENTS

65. The Trustee does not agree with BlockCAT that Cryptocurrency Claims should be assessed as of the CCAA Date. BlockCAT's submissions have two key flaws:

(a) First, as set out above, the Trustee believes that the Cryptocurrency Claims are liquidated claims and not contingent or unliquidated claims as submitted by BlockCAT; and

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[3] When a securities firm enters a non-bankruptcy insolvency proceeding prior to a bankruptcy proceeding, the date of bankruptcy is generally used to calculate net equity. In *Ashley v Marlow Group Private Portfolio Management Inc*, 2006 CanLII 31307 (ONSC) (CanLII), the securities firm was placed into receivership and later assigned into bankruptcy. Although there are limited sources to reference, materials filed on the Trustee's website implicitly suggest that the date of bankruptcy was used to assess net equity. In *Re MF Global Canada Co*, the Canadian Investor Protection Fund brought an application for a bankruptcy order on November 2, 2011. The securities firm filed a notice of intention to file a proposal later that same day. On November 4, 2011, the securities firm consented to the bankruptcy order, which was granted. The date of bankruptcy was used for the claims process and to calculate net equity; see the Claims Process Order (KPMG's website). Note, however, that in *Portus Alternative Asset Management Inc (Re)*, 2007 CanLII 44814 (ONSC) (CanLII), the Court used the date of the receivership to calculate net equity; this case, however, is distinguishable because the definition of "net equity" was modified by Campbell J. to avoid an injustice.

(b) Second, BlockCAT's own arguments do not support the conversion date being the CCAA Date, but rather, it likely supports a different date for each Cryptocurrency Claim based on the individual circumstances of the Affected User.

i. The Cryptocurrency Claims are liquidated claims

66. BlockCAT has submitted that the Cryptocurrency Claims are unliquidated claims for two reasons: (a) Cryptocurrency Claims are not a debt; and (b) Cryptocurrency Claims require investigation beyond mere arithmetical calculation. As noted above in paragraph 50, the Trustee is of the view that Cryptocurrency Claims are liquidated claims.

67. BlockCAT suggests that the Cryptocurrency Claim filed by other Affected Users could be and should be viewed as an individual breach of contract claim. The Trustee notes that BlockCAT's argument ignores other potential labels to be placed on cryptocurrency (e.g. currency, debt, commodity or security), or any other cause of action to be sought (e.g. unjust enrichment, conversion, misrepresentation). BlockCAT further raises arguments of Affected Users' obligations to mitigate their damages on a set date in support of the use of the CCAA Date for valuation purposes.

68. On the first point, BlockCAT submits that a Cryptocurrency Claim is not in the nature of debt because cryptocurrencies are not "money". BlockCAT does not support this position with any references to the BIA that specifies the nature of a debt or the requirement that debt be denominated in "money". This argument also ignores the fact that the specific characterization of cryptocurrency is unsettled; cryptocurrencies may indeed be a form of "money" and are even described by certain government agencies as "money" or "currency".

See e.g. footnote at paragraph 54.

69. On the second point, the Cryptocurrency Claims do not require investigation beyond mere arithmetical calculation. As detailed above in paragraph 50, the Cryptocurrency Claims can be converted into Canadian dollars using basic multiplication: (the prevailing exchange rate) *x* (quantum of cryptocurrency). The prevailing exchange rate is easily ascertainable from the market. BlockCAT's own submissions support this position, as BlockCAT argues that the Affected Users could mitigate their claims by acquiring the replacement quantum of cryptocurrency, which should be converted at the prevailing exchange rate as at the CCAA Date. Cryptocurrency Claims are, accordingly, liquidated. To decide otherwise is to unnecessarily complicate the matter.

70. In the alternative, if the Cryptocurrency Claims are unliquidated claims as BlockCAT suggests, then s. 121(2) and 135(1.1) of the BIA give the Trustee discretion in assessing unliquidated claims. Based on the guidance provided by the BIA, as outlined above, the Trustee maintains that the appropriate date of valuation is the Date of Bankruptcy.

Johnson v Erdman, *supra* at para 32 (CanLII).

ii. BlockCAT's own arguments do not support assessing the Cryptocurrency Claims as of the CCAA Date

71. BlockCAT submits that the universal date for assessing the Cryptocurrency Claims should be the CCAA Date on the basis that this date aligns with the date of breach of contract argument that BlockCAT suggests would form the basis of the claim, and provides for a reasonable mitigation period.

72. BlockCAT's argument ignores that the claims and causes of action asserted by Affected Users in ordinary litigation could have taken various forms beyond breach of contract, including, for example (a) unjust enrichment; (b) conversion; (c) misrepresentation; (d) fraud; and (e) breach of trust. The method and principles for valuing these types claims may vary and

damages could be pleaded in different manners depending on the individual facts related to the Affected Users' relationship with Quadriga.

73. Even if breach of contract were to be accepted as the appropriate (and only) cause of action, the case law and commentary show that there is "no fixed rule" with respect to when damages must be assessed in breach of contract actions outside of the insolvency context involving commodities and other assets subject to market fluctuations (and for which specific performance is not ordered). Indeed, Sopinka J. in *Semelhago* stressed that the common law in this regard has "flexibility."

> *Ansdell v Crowther*, 1984 CanLII 541 at para 27 (BCCA) (CanLII).
>
> *Semelhago v Paramadevan*, [1996] 2 SCR 415 at paras 14 and 17 (CanLII) [***Semelhago***].

74. Despite BlockCat's suggestion, the date to set the determination of damages is not certain. Some authorities suggest that damages are to be assessed based on information known and available at the date of the contractual breach, or damages should be based on a date of trial assessment, or some date in between. The date of trial is often selected to reach a damages award that (in cases of damages in lieu of specific performance) gives "as nearly as may be what specific performance would have given," or (in cases of compensatory damages) because that date is "appropriate in the circumstances" and will avoid an "injustice." Conversely, the date of breach may be chosen to assess damages so that the innocent party can turn around and purchase identical or equivalent goods and be placed in the same financial position as if the contract had been kept.

> *Semelhago*, *supra* at paras 12, 13 and 16 (CanLII).

75. Even if BlockCAT is correct and the correct cause of action is breach of contract and damages should be assessed as at the date of breach, it does not automatically follow that the date of breach for all Cryptocurrency Claims should be universally fixed on the CCAA Date.

The Quadriga platform, for example, was plagued with liquidity concerns and withdrawal issues long before the CCAA Date. Accordingly, the date of breach for some Affected Users may be much earlier than February 5, 2019 if they tried and failed to withdraw funds prior to that date, which some Affected Users did indeed try to do. Reasonable alternative dates of breach include the date of an individual Affected Users' failed withdrawal request; the date of Mr. Cotten's death; the date when the Quadriga platform was shut down; the CCAA Date; the Date of Bankruptcy; and the date of the Monitor's Fifth Report, which first outlined Quadriga's potential misconduct and concluded that the "missing" cryptocurrency may never have actually existed.

> OSC Quadriga Report, *supra* at 10, 15 and 21-22, Supplemental Report at Appendix B.

76. BlockCAT suggests that the date of assessment for the Cryptocurrency Claims should also incorporate a reasonable mitigation period. If BlockCAT is correct, then each Cryptocurrency Claim will have its own corresponding and unique reasonable mitigation period, just as each Cryptocurrency Claim has a unique date of breach. Questions such as "When did each Affected User become aware of the breach?", "Were they in a financial position to mitigate their loss by purchasing replacement cryptocurrency?", and "What is reasonable mitigation?" would have to be considered. The burden in establishing the mitigation obligation would rest with the Trustee.

77. If Cryptocurrency Claims are to be assessed as of the date of breach, and a relevant mitigation period, as suggested by BlockCAT, then it follows that each Cryptocurrency Claim may have its own unique date of breach and mitigation period depending on the facts specific to that Cryptocurrency Claim. Therefore, there may be potentially hundreds of unique dates to assess each of the Cryptocurrency Claims.

78. Should this Court ultimately find that the Cryptocurrency Claims should be assessed as unliquidated claims and the Date of Bankruptcy is not the appropriate date for valuing these claims, then the Trustee submits that a single date should still be selected for valuing all Cryptocurrency Claims. This conclusion would be more in line with the principles of efficiency and economy applicable to bankruptcy claims administration than would be the case if the Trustee was required to incur the time and expense to carry out 17,000 individual claim valuations.

D. CONCLUSION

79. As stated above, the Trustee is of the view that the applicable provisions of the BIA, as well as the principles of efficiency and economy underlying determination of claims under the BIA, dictate that the Date of Bankruptcy should be chosen as the date to assess the Cryptocurrency Claims. The logical conclusion of valuing the Cryptocurrency Claims using the principles outlined by BlockCAT could be a near-administrative impossibility and would significantly erode recoveries to the Affected Users.

PART V - ORDER SOUGHT

80. For all of the foregoing reasons, the Trustee respectfully requests that the Court order that the Cryptocurrency Claims be valued in Canadian dollars as at the Date of Bankruptcy.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 19th day of January, 2021.

Stikeman Elliott LLP

STIKEMAN ELLIOTT LLP
Lawyers for the Trustee

SCHEDULE "A"
LIST OF AUTHORITIES

Jurisprudence

1. *Ansdell v Crowther*, 1984 CanLII 541 (BCCA) (CanLII)
2. *Ashley v Marlow Group Private Portfolio Management Inc*, 2006 CanLII 31307 (ONSC) (CanLII)
3. *Citibank Canada v Confederation Life Insurance Co (Liquidator of)*, 1996 CanLII 8269 (Gen Div) (CanLII)
4. *Citibank Canada v Confederation Life Insurance Co (Liquidator of)*, 1998 CanLII 955 (ONCA) (CanLII)
5. *Copytrack Pte Ltd v Wall*, 2018 BCSC 1709 (CanLII)
6. *Credifinance Securities Ltd, Re*, 2011 ONCA 160 (CanLII)
7. *Eagle River International Ltd, Re*, 2001 SCC 92 (CanLII)
8. *In the Matter of the Bankruptcy of MF Global Canada Co* (27 January 2012), Toronto 31-OR-207854-T (ONSC) (Claims Process Order) (KPMG's website)
9. *Johnson v Erdman (Trustee of)*, 2006 SKQB 280 (CanLII)
10. *Nalcor Energy v Grant Thornton Poirier Ltd*, 2015 NBQB 20 (CanLII)
11. *Portus Alternative Asset Management Inc, Re*, 2007 CanLII 44814 (ONSC) (CanLII)
12. *Re Ted Leroy Trucking [Century Services] Ltd*, 2010 SCC 60 (CanLII)
13. *Saulnier (Receiver of) v Saulnier*, 2008 SCC 58 (CanLII)
14. *Semelhago v Paramadevan*, [1996] 2 SCR 415 (CanLII)
15. *Shair.Com Global Digital Services Ltd v Arnold*, 2018 BCSC 1512 (CanLII)
16. *Telemark Inc (Re)*, 2003 CanLII 29156 (SC) (CanLII)

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19. Canada Revenue Agency, Virtual Currency, (Ottawa: Canada Revenue Agency, 2019), available at https://www.canada.ca/en/revenue-agency/programs/about-canada-revenue-agency-cra/compliance/digital-currency.html

20. Canadian Securities Administrators and Investment Industry Regulatory Organization of Canada, Consultation Paper 21-402 – Proposed Framework for Crypto-Asset Trading Platforms (Canadian Securities Administrators and Investment Industry Regulatory Organization of Canada, 2019) (OSC Website)

21. Canadian Securities Administrators, Staff Notice 46-308 – Securities Law Implications for Offerings of Tokens (Canadian Securities Administrators, 2018) (OSC Website)

22. Financial Consumer Agency of Canada, Digital Currency (Ottawa: Financial Consumer Agency of Canada, 2018), available at https://www.canada.ca/en/financial-consumer-agency/services/payment/digital-currency.html

23. Janis Sarra and Louise Gullifer, "Crypto-claimants and bitcoin bankruptcy: Challenges for recognition and realization" (2019) 28 Int Insol Rev. 233 (Wiley)

24. Ontario Securities Commission, QuadrigaCX: A Review by Staff of the Ontario Securities Commission (April 14, 2020) (OSC Website)

SCHEDULE "B"
RELEVANT STATUTES

***Bankruptcy and Insolvency Act*, RSC 1985, c B-3**

Definitions

2 In this Act, […]

> **locality of a debtor** means the principal place
>
> > (a) where the debtor has carried on business during the year immediately preceding the date of the initial bankruptcy event,
> >
> > (b) where the debtor has resided during the year immediately preceding the date of the initial bankruptcy event, or
> >
> > (c) in cases not coming within paragraph (a) or (b), where the greater portion of the property of the debtor is situated

[…]

Property of bankrupt

67 (1) The property of a bankrupt divisible among his creditors shall not comprise

> (a) property held by the bankrupt in trust for any other person;
>
> (b) any property that as against the bankrupt is exempt from execution or seizure under any laws applicable in the province within which the property is situated and within which the bankrupt resides;
>
> (b.1) goods and services tax credit payments that are made in prescribed circumstances to the bankrupt and that are not property referred to in paragraph (a) or (b);
>
> (b.2) prescribed payments relating to the essential needs of an individual that are made in prescribed circumstances to the bankrupt and that are not property referred to in paragraph (a) or (b); or
>
> (b.3) without restricting the generality of paragraph (b), property in a registered retirement savings plan, a registered retirement income fund or a registered disability savings plan, as those expressions are defined in the Income Tax Act, or in any prescribed plan, other than property contributed to any such plan or fund in the 12 months before the date of bankruptcy,

but it shall comprise

> (c) all property wherever situated of the bankrupt at the date of the bankruptcy or that may be acquired by or devolve on the bankrupt before their discharge, including any

refund owing to the bankrupt under the Income Tax Act in respect of the calendar year — or the fiscal year of the bankrupt if it is different from the calendar year — in which the bankrupt became a bankrupt, except the portion that

(i) is not subject to the operation of this Act, or

(ii) in the case of a bankrupt who is the judgment debtor named in a garnishee summons served on Her Majesty under the Family Orders and Agreements Enforcement Assistance Act, is garnishable money that is payable to the bankrupt and is to be paid under the garnishee summons, and

(d) such powers in or over or in respect of the property as might have been exercised by the bankrupt for his own benefit.

[…]

Security for unpaid wages, etc. — bankruptcy

81.3 (1) The claim of a clerk, servant, travelling salesperson, labourer or worker who is owed wages, salaries, commissions or compensation by a bankrupt for services rendered during the period beginning on the day that is six months before the date of the initial bankruptcy event and ending on the date of the bankruptcy is secured, as of the date of the bankruptcy, to the extent of $2,000 — less any amount paid for those services by the trustee or by a receiver — by security on the bankrupt's current assets on the date of the bankruptcy.

[…]

Preferences

95 (1) A transfer of property made, a provision of services made, a charge on property made, a payment made, an obligation incurred or a judicial proceeding taken or suffered by an insolvent person

(a) in favour of a creditor who is dealing at arm's length with the insolvent person, or a person in trust for that creditor, with a view to giving that creditor a preference over another creditor is void as against — or, in Quebec, may not be set up against — the trustee if it is made, incurred, taken or suffered, as the case may be, during the period beginning on the day that is three months before the date of the initial bankruptcy event and ending on the date of the bankruptcy; and

(b) in favour of a creditor who is not dealing at arm's length with the insolvent person, or a person in trust for that creditor, that has the effect of giving that creditor a preference over another creditor is void as against — or, in Quebec, may not be set up against — the trustee if it is made, incurred, taken or suffered, as the case may be, during the period beginning on the day that is 12 months before the date of the initial bankruptcy event and ending on the date of the bankruptcy.

[…]

Transfer at undervalue

96 (1) On application by the trustee, a court may declare that a transfer at undervalue is void as against, or, in Quebec, may not be set up against, the trustee — or order that a party to the transfer or any other person who is privy to the transfer, or all of those persons, pay to the estate the difference between the value of the consideration received by the debtor and the value of the consideration given by the debtor — if

(a) the party was dealing at arm's length with the debtor and

(i) the transfer occurred during the period that begins on the day that is one year before the date of the initial bankruptcy event and that ends on the date of the bankruptcy,

(ii) the debtor was insolvent at the time of the transfer or was rendered insolvent by it, and

(iii) the debtor intended to defraud, defeat or delay a creditor; or

(b) the party was not dealing at arm's length with the debtor and

(i) the transfer occurred during the period that begins on the day that is one year before the date of the initial bankruptcy event and ends on the date of the bankruptcy, or

(ii) the transfer occurred during the period that begins on the day that is five years before the date of the initial bankruptcy event and ends on the day before the day on which the period referred to in subparagraph (i) begins and

(A) the debtor was insolvent at the time of the transfer or was rendered insolvent by it, or

(B) the debtor intended to defraud, defeat or delay a creditor.

[…]

Inquiry into dividends, redemption of shares or compensation

101 (1) When a corporation that is bankrupt has paid a dividend, other than a stock dividend, redeemed or purchased for cancellation any of the shares of the capital stock of the corporation or has paid termination pay, severance pay or incentive benefits or other benefits to a director, an officer or any person who manages or supervises the management of business and affairs of the corporation within the period beginning on the day that is one year before the date of the initial bankruptcy event and ending on the date of the bankruptcy, both dates included, the court may, on the application of the trustee, inquire into the transaction to ascertain whether it occurred at a time when the corporation was insolvent or whether it rendered the corporation insolvent.

[…]

Claims provable

121 (1) All debts and liabilities, present or future, to which the bankrupt is subject on the day on which the bankrupt becomes bankrupt or to which the bankrupt may become subject before the bankrupt's discharge by reason of any obligation incurred before the day on which the bankrupt becomes bankrupt shall be deemed to be claims provable in proceedings under this Act.

Contingent and unliquidated claims

121 (2) The determination whether a contingent or unliquidated claim is a provable claim and the valuation of such a claim shall be made in accordance with section 135.

[…]

Trustee shall examine proof

135 (1) The trustee shall examine every proof of claim or proof of security and the grounds therefor and may require further evidence in support of the claim or security.

Determination of provable claims

135 (1.1) The trustee shall determine whether any contingent claim or unliquidated claim is a provable claim, and, if a provable claim, the trustee shall value it, and the claim is thereafter, subject to this section, deemed a proved claim to the amount of its valuation.

Disallowance by trustee

135 (2) The trustee may disallow, in whole or in part,

(a) any claim;

(b) any right to a priority under the applicable order of priority set out in this Act; or

(c) any security.

Notice of determination or disallowance

135 (3) Where the trustee makes a determination under subsection (1.1) or, pursuant to subsection (2), disallows, in whole or in part, any claim, any right to a priority or any security, the trustee shall forthwith provide, in the prescribed manner, to the person whose claim was subject to a determination under subsection (1.1) or whose claim, right to a priority or security was disallowed under subsection (2), a notice in the prescribed form setting out the reasons for the determination or disallowance.

Determination or disallowance final and conclusive

135 (4) A determination under subsection (1.1) or a disallowance referred to in subsection (2) is final and conclusive unless, within a thirty day period after the service of the notice referred to in subsection (3) or such further time as the court may on application made within that period allow, the person to whom the notice was provided appeals from the trustee's decision to the court in accordance with the General Rules.

Expunge or reduce a proof

135 (5) The court may expunge or reduce a proof of claim or a proof of security on the application of a creditor or of the debtor if the trustee declines to interfere in the matter.

[…]

Courts vested with jurisdiction

183 (1) The following courts are invested with such jurisdiction at law and in equity as will enable them to exercise original, auxiliary and ancillary jurisdiction in bankruptcy and in other proceedings authorized by this Act during their respective terms, as they are now, or may be hereafter, held, and in vacation and in chambers:

(a) in the Province of Ontario, the Superior Court of Justice;

(b) [Repealed, 2001, c. 4, s. 33]

(c) in the Provinces of Nova Scotia and British Columbia, the Supreme Court;

(d) in the Provinces of New Brunswick and Alberta, the Court of Queen's Bench;

(e) in the Province of Prince Edward Island, the Supreme Court of the Province;

(f) in the Provinces of Manitoba and Saskatchewan, the Court of Queen's Bench;

(g) in the Province of Newfoundland and Labrador, the Trial Division of the Supreme Court; and

(h) in Yukon, the Supreme Court of Yukon, in the Northwest Territories, the Supreme Court of the Northwest Territories, and in Nunavut, the Nunavut Court of Justice.

[…]

Claims in foreign currency

215.1 A claim for a debt that is payable in a currency other than Canadian currency is to be converted to Canadian currency

(a) in the case of a proposal in respect of an insolvent person and unless otherwise provided in the proposal, if a notice of intention was filed under subsection 50.4(1), as

of the date the notice was filed or, if no notice was filed, as of the date the proposal was filed with the official receiver under subsection 62(1);

(b) in the case of a proposal in respect of a bankrupt and unless otherwise provided in the proposal, as of the date of the bankruptcy; or

(c) in the case of a bankruptcy, as of the date of the bankruptcy.

[…]

Part XII: SECURITIES FIRM BANKRUPTCIES

Definitions

253 In this Part,

customer includes

(a) a person with or for whom a securities firm deals as principal, or agent or mandatary, and who has a claim against the securities firm in respect of a security received, acquired or held by the securities firm in the ordinary course of business as a securities firm from or for a securities account of that person

(i) for safekeeping or deposit or in segregation,

(ii) with a view to sale,

(iii) to cover a completed sale,

(iv) pursuant to a purchase,

(v) to secure performance of an obligation of that person, or

(vi) for the purpose of effecting a transfer,

(b) a person who has a claim against the securities firm arising out of a sale or wrongful conversion by the securities firm of a security referred to in paragraph (a), and

(c) a person who has cash or other assets held in a securities account with the securities firm,

but does not include a person who has a claim against the securities firm for cash or securities that, by agreement or operation of law, is part of the capital of the securities firm or a claim that is subordinated to claims of creditors of the securities firm;

customer compensation body means a prescribed body and includes, unless it is prescribed to be excluded from this definition, the Canadian Investor Protection Fund;

customer name securities means securities that on the date of bankruptcy of a securities firm are held by or on behalf of the securities firm for the account of a customer and are registered or recorded in the appropriate manner in the name of the customer or are in the process of being so registered or recorded, but does not include securities registered or recorded in the appropriate manner in the name of the customer that, by endorsement or otherwise, are negotiable by the securities firm;

[…]

net equity means, with respect to the securities account or accounts of a customer, maintained in one capacity, the net dollar value of the account or accounts, equal to the amount that would be owed by a securities firm to the customer as a result of the liquidation by sale or purchase at the close of business of the securities firm on the date of bankruptcy of the securities firm, of all security positions of the customer in each securities account, other than customer name securities reclaimed by the customer, including any amount in respect of a securities transaction not settled on the date of bankruptcy but settled thereafter, less any indebtedness of the customer to the securities firm on the date of bankruptcy including any amount owing in respect of a securities transaction not settled on the date of bankruptcy but settled thereafter, plus any payment of indebtedness made with the consent of the trustee after the date of bankruptcy;

[…]

securities firm means a person who carries on the business of buying and selling securities from, to or for a customer, whether or not as a member of an exchange, as principal, or agent or mandatary, and includes any person required to be registered to enter into securities transactions with the public, but does not include a corporate entity that is not a corporation within the meaning of section 2;

security means any document, instrument or written or electronic record that is commonly known as a security, and includes, without limiting the generality of the foregoing,

(a) a document, instrument or written or electronic record evidencing a share, participation right or other right or interest in property or in an enterprise, including an equity share or stock, or a mutual fund share or unit,

(b) a document, instrument or written or electronic record evidencing indebtedness, including a note, bond, debenture, mortgage, hypothec, certificate of deposit, commercial paper or mortgage-backed instrument,

(c) a document, instrument or written or electronic record evidencing a right or interest in respect of an option, warrant or subscription, or under a commodity future, financial future, or exchange or other forward contract, or other derivative instrument, including an eligible financial contract, and

(d) such other document, instrument or written or electronic record as is prescribed.

[…]

Vesting of securities, etc., in trustee

261 (1) If a securities firm becomes bankrupt, the following securities and cash vest in the trustee:

(a) securities owned by the securities firm;

(b) securities and cash held by any person for the account of the securities firm; and

(c) securities and cash held by the securities firm for the account of a customer, other than customer name securities.

Establishment of a customer pool fund and a general fund

261 (2) Where a securities firm becomes bankrupt and property vests in a trustee under subsection (1) or under other provisions of this Act, the trustee shall establish

(a) a fund, in this Part called the "customer pool fund", including therein

(i) securities, including those obtained after the date of the bankruptcy, but excluding customer name securities and excluding eligible financial contracts to which the firm is a party, that are held by or for the account of the firm

(A) for a securities account of a customer,

(B) for an account of a person who has entered into an eligible financial contract with the firm and has deposited the securities with the firm to assure the performance of the person's obligations under the contract, or

(C) for the firm's own account,

(ii) cash, including cash obtained after the date of the bankruptcy, and including

(A) dividends, interest and other income in respect of securities referred to in subparagraph (i),

(B) proceeds of disposal of securities referred to in subparagraph (i), and

(C) proceeds of policies of insurance covering claims of customers to securities referred to in subparagraph (i),

that is held by or for the account of the firm

(D) for a securities account of a customer,

(E) for an account of a person who has entered into an eligible financial contract with the firm and has deposited the cash with the firm to assure the performance of the person's obligations under the contract, or

(F) for the firm's own securities account, and

(iii) any investments of the securities firm in its subsidiaries that are not referred to in subparagraph (i) or (ii); and

(b) a fund, in this Part called the "general fund", including therein all of the remaining vested property.

Allocation and distribution of cash and securities in customer pool fund

262 (1) Cash and securities in the customer pool fund shall be allocated in the following priority:

(a) for costs of administration referred to in paragraph 136(1)(b), to the extent that sufficient funds are not available in the general fund to pay such costs;

(b) to customers, other than deferred customers, in proportion to their net equity; and

(c) to the general fund.

IN THE MATTER OF THE BANKRUPTCY OF QUADRIGA FINTECH SOLUTIONS CORP., WHITESIDE CAPITAL CORPORATION AND 0984750 B.C. LTD. D/B/A QUADRIGA CX AND QUADRIGA COIN EXCHANGE

Court File No. & Estate No.:
CV-19-627184-00CL (31-2560674)
CV-19-627185-00CL (31-2560984)
and CV-19-627186-00CL (31-2560986)

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)
Proceeding commenced at Toronto

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