

Court File No. CV-17-11846-00CL

**SEARS CANADA INC.,
AND RELATED APPLICANTS**

EIGHTH REPORT OF FTI CONSULTING CANADA INC., AS MONITOR

December 6, 2017

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**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 OR ARRANGEMENT OF
SEARS CANADA INC., CORBEIL ÉLECTRIQUE INC., S.L.H. TRANSPORT INC., THE
CUT INC., SEARS CONTACT SERVICES INC., INITIUM LOGISTICS SERVICES INC.,
INITIUM COMMERCE LABS INC., INITIUM TRADING AND SOURCING CORP., SEARS
FLOOR COVERING CENTRES INC., 173470 CANADA INC., 2497089 ONTARIO INC.,
6988741 CANADA INC., 10011711 CANADA INC., 1592580 ONTARIO LIMITED, 955041
ALBERTA LTD., 4201531 CANADA INC., 168886 CANADA INC. AND
3339611 CANADA INC.

APPLICANTS

**EIGHTH REPORT TO THE COURT
SUBMITTED BY FTI CONSULTING CANADA INC.,
IN ITS CAPACITY AS MONITOR**

A. INTRODUCTION

1. On June 22, 2017, Sears Canada Inc. (“**Sears Canada**”) and a number of its operating subsidiaries (collectively with Sears Canada, the “**Applicants**”) sought and obtained an initial order (as amended and restated on July 13, 2017, the “**Initial Order**”), under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”). The relief granted pursuant to the Initial Order was also extended to Sears Connect LP, a partnership forming part of the operations of the Applicants (and together with the Applicants, the “**Sears Canada Entities**”). The proceedings commenced under the CCAA by the Applicants are referred to herein as the “**CCAA Proceedings**”.

2. The Initial Order, among other things:
 - (a) appointed FTI Consulting Canada Inc. as monitor of the Sears Canada Entities (the “**Monitor**”) in the CCAA Proceedings;
 - (b) granted an initial stay of proceedings against the Sears Canada Entities until July 22, 2017;
 - (c) authorized the Sears Canada Entities to enter into the DIP Credit Agreements and access funds available under the facilities provided under these agreements; and
 - (d) scheduled a comeback motion for July 13, 2017 (the “**Comeback Motion**”).
3. Following the Comeback Motion, the Court extended the stay of proceedings to October 4, 2017. In addition, the following orders were issued:
 - (a) the amended and restated Initial Order;
 - (b) an order setting out the terms of the appointment of Ursel Phillips Fellows Hopkinson LLP as representative counsel for the non-unionized active and former employees of the Sears Canada Entities (“**Employee Representative Counsel**”);
 - (c) an order setting out the terms of the appointment of Koskie Minsky LLP as representative counsel to the non-unionized retirees and non-unionized active and former employees of the Sears Canada Entities with respect to pension and post-employment benefit matters (“**Pension Representative Counsel**”);
 - (d) an order authorizing the eventual suspension of special payments under the Sears Canada Pension Plan, certain payments in connection with supplemental pension plans and certain payments under post-retirement benefit plans pursuant to a term sheet agreed to by the Ontario Superintendent of Financial Services, as Administrator of the Pension Benefits Guarantee Fund (the “**Superintendent**”),

Employee Representative Counsel, Pension Representative Counsel, each of their respective representatives, and the Sears Canada Entities; and

- (e) an order approving a sale and investor solicitation process (the “**SISP**”) to solicit interest in potential transactions, including investment and liquidation proposals, involving the business, property, assets and/or leases of the Applicants.
- 4. On October 4, 2017, the Court issued, among other orders, an order extending the stay of proceedings to November 7, 2017 and orders approving the sale of certain businesses and assets of the Applicants.
- 5. On October 13, 2017, the Court issued, among other orders, an order (a) approving an agreement and a process (the “**Second Liquidation Process**”) for the liquidation of the inventory and FF&E at all remaining Sears Canada locations (which liquidation commenced shortly thereafter and is projected to terminate by January 21, 2018); and (b) extending the stay of proceedings to January 22, 2018.
- 6. On October 27, 2017, on consent of the Applicants, the Court issued an endorsement amending the SISP to include a timeline for the Applicants to pursue transactions in respect of their remaining real property store leases (the “**October 27 Endorsement**”).
- 7. In connection with the CCAA Proceedings, the Monitor has provided seven reports and three supplemental reports (collectively, the “**Prior Reports**”), and prior to its appointment as Monitor, FTI also provided to this Court a pre-filing report of the proposed Monitor dated June 22, 2017 (the “**Pre-Filing Report**”). The Pre-Filing Report, the Prior Reports and other Court-filed documents and notices in these CCAA Proceedings are available on the Monitor’s website at cfcanada.fticonsulting.com/searscanada/ (the “**Monitor's Website**”).

B. PURPOSE

- 8. The purpose of this eighth report of the Monitor (the “**Eighth Report**”) is to provide the Court with information regarding:

- (a) the activities of the Monitor and the Sears Canada Entities since November 17, 2017, the date of the Seventh Report of the Monitor;
- (b) the Applicants' request for an order (the "**Claims Procedure Order**"), among other things:
 - (i) approving a claims process (the "**Claims Process**") for the identification, determination and adjudication of claims of creditors against the Sears Canada Entities and their current and former officers and directors;
 - (ii) authorizing, directing and empowering the Monitor to take such actions as are contemplated by the proposed Claims Procedure Order; and
 - (iii) expanding the mandates of Pension Representative Counsel and Employee Representative Counsel;
- (c) the Applicants' request for an order (the "**Omnibus Approval and Vesting Order**") authorizing the Applicants to complete sales of Residual Assets not exceeding \$5 million in any one transaction without seeking further Court approval, and vesting those Residual Assets in the applicable purchaser free and clear of the claims and encumbrances against those assets; and
- (d) the Monitor's comments and recommendations in connection with the foregoing.

C. **TERMS OF REFERENCE**

- 9. In preparing this Eighth Report, the Monitor has relied upon audited and unaudited financial information of the Sears Canada Entities, the Sears Canada Entities' books and records, certain financial information and forecasts prepared by the Sears Canada Entities and discussions and correspondence with, among others, the senior management ("**Management**") of, and advisors to, the Sears Canada Entities (collectively, the "**Information**").
- 10. Except as otherwise described in this Eighth Report:

- (a) the Monitor has not audited, reviewed or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would comply with Generally Accepted Assurance Standards pursuant to the *Chartered Professional Accountants of Canada Handbook*; and
 - (b) the Monitor has not examined or reviewed the financial forecasts or projections referred to in this Eighth Report in a manner that would comply with the procedures described in the *Chartered Professional Accountants of Canada Handbook*.
11. Future-oriented financial information reported in or relied on in preparing this Eighth Report is based on Management’s assumptions regarding future events. Actual results will vary from these forecasts and such variations may be material.
 12. The Monitor has prepared this Eighth Report in connection with the Applicants’ motions for the Claims Procedure Order and the Omnibus Approval and Vesting Order. The Eighth Report should not be relied on for any other purpose.
 13. Unless otherwise stated, all monetary amounts contained herein are expressed in Canadian Dollars.
 14. Capitalized terms not otherwise defined herein have the meanings ascribed to them in the affidavits of Mr. Billy Wong, the Chief Financial Officer of Sears Canada, sworn on June 22, 2017 and December 1, 2017, and the Prior Reports of the Monitor in these proceedings.

D. THE ACTIVITIES OF THE SEARS CANADA ENTITIES AND THE MONITOR

15. The activities of the Sears Canada Entities and the Monitor since the Monitor’s Seventh Report are summarized below.

SISP Process-Corbeil

16. On October 4, 2017, the Court issued an Order (the “**Corbeil AVO**”) approving the sale of the assets and business (the “**Corbeil Transaction**”) of Corbeil Électrique Inc. (“**Corbeil**”) to Am-Cam Électroménagers Inc. (the “**Corbeil Purchaser**”). On

November 21, 2017, the Court made an order approving the assignment of various contracts of Corbeil to the Corbeil Purchaser (the “**Corbeil Assignment Order**”).

17. The closing of the Corbeil Transaction occurred on November 25, 2017 and the Monitor filed the Monitor’s certificate in connection with the Corbeil Transaction on November 27, 2017.
18. Following the closing of the Corbeil Transaction, in accordance with the terms of the purchase agreement for the Corbeil Transaction, Corbeil changed its name to 9370-2751 Québec Inc.
19. In accordance with the Corbeil AVO, the Monitor is holding in escrow an amount of \$5 million in relation to the working capital adjustment mechanism contemplated by the Corbeil Transaction.
20. In addition, in accordance with the Corbeil Assignment Order, the Monitor has paid from the purchase price (the “**Corbeil Purchase Price**”), Cure Costs to the parties, and in the amounts, specified in a direction provided by Corbeil to the Monitor. In limited cases, discussions are taking place amongst the Monitor, Corbeil and the applicable counterparty to agree on the quantum of the Cure Costs.
21. Finally, in accordance with paragraph 8 of the Corbeil AVO, the Monitor distributed, out of the proceeds of the Corbeil Transaction, an amount sufficient to repay all remaining amounts then owing by the Applicants under the DIP Term Credit Agreement.
22. The balance of the proceeds from the Corbeil Transaction are currently being held by the Monitor.

SISP Process-SLH

23. As was the case for the Corbeil Transaction, the Court issued an Order (the “**SLH AVO**”) approving the sale of the assets and business (the “**SLH Transaction**”) of S.L.H. Transport Inc. (“**SLH**”) to 8507597 Canada Inc. (the “**SLH Purchaser**”) and an order approving the assignment of various contracts of SLH to the SLH Purchaser (the “**SLH Assignment Order**”).

24. The closing of the SLH Transaction occurred on December 4, 2017 and the Monitor filed the Monitor's certificate in connection with the SLH Transaction on the same day.
25. Following the closing of the SLH Transaction, in accordance with the terms of the purchase agreement for the SLH Transaction, SLH changed its name to 191020 Canada Inc.
26. The proceeds from the SLH Transaction are currently being held by the Monitor.

SISP Process-Leased Real Estate

27. Pursuant to the October 27 Endorsement, the Applicants were required to complete definitive documentation related to the sale, transfer or surrender of real property store leases (such documentation, "**Lease Agreements**") prior to November 30, 2017, or later if otherwise agreed to by the applicable landlord(s).
28. In addition, the Applicants were required to send a notice to all landlords whose store leases were not the subject of Lease Agreements (the "**Remaining Leases**").
29. The Applicants are still in discussions with respect to possible Lease Agreements for a limited number of leased store premises where landlords have consented to continued marketing of their leases.
30. The Applicants have advised the Monitor that they provided notices to the landlords with Remaining Leases on December 1, 2017.
31. Sears Canada continues to consider options with respect to its non-store leases, which were not the subject of the October 27 Endorsement.

SISP Process-Owned Real Estate

32. As previously reported to the Court, the Applicants have received a number of offers to purchase their various owned properties (the "**Owned Properties**").
33. On October 27, 2017, the Court issued an Order approving the sale of the Applicants' property located at 17700 Yonge Street, Newmarket, Ontario to Oxford Properties

Group. The Applicants have not sought approval of any other sale of Owned Properties to date.

34. The Monitor and the Applicants met with Employee Representative Counsel, Pension Representative Counsel, counsel to the Superintendent, counsel to Morneau Shepell (the “**Pension Administrator**”) (collectively, the “**Representative and Pension Counsel**”) and their respective financial advisors to discuss the results of the SISP with respect to Owned Properties and receive those parties’ views on the monetization of the Applicants’ remaining Owned Properties. These advisors’ clients are neither participants in the SISP nor do they hold any Property Agreements. They are also bound by non-disclosure obligations that limit the extent to which they can use, or disclose to creditors of Sears Canada, confidential information regarding the SISP, with the exception of a small subset of representatives of their respective clients.
35. At the request of Representative and Pension Counsel, the Monitor solicited listing proposals from three reputable real estate brokerage firms. Two of those firms elected to submit proposals, which the Applicants, the Monitor, Representative and Pension Counsel and their financial advisors, are considering. No decision has been made as to whether a real estate broker will be retained to assist with the monetization of the Owned Properties.
36. Finally, the Applicants have commissioned and obtained Phase II environmental studies in respect of the majority of their Owned Properties, and the Monitor is aware that Phase III environmental reports may be required for three of those properties.
37. The Applicants, with the assistance of their advisors and the Monitor, and with input from Representative and Pension Counsel continue to assess the various options available to the Applicants to maximize value from the Owned Properties for the benefit of the Applicants’ estate as a whole.

DIP Facilities

38. As previously reported in the Seventh Report, the obligations of the Applicants under the DIP ABL Credit Agreement have been repaid in full and outstanding letters of credit have been cash collateralized.
39. Remaining obligations under the DIP Term Credit Agreement have been repaid in full following the closing of the Corbeil Transaction.

Suppliers, Landlords

40. As part of the overall liquidation of the Applicants' retail business, the Applicants are continuing their review of the various agreements to which they are a party and identifying those agreements that can be disclaimed. These agreements include leases of real and personal property, information technology agreements, licence agreements, concession agreements and dealer agreements, amongst others.
41. The Applicants, with the assistance of the Monitor, continue to work with a number of vendors and landlords to reconcile amounts owing to those parties for the post-filing period. The Monitor believes that the Applicants are working in good faith and with diligence to address questions and issues as they arise and the Monitor and counsel continue to assist the Applicants in this respect.

Employee Matters

42. As at the date of this Eighth Report, the Monitor has received 37 applications for assistance from the Employee Hardship Fund, of which 24 have been approved. So far, approximately \$50,000 has been paid out the Employee Hardship Fund.
43. As set out in the Seventh Report, Employee Representative Counsel was seeking a meeting with the applicable government ministries to obtain clarity on certain technical and administrative issues that may assist in expediting availability of payments under the Wage Earner Protection Program. That meeting, which the Monitor will participate in, has now been scheduled for December 15, 2017.

Pension Matters

44. In the Seventh Report, the Monitor reported that¹:

“On October 17, 2017, the Superintendent announced that Morneau Shepell would be appointed administrator of the Sears Canada Inc. Registered Retirement Plan (the “**Sears Canada Pension Plan**”) effective immediately.

On November 10, 2017, pursuant to section 89(5) of the *Pension Benefits Act* (Ontario), the Superintendent issued a notice that he intended to make an order under Section 69 of the *Pension Benefits Act* (Ontario) to, among other things, wind-up the Sears Canada Pension Plan effective October 1, 2017. A copy of the notice received from the Superintendent is attached hereto as Appendix “A”.

If the above described wind-up order is made, this will render the motion by Pension and Retiree Representative Counsel, also seeking a wind up of the Sears Canada Pension Plan, unnecessary.”

and attached a copy of the notice from Superintendent (the “**Pension Notice**”), which is attached again to this Eighth Report as **Appendix “A”**.

45. The Pension Notice was also transmitted by the Pension Administrator to the parties on the Service List on November 13, 2017.
46. The Pension Notice provides that the Superintendent will make an order for the wind up of the Sears Canada Pension Plan, effective October 1, 2017, unless the Pension Administrator or Sears Canada requests a hearing with the Financial Services Tribunal within 30 days of the date the Pension Notice was served on them. Sears Canada has advised that it received the Pension Notice on November 14, 2017. Sears Canada’s counsel has advised the Monitor that the last date on which Sears Canada is entitled to request a hearing with the Financial Services Tribunal is December 14, 2017 (the “**Request Deadline**”).
47. Pension Representative Counsel has advised the Monitor that he will withdraw his motion seeking a wind up of the Sears Canada Pension Plan should the Request Deadline expire without any request for a hearing having been made. The Monitor is not aware of any request for a hearing having been made at this point.

¹ Extract from the Seventh Report, paragraphs 33 to 35, inclusive.

Other Activities of the Monitor

48. The Monitor has also undertaken the following activities:
- (a) monitored the Sears Canada Entities' receipts and disbursements;
 - (b) maintained the current Service List for the CCAA Proceedings and posted regular updates of the Service List to the Monitor's Website;
 - (c) with the assistance of the Applicants where appropriate, responded to stakeholders who have contacted the Monitor directly or via the Monitor's hotline or email address;
 - (d) supervised and assisted in activities related to the SISP, and worked with the Special Committee and advisors to ensure that the SISP was conducted in a manner consistent with standards expected of similar processes under the CCAA;
 - (e) provided SISP-related information to counsel and advisors to the Representative and Pension Counsel;
 - (f) worked with Employee Representative Counsel, Pension Representative Counsel and their advisors to respond to questions and provide information to their respective constituents;
 - (g) worked with the Sears Canada Entities to ensure appropriate accounting for pre-filing and post-filing obligations;
 - (h) planned and worked with the Sears Canada Entities to facilitate an orderly wind-down of their operations;
 - (i) monitored the original Liquidation Process and the Second Liquidation Process;
 - (j) continued to operate and monitor its telephone hotline and email account for stakeholder inquiries; and

- (k) worked with the Sears Canada Entities and various stakeholders to develop the Claims Process, as described in further detail below.

E. CLAIMS PROCEDURE ORDER

Overview

- 49. The draft Claims Procedure Order was included in the Applicants' motion record for the Claims Procedure Order (the "**CPO Motion Record**") served on the Service List on the morning of December 2, 2017. Since the CPO Motion Record was served, the Monitor and the Applicants have received input from several stakeholders and as a result, changes are being made to the draft Claims Procedure Order. The comments in this Section of the Eight Report reflect the Claims Procedure Order, as amended by those discussions to date. The Monitor understands that the amended Claims Procedure Order will be served on the Service List in advance of the return of the Applicants' CPO Motion.
- 50. Capitalized terms used but not defined in this section have the meanings ascribed to them in the Claims Procedure Order. In the event of any inconsistency between this Eighth Report and the terms of the Claims Procedure Order, as ultimately granted by the Court, the terms of the Claims Procedure Order as so granted will govern.
- 51. The Claims Procedure Order addresses the identification, determination and adjudication of all claims against the Applicants and the Directors and Officers, subject to limited exceptions, most notably with respect to the Claims of Employees and Pensioners.
- 52. In addition, the Claims Procedure Order proposes to expand the scope of the mandate of each of the Employee Representative Counsel and Pension Representative Counsel in order to allow them to work with the Monitor, the Sears Canada Entities and the Pension Administrator to craft a process by which the claims of any type of Employees and Pensioners can be most fairly and efficiently identified, determined and adjudicated. The Sears Canada Entities anticipate bringing a further motion before this Court to request approval of separate processes for such claims early in the new year.

53. In developing the Claims Procedure Order and since service of the CPO Motion Record, the Sears Canada Entities and the Monitor received input from:

- (a) counsel to the Board of Directors of Sears Canada;
- (b) Representative and Pension Counsel and their respective financial advisors;
- (c) counsel to certain landlords; and
- (d) counsel to certain Construction Claimants.

54. A summary of the key dates in the Claims Procedure Order are set out below:

Date	Event
December 8, 2017	Hearing of motion seeking Claims Procedure Order
December 13, 2017	The Monitor to post the Notice to General Creditor Claimants, the Employee Letter, the Other Employee Letter, the Pensioner Letter and the General Creditor Claims Package to the Monitor's Website. The Monitor intends to commence the publication of the Notice to General Creditor Claimants in certain designated newspapers in Canada.
December 20, 2017	The Monitor to: <ul style="list-style-type: none"> • send General Creditor Claims Packages to parties specified in Claims Procedure Order; • send a Construction Claims Package to all Construction Contractors; • send the Other Employee Letter to Employees not represented by the Employee Representative Counsel or, where the Employees are subject to union representation, to unions representing the unionized Employees; and • send the Employee Letter, in consultation with Employee Representative Counsel, to all Employees represented by Employee Representative Counsel.
December 20, 2017	Pension Representative Counsel to send Pensioner Letter to all Pensioners and post Pensioner Letter on Pension Representative Counsel's Website
December 20, 2017	Pension Plan Administrator to post Pensioner Letter to Pension Plan Administrator Website
December 20, 2017	Employee Representative Counsel to post Employee Letter on Employee Representative Counsel's Website
December 20, 2017	Applicants to post the Employee Letter, the Other Employee Letter and the Pensioner Letter to the my.sears.ca portal
February 15, 2018	Deadline for Construction Contractors to submit Notices of Dispute of Construction Claim

Date	Event
March 2, 2018	General Creditor Claims Bar Date Monitor to serve Monitor's Intercompany Claims Report
March 2, 2018 or Rolling	General Creditor Restructuring Period Claims Bar Date
April 2, 2018	General Creditor Post-Filing Claims Bar Date
In Monitor's discretion	Monitor to send Notices of Revision or Disallowance to General Creditor Claimants
30 days after Monitor sends Notice of Revision or Disallowance	Deadline for General Creditor Claimants to submit Notices of Dispute of Revision or Disallowance

Claims

55. The Claims Procedure Order proposes that the Monitor, on behalf of the Sears Canada Entities and the Directors and Officers (including current and former directors and officers), solicit the following Claims:

- (a) *Pre-Filing Claims*: any right or claim of any Person against any of the Sears Canada Entities in connection with any indebtedness, liability or obligation of any kind whatsoever of any such Sears Canada Entities that was in existence on June 22, 2017 (the “**Filing Date**”);
- (b) *Post-Filing Claims*: any right or claim of any Person against any one or more of the Sears Canada Entities in connection with any non-payment for goods or services supplied on or after the Filing Date. Solicitation of these claims is intended to assist the Monitor and the Sears Canada Entities in identifying creditors who may not have been paid for the merchandise or services they delivered to the Applicants following the Filing Date;
- (c) *Restructuring Period Claims*: any right or claim of any Person arising after the Filing Date, including as a result of the restructuring, disclaimer, resiliation, termination or breach by any Sears Canada Entity on or after the Filing Date of any contract, lease or other agreement whether written or oral (but excluding any Post-Filing Claims);

- (d) *D&O Claims*: any right or claim of any Person against one or more of the Directors and/or Officers, howsoever arising, for which such Directors and/or Officers are alleged to be by law or equity, liable to pay in their capacity as Directors or Officers;
- (e) *Intercompany Claims*: any Claim that may be filed by any of the Sears Canada Entities or any of their affiliated companies, partnerships or other corporate entities against any other of them (but excluding any Claim asserted against the Sears Canada Entities by Sears Holdings Corporation or any of its affiliated companies that are not Sears Canada Entities); and
- (f) *Construction Claims*: any Claims (i) asserted under the trust provisions of applicable provincial builders' lien or construction lien legislation or asserted under any holdback under such legislation, or (ii) that are secured in whole or in part by the registration of a construction lien under such legislation against any real property that was or is owned or leased by any of the Sears Canada Entities, or secured in whole or in part by any security held in connection with a Vacated or Discharged Lien.

Excluded Claims

- 56. The Claims Procedure Order provides that the solicitation, determination and adjudication of any Claims (including D&O Claims) of Employees and Pensioners against any of the Sears Canada Entities and/or their Directors and Officers will be subject to separate claims processes (the “**Employee Claims Process**” and the “**Pensioner Claims Process**”, respectively), as described further below. The Applicants and Monitor anticipate coming back to Court shortly for an order establishing the Employee Claims Process and the Pensioner Claims Process.
- 57. Other excluded Claims include Claims of beneficiaries of the Administration Charge, the FA Charge, the KERP Priority Charge, the Directors' Priority Charge; the KERP Subordinated Charge, the Directors' Subordinated Charge and any other charge established by the Court in these CCAA Proceedings with respect to such charges.

58. In addition, Claims in respect of customer Warranties of the Sears Canada Entities will also not have to be filed as a part of the Claims Process. Instead, the Claims Procedure Order will deem Proofs of Claim in respect of those Claims to have been properly submitted. The Monitor is of the view that sending Claims Packages to all Warranty holders and requiring them to file Proofs of Claim when the Applicants already maintain detailed records of Warranties would result in an uneconomic and inefficient process. As such, the Monitor believes that it is appropriate that such Proofs of Claim be deemed to be filed.

Claims Bar Dates

59. The Sears Canada Entities propose that any Claimant asserting a:
- (a) *Pre-Filing Claim or D&O Claim in respect of the Pre-Filing Period*, be required to file a Proof of Claim or D&O Proof of Claim, as applicable, with the Monitor prior to 5:00 p.m. (Toronto time) on March 2, 2018 (the “**General Creditor Claims Bar Date**”). Given the significant size and operating history of the Sears Canada Entities’ business and the upcoming holiday season, the Monitor believes that it is appropriate that the General Creditor Claims Bar Date be set in March. The Monitor believes that doing so will provide sufficient time for General Creditor Claimants to evaluate and submit their Claims;
 - (b) *Restructuring Period Claim or D&O Claim relating to the Restructuring Period*, be required to file a Proof of Claim or D&O Proof of Claim, as applicable, with the Monitor prior to the later of (i) 45 days after the date on which the Monitor sends a General Creditor Claims Package with respect to a Restructuring Claim, and (ii) the General Creditor Claims Bar Date. The Monitor believes that a 45 day period is reasonable in that it provides sufficient time from the date a General Creditor Claims Package is sent to a Claimant to evaluate and submit any Claim they may have against the Sears Canada Entities in respect of a Restructuring Period Claim or D&O Claim in respect of the Restructuring Period; and

- (c) *Post-Filing Claim* (which are for non-payment of goods or services supplied to the Sears Canada Entities after the Filing Date), be required to file a Proof of Claim with the Monitor prior to 5:00 p.m. (Toronto time) on April 2, 2018. As this deadline is approximately two months from the conclusion of the Second Liquidation Process and the anticipated shutdown of all of the Sears Canada Entities' retail operations, the Monitor believes it should give potential Claimants sufficient time to evaluate and submit any Post-Filing Claim they may have.
60. The Claims Procedure Order contemplates that any General Creditor Claimant (which term does not include, among others, Employees, Pensioners or any Persons asserting a Claim under a Warranty) who fails to file a Proof of Claim or D&O Proof of Claim by the applicable bar date shall be forever barred, without further act or notification, from making or enforcing any such Claim as against any of the Sears Canada Entities or the Directors and Officers, as applicable, and all such Claims shall be forever extinguished.
61. The Monitor and the Sears Canada Entities have established the claims bar dates by balancing the requirement to provide a reasonable period of time for Claimants to file their proofs of claim with the need to contain the length and the costs of the Claims Process. The bar dates are also reflective of the fact that the Monitor will require personnel from the Applicants in order to review and assess the Claims as well as various information technology systems, the significant ongoing costs of which are borne by the Applicants.

Notice

62. The proposed Claims Procedure Order provides that the following steps would be taken to publicize and give notice of the Claims Process:
- (a) by no later than 5:00 p.m. (Toronto time) on December 13, 2017, the Monitor shall post a copy of the Notice to General Creditor Claimants, the Employee Letter, the Other Employee Letter (for that small number of Employees not

represented by Employee Representative Counsel), the Pensioner Letter, and the General Creditor Claims Package to the Monitor's Website;

- (b) the Monitor shall publish the Notice to General Creditor Claimants at least three times in *The Globe and Mail* (National Edition), *La Presse*, and in such international publications and with such frequency as is determined by the Monitor in consultation with the Sears Canada Entities. The Monitor currently anticipates publishing the notice in Canada in the weeks of December 11 and 20, and in January, and in the United States and internationally early in the new year;
- (c) by no later than 5:00 p.m. (Toronto time) on December 20, 2017, the Monitor shall cause the General Creditor Claimant package to be sent to (i) each party that appears on the Service List or who has requested a General Creditor Claims Package; and (ii) all known General Creditor Claimants with a potential Claim, at their last known address recorded in the Sears Canada Entities' books and records;
- (d) by no later than 5:00 p.m. (Toronto time) on December 20, 2017, the Monitor shall cause (i) the Employee Letter to be sent to all Employees represented by Employee Representative Counsel; and (ii) the Other Employee Letter to be sent to (A) all Employees not represented by Employee Representative Counsel and (B) to the relevant union for unionized Employees, in each case advising such Employees that any Claims they may have (including D&O Claims) will be addressed in the separate Employee Claims Process;
- (e) by no later than 5:00 p.m. (Toronto time) on December 20, 2017, Pension Representative Counsel shall cause the Pensioner Letter to be sent to all Pensioners advising such Pensioners that any Claims they may have (including D&O Claims) will be addressed in the Pensioner Claims Process; and
- (f) by no later than 5:00 pm on December 20, 2017, (i) Employee Representative Counsel shall post a copy of the Employee Letter on its website, (ii) Pension

Representative Counsel and the Pension Administrator shall post a copy of the Pensioner Letter on their respective websites, and (iii) the Applicants shall post copies of the Employee Letter, Pensioner Letter and Other Employee Letter to the my.sears.ca portal maintained for active and former employees.

63. As a part of the notice process under the Claims Procedure Order, the Notice to General Creditor Claimants will also advise holders of gift cards and Sears Loyalty Points that such points and cards will no longer be honoured by Sears Canada Entities after January 21, 2018 and the holders will not have a provable claim under the Claims Process.

Adjudication of Claims

64. The Monitor, in consultation with the Sears Canada Entities, will review all Proofs of Claim received on or before the applicable bar date and will be responsible for accepting, revising or rejecting Claims. The Monitor, in consultation with the Sears Canada Entities, the Directors and Officers named in respect of such D&O Claim, and such Directors' and/or Officers' counsel, will also review all D&O Proofs of Claim received by the applicable bar date, and following such consultation and with the consent of the applicable Directors and Officers or further order of the Court, the Monitor will accept, revise or reject such D&O Claims.
65. If the Monitor intends to revise or reject a Claim, the Monitor will notify the Claimant by sending a Notice of Revision or Disallowance setting out the reasons therefor.
66. Any General Creditor Claimant who intends to dispute a Notice of Revision or Disallowance must send written notice to the Monitor by completing a Notice of Dispute of Revision or Disallowance that must be received by the Monitor within 30 days after the date on which the General Creditor Claimant receives the Notice of Revision or Disallowance. In the event a dispute raised in a Notice of Dispute of Revision or Disallowance is not settled within a time period or in a manner satisfactory to the Monitor, in consultation with the Sears Canada Entities (or the applicable Directors and Officers in respect of a D&O Claim), the Monitor, at its

election, shall refer the dispute raised in the Notice of Dispute of Revision or Disallowance to a Claims Officer or the Court.

67. Any General Creditor Claimant who receives a Notice of Revision or Disallowance and does not file a completed Notice of Dispute of Revision or Disallowance with the Monitor by the applicable deadline shall be deemed to have accepted the amount and determination as set out in the Notice of Revision or Disallowance and such General Creditor Claimant shall have no further right to dispute same.

Notification and Adjudication of Construction Claims

68. The Claims Procedure Order contemplates a specific process for the identification, determination and adjudication of Construction Claims. Construction Claims include all:
- (a) Claims under the trust provisions of applicable Provincial Lien Legislation and against the holdback under such legislation;
 - (b) Claims secured in whole or in part by the registration of a builder's lien or construction lien under the applicable Provincial Lien Legislation against any real property that has been or is owned or leased by any of the Sears Canada Entities; and
 - (c) Claims secured in whole or in part by any security held in consideration for the vacating of a builders' lien or construction lien against such real property.
69. Various potential Construction Claimants have already asserted such Construction Claims against the Sears Canada Entities by registering liens under applicable Provincial Lien Legislation and in some cases by alleging trust claims.
70. The Applicants, in conjunction with the Monitor, have completed significant work in reviewing Construction Claims. In many cases, the Applicants have obtained orders and negotiated agreements pursuant to which claims for lien have been vacated or discharged in exchange for either the Monitor or a court holding amounts equal to the

liened amounts and costs, as security or in escrow, pending final determination of such claims.

71. As a result, the Claims Procedure Order contemplates that the Monitor will send Notices of Construction Claim to all known Construction Claimants who are Construction Contractors, advising them of the quantum and validity of their Construction Claim, as valued by the Sears Canada Entities based on their books and records, and in consultation with the Monitor.
72. Under the Claims Procedure Order, the Construction Claim of a Construction Contractor in relation to a given improvement is deemed to include the Construction Claims of not only the Construction Contractor itself (being any Construction Claimant contracting with the Sears Canada Entities in connection with the improvement directly) but also the Construction Claims of any and all Construction Sub-Contractors (each, a “**Connected Sub-Contractor**”) who provided materials and/or services in connection with the improvement under an agreement or engagement with the Construction Contractor, or any other Construction Sub-Contractor at any level.
73. After receiving a Notice of Construction Claim, Construction Contractors will have until February 15, 2018 (the “**Construction Claims Bar Date**”) to dispute the amount set out in the Notice of Construction Claim by filing a Notice of Dispute of Construction Claim for themselves and on behalf on each Connected Sub-Contractor. Any trust claim asserted under the trust provisions of applicable Provincial Lien Legislation and alleged to form a part of the Construction Claim at issue would also have to be asserted through such form. No Connected Sub-Contractor would be required to submit any separate Notice of Dispute of Construction Claim in respect of its Construction Claim.
74. If a Construction Contractor does not deliver to the Monitor a completed Notice of Dispute of Construction Claim by the Construction Claims Bar Date, then all Construction Claimants, including any Connected Sub-Contractors, associated with

the Construction Contractor's Notice of Construction Claim shall be deemed to have accepted the Construction Contractor's Construction Claim as set out therein.

75. To ensure that Construction Contractors and Construction-Subcontractors are aware of their responsibilities and role in this respect, the Claims Procedure Order also provides that each Construction Contractor will receive a Construction Contractor Instruction Letter, that will, among other things, direct them to send a copy of the Notice of Construction Claim and Construction Sub-Contractor Instruction Letter to each Connected Subcontractor.
76. The Construction Sub-Contractor Instruction Letter, for its part, will (a) advise Construction Sub-Contractors (a) that all Construction Claims in respect of their goods or services as Construction Subcontractors in respect of a given improvement shall be included in the Construction Claim of the relevant Construction Contractor; and (b) direct such Construction Sub-Contractors to contact the Construction Contractor directly to determine and negotiate any rights they may have with respect to their Construction Contractor's Construction Claim. The Construction Sub-Contractor Instruction Letter will also advise them to send a copy of the same Construction Sub-Contractor Instruction Letter and Notice of Construction Claim to all Construction Sub-Contractors with whom they have a direct contractual relationship in connection with the relevant improvement.
77. The Monitor believes that this approach to the notification and administration of the Construction Claims of Construction Sub-Contractors is reasonable in the circumstances given that:
 - (a) the liens filed by Construction Contractors should include any claims of Connected Sub-Contractors. As such, the proposed process will avoid duplication; and
 - (b) the Construction Contractors are in the best position to work with their respective sub-contractors (who in turn can work with their own sub-contractors) to determine the appropriate amount of their Construction Claims

since, unless Connected Sub-Contractors have registered a claim for lien and given notice of same to the Sears Canada Entities, they will not be known to the Sears Canada Entities.

Claims Officers and Adjudication of Claims in Dispute

78. The Claims Procedure Order contemplates that the Monitor may refer disputed Claims to a Claims Officer for resolution. The decision of the Claims Officer would be binding on all parties, subject to appeal rights to the Court.
79. The Claims Procedure Order also contemplates that the Monitor may seek the Court's referral of any disputed Construction Claims to a Construction Lien Master, who would be appointed as a Claims Officer in the Claims Process.
80. The Claims Officer will review and determine the validity and amount of disputed Claims in accordance with the terms of the Claims Procedure Order and determine all procedural matters that may arise in respect of their determination of these issues, including the manner in which any evidence would be adduced.
81. Once a decision is rendered in respect of a given disputed Claim, the Monitor, the relevant General Creditor Claimant or Construction Contractor (as applicable), the Sears Canada Entities and the applicable Officers and Directors would each have 10 days to appeal the decision to the Court, failing which the decision of the Claims Officer will be binding on all parties.
82. Claims are frequently referred to Claims Officers in CCAA proceedings to expedite the resolution of disputed Claims in a timely, efficient and cost-effective manner. This is of particular importance in this case given the number of potential Claimants involved.

Identification of Intercompany Claims

83. To address Intercompany Claims, the Monitor will prepare a report, detailing its review of all Intercompany Claims and assessing the validity and quantum of such Claims (the "**Monitor's Intercompany Claims Report**").

84. The Monitor's Intercompany Claims Report would be served on the Service List on or before March 2, 2018, unless otherwise ordered by the Court, and will include a recommendation with respect to the next steps, if any, to be taken with respect to the determination and adjudication of Intercompany Claims. Nothing in the Monitor's Intercompany Claims Report would bind the Court in any determination of the validity, quantum and priority, among other aspects, of such Intercompany Claims.

Claims of Employees and Pensioners

85. As indicated above, any and all Claims (including D&O Claims) of Employees and Pensioners are excluded from this current Claims Process and Employee Claimants and Pensioner Claimants are not required to submit any proofs of claim to the Monitor thereunder.
86. The Sears Canada Entities and the Monitor are working with Employee Representative Counsel, Pension Representative Counsel, the Pension Administrator, the Superintendent, and their respective advisors to develop the Employee Claims Process and Pensioner Claims Process.
87. In view of the upcoming Employee Claims Process and Pensioner Claims Process, the Claims Procedure Order provides for the expansion of the mandates of Employee Representative Counsel and Pension Representative Counsel. In the case of Employee Representative Counsel, this includes the expansion of the scope of its mandate to include Employees who have been hired by the Sears Canada Entities since the Filing Date, subject to these Employees' ability to opt-out.

Conclusion

88. In the Monitor's view, the proposed Claims Process appropriately balances competing views and is fair and appropriate in light of the anticipated nature and volume of Claims to be advanced against the Sears Canada Entities and the Directors and Officers. In particular,

- (a) the Claims Procedure Order takes into account the stakeholders' desire for efficiency in bringing these CCAA Proceedings to their conclusion. The Monitor believes that the Claims Process will facilitate the determination of Claims against the Sears Canada Entities and/or their Directors and Officers in a fair, efficient and expeditious manner;
- (b) the proposed Claims Process contemplates direct notification and publication of notice to potential claimants in widely distributed domestic and international newspapers on numerous occasions;
- (c) the proposed Claims Process contemplates that certain Claims are deemed to have been filed and certain Claimants do not have to file proofs of claims, which the Monitor believes is appropriate in this case given the quantum of these claims and the information that the Applicants have in their possession regarding such claims;
- (d) proposed claims bar dates are reasonable in the circumstances, provide ample amounts of time for potential Claimants to evaluate and prove their claims, and are consistent with the availability of Sears Canada personnel and information technology resources that will be required by the Monitor in order to review and reconcile the Claims;
- (e) with the Second Liquidation Process having commenced, it is appropriate for the Sears Canada Entities to implement this Claims Process so that these CCAA Proceedings can move ahead to their conclusion on a timely basis;
- (f) the proposed Claims Process has been developed by the Sears Canada Entities and the Monitor with input from various stakeholders, including Representative and Pension Counsel;
- (g) the proposed mechanisms for review, dispute and resolution of the Claims of General Creditor Claimants are consistent with those used in CCAA proceedings generally; and

(h) the proposed approach to the notification, dispute and resolution of Construction Claims will ensure that Construction Claims of Construction Contractors and Connected Sub-Contractors are dealt with without duplication. Construction Contractors will be in the best position to reach out to Connected Sub-Contractors in order to determine the quantum of each of their respective Construction Claims which will, in most cases, not be known to the Sears Canada Entities, or be capable of being determined without the involvement of Construction Contractors in any case.

89. For the reasons set out above, the Monitor supports the Applicants' motion for the Claim Procedure Order and recommends that it be granted.

F. OMNIBUS APPROVAL AND VESTING ORDER

90. Given the approaching wind-down of their operations, the Applicants, with the assistance of the Monitor, have prepared a protocol to monetize sundry assets (the "**Residual Assets**") that the Applicants continue to own for the benefit of the estate. The Residual Assets do not include the inventory and FF&E subject to the Second Liquidation Process nor the Applicants' leased and owned properties.

91. The Residual Assets are primarily comprised of office furniture and equipment, photo studio equipment, technology and media equipment, food service equipment, miscellaneous smaller business lines as well as various intellectual property.

92. The Applicants and the Monitor are proposing that the Residual Assets be marketed and sold pursuant to a Residual Asset sale protocol (the "**Protocol**") that, in the Monitor's view, strikes a balance between cost and time efficiency and value maximization.

93. The Protocol is described in detail in the Applicants' motion materials in connection with this motion and those details are not repeated here. The Protocol contemplates that the Monitor will supervise the implementation of the Protocol and the negotiation of sale documentation in respect of Residual Assets. The Protocol also provides that the Applicants must obtain the Monitor's and, where appropriate, the Special

Committee's consent before entering into any transaction in respect of Residual Assets.

94. In connection with the Protocol, the Applicants are seeking the Omnibus Approval and Vesting Order which contemplates, amongst other things:
- (a) that the Applicants shall be authorized to dispose of Residual Assets not exceeding \$5 million in any one transaction without seeking further Court approval;
 - (b) a mechanism whereby the Monitor will notify the Service List and additional parties, if any, with an interest in the Residual Assets being sold, of the proposed transaction, and provide an opportunity for such persons to object to the proposed transaction; and
 - (c) that upon the filing of a Monitor's certificate in connection with the proposed transaction, the Residual Assets will vest in the purchaser free and clear of all claims and encumbrances, and that such claims will attach to the proceeds of the transaction in the same priority they had against the Residual Assets.
95. The Monitor is of the view that the Omnibus Approval and Vesting Order will assist the Applicants in negotiating and completing value-maximizing transactions for relatively *de minimus* Residual Assets while providing comfort to purchasers that the transactions do not require further Court approval and that the purchased assets will be sold free from claims and encumbrances. The Omnibus Approval and Vesting Order will also protect the interests of stakeholders, who will have an opportunity to consider any sale approved under this process, and will ensure that any objections of stakeholders are resolved prior to the completion of any such sales.
96. As such, the Monitor supports the Applicants' request for the Omnibus Approval and Vesting Order.

G. RECOMMENDATION

The Monitor supports the relief sought by the Applicants and recommends that the Claims Procedure Order and Omnibus Approval and Vesting Order be made.

The Monitor respectfully submits to the Court this, its Eighth Report.

Dated this 6th day of December, 2017.

FTI Consulting Canada Inc.
In its capacity as Monitor of
the Sears Canada Entities



Paul Bishop
Senior Managing Director



Greg Watson
Senior Managing Director

APPENDIX “A”

(see attached)



IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990,
c. P.8, as amended (the "*PBA*");

AND IN THE MATTER OF a Notice of Intended Decision of the
Superintendent of Financial Services to Make an Order under section 69
of the *PBA* relating to the Sears Canada Inc. Registered Retirement Plan,
Registration Number 0360065.

NOTICE OF INTENDED DECISION

TO: **Morneau Shepell Ltd.**
895 Don Mills Road
Tower One, Suite 700
Toronto ON M3C 1W3

Attention: Al Kiel
Managing Partner

Administrator

AND TO: **Sears Canada Inc.**
700-290 Yonge Street,
Toronto ON M5B 2C3

Attention: Bev Church
Senior Director, Treasury

Employer

I INTEND TO MAKE AN ORDER in respect of the Sears Canada Inc. Registered
Retirement Plan, Registration Number 0360065, (the "Plan") under section 69 of the
PBA.

Si vous désirez recevoir cet avis en français, veuillez envoyer votre demande
immédiatement à: Adjointe, audiences, Greffe, Commission des services financiers de
l'Ontario, 5160 rue Yonge, boîte 85, Toronto ON M2N 6L9.

YOU ARE ENTITLED TO A HEARING by the Financial Services Tribunal (the

“Tribunal”) pursuant to section 89(6) of the *PBA*. **A hearing before the Tribunal about this Notice of Intended Decision may be requested by completing the enclosed Request for Hearing (Form 1) and submitting it to the Tribunal within 30 days after this Notice of Intended Decision is served on you.¹ A copy of that form is included with this Notice of Intended Decision.** Additional copies can be obtained by visiting the Tribunal's website at www.fstontario.ca.

IF A REQUEST FOR HEARING (Form 1) is submitted to the Tribunal within 30 days after this Notice of Intended Decision is served on you, sections 89(8) and 89(9) of the *PBA* provide that the Tribunal shall appoint a time for and hold a hearing, and by order may direct the Superintendent of Financial Services (the “Superintendent”) to make or refrain from making the intended decision indicated in this notice and to take such action as the Tribunal considers the Superintendent ought to take in accordance with the *PBA* and the regulations, and for such purposes, the Tribunal may substitute its opinion for that of the Superintendent.

IF NO WRITTEN REQUEST FOR A HEARING IS MADE within 30 days after this Notice is served on you, TAKE NOTICE THAT the Superintendent will order the following:

- 1) The wind up of the Plan effective October 1, 2017, such wind up to include all members of the Plan whose employment was terminated on or after June 13, 2017, pursuant to section 69(1)(b) of the *PBA*; and
- 2) That contributions towards the defined contribution component of the Plan continue until all or substantially all of the members of the Plan cease employment with Sears, despite the wind up of the Plan.

A COMPLETED REQUEST FOR HEARING form must be received by the Tribunal within 30 days after this Notice is served on you. It may be mailed, faxed, or delivered to:

Financial Services Tribunal
5160 Yonge Street, 14th Floor
Toronto ON M2N 6L9

Attention: The Registrar

Fax: 416-226-7750

THE HEARING BEFORE THE TRIBUNAL will proceed in accordance with the Rules of Practice and Procedure for Proceedings before the Financial Services Tribunal made under the authority of the *Statutory Powers Procedure Act*, R.S.O. 1990, c. S.22, as amended. Those Rules are available at the website of the Tribunal: www.fstontario.ca. Alternatively, a copy can be obtained by telephoning the Registrar of the Tribunal at 416-590-7294, or toll free at 1-800-668-0128 ext. 7294.

¹ NOTE - Pursuant to section 112 of the *PBA* any Notice, Order or other document is sufficiently given, served or delivered if delivered personally or sent by regular mail and any document sent by regular mail shall be deemed to be given, served or delivered on the fifth day after the date of mailing.

REASONS FOR DECISION

I INTEND TO MAKE THE ORDER for the following reasons:

1. Sears Canada Inc. and its affiliated companies ("Sears") is the employer under the Plan. Until October 16, 2017, Sears was the administrator of the Plan.
2. The Plan is a single employer, multi-jurisdictional, hybrid pension plan.
3. The Plan was established on January 1, 1971, as a defined benefit ("DB") pension plan.
4. On July 1, 2008, all members of the Plan had their DB service frozen, although the DB entitlement at termination or retirement would continue to reflect any earning increases after July 1, 2008.
5. For service on or after July 1, 2008, pension benefits for all members accrued under the defined contribution ("DC") component of the Plan.
6. The latest filed actuarial report for the Plan as at December 31, 2015 (the "2015 Actuarial Report") indicated that the DB component of the Plan was underfunded by \$267 million on a wind up basis, with a solvency ratio of 0.85 and a transfer ratio of 0.81.
7. On June 13, 2017, Sears released its first quarter financial statements, reporting substantial decline in revenue compared to the previous year and a net loss of \$144.4 million for the quarter. On June 13, 2017, Sears issued a press release indicating that the conditions facing the company "raise significant doubt as to the Company's ability to continue as a going concern." This press release was widely reported on, including by the *Globe and Mail* and the *Toronto Star*.
8. On June 22, 2017, Sears was granted an order under the *Companies' Creditors Arrangement Act* ("CCAA").
9. On July 13, 2017, Justice Hainey of the Ontario Superior Court of Justice made an order suspending the obligation for Sears to make special payments to the Plan effective on and after October 1, 2017 (the "Special Payment Suspension Order").
10. Prior to September 30, 2017, Sears was making special payments of approximately \$3.7 million per month.
11. On September 30, 2017, Sears remitted the final special payment to the Plan.
12. On October 13, 2017, Justice Hainey issued an order approving a liquidation sale in respect of Sears (the "Liquidation Sale Approval Order").

13. The Superintendent appointed Morneau Shepell Ltd. as the administrator of the Plan pursuant to section 8(1.1) of the *PBA* effective October 16, 2017.
14. To date, all required contributions have been made to the DC component of the Plan.

Special Payments

15. As indicated above, the 2015 Actuarial Report indicated a solvency ratio of 0.85.
16. Section 55(2) of the *PBA* states that an employer required to make contributions under a pension plan shall make the contributions in accordance with the prescribed requirements for funding and in the prescribed manner and at the prescribed times to the pension fund.
17. Because the Plan is underfunded, Sears is required under sections 4 and 5 of Regulation 909 (the "Regulation") to continue to make special payments in equal monthly installments as calculated in the actuarial valuation report filed for the Plan.
18. Pursuant to the 2015 Actuarial Report, Sears was required to make special payments to amortize the solvency deficiency under the Plan until December 31, 2021.
19. However, pursuant to the Special Payment Suspension Order, Sears ceased to make special payments after September 30, 2017.
20. Section 69(1)(b) of the *PBA* provides that the Superintendent may require the wind up of a pension plan if the employer fails to make contributions to the pension fund as required by the *PBA* and the regulations.
21. Since October 1, 2017, Sears has failed to make special payments as required. Therefore, the Superintendent has grounds pursuant to section 69(1)(b) of the *PBA* to order the wind up of the Plan.

Wind Up Date

22. Pursuant to section 69(2) of the *PBA*, the wind up order must specify the effective date of the wind up.
23. The Superintendent proposes that the effective date of the wind up be October 1, 2017.
24. As a result of the Liquidation Sale Approval Order, Sears will inevitably cease operating and terminate all remaining employees.

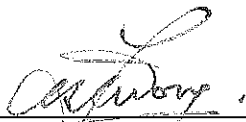
Contributions to the DC Component

25. As noted above, Sears continues to make payments to the DC component of the Plan.
26. Approximately 4,500 active members continue to accumulate benefits under the DC component of the Plan.
27. This benefit accumulation has no impact on the funded status of the DB component of the Plan.
28. It would be contrary to the purposes of the *PBA* if members of the DC component of the Plan were forced to cease accumulating retirement benefits.
29. Therefore, the Superintendent proposes that contributions towards the DC component of the Plan continue until all or substantially all of the members of the Plan cease employment with Sears, despite the wind up of the Plan.
30. Such further or other reasons as may come to my attention.

THE ADMINISTRATOR IS REQUIRED pursuant to section 89(5) of the *PBA* to transmit a copy of this Notice of Intended Decision to the following persons:

- 1) The persons listed as of the date of this Notice of Intended Decision on the Service List as defined in the Initial Order, dated June 22, 2017, of Justice Hainey in the Sears CCAA Proceedings (Court File No. CV-17-11846-00CL), at paragraph 57;
- 2) Unifor Local 40, Métallos Local 9153, and I.B.E.W. Local 213;
- 3) Any other person entitled to a payment from the pension fund of the Plan who is not represented by Koskie Minsky LLP, or the unions listed above.

DATED at Toronto, Ontario, this 10th day of November, 2017.



Lester J. Wong
Deputy Superintendent, Pensions
By delegated authority from the
Superintendent of Financial Services

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

Court File No. CV-17-11846-00CL

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF SEARS CANADA
INC., *et al.*

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceeding commenced at TORONTO

**EIGHTH REPORT TO THE COURT
SUBMITTED BY FTI CONSULTING CANADA INC.,
IN ITS CAPACITY AS MONITOR**

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