

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

APPLICATION UNDER SECTION 243(1) OF THE BANKRUPTCY AND INSOLVENCY ACT, R.S.C. 1985, c. B-3, AS AMENDED AND SECTION 101 OF THE COURTS OF JUSTICE ACT, R.S.O. 1990, c. C.43, AS AMENDED

B E T W E E N:

**MBL ADMINISTRATIVE AGENT II LLC, as agent for POST ROAD
SPECIALTY LENDING FUND II LP (f/k/a MAN BRIDGE LANE
SPECIALTY LENDING FUND II (US) LP), and POST ROAD SPECIALTY
LENDING FUND (UMINN) LP (f/k/a MAN BRIDGE LANE SPECIALTY
LENDING FUND (UMINN) LP)**

Applicant

and

**TRADE X GROUP OF COMPANIES INC., 12771888 CANADA INC., TVAS INC.,
TRADEXPRESS AUTO CANADA INC., TRADE X FUND GP INC., TRADE X LP FUND
I, TRADE X CONTINENTAL INC., TX CAPITAL CORP., TECHLANTIC LTD. AND TX
OPS CANADA CORPORATION**

Respondents

**RESPONDING MOTION RECORD
MBL ADMINISTRATIVE AGENT II LLC**

May 17, 2024

DAVIES WARD PHILLIPS & VINEBERG LLP
155 Wellington Street West
Toronto ON M5V 3J7

Natasha MacParland (LSO# 42383G)

Email: nmacParland@dwpv.com

Tel: 416.863.5567

Matthew Milne-Smith (LSO #44266P)

Email: mmilne-smith@dwpv.com

Tel: 416.863.5595

Natalie Renner (LSO# 55954A)

Email: nrenner@dwpv.com

Tel: 416.367.7489

Maya Churilov (LSO# 87190A)

Email: mchurilov@dwpv.com

Tel: 416.367.7508

Fax: 416.863.0871

Lawyers for the Trustee, MBL
Administrative Agent II LLC and the
Plaintiff, Post Road Specialty Lending
Fund II LP

TO: **ROSEMOUNT LAW PC**
150 King Street W, Suite 200
Toronto, ON M5H 1J9

Alexis Beale (LSO #65902W)

Tel: 647.692.0222

Email: abeale@rosemountlaw.com

Lawyers for the Moving Parties, the Van Essen Companies
and Wouter Van Essen

AND TO: **GOODMANS LLP**
Barristers and Solicitors
Bay Adelaide Centre
333 Bay Street
Suite 3400
Toronto ON M5H 2S7

Mark Dunn (LSO# 55510L)
Tel: 416.849.6895
Email: mdunn@goodmans.ca

Brittini Tee (LSO# 85001P)
Tel: 416.979.2211
Email: btee@goodmans.ca

Counsel for FTI Consulting

AND TO: **LAX O'SULLIVAN LISUS GOTTLIEB LLP**
145 King Street W, Suite 2750
Toronto, ON M5H 1J8

Andrew Winton
Tel: 416.644.5342
Email: awinton@lolg.ca

Matthew Gottlieb
Tel: 416.644.5353
Email: mgottlieb@lolg.ca

Special Counsel to FTI Consulting

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LENDING FUND (UMINN) LP)**

Applicant

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I, TRADE X CONTINENTAL INC., TX CAPITAL CORP., TECHLANTIC LTD. AND TX
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TAB 1

Court File No. CV-23-00710413-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
(Commercial List)**

APPLICATION UNDER SECTION 243(1) OF THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, c. B-3, AS AMENDED AND SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O. 1990, c. C.43, AS AMENDED

B E T W E E N:

MBL ADMINISTRATIVE AGENT II LLC, as agent for POST ROAD SPECIALTY LENDING FUND II LP (f/k/a MAN BRIDGE LANE SPECIALTY LENDING FUND II (US) LP), and POST ROAD SPECIALTY LENDING FUND (UMINN) LP (f/k/a MAN BRIDGE LANE SPECIALTY LENDING FUND (UMINN) LP)

Applicant

and

TRADE X GROUP OF COMPANIES INC., 12771888 CANADA INC., TVAS INC., TRADEXPRESS AUTO CANADA INC., TRADE X FUND GP INC., TRADE X LP FUND I, TRADE X CONTINENTAL INC., TX CAPITAL CORP., TECHLANTIC LTD. and TX OPS CANADA CORPORATION

Respondents

**AFFIDAVIT OF WESTIN LOVY
SWORN MAY 17, 2024**

I, **Westin Lovy**, of the City of Stamford, in the State of Connecticut, MAKE OATH

AND SAY:

1. I swear this Affidavit in response to the motion by 1309767 Ontario Limited and 2601658 Ontario Ltd. (the “**Van Essen Companies**”) for an Order that all evidence against them be struck in the pending Receiver’s Motion and the Van Essen Cross-Motion (as defined below), granting judgment in their favour in the pending Receiver’s Motion and the Van Essen Cross-Motion, and staying the rights and claims of FTI Consulting Canada Inc. (“**FTI**” or the “**Receiver**”) and MBL Administrative Agent II LLC (“**MBL**” or the “**Applicant**”).

2. I am a Managing Director of Post Road Group (“**PRG**”), which is the parent company to the Applicant. PRG is an alternative investment advisory firm based in Stamford, Connecticut, that focuses on private credit and private equity investments in digital infrastructure, telecommunications, media, business services, real estate and specialty finance. Since February 2021, I have been responsible for the management of the credit facilities made available to the Respondents (defined below) and their affiliates, including communications and negotiations with the Borrowers (defined below) and collateral reporting.

3. I hold a Juris Doctor from Duke University, which I obtained in 1998. Prior to working in the finance industry, I was an associate in the insolvency department at Latham & Watkins LLP in the New York office until 2003.

4. By virtue of my position as Managing Director at PRG, I have personal knowledge of the matters set out in this Affidavit. Where I do not have personal knowledge of the matters set out herein, I have stated the source of my information and belief and I verily believe it to be true.

A. BACKGROUND

5. On December 4, 2023, MBL brought an application for an Order appointing FTI as receiver and manager of substantially all of the assets, undertakings and property of each of Trade X Group of Companies Inc., 12771888 Canada Inc., TVAS Inc., Tradexpress Auto Canada Inc., Trade X Fund GP Inc., Trade X LP Fund I, Trade X Continental Inc., TX Capital Corp., Techlantic Ltd. and TX Ops Canada Corporation (collectively, the “**Respondents**”) (the “**Receivership Application**”).

6. MBL is the administrative agent under credit facilities made available to certain affiliates of the Respondents (defined and described below as the Borrowers). The Respondents are Canadian affiliates of the Borrowers and had guaranteed, on a secured basis, the obligations of the Borrowers. Consequently, MBL had security in substantially all of the Respondents’ property, assets and undertakings. The Borrowers were in material default of their obligations under the credit agreements with MBL and the defaults continued until the Receiver was appointed. As of November 30, 2023, just one week before the hearing of the Receivership Application, the Respondents owed guaranteed obligations to MBL in the aggregate of US\$15,256,504.16 (including principal and interest).

(i) The Parties to the Receivership Application

7. The Trade X Group of Companies Inc. (“**Trade X Parent**”) is a private corporation formed under the federal laws of Canada. Trade X Parent is a holding company and is the direct and indirect parent company of the other Respondents. The Respondents and their subsidiaries (together with Trade X Parent, the “**Trade X Group**”) were primarily involved in operating a business-to-business vehicle trading platform for car dealerships to purchase inventory from Canada and other overseas markets. The Trade X Group’s operations in Canada were predominantly conducted by three companies: (a) TX OPS Canada Corporation (“**TX Canada**”), (b) Techlantic Ltd. (“**Techlantic**”), and (c) 13517985 Canada Inc. (“**Wholesale Express**”).

8. TX Canada is a federal corporation that operates an automotive trading platform connecting car dealerships located in the United States with sellers in Canada through a secure marketplace offering end to end service that handles procurement, foreign exchange, logistics and duties for vehicle acquisitions between Canada and the United States (the “**Trade X Platform**”).

9. Techlantic is a federal corporation that operated out of Oakville, Ontario. Techlantic supported a network of automobile exporters and offered similar services to TX Canada—although Techlantic supported global sales and acquisition of vehicles by car dealerships. Techlantic is a borrower under the Global Credit Facility (as defined below).

10. Wholesale Express is a federal corporation that operated out of Saint-Madeleine, Quebec. Wholesale Express operated an online dealer-to-dealer auction platform for vehicles, whereby it acquired and sold pre-owned cars to registered dealers. MBL had a security interest in the shares of Wholesale Express by virtue of its security interest in all of the assets of Trade X Parent. However, MBL's interest in Wholesale Express was subordinated to Wholesale Express' senior secured creditor, Highcrest Lending Inc. ("**Highcrest**"), and as such, Wholesale Express was not a Respondent in the Receivership Application.

(ii) The Credit Facilities and Advances

11. The indebtedness owed to MBL arose out of two separate credit agreements under which MBL acts as the administrative agent (collectively, the "**Credit Agreements**"):

(a) **Domestic Facility:** US\$ 35 million credit facility made available pursuant to a senior secured revolving credit agreement dated February 5, 2021 between Post Road Specialty Lending Fund II LP and Post Road Specialty Lending Fund (UMINN) LP, as lenders (collectively, the "**Domestic Lenders**") and together with the Global Lenders (defined below), the "**Lenders**") and TX OPS Funding II, LLC, as borrower (the "**Domestic Facility**"); and

(b) **Global Facility:** A US\$ 35 million credit facility made available pursuant to a senior secured revolving credit agreement dated September 27, 2021 between Man Bridge Lane Specialty Lending Fund II (US) LP and Man Bridge Lane Specialty Lending Fund (UMINN) LP, as lenders (collectively

the “**Global Lenders**”) and Techlantic and TX OPS Global Funding I, LLC, as borrowers (the “**Global Facility**” and together with the Domestic Facility, the “**Credit Facilities**”).

12. The borrower under the Domestic Facility is TX OPS Funding II, LLC (the “**Domestic Borrower**”) a Delaware special purpose entity owned by TX OPS Indiana Limited, a U.S. subsidiary of the Respondents (“TX Indiana”). The borrowers under the Global Facility are Techlantic and TX OPS Global Funding I, LLC (the “**Global Borrowers**”). TX OPS Global Funding I, LLC is also a Delaware special purpose vehicle that is owned by TX Indiana. For the purposes of this Affidavit, the Domestic Borrower and Global Borrowers are collectively, referred to as the “Borrowers” and each, a “**Borrower**”.

13. The Credit Facilities are borrowing base facilities used by the Lenders to extend advances (“**Advances**”) to the Borrowers to facilitate the purchase and sale of vehicles by certain members of the Trade X Group, including Techlantic, TX Canada and TX Indiana, for sale between Canada and the United States (in the case of the Domestic Facility) or globally (in the case of the Global Facility).

14. There are a number of steps involved in connection with each Advance under the Credit Facilities, which are outlined in my Affidavit of December 4, 2023 (the “**First Lovy Affidavit**”) The First Lovy Affidavit, without Exhibits, is attached to this Affidavit as **Exhibit “A”**. At a high level, the steps that the Respondents and the Borrowers were supposed to follow pursuant to the various agreements between the parties were as follows:

- (a) TX Canada or Techlantic purchases a used vehicle (the “**Vehicle**”) and then enters into a purchase agreement with TX Indiana to sell the Vehicle to TX Indiana;
- (b) TX Indiana sells the Vehicle to a Borrower, along with TX Indiana’s rights under the related purchase agreement. The Borrower makes an Advance request to MBL to finance the purchase price of the Vehicle. Once the Advance is made by the Lenders, the Vehicle forms part of the Collateral that is subject to the Security (defined below);
- (c) An end buyer purchases the Vehicle and pays a deposit to TX Indiana. Once the Vehicle is delivered to the importing country (being the location of the end buyer), the end buyer pays the balance of the purchase price to the Borrower (the deposit, purchase price and any other amounts payable by the end buyer together, the “**End Buyer Payment**”). These monies are required to be deposited by TX Indiana and the Borrower in a designated bank account that is subject to a deposit account control agreement in favour of MBL (the “**Collection Account**”). The funds held in the Collection Account are used to repay the Advance made by the Lenders.

15. A chart that illustrates the various steps involved in these transactions is attached to my Affidavit as **Exhibit “B”**.

(iii) **The Security Interests and Collateral Held by MBL**

16. MBL has a first ranking security over substantially all of the assets of the Borrowers and the Respondents pursuant to a series of security agreements, as described in the First Lovy Affidavit. A high level summary of the security is as follows:

- (a) **The Borrower Security:** the Borrowers granted MBL a security interest in all of their property on February 5, 2021, in respect of the Domestic Facility (the “**Domestic Security**”) and on September 27, 2021, in respect of the Global Facility (the “**Global Security**”), as continuing security for the payment and performance of the Borrowers’ obligations under these Credit Facilities; and
- (b) **TX Canada Security:** TX Canada entered into guarantee and security agreements in connection with the Credit Facilities (collectively, the “TX Canada Security”). Pursuant to the TX Canada Security, TX Canada provided a guarantee for the obligations of the Borrowers to MBL for, among other things, any loss arising out of any acts of misappropriation or misapplication of funds or proceeds of any of the Collateral under the Domestic Security and Global Security (the “**Guaranteed Obligations**”).

17. As security for the Guaranteed Obligations, TX Canada granted a security interest over : (a) the harmonized sales tax receivables generated from the purchase of a Vehicle from TX Canada; (b) Vehicles that have been financed by an Advance and all the rights to payment and proceeds for all such Vehicles; (c) all of the rights and obligations under purchase agreements to which TX Canada is party; and (d) any Vehicles owned by TX

Canada that are not subject to purchase agreements (collectively, the “**TX Canada Collateral**”).

18. Pursuant to the 2022 Loan Restructuring (described and defined below), each of the Respondents, other than TX Canada who was already a guarantor of each of the Credit Facilities (collectively, the “**Canadian Guarantors**”), entered into joinders of the Global Facility and the Domestic Facility. The joinders had the effect of making each Canadian Guarantor a guarantor of the obligations of the Borrowers under the Credit Facilities, causing each Canadian Guarantor to become party to the Domestic Security and the Global Security and granting MBL a security interest in all of their property, and pledged to MBL any equity directly owned by them in the shares of a member of the Trade X Group.

19. MBL also entered into various blocked account agreements and deposit account control agreements with the Borrowers, TX Canada, Techlantic and Tradexpress (the “**DACAs**”). As noted above, any amounts received from an end buyer of a vehicle must be deposited into the Collection Account by TX Indiana and the Borrowers, along with any harmonized sales tax receivable that is generated from the purchase of a Vehicle from TX Canada, Techlantic and Tradexpress.

20. As a result of the Domestic Security, the Global Security, TX Canada Security and the DACAs, MBL has security over (a) the TX Canada Collateral, (b) substantially all of the assets of the Canadian Guarantors, (c) the shares of the Respondents, as well as their affiliate, Wholesale Express, some of which are perfected by possession, and (d) the Collection Account (collectively, the “**Collateral**”).

21. MBL registered its security against the Respondents under the *Personal Property Security Act* (Ontario) (the “**PPSA**”) as follows: (a) against all of the property of TX Canada on February 4, 2021 and September 27, 2021; (b) against collateral identified as Accounts and Other in respect of Davidson Motors Incorporated (former name of Tradexpress) on August 31, 2021, September 2, 2021 and September 27, 2021; (c) against all property of Techlantic registered on December 21, 2021 and December 23, 2022; and (d) against all of the property of the Canadian Guarantors, other than Tradexpress and Techlantic, on December 23, 2022.

(iv) Deterioration of Trade X Group’s Business and the 2022 Loan Restructuring

22. In 2022, with the decline in demand and car prices, the Trade X Group began to experience significant losses. Such losses were exacerbated by, among other things, operational inefficiencies and its use of a compensation model that provided bonuses based on the number of vehicles acquired for inventory purposes, regardless of the price paid by the end buyer of the vehicle. These difficulties were further compounded by the general reduction of available capital in the investment community, which meant that Trade X Parent was not able to raise additional funds to subsidize the losses in the Trade X Group.

23. As a result of its financial troubles, in December 2022, Trade X Parent entered into a loan restructuring transaction with its three largest creditors – Highcrest, Aimia Inc. (“**Aimia**”), and MBL (the “**2022 Loan Restructuring**”), whereby:

- (a) Aimia was granted a perfected security interest in all of the assets of Trade X Parent, whereas previously it was an unsecured creditor;

- (b) Wholesale Express and Trade X Parent entered into a Master Amended and Restated Loan and Security Agreement dated December 23, 2022 between Highcrest, as lender, Wholesale Express, as borrower, and Trade X Parent as guarantor, in which Trade X Parent pledged its interests in 100% of the equity of Wholesale Express and the assets of Wholesale Express in favour of Highcrest (the “**Highcrest Collateral**”); and
- (c) the Canadian Guarantors became parties to the Domestic Security and Global Security and granted security in all of their assets in favour of MBL.

24. On December 23, 2022, Aimia, Highcrest, MBL, the Borrowers, TX Indiana, TX Canada and TX Parent entered into an amended and restated intercreditor agreement (the “**Intercreditor Agreement**”). Pursuant to the Intercreditor Agreement, the parties agreed that (a) Highcrest has a priority security interest in the Highcrest Collateral, (b) MBL has a priority security interest over all of the assets of Trade X Parent (other than Wholesale Express and its shares), (c) and Aimia subordinated its interest for so long as any obligations to Highcrest and MBL remain outstanding.

(vi) The Borrowers’ Default on their Obligations to MBL

25. On October 9, 2023, MBL became aware that the Borrowers and Respondents failed to deposit payments received from end buyers of Vehicles into the Collection Account as required by the Credit Facilities to repay the Advances. Instead, those monies were diverted by the Trade X Group to fund its own operations and working capital needs,

including for the satisfaction of payroll obligations. Between June and September 2023 alone, the Borrowers and Respondents diverted over US\$7 million from the Lenders and continued to divert funds until the hearing of the Receivership Application.

26. The wrongful diversion of funds by the Borrowers and Respondents sparked a series of defaults, including, among other things, the failure of the Borrowers to deposit End Buyer Payments into the Collection Account, the failure of the Vehicles to qualify as “Eligible Assets”¹ for purposes of calculating the borrowing base, and the inability of the Borrower to deliver an accurate certification in respect of the borrowing base under the Credit Agreements (the “**Defaults**”).

27. The Defaults triggered the obligations of TX Canada under the TX Canada Security, as well as the obligations of the Canadian Guarantors under the Domestic Security and the Global Security.

(vii) The Appointment of the Receiver and Subsequent Events

28. The hearing of the Receivership Application was scheduled to take place on December 11, 2023. However, shortly before the hearing, the parties agreed to an adjournment to permit the Debtors an opportunity to refinance and remedy their defaults. The parties made submissions before Justice Penny on December 11, 2023 for an Interim Order that would provide the Debtors with such an opportunity. The Interim Order was issued on the same day and provided for the appointment of FTI as Information Officer,

¹ As described in para 27(g) of the First Lovy Affidavit, End Buyer Payments must be paid by the Borrower into the Collection Account within a prescribed period of time in order for a Vehicle to continue being characterized as an “Eligible Asset”.

rather than receiver, to maintain the status quo of the Debtors and to give the Debtors until December 21, 2023 to conclude a transaction that would provide adequate refinancing (the “**Interim Period**”). The Interim Order further provided that in the event that the Debtors’ refinancing transaction did not close by the end of the day on December 21, 2023, then the Respondents were deemed to consent to the appointment of FTI as Receiver, pursuant to the Receivership Application and a further hearing scheduled for December 22, 2023. Copies of the Interim Order and Justice Penny’s Endorsement are attached to my Affidavit as **Exhibits “C”** and **“D”**.

29. The Debtors were not able to effect the proposed refinancing transaction. As a result, on December 22, 2023, the parties appeared before Justice Cavanagh seeking an Order for the appointment of FTI as the receiver on consent. On the same day, Justice Cavanagh issued the Order appointing the Receiver (the “**Receivership Order**”). Copies of Justice Cavanagh’s Endorsement and the Receivership Order are attached to my Affidavit as **Exhibits “E”** and **“F”**.

30. On February 2, 2024, the Receiver served its Motion seeking an Order declaring that the Techlantic Funds (as defined below) are Property of the Debtors and directing that the Techlantic Funds be transferred to the Receiver (the “**Receiver’s Motion**”). The Receiver’s Motion Record included the Receiver’s First Report (the “**First Report**”), which revealed that the Van Essen Companies, third parties to these proceedings, had received

proceeds from the sale of Property (as defined in the Receivership Order) totalling approximately \$1.7 million.

31. The Receiver reported that fourteen vehicles (the “**Techlantic Vehicles**”) were allegedly purchased by the Van Essen Companies and subsequently sold to Techlantic. Techlantic then sold the Techlantic Vehicles to a customer named Stephen Zhou for a total of \$1,723,495 (the “**Techlantic Funds**”). The Receiver reviewed invoices that demonstrated these sales to have occurred between September 2023 and December 2023. According to the Receiver, the Van Essen Companies did not deal at arm’s length with Techlantic. The officer responsible for the transactions in question at Techlantic is Eric Van Essen (“**Eric**”), the son of Wouter Van Essen (“**Wouter**”), who owns and operates the Van Essen Companies.

32. The Receiver further reported that on December 20, 2023, during the Interim Period, Wouter claimed to apply the proceeds of the sale of the Techlantic Vehicles to repay a debt owed by Techlantic to the Van Essen Companies. However, according to the Receiver, the debt allegedly owed by Techlantic to the Van Essen Companies is not related to the Techlantic Vehicles, but rather, to transactions between Techlantic and the Van Essen Companies that took place in 2022. In January 2024, the Receiver was in contact with the Van Essen Companies and made efforts to recover the Techlantic Funds. The Van Essen Companies refused to return the Techlantic Funds, taking the position that they were paid in satisfaction of the debt owed to the Van Essen Companies by Techlantic.

33. On February 7, 2024, the Van Essen Companies served a Notice of Cross-Motion seeking an Order dismissing the Receiver’s Motion, declaring that Wouter did not conduct

the transactions relating to the Techlantic Vehicles in his personal capacity, requiring the Receiver to furnish documents relating to the 2022 Techlantic and Van Essen Companies' transactions, and declaring that the Van Essen Companies were entitled to conduct the set-off transactions described in the Receiver's Motion, among other things (the "**Van Essen Cross-Motion**"). The Van Essen Cross-Motion claims that the Van Essen Companies acted within their rights and were entitled to undertake the transactions that took place in December 2023.

34. On April 16, 2024, the Van Essen Companies served another Motion seeking an Order striking out all evidence submitted by the Receiver in the Receiver's Motion and the Van Essen Cross-Motion, granting judgment in favour of the Van Essen Companies in the Receiver's Motion and the Van Essen Cross-Motion and staying the right and claims of the Receiver and Applicant and any related parties (the "**Van Essen Privilege Motion**"). The Van Essen Companies commenced this Motion following the receipt of the First Supplemental Report to the First Report dated April 3, 2024, which stated that in order to assess the issues between the Receiver and the Van Essen Companies, the Receiver reviewed emails sent to and from Wouter from his Techlantic email address. Wouter claims that these emails include privileged and confidential documents and that

despite notifying the Receiver of this, the Receiver continued to review the documents. The Receiver has denied these allegations.

B. MATERIAL RECEIVED FROM FTI

35. In my capacity as a Managing Director of PRG, I have had limited communications with counsel to the Receiver at Goodmans LLP, Mark Dunn, and with Anita Patel of FTI's Forensic and Litigation Consulting group ("**FTI Forensics**"). I have done so in order to understand the status of the affairs of the Debtors. PRG and the Applicant have a common interest in seeing that the Defaults of the Borrowers are cured and that the assets of the Respondents are maximized and not diverted by related parties. To the extent that those communications conveyed privileged information, they were subject to a common interest privilege and I do not waive any such privilege. Nevertheless, PRG has maintained a professional and arm's length relationship with the Receiver, FTI Forensic, and Goodmans. None of the Receiver, FTI Forensic, or Goodmans has provided myself or anyone else at PRG with any confidential or privileged information that belongs to Wouter.

36. Since the Receiver's appointment, I have not received any documents from the Receiver that relates to the Van Essen Privilege Motion other than what it has filed publicly. I have received only one document from FTI Forensic. On April 8, 2024, FTI Forensic presented to me an update of its findings with respect to the Debtors' business. The Presentation excerpted certain e-mails sent to and received by the Debtors' officers and employees. None of the e-mails shown in the Presentation involved legal counsel to any party.

37. FTI Forensic also provided me with a digital copy of the Presentation. I did not receive any of the underlying documents to the Presentation and have only ever seen the selected captures included in the Presentation by FTI. I have not attached a copy of the Presentation, as it contains other information that is confidential and is not relevant to this motion. I am informed by my counsel, Matthew Milne-Smith of Davies Ward Phillips & Vineberg LLP, and understand that a redacted copy of the Presentation will be provided to the Court by the Receiver.

38. To the best of my knowledge, none of the information included in the Presentation or described to me by FTI involved correspondence with legal counsel, or was otherwise subject to any form of legal privilege.

39. In addition to the Presentation, I have also spoken to Mr. Dunn about the progress of the receivership on several occasions. During those calls Mr. Dunn did not reveal or describe to me any privileged information belonging to the Van Essen Companies, nor did he indicate that he had reviewed or received any such privileged information. During a videoconference on February 23, 2024, I do recall that Mr. Dunn shared his screen to show a number of emails as part of an update about his document review. To the best of my recollection, none of those documents were privileged, nor did they involve counsel to the Van Essen Companies.

C. PREJUDICE CAUSED BY THE VAN ESSEN MOTION

40. As described above, the Respondents continued to disregard the interests of MBL as a senior secured creditor, diverted funds from the Lenders, and repeatedly breached the terms of the Credit Agreements for months leading up to the Receivership Application.

The amount of indebtedness owed to PRG by the Respondents exceeds US\$15 million. PRG is relying on the Receiver in order to be able to recuperate the losses it has suffered at the hands of the Respondents.

41. If the relief sought by the Van Essen Companies is granted, the prejudice suffered by PRG would be irreparable. As expressed by the Receiver, there are grounds to believe that the \$1.7 million transferred from Techlantic to the Van Essen Companies by Wouter in December 2023 was inappropriately transferred and rightfully belongs to Techlantic. In addition, PRG still does not have visibility into how approximately \$7 million advanced under the Global Facility were used. If the relief sought by the Van Essen Companies is granted and all rights and claims of the Receiver and the Applicant are permanently stayed, there will be no opportunity for PRG to recover the Techlantic Funds in the future or any other funds that may have been wrongfully paid to the Van Essen Companies. It would be an unjust outcome for PRG if all claims against the Van Essen Companies were stayed and the Receiver later discovered, through further investigation, that the Techlantic Funds conclusively belonged to Techlantic and not the Van Essen Companies.

SWORN by Westin Lovy in the City of Lowell, in the State of Massachusetts, remotely before me in the City of Toronto, Province of Ontario, on this 17th of May, 2024 in accordance with O. Reg. 431/20: Administering Oath or Declaration Remotely

DocuSigned by:
Debra Bilous
EB44438559584D0

DocuSigned by:
Westin Lovy
77FB4E32FA9B46E...

Commissioner for Taking Affidavits

Westin Lovy

Debra Theresa Ann Bilous, a
Commissioner, etc.,
Province of Ontario, for Davies Ward
Phillips &
Vineberg LLP, Barristers and Solicitors.
Expires February 17, 2025

TAB A

This is Exhibit "A" referred to in the Affidavit of Westin Lovy sworn by Westin Lovy in the City of Lowell, in the State of Massachusetts, before me at City of Toronto, in the Province of Ontario, on May 17, 2024 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

DocuSigned by:

Debra Bilous

FR44438559584D0
A Commissioner for taking Affidavits

Debra Theresa Ann Bilous, a Commissioner, etc.,
Province of Ontario, for Davies Ward Phillips
&Vineberg LLP, Barristers and Solicitors.
Expires February 17, 2025

Court File No. CV-23-00710413-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
(Commercial List)**

APPLICATION UNDER SECTION 243(1) OF THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, c. B-3, AS AMENDED AND SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O. 1990, c. C.43, AS AMENDED

B E T W E E N:

MBL ADMINISTRATIVE AGENT II LLC, as agent for POST ROAD SPECIALTY LENDING FUND II LP (f/k/a MAN BRIDGE LANE SPECIALTY LENDING FUND II (US) LP), and POST ROAD SPECIALTY LENDING FUND (UMINN) LP (f/k/a MAN BRIDGE LANE SPECIALTY LENDING FUND (UMINN) LP)

Applicant

and

TRADE X GROUP OF COMPANIES INC., 12771888 CANADA INC., TVAS INC., TRADEXPRESS AUTO CANADA INC., TRADE X FUND GP INC., TRADE X LP FUND I, TRADE X CONTINENTAL INC., TX CAPITAL CORP., TECHLANTIC LTD. and TX OPS CANADA CORPORATION

Respondents

**AFFIDAVIT OF WESTIN LOVY
SWORN DECEMBER 4, 2023**

I, **Westin Lovy**, of the City of Stamford, in the State of Connecticut, MAKE OATH AND SAY:

1. The Applicant is MBL Administrative Agent II LLC (“**MBL**” or the “**Applicant**”). I am a Managing Director of Post Road Group LP (“**PRG**”), which is the parent company to the Applicant. PRG is an alternative investment advisory firm based in Stamford, Connecticut, that focuses on private credit and private equity investments in digital infrastructure,

telecommunications, media, business services, real estate and specialty finance. Since February 2021, I have been responsible for the management of the credit facilities made available to the Respondents (defined below) and their affiliates, including communications and negotiations with the Borrowers (defined below) and collateral reporting.

2. By virtue of my position as Managing Director, I have personal knowledge of the matters deposed to herein. Where I do not have personal knowledge of the matters set out herein, I have stated the source of my information and belief and I verily believe it to be true.

A. BACKGROUND AND OVERVIEW

3. I swear this Affidavit in support of an Application by MBL for the appointment of FTI Consulting Canada Inc. (“**FTI**”) as a receiver and manager (the “**Receiver**”) of substantially all of the assets, undertakings and property of each of Trade X Group of Companies Inc., 12771888 Canada Inc., TVAS Inc., Tradexpress Auto Canada Inc., Trade X Fund GP Inc., Trade X LP Fund I, Trade X Continental Inc., TX Capital Corp., Techlantic Ltd. and TX OPS Canada Corporation (collectively, the “**Respondents**”), including all proceeds thereof, pursuant to section 243 of the *Bankruptcy and Insolvency Act* (Canada) (the “**BIA**”) and section 101 of the *Courts of Justice Act* (Ontario).

4. The Respondents are part of a group of companies referred to throughout this Affidavit and defined below as the “**Trade X Group**”. The Trade X Group are primarily involved in operating a business-to-business vehicle trading platform for car dealerships to purchase inventory from or sell inventory to Canada and other overseas markets. Over

the past two years, the Trade X Group has experienced declining revenues due to a decline in used automobile prices, rising expenses and an undisciplined acquisition and sales practice. Despite entering into a loan restructuring transaction with its creditors, the Trade X Group's revenues have continued to decline and those losses are expected to continue indefinitely to the detriment of MBL's security and collateral value.

5. In recent months, the Trade X Group have conducted their operations in a manner that has jeopardized the Collateral, materially breached the terms of their credit agreements with MBL and disregarded the interests of MBL as a senior secured creditor of the Respondents. Specifically, the Trade X Group have improperly diverted over US\$7 million in funds payable to MBL, and instead used those funds for their working capital needs. These actions, among others, have given rise to a series of material defaults under the credit facilities that remain uncured and ongoing. In fact, as recently as November 4, 2023, the Trade X Group again, without notice, diverted funds that were payable to MBL and used them to fund payroll obligations instead.

6. The principal objective of these proceedings is to appoint the Receiver with the goal of preserving the collateral that is subject to MBL's security interest (defined in paragraph 41 below as the "**Collateral**") and ensuring an orderly liquidation of such Collateral.

7. As of November 30, 2023, the Respondents are indebted to MBL in the aggregate amount of US\$15,256,504.16 (which includes principal and interest) on a secured basis (the "**Indebtedness**"). This amount remains unpaid and interest, fees, costs and expenses continue to accrue on the amounts owing.

8. MBL is the administrative agent under credit facilities made available to certain affiliates of the Respondents (defined and described below as the Borrowers). The Respondents are Canadian affiliates of the Borrowers and have guaranteed, on a secured basis, the obligations of the Borrowers. The Borrowers are in material default of their obligations under the credit facilities and MBL has notified the Borrowers of such Default and has accelerated the indebtedness owing thereunder. Consequently, MBL is in a position to enforce its security against the Respondents.

9. MBL has security on substantially all of the Respondents' property, assets and undertakings, other than one of the Respondents' affiliates, Wholesale Express (defined below). Rather, MBL has a security interest over the shares of Wholesale Express, but not its assets. Highcrest Lending Inc. ("**Highcrest**") is a creditor of Wholesale Express with priority security over all of its shares and assets (later defined as the "**Highcrest Collateral**") and has commenced an application under the *Companies' Creditors Arrangement Act* ("**CCAA**") in relation to the Highcrest Collateral. As such, MBL is not seeking receivership over Wholesale Express or its assets.

10. This Application is especially urgent given events that have occurred in the last several weeks. MBL learned that not only has the Trade X Group continued to improperly and unlawfully divert and misappropriate funds payable to MBL, but that the Trade X Group has quietly been slowing its operations in Ontario. As described in more detail below, MBL appointed a financial advisor to attend the premises of certain of the Respondents. On November 15, 2023, the financial advisor reported that there is no apparent business being operated by the Trade X Group in Canada. Further, on

November 28, 2023, MBL was notified that the Trade X Group defaulted on their lease obligations in respect of their office in Mississauga, Ontario.

11. In the circumstances, MBL has lost faith in the management of the Trade X Group and has serious concerns that the Collateral has been entirely depleted, or at best, is at risk of being further eroded unless the Receiver is appointed. The appointment of a Receiver is necessary to take control over the operations of the Respondents and recover any remaining Collateral for the benefit of MBL.

B. THE PARTIES

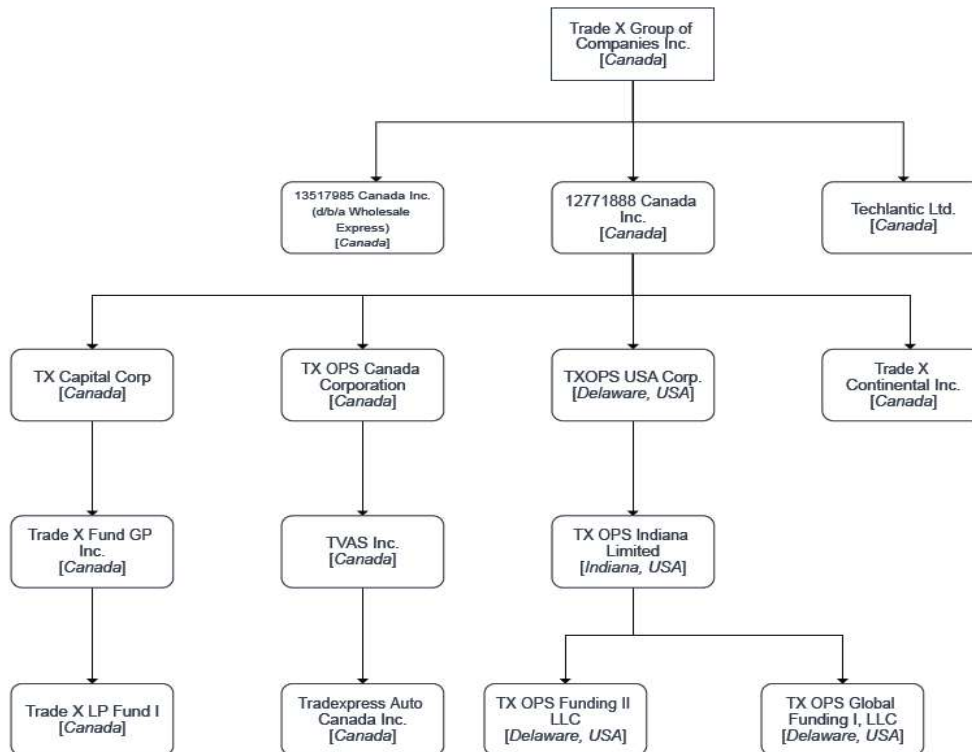
(i) The Applicant

12. MBL is the administrative agent for: (a) Post Road Specialty Lending Fund II LP (f/k/a Man Bridge Lane Specialty Lending Fund II (US) LP), and (b) Post Road Specialty Lending Fund (UMINN) LP (f/k/a Man Bridge Lane Specialty Lending Fund (UMINN) LP), lenders under the Global Facility and the Domestic Facility (each as defined below). The Lenders are each private investment funds managed by PRG. MBL is a Delaware limited liability company and a direct subsidiary of PRG.

(ii) The Respondents and their Business

13. Trade X Group of Companies Inc. ("**Trade X Parent**") is a private corporation formed under the federal laws of Canada. Trade X Parent is a holding company and is the direct and indirect parent company of the other Respondents.

14. A simplified¹ corporate organizational chart showing the ownership structure of Trade X Parent and its direct and indirect interest in the other Respondents is reproduced below:



15. The registered head office and principal place of business of Trade X Parent is located at 7401 Pacific Circle, Mississauga, Ontario, which is a leased premises (the “**Mississauga Location**”). All of the Respondents have their registered head office at the Mississauga Location.

¹

Trade X Parent also holds an indirect interest in TradeX Netherlands B.V., TXOPS USA Corp., TradeX Europe GmbH., TX OPS Hong Kong Limited, China (Tianjin) Pilot Free Trade Zone Tiansi International Trade Co., Ltd., TX OPS Indiana Limited, TradeXpress Germany GmbH, TXP Tradexport Kenya Limited, TX OPS Mexico Limited, Tradexpress Auto, Inc., TX OPS Funding I, LLC, TX OPS Funding II, LLC (*i.e.*, *Domestic Borrower*), TX OPS Funding III, LLC, TX OPS Global Funding I, LLC (*i.e.*, *Global Borrower*), Tradexpress Auto Nigeria Ltd., TX OPS Japan G.K.

16. The Respondents and their subsidiaries (together with Trade X Parent, the “**Trade X Group**”) are primarily involved in operating a business-to-business vehicle trading platform for car dealerships to purchase inventory from Canada and other overseas markets. The Trade X Group has allegedly built a fully automated platform to facilitate cross-border vehicle sales transactions. The Trade X Group’s operations in Canada are predominantly conducted by three companies: (a) TX OPS Canada Corporation (“**TX Canada**”), (b) Techlantic Ltd. (“**Techlantic**”), and (c) 13517985 Canada Inc. (“**Wholesale Express**”).

(a) TX Canada

17. TX Canada is a federal corporation. TX Canada operates an automotive trading platform connecting car dealerships located in the United States with sellers in Canada through a secure marketplace offering end to end service that handles procurement, foreign exchange, logistics and duties for vehicle acquisitions between Canada and the United States (the “**Trade X Platform**”).

(b) Techlantic

18. Techlantic is a federal corporation that operates out of Oakville, Ontario. As described below, Techlantic is a borrower under the global credit facility made available by the Lenders. Techlantic supports a network of automobile exporters and offers similar services to TX Canada—although Techlantic support global sales and acquisitions of vehicles by car dealerships.

(c) Wholesale Express

19. 13517985 Canada Inc. (“**Wholesale Express**”) is a federal corporation that operates out of Saint-Madeleine Quebec. Wholesale Express operates an online dealer-to-dealer auction platform for vehicles, whereby it acquires and sells pre-owned cars to registered dealers. MBL has a security interest in the shares of Wholesale Express by virtue of its security interest in all of the assets of Trade X Parent. However, MBL’s interest in Wholesale Express is subordinated to Wholesale Express’ senior secured creditor, Highcrest. Wholesale Express is not a Respondent in this Application.

(d) Employees

20. To the best of my knowledge, Trade X Parent and the other Respondents currently employ less than thirty individuals. Furthermore, to the best of my knowledge, the Respondents are not party to any collective agreements in respect of their employees and do not have any union contracts or pension plans in place with its employees.

(e) Assets

21. The Respondents do not own any real property. Rather, the Respondents all operate out of leased facilities located in Ontario. As discussed herein, the Respondents are currently in default of their lease obligations in respect of their facilities located in Ontario.

22. The primary assets of the Respondents are the vehicles they own, the contracts associated with the sale of those vehicles and the accounts receivable associated with vehicle sales. To the best of my knowledge, these accounts receivable are primarily

comprised of vehicles that have been committed for sale but not yet picked up and paid for by the end buyer.

C. THE CREDIT FACILITIES

(i) The Credit Facilities Owing to the Lenders

23. The outstanding indebtedness owing to MBL arises pursuant to two separate credit agreements under which MBL acts as the administrative agent (collectively, the “**Credit Agreements**”):

- (a) **Domestic Facility:** A US\$ 30 million credit facility made available pursuant to a senior secured revolving credit agreement dated February 5, 2021² between Post Road Specialty Lending Fund II LP and Post Road Specialty Lending Fund (UMINN) LP, as lenders (collectively, the “**Domestic Lenders**” and together with the Global Lenders (defined below), the “**Lenders**”) and TX OPS Funding II, LLC, as borrower (the “**Domestic Facility**”);
- (b) **Global Facility:** A US\$ 30 million credit facility made available pursuant to a senior secured revolving credit agreement dated September 27, 2021³ between Man Bridge Lane Specialty Lending Fund II (US) LP and Man Bridge Lane Specialty Lending Fund (UMINN) LP, as lenders (collectively,

² As amended by Amendment No. 1 dated as of June 8, 2021, Amendment No. 2 dated as of September 10, 2021, Amendment No. 3 dated as of December 20, 2021, Amendment No. 4 dated as of July 15, 2022 and as further amended under the Amendment No. 5 and Limited Waiver to dated Senior Secured Revolving Credit Agreement dated June 30, 2023.

³ As amended by Amendment No. 1 dated as of December 30, 2021, Amendment No. 2 dated as of September 6, 2022 and further amended by the Amendment No. 3 and Limited Waiver to Senior Secured Revolving Credit Agreement dated December 23, 2022.

the “**Global Lenders**”) and Techlantic and TX OPS Global Funding I, LLC, as borrowers (the “**Global Facility**” and together with the Domestic Facility, the “**Credit Facilities**”),

Attached to my Affidavit as **Exhibits “A”** and “**B**”, respectively, are the credit agreements forming the Domestic Facility and the Global Facility.

24. The borrower under the Domestic Facility is TX OPS Funding II, LLC (the “**Domestic Borrower**”) a Delaware special purpose entity owned by TX OPS Indiana Limited, a U.S. subsidiary of the Respondents (“**TX Indiana**”). The borrowers under the Global Facility are Techlantic and TX OPS Global Funding I, LLC (the “**Global Borrowers**”). TX OPS Global Funding I, LLC is also a Delaware special purpose vehicle that is owned by TX Indiana. For the purposes of this Affidavit, the Domestic Borrower and Global Borrowers are collectively, referred to as the “**Borrowers**” and each, a “**Borrower**”.

(ii) Advances under the Credit Facilities

25. The Credit Facilities extend advances to the Borrowers to facilitate the purchase and sale of vehicles by certain members of the Trade X Group for sale between Canada and the United States (in the case of the Domestic Facility) or globally (in the case of the Global Facility) and are based on collateral presented and monitored by a revolving borrowing base. As detailed below, the Borrower and Respondents have materially failed to comply with the terms of the Credit Facilities as they relate to these advances and their intentional and repeated misappropriation of such funds have jeopardized the Collateral and the Lenders’ interest therein.

26. Under the Domestic Facility, TX Canada generally procures vehicles in Canada that are ultimately sold to TX Indiana and the Domestic Borrower, for sale to an end buyer in the United States. Advances under the Domestic Facility are used by the Borrower to repay TX Canada for the acquisition of such vehicles. Advances under the Global Facility are used to finance vehicle sales by TX Canada or Techlantic, as applicable, that are ultimately sold to TX Indiana and the Global Borrower, for sale to end buyers in the rest of the world.

27. A more detailed description of steps involved in connection with each Advance (as defined below) under the Credit Facilities is as follows:

- (a) **Step 1:** A seller sells a vehicle (the “**Vehicle**”) to TX Canada or Techlantic, as applicable (the “**TX Purchaser**”), via the Trade X Platform or through direct purchase agreements, pursuant to an electronic purchase and sale agreement between seller and the TX Purchaser (the “**First Tier Purchase Agreement**”). TX Purchaser funds the purchase price for the Vehicle using its own funds. TX Purchaser also arranges for the export of the Vehicle⁴ to the destination of the ultimate buyer⁵ of the vehicle (the “**End Buyer**”), including the payment of all taxes and duties on behalf of the End Buyer.

⁴ In the case of TX Canada in the Domestic Facility, the Vehicle is generally exported from Canada. In the case of the Global Borrower in the Global Facility, the Vehicle may be exported from any jurisdiction that has been approved by the Global Lenders.

⁵ The Credit Agreements require the End Buyer to be a car dealer with a valid dealer license and approved by TX Indiana. In the case of the Global Facility, the End Buyer is a car dealership located in approved jurisdictions outside of Canada and the United States whereas in the case of the Domestic Credit Facility, the End Buyer is a car dealership located in the United States.

- (b) **Step 2:** TX Purchaser sells the Vehicle to TX Indiana, along with all of TX Purchaser's rights under the First Tier Purchase Agreement, pursuant to a purchase and sale agreement between TX Purchaser and TX Indiana (the "**Second Tier Purchase Agreement**").
- (c) **Step 3:** TX Indiana sells the rights in the Vehicle to a Borrower, along with all of TX Purchaser's rights under the First Tier Purchase Agreement and the Second Tier Purchase Agreement pursuant to a sale agreement between TX Indiana and a Borrower (the "**Third Tier Purchase Agreement**"). TX Indiana also grants the Borrower a security interest in, among other things, the Vehicle acquired from TX Purchaser and its rights under the Second Tier Purchase Agreement.
- (d) **Step 4:** After the parties enter into the Third Tier Purchase Agreement, the Borrower delivers an advance request to MBL in order to finance the purchase price for the Vehicle (the "**Advance**"). Among other things, as a condition to the Lenders making the requested Advance, the Vehicle must satisfy the definition of "**Eligible Asset**" in the applicable Credit Agreement, including the requirement that the Borrower acquired the Vehicle pursuant to the Third Tier Purchase Agreement and the Borrower has granted to MBL a valid and perfected first priority security interest in the Vehicle.
- (e) **Step 5:** Upon satisfaction of the conditions outlined above in Step 4, the Lenders make the Advance to TX Purchaser on behalf of the Borrower. This is also when the Vehicle becomes a "**Financed Vehicle**" under the Credit

Facilities and forms part of the Collateral that is subject to the Security (defined below) and the Vehicle is added to the borrowing base of the Credit Facilities.

- (f) **Step 6**: An End Buyer purchases the Financed Vehicle from TX Indiana through the Trade X Platform pursuant to an electronic purchase and sale agreement between TX Indiana and the End Buyer (the “**Fourth Tier Purchase Agreement**” and together with the First Tier Purchase Agreement, the Second Tier Purchase Agreement and the Third Tier Purchase Agreement, the “**Agreements**”). The End Buyer is required to pay a security deposit to TX Indiana upon the purchase of the Vehicle on the Trade X Platform and a fee for the use of the Trade X Platform. These monies are required to be deposited into a designated bank account that is subject to a deposit account control agreement in favour of MBL (the “**Collection Account**”). At this stage, the Borrower receives the economic interest in the Financed Vehicle and title remains with TX Indiana, the holder of the dealer license.
- (g) **Step 7**: The Financed Vehicle is transported to the importing country and arrives at the destination port and cleared through customs. At this time, the End Buyer pays the balance of the purchase price for the Vehicle (minus the security deposit already paid to TX Indiana above in Step 6) to the Borrower (the security deposit and the purchase price and any other amounts payable by the End Buyer, collectively the “**End Buyer Payments**”).

For such Vehicle to continue being characterized as an “Eligible Asset” under the applicable Credit Agreement, End Buyer Payments must be paid by the Borrower into the Collection Account no later than (i) in the case of the Domestic Facility, 90 days after the Vehicle officially⁶ enters the United States; and (ii) in the case of the Global Facility, 60 days after the Vehicle arrives at the approved country of destination. Failure to deposit such amounts within the foregoing periods would lead to the Vehicle becoming an “Ineligible Asset” under the applicable Credit Facility.

- (h) **Step 8**: The Borrower uses the End Buyer Payments held in the Collection Account to repay the Advance made by the Lenders under Step 4.
- (i) **Step 9**: Once the Advance is repaid to the Lenders, the Borrower and MBL authorize TX Indiana to release the Vehicle to the End Buyer. TX Indiana retitles the Vehicle to the End Buyer and coordinates delivery.

28. Separately, if any Vehicles held in inventory by TX Canada or Techlantic constitute an “Ineligible Asset” under the applicable Credit Facility, meaning it is held in inventory but not sold to an End Buyer, then Tradexpress Auto Canada Inc. (“**Tradexpress**”) an affiliate of TX Canada and a Respondent in this Application, is entitled to remarket and auction such Vehicles. The Credit Agreements also require Tradexpress to deposit receipts from any such Vehicle sales in the Collection Account.

⁶ Meaning the Vehicle is placed under the U.S. Customs and Border Protection bond, as evidenced by the filing of a Form 7501 Entry Summary with respect to such Vehicle.

29. As described below under a description of the defaults, the Borrower and Respondents have repeatedly and intentionally failed to comply with the terms of the Credit Facilities as they relate to Advances and the steps outlined above. In particular, they have failed to, among other things, deposit End Buyer Payments into the Collection Account and have instead misappropriated such funds for their working capital purposes.

D. THE SECURITY HELD BY MBL

(i) The Collateral

30. MBL has a first ranking security over substantially all of the assets of the Borrowers and the Respondents pursuant to a series of security agreements, which are detailed below.

31. The Canadian collateral underpinning the Security is predominantly comprised of (a) Vehicles acquired by the TX Purchasers (being TX Canada and Techlantic) and ultimately sold to TX Indiana for sale to End Buyers, (b) the rights of TX Canada and Techlantic under purchase and sale agreements with sellers and TX Indiana, (c) cash, representing payments by the Borrowers by way of Advances for Financed Vehicles, (d) a harmonized sales tax receivable that is generated from the purchase of a Vehicle from TX Canada, Techlantic or Tradexpress (the “**HST Receivable**”); as part of its services, TX Canada, Techlantic or Tradexpress will pay the HST on the Vehicle on behalf of the End Buyer, and recover the HST for its own account, and (e) the equity interests of certain of the Respondents.

(ii) Borrower Security

32. As security for the Indebtedness under the applicable Credit Facilities, Techlantic and the other Borrowers granted MBL a security interest in all of their property on February 5, 2021, in respect of the Domestic Facility (the “**Domestic Security**”) and September 27, 2021, in respect of the Global Facility (the “**Global Security**”). The Domestic Security is attached to my Affidavit as **Exhibit “C”**. The Global Security is attached to my Affidavit as **Exhibit “D”**.

(iii) Respondents’ Security

33. TX Canada entered into guarantee and security agreements in connection with each of the Domestic Facility and the Global Facility on February 5, 2021 and September 27, 2021, respectively (collectively, the “**TX Canada Security**”). Pursuant to the TX Canada Security, TX Canada guaranteed the obligations of the Borrowers to MBL, for among other things, any loss arising out of any acts of misappropriation of misapplication of funds or proceeds of any Collateral (“**Guaranteed Obligations**”). The agreements forming the TX Canada Security are attached to my Affidavit as **Exhibits “E”** and **“F”**.

34. As security for the Guaranteed Obligations, TX Canada granted a security interest over the (a) HST Receivables, (b) the Financed Vehicles and all rights to payment or proceeds for any such vehicles and related Purchase Agreements, (c) all rights and obligations under the Purchase Agreements to which it is a party, and (d) any Vehicles owned by TX Canada that are not subject to Purchase Agreements (collectively, the “**TX Canada Collateral**”).

(iv) The Canadian Guarantors

35. As part of the 2022 Loan Restructuring (described and defined in paragraph 57 below), each of the Respondents, other than TX Canada who was already a guarantor of each of the Credit Facilities (collectively, the “**Canadian Guarantors**”), entered into joinders of the Global Facility and the Domestic Facility which had the had the effect of (a) making each Canadian Guarantor a guarantor of the obligations of the Borrowers under the Credit Facilities and (b) causing each Canadian Guarantor to become party to the Domestic Security and the Global Security, pursuant to which they (i) granted in favour of MBL a security interest in all of their property, and (ii) pledged to MBL any equity directly owned by them in the shares of a member of the Trade X Group.

(v) Collection Accounts

36. The Borrowers, TX Canada, Techlantic and Tradexpress have entered into the following blocked accounts agreements or deposit account control agreements in favour of MBL with respect to the Collection Accounts (collectively, the “**DACAs**”):

- (a) deposit account control agreements between the Borrowers and Silicon Valley Bank (“**SVB**”) in favour of MBL;
- (b) blocked account agreements between Tradexpress, TX Canada, Royal Bank of Canada and MBL dated September 14, 2021; and
- (c) a blocked account agreement between Techlantic, MBL and RBC dated April 1, 2022,

Attached to my Affidavit as **Exhibits “G”** through “**K**” are copies of the DACAs.

37. As described in paragraph 29 above, TX Indiana and the Borrowers are required to deposit any amounts received by an End Buyer in respect of a Financed Vehicle into the Collection Account to repay the Advance made by the Lenders. TX Canada, Techlantic and Tradexpress are required to deposit all HST Receivables into the applicable Collection Account.

38. As a result of the Domestic Security, the Global Security, the TX Canada Security and the DACAs (collectively, the “**Security**”), MBL has security over (a) the TX Canada Collateral, (b) substantially all of the assets of the Canadian Guarantors, (c) the shares of the Respondents and Wholesale Express, some of which are perfected by possession, and (d) the Collection Account (collectively, the “**Collateral**”).

E. THE PRIORITY OF THE SECURITY AND OTHER CREDITORS

(i) The MBL Security

39. As described below, MBL has first ranking security against all of the assets of the Respondents.

40. Attached to my Affidavit as **Exhibit “L”** are the *Personal Property Security Act* searches conducted against each of the Respondents in Ontario with a file currency date of October 26, 2023 (the “**PPSA Searches**”). PPSA Searches were also conducted in Saskatchewan against TX Canada and Tradexpress because they are extra-provincially registered in those jurisdictions.

41. The PPSA Searches show that MBL registered the Security against the Respondents in Ontario as follows:

- (a) **TX Canada**: registrations against all of the property of TX Canada registered on February 4, 2021 and September 27, 2021;
- (b) **Tradexpress**: registrations covering collateral identified as Accounts and Other against Davidson Motors Incorporated (former name of Tradexpress) on August 31, 2021, September 2, 2021 and September 27, 2021;
- (c) **Techlantic**: registrations against all property of Techlantic registered on December 21, 2021 and December 23, 2022; and
- (d) **Canadian Guarantors**: a registration against all of the property of the Canadian Guarantors, other than Tradexpress and Techlantic, registered on December 23, 2022.

42. As shown in the PPSA Searches, the following registrations rank equally or prior to the registrations of MBL against TX Canada: (a) TX Indiana and Congressional Bank both registered interests against TX Canada on September 27, 2021, and (b) Trade X LP Fund I, an affiliate of TX Canada, registered an interest against TX Canada on February 25, 2020. I am advised that Congressional Bank has released its interest and there is no indebtedness outstanding between TX Canada and Congressional Bank. I am further advised that each of the other parties, namely TX Indiana and Trade X LP Fund I, who are affiliates of the Respondents, will receive notice of this Application.

43. MBL, through its counsel, is also currently in possession of the following physical share certificates representing pledged shares of the following Respondents: Techlantic; TX Canada; 12771888 Canada Inc.; Trade X Continental Inc.; and TX Capital Corp.

(ii) **Other Creditors**

(a) ***Aimia Inc.***

44. Trade X Parent is indebted to Aimia Inc. ("**Aimia**") pursuant to an amended and restated secured convertible note in the principal amount of US\$25 million dated December 23, 2022 (the "**Aimia Note**"). The Aimia Note is attached to my Affidavit as **Exhibit "M"**.

45. The maturity date of the Aimia Note is dated December 8, 2023. As security for the Aimia Note, Trade X Parent has granted a subordinated security interest to Aimia in all of its property. The PPSA Searches show that this security was registered under the personal property regime in Ontario on January 3, 2023.

(b) ***Highcrest Lending Inc.***

46. Pursuant to a Master Amended and Restated Loan and Security Agreement dated as of December 23, 2022 between Highcrest, as lender, Wholesale Express as borrower and Trade X Parent as guarantor (the "**Highcrest Loan and Security Agreement**"), Trade X Parent has pledged its interests in 100% of the equity of Wholesale Express and Wholesale Express has granted a security interest in all of its property to Highcrest (the "**Highcrest Collateral**"). A copy of the Highcrest Loan and Security Agreement is attached to my Affidavit as **Exhibit "N"**.

47. As shown in the PPSA Searches, Highcrest has a registration dated December 8, 2022 against Trade X Parent under the personal property regime in Ontario against 'accounts' and 'other', as well as a registration under the personal property regime in Quebec against all of Wholesale Express' property. Wholesale Express is not a Canadian

Guarantor nor has it granted any security in favour of MBL. Rather, MBL holds a security interest in the shares of Wholesale Express by virtue of its security against all of the assets Trade X Parent.

48. On November 22, 2023, Highcrest obtained an initial order under the CCAA in respect of Wholesale Express, which is attached to my Affidavit as **Exhibit “O”** (the **“Initial Order”**).

49. The Initial Order states that there is nothing preventing MBL from bringing an Application for receivership, provided that MBL does not seek control over the equity or assets of Wholesale Express. Accordingly, the Appointment Order sought by MBL does not extend to Trade X Parent’s interest in Wholesale Express and, at this time, MBL has no intention of pursuing control over Wholesale Express.

F. THE EVENTS LEADING UP TO THIS RECEIVERSHIP APPLICATION

(i) The Deteriorating Financial Condition of the Respondents

50. Throughout 2020 and 2021, the market for used cars benefited from inventory restrictions due to semi-conductor shortages and supply chain issues caused by the COVID-19 pandemic. As a result, the Trade X Group gained significantly from an increase in demand for used vehicles.

51. During this period, the Trade X Group leveraged their trading platforms, particularly the Trade X Platform, to market itself as a tech company to attract venture capital and raised over US\$45 million. At one point, the Trade X Group claimed it was valued at \$250 million. However, the Trade X Group hired a bloated staff of over 150 people, many of whom were computer programmers and software engineers, with the aim of creating their

technology platform. Trade X began to incur large monthly expenses in part due to its oversized staff and operational inefficiencies.

52. Starting in 2022, as retail sales declined amid interest rate hikes, rising new vehicle availability, increased fuel prices and recessionary fears, demand for used vehicles retrenched and prices for vehicles dropped precipitously (an average of 14% in the U.S. alone). As a result, the Trade X Group began experiencing losses on Vehicles that it purchased without having conducted sufficient prior diligence and market research. Such losses were made worse by the incentive structure in place for Trade X Group staff, some of whom received bonuses based on the number of Vehicles acquired for inventory purposes, regardless of the price paid by the End Buyer (even if it was later sold at a loss). It is clear that the Trade X Group had prioritized their growth at the cost of prudent underwriting and responsible management of expenses.

53. These losses coincided with the general reduction of available capital in the investment community. As a result, Trade X Parent was not able to raise additional funds to subsidize the losses in the Trade X Group.

(ii) 2022 Loan Restructuring

54. In December 2022, the three largest creditors of the Trade X Group—Aimia, Highcrest and MBL—entered into a loan restructuring transaction (the “**2022 Loan Restructuring**”) that amended and restated all loan documents and provided additional capital to Trade X Parent. In exchange, Trade X Parent agreed to sell Wholesale Express, use those proceeds as working capital in the Trade X Group and repay Highcrest. The Trade X Group also agreed to decrease its operating expenses and adopt a more rigorous

and disciplined approach to its Vehicle acquisition and sales practices in order to improve margins.

55. As part of the 2022 Loan Restructuring, (a) Trade X Parent issued the Aimia Note in favour of Aimia and granted a security interest in all of its property—prior to the 2022 Loan Restructuring, Aimia was an unsecured creditor, (b) Wholesale Express and Trade X Parent entered into the Highcrest Loan and Security Agreement and pledged Trade X Parent's interests in 100% of the equity of Wholesale Express and the assets of Wholesale Express in favour of Highcrest, and (c) the Canadian Guarantors became parties to the Domestic Security and Global Security and granted security in all of their assets in favour of MBL.

56. On December 23, 2022, Aimia, Highcrest, MBL, the Borrowers (with the exception of Techlantic), TX Indiana, TX Canada and TX Parent entered into an amended and restated intercreditor agreement (as amended and restated, the “**Intercreditor Agreement**”). A copy of the Intercreditor Agreement is attached to my Affidavit as **Exhibit “P”**.

57. Pursuant to the terms of the Intercreditor Agreement, the parties agreed that Highcrest has a priority security interest Wholesale Express and its shares, MBL has a priority security interest over all of the assets of Trade X Parent and its subsidiaries (other than Wholesale Express and its shares) and Aimia subordinated its interest for so long as any obligations to Highcrest or MBL remain outstanding.

G. THE BORROWERS DEFAULT ON THEIR OBLIGATIONS TO MBL

58. On or about October 9, 2023, I first became aware that the Borrowers failed to deposit End Buyer Payments into the Collection Account, as required by the Credit Facilities and, instead, used such End Buyer Payments to fund the Trade X Group operations and working capital needs.

59. I understand that between June and September, 2023, the Borrowers and the Respondents diverted approximately US\$7 million of End Buyer Payments from the Lenders arising from Vehicle sales during this period. I understand that these were “collective decisions” taken by management of Trade X Parent, with the knowledge, approval and assistance of Ryan Davidson (former CEO and material shareholder), Eric Gosselin (CEO from June to November 2023), Brent Sawadsky (interim CFO), Lakshmi Suresh (Controller) and Eric van Essen (Manager for Techlantic), among other personnel.

60. Moreover, over the last several months, the Respondents have attempted to conceal this information from MBL, including, without limitation, by continuing to report the Vehicles as unsold on the borrowing base reports delivered to MBL, despite the fact such Vehicles had, in fact, been sold. When MBL inquired about the status of these Vehicles as part of regular collateral reporting on September 15, 2023, the Borrowers misrepresented to MBL that the applicable Vehicles had not been sold and requested additional Advances under the Global Facility, in part, on the basis of Vehicles it no longer owned. I believe these misrepresentations were made with the intent to avoid the required pay down of Advances that were made under the Credit Facilities.

61. As described in paragraphs 29 and 32 above, the Credit Facilities and the Security share the following features:

- (a) the Collateral securing the Credit Facilities is predominantly comprised of the Vehicles, the rights of the Respondents under the Purchase Agreements and accounts receivable under those agreements;
- (b) receivables for the Vehicles and other amounts payable by End Buyers are paid by the applicable Respondents into Collection Accounts over which MBL has security and which are subject to the DACAs; and
- (c) both Credit Facilities are on a borrowing base, with Vehicles serving as the primary Collateral for calculating the borrowing base. Vehicles do not get included in the borrowing base unless, among other things, the Borrower has deposited the End Buyer Payments for a Vehicle into the Collections Account within a prescribed period of time after the Vehicle has been delivered to the destination of the End Buyer.

62. As a result, there are a series of material defaults (the “**Defaults**”) arising from the intentional and wrongful diversion of the End Buyer Payments, which include the following:

- (a) The failure of the Borrowers to deposit the End Buyer Payments into the Collection Account or hold such amounts in trust (subsections 8.01(b)(i) and (ii) of the Credit Agreements);

- (b) Certain Financed Vehicles failing to qualify as “Eligible Assets” resulting in them being characterized “Ineligible Assets” due to, among other reasons, the Borrower’s failure to deposit the End Buyer Payments for such Vehicles into the Collection Account within the period prescribed under the Credit Agreements, as further described in paragraph 29(g) above (sections 2.01(d) and Article IX(c) of the Credit Agreements); and
- (c) The inability of the Borrower to deliver an accurate certification in respect of the borrowing base under the Credit Agreements owing to certain Vehicles failing to meet the definition of “Eligible Assets” (section 5.11(h) and Article IX(e) of the Credit Agreements).

63. The Defaults committed by the Borrowers trigger the obligations of TX Canada under the TX Canada Security and the obligations of the Canadian Guarantors under the Domestic Security and Global Security.

H. MBL TOOK STEPS FOLLOWING THE DEFAULTS

64. On October 13, 2023, MBL sent the Borrowers, TX Indiana and the Respondents notices of default and acceleration in respect of the Defaults. MBL advised that (a) the aggregate outstanding obligations under the Domestic Facility were US\$2,329,813.97, and (b) the aggregate outstanding obligations under the Global Facility were US\$17,858,401.20, in each case, as at October 13, 2023. Attached to my Affidavit as **Exhibits “Q”** and **“R”** are true copies of the notices of default and acceleration.

65. Subsequently, on October 16, 2023, MBL sent notices of activation to RBC under the DACAs. These notices of activation are attached to my Affidavit as **Exhibits “S”** through **“U”**.

66. The notices of activation notified RBC that they were to transfer all funds on deposit to a designated collections account over which MBL has control. Additionally, MBL sent a notice of exclusive control under each of the DACAs to SVB, pursuant to which MBL directed SVB to cease complying with instructions from the Borrowers (as applicable under each DACA). The notice of exclusive control sent to SVB is attached to my Affidavit as **Exhibit “V”**.

67. I am advised by MBL’s counsel at Davies Ward Phillips & Vineberg LLP (**“Davies”**) that, on November 11, 2023, Davies sent the Respondents notices of intention to enforce the Security under section 244 of the *Bankruptcy and Insolvency Act*. Copies of the section 244 notices are attached to my Affidavit as **Exhibits “W”** and **“X”**.

I. IT IS NECESSARY TO APPOINT A RECEIVER

(i) Trade X Management Has Admitted to Wilful Diversion of Payments

68. MBL has entirely lost confidence in the management of Trade X Parent and the other Respondents. Every level of Trade X Parent’s management, from the Chairman, CEO, CFO, controller and accountants have admitted to me, or other representatives of MBL, that they have been complicit in the wilful diversion of payments properly owed to the Lenders under the Credit Agreements. In my view, the management of the Trade X Group has displayed a cavalier attitude and blatant disregard toward the covenants in the

Credit Facilities and Security, and have wilfully breached said contracts to the material detriment of MBL and the Lenders.

(ii) Trade X Group Has No Operating Capital and Has Effectively Ceased Operations

69. I have reason to believe that the Trade X Group has run out of operating capital, and is unable to fund its operations. On November 4, 2023, Highcrest advised MBL that Ryan Davidson, Chairman, former CEO and a material shareholder of Trade X Parent, admitted that he used funds payable to the Lenders under the Credit Facilities to satisfy payroll obligations at the Trade X companies, including Trade X Parent and Techlantic. Mr. Davidson admitted the same to me when I later asked.

70. I have recently learned that most of Trade X Group's employees resigned from their employment, leaving only a skeletal crew of volunteers operating the business of the Trade X Group. Indeed, on November 15, 2023, Eric Gosselin, the CEO of Trade X Parent since June 2023 resigned with immediate effect.

71. In light of these events, on November 15, 2023, MBL retained FTI as a financial advisor to conduct an inspection of the books and records of the Respondents, which is permitted under the terms of the Credit Agreements. I am advised that FTI attended at the Mississauga Location on November 15, 2023 and found only two bookkeeping employees working and only two Vehicles on site. FTI advised me that in their view, the Trade X Group is not operating an active business in Canada.

72. On November 27, 2023, the landlord under the Trade X Group's lease of its Mississauga Location, VS Verwaltungs GmbH (the "**Landlord**") served the Trade X

Group with a Lease Default Notice, stating that the tenant, the Trade X Group, was in default of its obligations pursuant to its Lease Agreement. The Lease Default Notice states that the Trade X Group owes \$70,027.04 exclusive of all legal fees, disbursements and accrued and accruing interest in arrears to the Landlord. Attached to my Affidavit as **Exhibits “Y”** and **“Z”** are copies of the Lease Default Notice and the Landlord’s waiver in favour of MBL, respectively. The Lease Default Notice confirms MBL’s suspicions that the Trade X Group has been quietly shutting down its operations in Ontario.

73. The Trade X Group’s blatant and unacceptable disregard for MBL’s collateral and security interest continues unabated. On November 29, 2023, Eric van Essen, Manager of Techlantic, told me that the Trade X Group would be using their inbound funds to pay their “critical expenses” before repaying Lenders, which indicated to me that the Trade X Group intended to continue diverting funds payable to MBL to sustain their operations. Attached to my Affidavit as **Exhibit “AA”** is a copy of the email correspondence between Eric van Essen and myself.

(iii) Collateral is at Risk of Dissipating Further

74. In the circumstances, MBL has grave concerns about whether the Respondents are conducting any active business at all and whether there is any Collateral available to satisfy the Indebtedness. Given the complex nature of the intercompany payables, the online nature of the business and the fact that Vehicles are exported between jurisdictions with frequency, I have serious concerns that if there is Collateral available, it is at risk of further dissipating and again being improperly misappropriated and diverted.

75. The Defaults are uncured and remain ongoing and MBL holds a first ranking security interest over substantially all of the assets of the Respondents (other than TX Canada). As at November 30, 2023 the aggregate amount of the Indebtedness, inclusive of interest and principal is US\$15,256,504.16. Both the Domestic Security and the Global Security provide that during an “Event of Default” (as defined in Article IX of the Credit Agreements) MBL may enforce the Security and sell the Collateral pursuant to court-appointed receivership proceedings.

76. The appointment of a receiver is necessary on an urgent basis to determine the status of the Trade X Group’s operations in Canada, to preserve the remaining Collateral and to ensure adequate recovery on those assets. In light of the Defaults described above, the business and assets of the Respondents cannot be left in the hands of present management if the Collateral is to be preserved and further diversion and misappropriation is to be avoided.

77. To the extent there are still active business operations within the Trade X Group, FTI will provide the necessary oversight and controls to ensure an orderly liquidation of the Collateral. FTI has provided written consent to act as the Receiver in this proceeding, a copy of which will be attached to its pre-filing report.

J. THE RECEIVER’S CHARGE

78. MBL has agreed to a charge in favour of the Receiver, if appointed, and its counsel, as security for payment of their respective fees and disbursements, in each case at their standard rate and charges (the “**Receiver’s Charge**”). The Receiver’s Charge shall form

a first charge in priority to the claims of MBL as secured creditor. If appointed, the Receiver will also be empowered to borrow funds to finance the costs of the receivership.

K. FUNDING OF THE RECEIVERSHIP

79. It is contemplated that, if appointed, the Receiver will be empowered pursuant to the terms of the Court order appointing it (the “**Appointment Order**”) to borrow funds from MBL for the purposes of, among other things, funding the costs and disbursements of the receivership. A condition to the financing would be the granting of a charge in favour of MBL over the Collateral. This charge would rank behind the Receiver’s Charge.

80. Subject to the approval of the Court, it is proposed that any financing would be reflected in certificates substantially in the form attached to the draft Appointment Order.

L. THE APPOINTMENT OF THE RECEIVER IS JUST AND CONVENIENT

81. I believe that it is just and convenient for FTI to be appointed as Receiver on the terms set out in the proposed Appointment Order, particularly in circumstances where:

- (a) Trade X Parent and its senior management have admitted that they have intentionally and repeatedly misappropriated funds that are due and owing to the Lenders;
- (b) the Borrowers have repeatedly breached the terms of the Credit Agreements and the Defaults remain uncured;
- (c) the obligations of the Respondents are due and owing under the Security as result of the Defaults;

- (d) the Respondents have continually disregarded the interests of MBL as senior secured creditor and diverted funds from the Lenders;
- (e) the Trade X Group appear to have abandoned or materially downsized their business operations in Canada;
- (f) the Respondents were provided with the required notice of MBL's intention to enforce the Security under section 244 of the BIA and the 10-day period has lapsed; and
- (g) the Respondents have no other secured creditors, other than related parties, and Highcrest, who is aware of this Application.

82. This Affidavit is sworn in support of the application by MBL for the appointment of a receiver over the Collateral and for no other or improper purpose.

SWORN by Westin Lovy in the City of Stamford, in the State of Connecticut, remotely before me in the City of Toronto, Province of Ontario, on this 4th of December, 2023 in accordance with O. Reg. 431/20: Administering Oath or Declaration Remotely



Commissioner for Taking Affidavits
MAYA CHURILOV



Westin Lovy

MBL ADMINISTRATIVE AGENT II LLC
Applicant

-and-

TRADE X GROUP OF COMPANIES INC. et al.
Respondents

Court File No. CV-23-00710413-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

PROCEEDING COMMENCED AT
TORONTO

AFFIDAVIT OF WESTIN LOVY

DAVIES WARD PHILLIPS & VINEBERG LLP
155 Wellington Street West
Toronto ON M5V 3J7

Natasha MacParland (LSO #42383G)
Email: NMacParland@dwpv.com
Tel: 416.863.5567

Natalie Renner (LSO# 55954A)
Email: nrenner@dwpv.com
Tel: 416.367.7489

Maya Churilov (LSO# 87190A)
Email: mchurilov@dwpv.com
Tel: 416.367.7508

Tel: 416.863.0900
Fax: 416.863.0871

Lawyers for the Applicant, MBL Administrative Agent II LLC

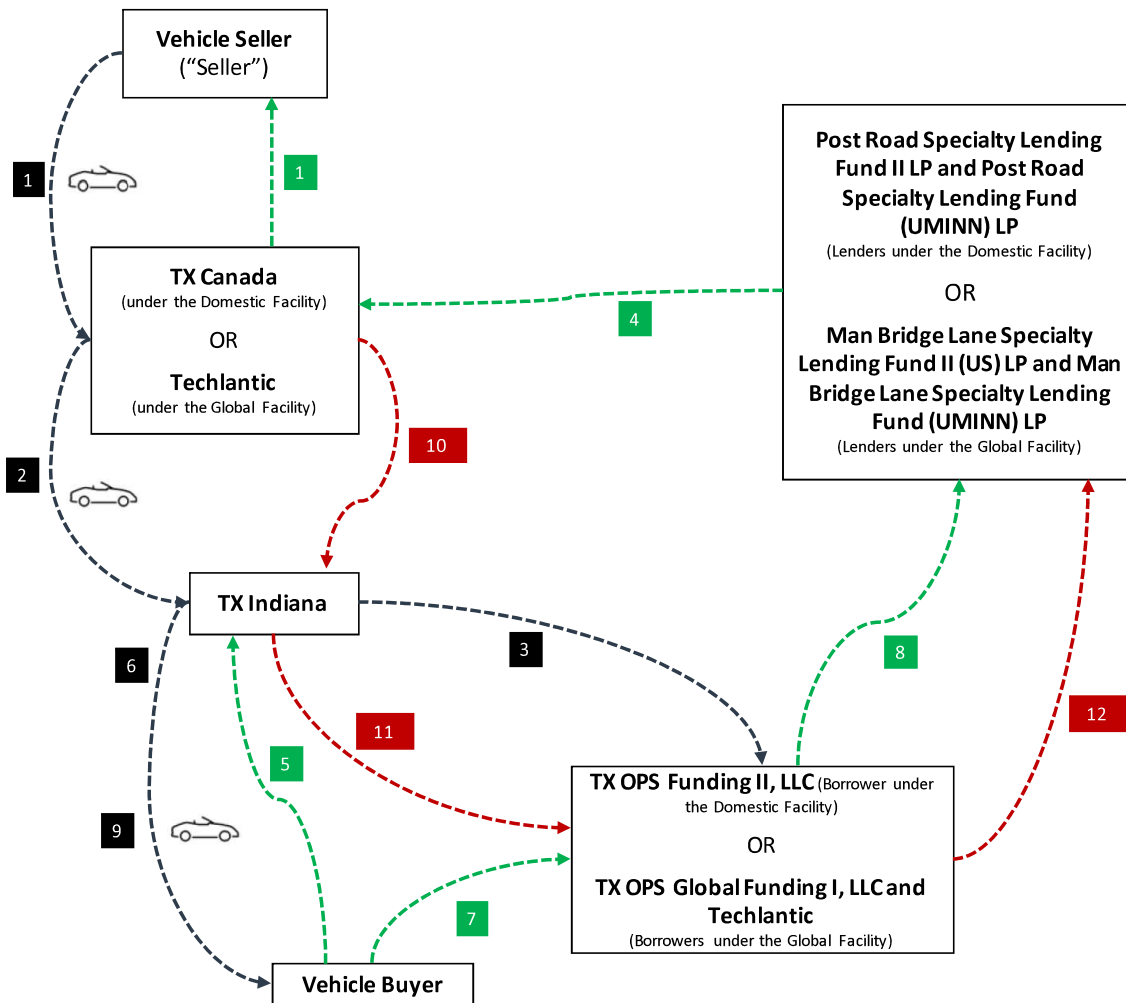
TAB B

This is Exhibit "B" referred to in the Affidavit of Westin Lovy sworn by Westin Lovy in the City of Lowell, in the State of Massachusetts, before me at City of Toronto, in the Province of Ontario, on May 17, 2024 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

DocuSigned by:
Debra Bilous
EB44438559584D0

A Commissioner for taking Affidavits

Debra Theresa Ann Bilous, a Commissioner, etc.,
Province of Ontario, for Davies Ward Phillips
&Vineberg LLP, Barristers and Solicitors.
Expires February 17, 2025



1. TX Canada or Techlantic purchase a vehicle from the Seller; TX Canada or Techlantic purchase the vehicle with their own funds.
2. Trade X Canada or Techlantic sell to TX Indiana all of their rights, title and interest in (a) the vehicle acquired from Seller, and (b) their rights under the purchase and sale agreement between TX Canada/Techlantic and the Seller. Trade X Canada or Techlantic coordinate the export of the vehicle via services of a common carrier.
3. TX Indiana sells to the Borrower all of its right, title and interest in (a) its accounts receivable owing from the Vehicle Buyer, (b) the vehicle acquired from TX Canada/Techlantic, and (c) its rights under the purchase and sale agreement between TX Indiana and TX Canada/Techlantic.
4. When (i) the bill of lading is issued by the carrier and delivered to the custodian and (ii) the vehicle is held by the common carrier, Lender advances vehicle price directly to TX Canada/Techlantic on behalf of TX Indiana and on behalf of Borrower, secured by the assets conveyed by TX Indiana to Borrower in #3.
5. The Vehicle Buyer pays TX Indiana a security deposit for the vehicle and a fee for the use of the Trade X electronic trading platform. These funds are required to be deposited in a designated bank account that is subject to a deposit control agreement in favour of the Lender.
6. Vehicle is transported to the importing country and arrives at the port destination.
7. Vehicle Buyer's pay a security deposit and fee for the use of the Trade X electronic trading platform to TX Indiana. The Vehicle Buyer pays balance of purchase price for the vehicle to Borrower's collection account no later than 30 days after arrival of the vehicle in its country of destination (in the case of global facility) or 60 days after in control of US Customs (in the case of the domestic facility).
8. Borrower uses funds received in #7 to repay Lender's loan made in #4.
9. The loan made in #4 now repaid, TX Indiana retitles the vehicle in the name of the Vehicle Buyer and delivers the vehicle to the Vehicle Buyer.

Security Interests

10. As security for the sale to TX Indiana in #2, and on a non-recourse basis, TX Canada/Techlantic grants to TX Indiana a security interest in (a) the vehicle acquired from Seller, and (b) its rights under the purchase and sale agreement between TX Canada/Techlantic and Seller.
11. As security for the sale to Borrower in #3 and on a non-recourse basis, TX Indiana grants to Borrower a security interest in (a) its accounts receivables owing from Vehicle Buyer in #7, (b) vehicles acquired from TX Canada/Techlantic, and (c) the purchase and sale contract between TX Canada/Techlantic and TX Indiana.
12. As security for loans from Lender in #4, Borrower grants to Lender a security interest in all personal property (including an assignment of Borrower's secured party rights under #11 and #12 below).

TAB C

This is Exhibit "C" referred to in the Affidavit of Westin Lovy sworn by Westin Lovy in the City of Lowell, in the State of Massachusetts, before me at City of Toronto, in the Province of Ontario, on May 17, 2024 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

DocuSigned by:
Debra Bilous
FB44438559584D0...

A Commissioner for taking Affidavits

Debra Theresa Ann Bilous, a Commissioner, etc.,
Province of Ontario, for Davies Ward Phillips
&Vineberg LLP, Barristers and Solicitors.
Expires February 17, 2025

Court File No. CV-23-00710413-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

THE HONOURABLE)	MONDAY, THE 11th
)	
JUSTICE PENNY)	DAY OF DECEMBER, 2023

APPLICATION UNDER Section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended, and Section 243 of the *Bankruptcy and Insolvency Act*, c. C.43, as amended,

BETWEEN:

**MBL ADMINISTRATIVE AGENT II LLC, as agent for POST ROAD
SPECIALTY LENDING FUND II LP (f/k/a MAN BRIDGE LANE
SPECIALTY LENDING FUND II (US) LP), and POST ROAD SPECIALTY
LENDING FUND (UMINN) LP (f/k/a MAN BRIDGE LANE SPECIALTY
LENDING FUND (UMINN) LP)**

Applicant

and

**TRADE X GROUP OF COMPANIES INC., 12771888 CANADA INC.,
TVAS INC., TRADEXPRESS AUTO CANADA INC., TRADE X FUND GP
INC., TRADE X LP FUND I, TRADE X CONTINENTAL INC., TX
CAPITAL CORP., TECHLANTIC LTD. AND TX OPS CANADA
CORPORATION**

Respondents

ORDER

ON READING the Applicant's Amended Notice of Application for an Order pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "**BIA**") and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c.

C.43, as amended (the "**CJA**") appointing FTI Consulting Canada Inc. as receiver and manager ("**FTI**" or the "**Information Officer**") without security, of substantially all of the assets and undertakings of Trade X Group of Companies Inc., 12771888 Canada Inc., TVAS Inc., Tradexpress Auto Canada Inc., Trade X Fund GP Inc., Trade X LP Fund I, Trade X Continental Inc., TX Capital Corp., Techlantic Ltd. and TX OPS Canada Corporation (the "**Debtors**") acquired for, or used in relation to a business carried on by the Debtors, and the affidavit of Westin Lovy sworn December 4, 2023 and the Exhibits thereto, and on hearing the submissions of counsel for the Applicant, FTI, the Debtors and no one appearing although duly served, and on reading the consent of FTI to act as Information Officer,

AND GIVEN the request made by the Debtors to adjourn and postpone the hearing of the Application until December 22, 2023,

AND GIVEN the inherent jurisdiction of the Superior Court of Justice to grant an interlocutory injunction or a mandatory order,

AND GIVEN the provisions of the BIA and CJA,

ADJOURNMENT OF THE APPLICATION

1. **THIS COURT ORDERS** that the hearing on the Application is hereby adjourned and postponed until December 22, 2023 (the "**Postponed Hearing**"), at which time the Application shall be returnable before the Court, at a time and by videoconference to be announced by the Court and communicated to the parties.

2. **THIS COURT ORDERS** that any interested party wishing to object to any relief sought in the Applicant's Application shall be entitled to do so at the Postponed Hearing, provided that such party serves to the Applicant's counsels, and to all other parties, a detailed written response stating the nature and grounds of such objection by no later than 1 p.m. on December 21, 2023.

STAY OF PROCEEDINGS AGAINST THE DEBTORS AND THE PROPERTY

3. **THIS COURT ORDERS** that, until the date of the Postponed Hearing or such later date as the Court may order (the “**Stay Period**”), no proceeding or enforcement process in any court or tribunal (each, a “**Proceeding**”), shall be commenced or continued against the Debtors, or affecting the Debtors’ business operations and activities (the “**Business**”) or the Property (defined below), except with leave of this Court. Any and all Proceedings currently under way against or in respect of the Debtors or affecting the Business or the Property, including all rights of His Majesty in right of Canada and His Majesty in right of a Province, are hereby stayed and suspended pending further order of this Court, with the exception of the proceedings commenced against the Debtors’ affiliate, 13517985 Canada Inc. (“**Wholesale Express**”) by Highcrest Lending Corporation (“**Highcrest**”) pursuant to the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, C-36, in the Commercial Division of the Superior Court of Quebec on November 22, 2023.

4. **THIS COURT ORDERS** that during the Stay Period, and subject to, *inter alia*, section 101 of the CJA, all rights and remedies of any individual, natural person, firm, corporation, partnership, limited liability corporation, trust, joint venture, association, organization, governmental body or agency, or any other entity (all of the foregoing, collectively being “**Persons**” and each being a “**Person**”) against or in respect of the Debtors, or affecting the Business, the Property or any part thereof, are hereby stayed and suspended except with leave of this Court.

5. **THIS COURT ORDERS** that during the Stay Period, no Person shall discontinue, fail to honour, alter, interfere with, repudiate, resiliate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Debtors, except with the written consent of the Debtors and the Information Officer , or with leave of this Court.

6. **THIS COURT ORDERS** that during the Stay Period and subject to paragraph 8 hereof, all Persons having verbal or written agreements with the Debtors or statutory or regulatory mandates for the supply of goods and services, including without limitation all

computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation utility or other goods or services made available to the Debtors, are hereby restrained until further order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Debtors, and that the Debtors shall be entitled to the continued use of its current premises, telephone numbers, facsimile numbers, internet addresses, domain names or other services, provided in each case that the normal prices or charges for all such goods or services received after the date of the Order are paid by the Debtors, without having to provide any security deposit or any other security, in accordance with normal payment practices of the Debtors or such other practices as may be agreed upon by the supplier or service provider and the Debtors, with the consent of the Information Officer, or as may be ordered by this Court.

7. **THIS COURT ORDERS** that, notwithstanding anything else contained herein, no Person shall be prohibited from requiring immediate payment for goods, services, use of leased or licensed property or other valuable consideration provided to the Debtors on or after the date of this Order, nor shall any Person be under any obligation on or after the date of the Order to make further advance of money or otherwise extend any credit to the Debtors.

8. **THIS COURT ORDERS** that, without limiting the generality of the foregoing, cash or cash equivalents placed on deposit by the Debtors with any Person during the Stay Period, whether in an operating account or otherwise for itself or for another entity, shall not be applied by such Person in reduction or repayment of amounts owing to such Person as of the date of the Order or due on or before the expiry of the Stay Period or in satisfaction of any interest or charges accruing in respect thereof; however, this provision shall not prevent any financial institution from: (i) reimbursing itself for the amount of any cheques drawn by the Debtors and properly honoured by such institution, or (ii) holding the amount of any cheques or other instruments deposited into the Debtors' accounts until those cheques or other instruments have been honoured by the financial institution on which they have been drawn.

9. **THIS COURT ORDERS** that, notwithstanding the foregoing, any Person who provided any kind of letter of credit, guarantee or bond (the “**Issuing Party**”) at the request of the Debtors shall be required to continue honouring any and all such letters, guarantees and bonds, issued on or before the date of the Order, provided that all conditions under such letters, guarantees and bonds are met save and except for defaults resulting from this Order; however, the Issuing Party shall be entitled, where applicable, to retain the bills of lading or shipping or other documents relating thereto until paid

10. **THIS COURT ORDERS** that notwithstanding the stay of proceedings ordered herein, the Debtors, with the prior approval of the Information Officer, shall be entitled but not obligated to pay amounts owing, either prior to or after the date of this Order, for goods or services actually supplied to the Debtors or any other expenses incurred in the ordinary course of business, if, in the opinion of the Information Officer, such payments are essential to the business and ongoing operations of the Debtors.

APPOINTMENT OF INFORMATION OFFICER

11. **THIS COURT ORDERS** that until the Postponed Hearing, FTI shall be appointed to act as Information Officer (the “**Information Officer**”) of all of the following property (collectively, the “**Property**”):

- (a) The assets, undertakings and properties of the Debtors (other than Trade X Group of Companies Inc. (“**Trade X Parent**”)) acquired for, or used in relation to a business carried on by the Debtors, including all proceeds thereof; and
- (b) The assets, undertakings and properties of Trade X Parent (other than the shares of 13517985 Canada Inc.) acquired for, or used in relation to a business carried on by Trade X Parent, including all proceeds thereof.

12. **THIS COURT ORDERS** that the Information Officer is hereby empowered and authorized, not obligated, to do any of the following where the Information Officer considers it necessary or desirable:

- (a) To review and approve the receipts and disbursements of the Debtors, in consultation with the Applicant;
- (b) To monitor the Debtors' business and all transactions in connection therewith;
- (c) To obtain and review information with respect to the bank accounts of the Debtors (including all transaction activity), and the banks and/or financial institutions which maintain the Debtors' bank accounts are hereby directed to promptly provide any and all such information at the request of the Information Officer and/or its representatives;
- (d) To provide a written report to the Court at the Postponed Hearing on all matters relating to the Debtors, their businesses and their Property and any potential transaction;
- (e) To provide a written report to the Applicant, Aimia Inc. and to any other interested party as the Information Officer deems appropriate;
- (f) To take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations.

13. **THIS COURT ORDERS** that the Debtors and all of their current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, direct or indirect, and any of their affiliates, and all other persons acting on the Debtors' instructions or on their behalf shall cooperate with and provide the Information Officer with such assistance as required to allow the Information Officer to perform its duties as set out in paragraph 11 above.

14. **THIS COURT ORDERS** that during the Stay Period, there shall be no intercompany transactions, including transfers of funds between the Debtors and any of their direct or indirect shareholders or affiliates, except with the written consent of the Information Officer.

15. **THIS COURT ORDERS** that no Proceeding shall be commenced or continued against the Information Officer except with the written consent of the Information Officer or with leave of the Court.

16. **THIS COURT ORDERS** that the Information Officer shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of this Order, whether common law, statutory, environmental or otherwise, save and except for any gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the protections afforded to the Information Officer under the BIA, including, without limitation, section 14.06 thereof, or under any other applicable legislation.

17. **THIS COURT ORDERS**, for greater certainty, that none of the orders set forth herein shall be deemed to create an obligation upon the Information Officer to take possession, control or otherwise manage the Property, or any portion thereof, and the Information Officer shall not be presumed to be in possession of same.

18. **THIS COURT ORDERS** that the Information Officer may from time to time apply to this Court for advice and directions in connection with this Order and the exercise of its powers and duties hereunder.

19. **THIS COURT ORDERS** the Debtors to pay the Information Officer's and its Counsel's fees and costs related to the Information Officer's appointment upon receipt of their bill.

20. **THIS COURT ORDERS** that nothing in this Order shall prevent the Information Officer from acting either as a receiver, monitor or trustee in bankruptcy of the Debtors.





MBL ADMINISTRATIVE AGENT II LLC
Applicant

-and-

TRADE X GROUP OF COMPANIES INC. et al.
Respondents

Court File No. CV-23-00710413-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

PROCEEDING COMMENCED AT
TORONTO

ORDER

DAVIES WARD PHILLIPS & VINEBERG LLP
155 Wellington Street West
Toronto ON M5V 3J7

Natasha MacParland (LSO #42383G)
Email: NMacParland@dwpv.com
Tel: 416.863.5567

Natalie Renner (LSO# 55954A)
Email: nrenner@dwpv.com
Tel: 416.367.7489

Maya Churilov (LSO# 87190A)
Email: mchurilov@dwpv.com
Tel: 416.367.7508

Fax: 416.863.0871

Lawyers for the Applicant, MBL Administrative Agent II LLC

TAB D

This is Exhibit "D" referred to in the Affidavit of Westin Lovy sworn by Westin Lovy in the City of Lowell, in the State of Massachusetts, before me at City of Toronto, in the Province of Ontario, on May 17, 2024 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

DocuSigned by:
Debra Bilous
FB44438559584D0...

A Commissioner for taking Affidavits

Debra Theresa Ann Bilous, a Commissioner, etc.,
Province of Ontario, for Davies Ward Phillips
&Vineberg LLP, Barristers and Solicitors.
Expires February 17, 2025



SUPERIOR COURT OF JUSTICE

COUNSEL/ENDORSEMENT SLIP

COURT FILE NO.: CV-23-00710413-00CL

DATE: 11 December 2023

NO. ON LIST: 4

TITLE OF PROCEEDING: MBL ADMINISTRATIVE AGENT II LLC, v. TRADE X GROUP OF COMPANIES INC., et al
BEFORE: JUSTICE PENNY

PARTICIPANT INFORMATION

For Plaintiff, Applicant, Moving Party:

Name of Person Appearing	Name of Party	Contact Info
Natasha MacParland	Lawyers for the Applicant, MBL Administrative Agent II LLC	nmacparland@dwpv.com
Natalie Renner		nrenner@dwpv.com
Maya Churilov		mchurilov@dwpv.com

For Defendant, Respondent, Responding Party:

Name of Person Appearing	Name of Party	Contact Info
John Salmas	Lawyer for the Respondents, Trade X Group of Companies Inc., 12771888 Canada Inc., TVAS Inc., Tradexpress Auto Canada Inc., Trade X Fund GP Inc., Trade X LP Fund I, Trade X Continental Inc., TX Capital Corp., Techlantic Ltd., and TX OPS Canada Corporation	john.salmas@dentons.com
Mark Freake		mark.freake@dentons.com
Helen Fotinos		helen.fotinos@dentons.com
Heather Meredith	Lawyer for Aimia Inc.	hmeredith@mccarthy.ca
Nathalie Nouvet	Lawyer for Highcrest Lending Inc.	nnouvet@stikeman.com

For Other, Self-Represented:

Name of Person Appearing	Name of Party	Contact Info
Caroline Descours	Lawyer for the Proposed Receiver,	cdescours@goodmans.ca

	FTI Consulting Canada Inc.	
Paul Bishop	The Proposed Receiver	bishop@fticonsulting.com

ENDORSEMENT OF JUSTICE PENNY:

- [1] The Applicant seeks the appointment of FTI Consulting as Receiver of the Respondent debtors.
- [2] The parties have, however, negotiated the terms of an adjournment, to permit the debtors an opportunity to refinance.
- [3] The terms of the interim order provide for the appointment of FTI as Information Officer and give the debtors until December 21 to conclude a transaction. In the event that the revised offer submitted by 15449189 Canada Inc. (the "MBO Purchaser") to Trade-X Group of Companies Inc. has not closed by end of day on December 21, 2023, or such other date that the Parties may agree, the Respondents consent to the appointment of FTI Consulting Canada Inc. as Receiver pursuant to this receivership application at a hearing scheduled for December 22, 2023. For greater certainty the Parties include the Applicant, the Respondents, the MBO Purchaser, Aimia Inc. and Highcrest Lending Corporation.
- [4] I am satisfied that the appointment of FTI as Information Officer is fair and reasonable in the circumstances, and that the remaining terms of the adjournment, as agreed, are appropriate.
- [5] This matter is adjourned to December 22, 2023 at 10:00 AM for one hour. Order to issue in the form signed by me this day.



Penny J.

TAB E

This is Exhibit "E" referred to in the Affidavit of Westin Lovy sworn by Westin Lovy in the City of Lowell, in the State of Massachusetts, before me at City of Toronto, in the Province of Ontario, on May 17, 2024 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

DocuSigned by:
Debra Bilous
FB44438559584D0...

A Commissioner for taking Affidavits

Debra Theresa Ann Bilous, a Commissioner, etc.,
Province of Ontario, for Davies Ward Phillips
&Vineberg LLP, Barristers and Solicitors.
Expires February 17, 2025



Court File No. CV-23-00710413-00CL

ONTARIO

SUPERIOR COURT OF JUSTICE

(COMMERCIAL LIST)

THE HONOURABLE)
JUSTICE CAVANAGH)
)
)
)

FRIDAY, THE 22nd
DAY OF DECEMBER, 2023

APPLICATION UNDER Section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended, and Section 243 of the *Bankruptcy and Insolvency Act*, c. C.43, as amended,

BETWEEN:

**MBL ADMINISTRATIVE AGENT II LLC, as agent for POST ROAD
SPECIALTY LENDING FUND II LP (f/k/a MAN BRIDGE LANE
SPECIALTY LENDING FUND II (US) LP), and POST ROAD SPECIALTY
LENDING FUND (UMINN) LP (f/k/a MAN BRIDGE LANE SPECIALTY
LENDING FUND (UMINN) LP)**

Applicant

and

**TRADE X GROUP OF COMPANIES INC., 12771888 CANADA INC.,
TVAS INC., TRADEXPRESS AUTO CANADA INC., TRADE X FUND GP
INC., TRADE X LP FUND I, TRADE X CONTINENTAL INC., TX
CAPITAL CORP., TECHLANTIC LTD. AND TX OPS CANADA
CORPORATION**

Respondents

ORDER
(appointing Receiver)

THIS APPLICATION made by the Applicant for an Order pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the

"BIA") and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended (the "CJA") appointing FTI Consulting Canada Inc. as receiver and manager (the "Receiver") without security, of substantially all of the assets and undertakings of Trade X Group of Companies Inc., 12771888 Canada Inc., TVAS Inc., Tradexpress Auto Canada Inc., Trade X Fund GP Inc., Trade X LP Fund I, Trade X Continental Inc., TX Capital Corp., Techlantic Ltd. and TX OPS Canada Corporation (the "Debtors") acquired for, or used in relation to a business carried on by the Debtors, was heard this day via videoconference.

ON READING the affidavit of Westin Lovy sworn December 4, 2023 and the Exhibits thereto, the supplementary affidavit of Westin Lovy sworn December 8, 2023 and the Exhibit thereto, the second supplementary affidavit of Westin Lovy sworn December 21, 2023 and the Exhibits thereto, the Endorsement of Justice Penny dated December 11, 2023, the Interim Order of this Court dated December 11, 2023, and the consent of FTI to act as the Receiver.

ON HEARING the submissions of counsel for the Applicant, counsel for FTI as proposed receiver, counsel for the Debtors, and counsel for Aimia Inc., and being advised that this Application is on consent of the Debtors, and on consent of Aimia Inc. on the condition that the shares of 13517985 Canada Inc. are not included in the Property over which the Receiver is appointed, and with counsel for Highcrest Lending Inc. having appeared before this Court and not opposed to this Application.

SERVICE

1. **THIS COURT ORDERS** that the time for service of the Amended Notice of Application and the Application is hereby abridged and validated so that this motion is properly returnable today and hereby dispenses with further service thereof.

APPOINTMENT

2. **THIS COURT ORDERS** that pursuant to section 243(1) of the BIA and section 101 of the CJA, FTI Consulting Canada Inc. is hereby appointed Receiver, without security, of all of the following property (collectively, the "**Property**"):

- (a) the assets, undertakings and properties of the Debtors (other than Trade X Group of Companies Inc. ("**Trade X Parent**") and TX OPS Canada Corporation ("**TX Canada**")) acquired for, or used in relation to a business carried on by the Debtors, including all proceeds thereof;
- (b) the assets, undertakings and properties of Trade X Parent (other than the shares of 13517985 Canada Inc.) acquired for, or used in relation to a business carried on by Trade X Parent, including all proceeds thereof; and
- (c) certain assets, undertakings and properties of TX Canada defined as the TX Canada Collateral in the Affidavit of Westin Lovy sworn December 4, 2023.

RECEIVER'S POWERS

3. **THIS COURT ORDERS** that the Receiver is hereby empowered and authorized, but not obligated, to act at once in respect of the Property and, without in any way limiting the generality of the foregoing, the Receiver is hereby expressly empowered and authorized to do any of the following where the Receiver considers it necessary or desirable:

- (a) to take possession of and exercise control over the Property and any and all proceeds, receipts and disbursements arising out of or from the Property;

- (b) to receive, preserve, and protect the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the relocating of Property to safeguard it, the engaging of independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;
- (c) to manage, operate, and carry on the business of the Debtors, including the powers to enter into any agreements, incur any obligations in the ordinary course of business, cease to carry on all or any part of the business, or cease to perform any contracts of the Debtors;
- (d) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Receiver's powers and duties, including without limitation those conferred by this Order;
- (e) to purchase or lease such machinery, equipment, inventories, supplies, premises or other assets to continue the business of the Debtors or any part or parts thereof;
- (f) to receive and collect all monies and accounts now owed or hereafter owing to the Debtors and to exercise all remedies of the Debtors in collecting such monies, including, without limitation, to enforce any security held by the Debtors;
- (g) to obtain and review information with respect to each of the bank accounts of each of the Debtors, including, but not limited to, bank accounts with the financial institutions set out in Schedule "B" (the

“**Bank Accounts**”), which includes all transaction activity, and, without limiting the generality of the other provisions of this Order, to take possession of, exercise control over, and withdraw or otherwise transfer amounts from the Bank Accounts, and each of the banks and/or financial institutions which maintain any Bank Accounts are hereby directed to promptly provide any and all such information, and otherwise cooperate with the Receiver with regards to the foregoing, at the request of the Receiver and/or its representatives;

- (h) to settle, extend or compromise any indebtedness owing to the Debtors;
- (i) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Receiver's name or in the name and on behalf of the Debtors, for any purpose pursuant to this Order;
- (j) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Debtors, the Property or the Receiver, and to settle or compromise any such proceedings. The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;
- (k) to market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate;

- (l) to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business,
 - (i) without the approval of this Court in respect of any transaction provided that the aggregate consideration for all such transactions does not exceed \$50,000; and
 - (ii) with the approval of this Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out in the preceding clause;
- and in each such case notice under subsection 63(4) of the Ontario *Personal Property Security Act* shall not be required.
- (m) to apply for any vesting order or other orders necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;
 - (n) to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver deems appropriate on all matters relating to the Property and the receivership, and to share information, subject to such terms as to confidentiality as the Receiver deems advisable;
 - (o) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;
 - (p) to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals

thereof for and on behalf of and, if thought desirable by the Receiver, in the name of the Debtors;

- (q) to enter into agreements with any trustee in bankruptcy appointed in respect of the Debtors;
- (r) to exercise any shareholder, partnership, joint venture or other rights which the Debtors may have; and
- (s) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations,

and in each case where the Receiver takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons (as defined below), including the Debtors, and without interference from any other Person.

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER

4. **THIS COURT ORDERS** that (i) the Debtors, (ii) all of their current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on their instructions or behalf, and (iii) all other individuals, firms, corporations, banks and other financial institutions, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being "**Persons**" and each being a "**Person**") shall forthwith advise the Receiver of the existence of any Property in such Person's possession or control, shall grant immediate and continued access to the Property to the Receiver, and shall deliver all such Property to the Receiver upon the Receiver's request.

5. **THIS COURT ORDERS** that all Persons shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of the Debtors, and any computer programs, computer tapes,

computer disks, or other data storage media or cloud-based storage containing any such information (the foregoing, collectively, the "**Records**") in that Person's possession or control, and shall provide to the Receiver or permit the Receiver to make, retain and take away copies thereof and grant to the Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 5 or in paragraph 6 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Receiver due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

6. **THIS COURT ORDERS** that if any Records are stored or otherwise contained on a computer or other electronic or cloud-based system of information storage, whether by independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to the Receiver for the purpose of allowing the Receiver to recover and fully copy all of the information contained therein whether by way of printing the information onto paper or making copies of computer disks or such other manner of retrieving and copying the information as the Receiver in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Receiver. Further, for the purposes of this paragraph, all Persons shall provide the Receiver with all such assistance in gaining immediate access to the information in the Records as the Receiver may in its discretion require including providing the Receiver with instructions on the use of any computer or other system and providing the Receiver with any and all access codes, account names and account numbers that may be required to gain access to the information.

7. **THIS COURT ORDERS** that the Receiver shall provide each of the relevant landlords with notice of the Receiver's intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to

observe such removal and, if the landlord disputes the Receiver's entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and the Receiver, or by further Order of this Court upon application by the Receiver on at least two (2) days notice to such landlord and any such secured creditors.

NO PROCEEDINGS AGAINST THE RECEIVER

8. **THIS COURT ORDERS** that no proceeding or enforcement process in any court or tribunal (each, a "**Proceeding**"), shall be commenced or continued against the Receiver except with the written consent of the Receiver or with leave of this Court.

NO PROCEEDINGS AGAINST THE DEBTORS OR THE PROPERTY

9. **THIS COURT ORDERS** that no Proceeding against or in respect of the Debtors or the Property shall be commenced or continued except with the written consent of the Receiver or with leave of this Court and any and all Proceedings currently under way against or in respect of the Debtors or the Property are hereby stayed and suspended pending further Order of this Court.

NO EXERCISE OF RIGHTS OR REMEDIES

10. **THIS COURT ORDERS** that all rights and remedies against the Debtors, the Receiver, or affecting the Property, including, without limitation, set-off rights, are hereby stayed and suspended except with the written consent of the Receiver or leave of this Court, provided however that this stay and suspension does not apply in respect of any "eligible financial contract" as defined in the BIA, and further provided that nothing in this paragraph shall (i) empower the Receiver or the Debtors to carry on any business which the Debtor is not lawfully entitled to carry on, (ii) exempt the Receiver or the Debtors from compliance with statutory or regulatory provisions relating to health, safety or the environment, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

NO INTERFERENCE WITH THE RECEIVER

11. **THIS COURT ORDERS** that no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Debtors, without written consent of the Receiver or leave of this Court.

CONTINUATION OF SERVICES

12. **THIS COURT ORDERS** that all Persons having oral or written agreements with the Debtors or statutory or regulatory mandates for the supply of goods and/or services, including without limitation, all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Debtors are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Receiver, and that the Receiver shall be entitled to the continued use of the Debtors' current telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Receiver in accordance with normal payment practices of the Debtors or such other practices as may be agreed upon by the supplier or service provider and the Receiver, or as may be ordered by this Court.

RECEIVER TO HOLD FUNDS

13. **THIS COURT ORDERS** that all funds, monies, cheques, instruments, and other forms of payments received or collected by the Receiver from and after the making of this Order from any source whatsoever, including without limitation the sale of all or any of the Property and the collection of any accounts receivable in whole or in part, whether in existence on the date of this Order or hereafter coming into existence, shall be deposited into one or more new accounts to be opened by the Receiver (the "**Post Receivership Accounts**") and the monies standing to the credit of such Post

Receivership Accounts from time to time, net of any disbursements provided for herein, shall be held by the Receiver to be paid in accordance with the terms of this Order or any further Order of this Court.

EMPLOYEES

14. **THIS COURT ORDERS** that all employees of the Debtors shall remain the employees of the Debtors until such time as the Receiver, on the Debtors' behalf, may terminate the employment of such employees. The Receiver shall not be liable for any employee-related liabilities, including any successor employer liabilities as provided for in section 14.06(1.2) of the BIA, other than such amounts as the Receiver may specifically agree in writing to pay, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*.

PIPEDA

15. **THIS COURT ORDERS** that, pursuant to clause 7(3)(c) of the Canada *Personal Information Protection and Electronic Documents Act*, the Receiver shall disclose personal information of identifiable individuals to prospective purchasers or bidders for the Property and to their advisors, but only to the extent desirable or required to negotiate and attempt to complete one or more sales of the Property (each, a "**Sale**"). Each prospective purchaser or bidder to whom such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evaluation of the Sale, and if it does not complete a Sale, shall return all such information to the Receiver, or in the alternative destroy all such information. The purchaser of any Property shall be entitled to continue to use the personal information provided to it, and related to the Property purchased, in a manner which is in all material respects identical to the prior use of such information by the Debtors, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.

LIMITATION ON ENVIRONMENTAL LIABILITIES

16. **THIS COURT ORDERS** that nothing herein contained shall require the Receiver to occupy or to take control, care, charge, possession or management (separately and/or collectively, "**Possession**") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, or the *Ontario Occupational Health and Safety Act* and regulations thereunder (the "**Environmental Legislation**"), provided however that nothing herein shall exempt the Receiver from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Receiver shall not, as a result of this Order or anything done in pursuance of the Receiver's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

LIMITATION ON THE RECEIVER'S LIABILITY

17. **THIS COURT ORDERS** that the Receiver shall incur no liability or obligation as a result of its appointment or the carrying out the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*. Nothing in this Order shall derogate from the protections afforded the Receiver by section 14.06 of the BIA or by any other applicable legislation.

RECEIVER'S ACCOUNTS

18. **THIS COURT ORDERS** that the Receiver and counsel to the Receiver shall be paid their reasonable fees and disbursements, in each case at their standard rates and

charges unless otherwise ordered by the Court on the passing of accounts, and that the Receiver and counsel to the Receiver shall be entitled to and are hereby granted a charge (the "**Receiver's Charge**") on the Property, as security for such fees and disbursements, both before and after the making of this Order in respect of these proceedings, and that the Receiver's Charge shall form a first charge on the Property in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subject to sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

19. **THIS COURT ORDERS** that the Receiver and its legal counsel shall pass its accounts from time to time, and for this purpose the accounts of the Receiver and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

20. **THIS COURT ORDERS** that prior to the passing of its accounts, the Receiver shall be at liberty from time to time to apply reasonable amounts, out of the monies in its hands, against its fees and disbursements, including legal fees and disbursements, incurred at the standard rates and charges of the Receiver or its counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

FUNDING OF THE RECEIVERSHIP

21. **THIS COURT ORDERS** that the Receiver be at liberty and it is hereby empowered to borrow by way of a revolving credit or otherwise, such monies (each, a "**Loan**") from time to time as it may consider necessary or desirable, provided that the aggregate outstanding principal amount of all of the Loans does not exceed \$100,000.00 (or such greater amount as this Court may by further Order authorize) at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by this Order, including interim expenditures.

The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the "**Receiver's Borrowings Charge**") as security for the payment of the Loans, together with interest and charges thereon, in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to the Receiver's Charge and the charges as set out in sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

22. **THIS COURT ORDERS** that neither the Receiver's Borrowings Charge nor any other security granted by the Receiver in connection with its borrowings under this Order shall be enforced without leave of this Court.

23. **THIS COURT ORDERS** that the Receiver is at liberty and authorized to issue certificates substantially in the form annexed as Schedule "A" hereto (the "**Receiver's Certificates**") for any Loan borrowed by it pursuant to this Order.

24. **THIS COURT ORDERS** that the Loans from time to time borrowed by the Receiver pursuant to this Order or any further order of this Court and any and all Receiver's Certificates evidencing the same or any part thereof shall rank on a *pari passu* basis, unless otherwise agreed to by the holders of any prior issued Receiver's Certificates.

SERVICE AND NOTICE

25. **THIS COURT ORDERS** that the E-Service Protocol of the Commercial List (the "**Protocol**") is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at <http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/e-service-protocol/>) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case

Website shall be established in accordance with the Protocol with the following URL <https://ontariocourts.caselines.com/Case/Details?caseKey=34e91e5ee4f444be8cabe9a6507ad889>.

26. **THIS COURT ORDERS** that if the service or distribution of documents in accordance with the Protocol is not practicable, the Receiver is at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or facsimile transmission to the Debtors' creditors or other interested parties at their respective addresses as last shown on the records of the Debtors and that any such service or distribution by courier, personal delivery or facsimile transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

GENERAL

27. **THIS COURT ORDERS** that the Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

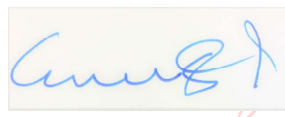
28. **THIS COURT ORDERS** that nothing in this Order shall prevent the Receiver from acting as a trustee in bankruptcy of the Debtors.

29. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

30. **THIS COURT ORDERS** that the Receiver be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Receiver is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

31. **THIS COURT ORDERS** that the Applicant shall have its costs of this motion, up to and including entry and service of this Order, provided for by the terms of the Applicant's security or, if not so provided by the Applicant's security, then on a substantial indemnity basis to be paid by the Receiver from the Debtors' estate with such priority and at such time as this Court may determine.

32. **THIS COURT ORDERS** that any interested party may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to the Receiver and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order.



Digitally signed by
Mr. Justice
Cavanagh

SCHEDULE "A"

RECEIVER CERTIFICATE

CERTIFICATE NO. _____

AMOUNT \$ _____

1. THIS IS TO CERTIFY that FTI Consulting Canada Inc., the receiver (the "**Receiver**") of the assets, undertakings and properties Trade X Group of Companies Inc., 12771888 Canada Inc., TVAS Inc., Tradexpress Auto Canada Inc., Trade X Fund GP Inc., Trade X LP Fund I, Trade X Continental Inc., TX Capital Corp., Techlantic Ltd. and TX OPS Canada Corporation (the "**Debtors**") acquired for, or used in relation to a business carried on by the Debtors, including all proceeds thereof (collectively, the "**Property**") appointed by Order of the Ontario Superior Court of Justice (Commercial List) (the "Court") dated the ■ day of December, 2023 (the "**Order**") made in an action having Court file number CV-23-00710413-00-CL, has received as such Receiver from the holder of this certificate (the "**Lender**") the principal sum of \$ _____, being part of the total principal sum of \$ _____ which the Receiver is authorized to borrow under and pursuant to the Order.

2. The principal sum evidenced by this certificate is payable on demand by the Lender with interest thereon calculated and compounded monthly not in advance on the _____ day of each month after the date hereof at a notional rate per annum equal to the rate of _____ per cent above the prime commercial lending rate of Bank of _____ from time to time.

3. Such principal sum with interest thereon is, by the terms of the Order, together with the principal sums and interest thereon of all other certificates issued by the Receiver pursuant to the Order or to any further order of the Court, a charge upon the whole of the Property (as defined in the Order), in priority to the security interests of any other person, but subject to the priority of the charges set out in the Order and in the *Bankruptcy and Insolvency Act*, and the right of the Receiver to indemnify itself out of such Property in respect of its remuneration and expenses.

4. All sums payable in respect of principal and interest under this certificate are payable at the main office of the Lender at Toronto, Ontario.
5. Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the Receiver to any person other than the holder of this certificate without the prior written consent of the holder of this certificate.
6. The charge securing this certificate shall operate so as to permit the Receiver to deal with the Property as authorized by the Order and as authorized by any further or other order of the Court.
7. The Receiver does not undertake, and it is not under any personal liability, to pay any sum in respect of which it may issue certificates under the terms of the Order.

DATED the ____ day of _____, 20__.

FTI Consulting Canada Inc., solely in its capacity as Receiver of the Property, and not in its personal capacity

Per: _____

Name:

Title:

SCHEDULE "B"

BANK ACCOUNTS AND FINANCIAL INSTITUTIONS

In the course of its duties as Information Officer pursuant to the Order of Justice Penny dated December 11, 2023, FTI has discovered that the Respondents hold bank accounts with various financial institutions including, without limitation, the below listed banks, which do not comprise an exhaustive list, as FTI may discover additional financial institutions in the course of executing its duties as Receiver:

1. Royal Bank of Canada;
2. Silicon Valley Bank;
3. TD Bank;
4. National Bank of Canada;
5. China Minsheng Bank;
6. Commerzbank;
7. Standard Chartered Bank;
8. Zenith Bank;
9. Guaranty Trust Bank;
10. Banco Bilbao Vizcaya Argentaria;
11. Banreservas; and
12. Itaú Bank.

Applicant

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

**PROCEEDING COMMENCED AT
TORONTO**

ORDER

DAVIES WARD PHILLIPS & VINEBERG LLP
155 Wellington Street West
Toronto ON M5V 3J7

Natasha MacParland (LSO #42383G)
Email: NMacParland@dwpv.com
Tel: 416.863.5567

Natalie Renner (LSO# 55954A)
Email: nrenner@dwpv.com
Tel: 416.367.7489

Maya Churilov (LSO# 87190A)
Email: mchurilov@dwpv.com
Tel: 416.367.7508

Tel: 416.863.0900
Fax: 416.863.0871

Lawyers for the Applicant, MBL Administrative Agent II LLC

TAB F

This is Exhibit "F" referred to in the Affidavit of Westin Lovy sworn by Westin Lovy in the City of Lowell, in the State of Massachusetts, before me at City of Toronto, in the Province of Ontario, on May 17, 2024 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

DocuSigned by:

Debra Bilous

FB44438559584D0...

A Commissioner for taking Affidavits

Debra Theresa Ann Bilous, a Commissioner, etc.,
Province of Ontario, for Davies Ward Phillips
&Vineberg LLP, Barristers and Solicitors.
Expires February 17, 2025



SUPERIOR COURT OF JUSTICE

COUNSEL SLIPCOURT FILE NO.: CV-23-00710413-00CL DATE: 22 December 2023NO. ON LIST: 1TITLE OF PROCEEDING: **MBL ADMINISTRATIVE AGENT II LLC, v. TRADE X
GROUP OF COMPANIES INC., et al**

BEFORE JUSTICE: JUSTICE CAVANAGH

PARTICIPANT INFORMATION**For Plaintiff, Applicant, Moving Party, Crown:**

Name of Person Appearing	Name of Party	Contact Info
Natalie Renner	Lawyer for Applicant, MBL Administrative Agent #LLC	nrenner@dwpv.com

For Defendant, Respondent, Responding Party, Defence:

Name of Person Appearing	Name of Party	Contact Info
John Salmas	Lawyer for Respondent, Trade X Group of Companies Inc.	john.salmas@dentons.com
Nathalie Nouvet	Lawyer for Respondent, Highcrest Lending Inc.	nnouvet@stikeman.com
Trevor Courtis	Lawyer for Respondent, Aimia Inc.	tcourtis@mccarthy.ca
Helen Fotinos	Lawyer for Respondents TradeX Group of Companies	helen.fotinos@dentons.com

For Other, Self-Represented:

Name of Person Appearing	Name of Party	Contact Info
Caroline Descours	Lawyer for Proposed Receiver FTI Consulting Canada Inc.	cdescours@goodmans.ca
Kamran Hamidi	Representative of FTI Consulting Canada Inc.	Kamran.Hamidi@fticonsulting.com

ENDORSEMENT OF JUSTICE CAVANAGH:

The Applicant, MBL Administrative Agent II LLC (“MBL”) seeks the appointment of FTI Consulting Canada Inc. (“FTI”) as receiver and manager (the “Receiver”) of substantially all of the assets, undertakings and property of the Respondents pursuant to section 243 (1) of the *Bankruptcy and Insolvency Act* and section 101 of the *Courts of Justice Act*.

This application was first scheduled to be heard on December 11, 2023. On that day, Justice Penny released an endorsement that reflected that the parties had negotiated the terms of an adjournment to permit the debtors an opportunity to refinance. Justice Penny issued an interim order providing for the appointment of FTI as Information Officer and giving the debtors until December 21 to conclude a transaction that was under consideration. Justice Penny’s endorsement provides that if a revised offer has not closed by the end of day on December 21, 2023, or such other date as the parties may agree, the Respondents consent to the appointment of FTI as receiver pursuant to the receivership application at a hearing scheduled for December 22, 2023. Justice Penny issued an interim order that day.

At the hearing before me today, the Applicant seeks an order appointing FTI as receiver. The Respondents consent to this application. No one appeared to oppose.

Counsel for the Respondents appeared and made submissions concerning requests that had been made for payment of amounts due to staff, contractors and other suppliers to the Respondents, including Dentons Canada LLP, the law firm that provided legal services to the Respondents. Dentons had provided the Information Officer with a copy of an invoice dated November 30, 2023 in the amount of \$84,750. By email dated December 18, 2023, counsel for the Information Officer advised that the requested disbursements, including the Dentons invoice, had been reviewed. The Information Officer confirmed that, at this time, the Information Officer does not approve the proposed disbursements.

At the hearing, I was advised that Dentons has provided to the Information Officer a further invoice for services provided after December 11, 2023, the date of Justice Penny’s order. The Information Officer has not yet completed its review of this invoice and has not taken a position on whether it is approved for payment.


Counsel for the Respondents submits that in the circumstances, including Justice Penny’s order, and having regard to the professional obligations of Dentons as legal counsel to the Respondents, the amounts due to Dentons under both invoices should be approved for payment. Counsel for the Respondents submits that, in the circumstances, a receivership order should not operate to prejudice a claim for payment of these invoices.

At the hearing of this application, the Applicant does not consent to payment of the amounts claimed by the Respondents, including the amounts invoiced by Dentons. Counsel for the Applicants advised that her clients do not intend to rely on the stay of proceedings in the requested form of receivership order to oppose the bringing of a motion to determine whether amounts due to Dentons should be paid.

I advised counsel that on the evidentiary record before me I was not prepared to make a determination of whether the Dentons invoices should be paid. I encouraged counsel to communicate with each other about this issue. If a motion is needed, it should be scheduled in the usual way through the Commercial List Office.

I am satisfied that the requested receivership order should be made.

Order to issue in form of Order signed by me today.

A handwritten signature in blue ink, appearing to read 'Cavanagh', is enclosed in a light green rectangular box. The signature is written in a cursive style.

Digitally signed
by Mr. Justice
Cavanagh

MBL ADMINISTRATIVE AGENT II LLC
Applicant

-and-

TRADE X GROUP OF COMPANIES INC. et al.
Respondents

Court File No. CV-23-00710413-00CL

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TORONTO

AFFIDAVIT OF WESTIN LOVY

DAVIES WARD PHILLIPS & VINEBERG LLP
155 Wellington Street West
Toronto ON M5V 3J7

Natasha MacParland (LSO #42383G)
Email: nmacparland@dwpv.com
Tel: 416.863.5567

Matthew Milne-Smith (LSO #44266P)
Email: mmilne-smith@dwpv.com
Tel: 416.863.5595

Natalie Renner (LSO# 55954A)
Email: nrenner@dwpv.com
Tel: 416.367.7489

Maya Churilov (LSO# 87190A)
Email: mchurilov@dwpv.com
Tel: 416.367.7508

Lawyers for the Applicant, MBL Administrative Agent II
LLC

MBL ADMINISTRATIVE AGENT II LC
Applicant

-and- TRADE X GROUP OF COMPANIES INC. et al.
Respondents

Court File No. CV-23-00710413-00CL

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RESPONDING MOTION RECORD

DAVIES WARD PHILLIPS & VINEBERG LLP
155 Wellington Street West
Toronto ON M5V 3J7

Natasha MacParland (LSO# 42383G)
Email: nmacParland@dwpv.com
Tel: 416.863.5567

Matthew Milne-Smith (LSO #44266P)
Email: mmilne-smith@dwpv.com
Tel: 416.863.5595

Natalie Renner (LSO# 55954A)
Email: nrenner@dwpv.com
Tel: 416.367.7489

Maya Churilov (LSO# 87190A)
Email: mchurilov@dwpv.com
Tel: 416.367.7508

Fax: 416.863.0871

Lawyers for the Trustee, MBL Administrative Agent II LLC and the
Plaintiff, Post Road Specialty Lending Fund II LP