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

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

THIRD REPORT OF FTI CONSULTING CANADA INC., AS COURT-APPOINTED RECEIVER

May 17, 2024

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

v.

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

A. Introduction

1. This is the Third Report of FTI Consulting Canada Inc. (**"FTI"**) in its capacity as receiver and manager (the **"Receiver"**), without security, of the following property (collectively the **"Property"**) of Trade X Group of Companies Inc. ("**Trade X Parent**"), 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. (**"Techlantic"**) and TX Ops Canada Corporation (**"TX Canada"**, and collectively, the **"Debtors"**):

(a) the assets, undertakings and properties of the Debtors (other than Trade X Parent and 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 (the **"Lovy Affidavit"**).

2. This Third Report is tendered in response to the motion brought by 1309767 Ontario Ltd. (**"130 Ontario"**) and 2601658 Ontario Ltd. (**"260 Ontario"**, and together with 130 Ontario, the **"Van Essen Companies"**) to (among other things) stay all present and future litigation against them in relation to the Debtors (the **"Stay Motion"**).

B. The Receiver's mandate and right to access Techlantic's documents

3. On December 4, 2023, MBL Administrative Agent II LLC (**"MBL"**) brought an application to appoint FTI as the Receiver of the Property, pursuant to section 243 of the BIA and section 101 of the *Courts of Justice Act* (Ontario), as amended.

4. MBL alleged that the Debtors had defaulted on their obligations under a senior secured revolving credit agreement dated September 27, 2021 (the **"Global Facility"**)[1] by, among

[1] The Receiver's First Report incorrectly stated that the Global Facility is dated February 5, 2021. Some of the Debtors entered into a separate facility (the "Domestic Facility") on February 5, 2021. The Global Facility is dated September 27, 2021.

other things, diverting vehicle sale proceeds totalling approximately $7 million that should have been deposited into the established collection account. MBL is the Administrative Agent for the Global Facility on behalf of a syndicate of lenders. The Lovy Affidavit describing the alleged diversion of funds from the collection accounts is attached hereto (without exhibits) as Appendix "**A**".

5. The Receiver has not yet independently verified MBL's allegations. It notes, however, that the Debtors did not challenge MBL's evidence before or after the Receiver was appointed.

6. On December 22, 2023, Justice Cavanagh issued the Receivership Order appointing FTI as the Receiver, without security, of the Property. The Receivership Order is attached hereto as Appendix "**B**".

7. Pursuant to the Receivership Order, the Receiver was, among other things, specifically empowered and authorized to:

   (a) take possession and exercise control over the Property;

   (b) manage, operate and carry on the business of the Debtors, including Techlantic; and,

   (c) initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings with respect to the Debtors, including Techlantic.

8. In connection with its business, Techlantic operated an e-mail server (the **"Techlantic Server"**) that Techlantic's employees and consultants used to send e-mails (the **"Techlantic E-mails"**) relating to Techlantic's business.

9. After the Receiver was appointed, it paid the fees required to operate the Techlantic Server and use and access the Techlantic E-mails. It made these payments in order to ensure that Techlantic's remaining employees could operate Techlantic's business and assist with the Receiver's realization efforts, and to preserve the Techlantic Server and the Techlantic E-mails.

10. After the Receivership Order, the Van Essen Companies did not ask for permission to use the Techlantic Servers. The Receiver did not know that they were doing so.

(ii) *Review of Techlantic's Documents*

11. Following the Receiver's appointment on December 22, 2023, the Receiver worked diligently to receive, preserve, protect and otherwise manage the Debtors' Property in accordance with the Receivership Order. In the course of the Receiver's efforts to manage the Debtors' Property, it became clear to the Receiver that the Debtors' books and records were, in some instances, not reliable and in other instances very difficult to understand.

12. By February 2024, the Receiver had identified a number of potential issues that required further investigation. Those issues are set out in the Second Report of the Receiver (the "**Second Report**") at paragraphs 26-34. The Second Report is attached hereto (without appendices) as Appendix "**C**".

13. Given the difficulties with the Debtors' records, and especially in light of MBL's evidence that funds had been improperly diverted by the Debtors, the Receiver determined that it was appropriate to conduct a more detailed review of the Debtors' electronic records, including the Techlantic E-mails and the documents stored on the Techlantic Server.

(iii) *The Receiver engaged FTI Forensic to assist with its Review*

14. On or around February 1, 2024, the Receiver and its counsel, Goodmans LLP (**"Goodmans"**) began to discuss engaging members of FTI's Forensic and Litigation Consulting group (**"FTI Forensic"**) to assist with the Receiver's investigation.

15. FTI Forensic operates a separate business line from the Receiver. Although both businesses are owned by FTI Consulting Canada Inc. (defined above as "**FTI**") they have separate internal reporting structures, internal profit and loss statements and information technology infrastructures. In the ordinary course, employees in FTI's Corporate Finance and Restructuring practice (including those working for the Receiver) cannot access documents stored on FTI Forensic's information storage and document management systems, and vice versa.

16. FTI Forensic prepared a budget estimate and proposal for approval by the Receiver before it began any work. The Receiver, in consultation with MBL, decided to engage FTI Forensic.

(iv) *E-mails from certain Techlantic employees – but not Wouter – added to Relativity Database on February 16, 2024*

17. In keeping with its mandate and the Receivership Order, the Receiver took steps to preserve the Techlantic Server, including the Techlantic E-mails, shortly after its appointment.

18. However, and as described below, the Receiver never reviewed the Techlantic Server or the Techlantic E-mails. All review of the Techlantic Server and Techlantic E-mails was conducted by either Goodmans or FTI Forensic, at the Receiver's request. To the extent

that the Receiver obtained information about documents on the Techlantic Server or Techlantic E-mails, this information was provided to it by either FTI Forensic or Goodmans.

19. The Techlantic Server and the Techlantic E-mails were hosted by a third party provider, MMO Techno. FTI Forensic asked MMO Techno to provide the contents of the mailboxes for the following e-mail addresses (the "**Initial Custodians**"):[2]

(a) eric@techlantic.com

(b) eric.vanessen@tradexport.com

(c) eric@tradexport.com

(d) june@techlantic.com

(e) michelle@techlantic.com

(f) ping@techlantic.com

(g) wouter@techlantic.com

20. The email inboxes from the Initial Custodians listed above were uploaded into a document management software called Relativity. In order to review the Techlantic E-mails, reviewers from either Goodmans or FTI Forensic had to login to the Relativity database (the **"Database"**).

[2] Other tradexport.com mailboxes were collected, but these mailboxes are not directly relevant to this motion.

21. Kamran Hamidi of the Receiver entered the Database only once, to click on one document as a "test" of his credentials.

(v) *The Receiver did not know that the Techlantic E-mails contained Van Essen Companies e-mails, let alone privileged emails*

22. The Van Essen Companies are operated by Wouter Van Essen (**"Wouter"**). Wouter is the father of Eric Van Essen (**"Eric"**), who was an officer and director of Techlantic when the Receiver was appointed.

23. Eric notified the Receiver of his resignation as a director and officer of Techlantic on January 2, 2024. Eric stayed on as a Techlantic employee until April 19, 2024.

24. When the Receiver's investigation began, it did not know (or have any reason to suspect) that the Van Essen Companies had used the Techlantic Server or the Techlantic E-mails for privileged communications. In fact, the Van Essen Companies did not tell the Receiver that they had used the Techlantic Server or the Techlantic E-mails for any business communication.

25. Importantly, the Van Essen Companies had represented to the Receiver that, despite the father/son relationship between Wouter and Eric, they dealt with Techlantic at arm's length. The Receiver assumed that this included operating the Van Essen Companies' business from a separate e-mail server that they paid for and controlled.

26. Because the Receiver did not know or suspect that the Van Essen Companies had any information (let alone privileged information) stored on the Techlantic Server, it did not

take any steps to identify or isolate any potentially privileged information that might belong to the Van Essen Companies.

27. It is not the Receiver's practice (nor, to the Receiver's knowledge, common practice among restructuring professionals) to screen a debtor's electronic records to determine whether privileged or confidential documents held by third parties might be stored there. Screening for potentially privileged documents without knowing anything about the documents (i.e., who sent them, when they were sent or what they a relate to) would be very difficult, and in some cases impossible. In order to find privileged documents, the Receiver would have had to know where to look. Before receiving the Van Essen Companies' e-mail on April 5, 2024, the Receiver had no reason to believe that there were any privileged documents belonging to a third party on the Techlantic Server.

28. If the Receiver had known that there were (or might be) privileged communications on the Techlantic Server, then it would have taken appropriate steps to ensure that those documents were not included in the Database or reviewed by anyone. However, the Receiver was not aware of any reason to implement these procedures when Goodmans and FTI Forensic began reviewing documents.

(vi) *Eric Tried to Delete Wouter's Emails from the Techlantic Server*

29. As described above, although Eric resigned as a director and officer shortly after the Receivership Order, he continued to work as an employee of Techlantic until April 19, 2024.

30. On or around February 7, 2024, without the Receiver's knowledge or permission, Eric instructed MMO Techno to remove certain users from the Techlantic Server, including Wouter. This request would have resulted in Wouter's e-mail account, and all of the data associated with it, being deleted. This e-mail is attached hereto as Appendix "**D**".

31. On or around February 16, 2024, Goodmans and FTI Forensic began to review documents in the Database. Shortly thereafter, Goodmans informed the Receiver that it had discovered through its preliminary review that Wouter had an e-mail account on the Techlantic Server.

32. After discovering this, FTI Forensic tried to collect Wouter's e-mails and add them to the Database. It was at this time that it learned, for the first time, that Eric had asked for Wouter's e-mail to be removed and deleted along with e-mails belonging to a number of Techlantic employees. Upon learning this, the Receiver instructed MMO Techno to disregard Eric's instructions and restore Wouter's email inbox. E-mails between the Receiver and MMO Techno are attached hereto as Appendix "**E**".

33. On February 21, 2024, Eric e-mailed the Receiver to advise that "Wouter suggested taking over some of the infrastructure costs" relating to the Techlantic Server. At no point during this correspondence did Eric indicate that there were privileged documents belonging to the Van Essen Companies on the Techlantic Server.

34. The Receiver wrote to Eric to clarify that the Receiver had to preserve Techlantic's historical records and that nothing should be deleted:

> I just sent you an invite for 1 pm with the agenda attached within the meeting invite. Re: Trade X and Techlantic infrastructure and historical records, we cannot make any changes and **we need to preserve that information for the Receiver's**

> **records so we cannot transfer those costs to any other party unless it relates to a sale of the business.**
>
> I understand there was a request made by you to delete certain user profiles from the Microsoft 365 server so **we need to ensure no changes or deletion of any Techlantic data is being made without the written consent of the Receiver.** [emphasis added]

35. A copy of this email is attached hereto as Exhibit "**F**".

(vii) *Documents Presented to the Receiver*

36. As described above, the Receiver did not conduct any document review. Document review relating to the Receiver's investigation was conducted by Goodmans or FTI Forensic. Specifically, FTI Forensic participated in its own separate review that focused primarily on investigating various financial transactions undertaken by the Debtors.

37. FTI Forensic communicated its findings to the Receiver and Goodmans through periodic presentations (the "**FTI Forensic Presentations**"). FTI Forensic also sent certain documents referenced in its presentations to the Receiver and Goodmans.

38. Many of the Techlantic documents referenced in the FTI Forensic Presentations were accounting documents, invoices and other financial documents relating to Techlantic's business. To the best of the Receiver's knowledge, the documents excerpted in the FTI Forensic Presentations are not documents alleged to be privileged. For greater clarity, none of the excerpted documents contain any correspondence between Wouter and Ms. Beale or Ms. Brinston, nor do they contain documents from within the "legal" folder in Wouter's inbox.

39. On March 28, 2024, FTI Forensic presented certain findings relating to Techlantic's purchase of vehicles from the Van Essen Companies in 2022. FTI Forensic subsequently sent certain supporting documents relating to its analysis. The Receiver was copied on FTI Forensic's e-mail to Goodmans, but did not review any of the supporting documents at any point in time.

40. On May 17, 2024, the Receiver was advised by Goodmans that the documents sent on March 28, 2024 included a potentially privileged e-mail. Upon being advised of this by Goodmans, the Receiver personnel copied on Ms. Patel's e-mail deleted the e-mails from Ms. Patel without reviewing them.

41. In order to facilitate certain information sharing relating to this project, the Receiver granted certain members of FTI Forensic access to a shared drive (the "**FTI Drive**"). FTI Forensic saved documents to the FTI Drive, but the Receiver did not access them.

42. For clarity, the only documents from the Database that have been reviewed by the Receiver are those documents presented to it in the FTI Forensic Presentations or appended to the Receiver's Reports.

C. The Van Essen Companies raise their privilege allegations for the first time on April 5, 2024

43. The Receiver delivered its Supplemental Report to the First Report on April 4, 2024 (the **"First Supplemental Report"**). The First Supplemental Report attached a number of e-mails sent and received by Wouter and Eric.

44. On April 5, 2024, Ms. Beale wrote to assert (for the first time) that the Van Essen Companies used the Techlantic Server for the purposes of "receiving legal advice

settlement-related discussion and litigation advice and strategy, including in relation to the litigation herein."

45. Ms. Beale also asserted that the Receiver had received and reviewed "all e-mails" sent from techlantic.com and many e-mails from techlanticconsulting.com. This is not correct. As noted above, the Receiver did not review any documents – all document review was conducted by either Goodmans or FTI Forensic.

46. Ms. Beale asked for a complete inventory of the Database and a copy of a "Document Collection and Review Protocol" that showed "measures taken to identify and exclude privileged information". The e-mail is attached hereto as Appendix "**G**".

47. As described above, the Receiver did not believe (or have any reason to believe) that any privileged material (other than potentially Techlantic's privileged material, which it was entitled to review) and so it did not implement any procedures for excluding such materials.

D. Conclusion

48. Since the Van Essen Companies initially raised their concerns about privilege, the Receiver has tried to work with the Van Essen Companies to address any legitimate concerns relating to the allegedly privileged documents in the Database. The Receiver does not believe that the Van Essen Companies should benefit from any inadvertent review of privileged documents that may have occurred, particularly given the Van Essen Companies' use of the Techlantic Server without the Receiver's permission, their delay in raising their privilege concerns, and the fact that the Receiver has not reviewed any privileged documents. In the Receiver's view, the Van Essen Companies would receive a significant benefit if their motion is granted by the Court, because substantial potential liabilities

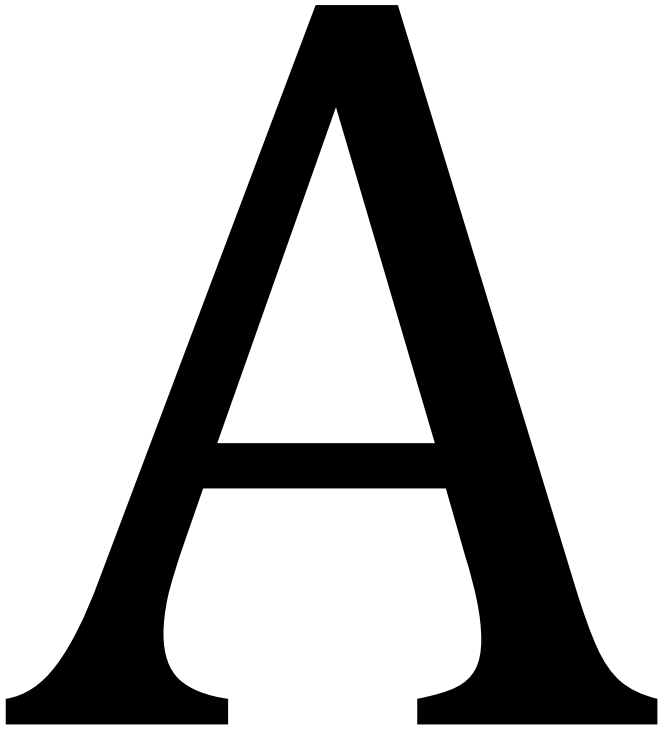
would be effectively eliminated without any hearing on the merits, and without any demonstration that the Van Essen Companies have actually suffered any prejudice. That benefit would come at the expense of Techlantic's stakeholders, and the Receiver does not believe that it is appropriate.

All of which is respectfully submitted,

FTI Consulting Inc., solely in its capacity as Court-appointed Receiver of certain property of Trade X Group of Companies Inc., 12771888 Canada Inc., TVAS Inc., Tradeexpress 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, and not in its personal or corporate capacity.

Paul Bishop
Senior Managing Director

Kamran Hamidi
Managing Director



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

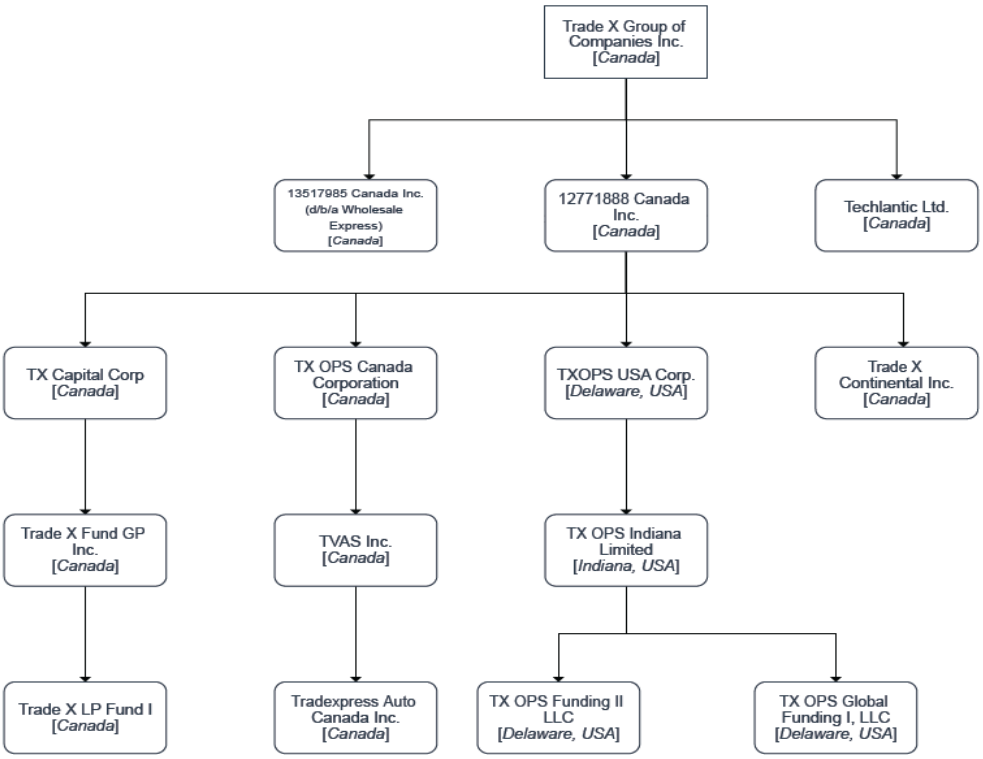
(i) The Applicant

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 simplified[1] 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 the 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, 2021[2] 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, 2021[3] 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 Vehicle[4] to the destination of the ultimate buyer[5] 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 officially[6] 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

Westin Lovy

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

PROCEEDING COMMENCED AT
TORONTO

AFFIDAVIT OF WESTIN LOVY

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Lawyers for the Applicant, MBL Administrative Agent II LLC

B

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

ONTARIO

SUPERIOR COURT OF JUSTICE

(COMMERCIAL LIST)

THE HONOURABLE	)	FRIDAY, THE 22nd
	)	
JUSTICE CAVANAGH	)	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,

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

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.

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

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Fax: 416.863.0871

Lawyers for the Applicant, MBL Administrative Agent II LLC

C

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

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

SECOND REPORT OF FTI CONSULTING CANADA INC., AS COURT-APPOINTED RECEIVER

March 27, 2024

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

v.

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

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A. PURPOSE

1. This is the Second Report of FTI Consulting Canada Inc. ("**FTI Consulting**") in its capacity as receiver and manager (the "**Receiver**"), without security, of the following property (collectively the "**Property**") 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. ("**Techlantic**") and TX Ops Canada Corporation (collectively, "**Trade X**" or the "**Debtors**"):

(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 (the "**Lovy Affidavit**").

2. The Debtors were primarily involved in operating a business-to-business vehicle trading platform for car dealerships to purchase inventory from or sell inventory to Canada, the United States and other overseas markets. Their operations were carried out by a number of entities.

3. By Order dated December 22, 2023 (the "**Receivership Order**"), the Receiver was appointed and authorized to, among other things, receive and preserve the Property and any proceeds thereof, operate and carry on the business of the Debtors, receive and collect all monies and accounts owing to the Debtors and to exercise all remedies of the Debtors in respect thereof, and to initiate and prosecute any proceedings with respect to the Debtors and the Property.

4. Since its appointment, the Receiver has, among other things, worked to liquidate the Debtors' remaining vehicle assets and collect amounts owed to the Debtors. That process is substantially complete.

5. To date, the Receiver has recovered approximately $1.8 million from the sales of remaining vehicles and collection of amounts owed to the Debtors.

6. The Receiver's attempt to collect on amounts owing to the Debtors has been complicated by the state of the Debtors' accounting records. Among other things, the Receiver has encountered the following challenges:

(a) the Receiver has received conflicting information from the Debtors and other parties about significant transactions involving the Debtors;

(b) the Debtors' books and records are complicated and involve a large number of accounting entries reflecting the transfer of vehicles (and potentially funds) between various Debtors and other parties for purposes that are unclear to the Receiver at this time;

(c) the Debtors engaged in a large number of transactions with companies owned or controlled by the Debtors' directors, officer and/or members of their immediate

families. The details of these transactions were not fully disclosed to the Receiver, and the Receiver learned important details about the transactions from its review of the Debtors' e-mails; and

(d) the Receiver has been contacted by individuals who claim to have invested in the Debtors, but who appear to have paid funds to entities controlled by the Debtors' founder and CEO, Ryan Davidson. The Receiver has been unable to determine whether (and how) these funds were actually provided to the Debtors or used in the Debtors' business.

7. The Receiver has tried to engage with certain of the Debtors' current and former directors, officers, employees and consultants to understand the foregoing transactions. Several such individuals have refused to meet with the Receiver, or refused to meet with the Receiver unless the Receiver paid for them to hire counsel.

8. The Receiver has also tried to obtain information from third parties (including potential related parties) that have engaged in transactions with the Debtors in order to understand those transactions. The Receiver has received incomplete responses and, in some cases, no response at all.

9. In light of the foregoing, the Receiver has determined that it requires expanded investigative powers in order to understand the Debtors' business and assets (including claims against other parties) that might provide additional recovery for the benefit of the Debtors' creditors. The Receiver served a Notice of Motion dated March 21, 2024 seeking, among other things, enhanced investigative powers, including the right to examine persons with relevant information under oath and compel the production of relevant documents.

10. In addition, the Receiver seeks the authority (but not the requirement) to assign one or more of the Debtors into bankruptcy in the event that such assignments are necessary or appropriate. The Debtors are insolvent and, based on the current facts and circumstances and information available to the Receiver, the Receiver does not believe that there is a realistic prospect of a going concern sale.

11. The Receiver believes that the powers of a trustee in bankruptcy pursuant to the *Bankruptcy and Insolvency Act* (the "**BIA**") may assist the investigation and ultimate recovery available to the Debtors. It is cognizant, however, of the additional potential administrative expenses associated with a bankruptcy and so it does not seek to make any bankruptcy assignments immediately. Instead, it seeks authority to assign some or all of the Debtors into bankruptcy at a later date if it determines that the assignment is likely to enhance stakeholder recovery.

B. BACKGROUND

12. A number of the Debtors entered into a senior secured revolving credit agreement dated September 27, 2021 (the "**Global Facility**"). MBL Administrative Agent II LLC ("**MBL**") is the Administrative Agent for the Global Facility on behalf of a syndicate of lenders (the "**Lenders**"). A copy of the Global Facility is attached hereto as Appendix "1".

13. In addition, a number of Debtors entered into a separate senior secured revolving credit agreement dated February 5, 2021 (the "**Domestic Facility**" and, together with the Global Facility, the "**Facilities**"). MBL is also the administrative agent for a syndicate of Lenders that advanced funds under the Domestic Facility. A copy of the Domestic Facility is attached hereto as Appendix "2".

14. The Receiver understands that the Lenders are the Debtors' senior secured creditors, with a first ranking security interest over substantially all of the Debtors' assets.[1] Based on the recoveries to date, and the Receiver's assessment of the Debtors' remaining assets, the Lenders are unlikely to recover the full amounts owed to them unless the Receiver is able to successfully investigate and prosecute potential claims available to the Debtors (and subject to the proceeds of such claims being sufficient to satisfy the Lenders' claims). If the Lenders do not recover all amounts owed to them, then the Debtors unsecured creditors and equity claimants are not expected to recover any amounts.

15. In light of the foregoing, the Receiver has, in consultation with MBL on behalf of the Lenders, determined that it is important to conduct a further investigation into the Debtors' affairs to determine what (if any) claims should be pursued.

C. THE FACILITIES

16. In general terms, the Global Facility was intended to fund vehicles sold outside of the United States and the Domestic Facility was intended to fund vehicles sold inside the United States.

17. The Facilities are sophisticated agreements involving a number of related Debtors. In very simple terms, the Lenders advanced funds to purchase specific vehicles and took security over those vehicles or the proceeds earned by selling them. The Facilities are summarized at a very high level below:

(a) the Debtors acquired vehicles for sale;

[1] Although the Receiver has not yet completed a formal security review, no party has disputed the validity of the Lenders' security.

(b) the Lenders provided an advance to pay the purchase price for the vehicles (the "**Advance**");

(c) the amount available to the Debtors under the Global Facility was based on the collateral owned by the Debtors and listed on a borrowing base from time to time (the "**Borrowing Base**");

(d) when the vehicle was sold to an end user, the purchase price was (or should have been) deposited into a dedicated account over which the Lenders have security (the "**Collection Accounts**").

18. One of the Debtors that is important to the Receiver's investigation is Techlantic. Techlantic became a "Borrower" within the meaning of the Global Facility by an Amendment No. 1 and Joinder to Senior Secured Revolving Credit Agreement dated December 30, 2021, a copy of which is attached hereto as Appendix "3".

D. APPOINTMENT OF THE RECEIVER

19. On December 4, 2023, MBL brought an application to appoint FTI Consulting as the Receiver of the Property, pursuant to section 243 of the BIA and section 101 of the *Courts of Justice Act* (Ontario), as amended.

20. MBL alleged that the Debtors had defaulted on their obligations under the Global Facility by, among other things, diverting vehicle sale proceeds totalling approximately $7 million that should have been deposited into the Collection Accounts. The Lovy Affidavit describing the alleged diversion of funds from the Collection Accounts is attached hereto (without exhibits) as Appendix "4".

21. The Receiver has not yet independently verified MBL's allegations. It notes, however, that the Debtors did not challenge MBL's evidence.

22. On December 22, 2023, Cavanagh J. issued the Receivership Order appointing FTI Consulting as the Receiver, without security, of the Property.

23. Pursuant to the Receivership Order, the Receiver is empowered to, among other things, receive and preserve the Property and any proceeds thereof, receive and collect all monies and accounts owing to the Debtors and to exercise all remedies of the Debtors in respect thereof, and to initiate and prosecute any proceedings with respect to the Debtors and the Property.

E. DIFFICULTY UNDERSTANDING THE DEBTORS' RECORDS

24. Since the Receiver's appointment on December 22, 2023, the Receiver has worked diligently to receive, preserve, protect and otherwise manage the Debtor's Property in accordance with the Receivership Order. However, it has become clear to the Receiver through these efforts that the Debtors' books and records are, in some instances, not reliable and in other instances very difficult to understand.

25. The Receiver has made inquiries in respect of these issues to representatives of the Debtors, but it has not received satisfactory answers. The Receiver continues to investigate issues involving the Debtors, and is currently aware of a number of issues that it still investigating and in respect of which it requires additional information, including as summarized below.

(i) *Groupe Grégor Claim*

26. The Debtors may have a claim for approximately $8 million (the "**Groupe Grégor Claim**") against Groupe Grégor Inc. ("**Groupe Grégor**") in connection with the Debtors' purchase

of 13517985 Canada Inc., operating as Wholesale Express ("**Wholesale Express**") from Groupe Grégor.

27. The Receiver has reviewed the Debtors' records related to the Groupe Grégor Claim. Its understanding, based on that review, include the following:

(a) after the Debtors bought Wholesale Express, they were unable to take an immediate assignment of certain permits required to operate its business. To address this issue, Groupe Grégor continued to operate Wholesale Express on behalf of the Debtors and deposit funds generated by Wholesale Express into Groupe Grégor's bank account;

(b) the Debtors subsequently alleged that Groupe Grégor did not remit all of the funds generated by Wholesale Express to Wholesale Express;

(c) separately, Groupe Grégor advanced a claim against the Debtors for approximately $2.7 million allegedly owed for a working capital adjustment in connection with the Wholesale Express sale (which claim the Receiver understands was being disputed by the Debtors);

(d) financial statements for both the Debtors and Groupe Grégor indicated that Groupe Grégor owed approximately $8 million to the Debtors; and

(e) on October 24, 2023, Wholesale Express assigned the Groupe Grégor Claim to Trade X Parent pursuant to an Assignment of Credit dated October 24, 2023 (the "**Assignment**").

28. Wholesale Express is currently the subject of separate proceedings pursuant to the *Companies' Creditors Arrangement Act* (the "**Wholesale Express CCAA Proceedings**"), and its Monitor in the Wholesale Express CCAA Proceedings has filed a motion seeking to set-aside the Assignment of the Groupe Grégor Claim as a transfer at undervalue. Such motion is currently scheduled to be heard before the Quebec Superior Court of Justice in the Wholesale Express CCAA Proceedings on June 13, 2024. A copy of the Monitor's Notice of Motion in respect thereof is attached hereto as Appendix "5".

29. The Receiver requires further information about both the Groupe Grégor Claim and the Assignment in order to determine whether, and how, to respond to the Monitor's motion and advance the Groupe Grégor Claim on behalf of the Debtors.

(ii) ***Transactions and transfers involving the Debtors' founder and CEO***

30. The Receiver has also been contacted by certain individuals who claim to have invested funds in the Debtors; however, these individuals advised that they paid funds to a company owned and controlled by Mr. Davidson. The Receiver has been unable to determine why these funds were paid to Mr. Davidson's company and whether they were ever transferred to the Debtors. Correspondence relating to these issues is attached hereto as Appendix "6".

31. The Receiver requires additional and accurate information about the transactions between the Debtors, Mr. Davidson and the companies that Mr. Davidson controlled.

(iii) ***The Debtors' records show potential significant overpayments to Auto Credit Canada, a company controlled by one of the Debtors' former executives***

32. The Receiver understands that Auto Credit Canada is operated by Luciano Butera, a former officer of the Debtors, and owned by Mr. Butera or members of his family.

33. Trade X's records indicate that Trade X made overpayments totalling $1,535,016 to 1254382 Ontario Ltd o/a Auto Credit Canada ("**ACC**"). On January 18, 2024, the Receiver wrote to ACC and demanded, pursuant to the Receivership Order, that ACC transfer the amount of the overpayment to the Receiver immediately. This correspondence is attached hereto as Appendix "7".

34. By way of email dated January 26, 2024, and attached as Appendix "8", ACC responded stating that it had not received any overpayments from Trade X, but rather that ACC had provided "floorplan funding" to Trade X, through which Trade X purchased vehicles in the name of ACC. The Receiver has requested documentation of this purported floorplan funding agreement, which documentation has not been provided. This correspondence is attached as hereto Appendix "9".

F. TRANSACTIONS WITH TECHLANTIC AND THE VAN ESSEN COMPANIES

35. The Receiver has served a motion seeking to recover approximately $1.7 million received by the Van Essen Companies (as defined below), which amounts the Receiver believes were improperly taken by the Van Essen Companies (as discussed below and in the First Report of the Receiver dated February 1, 2024). The Receiver is also currently investigating other transactions involving the same individuals and entities; however, Techlantic's officers, employees and consultants have refused to meet with the Receiver to explain the transactions at issue.

(i) *Techlantic*

36. According to its website, Techlantic was founded in 1983 by Wouter Van Essen ("**Wouter**"). Wouter's twin brother, Tom Van Essen ("**Tom**"), joined Techlantic in 1986. A long-time employee, Robin Jones, became a Techlantic shareholder in 2001.

37. Techlantic's core business, based on a review of its website and its records, was the export of vehicles to foreign markets.

38. In August 2019, Wouter's son Eric Van Essen ("**Eric**") became a major Techlantic shareholder. When Techlantic announced Eric's new status as a "major shareholder" of Techlantic, it confirmed that "Tom and Wouter are still actively involved and likely will be for many years".

39. Relevant excerpts from Techlantic's website are attached hereto as Appendix "10".[2]

40. Trade X purchased Techlantic in August 2021. After that time, Eric was Techlantic's Managing Director and had overall responsibility for Techlantic's business operations. Eric was also a director of Techlantic. Trade X does not appear to have exercised control over Techlantic's day to day operations. Those operations were overseen by Eric with significant assistance from Wouter.

41. As described below, the Receiver's review of Techlantic's records showed that Wouter remained very heavily involved in Techlantic's business after Trade X bought Techlantic. He continued to be listed as a member of Techlantic's finance team, and its founder, on the Techlantic website, until the website ceased to operate.

(ii) ***The Van Essen Companies***

42. Techlantic engaged in a large number of complicated transactions with two companies 1309767 Ontario Ltd. ("**130 Ontario**") and 2601658 Ontario Ltd. ("**260 Ontario**", and together

[2] Techlantic's website appears to no longer be operational, but the attached screenshots were access through the internet archive at https://web.archive.org/

with 130 Ontario, the "**Van Essen Companies**") and certain other parties that have long-term business relationships with the Van Essens.

43. The Van Essen Companies had the same staff as Techlantic, and Eric was also an officer and director of Techlantic, however, the Eric and certain of Techlantic's remaining staff have refused to meet with the Receiver to help it understand the relevant transactions unless the Receiver funded legal counsel for them. Correspondence communicating this position is attached hereto as Appendix "11".

44. Wouter, through counsel, also declined to meet with the Receiver. Correspondence from Wouter's counsel is attached hereto as Appendix "12". Wouter's counsel has stated in subsequent correspondence that Wouter did not refuse to meet with the Receiver, since he intended to attend his scheduled cross-examination on the Receiver's motion.

(iii) ***Dispute between the Receiver and the Van Essen Companies***

45. Issues between the Receiver and the Van Essens began when the Van Essen Companies received approximately $1.7 million worth of proceeds from the sale of vehicles owned by Techlantic (the "**Techlantic Funds**"). Instead of paying these funds to Techlantic, the Van Essen Companies kept the funds.

46. Wouter claimed in an e-mail that the Van Essen Companies had set off the Techlantic Funds against a debt allegedly owed by Techlantic as a result of different vehicles sold by the Van Essen Companies to Techlantic in 2022 (the "**Purported Set Off**").

47. Wouter claims to have executed the Purported Set Off on December 20, 2023, two days before the Receiver was appointed, and nine days after Justice Penny issued an Order dated

December 11, 2023 (the "**Interim Order**") prohibiting any exercise of rights and remedies against the Debtors.

48. The Receiver has filed a motion, as amended, to recover the Techlantic Funds on the basis that the Purported Set Off was prohibited by the Interim Order and effected a preference contrary to s. 95 of the BIA. The Receiver's Notice of Motion is attached hereto as Appendix "13".

49. The Van Essen Companies served a cross-motion claiming that they were entitled to execute the Purported Set Off because they were owed approximately $1.9 million in connection with vehicles they sold to Techlantic in 2022 (the "**2022 Vehicles**"). The Van Essen Companies' cross-motion is attached hereto as Appendix "14".

50. In the course of advancing its motion, the Receiver has discovered a number of important facts relevant to its motion in respect of the Van Essen Companies, including:

(a) the Van Essen Companies and Techlantic routinely transferred vehicles and funds between them, and generated an enormous (and unusual) amount of accounting entries for individual vehicles in Techlantic's records;

(b) the Van Essen Companies and Techlantic shared the same employees and office;

(c) Eric, who was an officer and director at Techlantic, was also the President of the Van Essen Companies' parent company and personally advanced some of the funds that the Van Essen Companies used in their dealings with Techlantic;

(d) Wouter, who Techlantic claims to have engaged as a consultant, appears to have been involved in many aspects of Techlantic's business and decided when and how

much Techlantic should pay the Van Essen Companies. Wouter also determined when and how much Techlantic should pay its other creditors, including MBL; and

(e) based on the records reviewed by the Receiver, the Van Essen Companies may have acquired certain of the 2022 Vehicles from certain of the Debtors. The Van Essen Companies then transferred the 2022 Vehicles to Techlantic. Techlantic, in turn, transferred the 2022 Vehicles back to the Debtors that may have previously owned them. The purpose of these circular transactions is unclear.

51. Techlantic's relationship with the Van Essen Companies, and with Techlantic's major customers, is difficult to understand based solely on Techlantic's records and the information provided by Techlantic in writing.

52. The Van Essen Companies, Techlantic, the other Debtors and various customers entered into a large number of transactions with very complex accounting and unclear record keeping. By way of example, two vehicles reviewed by the Receiver were involved in a high number of internal accounting entries, each involving transactions between the Van Essen Companies, Techlantic and other Debtors. The purpose of these transactions, and whether any of them involved the movement of funds, is unclear. A copy of a spreadsheet detailing these transactions is attached hereto as Appendix "15".

53. Among other arguments, the Van Essen Companies have claimed that they provided money to Techlantic as part of a "Liquidity Support Plan". The Receiver notes that section 5.16(g) of Global Facility prohibited the Debtors, including Techlantic, from incurring any debt other than the amounts owing to MBL. Additionally, section 5.16(j) prohibited Techlantic from entering into

any agreement with an affiliate, shareholder or principal, except in certain circumstances, without the consent of MBL.

G. THE RECEIVER'S ATTEMPTS TO GAIN CLARITY IN RESPECT OF THESE TRANSACTIONS

54. The Receiver has reached out to representatives of the Debtors, such as Eric, to clarify the circumstances leading to the above-noted questions and discrepancies. The answers it has received in respect of these inquiries have not been satisfactory and often do not align with other information available to the Receiver.

55. As noted above, in an attempt to further clarify these issues, the Receiver asked to meet with Eric and two additional long-time Techlantic employees. Those meetings were scheduled to take place on March 6, 2024, and initially accepted by Eric and the two employees. However, they were subsequently declined by all three of them on the morning of March 6, 2024.

56. As also noted above, the Receiver has also asked, through counsel, to meet with Wouter to discuss certain issues relating to the Van Essen Companies. Wouter declined, through counsel, to meet with the Receiver. As described above, Wouter's counsel has stated that he intends to attend his scheduled cross-examination.

H. AUTHORITY TO ASSIGN INTO BANKRUPTCY

57. Based on the current facts and circumstances and information available to the Receiver, the Receiver does not at this time believe that there is a realistic prospect of a going concern sale in respect of the Debtors' business. Among other things, the Receiver placed a notice in the Financial Post on February 1 and February 6, 2024 and in the Globe and Mail newspaper on February 7, 2024 soliciting interest in the assets and business of Trade X and Techlantic, a copy

of which is attached hereto as Appendix "16". The Receiver received limited interest or inquiries to such notices, none of which resulted in any offers for any assets of the Debtors. The Receiver did receive offers for the Techlantic business from Mr. Eric Van Essen, which the Receiver, in consultation with MBL, believed was likely below the liquidation value of the remaining Techlantic assets.

58. As noted above, the Receiver continues to investigate the Debtors' affairs and evaluate potential claims. As that investigation progresses, the Receiver may determine that the enhanced powers available to a trustee in bankruptcy would facilitate matters and potentially benefit all stakeholders. For clarity, the Receiver has not yet made such a conclusion, and thus at this time only seeks the authority, and not the requirement, to assign one or more of the Debtors into bankruptcy. The Receiver is mindful of the potential additional administrative costs associated with bankruptcy assignments, and prior to proceeding with any potential bankruptcy assignment of any of the Debtors, the Receiver will assess whether such an assignment would likely provide benefits as compared to those available in these receivership proceedings.

I. CONCLUSION

59. The Receiver may be able to recover substantial amounts through commencing actions on behalf of the Debtors in respect of the transactions described herein. However, the Receiver requires additional and accurate information to better assess the viability of these claims and whether it is worthwhile to advance them.

60. The books and records and other information obtained by the Receiver do not appear to be at all times reliable or consistent, and the accounting records of the Debtors are complex and

difficult to interpret absent additional information and assistance from the Debtors' representatives and other parties, a number of whom have refused to meet with the Receiver to date.

61. The Receiver accordingly respectfully requests the relief set forth herein and in the Receiver's Notice of Motion dated March 21, 2024, so that it is able to obtain the additional information it requires to make appropriate assessments on potential additional recoveries that may be available to the Debtors for the benefit of their creditors.

62. Further, the Receiver believes that there is a likelihood that it may, at some point, be necessary or desirable to assign the Debtors' into bankruptcy for the benefit of the creditors as a whole.

Dated this 27th day of March, 2024.

FTI Consulting Canada Inc.,

solely in its capacity as Court-appointed Receiver of certain property 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, and not in its personal or corporate capacity

Paul Bishop
Senior Managing Director

Kamran Hamidi
Managing Director

D

From: Eric van Essen <eric@techlantic.com>
Date: Wednesday, February 7, 2024 at 1:19 PM
To: Olivier L. Duguay <olivierl.duguay@mmotechno.com>
Subject: RE: Invoice - #2665 MMO Techno

Yes. I'm not sure who Bittitan is though. Ok to remove, but perhaps lookup when and why that login was added.

Also, I have some other questions related to the azure server. When you have a moment, can you call me to discuss it?

Thank you,

Eric van Essen
Techlantic Ltd. | 700 Third Line, Oakville, Ontario, Canada, L6L 4B1
Office: +1-905-465-1062 x 234 Mobile: +1-289-242-6182
www.techlantic.com

From: Olivier L. Duguay <olivierl.duguay@mmotechno.com>
Sent: Wednesday, February 7, 2024 12:54 PM
To: Eric van Essen <eric@techlantic.com>
Subject: RE: Invoice - #2665 MMO Techno

Hi Eric

So I'll remove the following users:

Bittitan
Magriet
Tom
Wouter

And next week Bill

I would also suggest that we move the public folder to a shared mailbox at no cost.

Are you okay with those changes?

Oli

--

Olivier L. Duguay

V-P Operations

t: 1-855-532-0189 x103

w: www.mmotechno.com

From: Eric van Essen <eric@techlantic.com>
Sent: Wednesday, February 7, 2024 12:29 PM
To: Olivier L. Duguay <olivierl.duguay@mmotechno.com>
Subject: FW: Invoice - #2665 MMO Techno

Hi Olivier,

Please keep Karen's license active for time being as well. Also, I have some questions about moving the QB data. Let me know when you have a moment to chat about it.

Thank you,

Eric van Essen
Techlantic Ltd. | 700 Third Line, Oakville, Ontario, Canada, L6L 4B1
Office: +1-905-465-1062 x 234 Mobile: +1-289-242-6182
www.techlantic.com

From: Eric van Essen
Sent: Wednesday, February 7, 2024 12:27 PM
To: Olivier L. Duguay <olivierl.duguay@mmotechno.com>
Cc: facturation@mmotechno.com; June da Costa <june@techlantic.com>; Hamidi, Kamran <Kamran.Hamidi@fticonsulting.com>
Subject: RE: Invoice - #2665 MMO Techno

Hi Oliver,

Can you please trim down licenses of Microsoft for Techlantic down to remaining staff members as well as any required credentials for you to access and help administer. Please redirect any other emails to myself and I will monitor on any topics that will help with the receivership process.

Also, can you please update Kamran's email as billing contact for Techlantic until further notice so he can coordinate payment directly once new invoices are issued.

Remaining staff members:

1. June
2. Eric
3. Michelle
4. Bill (last day is Friday so next week can you please automatically forwarder his emails to my email as well and turn off account as well)
5. Nikitia
6. Jaskiran
7. Carolyn

Regards,

Eric van Essen
Techlantic Ltd. | 700 Third Line, Oakville, Ontario, Canada, L6L 4B1
Office: +1-905-465-1062 x 234 Mobile: +1-289-242-6182
www.techlantic.com

From: MMO Techno <quickbooks@notification.intuit.com>
Sent: Wednesday, February 7, 2024 11:09 AM
To: Eric van Essen <eric@techlantic.com>; June da Costa <june@techlantic.com>
Subject: Invoice - #2665 MMO Techno

INVOICE 2665

MMO Techno

DUE 31/01/2024

$615.08

Review and pay

Powered by QuickBooks

** English message below **

Ceci est un simple rappel que le paiement de votre facture est attendu aujourd'hui.

Si vous avez déjà envoyé votre paiement, nous vous remercions et ne tenez pas compte de cet avis.

N'hésitez pas à nous contacter si vous avez des questions.

Merci de choisir MMO Techno
L'équipe de facturation

This is a simple reminder that payment is due today for the invoice in object.

If you already sent payment for your invoice, we thank you and please disregard this message.

Do not hesitate to get in touch with us should you have any question.

Thank you for choosing MMO Techno
The billing team

MMO Techno

3055 Boul. Saint-Martin Ouest, 5th floor Laval QC H7T 0J3

(855) 532-0189 facturation@mmotechno.com

If you receive an email that seems fraudulent, please check with the business owner before paying.

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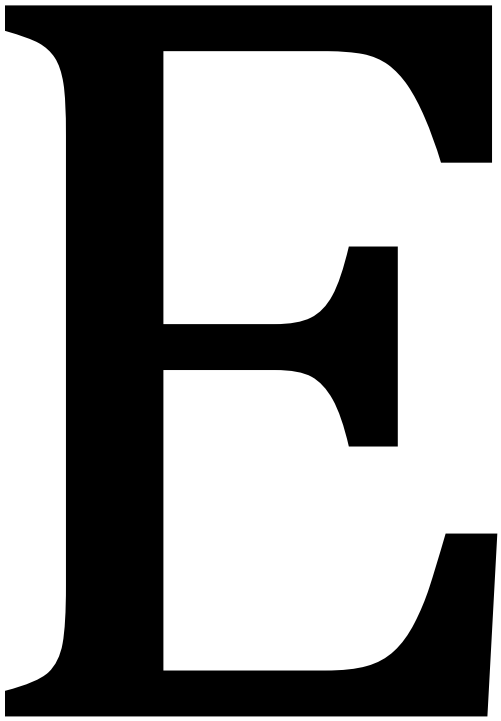

From: Olivier L. Duguay <olivierl.duguay@mmotechno.com>
Sent: Saturday, February 17, 2024 10:58 AM
To: Tatineni, Isaac <Isaac.Tatineni@fticonsulting.com>
Subject: Re: [EXTERNAL] Re: Trade-X

No, but I can restore. I've removed it this week.
Well within the 30 days.

Oli

--

Olivier L. Duguay

V-P Operations

t: 1-855-532-0189 x103

w: www.mmotechno.com

From: Tatineni, Isaac <Isaac.Tatineni@fticonsulting.com>
Date: Saturday, February 17, 2024 at 10:51 AM
To: Olivier L. Duguay <olivierl.duguay@mmotechno.com>
Subject: Re: [EXTERNAL] Re: Trade-X

Do we have a back up some where?

Best Regards,
Isaac Tatineni

Sent from my iPhone

> On Feb 17, 2024, at 9:33 AM, Olivier L. Duguay <olivierl.duguay@mmotechno.com> wrote:
>
> Heloo Isaac,
>
> The account for Wouter was removed as per Eric's request.
> Did you want to back that data up as well with Exchange Online P2?
>
> Oli
>
> --

Olivier L. Duguay

V-P Operations

t: 1-855-532-0189 x103

w: www.mmotechno.com

From: Tatineni, Isaac <Isaac.Tatineni@fticonsulting.com>
Date: Friday, February 16, 2024 at 6:11 PM
To: Olivier L. Duguay <olivierl.duguay@mmotechno.com>
Subject: Trade-X

Privileged and Confidential

Hi Oli,

Can you please confirm where is the data for the **wouter@techlantic.com** account?
Thank you.

Isaac Tatineni

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FTI Consulting Technology LLC
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isaac.tatineni@fticonsulting.com

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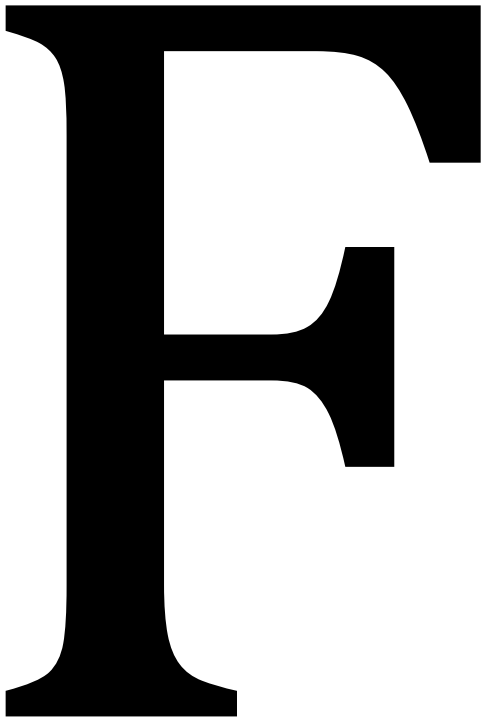

From: Hamidi, Kamran <Kamran.Hamidi@fticonsulting.com>
Sent: Wednesday, February 21, 2024 10:52 AM
To: Eric van Essen <eric@techlantic.com>
Subject: RE: Techlantic - Follow Up Matters

Hi Eric,

I just sent you an invite for 1 pm with the agenda attached within the meeting invite. Re: Trade X and Techlantic infrastructure and historical records, we cannot make any changes and we need to preserve that information for the Receiver's records so we cannot transfer those costs to any other party unless it relates to a sale of the business.

I understand there was a request made by you to delete certain user profiles from the Microsoft 365 server so we need to ensure no changes or deletion of any Techlantic data is being made without the written consent of the Receiver.

Thanks,
Kamran

Kamran Hamidi
647.400.7825

From: Eric van Essen <eric@techlantic.com>
Sent: Wednesday, February 21, 2024 9:22 AM
To: Hamidi, Kamran <Kamran.Hamidi@fticonsulting.com>
Subject: [EXTERNAL] RE: Techlantic - Follow Up Matters

Hi Kamran,

Are you available to talk practically through some of the next steps and action items today? I would like to set expectations well with team members so they aren't as surprised. I have told them to look for work as a warning but haven't told them when the end is expected. Also, from talking with Wouter he suggested taking over some of the infrastructure costs which I think make sense for Techlantic to reduce overhead as the final pieces fall in to place and gives less urgency on some of the issues that might take a while to sort out.

Eric van Essen
Techlantic Ltd. | 700 Third Line, Oakville, Ontario, Canada, L6L 4B1
Office: +1-905-465-1062 x 234 Mobile: +1-289-242-6182

www.techlantic.com

From: Eric van Essen
Sent: Friday, February 16, 2024 9:55 AM
To: Hamidi, Kamran <Kamran.Hamidi@fticonsulting.com>
Subject: RE: Techlantic - Follow Up Matters

Hi Kamran,

See some comments below. It's a little busy at home with PA day and kids. See latest on the G400 attached.

Eric van Essen
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From: Hamidi, Kamran <Kamran.Hamidi@fticonsulting.com>
Sent: Friday, February 16, 2024 8:53 AM
To: Eric van Essen <eric@techlantic.com>
Subject: Techlantic - Follow Up Matters

Hi Eric,

I would like to follow up on the below items as we look to wind down the operations:

1. RBC Account Closures – is there any reason to keep the bank accounts open? – I think it is unlikely we will get a surprise payment so once we redirect CRA it should be ok to close already.
2. CRA Accounts and Other Direct Deposits – can you please update the direct deposit details to reflect the Receiver's bank information? – I will do this today or Tuesday. Kids are a little demanding here at home as it's a PA day and Monday is a holiday.
3. Air Tax Refunds – have Jaskiran and Nikitia cleared the backlog and if so, when are the last refunds expected? I'd like to think ahead on the terminations to expedite the process (Feb. 23)? They are on track to complete the submissions by the end of February. The later months were lower values (few thousand each) but still worthwhile processing.
4. China 2x G400 – you forwarded me the emails yesterday which showed progress. When do we think we can collect on the cars to close this issue? Based on what I know, I think it will take approximately another couple days of work and then waiting for another couple weeks. Payment will arrive with Westchester Capital and they know to direct it to you but I will make that crystal clear.

5. Isha Gupta – I will send her the formal termination notice today. – Yes, that is fine. Whatever the legal requirements are if you can execute them would be great. If she connects with you for explanation, feel free to direct her to me to have a discussion.

Thanks,
Kamran

Kamran Hamidi, CPA, CA, CFA
Managing Director, Corporate Finance

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Kamran.Hamidi@fticonsulting.com

79 Wellington Street West | Suite 2010
Toronto, ON M5K 1G8, Canada

From: Alexis Beale
To: Dunn, Mark; Tee, Brittni; Descours, Caroline
Subject: Trade X Receivership
Date: Friday, April 5, 2024 1:08:36 PM

Counsel,

We have reviewed the Amended Responding Record and note that your client appears to have collected and reviewed all emails with the @techlantic.com domain and many with the @techlanticconsulting.com domain. These email domains were used by my clients for the purposes of receiving legal advice, settlement-related discussions and litigation advice and strategy, including in relation to the litigation herein. We have significant concerns regarding unauthorized access. It is trite to say that any such access would be prejudicial and in breach of the Receiver's authority.

To address this matter effectively, we request the following information:

- Detailed Inventory: A comprehensive list of all email accounts and any other documents collected from the servers.
- Document Collection and Review Protocol: Details on the protocols followed for document collection and review in this case, including measures taken to identify and exclude privileged information.

Kind Regards,
Alexis Beale

Alexis Beale
Rosemount Law
(647) 692-0222

www.rosemountlaw.com

MBL ADMINISTRATIVE AGENT II LLC and TRADE X GROUP OF COMPANIES INC. et al. Court File No. CV-23-00710413-00CL

Applicant Respondents

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceeding commenced at Toronto

THIRD REPORT OF THE RECEIVER

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