CANADIAN ASSOCIATION OF INSOLVENCY AND RESTRUCTURING PROFESSIONALS

ASSOCIATION CANADIENNE DES PROFESSIONNELS DE L'INSOLVABILITÉ ET DE LA RÉORGANISATION

STANDARDS OF PROFESSIONAL PRACTICE

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CAIRP STANDARDS OF PROFESSIONAL PRACTICE

1. INTRODUCTION AND INTERPRETATION

The Canadian Association of Insolvency and Restructuring Professionals is committed to quality and professionalism in the practice of insolvency and restructuring and expresses that commitment through its Rules of Professional Conduct and Interpretation and these Standards of Professional Practice. These Standards are intended to create consistency within the profession and should be interpreted in a manner which is consistent with the Rules, and with other applicable professional rules, statutes, BIA Rules and Directives.

Member's practices have continued to evolve from regulated and supervised administration of insolvency and restructuring mandates to less regulated areas. As a result, Members have become increasingly exposed to critical scrutiny by a broad range of stakeholders whose positions are directly affected by the actions of the Member, but whose interests may differ.

Members of the Association undertake a variety of assignments, which include, but are not limited to, the following:

a) Trustee in Bankruptcy, Trustee in a Proposal, Administrator of a Consumer Proposal or interim receiver under the *Bankruptcy and Insolvency Act*.

b) Monitor or information officer under the *Companies' Creditors Arrangements Act*.

c) Receiver, Liquidator or Inspector under the *Canada Business Corporations Act*, the *Winding-up and Restructuring Act* or other statute.

d) Trustee or receiver under any statute.

e) Receiver, receiver and manager, or agent by letter of appointment pursuant to a security agreement, debenture, trust deed, assignment of book debts, hypothec or the *Bank Act*.

f) Receiver, receiver and manager appointed by Order of the Court pursuant to a security agreement, debenture, trust deed, or otherwise.

g) Consultant or agent by letter of appointment on behalf of a specific creditor or group of creditors, regulatory authority or other stakeholder.

h) Consultant to a Debtor or Board of Directors.

In these Standards, a) to f) above are referred to as formal appointments, and g) and h) as advisory appointments.

These Standards are meant to complement, and should be regarded as additional to, any statutory, legal or contractual obligations that Members may have in carrying out their responsibilities. All efforts have been made to ensure that these Standards are consistent with relevant statutes, rules, regulations, BIA Rules, Directives or other statutory pronouncements or instruments. However, it is possible that the Standards or a portion thereof may conflict with a valid statutory rule, as a result of

evolving jurisprudence, change in legislation or issuance of a new Rule, regulation, BIA Rule or Directive.

In such a circumstance, the portion of the Standards that conflicts with the statutory pronouncement shall be considered moot as and from the date the statutory pronouncement takes effect, and the statutory pronouncement shall have precedence.

These Standards apply to all formal appointments, including those to which the BIA, CCAA, CBCA or WURA does not apply, as well as all advisory appointments. Members should apply the Standards, with due modification, to the extent that they are applicable to the situation encountered in an engagement not specifically envisaged by any of these Standards.

These Standards are meant to be guidelines which are generally applicable, subject to the professionalism, objective discretion and judgement of the Member. In appropriate circumstances, the Member may deviate from these Standards or guidelines to address a situation which requires the application of the Member's judgement and discretion. In such circumstances, it is recommended that the Member create a contemporaneous written record of the reasoning justifying the deviation from the Standards.

The following convention has been adopted and is applicable to all Standards:

- **"May"** indicates that the relevant Standard is intended to be helpful and the Member has full discretion to follow it or not.

- **"Should"** indicates a course of action that is appropriate in most circumstances, subject always to the provision that, should there be a deviation from such Standard, the Member should contemporaneously document the reason or reasons for his decisions.

Words importing the singular number or the masculine gender only include more persons, parties or things of the same kind than one, and females as well as males, and the converse.

Where there is a difference between the English version and the French version of a Standard, that provision which more accurately reflects the intent of the Standard and its context, should be preferred.

2. DEFINITIONS

"Administrator" « Administrateur » means a Member who administers a Consumer Proposal as defined in section 66.11 (a) of the BIA.

"Agreement" « Accord » means an agreement that, by virtue of the provisions of the BIA or CCAA as the case may be, is susceptible of being assigned or disclaimed or resiliated by a Debtor.

"Assets" « Actif » means material property, assets, business and undertaking, whether moveable or immoveable, corporeal or incorporeal, tangible or intangible, under the administration or oversight of a Member.

"Assignee" « Cessionnaire » means the party to whom an Agreement or right is being assigned.

"Appraiser" « Évaluateur » means a party providing the services addressed by Standard No. 20 titled "Appraisals".

"Association" « Association » means the Canadian Association of Insolvency and Restructuring Professionals ("**CAIRP**") / Association canadienne des professionnels de l'insolvabilité et de la réorganisation « **ACPIR »**.

"Assumptions" « Hypothèses » means the Hypothetical Assumptions and Probable Assumptions developed by the Debtor.

"**Bank Account**" **« Compte bancaire »** means an account at an institution which:

- Is a bank as defined in the BIA; or
- To the extent that the Member has banking activities outside Canada, is a deposit-taking institution in the foreign jurisdiction, similar to a bank.

"BIA" « LFI » means the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended from time to time.

"BIA Rules" « Règles de la LFI » means the *Bankruptcy and Insolvency General Rules*, C.R.C. c. 368, referred to in section 209 of the BIA.

"**Cash-flow Statement**" « **État de l'évolution de l'encaisse** » means a statement prepared by a Debtor, indicating the projected cash-flow of the Debtor based on Assumptions that reflect the Debtor's planned course of action for the period covered.

"CBCA" « LCSA » means the *Canada Business Corporations Act*, R.S.C. 1985, c. C-44, as amended from time to time.

"CCAA" « LACC » means the *Companies' Creditors Arrangements Act*, R.S.C. 1985, c. C-36, as amended from time to time.

"CCAA Plan" or **"Plan of Compromise or Arrangement" « Plan LACC »** ou « **plan de transaction ou d'arrangement** » means a Plan of Compromise or arrangement prepared by or in respect of the body or bodies having filed for Court protection pursuant to the CCAA.

"Claims Agent" « Agent des réclamations » means the Trustee, the Company, the Monitor or any other person authorized by the Court to review, admit or disallow claims in the course of a formal appointment.

"Company" « Compagnie » means a corporation as defined in the BIA or a company as defined in the CCAA and depending on the context, may include other forms of incorporated or unincorporated business ventures or enterprises, including (without limitation) partnerships, limited partnerships, income trusts, banks, railway companies, or insurance companies.

"Consumer Debtor" « Débiteur consommateur » means an individual within the meaning of section 66.11 of the BIA; or a Debtor that has commenced a proceeding under Division II of Part III of the BIA,

"Consumer Proposal" « Proposition de consommateur » means a proposal filed by a Consumer Debtor pursuant to Division II of Part III of the BIA,

"Counselee" « Personne conseillée » means a bankrupt who is an individual bankrupt or a Consumer Debtor and/or Relatives of the Consumer Debtor.

"Counselling" « Consultations » means assisting and educating the Counselee on good financial management, including prudent use of consumer credit and budgeting principles, in developing successful strategies for achieving financial goals and overcoming financial setbacks, and at any time, when appropriate, in making referrals to deal with non-budgetary causes of insolvency (including gambling, compulsive behaviour, substance abuse, marital and family problems).

"Counselling Directive" « Instruction sur les consultations » means the directive on "Counselling in Insolvency Matters"[1] issued by the OSB, as amended from time to time.

"CRA" « ARC » means the Canada Revenue Agency.

"Date of Initial Bankruptcy Event" « Ouverture de la faillite » means such date as defined in section 2 of the BIA.

"Debtor" « Débiteur » means a Debtor as defined by the BIA or, where the context requires, a Debtor company, as defined in section 2 of the CCAA or such other Company or Companies within the same group, including other bodies that intend to commence or have commenced a proceeding under the BIA or CCAA**.**

"Debtor's Report" « Rapport du Débiteur » means a Report on the Cash-flow Statement, prepared and signed by the Debtor in the form prescribed by the BIA or CCAA.

"Designated Area" « Région désignée » means an area identified from time-to-time by the DAS:

- In which there is no Qualified Counsellor available to conduct Counselling in person; and
- To which no Qualified Counsellor from another area is willing to travel for the purpose of conducting the Counselling in person.

"Designated Assistant Superintendent (DAS)" « Surintendant adjoint désigné (SAD) » means an individual representative of the OSB, responsible for oversight of bankruptcy and insolvency matters.

[1] In these Standards, the Directives issued by the Office of the Superintendent of Bankruptcy are referred to by the Directive number, followed by the letter "R" if the Directive in question has been revised or amended, but without indicating the number of such revision. Thus OSB Directive 1R3 that was issued August 14, 2009 and that came into force September 18, 2009, is referred to as Directive 1R. The reader should understand that Directive 1R refers to the version of Directive 1 as revised and then currently in force.

"Directive" « Instruction » means a directive issued by the OSB referred to in Subsections 5(4), 5(5), and 5(6) of the BIA.

"Division I Proposal" « Proposition en vertu de la section I » means a proposal made under Division I of Part III of the BIA, and includes a proposal for a composition, extension of time, or scheme of arrangement.

"Engagement Document" « Document d'engagement » means a Court order, a statutory document or a letter of engagement.

"Family Unit" « Unité familiale » means, in addition to the Debtor, any person who resides in the same household and who benefits from either the expenses incurred or income earned by the Debtor, or who contributes to such expenses or earnings. The Family Unit may also include a person who does not reside in the same household, if the person benefits from or contributes to the expenses incurred or income earned by the Debtor.

"Hypothetical Assumption" « Hypothèse conjecturale » means an assumption with respect to a set of economic conditions or courses of action that are not necessarily the most probable in the Debtor's judgment, but are consistent with the purpose of the Cash-flow Statement.

"ITA" « LIR » means the *Income Tax Act*, R.S.C. 1985, c. 1, (5th Supp.), as amended from time to time.

"Interested Person" « Personne intéressée » means any person that may have a Material interest in property being appraised by an Appraiser, including the potential proceeds arising from the sale of such property, depending on the particular circumstances and the nature of the Member's engagement. For illustrative purposes only, this category of persons with the above-described Material interest may include but is not necessarily limited to, some or all of:

- the Debtor;
- inspectors of the estate in bankruptcy;
- the secured creditor(s);
- the unsecured creditor(s);
- shareholders, or affiliates of shareholders; and
- regulators.

"Interim Financing" « Financement temporaire » means any financing, or an existing, amended or new term sheet or loan agreement, as the case may be, with respect to the provision of funding to the Debtor from and after the commencement of proceedings pursuant to a BIA proposal or CCAA plan of arrangement, including financing that may require as a condition precedent an order of the Court approving the financing and/or granting the Interim Lender's Security.

"Interim Lender" « Prêteur intérimaire » means the person that provides Interim Financing.

"Interim Lender's Security" «Sûreté du prêteur intérimaire» means a lien, charge or hypothec over all or part of the property, Assets, business and undertaking of the Debtor in favor of the Interim Lender, which lien, charge or hypothec is granted by Court order a priority over secured and/or unsecured creditors of the Debtor existing as of the date of the commencement of proceedings pursuant to the BIA or CCAA.

"Joint Filing Directive" « **Instruction sur le dépôt conjoint** » means Directive No. 2R *Joint Filing* issued by the OSB, as amended from time to time.

"Liquidator" « Liquidateur » means an auctioneer, Liquidator, or other party providing the services addressed by Standard No. 19 titled "Liquidators".

"Material" « Important » means important or significant, to a level sufficient to influence decisions or behaviours in a meaningful way.

"Material Change" « Changement important » means a change in an item or an aggregate of items which is likely to influence decisions or behaviours in a meaningful way.

"Material Adverse Change" « Changement négatif important » means a change which is Material and in the Member's opinion:

- has a significant adverse effect on the projected cash-flow;
- significantly impairs, or is reasonably expected to significantly impair, the Debtor's financial circumstances or the ability of the Debtor to carry on operations;
- significantly impairs the likelihood of success of a proposal or Plan of Compromise or Arrangement; or
- significantly prejudices the rights or interests of one or more classes of creditors.

"Member" « Membre » means a member or an associate of the CAIRP/ACPIR as defined in CAIRP's bylaw No. 1 of 2013.

"Monitor" « Contrôleur » in respect of a Company, means the person appointed by the Court pursuant to section 11.7 of the CCAA to monitor the business and financial affairs of the Company.

"**Notice of Intention**" **« Avis d'intention »** means the notice to be filed pursuant to s. 50.4 of the BIA.

"OSB" « BSF » means the Office of the Superintendent of Bankruptcy.

"Ordinary Course of Business" « Cours normal des affaires » means the usual transactions, customs, activities and practices of the Debtor.

"Person" « Personne » means a person as defined by the BIA**.**

"Preparation of the Statement of Affairs Directive" « **Instruction sur la préparation du Bilan statutaire** » means Directive No. 16R *Preparation of the Statement of Affairs* issued by the OSB as amended from time to time.

"Probable Assumption" « Hypothèse probable » means an assumption that the Debtor believes reflects the most probable set of economic conditions and expected courses of action.

"Qualified Counsellor"« Conseiller qualifié » means an individual who has successfully completed the Insolvency Counsellor's Qualification Course and/or is currently registered with the OSB as a Qualified Counsellor.

"Related Persons" « Personnes liées » means those persons who are so defined in the relevant statutes.

"Relative" « **Parent »** means an individual connected by blood relationship, marriage or common-law relationship, or adoption, to the Consumer Debtor, and includes same sex partners.

"Report" « Rapport » means a report by the Member when and as required, necessary or useful under the relevant statute including Directive Nos 24 and 30, or a Report by the Member to the Court or to one or more stakeholders, or to the party that retained the Member in respect of an engagement, on financial matters, transactions, proposed strategies or courses of action, current or past activities of a Debtor, progress of the engagement, activities of the Member in the course of the engagement or other matters pertaining to an engagement.

"Report of the Administrator on the Consumer Proposal" « Rapport de l'Administrateur concernant la Proposition de consommateur » means the Report filed by the Administrator pursuant to section 66.14 of the BIA in the prescribed form, including any additional information set out by the present Standard.

"Review for Reasonableness" « Révision du caractère raisonnable » means the review conducted by the Member under sections 50(6) and 50.4(2) of the BIA or the review conducted by the Monitor pursuant to section 23(1)(b) of the CCAA.

"Rules" « Règles » means those rules and regulations applicable pursuant to the relevant statute.

"Sale Process" « Processus de vente » means the marketing and process for the sale or other disposition of Assets by the Debtor outside of the Ordinary Course of Business.

"SOA" « Bilan » means the statement of financial affairs prepared as prescribed by the relevant statute.

"Suitably Supported" « Convenablement étayé » means that the Assumptions are based on past performance of the Debtor, the performance of other Persons or industry/market participants engaged in similar activities, studies or any other sources that provide objective corroboration of the Assumptions used.

"Trust Account" « Compte en fiducie » means a Bank Account maintained by the Member on behalf of a party other than the Member.

"Trustee" « Syndic » means a Licensed Trustee in Insolvency and Restructuring under section 13.1 of the BIA and the Directive on Trustee Licensing, as amended from time to time.

"Unpaid Supplier" « Fournisseur impayé » means a person who has sold and delivered goods to a purchaser in respect of whom the Member is acting as receiver or Trustee in bankruptcy and who has not been fully paid for those goods.

"Voting Letter" « Formule de votation » means the letter filed by a creditor with respect to a proposal, as described in the Standard on Consumer Proposals.

"**WURA**" **« LLR »** means the *Winding-up and Restructuring Act*, R.S.C., 1985, c. W-11, as amended from time to time.

3. ENGAGEMENTS

3.1. SCOPE AND PURPOSE

3.1.1. The purpose of this Standard is to provide guidance to Members:

a) when considering whether to accept an engagement;

b) when planning an engagement that has been accepted; and

c) when performing the engagement.

3.1.2. The Member should document the considerations leading to the acceptance of an engagement and significant events, transactions and decisions occurring during the engagement.

3.2. INITIAL ACCEPTANCE

3.2.1. Before accepting an engagement, the Member should:

a) assess the risks of conflicts of interest arising in the context of the proposed engagement and threats to independence. In this regard the Member should review the CAIRP Rules of Professional Conduct and Interpretations, as well as any other rule of ethic or code of professional conduct that could apply to the Member in the context of the contemplated engagement, including but not limited to, the BIA.

b) assess the engagement risks; and

c) be satisfied that, on a timely basis, he will be able to acquire sufficient knowledge of both the enterprise and the industry within which the enterprise operates, in order to perform his duties.

3.2.2. Where a Member has previously performed roles which he does not consider to have impaired his independence or objectivity but which could create a public perception of such impairment, disclosure to the appointing party of these previous roles should be considered by the Member.

3.3. RESTRUCTURING ENGAGEMENTS

3.3.1. The Member should make an initial assessment before accepting an engagement to act as Monitor under the CCAA or Trustee under a Notice of Intention or proposal under the BIA. The purpose of the initial assessment is to enable the Member to satisfy himself that the Debtor's intention in initiating a restructuring proceeding under the CCAA or BIA is *bona fide* and to identify any reason why he cannot or should not act.

3.3.2. The Member should assess the situation of the Debtor and should determine if he can act with objectivity.

3.4. SPECIAL CONSIDERATIONS

3.4.1. The Member should assess whether there exist special considerations that may affect the engagement and that need to be analyzed prior to accepting the engagement. Examples of such special considerations could be (for example only, and without limitation) a situation where:

a) the engagement is likely to receive a high degree of media attention;

b) the operations of the Debtor may have a significant impact on a specific community, because the Debtor is a large employer in the community, or because the Debtor's past or present activities could affect the environment or public health or safety; or

c) the Debtor is listed on a public stock exchange, or its debt trades on a public exchange.

In these circumstances, the Member may consider special reporting, information distribution and stakeholder communication measures.

3.5. CHANGES OF CIRCUMSTANCES DURING THE ENGAGEMENT

3.5.1. In the event the Member realizes, after an engagement commences, that a situation of conflict of interest or a threat to independence arises which has not been previously identified, the Member should immediately disclose this fact to the appointing party, the nature and extent of the potential conflict or threat to independence and the Member's planned course of action to address the situation.

3.6. ENGAGEMENT DOCUMENTATION

3.6.1. Engagement Documentation should be prepared in respect of all mandates in which a Member is involved. The Engagement Documentation may, depending on the circumstances of the engagement, consist of a written engagement letter, a Court order or statutory provisions.

3.6.2. The Engagement Documentation should aim to ensure that the Member's role and responsibilities, as well as any other relevant condition pertaining to the engagement, are

clearly set out. Without limiting the generality of the foregoing, the Engagement Documentation should set out the following information:

a) the role of the Member;

b) indicate who the Member represents if the Member is appointed to represent a specific party or parties.

c) the security agreement(s) or the provision(s) of the federal or provincial statute(s) pursuant to which the Member is appointed.

d) the responsibilities of the Member in carrying out the engagement;

e) the scope of the work to be performed;

f) the remuneration arrangements;

g) the expectations regarding frequency, timing and content of Reports; and

h) the expectations regarding the timing of the engagement, in terms of start date, completion date, and period of review.

3.6.3. Where an engagement continues over an extended period of time, the Member should:

a) periodically review the Engagement Document to ensure it properly reflects the current terms of the engagement

b) document in writing changes to the original terms of the engagement.

3.6.4. There may be some engagements in which a Member is involved by way of court order or statute, or is subject to statutory rules pursuant to which the Member does not represent the party applying for or recommending the Member's appointment. In such a situation, the Member should advise the party making the court application or recommending the Member that the Member will not be representing solely that party's interest(s).

3.7. PLANNING

3.7.1. The work should be sufficiently planned and properly executed and if assistants are employed, they should be properly trained and supervised.

3.7.2. At the outset of the engagement, the Member should develop a program sufficient to fulfill his duties. The program should be documented. Examples of planning considerations include: staffing, immediate and ongoing reporting requirements, retention of independent legal counsel, availability of insurance, employees, creditors, security interests, specific industry factors, environmental or public health and safety issues, and confidentiality.

3.8. MANAGEMENT AND DOCUMENTATION OF ENGAGEMENTS

3.8.1. The work performed, key analyses and decisions, meetings, agreements, and support for Reports, should be properly documented.

3.8.2. The work should be performed by a person or persons having, when considered as a whole, adequate technical training and proficiency, with due care and an objective state of mind. If assistants or agents are employed, they should be properly trained and supervised.

4. FILE DOCUMENTATION AND RETENTION OF DEBTOR'S RECORDS

4.1. SCOPE AND PURPOSE

4.1.1. The purpose of this Standard is to provide guidance to Members on possession and retention of Debtor's and Member's records.

4.2. DEBTOR'S RECORDS

4.2.1. The Member should take possession of, or obtain access to, such records of the Debtor as are required to carry out the engagement.

4.2.2. On completion of the administration, the Member should return the records to the Debtor or obtain permission from the Debtor to destroy the records. If the Member is unsuccessful in obtaining permission from the Debtor to destroy records, the Member may give reasonable notice of his intention to destroy the records and proceed accordingly in the absence of any contrary directions.

4.2.3. The permission from the Debtor to destroy records on completion of the administration may be obtained at any time, including at the inception of the engagement. If the Member seeks permission to destroy the records, the Member should advise the Debtor that the Debtor may have obligations to preserve documentation, books and records under various statutes and that the Member will not be responsible for a decision of the Debtor to authorize the destruction of records notwithstanding such obligations.

4.2.4. If the Member is unable to return the records to the Debtor or obtain the Debtor's authorization to destroy the records, the Member may seek permission of the Court before destroying the records, unless a statutory disposition specifically addresses the manner in which records are to be disposed of in the context of the engagement;

4.3. MEMBER'S RECORDS

4.3.1. The Member should maintain documentation on file in connection with each accepted appointment which should include consideration of the following:

a) the appointment documents, including pertinent pre-acceptance considerations and or representations made by the petitioning party, appointing party or Debtor;

b) legal opinion attesting to the validity of the appointing creditor's security or right to make such appointment;

c) communications:

- Reports
- copies of correspondence pertaining to any assignment and memoranda of significant meetings or discussions held
- copies of all statutory notices
- creditor list with amounts owing
- list of Assets taken into the Member's possession and/or control
- documentation received in support of all claims including secured, trust, statutory, preferred, other unsecured and 30 day goods claims
- copies or summaries of government returns
- financial information/statements, etc.
- minutes of important meetings

d) Actions/decisions

- documentation of significant decisions made or actions taken and analysis and reasons supporting same.

4.4. RETENTION OF MEMBER'S RECORDS

4.4.1. The Member's records should be retained for a period of at least four years following completion of the assignment.

4.4.2. The Member may consider keeping a 'permanent file' of key records for a period extending beyond four years.

5. REPORTING

5.1. SCOPE AND PURPOSE

5.1.1. The purpose of this Standard is to provide guidance to a Member in fulfilling his reporting obligations in respect of an engagement.

5.1.2. It is acknowledged that a Member may report either verbally or in writing. In view of the inherent limitations regarding verbal Reports, the present standard is intended to apply only to written Reports by a Member.

5.2. CONTEXT

5.2.1. In the context of an engagement, a Member may be called upon to report on the results of the Member's review or observations, or on the Member's opinion regarding a factual situation, a strategy or a proposed course of action, on the progress of the engagement, the activities of the Debtor or Member in the course of the engagement, or on other matters pertaining to an engagement.

5.2.2. The requirement for a Member to report in respect of an engagement may arise in a wide variety of contexts, including where the Report is required by private agreement through a letter of engagement, by Court order, or by statute. By way of example only, and without limiting the generality of the foregoing, a Report could be required in the following situations:

a) In an advisory engagement, to a lender on the Debtor's activities, financial position, business prospects or on the lender's security position;

b) In a formal appointment by a party as receiver in respect of a Debtor, on the progress of the receivership;

c) In a formal appointment as receiver appointed by Court order, to the Court on the progress of the receivership;

d) In a formal appointment as Trustee under a Notice of Intention or proposal under the BIA, or as Monitor or information officer in proceedings under the CCAA, to the Court on a decision of the Debtor to disclaim, resiliate, or assign an agreement, or to sell Assets outside the Ordinary Course of Business;

e) In a formal appointment as Trustee in bankruptcy, Trustee under a Notice of Intention or proposal under the BIA or Monitor in proceedings under the CCAA, on transactions to assess whether they could be considered as preferential payments, transactions at undervalue or are otherwise void or voidable;

f) In a formal appointment as Trustee of the estate of a bankrupt, on the bankrupt's affairs and on the Trustee's preliminary administration; and

g) In a formal appointment as Administrator of a Consumer Proposal, Trustee under a proposal under the BIA or as Monitor in proceedings under the CCAA, on the Debtor's proposal or CCAA Plan.

5.2.3. Depending on the circumstances or context, a Report may be:

a) intended to be used solely by one person or a very restricted group of persons for a very specific purpose; or

b) intended to be widely distributed or made available to a wide category of stakeholders or Interested Persons; or

c) prepared in a context that would normally imply a wide distribution, but contains information that could be sensitive or confidential.

5.2.4. It is acknowledged that in preparing a Report and expressing an opinion, the Member may have to rely on incomplete or imperfect information, either because obtaining information that is of a higher quality is not possible, or because obtaining such information would render the Report untimely.

5.2.5. In preparing a Report, the Member should be mindful of his professional obligations pursuant to the applicable Rules and CAIRP Rule of Professional Conduct No. 5. Members may consider an appropriate form of qualification in any Report. Reference is made to Schedule "A" as a form of qualification of financial information to be amended according to circumstances.

5.3. REPORT

5.3.1. Prior to preparing a Report, a Member should consider:

a) whether the Report will likely be widely distributed;

b) whether the matters addressed in the Report are controversial or routine;

c) whether the Report contains information that is considered sensitive, confidential or subject to personal privacy legislation;

d) whether the Report addresses the Member's own activities or addresses information obtained from the Debtor or from a third party and which is relied on by the Member.

5.3.2. If the Report is intended to be used by a single user or a very restricted group of users for a single purpose, the Member's Report should include a statement cautioning the reader that the information is intended for a specific purpose, that it should not be used for any other purpose, and that the information is not intended to be distributed, copied or used by any party other than the intended user without the Member's specific permission.

5.3.3. If the Report is intended to be used by a wide range of stakeholders or other interested parties, the Member's Report may include a statement outlining the context in which the Report was prepared, its intended use, and a caution that the Report should not be used for other purposes.

5.3.4. If a Report is prepared in a context that would normally imply a wide distribution, but contains information that could be sensitive or confidential, the Member's Report should include a statement outlining the context in which the Report was prepared, its intended use, and a caution that the Report is not intended to be distributed, copied or used by any party because it is considered to contain confidential or sensitive information. In such a situation, the interested parties may use the information in the Member's communication

to address the court with a view to restricting the distribution of the Report, or make its disclosure conditional on such undertaking as the court may consider appropriate.

5.3.5. Where the Report contains financial information that does not emanate from the Member or does not reflect the Member's own activities, the Report should contain an appropriate cautionary note or notice to the reader that explains the source of the information and cautions the reader that the information has not been audited or otherwise verified and that the inclusion of this information in the Report should not be considered as an audit opinion or other form of assurance regarding its reasonableness or compliance with generally accepted accounting principles.

5.3.6. The Member may not subject information that emanates from the Member's own activities to a disclaimer. Where a Report contains both information on the Member's own activities and financial information which has not been verified and was obtained from the debtor or a third party, the Report should identify which information emanates from the Member's activity and which information was obtained from the debtor or a third party.

5.3.7. Where the Member expresses an opinion on a factual situation or on a proposed strategy or course of action, the Member should indicate in his Report the information on which he relies and the assumptions made in developing the opinion.

5.3.8. The Member's Report may include a caution to the reader that the information should be read in the context of the full report

5.3.9. Where the Report addresses future oriented financial information, such as financial projections or forecasts, the Report should specify that the information therein is based on assumptions about future events and conditions that are not ascertainable, that the actual results may vary from the projections or forecasts, even if the assumptions materialize, and that the variations may be material. In such a situation, the Report should outline the more significant assumptions that underlie the projections or forecasts.

6. PREPARATION AND VERIFICATION OF STATEMENT OF AFFAIRS

6.1. SCOPE AND PURPOSE

6.1.1. The purpose of this Standard is to provide guidance to a Member acting in a personal insolvency matter under the BIA with respect to the preparation and verification of the Debtor's SOA. In particular, this Standard addresses:

a) The Member's obligations regarding the Debtor's SOA;

b) Specified substantive and procedural considerations as they pertain to the Member's obligation to verify the contents of the Debtor's SOA and report to the stakeholders, where necessary;

c) The obligation of the Member to confirm the Debtor's legal identity; and

d) Specified substantive and procedural considerations as they pertain to the Member's obligation to consider transactions involving the Debtor during the period stipulated within the Standard.

6.1.2. This Standard applies to all proceedings with respect to an insolvency proceeding commenced under the BIA in respect of a natural person. Where the proceeding is filed as a joint proceeding (to the extent permitted by the Joint Filing Directive), this Standard should be interpreted by the Member, exercising professional judgment, with such modifications as are appropriate in the circumstances.

6.2. GENERAL

6.2.1. The Member should advise the Debtor that the SOA is the responsibility of the Debtor and that the role of the Member is to:

a) Assist the Debtor in the preparation of the SOA based on the information provided by the Debtor, having regard to the circumstances of the Debtor and applicable provincial and federal legislative exemptions;

b) Verify the reasonableness and accuracy of the contents of the SOA as provided by the Debtor; and

c) Report to the stakeholders, where appropriate.

6.2.2. In assisting the Debtor in the preparation of the SOA, the Member should use his experience and professional judgment to enhance the full disclosure of all the necessary information.

6.2.3. The Member should advise the Debtor of his duty regarding the SOA to:

a) Provide complete and accurate information to the best of his knowledge and ability noting that the Debtor must attest by affidavit or solemn declaration to the contents of the SOA; and

b) Provide the Trustee where possible with appropriate information supporting the content of the SOA for verification purposes.

6.3. ASSETS

6.3.1. The Member should advise the Debtor of the requirement to include all Assets and other relevant matters, including an estimated realizable value for each asset, on the SOA. The Assets include the following types of Assets, where applicable:

a) Cash, marketable securities and other investments;

b) Real property Assets, including the Debtor's principal residence, vacation property, fractional or timeshare interests, farming or other property used for business or other purposes;

c) Motor vehicles, recreational vehicles, boats, and motorcycles;

d) Business Assets, including accounts receivable, inventory, fixtures and equipment and other tangible or intangible business Assets used in or for the purpose of operating a business in which the Assets are attributable to the Debtor;

e) Registered Retirement Savings Plans, Registered Retirement Income Funds, Registered Education Savings Plans, Registered Disability Savings Plans, Tax Free Savings Accounts or other funds of a similar nature;

f) Income tax refunds and other similar amounts receivable from or through application to the Canada Revenue Agency or other governmental institution or agency;

g) Life insurance policies;

h) Potential recoverable amounts arising from litigation, judgments in favour of the Debtor and / or other amounts that may be recovered through a litigation or mediation process, including settlements of pending or ongoing actions;

i) Potential recoveries arising from transactions involving the Debtor and third parties, at arm's length or otherwise, at value less than fair market value and / or as prescribed in the BIA;

j) Personal Assets of the Debtor, including jewellery, antiques, art, artwork, stamp collections, trading card collections and other Assets to which a value could be ascribed;

k) All provincially and federally exempt Assets; and

l) Any other Assets in which the Debtor maintains a financial interest.

6.3.2. In assisting the Debtor with the preparation of the SOA, the Member should ensure that the Debtor discloses the following:

a) The basis of valuation used by the Debtor with respect to each asset;

b) The Debtor's percentage of ownership for each asset (where the Debtor's interest in the asset is less than 100%);

c) The net realizable value net of estimated income tax (where applicable); and

d) A value for all Assets or where a value for an asset cannot be reasonably estimated, the SOA should disclose the rationale for such conclusion.

6.3.3. In verifying the Debtor's SOA for completeness, accuracy and reasonableness pursuant to the requirements of sections 21 and 158 (d) of the BIA, the Member should:

a) Review with the Debtor the different type of Assets, detailed in section 6.3.1 above to ensure that all Assets of the Debtor have been disclosed;

b) Review the documentation provided by the Debtor to assess the reasonableness of the estimated realizable value of each asset.

6.3.4. In assisting the Debtor in preparing the SOA and reviewing the completeness, accuracy and reasonableness thereof, the Member should maintain in the estate file:

a) Proper records that support underlying assumptions and the calculation methodology used by the Debtor for purpose of estimating the net realizable value of each asset;

b) An executed form of statement of consent to the use of personal information;

c) An executed acknowledgement by the Debtor of the Debtor's responsibilities under the BIA; and

d) A description of provincially and federally exempt Assets, including reference to relevant sections of the BIA and provincial and federal legislation.

6.3.5. In the event that the Member is unable to comply with his review obligations pursuant to section 6.3.3 of this Standard, the Member should advise the stakeholders of such circumstance, including the issues requiring resolution to make such determination.

6.3.6. The Member should advise the Debtor in a bankruptcy proceeding of the Trustee's obligation to realize upon the equity in each asset (including Assets that may devolve upon the Debtor prior to his discharge) for the general benefit of his creditors, subject to:

a) Applicable provincial and federal exemptions;

b) The Debtor's option to enter into an asset repurchase agreement;

c) Secured claims and other priority claims (e.g. deemed trust and lien claims);

d) The costs associated with the realization of the Assets; and

e) The costs associated with the administration of the bankruptcy proceeding.

6.4. LIABILITIES

6.4.1. The Member should advise the Debtor of his requirement to disclose the name, address and amount owing to each of his creditors, whether or not the debt is subject to discharge, including:

a) Ordinary unsecured;

b) Preferred unsecured;

c) Secured;

d) Deemed trust claims;

e) Contingent claims; and

f) Unliquidated claims.

6.4.2. In assisting the Debtor with the preparation of the SOA, the Member should ensure that the Debtor is aware of his obligations to:

a) Provide documentation that supports the nature and amount of the creditors' claims, including:

- Invoices, credit card statements and other documentation;
- Demand for payment notices;
- Mortgage documents;
- Lease contracts and / or statements;
- Guarantee agreements;
- Court orders or other relevant documents supporting amounts due, including in respect to matrimonial rights, support and maintenance;
- *Canada Student Loans Act*, *Canada Financial Assistance Act* or any equivalent provincial student loan or assistance program loan statements;
- Security documents, including security agreements and loan statements; and

b) Identify the asset(s) to which a security interest is attached.

6.4.3. Where the Member believes that a security interest against an asset of the Debtor may not be valid or enforceable against the estate, the Member should conduct appropriate lien, title and/or security searches, and consider retaining independent legal counsel to opine on the validity and enforceability of such security interests.

6.4.4. The Member should send the SOA to the OSB and all known creditors.

6.4.5. Where prior notice has been provided to the Trustee by any collection agency or any other parties, including lawyers representing any creditor of the Debtor, the Member should notify such parties of the insolvency proceeding.

6.5. PERSONAL INFORMATION

6.5.1. With respect to the confirmation of the legal identity of the Debtor, the Member should:

a) Obtain a copy of at least one valid government issued ID subject to applicable provincial standards and maintain a copy in the estate file of the Debtor; and

b) Attempt to ascertain all legal names and / or aliases of the Debtor and disclose same on the SOA.

6.5.2. In all personal insolvency proceedings, the Member should perform an insolvency name search of the Debtor through the OSB's Bankruptcy and Insolvency Records, to ensure that the Debtor has disclosed all prior insolvency proceedings and that he is not already subject to a pending insolvency proceeding in respect of which he has not been discharged.

6.6. INFORMATION WITH RESPECT TO THE AFFAIRS OF THE DEBTOR

6.6.1. In verifying information pertaining to the SOA, the Member should inquire as to transactions involving the Debtor, including advising the Debtor of his obligations to:

a) Disclose to the Member the details of all transactions in relation to the sale, disposal or other transfers of any assets to third parties, arm's length or non-arm's length, within the period beginning on the day that is five (5) years before the Date of Initial Bankruptcy Event;

b) Provide to the Member a description of the nature and estimated value of the asset(s) as at the date of the transaction;

c) Disclose to the Member the identity of the parties involved in the transaction and the consideration received for said transaction; and

d) Provide the Member with documentation, if any, supporting such transactions.

6.6.2. Where the Debtor confirms the existence of a transaction involving the Debtor and a third party within the defined period of time, the Member should consider:

a) Whether the transaction was at arm's length or non-arm's length;

b) The consideration given or received;

c) The market value of the asset as at the date of the transaction;

d) The date of occurrence of the transaction;

e) The likelihood of the Trustee being able to challenge the transaction, including the cost of pursuing such action; and

f) The net benefit to the creditors of pursuing a challenge of the transaction.

6.6.3. The Member should ensure that the estate file contains sufficient information to support the actions of the Member with respect to transactions described in 6.6.2 of this Standard.

6.6.4. The Member may consider providing detailed instructions and a questionnaire to assist the Debtor in supplying all necessary information.

7. COUNSELLING IN INSOLVENCY MATTERS

This Standard of Professional Practice has not been substantively amended pending the OSB's review of Directive 1R3 Counselling in Insolvency Matters.

7.1. SCOPE AND PURPOSE

7.1.1. The purpose of this Standard is to provide guidance to a Member with respect to Counselling services to be rendered by a Member to a Counselee in all engagements for which Counselling must be made available by a Member to a Consumer Debtor under the BIA. In particular, this document addresses:

a) The manner in which Counselling of a Counselee should be conducted by a Qualified Counsellor;

b) Specified substantive and procedural considerations pertaining to:

- First Counselling session – consumer and credit education;
- Second Counselling session – identification of roadblocks to solvency and rehabilitation;

c) The circumstances and protocol for not-in-person Counselling of a Counselee; and

d) The circumstances and protocol for supplemental Counselling of a Counselee.

7.1.2. This Standard applies to all Counselling of a Counselee, whether conducted individually or in a group setting (to the extent permitted by the Counselling Directive). Where the Counselling is conducted in a group setting, this Standard should be interpreted by the Member, exercising professional judgment, with such modifications as are appropriate for the circumstances.

7.2. GENERAL COUNSELLING REQUIREMENTS

7.2.1. The Member should ensure that before any Counselling session, a Qualified Counsellor has:

a) Reviewed all pertinent information contained in the Consumer Debtor's file to become familiar with the individual circumstances of the Counselee ; and

b) Ascertained that the proposed Counselling of the Counselee is appropriate taking into consideration the particular situation and needs of the Counselee.

7.2.2. The Member should ensure that the individual conducting the Counselling of the Counselee is a Qualified Counsellor, including having obtained from the individual written proof of registration with the OSB as a Qualified Counsellor.

7.2.3. Where the Member determines that Counselling available for the Counselee is better given by a Qualified Counsellor who is not an employee (by direct hire, contract or otherwise) of the Member, the Member should:

a) Document in the file of each Counselee the basis on which the referral is appropriate; and

b) Obtain from the Qualified Counsellor documentation that supports the quality and nature of the Counselling provided.

7.2.4. A Member should apply due care in accordance with section 52 of the BIA Rules to ensure quality Counselling of a Counselee regardless of whether the Counselling is provided by the Member, an employee of the Member, or by a third party to whom the Member has outsourced the Counselling as permitted by section 7.2.3 above.

7.2.5. The Member should ensure that a Qualified Counsellor conducts in person Counselling of the Counselee, subject only to the exception outlined in section 7.5 of this Standard, taking into consideration the particular situation and needs of the Counselee, which session may be supplemented by video or other resource materials.

7.2.6. Where a non-budgetary cause of insolvency is mentioned by the Counselee or a family member, the Member should ensure that this non-budgetary cause of insolvency is addressed at each of the Counselling sessions, as appropriate, having regard to the willingness of the Counselee to discuss the non-budgetary causes of insolvency. Where the Counselee is not willing to discuss the non-budgetary causes of insolvency, the Qualified Counsellor should ensure that the Counselee is made aware of resources in his geographic locale that may be available to assist him with the identified issue.

7.2.7. The Member should ensure that when the Qualified Counsellor provides Counselling to a Relative of a bankrupt, such Counselling is provided at the same time as the Counselling provided to the bankrupt.

7.2.8. The Counselling should consist of two stages:

a) A first stage to be conducted in accordance to section 7.3 of this Standard, and

b) A second stage to be conducted in accordance with section 7.4 of this Standard.

7.3. FIRST COUNSELLING SESSION – Consumer and Credit Education

7.3.1. In the first stage, the Member should ensure that the Qualified Counsellor presents information and advice in the areas of:

a) Money management;

b) Spending and shopping habits;

c) Warning signs of financial difficulties; and

d) Obtaining and using credit.

7.3.2. With respect to determining the particular circumstances of each Counselee and providing the best Counselling to said Counselee, the Qualified Counsellor should give consideration to the following with respect to the Counselee:

a) Source and nature of income;

b) Stability of the income;

c) Knowledge and understanding of the Canadian financial system and the type of credit available;

d) Importance of family issues as a factor contributing to insolvency;

e) Importance of illness as a factor contributing to insolvency;

f) Initial reasons for the use of the credit;

g) Historical usage of credit;

h) Aging of credit (period the debt has been carried);

i) Ability and tools for monitoring income and expenses on a regular basis;

j) Budgetary versus non-budgetary causes of insolvency;

k) Non-budgetary factors (including gambling, compulsive behaviour, substance abuse, employment, marital or family difficulties);

l) Nature of debts (including secured creditor claims, deemed trust claims, contingent claims, claims subject to section 178(1) of the BIA, credit card, income tax debt);

m) Age; and

n) Number of times the bankruptcy and insolvency system has been utilised to discharge the burden of debt.

7.3.3. The Member should ensure that the file of the Consumer Debtor pertaining to the Counselling performed is documented as to:

a) The information outlined in section 7.2.3 above, where the Counselling is provided by a Qualified Counsellor who is not an employee of the Member;

b) The areas of Counselling reviewed, including those outlined in 7.3.1 above, where appropriate;

c) Examination of the considerations outlined in 7.3.2 above, where applicable; and

d) Such other pertinent information that would permit the Member to properly prepare for the second Counselling session.

7.3.4. The Member should ensure that the Qualified Counsellor has in his possession a variety of resource materials to assist the Counselee to keep appropriate records of his income and expenses on a monthly basis and that such resource material is provided to the Counselee if necessary.

7.3.5. The Member should ensure that the Counselling of the Counselee by the Qualified Counsellor is scheduled or conducted:

a) Between 10 and 60 days following the Date of Initial Bankruptcy Event, or,

b) Within 10 days following the first meeting of creditors held pursuant to subsection 57(c)(i) of the BIA where a Division I Proposal was refused by the creditors; or

c) Any other time period that may be stipulated by the Counselling Directive.

7.4. SECOND COUNSELLING SESSION – Identification of Roadblocks to Solvency and Rehabilitation

7.4.1. In the second stage, the Member should ensure that the Qualified Counsellor reviews the budgetary and /or non-budgetary causes of insolvency or bankruptcy; more particularly that the Qualified Counsellor:

7.4.2. Follows up on the application by the Counselee of the principles presented in the first Counselling stage to assess the Counselee's understanding with regard to money management and budgeting skills;

7.4.3. This session will assist the Counselee to:

7.4.4. Identify the non-budgetary causes (such as gambling, compulsive behaviour, substance abuse, employment and marital or family difficulties) that may have contributed to his financial difficulties, as appropriate, having regard to the willingness of the Counselee to discuss the non-budgetary causes of insolvency. Where the Counselee is not willing to discuss the non-budgetary causes of insolvency, the Qualified Counsellor should ensure that the Consumer Debtor is made aware of resources in his geographic locale that may be available to assist him with the identified issue;

7.4.5. Better understand financial management and consumption habits;

7.4.6. Become aware of the existence of resources that will help the Counselee achieve and maintain economic stability;

7.4.7. Cooperatively with the Counselee, develop recommendations and alternatives for a financial plan of action that, if appropriate, may include a referral for specialized Counselling to assist with non-budgetary causes of insolvency;

7.4.8. Access a list of pertinent outside resources to address the non-budgetary contributors to insolvency, by referring to the information outlined in paragraph section 1.1.1 of this Standard. Where it is not deemed appropriate to provide a list of resources, having regard to the circumstances of the Consumer Debtor, the Member should ensure that the Qualified Counsellor documents the rationale for such decision.

7.4.9. With respect to the determination of the non-budgetary causes of insolvency, the Member should ensure that the Qualified Counsellor gives consideration to the following:

a) Knowledge by the Counselee of the non-budgetary contributors to his insolvency;

b) Willingness of the Counselee to acknowledge the causes of the insolvency;

c) Willingness of the Counselee to seek advice from outside resources with respect to the non-budgetary contributors to insolvency; and

d) State of the non-budgetary causes of the insolvency at the time of the second Counselling session.

7.4.10. With respect to the Counselee's understanding of his behaviour in respect of financial management and consumption habits, the Member should ensure that the Qualified Counsellor considers the following:

a) Counselee's knowledge of the different types of credit available to consumers;

b) Types of credit used by the Counselee and which contributed to his insolvency;

c) Counselee's credit experience prior to insolvency;

d) Age of the Counselee;

e) Reasons for the use of credit;

f) Changes with respect to the consumption habits of the Counselee since the Date of the Initial Bankruptcy Event; and

g) Development of new habits and / or financial management by the Counselee.

7.4.11. With respect to the developing of a financial plan of action for the Counselee, the Member should ensure that the Qualified Counsellor considers the following:

a) Level of education and abilities of the Counselee with respect to financial planning;

b) Surplus income of the Counselee, if any;

c) Ability of the Counselee to modify his financial habits;

d) Ease with which the Counselee has changed with respect to his consumption habits; and

e) Budgetary causes of the insolvency.

7.4.12. Where an issue has been identified pursuant to section 7.2.6 of this Standard, the Member should ensure that the Qualified Counsellor:

a) Inquires of the Consumer Debtor as to whether he has obtained assistance from an outside resource; and

b) Where the Consumer Debtor advises that he has not sought assistance from an outside resource, obtains from the Consumer Debtor the reasons the Consumer Debtor failed to obtain assistance from an outside source and document such reasons in the Consumer Debtor's file.

7.4.13. The Member should ensure that the Counselling of the Counselee by the Qualified Counsellor is scheduled or conducted not before the end of a 30-day period after completion of the first stage of Counselling of the Counselee and prior to any time period that may be stipulated by the Counselling Directive.

7.5. COUNSELLING NOT DONE IN PERSON

7.5.1. As stipulated in section 7.2.5 of this Standard, all Counselling is to be conducted in person. In exceptional circumstances Counselling may be conducted by telephone, video conference or other electronic means; however, such manner of Counselling is subject to prior written approval by the DAS.

7.5.2. The following situations are considered exceptional circumstances for which a Member may request from the DAS not-in-person Counselling:

a) The Counselee resides in a Designated Area;

b) The Counselee resides outside Canada because of a work assignment and / or a move for personal reasons; or

c) Any other reason(s) the Member considers justified with respect to the particular needs and circumstances of the Counselee.

7.5.3. In all situations where the Member requests that the Counselling be performed by telephone, video conference or other electronic means, the Member should ensure that appropriate resource material is made available to the Counselee prior to the Counselling taking place.

7.5.4. In all cases where the Counselling is held by telephone, video conference or other electronic means, the Member should ensure that the Qualified Counsellor:

a) Discusses non-budgetary causes of insolvency, as appropriate, having regard to the willingness of the Counselee to discuss the non-budgetary causes of insolvency;

b) Provides the Counselee with resource material concerning non-budgetary causes of insolvency, if appropriate;

c) Ensures that the Consumer Debtor's file is documented appropriately to reflect:

- The basis for not-in-person Counselling;
- Approval of the DAS for not-in-person Counselling;
- The means by which not-in-person Counselling was conducted; and
- All other pertinent matters consistent with in person Counselling.

7.6. SUPPLEMENTAL COUNSELLING SESSIONS

7.6.1. In certain specific circumstances it may be appropriate for the Member to decide to conduct additional Counselling with a Counselee. Where a Member decides additional Counselling of a Counselee is appropriate and the Counselee is willing to attend additional Counselling session(s), the Member should ensure that a Qualified Counsellor conducts such additional Counselling.

7.6.2. The Member should offer additional Counselling to the Counselee when:

a) the Counselee requests supplemental Counselling;

b) the Member is of the opinion that the Counselling is within the Member's area of expertise; and

c) the appropriate Counselling is not available at no cost to the Consumer Debtor from another source.

7.6.3. The Member may offer additional Counselling to the Counselee in at least the following circumstances:

a) When an opposition to the Counselee's discharge is based on the fact that the Counselee has abused credit;

b) When the period of bankruptcy of the Counselee exceeds nine (9) months;

c) When the Counselee has been granted a discharge order on terms or conditions or on the condition that the Counselee consents to judgment in order to obtain an absolute discharge; and

d) When the Member is of the opinion that the Counselee would benefit from supplemental Counselling.

7.6.4. In all cases where the additional Counselling is provided to a Counselee, the Member should document the file with respect to the rationale for the supplemental Counselling.

8. CONSUMER PROPOSALS

8.1. SCOPE AND PURPOSE

8.1.1. The purpose of this Standard is to provide guidance to a Member acting as an Administrator of a Consumer Proposal under Division II, Part III of the BIA. In particular, this document addresses:

a) The duties of an Administrator, which include:

- General assessment of the Debtor as required by the BIA;
- Investigation of the property and financial affairs of the Consumer Debtor, so as to be able to assess the financial situation and the causes of insolvency;
- Preparation of the Consumer Proposal;
- Report of the Administrator on the Consumer Proposal; and

b) The obligation of the Administrator to report Material Changes in the circumstances of the Consumer Debtor that could affect a creditor's vote on, or jeopardize the performance of, the Consumer Proposal.

8.1.2. This Standard applies to all proceedings commenced under Division II, Part III of the BIA, whether filed as an individual or joint Consumer Proposal (to the extent permitted by the Joint Filing Directive). Where the Consumer Proposal is filed as a joint Consumer Proposal in accordance with the rationale outlined in the stated Directive, this Standard should be interpreted by the Member, exercising professional judgment, with such modifications as are appropriate in the circumstances.

8.2. GENERAL ASSESSMENT OF DEBTOR FOR PURPOSES OF THE BIA

8.2.1. The Member should assess the financial and other circumstances of the Debtor having regard to Directive 6R - Assessment of an Individual Debtor.

8.2.2. The Member should advise the Debtor of his obligations pursuant to the BIA, including:

a) Providing the Member with the information necessary to fully and accurately prepare the Consumer Proposal;

b) Reporting to the Administrator any Material Change immediately upon occurrence of such Material Change; and

c) All other obligations pursuant to section 158 of the BIA, with such modifications as the circumstances require, to be applicable to Consumer Proposals.

8.3. INVESTIGATION OF FINANCIAL SITUATION AND CAUSES OF INSOLVENCY

8.3.1. The Member should investigate, or cause to be investigated, the Debtor's property and financial affairs to be able to assess with reasonable accuracy the Debtor's financial situation and the causes of his insolvency.

8.3.2. In assessing and investigating the property and financial affairs of the Debtor the Member should consider, amongst other factors, the:

a) Source, nature and stability of income of the Family Unit;

b) Source, nature and amount of non-discretionary expenses of the Family Unit;

c) Experience of credit use, including the aging of unpaid credit amounts;

d) Age and skills for re-employment, where applicable;

e) Previous BIA filings or debt management plans;

f) Nature and priority of creditor claims (refer to Standard of Professional Practice No. 6 for further information), including:

- Secured creditor claims;
- Deemed trust claims;
- Contingent claims;
- Unliquidated claims;
- Claims subject to Subsection 178(1) of the BIA;
- Claims with guarantors and co-signers within or external to the Family Unit of the Consumer Debtor, and/or other debt payment obligations of third parties (including other family Members);
- Ordinary unsecured claims; and
- Preferred unsecured claims.

g) Nature of the Assets and estimated realizable value of each type of asset (refer to Standard of Professional Practice No. 6 for further information), including:

- Cash, marketable securities and other investments;
- Real property Assets, including the Consumer Debtor's principal residence, vacation property, farming or other property used for business or other purposes;

- Business Assets, including accounts receivable, inventory, fixtures and equipment and other business Assets used in or for the purpose of operating a business in which the Assets are attributable to the Consumer Debtor;

- Registered Retirement Savings Plans, Registered Retirement Income Funds, Registered Disability Savings Plans, Tax Free Savings Accounts or other funds of a similar nature;

- Income tax refunds and other similar amounts receivable from or through application to the Canada Revenue Agency or other Governmental institution or agency;

- Life insurance policies, including their cash surrender value or borrowing value, as applicable;

- Motor vehicles, recreational vehicles, boats, and motorcycles;

- Potential recoverable amounts arising from litigation, judgments in favour of the Consumer Debtor and/or other amounts that may be recovered through a litigation or mediation process, including settlements of pending or on-going actions;

- Potential recoveries arising from transactions involving the Consumer Debtor and third parties, at arm's length or otherwise, at value less than fair market value and /or as prescribed in the BIA;

- Personal property of the Consumer Debtor, including jewellery, artwork, stamp collections, trading card collections and other Assets to which a value could be ascribed; and

- Any other asset in which the Consumer Debtor maintains a financial interest.

8.3.3. In investigating the causes of insolvency of the Consumer Debtor the Member should consider, amongst other factors, the:

a) Results of the investigation into the property and financial affairs of the Consumer Debtor as undertaken in 8.3.2 above;

b) Consumer Debtor's knowledge and understanding of the Canadian financial system and type and amount of credit available to him;

c) Initial reason for the use of credit;

d) Ability to monitor income and expenses on a regular basis;

e) Use of discretionary income by the Consumer Debtor or on behalf of the Family Unit;

f) Importance of family issues as a contributing factor;

g) Importance of illness as a contributing factor; and

h) Other non-budgetary factors (including gambling, compulsive behaviour, substance abuse, marital and family problems).

8.4. PREPARATION OF THE CONSUMER PROPOSAL

8.4.1. The Member should assist the Debtor in preparing the Consumer Proposal in the prescribed form.

8.4.2. In assisting the Debtor in the preparation of the Consumer Proposal the Member should consider, amongst other factors, the:

a) Information required to be prepared in accordance with the Standard No. 6 – Preparation and Verification of Statement of Affairs;

b) Results of the investigation into the property and financial affairs of the Consumer Debtor as undertaken in 8.3.2 above; and

c) Results of the investigation into the causes of insolvency of the Consumer Debtor as undertaken in 8.3.3 above.

8.5. REPORT OF THE ADMINISTRATOR ON THE CONSUMER PROPOSAL

8.5.1. The Report of the Administrator on the Consumer Proposal (Form 48) should include the following additional information, as applicable:

a) An explanation of the key terms of the Consumer Proposal;

b) Identification of estimated claims of parties related to the Consumer Debtor;

c) Segregation of secured creditor claims in such a manner as to ensure that it is clear that the secured creditors will not share in the dividends available for the unsecured creditors; and

d) An analysis comparing the recoveries to the creditors under the Consumer Proposal to the potential recoveries under a bankruptcy proceeding. This analysis should include:

- An explanation as to the method of valuation of all Assets;
- An explanation as to the legal basis for an exemption of certain Assets;
- The nature of claims against Assets that would impact the net equity available to the creditors;
- The calculation of the monthly payment pursuant to section 68 of the BIA if the Consumer Debtor were to file a bankruptcy proceeding;
- Known facts or situations that are not readily apparent from the SOA and which could affect the recovery to the creditors;

- Known contingent and unliquidated claims and, if possible, the value an Administrator would likely ascribe to said claims if the Consumer Debtor filed a bankruptcy proceeding;

- Known defects in any security interests;

- Any gifts, transfers, conveyances or other transactions at undervalue that may be subject to challenge by an Administrator, including the effect on recoveries if the challenge is successful (net of estimated costs); and

- Any known claims which have been co-signed and /or guaranteed and the impact, if any, of these claims.

8.5.2. Where the recovery to the creditors under the Consumer Proposal is inferior to that under an alternative proceeding, the Member should include any supplemental facts, information or rationale that the creditors should consider in respect of the Consumer Proposal.

8.5.3. With each distribution to the creditors pursuant to the terms of the Consumer Proposal, the Member may consider sending to each such creditor an interim Administrator's statement of receipts and disbursements, including a copy of the dividend sheet associated therewith.

8.6. VOTING LETTER

8.6.1. The Member should include a Voting Letter with the Report of the Administrator on the Consumer Proposal.

8.7. MATERIAL CHANGES THAT COULD AFFECT A CREDITOR'S VOTE ON, OR JEOPARDIZE PERFORMANCE OF, THE CONSUMER PROPOSAL

8.7.1. If a Member becomes aware of a Material Change involving the Debtor prior to the date of creditors' approval or deemed approval of the Consumer Proposal, the Member should forthwith report in writing the occurrence of the Material Change to the OSB and every known creditor the occurrence of the Material Change.

8.7.2. Prior to a deemed annulment of the Consumer Proposal in accordance with Subsection 66.31(1) of the BIA and / or the Member notifying the OSB and all known creditors as contemplated in section 8.7.1 of the Standard, the Member should notify the Debtor as to the effect of a deemed annulment of the Consumer Proposal. Additionally, the Administrator may discuss and consider with the Debtor the following:

a) A plan to replace the payment(s) that was/were missed;

b) The possibility or necessity of filing an amended Consumer Proposal;

c) The possibility or necessity of filing a bankruptcy proceeding; and

d) Other alternatives available to the Consumer Debtor.

8.7.3. The Member's Report as to the Material Change should include at least, the following:

a) The nature of the Material Change;

b) The results of the consultation with the Debtor, where undertaken, as contemplated in section 8.7.2 of the Standard; and

c) The Administrator's estimate of the impact of the Material Change on the recovery to the creditors.

9. CASH-FLOW STATEMENT

9.1. SCOPE AND PURPOSE

9.1.1. The purpose of this Standard is to provide guidance to a Member in fulfilling his statutory responsibilities under the BIA or CCAA regarding the preparation, review and report on the Debtor's Cash-flow Statement.

9.2. INITIAL ASSESSMENT

9.2.1. The Member should review the documents filed, namely the Notice of Intention or application for an initial order, as the case may be, and note the deadlines for notifying creditors and for filing the Cash-flow Statement, the Debtor's Report and the Trustee's or Monitor's Reports.

9.2.2. The Member should inquire about third party guarantees and determine their effect on the success of the proposal or CCAA Plan.

9.2.3. The Member should assess the extent to which unpaid wages or other employment benefits, Crown claims, statutory trusts and security interests, may affect the viability of the Debtor's intended proposal or CCAA Plan.

9.3. ASSISTING THE DEBTOR

9.3.1. Although the Member may assist the Debtor in the preparation of the Cash-flow Statement, the Member should remind the Debtor that the Assumptions and statement of projected cash-flow belong to and are the responsibility of the Debtor.

9.3.2. The Member should remind the Debtor that the Member has the statutory duty to file a report with respect to the Cash-flow Statement.

9.3.3. The Member should advise the Debtor that any information given by the Debtor to the Member may be disclosed to the Court and the creditors.

9.4. DEBTOR'S CONFIRMATION

9.4.1. The Member should obtain written confirmation from the Debtor or a signing officer of the Debtor that:

a) the Cash-flow Statement and the underlying Assumptions are the responsibility of the Debtor;

b) the obligations of the Debtor under the BIA or CCAA, as the case may be, have been properly explained and understood, including an understanding that every person who fails to comply with such obligation may be liable to fines and/or imprisonment;

c) the Debtor's responsibility extends beyond ensuring that individual Assumptions used to prepare the Cash-flow Statement are appropriate in the circumstances: the Debtor is responsible to ensure that the Assumptions as a whole are appropriate; and

d) the Cash-flow Statement has been approved by the board of directors or by senior management duly delegated and authorized by the board of directors.

9.4.2. A form of Debtor confirmation is available in Schedule "B" or a form of engagement confirmation regarding Cash-flow Statement is available in Schedule "D".

9.5. MEMBER'S REVIEW AND DOCUMENTATION

9.5.1. The Member should perform a review consisting of enquiry, analytical procedures, and discussions of the support provided by the Debtor to determine whether there is anything that causes him to believe that:

a) all Probable and Hypothetical Assumptions that are material have not been used in preparing the Cash-flow Statement;

b) the Hypothetical Assumptions are not consistent with the purpose of the Cash-flow Statement;

c) as at the date of the Report the Probable Assumptions developed by the Debtor are not Suitably Supported and consistent with the plans of the Debtor or do not provide a reasonable basis for the Cash-flow Statement given the Hypothetical Assumptions; or

d) the Cash-flow Statement does not reflect the Probable and Hypothetical Assumptions.

9.5.2. The Member should satisfy himself that the computations and results reflect the Assumptions.

9.6. PRESENTATION AND DISCLOSURE

9.6.1. The Member should ensure that the Debtor's statement of projected cash-flow and Report are cross-referenced to the Trustee's or Monitor's Report so that it is clear that they are to be read in conjunction with such Report.

9.6.2. The following wording is suggested as a preface to the Member's signature on the Cash-flow Statement:

This statement of projected cash-flow of [name of Debtor] prepared in accordance with the provisions of the [BIA] [CCAA] should be read in conjunction with the [Trustee's] [Monitor's] Report on the Cash-flow Statement

9.6.3. The Member should ensure that all Probable and Hypothetical Assumptions having a material effect that were used to prepare the Cash-flow Statement are disclosed in the notes.

9.7. REPORT

9.7.1. After completing his review, the Member should consider whether anything material has come to his attention that causes him to believe that:

a) the Hypothetical Assumptions are not consistent with the purpose of the Cash-flow Statement;

b) as at the date of the report, the Probable Assumptions developed by the Debtor are not Suitably Supported and consistent with the plans of the Debtor or do not provide a reasonable basis for the Cash-flow Statement, given the Hypothetical Assumptions; or

c) the Cash-flow Statement does not reflect the Probable and Hypothetical Assumptions.

9.7.2. If nothing Material has come to the Member's attention that prevents him from signing the Report, he should prepare and sign the Report in the form prescribed by the BIA or, as the case may be, in the format as set out in Schedule "C".

9.7.3. Where the Member concludes he is unable to issue the Report in the form set out above in a timely fashion, the Member should:

a) advise the Debtor of the Assumptions and/or other matters that prevent the Member from issuing the Report and should consider advising the Debtor of same in writing; and

b) report that fact in timely fashion to the appropriate persons, including the Court, the creditors and the Superintendent of Bankruptcy, as the case may be, setting out the reasons therefor.

9.7.4. The Member should date the Report as of the date of the completion of his Review for Reasonableness.

9.7.5. The Member's Report, in addition to the above-mentioned statutory report, may also include an overview and review of the Cash-flow Statement and a summary of its determinations.

9.8. EXPLANATORY NOTES

9.8.1. These notes have been prepared for the use of Members in conjunction with the Standard of Professional Practice pertaining to Cash-flow Statements. These notes are intended to give additional guidance to Members in understanding and applying the Standard, but the provisions of this section 9.8 should not be considered as authoritative as part of the Standard No. 9.

9.8.2. The requirement for the filing of a Cash-flow Statement was introduced in the 1992[2] BIA amendments. The requirement was later extended to proceedings under the CCAA, through amendments made in 1997[3], 2005 and 2007[4]. The requirement for a Cash-flow Statement is intended to increase transparency, so that information can be available to creditors as to how the Debtor intends to carry its business during the pendency of restructuring proceedings, and whether the expected operations could result in a deterioration in the financial position of the Debtor and thus could affect the creditors of the business.

9.8.3. Set out below are significant aspects which should be considered by the Member in connection with his review of the Debtor's Cash-flow Statement. The following is not a comprehensive list of considerations and the Member would not be expected to use them as a checklist in order to comply with this Standard. The primary element of the review is the exercise of the Member's professional judgment.

Responsibility for the Cash-flow Statement and Documentation

9.8.4. The legislation makes it clear that the Cash-flow Statement is the responsibility of the Debtor, by requiring that the Cash-flow Statement be accompanied by a Report of the Debtor setting out prescribed representations and drawing the attention of the reader to the assumptions that support the Cash-flow Statement (sections 50.4(2) and 50(6) of the BIA and section 10(2) of the CCAA).

9.8.5. While the Cash-flow Statement is necessarily the responsibility of the Debtor, the Trustee or Monitor has an obligation to comment on the reasonableness of the Cash-flow Statement (sections 50.4(2) and 50(6) of the BIA and section 23(1)(b) of the CCAA). As well, the Trustee or the Monitor may assist in the preparation of the Cash-flow Statement, or may provide preliminary comments while the Cash-flow Statement is being developed, before formally commenting on its reasonableness through the Report referred to herein. In view of the assistance that may be given or input that may be contributed by the Members in the preparation of the Cash-flow Statement and the fact that the Trustee or Monitor will be commenting on the reasonableness of the Cash-flow Statement, it is possible that the issue of ownership and responsibility for the contents of the Cash-flow Statement may become blurred in the minds of certain Debtors. As such, it is considered good practice to specify in writing and remind the Debtor, either through the letter of engagement or other documented communication with the Debtor, of the

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[2] S.C. 1992, c. 27, that came into effect November 30, 1992.

[3] S.C. 1997 c. 12, that came into effect for the most part on September 30, 1997.

[4] S.C. 2005 c. 47, as amended and complemented by S.C. 2007 c. 36. Certain provisions of this legislation came into effect on July 1, 2008, but the provisions relevant to this Standard came into effect on September 18, 2009.

respective roles and responsibilities of the Debtor and the Member regarding the preparation of the Cash-flow Statement or updated Cash-flow Statements, if necessary. An example of such a letter of engagement and confirmation is attached as Schedule "D".

Governance

9.8.6. The Member should ensure that the preparation and contents of the Cash-flow Statement receive the full attention of the Debtor, or of the board of directors of a Debtor Company. As such, the Member should ensure that the letter of confirmation referred to in section 9.8.5 above as well as any Cash-flow Statement is approved or authorized by the board of directors of the Debtor Company or by senior management duly delegated and authorized by the board of directors of the Debtor Company.

Timing

9.8.7. The Member should bear in mind the deadlines for filing the Cash-flow Statement, Debtor's representations and the Trustee's or Monitor's Report.

9.8.8. In the case of a proposal under the BIA, the Cash-flow Statement, Debtor's representations and Trustee's Report must be filed at the same time as the proposal, and as a consequence the member must plan the review of the Cash-flow Statement in advance of filing the proposal.

9.8.9. In the case of a proceeding under the CCAA, the initial Cash-flow Statement, together with the Debtor's representations, should be filed at the time of the request for an initial order. There is no requirement in the CCAA that the Monitor's Report on the reasonableness of the Cash-flow Statement be available at that time. However, the Monitor's Report on the reasonableness of the Cash-flow Statement may be a consideration in implementing restructuring measures, such as seeking Interim Financing secured on a priority basis. As such, the timing of the Member's review and issuance of a Report may very well depend on the Debtor's particular needs and the circumstances of the engagement. Where there is no particular reason to expedite the issuance of a Report on the reasonableness of the Cash-flow Statement, it is considered that the Member should aim to issue such a report as soon as possible after the issuance of the initial order, and unless circumstances dictate otherwise, within 10 days of the issuance of the initial order, so that the Report remains timely.

9.8.10. In the case of a Notice of Intention to make a proposal under the BIA, the deadline for the filing of the Debtor's Cash-flow Statement is 10 days from the filing of the Notice of Intention. In view of the provisions of BIA Rule No. 4, this period is interpreted to be 10 calendar days and not business days. The Member should consider if this requirement is achievable, and should not assume that the time limit can necessarily be extended. To the extent that an extension of the deadline to file a Cash-Flow Statement will be sought from the Court, the application for an extension must be made before the expiration of the 10-day period.

Period covered by the Cash-flow Statement

9.8.11. The requirement for a Cash-flow Statement is intended to increase transparency during the pendency of the restructuring proceedings. Neither the BIA nor the CCAA prescribe the period of time that must be covered by a Cash-flow Statement, and as such the period over which the Cash-flow Statement is made, is undetermined. The only reference to a time period in connection with the Cash-flow Statement, other than the period within which it must be filed, is the fact that the BIA specifies that it must present information at least on a monthly basis (sections 50.4(2) and 50(6) of the BIA) and the CCAA specifies that it must present information on at least a weekly basis (section 10 of the CCAA[5]). Considering the purpose of the Cash-flow Statement, it is considered that the Cash-flow Statement should cover at least the entire period of the contemplated stay of proceedings, until the next decision point (for example, the date on which a proposal or arrangement must be filed or an extension sought from the Court). Accordingly, the Cash-flow Statement made in connection with a Notice of Intention to make a proposal under section 50.4 of the BIA should cover at least 30 days in the case of a new proceeding, and the length of the extension sought, in the case of a Cash-flow Statement filed in support of a request for an extension of the delay to file a proposal. As well, a Cash-flow Statement filed in connection with a proposal should extend over a period sufficient to allow for the holding of a meeting of creditors to consider the proposal, and the hearing of an application for ratification of the proposal by the Court. Similarly, the Cash-flow Statement filed in connection with an application for an initial order under the CCAA should cover at least 30 days, and the Cash-flow Statement filed in support of an application for an extension of the initial order should cover the length of the extension sought.

9.8.12. While the Cash-flow Statement should cover at least the period during which the stay of proceedings is expected or requested to be in effect, it would be preferable, if it is possible, that such Cash-flow Statement cover a longer period, to provide some information to users of the statement on expected trends after the expiry of the current stay of proceedings while the restructuring proceedings are continuing. By way of an example, while it is considered that a Cash-flow Statement filed pursuant to a Notice of Intention to make a proposal under section 50.4(2) of the BIA should cover at least 30 days, it would be preferable if the Cash-flow Statement extended over two months, to allow for any expected extensions and the period required to hold a meeting of creditors to consider the proposal.

9.8.13. As well, it is possible that a Cash-flow Statement filed in connection with a proposal under the BIA or concurrently with a Plan of Compromise or arrangement under the CCAA is intended to provide information beyond the duration of the restructuring proceedings, and may include as well disclosure of the Debtor's business plan. In these circumstances, the Cash-flow Statement may extend beyond the expected date of expiry of the stay of proceedings.

[5] The misalignment between the provisions of the BIA and CCAA in this respect is thought to be the result of an oversight in changes that were intended to harmonize the provisions, and is therefore likely temporary.

9.8.14. In view of the different objectives that may be applied to the disclosure of information in a Cash-flow Statement, the Cash-flow Statement should clearly set out the purpose for which it was prepared, in addition to the relevant assumptions on which it is premised.

Content and format

9.8.15. Neither the BIA nor the CCAA prescribe the contents or format of a Cash-flow Statement. The information could be as limited as to only include a summary statement of projected receipts and projected disbursements, or could include information on projected changes in working capital components, or could include a fully integrated financial projection model presenting a projected statement of financial position, projected results, projected cash-flows and other supporting schedules.

9.8.16. The determination of what constitutes appropriate and relevant content or format for the Cash-flow Statement will depend on a number of factors, such as:

a) The extent to which the information may be confidential or sensitive, given the competitive environment;

b) the degree of complexity of the enterprise and its operations;

c) the degree of sophistication of the Debtor, in terms of financial reporting and financial forecasting; and

d) the availability of information given the time constraints under which the Cash-flow Statement has to be prepared.

9.8.17. The combination of the above factors may result in a Cash-flow Statement that discloses information that tends to be limited.

9.8.18. Where the information is limited as a result of a concern over the competitive environment and the disclosure of sensitive information, the Member may suggest that the Debtor ask the Court for an order limiting or restricting access to the information contained in the Cash-flow Statement (sections 50.4(4) and 50(8) of the BIA and section 10(3) of the CCAA).

9.8.19. The Cash-flow Statement may include information on the expected changes in the significant working capital components, such as changes in accounts receivable and inventory levels, and changes in accounts payable levels where there is an assumption that purchases or expenses are not all paid for on a "cash on delivery" basis. This information is useful to provide knowledge to operating lenders to the Debtor of the expected changes in its security position during the pendency of the restructuring process.

9.8.20. The objective of the Cash-flow Statement is to provide information that is relevant and transparent, taking into consideration the constraints that result from the factors outlined in section 9.8.16 above. The information in the Cash-flow Statement should be presented in a clear and logical fashion, keeping in mind the audience to which it is directed. With respect to the Cash-flow Statement, the line items that are disclosed will

depend on the components of the operations that are significant to the enterprise, with a view to providing information that is not aggregated to a point of being meaningless, and that is not detailed to a point of being cumbersome or trivial. For example, the information could include:

a) Cash receipts:

- Collections of accounts receivable
- Sales of Assets
- Other miscellaneous receipts

b) Cash disbursements:

- Payments to suppliers of merchandise and services
- Salaries, wages and benefits
- Remittances of amounts due to governments for taxes
- Payments of operating or administrative expenses
- Other payments

c) Proceeds/repayments of proposed Interim Financing , secured debt or other property claims

d) Changes in cash position

e) Any information that is unique to the Debtor or that is unusual in the context of the regular operations of the Debtor or of the restructuring proceedings, such as for example:

- key employee retention payments
- payments of arrears of amounts due to key suppliers
- Professional fees and disbursements relating to the restructuring process

Standard of review

9.8.21. The Member that reviews a Cash-flow Statement for the purposes of commenting thereon in the context of a restructuring engagement under the BIA or CCAA must make a determination of the reasonableness of the Cash-flow Statement. Even though the Report to be issued by the Member is a "negative assurance" type of Report, i.e. a Report indicating that nothing has come to the Member's attention that causes the Member to believe that the Assumptions used are inconsistent with the purpose of the Cash-flow Statement, the Member's burden to comment on the reasonableness of the Cash-flow Statement must be addressed by substantive work and analysis.

9.8.22. While the level of work required will vary depending on the circumstances, the Member should carry out sufficient procedures to ensure that, to the best of the Member's knowledge and belief:

a) The purpose of the Cash-flow Statement is clearly set out for the reader of the Cash-flow Statement;

b) The Assumptions are properly set out in the Cash-flow Statement or in notes accompanying and forming part of the Cash-flow Statement;

c) All relevant Assumptions are described, and an indication is made of the degree to which the assumption is considered to be speculative, namely whether the assumption is considered to be a Hypothetical Assumption or a Probable Assumption;

d) Where an assumption is considered to be a Hypothetical Assumption, whether it is consistent with the purpose of the Cash-flow Statement, and where an assumption is considered to be a Probable Assumption, whether it is Suitably Supported;

e) The Assumptions as a whole and each of the Assumptions are considered to be reasonable and consistent with the purpose of the Cash-flow Statement;

f) The worksheets or financial models used to compile the Cash-flow Statement are internally consistent and logical (i.e. in all materials respects, the worksheets add, cross add, and cross references to common information exist and are consistent);

g) The information that is presented in the Cash-flow Statement is not misleading or incorrect; and

h) The Cash-flow Statement as a whole appears reasonable in the circumstances.

9.8.23. The Member's review should be sufficient in breadth and depth to allow for the forming of an opinion regarding the reasonableness of the Cash-flow Statement. This review may consist of enquiry, discussions with the Debtor or management of the Debtor Company, analysis, comparison with recent results, evaluating recent trends for the Debtor and the Debtor's industry, and awareness of general economic conditions and of the environment in which the Debtor operates.

Assumptions

9.8.24. The Assumptions made in preparing the Cash-flow Statement are the responsibility of the Debtor. However, in the context of forming an opinion on the reasonableness of the Cash-flow Statement, a Member should ensure that the review work includes a robust challenge of the Assumptions to assess their reasonableness in the circumstances. A Member may consider the following:

a) Whether the Probable Assumptions are Suitably Supported, i.e. are they consistent or comparable with:

- past performance

- industry practices
- feasibility studies
- marketing studies

b) Whether sufficient allowance has been made to account for the rights of suppliers during the pendency of the restructuring process, namely:

- The right of suppliers of goods and services to be paid on a "cash on delivery" basis for merchandise delivered, or goods and services supplied after the commencement of the restructuring proceedings; and
- The possibility of accelerating payment to utility or public service companies as compared with normal business terms, either by making instalment payments or providing reasonable deposits, to reflect their right to not extend credit.

c) Whether sufficient allowance has been made for a possible temporary slowdown of activity that could occur such as:

- Normal business cycles or seasonal changes
- Possibility of a temporary slowdown as a result of uncertainty in the early period of a restructuring process, while the business stabilizes;
- Withholding of payments by customers who may be concerned over warranty or other issues
- Possibility of having to accelerate deliveries of goods and services to ensure that supplies are received on a timely basis, given the additional built-in inefficiency of having to arrange payment to suppliers on a cash on delivery basis, or the depletion of supplies prior to the filing, which may extend the lead time for the supply chain

d) Whether sufficient allowance has been made for expenditures or transactions that are directly related to the restructuring process, such as:

- The need for Interim Financing , the cash-flows (advances and repayments) related thereto and any fees or charges relating to the Interim Financing (interest charges, commitment fees and other financing fees)
- Professional fees and disbursements of the professionals that will be involved in the restructuring process

e) Third party commitments or guarantees to fund the proposal may be a major factor affecting the success of the proposal. The Member should enquire as to the existence or possibility of a guarantee from a third party and understand the nature of such commitments or guarantees, including the financial means of the plan or proposal sponsor, and when funds are to be put in trust and under what conditions.

Reporting

9.8.25. The review performed by the Member in respect of a Cash-flow Statement prepared in the context of restructuring proceedings under the BIA or CCAA has one basic objective, which is the issuance of the Report commenting on the reasonableness of the Cash-Flow Statement. As soon as the Member has completed his review, the Member should prepare, sign and date the Report on the reasonableness of the Cash-flow Statement. The Report should be dated as of the date of completion of the review work.

9.8.26. The Cash-flow Statement and the Member's Report should be cross-referenced so that there can be no misunderstanding as to which Cash-flow Statement is referred to in the Report, and so that the reader is notified that the Cash-flow Statement must be read in conjunction with the Report.

9.8.27. It is expected that in most circumstances, the work will be performed collaboratively between the Debtor's preparation of the Cash-flow Statement and the Member's review of same, so that in most circumstances the Member should be able to sign a Report that follows the standard format suggested in section 9.7.2.

9.8.28. However, in some cases, it is possible that the Member is unable to satisfy himself that the Cash-flow Statement is reasonable in the circumstances. In that case, the Member should immediately communicate with the Debtor (or the appropriate representatives of the Debtor Company) to advise of this fact and discuss further steps to be taken in view of this finding. This discussion may result in amendments to the Cash-flow Statement that will allow the Member to sign the Report.

9.8.29. Where, after discussion and due consideration, the Member determines that he cannot sign the Report, the Member should communicate in writing with the Debtor, and Report to the Court (in the context of proceedings under the CCAA) or the OSB (in the context of proceedings under the BIA) providing reasons why the standard form Report cannot be signed.

9.8.30. In view of the transparency objective that underlies the restructuring proceedings pursuant to the CCAA and the BIA, the Member should also consider notifying the creditors of the fact that the Member was unable to become satisfied with the reasonableness of the Cash-flow Statements and the reasons therefor. Such a notification may be moot in the context of proceedings under the BIA, but might be useful information for the creditors in the context of proceedings under the CCAA.

9.8.31. As well, in that situation, the Member may consider other courses of action. For example, the Member might recommend to the Court:

a) terminating the stay;

b) annulling the proposal or Plan of Compromise or arrangement; or

c) the appointment of an interim receiver.

10. MONITORING THE DEBTOR'S BUSINESS AND FINANCIAL AFFAIRS

10.1. SCOPE AND PURPOSE

10.1.1. The purpose of this Standard is to provide guidance to a Member acting as:

a) a trustee under a proposal or a Notice of Intention;

b) an interim receiver under section 47.1 of the BIA; or

c) a Monitor appointed in a proceeding under the CCAA

in fulfilling his statutory responsibilities under the BIA or CCAA, as the case may be, and specifically, in identifying and reporting on Material Adverse Changes in the Debtor's projected cash-flow or financial circumstances.

10.2. MATERIAL ADVERSE CHANGE

10.2.1. The Member and the Debtor may discuss the types of variances to the Cash-flow Statement that may constitute a Material Adverse Change; however, it must be clear that the Member's determination prevails.

10.2.2. The Member should advise the Debtor at the onset of his engagement that the Member has a statutory obligation to report the occurrence of a Material Adverse Change to the creditors and the Court.

10.2.3. The Member should advise the Debtor of his responsibility to report any potential Material Adverse Change to the Member immediately.

10.2.4. When a Member determines that a Material Adverse Change has occurred, the Member should use reasonable efforts to obtain from the Debtor an acknowledgement confirming the occurrence, scope and expected consequences of the Material Adverse Change, and, if necessary in the Member's view, obtain a revised Cash-flow Statement that takes into consideration the impact of the Material Adverse Change.

10.3. MONITORING AND DOCUMENTATION

10.3.1. The Member should monitor the Debtor's business and financial affairs from the date of inception of his engagement until the commencement of the implementation of the restructuring plan that has been approved by the Court or until the plan is determined to have failed. For example, in a proceeding under the BIA, the monitoring process should extend from the filing of the proposal or Notice of Intention until the proposal is approved by the Court, or until the Debtor becomes bankrupt, and in the context of proceedings under the CCAA, the monitoring process should extend from the filing of the initial application until the CCAA Plan is approved by the Court and/or the Member is discharged by the Court.

10.3.2. At the outset of the engagement, the Member should develop a program for monitoring the Debtor's business and financial affairs and advise the Debtor as to what may constitute a Material Adverse Change.

10.3.3. In establishing the monitoring program the Member should:

a) obtain a copy of the supporting documentation, including the Assumptions, associated with the Cash-flow Statements;

b) consider communication with any parties whose support is critical to the success of the restructuring plan, including labour and critical suppliers, if practical;

c) review material financing agreements (including Interim Financing arrangements) for covenants, borrowing availability, and events of default;

d) establish a communication program to answer reasonable enquiries of stakeholders;

e) identify and meet with the appropriate personnel of the Debtor to inform them of the Member's duties to monitor and to report and to request their assistance in fulfilling this role;

f) determine, in his judgement, which Probable and Hypothetical Assumptions are significant enough to cause a Material Adverse Change in cash-flow if these Assumptions are not valid;

g) determine what other items or factors are material;

h) consider material financing agreements;

i) establish quantitative guidelines as to what would constitute a Material Adverse Change;

j) determine the appropriate frequency for monitoring material items;

k) determine the extent to which the management and financial information systems in place can be relied upon to provide the necessary information;

l) review actual results and compare them with the Cash-flow Statement.

m) perform sufficient detailed procedures to ensure the reported results properly reflect the Debtor's operations.

10.3.4. The Member should periodically compare actual cash-flow results with those reflected in the Cash-flow Statement and obtain reasonable explanations for significant variances.

10.3.5. In conjunction with the Monitor's monitoring of the Company, the Monitor should periodically inquire of management with respect to the Company's cash-flow, financial circumstances, and related matters in order to assess whether any Material Adverse Change may have occurred or be impending.

10.3.6. The work performed by the Member and the assessment by the Member of whether a Material Adverse Change has occurred should be sufficiently documented.

10.4. REPRESENTATION LETTER

10.4.1. The Member should remind the Debtor of his responsibilities under the BIA or CCAA and should obtain from the Debtor a letter of representation. Refer to Schedule "E" for a sample letter of representation.

10.5. REPORTING

10.5.1. The Member should report to the Court, from time to time or as required under the terms of the Court Order, on the Debtor's business and financial affairs and its progress on achieving a successful proposal or CCAA Plan.

10.5.2. When the Member determines that a Material Adverse Change may have occurred, he should forthwith discuss with the Debtor the Material Adverse Change and the Member's intended course of action. When the Member ascertains that a Material Adverse Change has occurred, he should file a Report thereon in the manner specified in the BIA or CCAA, as the case may be, and advise the creditors of the filing of such Report.

10.5.3. The Monitor's Report should include:

a) A description of the Material Adverse Change and management's comments thereon;

b) If necessary or advisable in the Member's view, a revised Cash-flow Statement reflecting the impact of the Material Adverse Change;

c) The Member's comments with respect to the potential impact of the Material Adverse Change;

d) The Member's further recommendations, if any.

10.5.4. The Member should consider whether it is appropriate to take any additional measures to safeguard the interests of the Debtor's creditors as a whole, including, but not limited to, recommending to the Court that the stay of proceedings under the CCAA or BIA be terminated.

10.6. EXPLANATORY NOTES

10.6.1. These notes have been prepared for the use of Members in conjunction with this Standard of Professional Practice pertaining to Monitoring the Debtor's business and financial affairs. These notes are intended to give additional guidance to Members in understanding and applying the Standard, but the provisions of this section 10.6 should not be considered as authoritative as part of the Standard No. 10.

10.6.2. Subsection 50(10) of the BIA requires a Trustee under a proposal to monitor and report on the Debtor's business and financial affairs; section 50.4(7) imposes the same

requirement on a Trustee under a Notice of Intention; section 47.1(2) allows the Court to direct that an interim receiver carry out the duties in sections 50(10) or 50.4(7) in substitution for the Trustee named in the relevant Subsection or jointly with that Trustee. This obligation to monitor the Debtor's business and financial affairs will begin with the appointment of the Trustee or interim receiver, and will continue until the proposal is approved by the Court, or until the restructuring proceedings are terminated, as the case may be.

10.6.3. In the context of a proceeding under the CCAA, a similar requirement exists, pursuant to sections 11.7 and 23 of the CCAA, to monitor the Debtor Company's business and financial affairs from the date of the initial order, until the Plan of Compromise or an arrangement is approved by the Court and/or the Member is discharged by the Court.

10.6.4. In the case of proceedings under the BIA or the CCAA, the role of the Monitor is to act as an independent officer of the Court, to monitor the Debtor's business and financial affairs and to communicate information to the Court, creditors and other affected stakeholders. While the reporting obligations are slightly different under the BIA and CCAA, their fundamental objective is the same: the timely communication of relevant information to affected parties.

10.6.5. Set out below, under the headings Monitoring, Reporting, and Representation Letter, are the significant aspects of the business which should be considered by the Member when developing the monitoring program for the Debtor. The following is not a comprehensive list of considerations, nor is the Member expected to use this list as a checklist in order to comply with the Standard. The primary element of the review is the exercise of the Member's professional judgment.

Monitoring

10.6.6. The Member should review the Probable and Hypothetical Assumptions to identify which are significant enough to cause a Material Adverse Change if these Assumptions are subsequently found not to be valid. (The extent of detailed information supporting each assumption, and an assessment as to the reasonableness of each assumption, will vary according to circumstances and will be influenced by factors such as the significance of the assumption and the availability and quality of the supporting information).

10.6.7. The Member should consider communicating, if practical, with parties whose support is critical to the success of the restructuring plan, to identify the items or factors which should be incorporated into the monitoring program.

10.6.8. The Member should consider or examine:

a) Cash management, or how cash is handled in the organization, including:

- segregation of duties
- recordkeeping as it relates to cash

- where the banking is done
- whether a new Bank Account has been opened for all transactions after the filing of a Notice of Intention , proposal or after the initial order
- what support is prepared for all cheques and disbursements made;
- the number and responsibilities of authorized signing officers

b) Working capital management, including whether receivable collections are monitored and accounted for efficiently and effectively;

c) availability and conditions of financing during the restructuring process;

d) whether the Debtor's information systems provide information that is reasonably accurate and timely, and whether it can be relied upon;

e) asset disposals;

f) Other events may affect the viability of a proposal even though in the short term they may not affect cash-flow. These business considerations may be revealed through a review of corporate minutes, physical observations and other procedures required by the circumstances. Examples are:

- expiring labour contracts which could lead to a strike or more onerous employment conditions
- a major fire without insurance coverage
- loss of a major contract
- environmental orders
- the future termination of arrangements with parties where there is economic dependence
- economic support from related parties

Reporting

10.6.9. Once the Member has determined what he considers to be a Material Adverse Change, the Member is required to file a Report on the Debtor's business and financial affairs with the appropriate party, which may be the official receiver and/or the Court, as the case may be. The Member is also required to either send the Report to the creditors, or to advise the creditors that a Report has been filed and is available on the Member's website. Whether the requirement arises in the context of a proceeding under the BIA or the CCAA, the guiding principles are the same, in that the reporting has to be timely, the creditors have to be informed of the filing of the Report and its content, whether the Report is addressed to the official receiver, the Court, or both.

10.6.10. Several courses of action become possible after the filing of a Report on a Material Adverse Change, and the decision on subsequent steps to be taken will depend on the particular circumstances and the Member's professional judgment. For example, the Member could recommend to the Court:

a) terminating the stay;

b) annulling the proposal or Plan of Compromise or arrangement;

c) appointing an interim receiver.

10.6.11. Although not contemplated in the BIA, where there has been a material favourable change, the Member should consider the appropriateness of notifying creditors and other interested parties.

Representation Letter

10.6.12. For further support, the Member should obtain from the Debtor for each reporting period, a letter of representation a sample of which is set out in Schedule "E". The reporting period will begin with the earlier of the date of the filing of the Notice of Intention to file a proposal or the date of the filing of the proposal or the date of the initial order, as the case may be, and ends with the date of signing the latest letter of representation. The purpose of this letter is to remind the Debtor of its responsibilities during the monitoring period. If the Member is unable to obtain a letter of representation from the Debtor, he should consider whether to continue or what steps should be taken.

11. INVESTIGATING THE FINANCIAL SITUATION OF THE PROPOSAL DEBTOR AS IT RELATES TO INCOME TAX DEBT

11.1. SCOPE AND PURPOSE

11.1.1. The purpose of this Standard is to provide guidance to a Member acting as Administrator in a Consumer Proposal or as Trustee in a Division I Proposal in fulfilling his obligations to investigate the Debtor's financial affairs so as to be able to assess or estimate with reasonable accuracy the financial situation of the Debtor as it relates to income tax debt pursuant to the ITA.

11.1.2. This Standard reflects the terms of an administrative policy that CRA has used since 1995, on a discretionary basis, to split the tax year in which a proposal is filed, as of the date of the filing of a proposal for both personal and corporate income tax debt, similar to what the ITA provides for in the event of a bankruptcy. Under this administrative policy, if certain conditions are met, CRA may file a provisional proof of claim for the estimated pre-proposal income tax debt even though there is no provision under the ITA for a deemed year end for tax purposes;

11.2. ASSISTING THE DEBTOR

11.2.1. The Member should inform the Debtor that CRA may file a provisional proof of claim in proposals where the Debtor:

a) has prepared and filed all outstanding income tax returns at the time of filing the proposal; and

b) has prepared and filed a provisional return at the time of filing the proposal which reflects the taxable income earned during the pre-proposal period based on reasonably complete and accurate documentation and calculations; and

c) discloses the income tax debt relating to the provisional return as a separate line item on the statement of affairs; or

d) includes the required terms regarding income tax debt in the proposal as defined in section 11.3.1 of this standard.

11.2.2. The Member should inform the Debtor that where the Debtor is unable to comply with the requirements of 11.2.1 a) and/or b) above by filing these returns at the time of filing the proposal, CRA may still file a provisional proof of claim in proposals, provided:

a) the Debtor discloses CRA as a creditor in the proposal showing the amount owing as "unknown";

b) files the returns no later than 10 days prior to the vote on the proposal;

c) includes the required terms regarding income tax debt in the proposal as defined in section 11.3.1 of this Standard; and

11.2.3. The Member should also consider informing the Debtor that acceptance of the pre-Proposal income tax debt is at the sole discretion of CRA.

11.2.4. The Member should inform the Debtor that if he is unwilling or unable to meet these requirements, CRA may not file a provisional proof of claim and any actual current year pre-proposal income tax debt may become a post-proposal debt.

11.2.5. The Member should inform the Debtor that if the amount of the actual current year pre-proposal income tax debt exceeds the estimated current year pre-proposal income tax debt, the excess may become a post-proposal debt, unless CRA exercises its discretion.

11.2.6. A Debtor may choose to file a Consumer Proposal in order to obtain a stay of proceedings but may not have all of the information available to estimate the income tax debt accurately. The Member may put forth a resolution permitting the meeting of creditors to be adjourned (if there is one), if CRA or the Debtor so requests, for no longer than 30 days to permit time for the Debtor in a consumer proposal to provide the required information. The same procedure applies to Division I proposals, but in such a case the adjournment may be for a longer period.

11.3. REQUIRED TERMS

11.3.1. The Member should advise the Debtor that the required terms expected by CRA to be included in the proposal to meet the requirements of sections 11.2.1 c) and 11.2.2 c) above, are the following:

I confirm that the estimated current year pre-proposal income tax debt, based on the provisional return and disclosed on my statement of affairs, is a reasonable estimate of my actual current year pre-proposal income tax debt.

I will prepare and file, on or before the filing due date, a tax return for the tax year in which the proposal is filed as well as a detailed calculation of the actual current year pre-proposal income tax debt, which discloses the details of any differences from the estimated current year pre-proposal income tax debt.

11.3.2. The Member should also advise the Debtor that if CRA is not satisfied with the reasonableness of the estimate, there may be an impact on the post-proposal taxable income.

11.4. MEMBERS'S INVESTIGATION

11.4.1. The Member should, as part of his investigation of the financial affairs of the Debtor, consider the correctness of the income tax debt shown on the Debtor's statement of affairs.

11.5. EXPLANATORY NOTES

11.5.1. These notes have been prepared for the use of Members in conjunction with the Standard of Professional Practice pertaining to investigating the financial situation of the proposal Debtor as it relates to income tax debt. These notes are intended to give additional guidance to Members in understanding and applying this Standard, but the provisions of this section 11.5 should not be considered as authoritative as part of the Standard No. 11.

11.5.2. When investigating the financial situation of the proposal Debtor as it relates to the income tax debt, a Member may wish to consider the issues outlined below.

Background

11.5.3. When a Debtor files a Consumer Proposal or a Division I Proposal CRA may file a provisional proof of claim for the current year pre-proposal income tax debt, notwithstanding CRA's assertion, confirmed by jurisprudence[6], that the ITA does not

[6] *R. v. Marchessault*, 2007 CarswellNat 5447 (Fed. C.A.). Note however that the result should not apply to income tax debts due to the Minister of Revenue of the Province of Québec, in view of the decision in *re: Bernier*, 2000 CarswellQue 375 (Qc. C.A.) and *re: Bouvier* 1999 CarswellQue 494 (Qc. S.C.). The practice of including a provision in Division I and II Proposals allowing CRA to claim, as a post-filing debt, the excess of the actual income of the debtor over the debtor's estimate of pre-proposal income, is not clear and there is jurisprudential conflict in connection with it. Accordingly, a future clarification of this part of the standard may become necessary.

contemplate nor allow for a pro-ration of income tax liabilities between the pre-proposal and post proposal period.

11.5.4. The administrative policy of CRA to allow (subject to conditions) for a provisional proof of claim is of great assistance to the Debtor since the pre-proposal tax debt would otherwise become a post-proposal debt, and as such the obligation to include both the income earned before and after the date of the proposal could in many cases jeopardize the viability of the proposal. The onus is on the Debtor to prepare an accurate statement of his liabilities as at the date of the proposal. However, it is often difficult to quantify the income tax debt.

11.5.5. CRA has difficulty deciding how to vote on a proposal where the income tax debt is not disclosed accurately. If CRA is to file a provisional proof of claim, it requires that the Debtor be accurate in calculating the estimated current year pre-proposal income tax debt and to provide full disclosure of the calculations.

11.5.6. The Standard deals only with income tax debt since CRA's administrative policy only deals with income tax debt.

Assisting the insolvent Debtor

11.5.7. As stated in explanatory note 11.5.4 above, the onus is on the Debtor to ensure the accuracy of the calculation of the estimated current year pre-proposal income tax debt. In cases where the actual current year pre-proposal income tax debt is greater than the estimated current year pre-proposal income tax debt, the excess may be a post-proposal liability, unless otherwise decided by CRA.

11.5.8. Efforts should be made to prepare a provisional tax return before the filing of a Consumer Proposal. If this cannot be done and there is concern that a provisional return cannot be filed within the required delay, consideration should be given to contacting the official receiver and have him direct the Member to call a meeting (section 66.15 of the BIA). The reference is only to consumer proposals since, in a Division I proposal, if the Debtor does not have the financial statements and tax returns prepared, he can file a notice of intention to make a proposal and obtain the required time to do so.

Member's investigation

11.5.9. The requirement to perform an investigation is detailed in the BIA as noted in section 11.1.1 of the Standard. In order to do so, the Member should consider reviewing the Debtor's current and historical financial and tax information and any other information provided by the Debtor, with a view to establishing that the pre-proposal income tax debt is based on reasonably complete and accurate documentation and calculations.

11.5.10. The Standard does not address the need for the Member to report his findings. This is dealt with in the BIA which requires in a Division I proposal that the results be reported to the meeting of creditors and in a Consumer Proposal that the results be included in the Administrator's report (subsections 50(5) and 66.14 of the BIA).

12. INTERIM FINANCING

12.1. SCOPE AND PURPOSE

12.1.1. The purpose of this Standard is to provide guidance to a Member fulfilling its statutory responsibilities under the applicable legislation, in respect of Interim Financing that may be sought and obtained by the Debtor in the context of restructuring proceedings pursuant to the BIA or CCAA.

12.2. ASSISTING THE COMPANY

12.2.1. The Member may assist the Debtor to identify, negotiate and enter into an agreement with an Interim Lender to provide Interim Financing.

12.2.2. In the event the Member does assist the Debtor in obtaining Interim Financing, the Member should advise the Court and provide details of the nature and extent of its role.

12.2.3. The Member should advise the Debtor that the responsibility for identifying and arranging for Interim Financing, and the terms and conditions of any agreement entered into by the Debtor with an Interim Lender in respect of Interim Financing, rests with the Debtor.

12.2.4. The Member should advise the Debtor that any information given by the Debtor to the Member may be disclosed to the court and the creditors.

12.3. MONITOR'S REVIEW AND DOCUMENTATION

12.3.1. The Member should perform a review of the reasonableness of the process undertaken to obtain the Interim Financing, as well as the reasonableness of the attendant quantum and terms and conditions in the circumstances, including any related to the Interim Lender’s Security and its impact on the restructuring and on other stakeholders, particularly those whose existing security interests may be affected. If the Member considers it appropriate under the circumstances, the Member may seek the views of existing secured or other significant creditors.

12.3.2. The Member should ensure that the Interim Financing and attendant terms are appropriately reflected in the Cash-flow Statement and any terms and conditions which may restrict the Debtor’s access to the Interim Financing have been considered by the Member and are appropriately disclosed in the Cash-flow Statement.

12.4. REPORT

12.4.1. The Member should report to the Court on the background and other relevant factors in respect of the Debtor’s financing needs for the period of time covered in the Cash-flow Statement.

12.4.2. The Report should include the following:

a) An appropriate notice to reader, summarizing the scope of the Member's review, the documents or information on which he relied, and the possible limitations of such information (reference should be made to Standard No. 5 – Reporting in this regard);

b) A description of the process undertaken by the Debtor to identify other financing offers received, and to negotiate and enter into an agreement with an Interim Lender to provide Interim Financing as well as the nature and extent of the Member's role, if any, in that process;

c) The identity of the proposed Interim Lender;

d) A summary of the quantum and material terms of the Interim Financing, including any related to the Interim Lender's Security that is requested, the fees, interest rate and other costs associated with the Interim Financing, and the reasonableness of such terms in the circumstances:

e) The granting of new or additional liens or charges for existing obligations owed by the Debtor to the Interim Lender prior to the commencement by the Debtor of proceedings under the BIA or CCAA and the reasonableness of such terms in the circumstances, whether such additional liens or charges are granted directly or indirectly (for example, through a "roll up" Interim Financing agreement, or take-out financing or otherwise);

f) The Member's comments on the impact of the Interim Financing and the Interim Lender's Security on the Debtor and on its stakeholders, particularly those whose existing liens, charges or hypothecs may be affected, and whether any creditor will be materially prejudiced as a result of the Interim Financing or the Interim Lender's Security;

g) The Member's comments on whether the Interim Financing will enhance the prospects of a viable compromise or arrangement being made in respect of the Debtor, or otherwise benefit the Debtor's stakeholders on the whole; and

h) The other factors set out in BIA section 50.6 or CCAA section 11.2 as regards Interim Financing, where appropriate.

12.4.3. The Report should include a statement on whether, in the Member's opinion, the Interim Financing and attendant terms are appropriately reflected in the Cash-flow Statement and the Assumptions relied upon therein.

12.4.4. Where a person objects to the proposed Interim Financing and/or Interim Lender's Security, the Member may include in the Report available details with respect to the objection, how such objection has been addressed, and any other comments that the Member considers necessary.

13. ASSIGNMENT, DISCLAIMER OR RESILIATION OF AGREEMENTS

13.1. SCOPE AND PURPOSE

13.1.1. The purpose of this Standard is to provide guidance to a Member fulfilling his statutory responsibilities under the applicable legislation, in respect of an assignment, disclaimer or resiliation by a Debtor of its rights and obligations under an Agreement in connection with restructuring proceedings under the BIA or CCAA.

13.1.2. While the legislation does not specifically state that a Monitor or Trustee must file a report in respect of a proposed assignment, disclaimer or resiliation of an Agreement, one of the factors to be considered by the Court may be whether the Monitor or Trustee, as the case may be, approves of the proposed assignment, disclaimer or resiliation, and accordingly, the filing of a Report to the Court in this regard may be required.

13.2. ASSISTING THE DEBTOR

13.2.1. The Member may assist the Debtor in reviewing the Agreements to which the Debtor is a party for the purpose of determining which Agreements, if any, are sought to be assigned, resiliated or disclaimed as part of the Debtor's restructuring proceedings, and in developing an appropriate approach for any such proposed assignment, disclaimer or resiliation.

13.2.2. Where an Agreement or rights thereunder are proposed to be assigned, the Member may assist the Debtor in negotiating the terms and conditions of the assignment with a proposed Assignee.

13.2.3. The Member should advise the Debtor that the responsibility for the assignment of an Agreement or its disclaimer or resiliation, and providing appropriate information to the Court for consideration in determining whether to make an appropriate order, rests with the Debtor.

13.2.4. The Member should advise the Debtor that any information given by the Debtor to the Member may be disclosed to the court and the creditors.

13.3. MEMBER'S REVIEW AND DOCUMENTATION

13.3.1. The Member should gain an understanding of the reasons/purpose of the proposed assignment, the benefits to the Debtor resulting therefrom and the benefits and costs to the Debtor resulting from any disclaimer or resiliation, and the impact thereof, or the impact of not disclaiming or resiliating an Agreement, as the case may be, on the Debtor and its proceedings under the relevant statute. In the case of an assignment of an Agreement or rights there under, the Member should review the Agreement or rights proposed to be assigned to the Assignee and the potential impact on the Debtor, its stakeholders and its proceedings under the relevant statute resulting from the assignment of, or the failure to assign, as the case may be, the Agreement or rights thereunder.

13.3.2. The Member should review the basis on which the Debtor has determined that the proposed Assignee will be able to perform the obligations under the Agreement and that such assignment would be appropriate (BIA s. 84.1(4), CCAA s. 11.3(3)).

13.3.3. The Member should perform a review of the terms of the proposed assignment of any such Agreement or rights thereunder to assess the monetary defaults existing under the Agreement (other than those arising by reason only of the Debtor's insolvency or the commencement of insolvency proceedings); whether there is failure to perform a non-monetary obligation; and whether such defaults can be remedied on or before a date fixed by the Court or by the date of assignment (BIA s. 84.1(5), CCAA s. 11.3(4)).

13.4. REPORT

13.4.1. When the Member determines that a Report on a proposed assignment of an Agreement or rights thereunder, a disclaimer or a resiliation is necessary, the Report should include the following:

a) An appropriate notice to reader, summarizing the scope of the Member's review, the documents or information on which he relied, and the possible limitations of such information (reference should be made to Standard No. 5, Reporting, in this regard);

b) An overview of the Agreement or the relevant rights;

c) The identity of the proposed Assignee, or counterparty to the Agreement, as the case may be;

d) The reasons an assignment of the Agreement or rights thereunder or, disclaimer or resiliation of the Agreement is being sought;

e) The potential impact on the Debtor and its proceedings resulting from the assignment of, or the failure to assign, as the case may be, the Agreement or the relevant rights;

f) In the case of a disclaimer or resiliation, a statement whether, in the Member's opinion, such disclaimer or resiliation of the Agreement enhances the prospect of the Debtor making a viable proposal or arrangement, or whether the disclaimer or resiliation is expected to otherwise benefit the Debtor or its stakeholders as a whole;

g) In the case of an assignment, the quantification of any monetary defaults as at the commencement of the proceedings and the ability, willingness, and capacity of the proposed Assignee or other applicable party to remedy all such financial defaults upon completion of the assignment;

h) The Member's comments on the Debtor's assessment of the proposed Assignee's ability to perform the obligations under the Agreement and that such assignment would be appropriate, in the case of an assignment; and

i) Where there is an objection to the proposed assignment, disclaimer or resiliation of an Agreement, the Member may include in the Report observations with respect to the objection, and how the Debtor has addressed the objection.

13.4.2. The Report should state the Member's assessment of the proposed assignment, disclaimer or resiliation, as the case may be, and the reasons therefor.

13.5. CLAIMS IN THE EVENT OF A DISCLAIMER OR RESILIATION

13.5.1. In the event that a resiliation or a disclaimer is proposed by the Debtor and is not objected to or is authorized by the Court notwithstanding any objection, the Member should notify the counterparty to the disclaimed or resiliated Agreement of its right to assert a pre-filing claim for the loss resulting from the disclaimer or resiliation in the Debtor's proceedings or subsequent proceedings, as the case may be.

13.5.2. When a Member receives a claim from a counterparty to a resiliated or disclaimed agreement, the Member should advise the claimant of the status of its claim on a timely basis.

14. SALE OR DISPOSITION OF ASSETS OUTSIDE OF THE ORDINARY COURSE OF BUSINESS

14.1. SCOPE AND PURPOSE

14.1.1. The purpose of this Standard is to provide guidance to a Member fulfilling his responsibilities where there is a report required on a Debtor's sale or other disposition of Assets outside of the Ordinary Course of Business, in the context of restructuring proceedings pursuant to the BIA or CCAA.

14.2. ASSISTING THE DEBTOR

14.2.1. The Member may, to the extent permitted or otherwise consistent with the powers granted by the Court to the Member, prepare for, conduct and conclude, or assist the Debtor in preparing for, conducting and concluding, a Sale Process.

14.2.2. The Member should advise the Debtor of the following:

a) That, unless otherwise ordered by the Court, the substance, structure, timing and conduct of a Sale Process is the responsibility of the Debtor; and

b) That the Court will consider whether the Member approves of the Sale Process in deciding whether to grant the authorization to sell.

c) That any information given by the Debtor to the Member may be disclosed to the court and creditors.

14.3. MEMBER'S REVIEW AND DOCUMENTATION

14.3.1. Prior to the commencement of a Sale Process, the Member should review the Debtor's proposed Sale Process and determine whether it appears reasonable in the context of the Debtor's business, industry and circumstances.

14.3.2. The Member's review should consider the following:

a) The appropriateness of the realization strategy/overall sales strategy selected by the Debtor, including whether the Debtor has made a satisfactory effort to obtain the best price and has not acted improvidently;

b) The qualifications and experience of any parties involved or proposed to be involved in the Sale Process;

c) The adequacy of the steps to be taken to identify potentially interested parties and bring the sale opportunity to the attention of potentially interested parties and to the public at large;

d) The process for preparation and distribution of information to potentially interested parties including the preservation of the confidentiality of such information where applicable;

e) The existence of related parties which may be bidders in the transaction;

f) The reasonableness of the proposed timeframe to market and sell the Debtor's Assets, with a view to maximizing the net proceeds from the Sale Process in light of the Debtor's circumstances;

g) The efficacy and integrity of the proposed Sale Process, including the ability of all potentially interested parties to obtain timely and comparable information in respect of the Assets available for sale and to submit an offer for same;

h) The planned approach and criteria for assessment and comparison of offers in order to identify the "highest and/or best offer";

i) The principles identified in Royal Bank v. Soundair Corp. (the "Soundair Principles"), as follows:

   i. Whether the proposed vendor has made a sufficient effort to get the best price and has not acted improvidently;

   ii. The interests of all parties;

   iii. The efficacy and integrity of the process by which offers are obtained; and

   iv. Whether there has been unfairness in the sale process.

j) The interests of all stakeholders, the manner in which the Sale Process and the outcome of the Sale Process affects such interests, and whether such outcome is in the best interests of the Debtor's stakeholders as a whole.

14.3.3. Where the Member determines that he does not approve any aspect of the Sale Process, the Member should forthwith discuss the reasons and alternatives with the Debtor.

14.3.4. The Member should periodically review the status of the Sale Process to assess whether the actual substance, structure, timing and conduct of the Sale Process remain consistent with the Debtor's planned Sale Process, and whether such planned Sale Process is still feasible. Such review may include consideration of those factors outlined in section 14.3.2, as well as the Debtor's actions to:

a) Track and respond to inquiries received from potentially interested parties;

b) Assess interested parties' ability to close a purchase and sale transaction;

c) Select, analyze, and identify the "highest and/or best" offer received as well as the negotiations with prospective purchaser(s);

d) Communicate with secured or other significant stakeholders in respect of the Sale Process; and

e) Respond to other significant developments that occur during, and affect, the Sale Process.

14.3.5. Where the Member does not approve the proposed Sale Process or the original Sale Process no longer appears feasible, the Member should forthwith discuss the reasons for the Member's concerns with the Debtor and, to the extent the Member considers it necessary or appropriate (including due to a Material Adverse Change), file a Report with the Court, the creditors, or the OSB as appropriate.

14.4. MEMBER'S REPORT

14.4.1. The Member should file a Report with the Court prior to or concurrent with the commencement of any hearing in connection with an application for Court approval of the sale or disposition of Assets of the Debtor outside of the Ordinary Course of Business.

14.4.2. The Report should include the following:

a) An appropriate notice to reader, summarizing the scope of the Member's review, the documents or information on which it relied, and the possible limitations of such information (reference should be made to Standard No. 5, Reporting, in this regard);

b) A description of the Sale Process;

c) The number of potentially interested parties identified and to which information was distributed, and the number of interested parties that responded and participated in the Sale Process (including the number of parties executing a confidentiality agreement and receiving access to confidential information pertaining to the Debtor and the Assets);

d) The identification of related parties participating in the process;

e) A summary of the offers received. Where there are confidentiality issues, the Member should ensure that confidential information is adequately protected, including the identity of prospective purchasers and the range of values offered for the Assets;

f) An overview of the Debtor's methodology used to determine the "highest and/or best offer" and the Member's view on same;

g) A summary of the material terms and conditions of the proposed purchase and sale agreement, including any actual or potential adjustments to the purchase price and any material conditions precedent to closing, and if applicable, the purchaser's financial ability to comply with the terms of the agreement of purchase and sale;

h) Disclosure of any significant communication with secured creditors or other significant stakeholders of the Debtor in respect of the Sale Process, its outcome and the selection of the highest and/or best offer, including any statement of support of or opposition to the proposed purchase and sale;

i) The effects of the proposed sale or other disposal of Assets on the creditors and other stakeholders of the Debtor;

j) A statement on whether in the Member's opinion, the sale or disposal of the Assets would be more beneficial to the creditors than if the sale of disposal took place under a bankruptcy proceeding;

k) A statement as to whether the Member has approved the Sale Process or where the Member has conducted or taken a more active role in the Sale Process, a description of the role the Member played in respect thereto; and

l) A statement whether the Member supports the proposed sale of Assets.

14.4.3. Where the proposed consideration to be received includes non-cash consideration, the Member should include a description of the non-cash consideration as well as the Member's and Debtor's estimates of the likelihood and timing of realization and, if reasonably estimable, its fair market value.

14.4.4. Where the proposed purchaser is a related party to the Debtor or does not deal at arm's length with the Debtor, the Member's Report should consider the factors set out in section 65.13(5) of the BIA or section 36(4) of the CCAA.

14.4.5. The Member's Report may be augmented with such additional comments as deemed appropriate by the Member in the circumstances.

15. RESPONSIBILITIES WITH RESPECT TO PLANS OF COMPROMISE, ARRANGEMENTS AND PROPOSALS

15.1. SCOPE AND PURPOSE

15.1.1. The purpose of this Standard is to provide guidance to a Member fulfilling statutory responsibilities under applicable insolvency legislation, in respect of a Report on a Plan of Compromise or Arrangement, or on a proposal, in respect of restructuring proceedings undertaken by a Debtor pursuant to the BIA or CCAA.

15.2. ASSISTING THE DEBTOR

15.2.1. Subject to BIA section 50.5, the Member may assist the Debtor in the preparation of the proposal or CCAA Plan, and in discussing and negotiating the terms thereof with the Debtor's stakeholders.

15.2.2. The Member should advise the Debtor that the development and substance of the proposal or CCAA Plan is the responsibility of the Debtor and that the Member has a duty to report to the Court on the proposal or CCAA Plan.

15.2.3. The Member should ensure that, in his view, the proposal or CCAA Plan satisfies the express requirements of the applicable legislation.

15.3. MEMBER'S REPORT

15.3.1. The Member's Report should include the following:

a) An appropriate notice to reader, summarizing the scope of the Member's review, the documents or information on which he relied, and the possible limitations of such information (reference should be made to Standard No. 5, Reporting, in this regard).

b) Background information on the Debtor, including:

- Identification of the ownership of the Debtor and any Related Persons
- Overview of the Debtor's business and recent financial results
- Material Assets and liabilities
- Causes of financial difficulties

c) Commentary on operations, including:

- Current and anticipated future status of operations following implementation of the restructuring plan (e.g. whether operations are to be continued or shut down)
- Significant developments since the filing of the CCAA application or the Notice of Intention or proposal, as the case may be

- A summary of the operating results for the operations of the Debtor since such filing

d) Summary of the material terms and conditions of the CCAA Plan or proposal, as the case may be, including material conditions precedent to the CCAA Plan or proposal implementation, and the timing and quantum of estimated recoveries to each class of creditors;

e) Conduct of the Debtor before and during its insolvency proceedings, including:

- Description of any review performed by the Member of any potential preferences, fraudulent conveyances or transactions at undervalue, and any conclusions reached by the Member with respect thereto. If no work in this respect has been performed or the work is still in progress, the Member should advise creditors of this fact

- The Member's opinion on the reasonableness of the CCAA Plan or Proposal, including any provision in the CCAA Plan or proposal that stipulates that sections 38, 95 to 101 of the BIA do not apply to the CCAA Plan or proposal, as the case may be

- The Debtor's breach of, or non-compliance with, any requirement under applicable legislation or pursuant to any order issued by the Court

- Where applicable, whether, in the Member's view, the Debtor has acted and continues to act in good faith and with due diligence

f) Analysis of Claims against the Debtor, including:

- A summary of all claims made against the Debtor, including an overview of the results of any claims bar process and any disputed or unresolved claims

- A review of claims resulting from the Debtor's disclaimer or resiliation of agreements

- Identification of all claims involving Related Persons and the nature of the Member's review, if any, to ascertain the priority and validity of such claims and the transactions giving rise to such claims

- Identification of any trust claims and any claims that cannot be compromised pursuant to the applicable legislation

- Results of any legal opinion available to the Member on the validity of secured creditors' claims

- A general discussion of claims against Related Persons, including directors and officers of the Debtor, that are compromised or otherwise affected pursuant to the CCAA Plan or Proposal

g) A discussion of the expected recoveries to be realized under the CCAA Plan or Proposal, compared to the estimated recoveries that could be expected under other alternatives available to the creditors, including a bankruptcy under the BIA, to the extent determinable.

h) Other material considerations, including:

- The level of support by each class of creditors, if known.
- The formation, composition and support of any Creditors' Committee.
- The Member's final conclusions or recommendations, including the Member's opinion on whether, in the circumstances, the plan is advantageous to the Debtor's creditors, and is fair and reasonable as between the Debtor's creditors and the Debtor.
- If the Member objects to the CCAA Plan or proposal, or makes no recommendation, the Member should indicate the reasons for same.

16. BANKING AND CONTROL OF ASSETS

16.1. SCOPE AND PURPOSE

16.1.1. The purpose of this Standard is to provide guidance to a Member acting in a formal appointment in respect of controlling funds and other Assets of a Debtor. Reference is made to Directive 5R in this regard.

16.2. BANKING

16.2.1. The Member should maintain a separate Trust Account for each appointment except as specifically provided for by the BIA.

16.2.2. The Member should exercise the controls necessary for the safekeeping, the proper accounting, and the prudent management of the funds received by the Member.

16.2.3. The Member should deposit receipts promptly into the appropriate Trust Account and the Member should maintain adequate descriptions of the source and nature of each receipt.

16.2.4. Each disbursement from the Trust Account, whether by cheque or transfer, should be authorized in writing by the Member or by a person authorized by the Member.

16.2.5. The Member should disburse funds which are surplus to the needs of the estate administration to the beneficiaries of the Trust Account on a timely basis.

16.2.6. Where significant balances are held, the Member should utilize interest-bearing Trust Accounts, or invest available funds in Guaranteed Investment Certificates or Term Deposits.

16.3. IDENTIFICATION OF ASSETS

16.3.1. At the date of the formal appointment or as soon as practicable thereafter, the Member should identify and make a list of the Assets which are subject to the appointment. The Member should also review the Company's insurance policies and asset subledgers as part of the asset identification process.

16.3.2. Assets not subject to the appointment should be identified and segregated. If material, the Member should obtain a legal opinion as to the ownership of such Assets, and should receive an appropriate receipt from the owner of such Assets on the returning of the Assets to the owner.

16.3.3. The Member, after having completed the listing of Assets, should value the Assets on the same basis as the Debtor used for his own books and records. In the event that the value of the Assets as determined above by the Member is materially different from that shown in the Debtor's books and records, the Member should make inquiries into the cause of the difference and make appropriate disclosure to affected parties.

16.3.4. The Member should obtain a certificate from the Debtor or an authorized officer of a corporate Debtor, that the listing of the Assets together with their valuation is complete and accurate.

16.4. SAFEGUARDING OF ASSETS

16.4.1. At the date of the formal appointment the Member should, as soon as possible thereafter make arrangements to safeguard and insure the Assets which are subject to the appointment.

16.4.2. The Member should take steps to prevent unauthorized removal of the Assets.

16.4.3. The Member should review the books and records, and make enquiries of the Debtor whether any applications, registrations, or the like are required to be made in order to preserve or enhance title to the Assets subject to the appointment, and the Member should take the necessary steps to effect same.

16.4.4. In the event that third parties are in possession of the Assets subject to a formal appointment, the Member should, as soon as practicable, notify those parties of his appointment, and that the Assets should not be released without the Member's prior approval.

16.5. RECORDS

16.5.1. The Member should maintain records that account for the Assets taken into his possession, their estimated value, and their disposition.

16.5.2. The Member should prepare statements on a periodic basis properly accounting for the disposition of the Assets, and the Assets remaining to be realized upon and should submit such statements to the appropriate parties.

16.6. EXPLANATORY NOTES

16.6.1. These notes have been prepared for the use of Members in conjunction with the Standard of Professional Practice pertaining to Banking and Control of Assets. These notes are intended to provide additional guidance to Members in understanding and applying the Standard, but the provisions of this section 16.6 should not be considered as authoritative as part of this Standard No. 16.

16.6.2. Section 16(3) of the BIA requires the Trustee to take possession as soon as possible of the deeds, books, records and documents and all property of the bankrupt and make an inventory. Sections 46, 47 and 47.1 of the BIA allow the Court to appoint an interim receiver and direct him to take immediate possession of some or all of the Assets of the Debtor. The duties and powers of a receiver, receiver-manager or agent, as set out in the Engagement Document or appointing Court order, will normally empower and require the Member to take possession of the Debtor's property. The powers and duties of a Monitor in respect of the Debtor's Assets if any, be set out in the Engagement Document or Court order. The administration of an engagement may require the Member to receive and disburse funds. The duties of a Trustee with respect to estate funds are set out in BIA section 25. Some aspects of banking and control of Assets which the Member might wish to consider when taking possession of the Debtor's property and handling the receipt and disbursement of funds in the engagement are summarized below.

Banking

16.6.3. Separate Trust Accounts are not required in all circumstances, including when a Member has obtained approval to operate certain consolidated Trust Accounts under the BIA.

16.6.4. Internal controls assist a Member in proper management and administration of Trust Accounts. The extent and type of internal controls will depend upon the size, complexity and organizational structure of the Member's practice. Regardless of the size of the practice the Member should be aware of the need for internal controls and ensure that sufficient controls are in place.

16.6.5. The following considerations may assist the Member in assessing the sufficiency of its internal controls:

a) Segregation of duties - have functions been assigned so that no individual is in a position to both commit and conceal a fraud?

b) Limits of authority - is supervision of staff effective in ensuring that controls are implemented and levels of authority are not exceeded?

c) Reliability of data and Reports - do internal controls ensure that transactions are recorded properly and completely and that the Member's accounting records correctly reflect the transactions?

The Member may wish to consider the following elements of control:

- the prompt recording of transactions
- maintaining adequate documentation for transactions
- requiring proper authorization of transactions
- creating and maintaining adequate safeguards in connection with access to records
- appropriate review of Reports and reconciliations

d) Bank reconciliations

- is each Trust Account reconciled on a monthly basis?
- does the Member review each bank statement and reconciliation on a monthly basis?

e) Does the Member have a system of regular reports which are reviewed by the Member to assess the accuracy and integrity of the information being recorded?

f) Surplus funds - are procedures in place to ensure that interest is being earned on surplus funds?

Identification of Assets

16.6.6. The Member will wish to determine the existence, ownership and location of all of the Assets subject to the appointment and make a listing thereof. The following considerations may assist the Member in detecting the existence, ownership, and location of the Assets and assessing the reasonableness of accounts receivable, inventories and other current Assets:

a) external sources having knowledge of the affairs of the Debtor; e.g., bankers, suppliers, professional advisors, secured creditors, customers;

b) the Debtor's books, records and documents, including books of account, banking records, security agreements, insurance policies, etc. to determine the existence of Assets;

c) review of transactions and other data, including paid cheques, transfers, rental revenue unaccounted for, and receipts which may indicate the existence of an undisclosed asset;

d) registry searches;

e) reconciliation to subledgers and verification of the mathematical accuracy of the Debtor's records in respect of inventory, accounts receivable and other Assets;

f) determine whether the Debtor's records are up to date; and

g) employ appropriate controls to ensure that any inventory count is accurate and complete.

17. REALIZATION

17.1. SCOPE AND PURPOSE

17.1.1. The purpose of this Standard is to provide guidance to a Member acting in a formal appointment, with respect to realizing on Assets under the control of the Member and reporting thereon. In such circumstances, a Member must act honestly and in good faith, and deal with the Assets in a commercially reasonable manner.

17.2. SALE OF ASSETS

17.2.1. The Member should maintain control of the sale process.

17.2.2. The Member should consider various methods of sale, and document the reasons for the realization strategy selected.

17.2.3. The Member should seek broad coverage for solicitation of prospective purchasers, having due regard to the nature and value of the Assets.

17.2.4. The Member should obtain one or more independent appraisals of value if the Assets to be sold will not receive public exposure.

17.2.5. The terms of engagement of agents, auctioneers, former employees of the Debtor, and/or other parties retained to assist the Member in the sale of Assets should be in writing.

17.2.6. The Member should advise prospective purchasers that it is the purchaser's responsibility to inspect and evaluate the Assets offered for sale.

17.2.7. If appropriate, the terms and conditions of an agreement of purchase and sale should include the following:

a) the Member is conveying only such right, title and interest as he may have, if any, in the Assets, and;

b) the Assets are sold on an "as is, where is" basis, without representations or warranties.

17.2.8. The Member should disclose his knowledge of any material defects in Assets offered for sale or material obligations that the purchaser would be assuming on the acquisition of the Assets.

17.2.9. If appropriate, the Member should require prospective purchasers to sign a confidentiality agreement prior to releasing proprietary information.

17.2.10. Prior to a sale, the Member should disclose all terms and conditions to all prospective purchasers participating in the sale.

17.2.11. The Member should respond to requests for information about the terms and conditions of the sale process.

17.3. ACCOUNTS RECEIVABLE

17.3.1. The Member should account for all of his transactions in respect of accounts receivable subject to the appointment.

17.3.2. The Member should document the reasons that any book debts were not collected in full.

17.4. EXPLANATORY NOTES

17.4.1. These notes have been prepared for the use of Members in conjunction with the Standard of Professional Practice pertaining to Realization of Assets. These notes are intended to give additional guidance to Members in understanding and applying the Standard, but the provisions of this section 17.4 should not be considered as authoritative as part of this Standard No.1.

Control of the sale process

17.4.2. The Member's control of the entire sale process does not preclude the following:

a) seeking the input and/or instructions of a creditor, inspector, guarantor or other interested party at various stages in the sale process;

b) retaining a third party to perform some or all steps associated with the sale process as long as the third party reports to the Member and, all major decisions are made by the Member;

c) allowing the auctioneer/ Liquidator retained by the Member, to make decisions consistent with the mandate given to such auctioneer/ Liquidator.

Terms of engagement for parties retained to assist the sales process

17.4.3. When retaining agents, auctioneers, former employees of the Debtor, or other parties to assist in the sale of Assets, a Member should give consideration to the inclusion of the following matters in the written terms of engagement:

a) specific individuals/parties retained and qualifications;

b) duration of their engagement;

c) duties to be performed and the timetable for their completion (this should be as specific as possible to avoid any confusion amongst the parties);

d) individuals/parties' ability to bind the Member;

e) controls to be followed in the handling of cash;

f) at whose risk are the Assets during the sale process and, if appropriate, who should bear the cost of insurance with the beneficiary, in all cases, being the Member;

g) terms and conditions associated with the sale to the ultimate purchaser;

h) security provided by the individual/parties to guarantee their performance;

i) indemnities given to/provided by the Member;

j) third party liability and, if appropriate, the obtaining of appropriate third party liability insurance, and at whose cost, with the beneficiary being the Member.

Terms and conditions of an agreement of purchase and sale

17.4.4. A Member should consider addressing the following issues as part of the general terms of a sale agreement:

a) Members are not acting in a personal capacity;

b) damages that the Purchaser can seek from the Vendor for breach of contract etc. are limited to the purchase price;

c) purchaser indemnifies the Vendor for all taxes arising from the transactions, which indemnity survives closing;

d) Arrangements for occupation of leased premises when Assets are situated on or in leased premises.

Disclosure of information to prospective purchasers

17.4.5. The Member should consider:

a) whether information in his possession would materially impact the title, or use of the Asset; and

b) disclosing such information and its source to prospective purchasers.

17.4.6. In providing information to prospective purchasers, Members should abide by the CAIRP Rules of Professional Conduct No. 5 and BIA Rule No. 45, and specifically,

should not associate himself with any letter, Report, statement, representation, or financial statement, which he knows, or should know, to be false or misleading. A Member may transmit information which he has not verified provided that such information is subject to a disclaimer of responsibility or an explanation of the source of the information.

Confidentiality agreement

17.4.7. Schedule "F" contains a sample confidentiality agreement for Members' consideration.

18. TRUSTEES' AND RECEIVERS' RESPONSIBILITIES IN RESPECT OF WRITTEN DEMANDS FOR 30 DAY GOODS BY UNPAID SUPPLIERS

18.1. SCOPE AND PURPOSE

18.1.1. The purpose of this Standard is to provide guidance to Members who are acting as a Trustee in bankruptcy or receiver in fulfilling their statutory responsibilities under the BIA section 81.1 in dealing with demands for goods by Unpaid Suppliers.

18.2. RESPONSIBILITIES OF TRUSTEES AND RECEIVERS

18.2.1. The Member should respond forthwith to all demands by Unpaid Suppliers.

18.2.2. The Member should promptly review any such claims by suppliers by assessing the factors listed in section 81.1 a) to d) of the BIA.

18.2.3. The Member should not sell or enter into agreements to sell or alter the state of goods which are possibly subject to demands by Unpaid Suppliers for the purpose of frustrating such demands

18.2.4. The Member should make reasonable attempts to allow Unpaid Suppliers to conduct a physical inspection, if requested, to identify the goods which are demanded.

18.2.5. Demands which are incomplete or which are not in the prescribed form should be returned immediately to the supplier with an indication of the deficiencies. If a demand is not acceptable because it fails to satisfy the criteria set out by the BIA, the Member should notify the supplier in writing with a detailed explanation of the reasons for its rejection.

18.2.6. If necessary, the Member should provide a potential claimant with the appropriate form for such claims.

18.2.7. The Member should account for the sale or use of the goods which are demanded, from the date of receipt of the initial demand, in case the demand is subsequently determined to be valid by the Court.

18.2.8. The reasons for the Member's decision regarding a demand should be documented.

19. LIQUIDATORS

19.1. SCOPE AND PURPOSE

19.1.1. The purpose of this Standard is to provide guidance to a Member acting in a formal appointment or in an advisory appointment with respect to the engagement of the services of a Liquidator in a Sales Process. In particular, this Standard addresses:

a) The engagement of a Liquidator by a Member;

b) Standards to be followed by a Member in respect of the engagement of a Liquidator;

c) Issues to be considered by a Member when appointing, or advising on the engagement of a Liquidator; and

d) Suggested guidelines with respect to the engagement of a Liquidator.

19.1.2. In the interpretation and application of this Standard, a Member should bear in mind the following principles:

a) Preserving public trust and confidence in the insolvency system; and

b) Optimizing realizations for the stakeholders in a transparent, efficient and economical manner.

19.2. ENGAGEMENT OF LIQUIDATOR BY A MEMBER – LIQUIDATOR'S QUALIFICATIONS AND EXPERIENCE

19.2.1. When retaining a Liquidator, the Member should give consideration to the following:

a) Is the Liquidator a member of a recognized professional association?

b) Does the Liquidator have the appropriate certification and education to proceed with the assignment?

c) Does the Liquidator have adequate knowledge, resources and experience in dealing with the type of Assets to be sold?

d) Has the Liquidator provided references to the Member that may be used to assess the credentials of the Liquidator?

e) Does the Liquidator carry appropriate and adequate insurance?

f) Does the Liquidator have adequate financial resources to carry out its proposal?

19.3. ENGAGEMENT OF LIQUIDATOR BY A MEMBER – COMPONENTS OF THE PROPOSAL

19.3.1. The Member may request that the Liquidator provide a proposal which sets out the form of any recoveries, including a specified commission basis, net minimum guarantee, and/or a combination of options, and by asset category/parcel if necessary.

19.4. ENGAGEMENT OF LIQUIDATORS – MULTIPLE PROPOSALS

19.4.1. The Member should consider obtaining written proposals from more than one Liquidator, and document the reasons and analysis in its selection process.

19.4.2. A Member should take into consideration the following matters when determining if it would be appropriate to obtain more than one proposal:

a) The Interested Persons;

b) The scope of the Assets subject to a proposed sale, as well as Assets which are excluded from the proposal;

c) Time constraints, if any;

d) The geographic dispersion and/or remoteness of the Assets;

e) The value of Assets to be liquidated, preferably by parcel;

f) The nature of the Assets and the industry in which they are employed;

g) The Liquidator's proposed sales process, including length of time, advertising and marketing plans, and related occupancy and selling costs;

h) The size and location of the potential market for the Assets under consideration; and

i) Whether the Liquidator or any party related to it providing the proposal:

- Previously provided an appraisal of the Assets and is offering to liquidate or purchase the Assets (such as via a net minimum guarantee proposal or outright cash purchase offer), or
- Has had any non-arm's length dealings with the Debtor or is related to the Debtor in accordance with the definition as outlined in BIA section 4, or
- Has any interest in the Assets (such as in the case where the Liquidator, or any party related to it, is also a secured creditor in respect of the Assets),

and the Member should disclose the above facts to such Interested Persons as is appropriate in the circumstances if the Liquidator's proposal is considered for acceptance, or accepted.

19.4.3. When, having regard to the above considerations, it is determined by the Member that obtaining more than one proposal is not feasible or appropriate, the Member should document the basis for such conclusion.

19.5. ENGAGEMENT OF LIQUIDATORS – WRITTEN ENGAGEMENT

19.5.1. When a Member retains a Liquidator to assist in the sale of Assets, the terms of engagement should be in writing.

19.5.2. The written agreement to engage a Liquidator should address the following:

a) The nature of the relationship between the Member and the Liquidator;

b) The assignment of responsibility for the undertakings under the agreement amongst the parties;

c) The conduct of the sale, including which party to the engagement controls the conduct of the sale and whether the Liquidator has the right to concurrently sell third-party goods other than the Assets and, if so, the terms applicable thereto;

d) The timing of the sale, including any deadlines;

e) The nature of advertising, if any, in respect of the sale, including: (i) which party to the engagement controls such advertising; and (ii) the description of the capacity of the Member or the Debtor;

f) The condition of the Assets and the nature of representations and warranties, if any, to be made to third-party purchasers of the Assets. The Member may consider appropriate language in the engagement letter to acknowledge that the Member is not responsible for the completeness and accuracy of any information used to prepare the Liquidator's proposal, that the Member accepts no liability for any reliance by the Liquidator on information made available by the Member for the Liquidator, and that the Liquidator is to perform its own due diligence;

g) The identification of included and excluded Assets from the sale;

h) The basis of the proposal from the Liquidator, and specifically whether the sale: (i) will include a net minimum guarantee from the Liquidator; (ii) will be conducted on a basis that the Liquidator will receive a percentage commission on the sale; and/or (iii) will include a combination of the foregoing;

i) The inclusion of an exclusivity arrangement, if any, afforded to the Liquidator to conduct the sale;

j) The compensation arrangements, including identification of a buyer's premium, if applicable;

k) The nature and timing of any deposit and payment of the proceeds of the sale;

l) The protocol for safeguarding of the Assets and/or proceeds therefrom, including, inter alia, by: (i) insurance, (ii) the posting of a bond or letter of credit, (iii) the segregation of proceeds from the sale into a designated Trust Account, and (iv) the inventorying of Assets prior to conducting the sale, or prior to removal of the Assets from the existing premises for sale at a third party location;

m) The manner of accounting for sales made by the Liquidator;

n) The landlord and leased premises issues, including access to premises for the preparation and conduct of the sale and the condition in which such premises must be returned to the Member, to the Debtor or the landlord, as the case may be;

o) The allocation of expenses of the sale;

p) The use of personnel in respect of the sale;

q) The acquisition of required permits;

r) The responsibility for collecting and remitting applicable taxes;

s) The timing of the transfer of title to the Assets, whether an extension of the sale period is advisable, and the treatment of any unsold Assets;

t) The removal of Assets and allocation of liability for damage to Assets and the premises;

u) The establishment of a dispute resolution mechanism;

v) Where the liquidation is multi-jurisdictional, a choice of law provision; and

w) The provision for insurance, risk of loss and who bears the burden of the premium, with the Member, in all events, being the named beneficiary of the insurance.

19.6. EXPLANATORY NOTES

19.6.1. These notes have been prepared for the use of Members in conjunction with the Standard of Professional Practice pertaining to Liquidators. These notes are intended to give additional guidance to Members in understanding and applying the Standard, but the provisions of this section 19.6 should not be considered as authoritative as part of Standard No. 19.

Disclosure of relationships

19.6.2. One of the factors that should be considered in making a decision to obtain multiple offers of services from various Liquidators, is whether a Liquidator being considered, or a party related to such a Liquidator, has a relationship as described in section 19.4.2. i) of the Standard.

19.6.3. In addition to considering obtaining more than one offer of services, transparency requires that where a Liquidator that has a relationship as described in the above

sectioni) made an offer which is being considered for acceptance or has been accepted, there should be disclosure of the relationship to such Interested Persons as is appropriate in the circumstances. For example, in the case of an ordinary bankruptcy administration, it may be appropriate to disclose such facts only to inspectors, and not to all creditors, whereas in the case of a Court-appointed receivership, disclosure of such facts would be required to be made to the Court, among others, as applicable.

Terms of engagement

19.6.4. When negotiating the specific terms of an engagement with a Liquidator, the Member should consider the following matters, enumerated in section 19.5.2 of the Standard.

a) The nature of the relationship between the Member and the Liquidator:

- The degree to which the Member directs the conduct of the Sale and maintains control over the Liquidator will dictate whether the Liquidator is serving as an agent of the Member or an independent contractor to the Member.

b) The assignment of responsibility for the undertakings under the agreement amongst the parties thereto:

- Which party has responsibility for completing the various undertakings as outlined in the agreement and the remedies available to the counter-party in the event of default by a counter-party thereto;

c) The conduct of the Sale, including which party to the engagement controls the conduct of the Sale:

- Which party controls the Sale Process? To the extent it is the Liquidator, the agreement should specify that the Liquidator has an obligation to act in a commercially reasonable manner and any obligation of the Liquidator to provide status updates should be described.

- The ability of the Liquidator to sell third-party goods, other than the Assets, concurrently with the Sale of the Assets, and, if so, on what terms. If such supplementary sales are allowed, the Member should consider control over expense allocation, profit-sharing in respect of such other items, whether the addition of such additional items will enhance, or detract from the Sale Process, and other relevant matters.

- The ability of the Liquidator to sell any of the Assets by private sale?

- The authority of the Liquidator to sell any of the Assets on credit and, if so, on what terms and at whose risk?

- In the event of a public auction, the establishment of reserve prices or whether the auction will be conducted on a without-reserve basis?

- Has the Member sought, or has the Court imposed guidelines in respect of the Sale ("Sales Guidelines") in instances where there is an order approving the

liquidation? In such an event, has the Liquidator been made aware of, and agreed to abide by, the Sales Guidelines?

d) The timing of the Sale, including any deadlines.

- Is there a need to specify a date by which the liquidation/auction must be completed?

e) The nature of advertising, if any, in respect of the Sale, including: (i) which of the parties to the engagement controls such advertising; and (ii) the description of the capacity of the Member, as applicable.

- Any advertisements should disclose for whom and in what capacity the Liquidator is acting.

- Which of the parties to the engagement controls the Sale advertising process? Who has the right to review in advance the form and content and set the frequency of advertisements?

- Can the Liquidator use the Debtor's or the estate's intellectual property, such as its trade name and trademarks, on a limited, non-exclusive basis for advertising/Sale purposes? The Member should consider whether the Debtor or the estate owns (or is only a licensee of) the intellectual property and is thereby able to permit its use, and the Member should consider whether it is advisable to have such intellectual property used in conjunction with the liquidation process.

- Are there obligations on the Liquidator to advertise that the goods are sold "as is, where is", warranty-free, and without right of purchase price adjustment?

- How has the advertising described the role and/or capacity of the Member?

f) The condition of the Assets and the nature of representations and warranties, if any, to be made to third-party purchasers of the Assets. The Member may consider appropriate language in the engagement letter to acknowledge that the Member is not responsible for the completeness and accuracy of any information used to prepare the Liquidator's proposal; that the Member accepts no liability for the Sale; and that the Liquidator is to perform its own due diligence.

- Have the parties specified in the written agreement with the Liquidator that all items are to be sold "as is, where is" and without representation or warranty as to fitness for purpose or other non-title issues and without right of purchase price adjustment?

g) The identification of Assets excluded from the Sale.

- The Assets excluded from the sale as a result of Assets being subject to lease, third party ownership, alternative proposal for sale or private sale, or otherwise should be clearly identified.

h) The basis of the proposal from the Liquidator, and specifically whether the Sale: (i) will include a net minimum guarantee from the Liquidator; (ii) will be conducted on a basis that the Liquidator will receive a percentage commission on the Sale; and/or (iii) will include a combination of the foregoing.

i) The inclusion of an exclusivity arrangement, if any, afforded to the Liquidator to conduct the Sale.

- What is the duration of such exclusivity period? Is there a carry-over period?

j) The basis of compensation to the Liquidator, including identification of a buyer's premium (if applicable).

- What is the commission structure and/or fixed fee arrangement between the parties?
- Can the Liquidator charge a percentage or set fee which is to be added to a bid (i.e. a Buyer's Premium) in order to determine the total contract price to be paid by a buyer of one or more of the Assets? Has this been appropriately disclosed to prospective bidders?
- Have the parties established a formula for sharing proceeds in excess of the net minimum guarantee?
- In commission sales arrangements, is there a commission percentage adjustment mechanism in the event that there is significant shortfall or overage in the level of Sales?
- Does the compensation include a reimbursement for costs incurred and if so on what basis?

k) The nature and timing of any deposit and payment of the proceeds of the Sale.

- Does the written agreement specify a payment formula? An advance payment/deposit (or irrevocable letter of credit) should be considered from the Liquidator under net minimum guarantee and outright Sale arrangements; in respect of all other arrangements, the Member should consider whether an advance payment/deposit is appropriate and practical.
- Is there to be a specified outside date for payment from the Liquidator, and is it an absolute date or rather a set period after the auction or sale date(s)?

l) The protocol for safeguarding the Assets and/or proceeds therefrom, including, *inter alia*: (i) insurance, (ii) the posting of a bond or letter of credit, (iii) the segregation of proceeds from Sale into a designated Trust Account, and (iv) the inventorying of Assets prior to conducting the Sale or prior to removal from the existing premises for Sale at a third party location.

- Which party to the engagement is responsible for maintaining insurance?

- Which party to the engagement is responsible for acquiring third-party liability insurance for occupancy and use of premises?

- Will the Liquidator post an irrevocable performance bond or letter of credit in favour of the Member (or the Debtor, as applicable) in its contracted capacity? What is the appropriate amount of the bond or letter of credit having regard to the value of the Assets, the net minimum guarantee, if any, and the potential for damages?

- In an agency commission arrangement or a net minimum guarantee arrangement, are Sales proceeds (of at least the amount of the net minimum guarantee, in such an arrangement) to be deposited in the Liquidator's account or in a separate Trust Account prior to the commencement of the auction?

- If Sales proceeds are to be deposited in a separate Trust Account, which party to the engagement controls the Trust Account?

- Which party to the engagement is entitled to accrued interest on the proceeds of Sale?

- What protocol exists to conduct an inventory of the Assets prior to the commencement of the Sale? Who will participate in the inventory count? Who is responsible to approve the completed inventory count? How will the inventory sheets be reconciled to the accounting provided by the Liquidator following the conclusion of the Sale?

m) The manner of accounting for sales made by the Liquidator.

- Have the parties addressed the required extent of accounting obligations by the Liquidator? Accounting may be required in respect of proceeds per item or by lot; excluded items; copies of bills of sale/transactions records; and other matters.

- Have the parties established a deadline for submission and reconciliation of accounts, including an applicable dispute resolution mechanism?

- Have the parties considered how the accounting will reconcile with the inventory count of the Assets?

- Who is responsible to collect and remit sales taxes and what documentation is to be maintained for audit purposes?

n) Landlord and leased premises issues, including access to premises for the preparation and conduct of the Sale and the condition in which such premises must be returned to the Member, the Debtor or the landlord, as applicable.

- Which party to the engagement is to assume rent obligations and other occupancy costs/expenses?

- Do parties other than the Member (or the Debtor, as applicable) and the Liquidator have a right of access to the premises? The agreement should specify

that any third party, including prospective purchasers attending at the premises, are considered an invitee of the Member or of the Liquidator with appropriate liability insurance to be in place.

- What is the period of the Liquidator's access to the premises? The period should not exceed the term of the liquidation (including a short period for delivery and clean-up), and the Member should consider specifying that in the event that occupation exceeds the term then the Liquidator is to pay damages and occupation rent for such excess occupation.

- In the event there are Sales Guidelines addressing landlord/lease-related concerns and requirements, have the parties to the engagement assumed their respective obligations to ensure that the premises are kept, and the Sale conducted, in a manner consistent with the Sales Guidelines?

- Which party to the engagement assumes responsibility for removing unsold items?

- Which party to the engagement assumes responsibility for damages to premises?

- What is the extent of the Liquidator's obligations in respect of cleaning or ensuring the state of the premises upon completion of the Sale?

- Which party to the engagement assumes responsibility for environmental issues? Inasmuch as Liquidators will not likely assume this exposure without qualification, a Member should consider differentiating between environmental concerns arising from the Liquidator's use of the premises and other pre-existing environmental issues.

- Have the parties to the engagement specified the nature of the Liquidator's third-party indemnification obligations?

o) The allocation of expenses of the Sale.

- Which party to the engagement assumes Sale-related expenses? The agreement should specify this, and to the extent that the Liquidator is responsible, should provide a budget and minimum expenditure commitment of such expenses to the Member.

- If there are multiple beneficiaries of the sale process, the method of allocation of direct and general expenses should be set out.

- Specification of legal jurisdiction.

p) The use of personnel in respect of the Sale.

- Which party to the engagement bears responsibility for supervision and the costs of Debtor's employees or other personnel used to conduct the Sale?

- Are all Debtor's and Liquidator's employees adequately covered under applicable Provincial workers' compensation plans?

- Are the Liquidator's employees bonded and does the Liquidator have adequate fidelity insurance coverage having regard to the value of the Assets?

- Are the Liquidator's employees adequately skilled to discharge the obligations of the Liquidator imposed under the agreement?

q) The acquisition of required permits.

- Which party is responsible for obtaining all approvals/permits and ensuring compliance with the law regarding the liquidation process? The Liquidator is typically responsible for these matters, but the Member may be liable if the Liquidator is acting on their behalf.

- Has the Liquidator provided an indemnity in respect of obtaining relevant permits?

r) The payment of required taxes.

- Which party is responsible for collecting and remitting sales taxes on the Sale?

- Has the Liquidator provided an indemnity in respect of all tax related matters?

s) The removal of Assets and allocation of liability for damage to Assets.

- Has the Member considered his obligations in respect of unsold property pursuant to the BIA?

- Which parties bears the loss in case of damage to, or loss of, Assets?

t) The establishment of a dispute resolution mechanism.

- Is there an effective dispute resolution mechanism for the given circumstances? For instance, while arbitration can provide for expedient dispute resolution, it may be more costly than acting via the Courts.

20.**APPRAISALS**

20.1. SCOPE AND PURPOSE

20.1.1. The purpose of this Standard is to provide guidance to a Member acting in a formal appointment or in an advisory appointment with respect to the engagement of the services of an Appraiser. In particular, this Standard addresses:

a) The engagement of an Advisor by a Member, or by a Debtor which has engaged a Member or for which a Member is otherwise acting;

b) The standards to be followed in respect of the engagement of an Appraiser by a Member; and

c) Issues to be considered when contracting with Appraisers**.**

20.1.2. In the interpretation and application of this Standard, a Member should bear in mind the following principles:

a) Preserving public trust and confidence in the insolvency system;

b) Optimizing realizations for the stakeholders in a transparent, efficient and economical manner; and

c) Demonstrating that the Member is acting in good faith and in a commercially reasonable manner.

20.2. ENGAGEMENT OF APPRAISERS - GENERAL

20.2.1. When retaining an Appraiser, the Member should give consideration to the following:

a) Does the Appraiser have proper qualifications?

b) Does the Appraiser have adequate experience?

c) Does the Member have prior experience with the Appraiser?

20.2.2. A Member should consider the interests of Interested Persons in assessing and deciding on the Appraiser to be retained.

20.3. ENGAGEMENT OF APPRAISERS – QUALIFICATIONS

20.3.1. When assessing an Appraiser's qualifications, a Member should review and consider the following:

a) The need for the Appraiser to have a formal professional accreditation;

b) The Appraiser's capabilities, credentials, suitability and competence with respect to the property to be appraised; and

c) The Member's prior experience with the Appraiser.

20.4. ENGAGEMENT OF APPRAISERS – EXPERIENCE

20.4.1. When assessing an Appraiser's experience, a Member should give consideration to the following:

a) The length of time the Appraiser has been providing appraisal services, and in particular with regard to the nature of Assets to be appraised;

b) The knowledge and experience of the Appraiser in dealing with the type of Assets being appraised;

c) The familiarity of the Appraiser with the market or geography within which the Assets or property that are subject to the appraisal are located;

d) The quality of the references provided by the Appraiser for the purpose of permitting the Member to assess the credentials of the Appraiser; and

e) The Member's prior experience with the Appraiser.

20.5. ENGAGEMENT TERMS

20.5.1. The engagement of an Appraiser by a Member should be evidenced by a written agreement between the parties, which agreement should consider the following terms and conditions:

a) The scope of the appraisal work to be undertaken, specifically describing the Assets or property to be appraised;

b) The type of appraisal the Appraiser is being engaged to undertake;

c) The effective date of the appraisal, including the validation period of the appraisal thereafter;

d) If the Appraiser engages, formally or informally, third party Appraisers or service providers to perform a portion of the appraisal work, the Member should ensure: (i) that the Appraiser has confirmed that the sub-contractor is aware of and has agreed to act within the Appraiser's engagement scope, terms and conditions as applicable to each sub-contractor, and (ii) any scope limitations, qualifications or restrictions on the Appraiser's Report, attributable to the use of such sub-contractor(s) is clearly set out in the terms and conditions of the letter of engagement / agreement between the Member and the Appraiser;

e) The fees to be paid to the Appraiser in respect of the appraisal as well as the party responsible for the payment of such fees, as well as the basis on which the fees are to be determined. In all cases, it would be inappropriate for fees to be contingent in any way on the outcome of the appraisal;

f) Known scope limitations that are agreed as between the Member and the Appraiser;

g) A description of the form of appraisal Report that is to be delivered;

h) The date upon which the Appraiser undertakes to render its appraisal Report;

i) A confirmation from the Appraiser that it is free from any conflict of interest in relation to the subject matter of its engagement; and

j) Such other customary terms and provisions governing commercial agreements between arm's length parties (including, for example, confidentiality undertakings to be given by the Appraiser).

20.6. DELIVERABLES AND REPORTING

20.6.1. The Member should:

a) Ensure that the Appraiser delivers a written appraisal Report, in a satisfactory form, and that the Appraiser is available to the Member to review the findings;

b) Observe any restrictions or limitations in respect of the appraisal Report set forth by the Appraiser, as provided for in any written agreement between the parties, including any non-disclosure provisions or restrictions on use, with respect thereto.

c) Ensure that any scope limitations identified in the Appraiser's Report are consistent with the terms of the Appraiser's engagement. Scope limitations within the Report that were not agreed to by the Member must be reviewed with the Appraiser to determine the appropriateness of their inclusion and their impact on the conclusions.

d) Ensure that any Report delivered by the Appraiser complies with the terms of its engagement.

e) Ensure the confidentiality of the Appraiser's Report.

20.6.2. The Member should ensure that the appraisal Report clearly sets forth the Report's effective date and validation period of the appraisal Report.

20.7. EXPLANATORY NOTES

20.7.1. These notes have been prepared for the use of Members in conjunction with the Standard of Professional Practice pertaining to Appraisals. These notes are intended to give additional guidance to Members in understanding and applying the Standard, but the provisions of this section 20.7 should not be considered as authoritative as part of the Standard No. 20.

Qualifications

20.7.2. The Member should ensure that the Appraiser that is retained has the knowledge, competence, capabilities, credentials and suitability to provide an opinion of value regarding the Assets being appraised.

20.7.3. In some cases, the Assets to be appraised are very specific and specialized and the Appraiser retained should have specific competencies in respect of such Assets, including being a member of a recognized body of specialists.

20.7.4. For example, oftentimes significant Assets to be appraised in insolvency situations include real estate. In that case, the Member should consider whether the Appraiser is specifically qualified to appraise real estate Assets such as Appraisers certified by the Appraisal Institute of Canada or other similar provincial bodies, regulating the certification of real estate Appraisers.

Type of appraisal

20.7.5. Section 20.5.1 b) makes reference to the type of appraisal that the Appraiser is requested to perform. There are many types of appraisal values that may be sought by Members and provided by Appraisers. For example, Forced Liquidation Value, Orderly Liquidation Value, Fair Market Value, Fair Market Value – Continued Use (i.e. in situ)

21. SCHEDULES TO THE STANDARDS OF PROFESSIONAL PRACTICE

Schedule	Applicable Standard of Professional Practice	Name of Schedule
"A"	No. 5 – Reporting	Qualification of Financial Information Received from Third Parties with respect to Reports to Court
"B"	No. 9 – Cash-flow Statement	Form of Debtor Confirmation
"C"	No. 9 – Cash-flow Statement	Report on Cash-flow Statement
"D"	No. 9 – Cash-flow Statement	Engagement and Confirmation regarding Cash-flow Statement
"E"	No. 10 – Monitoring the Debtor's Business and Financial Affairs	Form of Letter of Representation
"F"	No. 17 – Realization	Form of Confidentiality Agreement

SCHEDULE "A" STANDARD NO. 5 (REPORTING)

QUALIFICATION OF FINANCIAL INFORMATION RECEIVED FROM THIRD PARTIES

In preparing this report and making the comments herein, [The Member] has been provided with, and has relied upon certain unaudited, draft and/or internal financial information, company records, company prepared financial information and projections, discussions with management and employees of [The Debtor], and information from other third party sources (collectively, the "Information"). Except as described in this report:

1. [The Member] has reviewed the information for reasonableness, internal consistency and use in the context in which it was provided. [The Member] has not audited, reviewed or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would wholly or partially comply with generally accepted assurance standards, and accordingly [The Member] expresses no opinion or other form of assurance in respect of the Information.

2. In view of the purpose of the report, some of the financial information herein may not comply with generally accepted accounting principles.

3. Some of the information referred to in this report consists of forecasts and projections, which were prepared based on management's estimates and assumptions. Such estimates and assumptions are, by their nature, not ascertainable and as a consequence no assurance can be provided regarding the forecasted or projected results. Indeed, the reader is cautioned that the actual results will likely vary from the forecasts or projections, even if the assumptions materialize, and the variations could be significant.

4. [The Member] has prepared this report [DESCRIBE CAPACITY AND PURPOSE OF REPORT, for example, in its capacity as [a court appointed officer in support of the motion described in section _____ of this report]. The reader is cautioned that this report may not be appropriate for any other purpose and consequently should not be used for any other purpose.

SCHEDULE "B" STANDARD NO. 9 (CASH-FLOW STATEMENT)

FORM OF DEBTOR CONFIRMATION

[On letterhead of Debtor Name]

[Date]

Professional Firm
Address
Attention: Individual Name

Dear Sirs,

Re: [In the matter of the Proposal of ...] [Proceedings under the *Companies' Creditors Arrangement Act* ("CCAA") for…] - Responsibilities/Obligations and Disclosure with Respect to Cash-flow Projections

In connection with the application by [Debtor Name] for the commencement of proceedings under the [BIA] [CCAA] in respect of [Debtor Name], the management of [Debtor Name] ("Management") has prepared the attached cash-flow statement and the assumptions on which the cash-flow statement is based.

[Debtor Name] confirms that:

1. the cash-flow statement and the underlying assumptions are the responsibility of [Debtor Name];

2. all material information relevant to the cash-flow statement and to the underlying assumptions has been made available to [Professional Firm] in its capacity as Monitor / Trustee; and

3. Management has taken all actions that it considers necessary to ensure:

    a. That the individual assumptions underlying the cash-flow statement are appropriate in the circumstances; and

    b. That the assumptions underlying the cash-flow statement, taken as a whole, are appropriate in the circumstances.

    c. That all relevant assumptions have been properly presented in the cash-flow statement or in the notes accompanying the cash-flow statement.

4. Management understands and agrees that the determination of what constitutes a material adverse change in the projected cash flow or financial circumstances, for the purposes of our monitoring the on-going activities of the Debtor, is ultimately at your sole discretion, notwithstanding that Management may disagree with such determination.

5. Management understands its duties and obligations under the [BIA][CCAA] and that a breach of these duties and obligations could make the [Debtor's] Management liable to fines and imprisonment in certain circumstances.

6. The cash-flow statement and assumptions have been reviewed and approved by the Debtor's board of directors or management has been duly authorized by the [Debtor's] board of directors to prepare and approve the cash-flow assumptions.

Yours truly,

Name:

Title:

SCHEDULE "C" STANDARD NO. 9 (CASH-FLOW STATEMENT)

TRUSTEE'S REPORT ON CASH-FLOW STATEMENT
(Sections 50(6)(b) and 50.4(2)(b) of the BIA) AND
CCAA MONITOR'S REPORT ON THE CASH-FLOW STATEMENT
(Sections 23(1)(b) of the CCAA)

The statement of projected cash-flow attached as Appendix "___" of [this report] [the Debtors application material] (the "Cash-flow Statement") of _____ (name of Company), (the "Company") as of the _____ day of _____ ____, consisting of _____ (describe, including relevant dates), has been prepared by the management of the company for the purpose described in Note _____, using the probable and hypothetical assumptions set out in Notes _____.

Our review consisted of inquiries, analytical procedures and discussion related to information supplied to us by certain of the management and employees of the company. Since hypothetical assumptions need not be supported, our procedures with respect to them were limited to evaluating whether they were consistent with the purpose of the cash-flow statement. We have also reviewed the support provided by management of the company for the probable assumptions, and the preparation and presentation of the cash-flow statement.

Based on our review, nothing has come to our attention that causes us to believe that, in all material respects:

a) the hypothetical assumptions are not consistent with the purpose of the cash-flow statement;

b) as at the date of this report, the probable assumptions developed by management are not suitably supported and consistent with the plans of the company or do not provide a reasonable basis for the cash-flow statement, given the hypothetical assumptions; or

c) the cash-flow statement does not reflect the probable and hypothetical assumptions.

Since the cash-flow statement is based on assumptions regarding future events, actual results will vary from the information presented even if the hypothetical assumptions occur, and the variations may be material. Accordingly, we express no assurance as to whether the cash-flow statement will be achieved. The cash-flow statement has been prepared solely for the purpose described in Note ____/on the face of the cash-flow statement, and readers are cautioned that it may not be appropriate for other purposes.

Yours truly,

NAME OF FIRM

Per:

SCHEDULE "D" STANDARD NO. 9 (CASH-FLOW STATEMENT)

ENGAGEMENT AND CONFIRMATION REGARDING CASH-FLOW STATEMENT

[on the letterhead of the Member]

Date

Name and address of Debtor

Re: Name of Company

Dear Sir:

This is to confirm of Member ("Firm") has been retained to assist _____ ("Company") in the preparation and filing of a [Notice of Intention to make a proposal under the *Bankruptcy and Insolvency Act* ("BIA")] [or a plan of arrangement under the *Companies' Creditors Arrangement Act* ("CCAA")], and that we have agreed to act as [Trustee] [Interim Receiver] [Monitor] (if appointed) in connection therewith. [You understand that our role in the present proceedings could, as well, include acting as a monitor under proceedings pursuant to the *Companies' Creditors Arrangement Act* ("CCAA"), and/or as trustee to the bankrupt estate of the Company, if the reorganization attempts are unsuccessful].

Our mandate is subject to the following terms and conditions, which you have accepted:

1 You shall be responsible to prepare and present to us a statement of cash-flow, along with all pertinent assumptions and the Debtor's declaration, within the 10 day period next following the notice of intention to make a proposal.

You shall also be responsible to update or modify the cash-flow statement, along with the above-mentioned information and documents, in the context of a request to extend the delay in which to file a proposal, and concurrently with the execution of the proposal or as required in the context of proceedings under the CCAA.

This statement of cash-flow and related documents shall be presented to us on a timely basis so that we may review same and complete the [Trustee's] [Monitor's] Report on the cash-flow statement, in accordance with the provisions of the [BIA] [CCAA].

You shall be responsible to ensure that the individual assumptions made in preparing the cash-flow are appropriate in the circumstances, and that the assumptions as a whole are appropriate. All material relevant assumptions shall be properly presented in the notes accompanying the cash-flow statement.

2 You shall be responsible to determine with us at the time of preparation of the cash-flow statement what will constitute a material adverse change in the projected cash-flow or financial circumstances, for the purposes of our monitoring the on-going activities of the company. In the

event of a disagreement between yourselves and ourselves as to what constitutes a material adverse change, you agree that our decision in this regard will prevail, whether such decision is made prior to finalizing the cash-flow statement or in process of monitoring the activities.

3 If for any reason whatsoever we are unable to satisfy ourselves with the reasonableness of the cash-flow statement, such that we are unable to complete the [Trustee's] [Monitor's] Report on the cash-flow statement in accordance with the provisions of the [BIA] [CCAA], we shall inform you of this fact immediately upon making such a determination.

4 You acknowledge that Firm may act as advisor in the preparation of a reorganization plan under the *BIA* or *CCAA* (hereinafter the "Proposal") and may participate in the discussions and negotiations with the various interested parties. You acknowledge that Firm has an obligation to report to the creditors and the Court on the viability of the proposal [or plan of arrangement], and that in monitoring the activities of the company, Firm may have to report to the Court and others on material adverse changes, or request the termination of the stay of proceedings or that the proposal be deemed rejected by the creditors, in certain circumstances.

5 You acknowledge your obligation to disclose to us all pertinent aspects of the company's affairs, and you undertake and agree to keep us informed forthwith of any developments in this respect. To this end, you shall give us complete and unrestricted access to your solicitors, auditors, bankers, advisors, directors, officers and employees and to any information they may have with regard to the company's affairs.

With respect to the above, but without limiting the generality thereof, you hereby represent that at the date of filing of the proposal:

5.1 You shall have made available to us all financial records of the company as well as all Minutes of meetings of shareholders, directors and relevant committees, and summaries of actions for which Minutes have not yet been prepared.

5.2 All transactions shall have been properly recorded in the financial records.

5.3 All transactions out of ordinary course of business have been disclosed to us.

5.4 Liens and encumbrances known to you have been disclosed to us.

5.5 Unrecorded contingencies or claims known to you have been disclosed to us.

5.6 Contractual agreements (including orders on hand, sales commitments, contracts on hand or in process) incapable of being fulfilled or complied with have been disclosed to us.

5.7 Transactions with related parties (directors, officers, shareholders, affiliated companies) have been disclosed to us.

6 You understand that you are responsible for certain duties and obligations pursuant to the [BIA] [CCAA], and that a breach of these duties and obligations could make the company's directors, officers or managers liable to fines or imprisonment in certain circumstances. You confirm that your duties and obligations under the [BIA] [CCAA] have been adequately explained to you and that you are familiar therewith.

7 You have been duly authorized by the board of directors to file the [notice of intention] [plan of arrangement] and to approve the cash-flow statement on behalf of the board.

8 You have irrevocably authorized us to communicate directly with [_____] ("Bank"), your operating lender, as well as any other secured creditor of the company, and to provide them with such information as they may reasonably request.

9 You agree to pay all of our professional fees and disbursements related to this mandate, including the professional fees and disbursements of any solicitor retained by us. [Describe details of fee arrangement].

You shall request that the Court provide for a first ranking charge against all assets and undertakings of the company, in an amount that we consider acceptable, at our sole discretion, to secure any unpaid remuneration of Firm and the costs of any solicitor or other party engaged in connection with this mandate and to indemnify us against any and all loss, charge, obligation or other expense we may incur in connection with our mandate as contemplated herein.

10 You acknowledge and agree that you shall not make or cause to be made any claim against Firm in connection with our appointment as [Monitor] [Trustee] [Interim Receiver] in connection with the restructuring efforts of the company, and you agree to indemnify Firm and hold it harmless from any claim arising from our appointment.

11 You confirm that you are acting in good faith and with due diligence in developing your proposal, and are not aware of any reason or fact that would cause you to question the viability of your proposal.

Please confirm that the above properly reflects our agreement as concerns the assignment, by signing a copy hereof in the appropriate space below.

Yours truly,

NAME OF FIRM

Per:
Title

CONFIRMED AND ACCEPTED this ___the day of _____, 20__

NAME OF COMPANY

Per :
Title

SCHEDULE "E" STANDARD NO. 10
(MONITORING THE DEBTOR'S BUSINESS AND FINANCIAL AFFAIRS)

FORM OF LETTER OF REPRESENTATION

[on the letterhead of the Debtor]

TO: [Member]

In connection with your monitoring of our business and financial affairs pursuant to our [notice of intention and/or proposal or proposed plan of compromise or arrangement], we acknowledge that we are responsible for the accuracy of our financial records and the summaries and financial statements that we have prepared and provided to you.

We also represent that since [date of notice of intention, proposal, initial order, as the case may be], to the best of our knowledge and belief:

1. We have made available to you:

    1.1. All financial records;

    1.2. Minutes of meetings of shareholders, directors, and relevant committees, or summaries of action for which minutes have not yet been prepared; and

    1.3. Any other relevant information.

2. We understand that all information disclosed to the [Monitor] [Trustee] may be requested to be disclosed to the Court or creditors.

3. All transactions have been properly recorded in the financial records.

4. We have not sold any assets out of the ordinary course of business, except as disclosed below.

5. There are no liens or encumbrances on any assets except as disclosed below.

6. There are no unrecorded contingencies or claims except as disclosed below.

7. We do not foresee sustaining any loss in the fulfilment of, or from the inability to fulfil, orders on hand, contracts on hand and/or in process, and sales commitments, except as disclosed below.

8. We have complied with all contractual agreements except as disclosed below.

9. All transactions during the reporting period with related parties (directors, officers, shareholders, and affiliated companies) have been disclosed to you.

10. We have responded fully to all enquiries made by you.

11. The probable and hypothetical assumptions used in the cash-flow statement are still valid.

12. We confirm we are acting in good faith and with due diligence in developing our proposal and are not aware of any reason that we likely would not be able to make a viable proposal.

Yours truly,

Name:
Title:

SCHEDULE "F" STANDARD NO. 17 (REALIZATION)

FORM OF CONFIDENTIALITY AGREEMENT

BETWEEN:

Name of Firm

(hereinafter, the ["Receiver"] ["Trustee"] ["Monitor"])

- and -

_____

[Print name]

(hereinafter, the "Recipient")

WHEREAS:

A. [RECITALS]

B. The [Receiver] [Trustee] [Monitor] intends to provide certain confidential information pertaining to the Debtor and the Property to the Recipient for its review and consideration in connection with [describe the transaction].

FOR GOOD AND VALUABLE consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

1. The [Receiver] [Trustee] [Monitor] shall furnish to the Recipient certain information pertaining to the Debtor and the Property [to be defined] that is either non-public, confidential or proprietary in nature, including, but not limited to, property, financial and operating information and an information memorandum. All such information furnished to the Recipient, its directors, officers, employees, agents or representatives, including, without limitation, its lawyers, accountants, consultants or financial advisors (collectively "Representatives") by the [Receiver] [Trustee] [Monitor], and all analyses, compilations, data, studies, derivative works or other documents prepared by the Recipient or its Representatives containing or based upon, in whole or in part, any such furnished information is herein referred to as the "Information". Information includes, but is not limited to, information about identifiable individuals ("Personal Information").

2. The Information will be kept confidential by the Recipient and its Representatives and will not, without the prior written consent of the [Receiver] [Trustee] [Monitor], be disclosed by the Recipient or its Representatives, in any manner whatsoever, in whole or in part, and will not be used by the Recipient or its Representatives, directly or indirectly, for any purpose other than in connection with the Potential Transaction.

3. The Recipient acknowledges that the Information is being furnished to the Recipient in accordance with the Request for Offers [and the Marketing Order to be defined] and no provision

of this Confidentiality Agreement shall limit or otherwise affect any of the terms of the Marketing Order including, without limitation, the limitations on the [Receiver] [Trustee] [Monitor]'s liability contained therein with respect to marketing and sale of the Property as well as the confidentiality obligations imposed upon the Recipient pursuant thereto. The Recipient acknowledges that the [Receiver] [Trustee] [Monitor] does not make any express or implied representation or warranty as to the accuracy or completeness of the Information and agrees that the [Receiver] [Trustee] [Monitor] shall not have any liability, direct or indirect, to the Recipient or its Representatives relating to or resulting from the Information or the use by the Recipient thereof, errors therein, or omissions therefrom, except in accordance with any specific representation or warranty made in any definitive agreement entered into in respect of the Potential Transaction. The Recipient acknowledges that it will be conducting its own investigation into the assets and affairs of the Debtor and will not be relying on the information provided by the [Receiver] [Trustee] [Monitor] in conducting its due diligence in connection with the Potential Transaction.

4. The Recipient agrees to furnish the Information only to those Representatives who need to know the Information for the purpose of evaluating the Potential Transaction and who are informed by the Recipient of the confidential nature of the Information and who agree in writing to be bound by the terms of this Agreement. The Recipient further agrees to be responsible for any breach of this Agreement by any of its Representatives. The Recipient will make all reasonable, necessary and appropriate efforts to safeguard the Information from disclosure to anyone other than as permitted hereby.

5. Without the prior written consent of the [Receiver] [Trustee] [Monitor], the Recipient will not, and will direct its Representatives not to, disclose to any other person that the Information has been made available, that this Agreement has been entered into, that discussions or negotiations are taking place concerning the Potential Transaction, or any of the terms, conditions or other facts with respect to the Potential Transaction, unless and only to the extent that in the opinion of its counsel disclosure is required to be made under applicable laws or regulations or as required by any competent governmental, judicial or other authority, provided that the Recipient will advise the [Receiver] [Trustee] [Monitor] so the [Receiver] [Trustee] [Monitor] may seek a protective order or other appropriate remedy and, where reasonably practical, consult with the [Receiver] [Trustee] [Monitor] prior to such disclosure concerning the Information the Recipient proposes to disclose. The Recipient shall co-operate with the [Receiver] [Trustee] [Monitor] on a reasonable basis to obtain such protective order or other appropriate remedy.

6. The Recipient shall keep a record of each location of the Information and its Representatives to whom the Information is provided. If the parties determine not to enter into an offer to purchase the Property, or if an offer to purchase the Property is not concluded, the Recipient shall, if requested by the [Receiver] [Trustee] [Monitor], promptly deliver to or shall confirm to the [Receiver] [Trustee] [Monitor] destruction of all documents furnished or made available to the Recipient or its Representatives constituting the Information, without retaining copies thereof. Without limiting the generality of the foregoing, the Recipient shall not retain for any longer than necessary, and shall destroy or make anonymous, any records pertaining to Personal Information in accordance with applicable law.

7. The Recipient shall store the Personal Information properly and securely and ensure that appropriate technical and organizational means are in place to protect the Personal Information against unauthorized or unlawful processing and against accidental loss, destruction or damage,

including taking reasonable steps to ensure the compliance of Representatives permitted by the Recipient to have access to the Personal Information.

8. Save and except with respect to Personal Information, this Agreement shall be inoperative as to such portions of the Information which: (a) are or become generally available to the public other than as a result of the disclosure by the Recipient or its Representatives; (b) become available to the Recipient from a source other than the [Receiver] [Trustee] [Monitor] or its Representatives, provided that such source, so far as the Recipient is aware, is not bound by a confidentiality agreement with the [Receiver] [Trustee] [Monitor] or otherwise prohibited from transmitting the Information to the Recipient by a contractual or legal obligation; or (c) were known to the Recipient prior to their disclosure to the Recipient by the [Receiver] [Trustee] [Monitor].

9. The Recipient's right to receive information hereunder may be terminated by the [Receiver] [Trustee] [Monitor] at any time upon written notice to the Recipient whereupon the Recipient shall remit and surrender to the [Receiver] [Trustee] [Monitor] or destroy, without any cost to the [Receiver] [Trustee] [Monitor], the Information, which the Recipient or its Representatives may have in their possession at that time.

10. The Recipient hereby agrees to indemnify the [Receiver] [Trustee] [Monitor] against any damages, liability or expense (including legal fees and disbursements) caused to the [Receiver] [Trustee] [Monitor], or its agents and arising from any breach by the Recipient of its obligations under the terms of this Agreement.

11. No failure or delay by either party in exercising any right, power or privilege under this Agreement will operate as a waiver thereof, nor will any single or partial exercise preclude any other or further exercise of any right, power or privilege under this Agreement.

12. The Recipient acknowledges that disclosure of the Information or other breach of this Agreement would cause serious and irreparable damage and harm to the [Receiver] [Trustee] [Monitor] and that remedies at law would be inadequate to protect against breach of this Agreement, and each agrees in advance to the granting of injunctive relief in favour of the [Receiver] [Trustee] [Monitor] for any breach of the provisions of this Agreement and to the specific enforcement of the terms of this Agreement, without proof of actual damages, in addition to any other remedy to which the [Receiver] [Trustee] [Monitor] would be entitled.

13. No amendment, supplement, modification or waiver or termination of this Agreement and, unless otherwise specified, no consent or approval by either party, shall be binding unless executed in writing by the party to be bound thereby.

14. The confidentiality and non-use obligations described in this Agreement shall terminate two (2) years from the date of this Agreement.

15. This Agreement shall not be assigned without the prior consent of both the [Receiver] [Trustee] [Monitor] and the Recipient.

16. This Agreement shall be governed by and construed in accordance with the laws of the Province of [ ] and the laws of Canada applicable to agreements made to be performed within such province.

DATED at _____ this day of [month], 20[ ].

[SIGNED]