

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

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

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT
OF NELSON FINANCIAL GROUP LTD.**

**MOTION RECORD
(Discharge of Representative Counsel)**

August 8, 2011

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Special Counsel to the Representative Counsel for the Noteholders and to
the Interim Operating Officer

I N D E X

1. Notice of Motion dated August 8, 2011
2. Representative Counsel Appointment Order made by the Honourable Madam Justice Pepall on June 15, 2010
3. Order made by the Honourable Madam Justice Pepall on August 27, 2010
4. Order made by the Honourable Madam Justice Pepall on November 22, 2010
5. First Report of the Representative Counsel dated November 3, 2010
6. Second Report of the Representative Counsel dated November 13, 2010
7. Third Report of the Representative Counsel dated November 29, 2010
8. Fourth Report of the Representative Counsel dated April 16, 2011
9. Fifth Report of the Representative Counsel dated August 8, 2011
10. Draft Order

TAB 1

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

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

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT
OF NELSON FINANCIAL GROUP LTD.**

**NOTICE OF MOTION
(Discharging Representative Counsel for the Noteholders)**

Douglas Turner Q.C., in his capacity as the Representative Counsel for the Noteholders of Nelson Financial Group Ltd. appointed by this Court (the "Representative Counsel"), will make a motion before a judge of the Ontario Superior Court of Justice sitting on the Commercial List on a date to be fixed by Order of the Registrar or as soon after that time as the motion can be heard at 330 University Avenue, in the City of Toronto.

PROPOSED METHOD OF HEARING: The motion is to be heard orally.

THE MOTION IS FOR an Order substantially in the form attached hereto as Schedule "A" granting, *inter alia*, the following relief:

1. an Order abridging the time for service of the Notice of Motion and Motion Record herein, if necessary, and dispensing with any further

service thereof such that the motion is properly returnable on the date fixed by the Court;

2. an Order approving the activities of the Representative Counsel, as set out in his reports filed dated November 3, 15 and 29, 2010, and April 18 and August 8, 2011;
3. an Order discharging and releasing the Representative Counsel for the Noteholders of the Applicant and his Special Counsel of and from all duties, authorities and responsibilities imposed upon the Representative Counsel pursuant to the Order of the Honourable Madam Justice Pepall made on June 15, 2010, as amended by Orders of August 27, 2010 and of November 22, 2010, provided however that notwithstanding his discharge the Representative Counsel and his Special Counsel shall continue to have the benefit of the provisions of all Orders made in this proceeding, including all approvals, protections and stays of proceedings in favour of the Representative Counsel and his Special Counsel; and
4. such further and other relief as counsel may request and this Honourable Court may deem just.

THE GROUNDS FOR THE MOTION ARE:

- a) Pursuant to an Order of the Honourable Madam Justice Pepall made on June 15, 2010, as amended by Her further Orders made on August 27, 2010 and November 22, 2010, (collectively, the “Representative Counsel

Appointment Order”), the Court appointed Douglas Turner, Q.C. as the representative counsel for the holders of promissory notes issued by Nelson Financial Group Ltd., the Applicant, (the “Noteholders”) and instructed the Representative Counsel to take various steps to protect and advance the interests of the Noteholders;

- b) In accordance with the direction of this Honourable Court in the Representative Counsel Appointment Order, the Representative Counsel retained the services of Richard B. Jones as his special counsel in respect of *Companies’ Creditors Arrangement Act* (the “CCAA”) issues (the “Special Counsel”) and proceeded to perform the mandate and the additional tasks and to take the proceedings authorized by this Honourable Court for the benefit of the Noteholders;
- c) The Noteholders’ Claims comprise over 99% of all creditor Claims against the Applicant;
- d) In accordance with the directions of this Honourable Court in the Order of August 27, 2010, the Representative Counsel brought a motion that asked this Honourable Court to determine the characterization of some \$14 million of outstanding preferred shares of the Applicant and the characterization of the creditor claims of the investors in such shares, which motion resulted in an Order granted by the Honourable Madam Justice Pepall on November 16, 2010 that all such claims are determined to be “equity claims” for the purposes of the CCAA;

- e) The Representative Counsel sought, and this Honourable Court granted under its Order made on November 22, 2010, the appointment of the Interim Operating Officer to replace incumbent management of the Applicant and to advance a restructuring for the benefit of the Creditors;
- f) The Representative Counsel worked with the Interim Operating Officer to develop a plan for the restructuring of the business and assets of the Applicant in a manner that would maximize recoveries for the unsecured creditors of the Applicant;
- g) The Plan of Compromise and Arrangement in respect of the Applicant was dated February 11, 2011, subsequently amended, approved at a meeting of Affected Creditors on April 16, 2011 and sanctioned by an Order of the Honourable Mister Justice Morawetz made on April 21, 2011 (the “Sanction Order”);
- h) The Articles of Reorganization approved under the Sanction Order have been filed with the Ministry of Consumer and Corporate Affairs of Ontario and the Plan of Compromise and Arrangement in respect of the Applicant has been and continues to be implemented in accordance with the Sanction Order;
- i) The Representative Counsel has prepared and filed the Representative Counsel’s Certificate dated May 31, 2011 confirming that all conditions of implementation of the Plan were satisfied or waived in accordance with the Plan and that the Plan Implementation Date was May 13, 2011;

- j) All functions and responsibilities of the Representative Counsel pursuant to the Representative Counsel Appointment Order have been fully performed;
- k) All accounts for the services of the Representative Counsel from May 20, 2010 to October 25, 2010 and of Richard B. Jones as his special counsel from June 16, 2010 to October 21, 2010 were approved by the Order of the Honourable Madame Justice Peppal made on December 9, 2010 and have been paid in full;
- l) All subsequent accounts of the Representative Counsel and of his special counsel have been approved by the Interim Operating Officer and, subsequent to the making of the Sanction Order, unmanimously approved by the board of directors of the Applicant appointed pursuant to the Sanction Order and all such accounts have been paid in full;
- m) There are no further functions or other duties necessitating the continuing appointment of a representative counsel for the creditors of the Applicant and it is appropriate that the Representative Counsel should be discharged and his activities as reported to this Honourable Court should be approved;
- n) Section 11 of the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c.C36, as amended;
- o) Rules 2.03, 3.02 and 37 of the *Rules of Civil Procedure*; and,

- p) Such further and other grounds as counsel may advise and this Honourable Court may permit.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion:

- a) The Representative Counsel Appointment Order made by the Honourable Madam Justice Pepall on June 15, 2010 as amended by an Order of August 27, 2010 and further Order of November 22, 2010;
- b) The First Report of the Representative Counsel dated November 3, 2010;
- c) The Second Report of the Representative Counsel dated November 15, 2010 ;
- d) The Third Report of the Representative Counsel dated November 29, 2010;
- e) The Fourth Report of the Representative Counsel dated April 16, 2011;
- f) The Fifth Report of the Representative Counsel dated August 8, 2011;
- g) The Third Report of the Interim Operating Officer dated August 8, 2011;
and
- h) Such further and other materials as counsel may advise and this Honourable Court may permit.

August 8, 2011

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Special Counsel to the Representative Counsel for the Noteholders and to
the Interim Operating Officer

SCHEDULE "A"
DRAFT ORDER

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

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT
OF NELSON FINANCIAL GROUP LTD.**

Court File No. CV-10-8630-00CL

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

**NOTICE OF MOTION
(Discharge of Representative Counsel for
Noteholders)**

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Counsel for the Interim Operating Officer and for
Representative Counsel

TAB 2

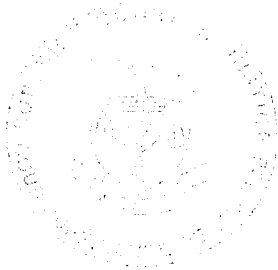
ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE MADAM) TUESDAY, THE 15th
)
JUSTICE PEPALL) DAY OF JUNE, 2010

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT
OF NELSON FINANCIAL GROUP LTD. (the "Applicant")

Applicant



ORDER
(Appointing Representative Counsel)

THIS MOTION, made by Nelson Financial Group Ltd. (the "Applicant") pursuant to the Companies' Creditors Arrangement Act, R.S.C. 1985, c. C-36, as amended (the "CCAA") was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Notice of Motion of the Applicant, the Affidavit of Marc Boutet sworn June 11, 2010 and the Third Report (the "Third Report") of A. John Page & Associates Inc. in its capacity as Court-appointed monitor of the Applicant (the "Monitor") and on hearing from counsel for the Applicant, the Monitor, ~~and such other counsel as were present, no one else~~ ^{the Ontario Securities Commission, Foscarini Mackie Holdings Inc.} ~~and such other counsel as were present, no one else~~ ^{Noel and Lorna D'Elves and Lendcare Financial Services Inc., no one else} appearing although duly served as appears from the affidavit of service, filed.

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L. machie

svf

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion, the Motion Record and the Third Report is hereby abridged so that this Motion is properly returnable today and hereby dispenses with further service thereof.

- subject to 3(e) -

2. **THIS COURT ORDERS** that Douglas Turner, Q.C. be and is hereby appointed as representative counsel (the "**Representative Counsel**") to represent the interests of all persons who, as at March 23, 2010, held promissory notes issued by the Applicant (the "**Noteholders**") for the sole purpose of advising the Noteholders in respect of any plan of compromise or arrangement in this CCAA proceeding (the "**Mandate**").

3. **THIS COURT ORDERS** that, in fulfilling the Mandate, the Representative Counsel:

- (a) may consult with individual Noteholders but shall not be obligated to follow the instructions of nor provide opinions to individual Noteholders;
- (b) may consult with and provide his views to the Monitor and/or the Applicant;
- (c) shall act in the best interests of the Noteholders as a whole and take such necessary and appropriate actions and steps as the Representative Counsel deems fit from time to time; and,
- (d) shall incur no liability or obligation as a result of his appointment or the carrying out of the provisions of this Order save and except for any gross negligence or

✓ wilful misconduct on his part; and

(e) is directed to engage Richard B. Jones as special counsel on an as needed basis to provide the Representative Counsel with advice in respect of the Mandate and the provisions and operation of the CCAA.

4. **THIS COURT ORDERS** that the activities of the Representative Counsel shall be restricted to fulfilling the Mandate.

SRP

5. **THIS COURT ORDERS** that the Applicant shall, subject to the Representative Counsel executing a confidentiality agreement, provide to Representative Counsel, without charge, the names, last known addresses, last known telephone numbers, and last known e-mail addresses (if any) of all the Noteholders, to be used only for the purposes of the performance by the Representative Counsel of the Mandate.

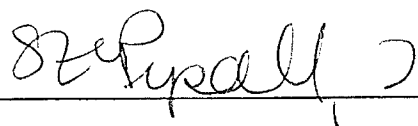
6. **THIS COURT ORDERS** that, subject to such fee arrangements as have been agreed to by the Applicant and Representative Counsel, all reasonable legal fees and other incidental fees and disbursements incurred by Representative Counsel, up to an aggregate amount of \$75,000, shall be paid by the Applicant on a monthly basis, forthwith upon the rendering of accounts to the Applicant. In the event of any disagreement regarding such fees, such matters may be remitted to this Court for determination.

7. **THIS COURT ORDERS** that the Representative Counsel is authorized to take all steps and to do all acts necessary or desirable to carry out the terms of this Order, including dealing with any Court or any regulatory body, other governmental ministry, department or agency (each a “**Governmental Authority**”), and to take all such steps as are necessary or incidental thereto, provided adequate notice is given to the Applicant and the Monitor before any formal proceedings before a Court or Governmental Authority are commenced.

8. **THIS COURT ORDERS** that a copy of this Order and a letter from the Representative Counsel explaining the effect of this Order be posted on the Monitor’s website.


9. **THIS COURT ORDERS** that no action or other proceedings shall be commenced against the Representative Counsel relating to their acting as such, except with prior leave of this Court, on at least 7 days’ notice to the Representative Counsel.

10. **THIS COURT ORDERS** that Representative Counsel may from time to time apply to this Court for advice and directions in respect of its appointment or the fulfillment of its duties in carrying out the provisions of this Order, upon notice to the Applicant and the Monitor and to other interested parties, unless otherwise ordered by the Court.



ENTERED AT / INSCRIT À TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO.:

JUN 15 2010

PER / PAR: 

Court File No. 10-8630-00CL

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C., 1985 c. C-36, AS AMENDED
AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF NELSON FINANCIAL GROUP LTD.

Applicant

ONTARIO
SUPERIOR COURT OF JUSTICE
(PROCEEDING COMMENCED AT TORONTO)

ORDER
(Appointing Representative Counsel)

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TAB 3



**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

**THE HONOURABLE MADAM)
)
JUSTICE PEPALL)
)**

**FRIDAY, THE 27TH DAY
OF AUGUST, 2010**

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

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT
OF
NELSON FINANCIAL GROUP LTD.**

:

APPLICANT

ORDER

THIS MOTION made by A. John Page & Associates Inc., in its capacity as the Court-appointed monitor of the Applicant (the "**Monitor**"), for the relief set out in its Notice of Motion dated August 23, 2010 (the "**Notice of Motion**") was heard this day at 330 University Avenue, Toronto, Ontario.

UPON READING the Monitor's Sixth Report to the Court dated August 23, 2010 and upon hearing from counsel for the Monitor, counsel for the Applicant, counsel for Staff of the Ontario Securities Commission, counsel for Douglas Turner Q.C. in his capacity as Court-appointed Representative Counsel for the holders of promissory notes issued by the Applicant (the "**Representative Counsel**"), counsel for Foscarini Mackie Holdings Inc. and Glen and Lisa

Mackie, no one else appearing although duly served as appears from the Affidavit of Service filed:

SERVICE

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion, the Motion Record and the Sixth Report is hereby abridged so that this Motion is properly returnable today and hereby dispenses with further service thereof.

THE PREFERRED SHAREHOLDER MOTION

2. **THIS COURT ORDERS** that the Representative Counsel is authorized and directed to make a motion to this Court at 10:00 a.m. on September [✓]27[✓], 2010 for an Order that all claims and potential claims of the holders of preferred shares of the Applicant (the "**Preferred Shareholders**") relating directly or indirectly to the ownership, purchase or sale of such preferred shares are "equity claims" within the meaning of the *Companies' Creditors Arrangement Act* (Canada) and that the Preferred Shareholders are to constitute a separate class in any plan of arrangement, are not entitled to vote at any meeting of creditors and that such claims shall not participate in any distribution by the Applicant to its creditors pursuant to any plan of compromise or arrangement in this proceeding until all creditors of the Applicant have been paid in full (the "**Preferred Shareholder Motion**").

3. **THIS COURT ORDERS** that the Representative Counsel shall serve its motion record in respect of the Preferred Shareholder Motion by no later than September 2, 2010 and that the Monitor shall post such motion record on the Monitor's website.

4. **THIS COURT ORDERS** that the Order of this Court made June 15, 2010 in this proceeding (the “**Representative Counsel Appointment Order**”) be and the same is hereby amended and varied to include the bringing and prosecution of the Preferred Shareholder Motion and any related motions or appeals that may arise therefrom within the scope of the Mandate of the Representative Counsel.

5. **THIS COURT ORDERS** that the costs and disbursements of the Representative Counsel incurred in preparing and prosecuting the Preferred Shareholder Motion shall be subject to review and reasonable approval by the Monitor without waiver of any privilege by the Representative Counsel, shall thereupon be reimbursed and paid by the Applicant and shall not be subject to the terms and limitations of paragraph 6 of the Representative Counsel Appointment Order.

6. **THIS COURT ORDERS** that the Monitor shall serve the Preferred Shareholders with notice of the Preferred Shareholder Motion by sending a letter to each of the Preferred Shareholders (the “**Preferred Shareholder Letter**”), by ordinary prepaid mail to the Preferred Shareholder’s last known address based on the books and records of the Applicant by no later than September 3, 2010, enclosing a copy of the Representative Counsel’s Notice of Motion in respect of the Preferred Shareholder Motion, and advising the Preferred Shareholders as follows:

- (a) the Monitor has obtained an opinion from the Monitor’s Independent Counsel (the “**Opinion**”) and setting out the conclusions contained therein;
- (b) the Representative Counsel will make the Preferred Shareholder Motion to this Court at 10:00 a.m. on the date set forth in paragraph 2 above. The Monitor shall

advise that a copy of the complete motion record is available on the Monitor's website;

(c) the Monitor agrees with the conclusions of the Independent Counsel set out in the Opinion and will file a report in support of the Preferred Shareholder Motion;

(d) pursuant to the Order of the Honourable Madam Justice Pepall dated July 7, 2010, the Opinion does not constitute issue estoppel or *res judicata* with respect to any matters of fact or law referred to in the Opinion.

(e) if the Preferred Shareholder wishes to oppose the Preferred Shareholder Motion and assert that it is entitled to rank equally with the Applicant's creditors, it is free to do so; and

but seeing + filing materials on or before SEP 17 2017

(f) the Monitor recommends that, if the Preferred Shareholder wishes to oppose the Preferred Shareholder Motion and assert that it is entitled to rank equally with the Applicant's creditors, that the Preferred Shareholder should obtain legal advice and retain legal counsel to represent it, ~~_____~~

7. **THIS COURT ORDERS** that Monitor shall publish a notice to the Preferred Shareholders once in each of the Globe & Mail and the Toronto Star by no later than September 7, 2010.

DISCLOSURE OF OPINION

8. **THIS COURT ORDERS** that, in connection with the Preferred Shareholder Motion, the Monitor shall post a copy of the Opinion on its website and report to the stakeholders and this Court on the conclusions of the Opinion.

9. **THIS COURT ORDERS** that the Monitor's disclosure of the Opinion shall not constitute a waiver of the solicitor-client privilege of the Monitor with respect to any matters pertaining to the Opinion.

10. **THIS COURT ORDERS** that the Opinion shall not constitute evidence and the legal conclusions contained in any Monitor's report and the Preferred Shareholder Letter shall not constitute expert opinion evidence in this proceeding, or any subsequent proceeding, and the Monitor, its counsel and its Independent Counsel shall not be cross-examined on these documents or any of them.

11. **THIS COURT ORDERS** that the Monitor is hereby authorized, *nunc pro tunc*, to redact the Opinion attached as Exhibit "D" to the version of the Sixth Report served upon any party other than this Court.

MONITORS ACTIVITIES

12. **THIS COURT ORDERS** that the Sixth Report and the conduct and activities of the Monitor described therein be and are hereby approved.



ENTERED AT / INSCRIT A TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO.:

AUG 27 2010

PER / PAR:

NB

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT
OF NELSON FINANCIAL GROUP LTD.

APPLICANT

Court File No.: 10-8630-00CL

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

Proceedings commenced at **Toronto**

ORDER

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TAB 4

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE MADAM)
JUSTICE PEPALL)
)
)

MONDAY, THE 22nd DAY
OF NOVEMBER, 2010

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR
ARRANGEMENT OF NELSON FINANCIAL GROUP LTD. (the
"Applicant")

Applicant

ORDER

THESE MOTIONS made by **Douglas Turner, Q.C.**, in his capacity as the Court-appointed Representative Counsel (the "**Representative Counsel**") for the holders of promissory notes issued by the Applicant (collectively, the "**Noteholders**" and each a "**Noteholder**"), for the relief set out in the Amended Notice of Motion dated November 12, 2010 (the "**Representative Counsel Notice of Motion**") and made by A. John Page & Associates Inc., in its capacity as the Court-appointed Monitor of the Applicant (the "**Monitor**") for the relief set out in its Notice of Motion dated November 12, 2010 (the "**Monitor Notice of Motion**") were heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the material filed, including the Representative Counsel Notice of Motion, the First Report of the Representative Counsel dated November 3, 2010 (the “**Rep Counsel First Report**”), the Second Report of the Representative Counsel dated November 15, 2010 (the “**Rep Counsel Second Report**”), the Affidavit of Douglas Turner sworn November 16, 2010, the Affidavit of Richard B. Jones sworn November 17, 2010, the Monitor’s Motion Record dated November 12, 2010, the Ninth Report of the Monitor dated November 15, 2010 (the “**Ninth Report**”), the Supplemental to the Ninth Report of the Monitor dated November 18, 2010 and the Affidavit of A. John Page sworn October 26, 2010, the Affidavit of James H. Grout sworn October 29, 2010 and the two Affidavits of Tina M. Woodside sworn November 17, 2010 (collectively, the “**Motion Materials**”), and on hearing from counsel for the Representative Counsel, counsel for the Monitor, counsel for the Applicant, counsel for Staff of the Ontario Securities Commission (the “**OSC**”), no one else appearing although duly served as appears from the Affidavits of Service filed:

SERVICE

1. **THIS COURT ORDERS** that, *nunc pro tunc*, the Monitor shall serve the Motion Materials on the holders of preferred shares issued by the Applicant (the “**Preferred Shareholders**”) as follows:
 - (a) by posting copies of the Motion Materials on the Monitor’s website; and
 - (b) by delivering, by courier, copies of the Motion Materials to all of the Preferred Shareholders who made oral submissions to this Court on October 18, 2010 except for Mr. John McVey who shall be served by email.

2. **THIS COURT ORDERS** that the time for service of the Motion Materials is hereby abridged so that this Motion is properly returnable today and hereby dispenses with further service thereof.

CHANGE OF MANAGEMENT OF APPLICANT: APPROVAL OF THE HEADS OF AGREEMENT

3. **THIS COURT ORDERS** that the arrangements proposed between the Applicant, Nelson Financial Group Ltd., and each of Marc Boutet (“Boutet”) and Stephanie Lockman Sobol (“Sobol”) as set out in the Heads of Agreement dated November 11, 2010 attached as Exhibit “C” to the Ninth Report of the Monitor filed (the “Heads of Agreement”) be and the same are hereby approved and the Applicant is authorized and directed to take all reasonable steps to implement the same, including without limitation to enter into the engagement letter with Ms Sherry Townsend or her service corporation for her retainer as the Interim Operating Officer as hereinafter defined of the Applicant, to accept the common shares of Marc Boutet or any associate or affiliate for cancellation, to accept the resignation of Marc Boutet as an officer, employee and the director of the Applicant, to exchange general releases with Marc Boutet and with Nelson Mortgage Group Ltd., to grant the limited release to Stephanie Lockman Sobol and to enter into the interim employment arrangements with Stephanie Lockman Sobol all and on the terms provided for in the Heads of Agreement.

THE APPOINTMENT AND ROLE OF THE INTERIM OPERATING OFFICER

4. **THIS COURT ORDERS** that the engagement by the Applicant of Ms. Sherry Townsend as its interim chief executive officer to direct and manage all of its business operations and to manage all efforts to develop a plan for the restructuring of the Applicant or of its business,

assets and undertaking on and subject to the Engagement Letter filed and the Orders of this Court be and it is hereby approved and the Applicant is authorized to enter into such engagement and to give it full force and effect.

5. **THIS COURT ORDERS** that Ms. Sherry Townsend is hereby appointed to be the Interim Operating Officer (“IOO”) of the Applicant on and subject to the terms of the Engagement Letter and of this Order.

6. **THIS COURT ORDERS** that Ms Sherry Townsend shall be and she is hereby appointed as an officer of this Court to be the IOO over and in respect of all of the Property (as defined in the Initial Order of the Honourable Madam Justice Pepall dated March 23, 2010 (the “**Initial Order**”)) of the Applicant and is hereby directed and empowered to supervise and manage the business and affairs of the Applicant and shall have the powers, responsibilities and duties of the chief executive officer of the Applicant, subject to the supervision of the Monitor. In particular, the IOO is authorized and empowered to do the following:
 - (a) enter into and execute any and all ancillary documents and take all such other steps or acts necessary to implement the terms of the Heads of Agreement, including, without limitation, executing the releases in favour of Boutet, Sobol and Nelson Mortgage Group Inc. contemplated therein;

 - (b) approve all expenditures and commitments of the Applicant, provided that the IOO shall be required to approve all expenditures and commitments of the Applicant in excess of \$10,000.00 and shall be required to obtain the approval, in advance, of the Monitor for all expenditures and commitments over \$20,000.00;

- (c) authorize payments out of any account of the Applicant whether by cheque, internet banking or otherwise, provided that the IOO shall be required to actively authorize all payments in excess of the amount of \$10,000.00 and shall be required to obtain the approval, in advance, of the Monitor of all payments over the amount of \$20,000.00;
- (d) take such actions and steps, and execute such documents and writings as may be required to cause or permit the Applicant to do all things authorized, directed and permitted pursuant to the terms of the Initial Order and any subsequent Orders of this Court, subject to the terms of those Orders;
- (e) take such steps as in the opinion of the IOO are necessary or appropriate to maintain control over all receipts and disbursements of the Applicant including, without limiting the generality of the foregoing, take such steps as are necessary or desirable to control and use all bank accounts, investment accounts or financial instruments of the Applicant;
- (f) the IOO, together with such other persons as she may designate in writing with the approval of the Monitor, shall become signing officers of all bank accounts of the Applicant and the Applicant's banks are hereby directed, when notified in writing by the IOO and the Monitor, to revoke any existing signing authorities in respect of any accounts of the Applicant and to act on the instructions only all of the IOO and her designated signing officers;

- (g) retain and terminate the employment or services contracts of employees, agents or consultants of the Applicant and otherwise deal with human resources and other organization issues on behalf of the Applicant;
- (h) conduct such inquiries and investigations as she shall determine to be necessary to identify the fair value of the assets, undertaking and business enterprise of the Applicant for the purposes of a viable restructuring of such for the benefit of the creditors of the Applicant and to represent the Applicant having regard to the best interests of its creditors in any negotiations with any prospective acquirer or plan sponsor in respect of any restructuring plan for the Applicant or its business or assets;
- (i) retain advisory counsel, including the Representative Counsel and its special counsel, to review claims and rights that the Applicant may have against any person or persons and to cause the Applicant to commence such actions or proceedings as may be recommended by such counsel and approved by the Monitor or further Order of this Court to preserve or perfect such claims and rights;
- (j) communicate with and provide information to the Monitor, the Representative Counsel and the Court regarding the business and affairs of the Applicant and the progress of plans for the restructuring of the Applicant or its business or assets; and
- (k) take all such steps and actions, enter into and execute all such agreements and documents and incur such expenses and obligations for or on behalf of the Applicant as may be necessary or incidental to the exercise of the powers of the IOO in order to continue the operation of the business of the Applicant and to preserve and protect its

assets and undertaking including its going-concern business, including preparing plans for any restructuring.

7. **THIS COURT ORDERS** that the IOO shall be entitled to all of the benefits and protections afforded to the Monitor or to any director of the Applicant under the terms of the Initial Order made on March 23, 2010 in this proceeding including, without limitation, those provided in paragraphs 18, 19, 20, 25 and 27 of the Initial Order, provided that, for the benefit of the IOO only, the amount of the Directors' Charge as defined in the Initial Order is hereby increased to \$1,000,000 in both paragraphs 20 and 31 of the Initial Order.
8. **THIS COURT ORDERS AND DIRECTS** that the IOO shall immediately advise the Monitor if, in the opinion of the IOO, there is a material adverse change in the operations of the Applicant or in the event that the IOO has any major concerns regarding the operations of the Applicant.
9. **THIS COURT ORDERS** that none of the IOO and any of the employees of or consultants to the IOO or to the Applicant shall be deemed to be a director of the Applicant pursuant to section 115(4) of the *Business Corporations Act* (Ontario) or otherwise.
10. **THIS COURT ORDERS** that the IOO may from time to time apply to this Court for advice and directions in the discharge of her powers and duties hereunder.

EXPANSION OF MONITOR'S POWERS UNDER INITIAL ORDER

11. **THIS COURT ORDERS** that the Monitor, in addition to its prescribed rights and obligations under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c.C-36, as amended (the "CCAA") and the Initial Order be and it is hereby empowered and directed to:

- (i) supervise, cooperate with and complement the work of the IOO and the Representative Counsel in the development of plans for the restructuring and refinancing of the business, assets and undertaking of the Applicant and the development and negotiation of transactions to implement such plans with a view to the maximization of recoveries for the unsecured creditors;
- (ii) have full continuing access to all transactions in the bank accounts, payments and receipts of the Applicant while such shall be controlled and operated by the IOO;
- (iii) provide full access to all records of or pertaining to the Applicant as are in the possession or under the control of the Monitor, on the execution of confidentiality agreements satisfactory to the Monitor and its counsel, for the coordination and provision of opportunities for prospective investors or plan sponsors to conduct due diligence investigations with respect to any such restructuring opportunities as the Monitor, the IOO and the Representative Counsel shall determine may be beneficial to the interests of the unsecured creditors; and
- (iv) Consult with the IOO and the Representative Counsel with respect to the restructuring of the Applicant.

12. THIS COURT ORDERS AND DIRECTS that the Monitor, in addition to its duties under the CCAA, the Initial Order and any other Orders in these proceedings, is hereby empowered to take such other actions and fulfil such other roles as are authorized by this Order and the CCAA and that, in taking such other actions and in fulfilling such other roles, the Monitor shall have all of the benefits and protections afforded to the Monitor pursuant to the CCAA, the Initial Order and this Order.

13. **THIS COURT ORDERS** that the Monitor shall continue to have the benefit of all of the protections and priorities as set out in the CCAA and the Initial Order and any such protections and priorities shall apply to the Monitor in fulfilling its duties under this Order or carrying out the provisions of this Order.

THE REPRESENTATIVE COUNSEL

14. **THIS COURT ORDERS** that the Order of this Court made on June 15, 2010 appointing the Representative Counsel is hereby amended to expand the Mandate of the Representative Counsel to include the following:

- (a) To take such steps, in consultation with representative Noteholders as he may determine, the Monitor and the IOO that he may determine in his professional judgment to be prudent and reasonable, for the preservation and protection of the rights of Noteholders generally in respect of their investment in and claims against the Applicant, including the prosecution of such proceedings including preference, fraudulent conveyance, derivative or oppression actions as the Representative Counsel may determine to be necessary to preserve, protect or enforce any such rights;
- (b) to develop, in consultation with representative Noteholders as he may determine, the Monitor and the IOO, transactions with any persons willing to invest capital or management skills in the Applicant or otherwise to sponsor any restructuring plan for the restructuring or refinancing of the Applicant or its business and assets to be implemented by way of a plan or plans of compromise and arrangement in respect of the Applicant or its assets and undertaking for the purpose of maximizing the recovery of the unsecured creditors of the Applicant;

- (c) to cooperate with and provide information to regulatory authorities and law enforcement officials in a manner that he determines to be consistent with the best interests of the Noteholders and consistent with his duties of an officer of this Court;
 - (d) to advise and assist the IOO in the performance of the powers and functions of the IOO, including without limitation the review of the claims and rights that the Applicant may have or be entitled to assert as against any other person;
 - (e) to inform and cooperate with the Monitor in respect to such functions and the taking of any such actions and proceedings and, subject to further order of this Court, to coordinate all such with the Monitor and the IOO to ensure that such are conducted by the most appropriate party and without duplication of costs to the estate;
 - (f) to report to this Court on such activities from time to time as required by this Court and in conjunction with the Monitor; and
 - (g) the Representative Counsel may from time to time apply to this Court for advice and directions in the discharge of his powers and duties hereunder.
15. **THIS COURT ORDERS** that paragraph 6 of the Order of this Court made June 15, 2010 appointing the Representative Counsel is replaced *nunc pro tunc* with the following:

“THIS COURT ORDERS that the remuneration and disbursements of the Representative Counsel, including professional fees and disbursements of the special counsel retained by the Representative Counsel, in each case at their standard rates and charges, shall be paid by the Applicant as part of these proceedings on a bi-weekly basis and such fees and disbursements of the Representative Counsel and his special counsel outstanding from time to time shall have the benefit of the Administration Charge

established under the Initial Order and the Representative Counsel and his special counsel shall pass all accounts in respect of their fees and disbursements from time to time, and for this purpose the accounts of the Representative Counsel and his special counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.”

16. **THIS COURT ORDERS** that the motions seeking approval of all professional fees and disbursements and of the Monitor’s reports be adjourned to December 1, 2010.
17. **THIS COURT ORDERS** that any interested party may apply to this Court to vary or amend this Order on not less than seven (7) days notice to any other party or parties likely to be affected by the order sought or upon such other notice, if any, as this Court may order.



A handwritten signature in black ink, appearing to read "J. Repall, J.", is written above a horizontal line.

ENTERED AT / INSCRIT A TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO.:

NOV 25 2010

PER / PAR: 

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED
AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF NELSON FINANCIAL GROUP LTD.

APPLICANT

Court File No.: 10-8630-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceedings commenced at Toronto

ORDER

Douglas Turner Q.C.
 63 Albert St.
 Uxbridge, Ontario
 L9P 1E5

Representative Counsel to Noteholders

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 Barrister & Solicitor
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 100 Yonge Street
 Toronto, ON M5C 2W1

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Special Counsel for the Representative Counsel for the Noteholders

TAB 5

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

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

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT
OF
NELSON FINANCIAL GROUP LTD.**

APPLICANT

**FIRST REPORT OF DOUGLAS TURNER, Q.C.,
REPRESENTATIVE COUNSEL FOR NOTEHOLDERS**

1. INTRODUCTION

1.1 By the Order of this Honourable Court made June 15, 2010 (the “Representative Counsel Order”), Douglas Turner, Q.C. was appointed as the representative counsel (the “Representative Counsel”) to represent and advise all persons holding promissory notes issued by the Applicant (the “Noteholders”). The Representative Counsel was directed to engage Richard B. Jones, Barrister as special counsel to assist him in the CCAA aspects of his mandate.

1.2 The purpose of this Report is to provide this Honourable Court with information on the steps taken by the Representative Counsel to October 31, 2010 to advance the interests of the Noteholders and to seek direction and approval of the Court as to certain subsequent proceedings to protect and advance the Noteholders' interests.

1.3 This Report also provides this Honourable Court with the circumstances that have lead to the Representative Counsel determining that there needs to be a change in the incumbent management of the Applicant and the steps that have been taken to arrange such replacement on a prompt and consensual basis. The Representative Counsel has

participated with the Monitor in negotiations with Marc Boutet that have been reduced to Heads of Agreement dated October 29, 2010 and agreed to by Mr. Boutet. These agreements, if approved by this Honourable Court, will result in the replacement of incumbent management with an Interim Operations Officer appointed by the Court and supervised by the Monitor. The Representative Counsel recommends the approval of these arrangements.

2. NOTEHOLDER ORGANIZATION

2.1. The Representative Counsel has engaged, consulted and will continue to engage and consult with Richard B. Jones, Barrister as his special counsel pursuant to the direction of this Honourable Court. The Representative Counsel and his special counsel are working in close coordination in order to avoid any duplication, minimize costs to the estate and maximize the benefit to the Noteholders of their respective skills and experience. The Representative Counsel and his special counsel have taken all necessary steps and will continue to take such steps to avoid duplication of professional services and to reduce costs, all while providing the best proper representation for the interests of the Noteholders.

2.2 The Representative Counsel has consulted and worked with the Monitor to protect and advance the interests of the Noteholders.

2.3 Representative Counsel, after negotiations with Counsel to the Applicant, on July 9, 2010 executed the Confidentiality Agreement required by paragraph 5 of the Order. Representative Counsel received on July 14, 2010 and reviewed the Applicant's lists of Noteholders and Preference Shareholders.

2.4 Representative Counsel selected from the list of Noteholders an advisory committee of four Noteholders which was in place by July 19, 2010 at which time the committee met with Representative Counsel. The committee members were advised that they had no legal status under the *Companies' Creditors Arrangement Act*, R.S.C. 1985,

c. C-36, as amended ("CCAA") or the Court Order, but were to advise and assist Representative Counsel in the CCAA process concerning the Applicant.

2.6 Representative Counsel also through the Monitor arranged for a notice of a meeting for all Noteholders to be held in Ajax, in the Region of Durham on July 21, 2010 at 11:00 a.m.

2.7 The meeting on July 21, 2010 was attended by 166 Noteholders and their authorized representatives. These represented a majority of the Noteholders and close to two thirds of the claims of Noteholders by value.

2.8 During the First half of the meeting, Representative Counsel explained the CCAA process, and the Monitor and Marc Boutet, made presentations and took questions after the presentations. The Monitor outlined the basic terms of a restructuring plan that Marc Boutet as the incumbent management of the Applicant was preparing. Since that meeting, no further specifics of such restructuring plan have been provided to the Representative Counsel and no plan of arrangement has been filed by the Applicant or provided in draft to the Representative Counsel.

2.9 During the second half of the meeting, from 12:30 to 2:30 p.m., only Noteholders were present and the Noteholders offered comments, expressed their concerns and presented questions to Counsel and to members of the Noteholders' Committee. The Noteholders by a virtually unanimous vote requested a subsequent meeting. The Representative Counsel intends to call a further meeting of the Noteholders to review re-organization plans once any such plans are available or presented.

2.12 Representative Counsel on August 5, 2010, established a web site (nelsonNoteholders.ca) and email addresses for Noteholders to communicate with Representative Counsel and the Committee.

2.13 The Representative Counsel has met with many Noteholders and received many communications from Noteholders by telephone, email and fax. The Representative Counsel has reviewed the Noteholders' claims and communicated with Noteholders.

2.14 Including the notes held by Marc Boutet, and the secured notes held by the Foscarini Mackie Holdings Inc., the promissory notes outstanding total \$36.8 million. The Foscarini Mackie notes have been repaid and the security has been discharged with the approval of this Court. Under the Heads of Agreement discussed below, the notes held by Marc Boutet or his affiliated corporations and the creditor claim of, and the security claimed by, Nelson Investment Group Ltd. will be cancelled and released. Accordingly, it is likely that the total unsecured claims outstanding will be less than \$36 million.

2.15 An analysis of the notes and holders shows the following:

- (a) 18 noteholders hold notes between \$500,000 and \$1.6 million, totaling \$15.3 million;
- (b) 80 noteholders hold notes between \$100,000 and \$499,999, totaling \$15 million; and
- (c) 177 noteholders hold notes between \$10,000 and \$99,999, totaling \$6.5 million.

3. NOTEHOLDERS' ISSUES: SUMMARY

3.1 Representative Counsel, with the assistance of the Monitor and the Committee, reviewed and is continuing to review the following actions to protect the Noteholders' interests:

- 1. Review and establish validity of the Foscarini Mackie claims to special security for their notes, including examinations under oath of Marc Boutet and Mrs. Lisa Mackie ;
- 2. Continuing review of the position of the preference shareholders, particularly with respect to:

priority under the CCAA: Representative Counsel determined that the Noteholders (and not the Applicant or the Monitor) were the proper parties to ask for a judicial determination as to whether the preference shareholders' claims were "equity claims" under the CCAA. The motion is to be heard October 18th and 19th, 2010, and all preference shareholders have been notified.

Validity of consideration for issue of shares;

payment of dividends and redemptions with respect to payments during insolvency;

3. reviewing the financial operations of the Applicant, including
 - (a) debt collections, age of receivables and limitation periods;
 - (b) investment of and return on noteholders' funds held by Applicant;
 - (c) examining current and past financial statements; and
 - (d) working with Ontario Securities Commission staff.

3.2 Representative Counsel and Noteholders' committee members are preparing a draft plan of reorganization for submission to the Noteholders and the Court.

3.3 Representative Counsel with the assistance of Noteholders' committee members are also engaged in the following on behalf of the Noteholders

- (1) searching for possible investment partners for the Applicant;
- (2) assisting the Applicant by attempting to find vendors to replace the 60% of the business represented by Lendcare;
- (3) analyzing with the assistance of accountants the financial statements of the Applicant to assist in its rejuvenation and growth at the end of the CCAA mandate; and
- (4) reviewing management issues.

3.4 Representative Counsel accounts have been paid or approved up to the end of July 2010. There has been a larger volume of work than originally planned, involving

increased professional time beyond what was originally anticipated. The committee of Noteholders advising the Representative Counsel also anticipates that there may be a need to retain accounting and perhaps financial assistance in the near future. These increased needs have been caused by, *inter alia*

- (1) increased communication required by a large number (in excess of 250) Noteholders;
- (2) unexpected legal issues involving validity of security, especially
 - (a) validity of preference share issuance;
 - (b) validity of preference share dividends redemptions and sales commissions when Applicant was insolvent;
 - (c) validity of certain security to limited class of noteholders (Foscarini Mackie),
 - (d) complexity of plans of reorganization/sale instead of liquidation,
 - (e) review of management issues, and
 - (f) additional work for special counsel Richard Jones.

3.5. Representative Counsel anticipate having to retain accountants (and possibly a financial advisor) to review certain past transactions of the Applicant that may have affected the Noteholders' claims, as well as to assist in the proposed reorganization.

3.6 The Representative Counsel is also asking for an adjustment to the terms of the Representative Counsel Order to make adequate provision for the professional fees as well as disbursements that have been necessitated by the material changes that have occurred in the circumstances of the Applicant since his appointment. Substantial wider scope of work has and will continue to be needed to protect adequately the Noteholders' interests.

3.7 The Monitor has co-operated fully with Representative Counsel and Representative Counsel have nothing but praise for the Monitor's professionalism and conduct.

3.8 While the Monitor is reporting separately on the claims process and other duties, Representative Counsel found that the claim process of the Monitor functioned efficiently and fairly.

3.9 Representative Counsel believes that the few small creditor claims filed by the September 15th date will be dealt with properly by the Monitor and will not impact in any significant way on the Noteholder claims.

4. FOSCARINI MACKIE SECURED NOTES

4.1 Of some 300 Noteholders, only one group received specific security (assignment of chattel paper on specific enumerated loans). This group was made up of a husband and wife, Glen and Lisa Mackie, who were close friends of Marc Boutet, and their personal holding corporation, Foscarini Mackie Holdings Inc.

4.2 The proximity of the timing of the giving of the security to March 23, 2010 raised an additional red flag as to whether the Mackies may have received a preference under the Ontario Assignments and Preferences Act.

4.3 The Court ordered that Marc Boutet and Mrs. Lisa Mackie be examined under oath in August of 2010.

4.4 A careful examination of Marc Boutet and Mrs. Mackie revealed that:

- (a) the Applicant had previously granted similar security to other noteholders;
- (b) the Mackies had asked for the security some nine months before it was perfected under the PPSA; and
- (c) while Marc Boutet acknowledged that he knew the Applicant was insolvent as early as the summer of 2007, the Mackies did not have this knowledge nor could they have reasonably obtained it.

4.5 The advice of Special Counsel was that it would be difficult to show that the transaction would be impugned and that litigating the preference issue would add substantially to the CCAA costs and unreasonably extend the time.

4.6 Representative Counsel accepted the advice of Special Counsel and negotiated a settlement with those secured creditors by getting them to agree to a \$25,000.00 discount, and other conditions as to timing.

4.7 Although Representative Counsel incurred expenses in questioning these claims, there were unexpected fact revelations by Marc Boutet on his examination with respect to the financial affairs of the Applicant. These revelations are discussed below.

5. PREFERENCE SHAREHOLDERS

5.1 Representative Counsel proposed, and Monitor agreed, that as the representative of the Noteholders, he was the proper party to bring a motion asking the Court to determine the characterization and priority of any claims as creditors that might be made against the Applicant by any preferred shareholders. The Representative Counsel was satisfied that any creditors claims of preferred shareholders are “equity claims” under the CCAA and subordinated to the claims of unsecured creditors under section 6(8) of the CCAA.

5.2 The independent counsel opinion, Representative Counsel’s notice of motion, the Monitor's notices to the preferred shareholders and the preliminary motions all served to ensure that the preference shareholders were given every opportunity to argue their priority. These are all on the Court record.

5.3 The preferred shareholder claims characterization motion was argued by the Representative Counsel and his special counsel on October 18 and 19, 2010.

5.4 Representative Counsel has examined the share register for the Applicant and has discovered that preference shares appear to have been redeemed while the Applicant was

insolvent, contrary to section 32 of the Ontario Business Corporations Act. This issue and other similar problems, including illegal payments of dividends contrary to section 38 and questionable commissions under section 37, are dealt with later in this report.

5.5 At this time, although Representative Counsel has asked the Applicant for certain financial information - which has not been forthcoming - Representative Counsel has no evidence of inadequate consideration for payment for preference shares. If the Court finds that the preference share claims are "equity claims" under the CCAA, and the preference shares are subsequently cancelled under the CCAA, this issue may become moot.

6. RE-ORGANIZATION AND MANAGEMENT

6.1 While initially Representative Counsel was given assurances that the Applicant could emerge from CCAA with existing management, subsequent events have caused the Representative to reject that position.

6.2 The CCAA process is now over 6 months old, and there has been no re-organization plan from the incumbent management of the Applicant. The Monitor has been advised repeatedly that a re-organization plan will be prepared (see page 9 of the Initial Report March 22, 2010; First Report April 15, 2010 page 12; Third Report June 16, 2010 pages 9-10; Fifth Report July 21, 2010 page 11). As at the date of this report there is no plan - just a reference in the Eighth Report of September 28th, 2010.

6.3 There have been a number of red flags raised by the Monitor during existing management's operation of the Applicant:

1. Monitor's First Report: April 10, 2010:

1.1 In Exhibit D, the Monitor states that the Applicant "... if it is to continue in business for the longer term, Nelson will need to obtain financing ...".

There has been no indication of any progress to achieve such financing.

1.2 At Page 6: Nelson lost 65% of its lending business through withdrawal of Lendcare, its major vendor. There has been no replacement of this

volume. Representative Counsel in reviewing Applicant prospects with management in August of 2010 was advised that the Applicant was not actively seeking New Vendors.

2. Monitor's Third Report: June 11, 2010:

2.1 Page 5: the Monitor advised that business had shrunk to less than 50% of historical lending volumes.

Page 6: Nelson unable to find sources of financing, but at Page 8 the Monitor advised that new financing was necessary for the Applicant to continue.

3. Monitor's Fifth Report: July 21, 2010:

3.1 Page 10: "Nelson's rate of lending is lower than it had planned. Nelson is working to address the drop in lending at the present time by sourcing new vendors".

4. Monitor's Supplemental to Fifth Report: July 23, 2010:

4.1 Monitor's report on cash flow forecast: "... we express no assurance as to whether the Cash Flow Forecast will be achieved."

5. The Monitor's original restructure plan reinvestment was \$8 million annually but by the end of June it had already dropped by 25% to \$6 million.

6. Monitor's Eighth Report: Sept. 28, 2010:

6.1 Page 14: "The Monitor understands that the Applicant's legal counsel is close to finalizing a first draft ...". No plan was received by Representative Counsel as of September 29, 2010.

6.2 Page 18: "... between July 10 and September 10, 2010, the Applicant's cash collections ... are \$762,939 lower than forecast."

6.4 Management has been less than forthcoming in requests on behalf of the Noteholders for information:

6.4.1 On August 12, 2010 the Noteholders were concerned over the operations of the business and requested through the Monitor the following information from the Applicant:

1. ***Receivables:***
 - 1.1 summary of receivables by amount
 - 1.2 summary of receivables by aging: 30 days, 90 days, 120 days and 180 days
 - 1.3 summary of non-performing loans, including aging
 - 1.4 summary of loans that are 90 days from being statute barred by the Limitations Act
 - 1.5 summary of accounts in collection
 - 1.6 using collection agency, including details of agency and costs, and
 - 1.7 using in house staff
2. ***Investment of corporate funds:***
 - 2.1 total of investment funds
 - 2.2 summary of investments, including
 - a. financial institution
 - b. type of investment
 - c. interest rates
3. ***Vendors***
 - 3.1 list of vendors as at March 23, 2010
 - 3.2 list of vendors as at August 1, 2010
 - 3.3 contact list of new vendors

The response from the Applicant through the Monitor (September 6) was inadequate:

1. ***Receivables***

... Nelson's consumer loans are its "receivables". They are tracked using software called LMS. It does not produce receivables information directly in the manner of your request. I want to talk further with Stephanie Sobol to see what information might be readily available. I will get back to you after I have had that discussion.
2. ***Investment of corporate funds***

Nelson keeps funds that are surplus to immediate requirements in a money market bank account at TD.

At August 27, 2010 they had \$356,520 in their regular account and \$4,179,860 in the Money Market Account. Given very low interest rates available for any form of money market investment we have not enquired as to what rate they are receiving.
3. ***Vendors***

We have discussed this request with Nelson and their legal counsel. Nelson have indicated that they regard information on vendors as confidential and do not wish us to disclose that information to you at this time. Please let me or Cliff Prophet know if that is a problem for you.

6.4.2 A further request was made for additional information on September 1, 2010 after a review of Nelson's financial statements by the Noteholders' accountant. The Applicant advised (through the Monitor) that the Applicant was "reluctant to devote

resources to giving you a formal response ... unless they are convinced it is essential".

The requests for information remain outstanding, and include the following:

- (a) reason for decreasing profit margins;
- (b) office overhead expenses, and
- (c) detail of \$531,762 in marketing costs

All of this information would be relevant to analyze any restructure plan. This lack of information reflects in a negative way on management of the Applicant.

6.5 As requested, Counsel for the Applicant provided a copy of the Shareholders' Register up to February 10, 2010, and his undertaking to provide any amendments up to March 22, 2010. Representative Counsel has reviewed the register. Based on the existing register, and the admissions under oath by Marc Boutet, it appears that there were redemptions of shares while the Applicant was insolvent, contrary to section 32(2) of the Ontario Business Corporations Act.

6.6 Based on corporate information provided by the Applicant, it appears at this time that Marc Boutet has been the controlling shareholder, probably the sole beneficial owner of all the voting shares and the sole director and officer since at least June 26, 2007.

6.7 It also appears at this time that the Applicant made both redemptions of shares and payments of dividends while the Applicant was insolvent, contrary to sections 32 (redemptions) and 38 (dividends) of the Ontario *Business Corporations Act*. Without the final share register, it is not possible to be precise as to the amounts paid, but the estimate at this time is:

Unlawful Redemptions:	\$ 2.3 million
Unlawful Dividends:	\$ 2.24 million

6.8 In addition, based on OSC information, and again without final numbers due to the non-disclosure by the Applicant, Marc Boutet directly or indirectly through his corporate alter ego, Nelson Investment Group Ltd., appears to have paid himself commissions in excess of \$2 million.

6.9 Representative Counsel is concerned about these payments and the possibility that they are payments prohibited by section 130(2)(b) [S.30 - redemptions of shares], 130(2)(c) [S.37 - payments of commissions] or 130(2)(d) [S.38 - payments of dividends].

6.10 Representative Counsel is of the opinion that Marc Boutet did not to meet the standard of care in S.134(1) and (2) of the Ontario *Business Corporations Act*.

6.11 The share register also discloses another series of transactions that cause concern for the Noteholders and involves redemption of common shares.

6.12 This transaction involved a restructuring of share ownership culminating in the purchase for cancellation of all the common shares previously owned by David Baker and Sharon Louise Baker (presumably his wife) over several months ending on June 26, 2007. The Applicant would not provide information for transactions in 2007, but the concerns raised are:

- (a) the insolvency of the Applicant at the time of the transaction; and
- (b) that these transactions represented a buy-out of Marc Boutet's former partner using the Applicant funds for the benefit of Marc Boutet.

It appears from the financial statements of the Applicant that it was insolvent as of its fiscal year ended July 31, 2007.

6.13 Because of the lack of complete accounting at this time, Representative Counsel is unable to do more than estimate that the payments to the Bakers exceed \$3 million, and likely more.

6.14 While it is acknowledged that the May 12, 2010 Statements of Allegations issued by the Ontario Securities Commission are not yet proven in the regulatory process, Representative Counsel has reviewed the allegations with counsel to the OSC and is concerned that regardless of the outcome of the hearing (set for February 2011) the

charges will make it difficult for Marc Boutet to attract new business and to raise additional capital. From communications received by the Representative Counsel from Noteholders and from the uncontradicted evidence of preferred shareholders in the motion heard on October 18 and 19, 2010, it appears to the Representative Counsel that these allegations of breaches of the *Securities Act* and of the making of fraudulent misrepresentations are well founded.

6.15 These outstanding OSC allegations also name the Applicant, and until they are resolved, they will have a serious negative impact on the ability of the Applicant to raise additional capital. Based on meetings and discussions with OSC Counsel, Representative Counsel believes (and has the consent of OSC Counsel to so advise the Court) that a change in management of the Applicant would permit a prompt and beneficial resolution of the allegations and proceedings as against the Applicant.

6.16 Representative Counsel has received two proposals for an effective recapitalization and rejuvenation of the Applicant. At this time those proponents have each asked that the proposals be kept confidential.

6.17 Representative Counsel is actively pursuing both proposals. Neither proposal would continue the incumbent management of Mr. Boutet.

6.18 Both proposals require due diligence by detailed examination of the Applicant's records. Based on the opaqueness of the Applicant's responses to date to Representative Counsel enquiries, it is extremely doubtful that due diligence could be conducted under existing management. However, Representative Counsel is confident of receiving full co-operation from the Monitor without existing management.

6.19 For the above reasons concerning the present and future problems of existing management, as well as the decline of the business of the Applicant, inability to formulate a plan of restructuring, as well as the future heavy financial claims to be made against Marc Boutet, for the protection of the Noteholders, Representative Counsel

recommends to the Court that existing management be terminated, and the Monitor's role be expanded as set out in the motion material to be served and filed by Representative Counsel.

6.20 In support of the removal of existing management and with the assistance of members of the noteholders' committee, Representative Counsel over the period of October 5, 2010 to October 14 2010 canvassed noteholders to ascertain the numbers that would not support the retention of existing management. The noteholders were advised by noteholder committee members of the management problems and asked for their views on management. Those who had lost confidence were asked to confirm this in writing :

To: Douglas Turner, Q.C. in his capacity as Representative Counsel for the Noteholders of Nelson Financial Group Ltd.

This will advise you that the undersigned is the holder of promissory notes issued by Nelson Financial Group Ltd. in the amount of \$. The undersigned has considered the outline of the plan of arrangement presented on behalf of Marc Boutet as incumbent management of Nelson Financial Group Ltd. by the Monitor on July 21, 2010.

Please be advised that will not support such a plan of arrangement where the business and assets of Nelson Financial Group Ltd. remain under the control of incumbent management, particularly Mr. Boutet. Please take any steps that you determine to be necessary to protect the assets and business of Nelson Financial Group Ltd. and to maximize the Noteholders' recoveries.

Dated at , this day of October, 2010

 Noteholder Signature

6.21 As of October 29 2010, this initial request for noteholder support for removal of existing management has produced responses from Noteholders holding over \$22 million by dollar volume of notes who would not support existing management. Written responses by fax or email are now over \$20 million. Representative Counsel is continuing to receive confirmations for removal. Based on conversations with other noteholders, Representative Counsel anticipates that over two thirds by value of the noteholders wish Marc Boutet removed from management.

6.22 On the basis of these expressions of an overwhelming proportion of the Noteholders, the Representative Counsel advised the Monitor that he was satisfied that obtaining the approval of the unsecured creditors for a restructuring plan for the Applicant could not be obtained without a change of management. Representative Counsel also advised the Monitor of his view that the continuing pendency of the OSC proceedings involved reputational and financial risks for the individuals in management that made a successful restructuring very difficult. He further noted that the resolution of these matters could delay the restructuring particularly since the hearing on the OSC allegations had been scheduled for the last half of February next year.

6.23 With the assistance of the Monitor, negotiations were undertaken with counsel for the Applicant and Marc Boutet as to the terms under which Mr. Boutet would depart on a consensual basis and with an orderly transition to new interim management to function under the supervision of the Monitor until a plan of re-organization can be developed on behalf of the creditors and filed for consideration by the unsecured creditors.

6.24 An agreement has been reached with Mr. Boutet on the terms for such a transition which the Representative Counsel is satisfied is in the best interests of the Noteholders. This requires that, conditional upon the approval of the Court, Marc Boutet will do or cause Nelson Financial Group Inc. to do the following principal things:

- i) appoint Sherry Townsend as Interim Operations Officer to act as chief executive of the Applicant under the supervision of the Monitor;
- ii) surrender all shares of the Applicant held by him or his affiliates for cancellation;
- iii) cause Nelson Investment Group Ltd. to surrender all claims and any security for any such claims that it may have as against the Applicant;
- iv) cause the Applicant to grant a release for all known matters to Stephanie Lockman Sobol and to confirm terms for her employment by the Applicant during a transition period;
- v) exchange mutual general releases between the Applicant and each of Marc Boutet and Nelson Mortgage Group Ltd.; and

vi) upon completion of the foregoing, he will resign as an officer and as a director of the Applicant.

These arrangements are set out in a document entitled Heads of Agreement dated October 29, 2010 which has been approved by Marc Boutet and approved by the Monitor and the Representative Counsel. A true copy of the Heads of Agreement is appended as Exhibit "A" to this Report.

6.25 Sherry Townsend has agreed to accept the appointment by the Court proposed to perform the chief executive functions of the Applicant. She has served as a member of the advisory committee assisting the Representative Counsel since June. She and members of her family hold promissory notes issued by the Applicant with aggregate claim values of \$892,000. She is independent and unrelated to the Applicant and to Marc Boutet and Stephanie Sobol. In the course of her work in recent months with the Representative Counsel, she has acquired substantial knowledge of the business of the Applicant and has been directly engaged in assisting the Representative Counsel in addressing the alternative restructuring possibilities for the Applicant or its business and assets. She has been particularly helpful in those efforts. . Through her offices, and with the knowledge and approval of the Monitor, Ms. Townsend has made arrangements for senior executives from consumer finance divisions of first tier financial organizations to examine the business of the Applicant and make recommendations for the maximizing of the creditors' interests in the Applicant. Representative Counsel anticipates that these recommendations will be used in the reorganization plan to be presented to the Court and the noteholders.

6.26 The Representative Counsel has confirmed the business experience, management skills and sensible judgment of Sherry Townsend. Ms. Townsend is a successful entrepreneur who established her own company in the printing and promotional packaging business. With over 18 years as its president and chief executive officer, she has made it very successful. That business now has a staff of about 60 and sales of over \$7,000,000 per year. The Representative Counsel is satisfied that she has the

management skills and sound judgment that are required to stabilize the business, employees and operations of the Applicant through the change of management. The Representative Counsel recommends that the Court should appoint her to perform those functions as Interim Operations Officer of the Applicant to act under the supervision of the Monitor and the directions of this Court.

6.27 The Representative Counsel is satisfied that Sherry Townsend in performing the functions assigned to the Interim Operations Officer should properly have the protections set out in the draft order including the benefit of an increased Directors' Charge and a full indemnity.

7. RESTRUCTURING COSTS

7.1 As noted on p.18 of the Monitor's Eighth Report, "... as noted earlier and detailed in the Report of the Monitor ... the Monitor and ... legal counsel ... have collectively had to deal with a number of issues that were not fully anticipated in June 2010 ...".

7.2 Initially Representative Counsel was advised by the Applicant, the Applicant's counsel and the Monitor that the CCAA proceedings were expected to involve a prompt assessment and proof of claim process accompanied by a re-organization plan to be presented very shortly by the Applicant that would result in a speedy exit from CCAA administration. On this basis, Representative Counsel accepted the cap on counsel fees suggested by the Counsel for the Applicant and set out in paragraph 6 of the Representative Counsel Order. Unfortunately these expectations of May have not come to pass.

7.3 Representative Counsel, like the Monitor, has needed to confront and deal with a large number of additional and difficult issues:

(a) The large number of Noteholders (in excess of 300) resulted in a need for communication and the creation of an active and competent Noteholders' advisory committee and corresponding time spent in organization and communications. Representative Counsel determined that many of Noteholders were small non-accredited

investors who had been induced to purchase notes by fraudulent misrepresentations. The reliance of some of them on the interest on these notes for their support necessitated the efforts of the Representative Counsel to achieve transparency and provide explanations were necessary to maintain the integrity of the restructuring process.

(b) The bad optics created by the preferential treatment given to Foscarini Mackie and the apparent preference demanded a thorough review of the facts and the testing of the claimants veracity and probity under oath.

(c) The large size of the potential creditor claims of the preferred share investors had the potential to dilute the Noteholder's potential recoveries by as much as fifty percent. The understandably desperate cries for help of the preferred shareholders, even after the release of the independent counsel's opinion, necessitated the Representative Counsel addressing this issue and taking a lead role to have the question determined by the Court.

(d) The lack of the production of any plan by the Applicant, and the rapid shrinking of the Applicant's business, particularly after the loss of business volumes that had been originated through Lendcare, constituted a material threat to the Noteholders' possible recovery on their claims. When combined with the lack of transparency from management of the Applicant, and the taint of the OSC allegations, the Representative Counsel concluded, and his advisory committee of Noteholders agreed, that the Noteholders had to look to developing their own plan or to finding a third party who would participate in a purchase transaction to improve their recoveries. Representative Counsel undertook to pursue both of these courses and is continuing to do so. This effort, which shows possibilities of being productive, did involve further unanticipated professional time.

(e) The examinations of what first appeared to be peripheral claims, such as redemptions and dividends during insolvency, led down another avenue that had to be examined to protect the interests of the Noteholders.

(f) It appears likely that the Noteholders may have to proceed with a creditor proposed plan of re-organization and this may result in the Representative Counsel needing to retain solicitors, tax advisors and other professionals in order to document and complete the re-organization transactions.

(g) The Representative Counsel may need, in addition to the accounting advice already obtained, specialized tax advice with respect to the capital structure and the value to third party new investors of the non-capital loss carry forwards and the paid-up capital accounts of the Applicant.

(h) Finally, there has been a substantial administrative burden on Representative Counsel in dealing with individual noteholders and their counsel, although the professional support of the Monitor has considerably assisted with this burden.

7.4 Taking into consideration the changing role of the Representative Counsel, the pending change of management of the Applicant, and the conversion of the restructuring from a debtor-directed process into a process requiring the preparation of a creditor-directed plan, additional volumes of necessary work are to be expected. Material portions of such work will need to be performed by the Representative Counsel instead of the counsel for the Applicant. Representative Counsel requests that the provisions of the Representative Counsel Order dealing with its fees and disbursements be amended to make such subject to approval by the Monitor and ultimately the approval of the Court or as it may direct..

All of which is respectfully submitted

Douglas Turner Q.C.

November 3, 2010

TAB 6

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

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

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT
OF
NELSON FINANCIAL GROUP LTD.**

APPLICANT

**SECOND REPORT OF DOUGLAS TURNER, Q.C.,
REPRESENTATIVE COUNSEL FOR NOTEHOLDERS
NOVEMBER 15, 2010**

1. INTRODUCTION

- 1.1 The first report of Representative Counsel was dated November 3, 2010. Significant changes have happened in the short span of time necessitating this Second Report to the Court.
- 1.2 Representative Counsel commenced in September of 2010 negotiations for the voluntary stepping aside of Marc Boutet from management, his resignations as an officer and director, and the surrender for cancellation of all of his common shares in Nelson Financial Group Ltd. ("Nelson Financial"). Representative Counsel was conscious of the costs of extensive court proceedings if there were no voluntary departure. These negotiations culminated in the Heads of Agreement which is exhibit 1 to the first report of Representative Counsel dated November 3, 2010.
- 1.3 Marc Boutet then required that he settle any allegations of the OSC against him before he would execute the Heads of Agreement.
- 1.4 The Ontario Securities Commission staff on November 10, 2010 amended their Statement of Allegations with respect to Marc Boutet. These amendments have been posted. The amendments (to sections 1, 2, 3, D, 36, 39 and 40) add allegations of misrepresentation, fraud and conduct abusive to the integrity of the capital markets and contrary to the public interest against Marc Boutet and others.
- 1.5 While the OSC is charged with the protection of all of Nelson's security holders (including the preference shareholders) Representative Counsel has been advised that

OSC staff supports the removal of Marc Boutet. Representative Counsel continues to work with OSC staff counsel to protect and advance the Noteholders' interests, and continues to receive the support of OSC counsel. In addition, while the original allegations name Nelson Financial as a party, Representative Counsel believes that the OSC fully supports the reorganization of Nelson under the CCAA, and that any reorganization will include the deletion of Nelson Financial as a party.

2. PROPOSED CHANGES IN MANAGEMENT PROPOSAL

- 2.1 After prolonged negotiations during most of October among the Representative Counsel, the Monitor and counsel for Mr. Boutet, heads of agreement were drafted by the Representative Counsel which were believed to be acceptable to all. That document is found as Exhibit 1 to the Representative Counsel's First Report dated November 3, 2010 and filed with the Court. Those were not executed by Mr. Boutet as he insisted that a settlement of the OSC proceedings was a pre-condition.
- 2.2 After further discussions with the Monitor and counsel for Mr. Boutet and the commencement of the Representative Counsel's motion seeking the removal of Mr. Boutet by the Court, Marc Boutet on November 12, 2010 executed an amended Heads of Agreement. for the removal of existing management through the voluntary stepping aside of Marc Boutet. A copy of the final Heads of Agreement executed by Mr. Boutet and approved by the Representative Counsel and the Monitor, subject to approval of the Court, is attached as Exhibit 1 to this Report. This agreement is conditional on Court approval.
- 2.3 Marc Boutet indicated that he would not execute the original Heads of Agreement without some provision for the continuing payment of his costs of the defence of the OSC proceedings.
- 2.4 Representative Counsel and the Monitor had to consider the effect of the by-laws of Nelson which purported to require the company to pay any legal defence costs of Marc Boutet. This by-law is section 6.2 of the company's by-laws and is referred to in the third report of the Monitor dated June 11, 2010 at paragraphs 57 and 63, where the Monitor recommended that the company continue to pay these legal expenses of Marc Boutet. Representative Counsel and Special Counsel had grave concerns about the obligations of the company under this part of the by-law, and these concerns were underlined by the change in OSC allegations now including fraud and misrepresentation by Marc Boutet.
- 2.5 There was also a concern about the fact that Marc Boutet could argue that the claims against the company for his legal costs were open ended and could even be expanded to include subsequent appeals should Marc Boutet not be successful during the first hearing.
- 2.6 The Securities Commission had set a date for the hearing against Marc Boutet for two weeks, beginning February of 2011, and this meant that the company could be liable for the costs of Boutet for not only a senior lawyer and a junior, but also for preparation time

which could be up to a week or more, and that this possible further financial drain could be a drag on the company's reorganization.

- 2.7 After agonizing review of the costs by the Representative Counsel, his Special Counsel and consultations with the noteholders' committee, the committee's unanimous – although extremely reluctant - conclusion was that the risk of the company continuing without proper management, the costs, the necessary delay of Court proceedings of obtaining and enforcing any removal order, meant that the noteholders had no choice but to consent to the amendment. The Representative Counsel so advised the Monitor, who also agreed.
- 2.8 Accordingly, the parties agreed to add clause 8 to the Heads of Agreement. The parties agreed that Representative Counsel would bring a motion for approval of the amended Heads of Agreement.
- 2.9 Because of the urgent need to proceed with the plan of reorganization, to avoid the hiatus period from the time of the execution of the agreement (which finally took place on November 11) an additional clause was added to section 1 of the Heads of Agreement to provide for the interim period until the Court has properly reviewed and heard from any other affected parties. The amendment permits Ms. Townsend immediate access to the company premises and records commencing Monday, November 15, 2010.
- 2.10 Representative Counsel applied to the Court on an urgent basis, and on November 12 the Court
- (a) set the date of November 22 for the hearing of the motion of Representative Counsel for a hearing of the motion to remove Marc Boutet and other interim orders that counsel agree need to be brought before the Court, all of which are set out in Representative Counsel's amended motion dated November 12 and posted on the Monitor's web site and filed in Court;
 - (b) directed that the preference share claimants as well as the other interested parties be served with the Notice of Motion (which has been posted on the Monitor's web site and is being filed with the Court under the Rules).
- 2.11 As directed by the Court, all parties were served with Representative Counsel's amended Motion.

3 INTERIM OPERATING OFFICER

- 3.1 If approved by the Court on November 22, Sherry Townsend by virtue of Exhibit 1 becomes the Interim Operating Officer of Nelson Financial Group Ltd.
- 3.2 Representative Counsel has worked continuously with the noteholders' committee members, and in particular with Ms. Townsend, who, in addition to being a substantial noteholder (in the amount of \$892,000.00) is an experienced business person who has

started and run her own business over the last seventeen years. The business has a staff of forty and income in excess of seven million dollars annually. In addition, she has arranged for the retaining of experts in the financial world of consumer lending as described below.

- 3.3 Included in Ms. Townsend's duties will be the retaining and supervision of consultants with consumer lending experience to analyze Nelson. Ms Townsend's CV, the consultants' mandate and their qualifications are in exhibit 2. Representative Counsel is confident that the consultants are necessary for the analysis of the business of Nelson, particularly because of the unfortunate (but unduly lengthy in the view of Representative Counsel) holding pattern that the company has been in since March 22, 2010.
- 3.4 The Monitor has also spent appropriate time reviewing the proposed new management and consultant analysis, and Representative Counsel is advised that Ms. Townsend and the consultants will have the full support of the Monitor.
- 3.5 Ms. Townsend has been working with the Monitor for the past weeks and Representative Counsel is satisfied that they have and are in the process of working out the details of the duties of the Interim Operating Officer, including the increased responsibility of Ms. Townsend if the Court approves the Heads of Agreement.

CONCLUSION

For the above reasons, it is the recommendation of Representative Counsel and Special Counsel that the Court approve the Heads of Agreement executed by Marc Boutet on November 12, 2010 and appoint Ms. Sherry Townsend as Interim Operating Officer of Nelson Financial.

All of which is respectfully submitted

Douglas Turner Q.C.

November 15, 2010

**EXHIBIT 1 to Report of Representative Counsel to Court
November 15, 2010**

Heads of Agreement

In connection with the insolvency of Nelson Financial Group Ltd. ("Nelson Financial") and the efforts to restructure it or its assets and undertaking in order to maximize the recoveries of its creditors, Douglas Turner Q.C., in his capacity as Court-appointed representative counsel for the Noteholders of Nelson Financial (the "Representative Counsel"), appointed by the Court in the proceeding of Nelson Financial under the *Companies' Creditors Arrangement Act* (the "CCAA") has been advised by Noteholders holding more than half of the claims by value that they will not support the plan of arrangement proposed by incumbent management. The Representative Counsel has determined that for this and other reasons, a change of management of Nelson Financial is likely to enhance the possibility of a restructuring of Nelson Financial.

Marc Boutet ("Boutet") holds all of the voting shares of Nelson Financial and is its sole director and corporate officer. Boutet is the sole officer, director and beneficial shareholder of Nelson Mortgage Group Inc. ("Nelson Mortgage"). In each of those several capacities and in his personal capacity, he agrees with the Monitor and with the Representative Counsel to take or support, as the context may require, the following steps for the purpose of replacing the incumbent management control of Nelson Financial:

1. As the sole director of Nelson, Mr. Boutet will forthwith approve a resolution satisfactory to the Representative Counsel and to the Monitor appointing Ms. Sherry Townsend as the Interim Operating Officer of Nelson, delegating to her the authority to manage the business and assets of Nelson Financial on such other terms as she or other stakeholders (or any of them) may propose and which are then recommended by the Monitor and approved by the Court. Ms. Townsend shall be provided full access to the premises and records of Nelson Financial immediately but shall assume neither responsibility nor authority with respect to its operations and assets until the Court approves these arrangements and her appointment on terms and conditions satisfactory to her.
2. On the date upon which the Court authorizes Nelson Financial to perform these arrangements and approves the appointment of the Interim Operating Officer (the "Effective Date"), Boutet shall tender to Nelson Financial for cancellation all of the shares in its common stock held by him or entities associated with him. As its sole director, Boutet shall approve and consent to a resolution accepting such surrender and cancellation. Immediately thereafter, Boutet shall resign as a director, officer and employee of Nelson Financial.
3. Boutet and any corporation associated with him, including without limitation Nelson Investment Group Ltd. and Nelson Mortgage, will surrender and release

all of their claims against Nelson Financial, including all Claims under the Claims Procedure Order, provided that the foregoing release shall not apply to or compromise in any way the rights of:

(a) Paladin Holdings under existing lease arrangements for the office premises of Nelson Financial; or,

(b) Boutet in relation only to wages due to him (on existing terms) up to the Effective Date.

4. Nelson Financial shall agree to propose, or to support if proposed by a creditor or other person, a plan of compromise or arrangement in respect of Nelson Financial which includes a release of such claims by any person against Boutet in his capacity as a director of Nelson Financial as can be compromised pursuant to s. 5.1(1) and (2) of the CCAA..
5. (a) The employment of Stephanie Lockman Sobol (“Sobol”) shall be continued by Nelson Financial following the Effective Date (defined below) (the “Temporary Employment”) for a period of 6 months (the “Temporary Employment Term”) on the basis that the Temporary Employment Term shall constitute working notice. The Temporary Employment shall be on substantially identical terms and conditions to those currently in place, except that she shall report to and be subject to the direction of the Interim Operating Officer. In the event that Sobol’s services are terminated by Nelson Financial before the expiry of the Temporary Employment Term, she shall be entitled to pay in lieu of notice equal to that which she would have earned during any remaining period of the Temporary Employment Term. If she should be required to perform for five months of the Temporary Employment Term, she shall thereupon be granted a bonus of two months salary.

(b) Nelson Financial will provide a full and final general release in favour of Sobol of any claims which the Monitor and the Representative Counsel have knowledge of and are referred to in the reports of the Monitor in the CCAA proceeding up to the date hereof.
6. Nelson Financial will provide a full and final general release in favour of Boutet and Nelson Mortgage of any and all claims which Nelson Financial may have against either of them, including without limitation any claims that could be asserted under section 130 of the *Business Corporations Act* (Ontario) in respect of Boutet’s acts as a director to approve or consent to the payment of any dividends or the redemption of any preferred shares of Nelson Financial.
7. Subject to the approval and direction of the Court in the CCAA proceeding of Nelson Financial, the Monitor and the Representative Counsel shall advise the Ontario Securities Commission that the steps taken by Boutet in the matters dealt with herein, in their opinion, constitute a material contribution to the unsecured

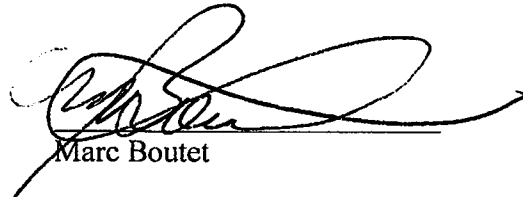
creditors and the Noteholders of Nelson Financial and that they do not object to a settlement substantially on the terms outlined in the proposal presented by Boutet to them on October 18, 2010.

8. Nelson Financial shall pay the sum of \$90,000 (the "Payment") to Gowling Lafleur Henderson, LLP ("Gowlings"), in trust to be applied to reimburse or pay legal costs and expenses incurred by Boutet and Sobol after the Effective Date in relation to the proceedings commenced against Boutet and Sobol and others by the Ontario Securities Commission (the "Proceedings"), in full satisfaction of any obligations pursuant to section 6.2 of the General By-Law of Nelson Financial. In the event that the Proceedings are fully and finally resolved in relation to Boutet and Sobol and any amount of the Payment remains unspent after payment of all amounts due to Gowlings in respect of the Proceedings, Gowlings shall return the said amount to Nelson Financial. Upon request, Gowlings shall provide Nelson Financial with copies of its invoices in relation to the Proceedings, redacted for privileged information.

The foregoing heads of agreement are subject to and conditional upon the approval of the Court in the CCAA proceeding of Nelson Financial. The Representative Counsel will bring a motion seeking such approval and the approval and appointment of the Interim Operating Officer by November 18, 2010 to be heard as soon as the Court will schedule the same. If such Court approval shall be refused or not granted for any reason by November 30, 2010, these heads of agreement shall be null and void and of no effect.

Toronto, Ontario

November 11, 2010



Marc Boutet

The Representative Counsel will make and the Monitor will support an application to the Court for the approval by the Court of Nelson Financial and Marc Boutet entering into and implementing the arrangements set out above, including the agreements and releases between Nelson Financial and each of Marc Boutet and Stephanie Lockman Sobol, and each of the Monitor and the Representative Counsel will recommend such approval by way of Reports to be filed with the Court.

Toronto, Ontario
October 29, 2010

A. John Page & Associates Inc., in its
capacity as Monitor of Nelson Financial
Group Ltd.

Per: _____
A. John Page

Douglas Turner, Q.C., in his capacity as
Representative Counsel appointed by the
Court

**Exhibit 2 to Report of Representative Counsel to Court
November 15, 2010**

SHERRY TOWNSEND

PROFILE

A high-calibre executive with a focus on operational management, process improvement and team leadership. An energetic team leader able to communicate effectively with people of all ages and backgrounds working collaboratively to resolve issues and to motivate team members to achieve personal and organizational objectives. Able to identify and implement successful process improvements that increase accuracy, consistency and efficiency through analysis and attention to detail.

BUSINESS EXPERIENCE

BUSINESS
1992 - present
OWNER

PROMOTIONAL PRINT AND PACKAGING INC., Scarborough

Responsibilities:

- Oversees management of entire business including daily operations, monitoring cash flow, budget and overhead, and performs safety and compliance checks
- Provides leadership and strategic vision to guide all aspects of the business
- Conducts strategic planning to manage business growth and maintenance
- Manages 50 employees on a daily basis
- Liaises with management on production meetings
- Develops and nurtures business relationships with clients
- Manages clients on a day to day basis
- Negotiates company contracts with clients

Accomplishments:

- Built the business from the ground up to \$8 million in annual sales
- Expanded the business from packaging and printing by developing and integrating promotions and fulfillment house capability, thereby creating a one stop shop for clients
- Employ and manage 50 employees
- Fostered a positive work environment achieving a high employee retention rate
- Boasts top tier list of clients
- Selected as a preferred supplier to manage warehouse management system for a client's retail products and packaging

- Achieved several million dollars in cost savings for a client through effective cost management and negotiation
- Developed and implemented stringent, high quality packaging standards
- Awarded and recognized by a client for achieving 100% accuracy in our business output
- Developed and implemented promotional activities which achieved 35% increase in sales

BUSINESS

COMMERCIAL HAND LABOUR, Scarborough
1983-1992

OWNER

Responsibilities:

- Management of general business day to day operations
- Supervising and training employees
- Development of customer relationships

Accomplishments:

- Launched new packaging company in 1983
- Achieved \$1.5 million sales volume in 2 years
- Expanded the business to include printing in 1988
- Secured top tier clients

HEAD CASHIER

DOMINION STORES LTD, Scarborough
1973-1983

Responsibilities:

- Forecast planning
- Customer care
- Inventory control
- Staff recruitment
- Staff training

Accomplishments:

- Promoted to head cashier at 21 years of age

EDUCATION

INTERIOR

SENECA COLLEGE, Toronto
1985-1986

DESIGN

OTHER
ACCOMPLISHMENTS

- Raised \$282K for breast cancer through fundraising efforts

OTHER SKILLS

- Proficient in Microsoft Office, Word, Excel, PowerPoint, Outlook, Warehouse Management systems

TAB 7

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

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

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT
OF
NELSON FINANCIAL GROUP LTD.**

APPLICANT

**THIRD REPORT OF DOUGLAS TURNER, Q.C.,
REPRESENTATIVE COUNSEL FOR NOTEHOLDERS**

NOVEMBER 29, 2010

1. INTRODUCTION

- 1.1 The first reports of Representative Counsel were dated November 3 and November 15 2010. Further events have happened in the short span of time since the Second Report necessitating this Third Report to the Court.
- 1.2 As outlined at paragraphs 2.4 and 2.12 of the First Report, Representative Counsel appointed a Noteholders' committee and established a web site (*NelsonNoteholders.ca*) to establish and maintain communication with the some 273 Noteholders of the Applicant.
- 1.3 Representative Counsel has determined that the communication with the Noteholders has served a useful function in advising the Noteholders of issues not always included in the Monitor's website and directly affecting the Noteholders, such as the dissatisfaction with management as described in sections 6.20-6.21 of the First Report. The communication channels that have been established by email, fax, telephone and mail have enabled Representative Counsel and Special Counsel (with the assistance of the Noteholders' committee) to learn the concerns and wishes of the Noteholders.
- 1.4 Noteholders have continuously made known their concerns on the administration of the Applicant. Representative Counsel and Special Counsel are continuing to deal with the questions of Noteholders.

2. COSTS CONCERNS OF NOTEHOLDERS

- 2.1 After reviewing the Ninth Report of the Monitor (and its Supplement) and the Monitor's motion for approval of costs heard November 22, 2010, the Noteholders on November 29, 2010 spontaneously and without involvement of Representative Counsel or Special Counsel independently reviewed the costs of the CCAA administration, and considered the possibility

of the amount of the going-forward costs, up to the time of the end of the CCAA administration.

- 2.2 Through the offices of the Noteholders' committee, a substantial majority of the Noteholders – 71% by dollar value and 61% by numbers of Noteholders – requested Representative Counsel to forward to the Court the correspondence attached as **Exhibit 1** to this Report.
- 2.3 Representative Counsel has not attached the voluminous email responses to the original email from the Noteholders' committee and referred to in Exhibit 1, but has reviewed this correspondence (referred to on page 2 of Exhibit 1), and believes that the responses represent \$25,585,190.99 of the \$35,846, 196.23 in value of outstanding notes, and 166 of the 273 notes outstanding.

All of which is respectfully submitted

Douglas Turner Q.C.

November 29, 2010

**EXHIBIT 1 to Report of Representative Counsel to Court
November 29, 2010**

November 28, 2010

Mr. Douglas Turner, Q.C.
Barrister and Solicitor
63 Albert Street
Uxbridge, Ontario
L9P 1E5

Dear Mr. Turner,

On behalf of the Nelson Noteholders' Committee and all Noteholders, we are requesting that you, as our representative legal counsel, bring to the attention of Justice Pepall the following:

- 1) that we want to raise very serious concerns and outrage regarding the exorbitant and escalating monitor and legal costs which have not been suitably controlled, and,
- 2) that we want to restrict the role of the monitor and its counsel to only monitoring activities required under the CCAA rules in order to avoid cost duplication, and ensure more cost efficient spending.

The Nelson Noteholders are appalled and horrified, and are objecting vehemently to the costs that have been expended to date i.e. \$2.2 million and which are forecasted to reach up to \$4 million in fees. The largest proportion of these fees has been charged by the monitor. These costs are unacceptable, particularly due to the fact that they represent approximately 20% of the estimated remaining value of Nelson Financial. Nelson Financial is neither a Can-West nor an Air Canada. There are not billions of dollars to absorb such costs, and the creditors in question are private individuals, not institutional lenders. These escalating costs, coupled with sub-optimal business operating levels, are penalizing the very individuals who have suffered at the hands of incumbent management and diminish the prospect of financial recovery. We are asking you to make the judge aware of our concerns in order to have certain costs reviewed, and to contain the overall costs for the remainder of the CCAA proceedings.

Additionally, on two occasions, the first being July 22, I personally sent the monitor a communication (see attached e-mail) expressing my concern with respect to the growing costs, pleading for better cost monitoring. I had asked that he deal with the cost issue to ensure that there was no duplication of lawyers attending every court date, etc. Again, I sent another e-mail to the monitor citing these very issues again on November 12, but to no avail, as costs have continued to mount at an alarming rate.

After the Noteholders' Committee conducted a recent review of invoices, we were left with concerns as to who has been monitoring the Nelson Financial restructuring costs. Among other issues, invoices directed to the monitor from its counsel as well as from its independent counsel for the preferred shareholder opinion, were sent for payment, without fully detailed dockets of time spent, and dates with tasks performed by each lawyer (or paralegal). Further, a cap of \$50K was placed in the Order for the preferred shareholder opinion. However, the final bill, which the monitor approved, was for \$68K. We would have expected the monitor to have clearly communicated the fee cap restrictions for the scope of this work to the independent counsel.

Additionally, we have concerns regarding invoices that were directed to Nelson Investment Group (a separate entity from Nelson Financial), by the applicant's counsel, but were paid for by Nelson Financial. We would ask once again, who was supposed to be monitoring these costs? As Noteholders, we were under the impression that the monitor was the watchdog. The monitor's counsel e-mailed our special counsel on November 21, 2010 stating that the "Monitor will not be taking a position on anyone's professional fees other than its own and those of its counsel". This statement puts into question why the monitor is not "taking a position" on costs when our understanding is that the review of fees to protect our assets is within his mandate.

The appointment of representative counsel has been and is still incredibly important for the protection and preservation of the Nelson Noteholders' rights and remaining investments. The committee is comfortable with the fees that representative counsel and its special counsel have had to charge to date, having had to deal with unexpected issues such as the Foscari-Mackie matter, the preferred shareholder issue, and ultimately, the initiation and negotiation of the removal of incumbent management from Nelson Financial. At times, our representative counsel's progress was impeded by the monitor as he was not forthcoming with information that was requested on numerous occasions (referred to in Doug Turner's first report to the court, paragraphs 6.4.1 and 6.4.2). The information requested included prior financial statements and needed financial information regarding the applicant's current and past business management.

We ask that the Interim Operating Officer (IOO) in consultation with representative counsel, take the primary responsibility for the design and development of both the business and restructuring plans. The IOO would consult with the monitor on an as needed basis. Additionally, we are requesting as our legal representative, that you seek to restrict the activities of the monitor and its counsel to basic monitoring only, including the preparation of the independent report on the restructuring plan as required by CCAA rules as we understand them. It is imperative at this point, after 8 months into CCAA proceedings, that we move to accelerate this process as this matter has been dragging for too long, and the monitor has been unable to get prior management to advance this process in a rapid and cost-contained manner.

Attached you will find the support and letters from Nelson Noteholders representing 71% of the value (\$25.6 million) and 61% of the promissory notes outstanding (as of November 28, 2010) with respect to their opposition to the costs in this matter, and favouring the reduction of the monitor's role to basic monitoring required under the CCAA.

We thank you in advance for your assistance in this matter.

Sincerely,

Tina Young (a Nelson Noteholder)

On behalf of the Nelson Noteholders' Committee and all Noteholders

----- Original Message -----

From: Tina Young

To: A. John Page

Cc: doug.turner ; richard.jones@sympatico.ca ; marc@nelsoninvestment.ca ; Sherry Townsend

Sent: Thursday, July 22, 2010 4:59 PM

Subject: Nelson Excessive Restructuring Costs

John,

Further to our conversation regarding legal costs, I took a look at the cash flow projection from your 5th report out today. If you take \$766,000 (your total for restructuring costs including the monitor) for the 11 weeks you have projected, this works out to \$51,066 per week! (close enough to the \$60,000 number I quoted you). These costs are unacceptable for all stakeholders involved and must be put in check. If this needs to be brought before the court as to the excessive and possibly abusive nature of legal costs - than we must. The initial costs of \$1.2 million set aside for the restructuring, will be far exceeded, and at this rate, to the tune of more than \$3 million!

I will site once again an example of this abuse of stakeholders funds: at the noteholders meeting on Wednesday, July 21, 2010, there were 2 lawyers from Gowlings - Cliff Prophet and Frank Lamie - only one needed to be there to take notes and represent Marc, etc.; there were 2 lawyers for the monitor, Mr. Grout and Ms. Aggarwal - I would say the same applies here, that only one lawyer needed to be there.

There have also been a number of instances where there has been more lawyers than needed showing up at court hearings.

I am strongly requesting that this is dealt with immediately with all parties as the committee will be requesting more accountability and documentation with respect to these fees. Our expectation (and the court's expectation) of the monitor is to be the "watch dog" of these costs.

On a go forward basis:

we expect coordination amongst all lawyer and monitor parties with a list of who really needs to be in court or other relevant activities, ensuring there is no double counting of people and fees.

Thank you for your assistance in this very important matter.

Regards,

Tina Young

----- Original Message -----

From: Tina Young

To: A. John Page

Cc: Sherry Townsend ; doug turner

Sent: Friday, November 12, 2010 4:25 PM

Subject: Excessive Restructuring Costs

Hi John,

As a follow up to my email of July 22 - I had requested on behalf of the noteholders that there would be more careful use of the various lawyers with respect to the go forward in order to manage the continued excessive restructuring costs which are approaching \$3 million as I had previously forecasted. I understand that in recent weeks, that there has been the "doubling up" of the monitor's lawyers and Marc's lawyers (I understand that there were doubles in court today). I would like it if you would please advise the lawyers involved that we are only paying for the services of one lawyer to attend all of these activities - it continues to be unacceptable that this doubling up of professional fees continues. I have conferred with the incoming IOO and we expect full accountability of these recent activities as we will require appropriate justification for these and any go forward where doubling of lawyers may be deemed necessary.

Thank you for taking care of this important issue.

Tina

TAB 8

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

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

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT
OF
NELSON FINANCIAL GROUP LTD.**

APPLICANT

**FOURTH REPORT OF DOUGLAS TURNER, Q.C.,
REPRESENTATIVE COUNSEL FOR NOTEHOLDERS**

APRIL 16, 2011

1. INTRODUCTION

- 1.1 The first three reports of Representative Counsel were dated November 3, November 15, and November 29, 2010.
- 1.2 On November 22, 2010, Justice Pepall confirmed the removal of existing management and the appointment of Sherry Townsend, a Noteholder, as Interim Operating Officer (the "IOO") of the company. As part of the settlement, negotiated for his removal without the risks of costly litigation, Marc Boutet also agreed to surrender all his shares in the company and resign as a director and officer. The overwhelming rejection of Mr. Boutet by the Noteholders through emails, faxes, and letters, was a significant factor in removing him.
- 1.3 The Agreement for Mr. Boutet's removal is found in Exhibit 1 to the Third Report of Representative Counsel.
- 1.4 Ms. Townsend was given the power as IOO to assume operating management of the company by the Court on December 9, although Mr. Boutet did not sign all of his agreed documents until December 13.
- 1.5 The IOO, with the approval of the Court in the Order of November 22, retained consultants to analyze the business of Nelson. The consultants agreed to produce an interim report on December 15, and a second phase report before the end of January 2011.

2. CONSULTANTS' REPORTS ON VIABILITY OF COMPANY

- 2.1 The consultants' interim report on December 15, 2010 confirmed that the consumer finance business model was a viable model for the company, but also confirmed what Representative Counsel, Special Counsel, and the Noteholders' committee members had suspected : the company was not properly managed.
- 2.2 Ms. Townsend reorganized the company where necessary to create profitability for the return on the Noteholders' money. The reorganization included staff streamlining, collecting the company's receivables, and pursuing new vendors, and is set out in further detail in the IOO's First Report dated February 18, 2011, particularly at paragraphs 5 – 12. The Representative Counsel accepts the IOO's First and subsequent report as accurate.
- 2.3 Due to the lack of proper records and the extremely inadequate records and Information Technology, the consultants' second report was longer in preparation than initially estimated, and was not completed until the beginning of February, 2011.
- 2.4 The consultants' report consisted of a detailed Business Plan, which was used to prepare both the Plan of Arrangement filed with the Court on February 22, 2011 (*infra*), and the Information Circular for the Noteholders (*infra*). The Business Plan was provided on a confidential basis to the Monitor. As part of the settlement negotiations to terminate the Ontario Securities Commission proceedings brought against the company contemporaneously with the proceedings brought against the previous directors, officers, and shareholders (all of whom had ceased to have any connection with the company on December 13, 2010 by virtue of the completion of the Heads of Agreement, *supra*).

3. PLAN OF ARRANGEMENT

- 3.1 The Plan of Arrangement was filed by the IOO on February 11, 2011 with the Court. The IOO also brought on behalf of the creditors (virtually all of whom were Noteholders) an application on March 4, 2011 before Justice Morawetz (replacing Justice Pepall) who ordered, *inter alia*, that the company :
 - (1) send the Plan to the creditors on or before March 10, 2011;
 - (2) prepare and, after obtaining confirmation from the OSC staff that it did not oppose the contests, send an Information Circular with prospectus level disclosure to the creditors on or before April 6, 2011;
 - (3) notify all creditors of and hold a meeting of all creditors on April 16, 2011 to consider and if seen fit, approve the Plan of Arrangement.
- 3.2 The March 4 Order also provided :
 - (1) for the appointment of Greg S. MacLeod CA, CIRP as Chairman of the meeting;
 - (2) for the appointment of Ronald S. Dale CA as Scrutineer; and

- (3) that the Monitor prepare and serve a report on the Noteholders on or before April 6, 2011.
- 3.3 The March 4 Order set April 20 for a sanction hearing following the April 16, 2011 Creditors meeting.
- 3.4 All of the actions in 3.1 and 3.2 were completed.
4. INFORMATION CIRCULAR, NOTEHOLDER INFORMATION MEETING, AND SINGLE NOTEHOLDER MOTION FOR DELAY
- 4.1 The Information Circular after OSC staff review was sent to the Noteholders on March 22, 2011.
- 4.2 The Noteholders' Committee held an information meeting on March 26, 2011 at which the IOO, Representative Counsel, Special Counsel, the company's proposed accountants, and proposed directors were present. The IOO reviewed the Plan of Arrangement and the Information circular with 172 Noteholders and their representatives, being two thirds of the Noteholders.
- 4.3 Following the March 26 meeting, one Noteholder expressed her disapproval of the approval process, and brought an application to the Court on April 14 for an Order delaying the meeting and other relief.
- 4.4 On consent, the dissident Noteholder was permitted by the Court to access all of the names of the Noteholders for the purpose of, *inter alia*, contacting the Noteholders to secure support for the delay, and the motion for other relief was adjourned to April 20, 2011.
5. NOTEHOLDER APPROVAL OF PLAN AT APRIL 16 MEETING
- 5.1 Pursuant to the Court Order of March 4, 2011, the Noteholder meeting was held April 16, 2011. The Plan was overwhelmingly approved by 95.1% of the Noteholders by number, and \$ 32,165,552.21 out of \$33,902,693.02 of voting claims by dollar amount, or 94.9%.
6. ONTARIO SECURITIES COMMISSION PROCEEDINGS
- 6.1 The proceedings against the company brought by the OSC were commenced at the time that Marc Boutet was the sole shareholder, and principal director and officer, and simultaneously with proceedings against Boutet and other former officers of the company.

- 6.3 The proceedings against Boutet and the other officers are continuing and scheduled to be heard commencing the week of May 16, 2011. The company has an interest in these proceedings as the OSC has indicated that one of the remedies it will be seeking may be a disgorgement of money back to the company from Boutet. The IOO has been summoned to appear as a witness on behalf of the OSC at the hearings.
- 6.2 The OSC staff after negotiations accepted the proposal of the Representative Counsel that as Boutet no longer had any interest in the company, the proceedings against the company were not necessary.
- 6.3 On April 15, 2011 the Ontario Securities Commission by consent order (a copy of which is annexed as exhibit 1) effectively ended its proceedings against the company.
- 6.4 OSC counsel has indicated that to assist the Court she will attend the sanction hearing April 20, 2011.
- 7 DISCHARGE OF REPRESENTATIVE COUNSEL, SPECIAL REPRESENTATIVE COUNSEL AND INTERIM OPERATING OFFICER
- 7.1 The Representative Counsel, Special Counsel, and Interim Operating Officer will seek to be discharged as officers of the court, together with the Monitor, at the April 20, 2011 Court date.
- 7.2 The Court Officers anticipate that the company will be subsequent to the April 20 2011 Court appearance for the approval of accounts.

All of which is respectfully submitted

Douglas Turner Q.C.

April 16, 2011

EXHIBIT 1 to Report of Representative Counsel to Court
APRIL 16, 2011



Ontario
Securities
Commission

Commission des
valeurs mobilières
de l'Ontario

P.O. Box 55, 19th Floor
20 Queen Street West
Toronto ON M5H 3S8

CP 55, 19^e étage
20, rue queen ouest
Toronto ON M5H 3S8

IN THE MATTER OF THE *SECURITIES ACT*,
R.S.O. 1990, c. S.5, AS AMENDED

- AND -

IN THE MATTER OF
NELSON FINANCIAL GROUP LTD., NELSON INVESTMENT GROUP LTD.,
MARC D. BOUTET, STEPHANIE LOCKMAN SOBOL,
PAUL MANUEL TORRES, H. W. PETER KNOLL

ORDER

WHEREAS on May 12, 2010, the Ontario Securities Commission (the "Commission") issued a Notice of Hearing and a Statement of Allegations in this matter pursuant to section 127 and 127.1 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "*Act*");

AND WHEREAS on November 10, 2010, the Staff of the Commission amended the Statement of Allegations;

AND WHEREAS Nelson Financial Group Ltd. ("Nelson Financial") is the subject of restructuring proceedings under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "CCAA");

AND WHEREAS Nelson Financial entered into a settlement agreement with Staff of the Commission ("Staff") dated April 13, 2011 (the "Settlement Agreement"), a copy of which is attached as Schedule "A" to this Order, subject to the approval of the Commission;

AND UPON reviewing the Settlement Agreement, and upon hearing submissions from counsel for Staff and Nelson Financial;

AND WHEREAS the Commission is of the opinion that it is in the public interest to make this order;

IT IS ORDERED THAT

1. The Settlement Agreement is approved;
2. Trading in any securities of or by Nelson Financial shall cease throughout the period of restructuring under the *CCAA*, pursuant to s. 127(1)2 of the *Act*;
3. Any exemptions contained in Ontario securities law shall not apply to Nelson Financial throughout the period of restructuring under the *CCAA*, pursuant to s. 127(1)3 of the *Act*;
4. The trading restrictions and removal of exemptions set out in paragraphs 2 and 3 above shall expire upon the completion of the *CCAA* proceeding;
5. Paragraphs 2 and 3 shall not apply to any securities to be issued, exchanged, redeemed or otherwise dealt with:
 - (a) pursuant to any order of the Court; or
 - (b) in the course of transaction implementing any plan of compromise or arrangement of Nelson Financial pursuant to the *CCAA*, or Articles of Reorganization of Nelson Financial pursuant to section 186 of the Ontario *Business Corporations Act* that shall have been approved and sanctioned by the Court in the *CCAA* proceeding on notice to the Staff.

DATED at Toronto this 15th day of April, 2011.

“Edward P. Kerwin”

Edward P. Kerwin

TAB 9

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

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

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT
OF NELSON FINANCIAL GROUP LTD.**

**FIFTH REPORT OF DOUGLAS TURNER, Q.C.
in his capacity as the Representative Counsel for the Noteholders**

August 8, 2011

Introduction

1. By the Order of this Honourable Court made June 15, 2010 (the “Representative Counsel Order”), Douglas Turner, Q.C. was appointed as the representative counsel (the “Representative Counsel”) to represent and advise all persons holding promissory notes issued by the Applicant (the “Noteholders”). The Representative Counsel was directed to engage Richard B. Jones, Barrister as special counsel to assist him in the CCAA aspects of his mandate (the “Special Counsel”).

2. The mandate of the Representative Counsel was amended by the Order made by Madam Justice Pepall on August 27, 2010 to direct him to bring a motion to address the characterisation of claims made by persons holding preferred shares of the Applicant in

respect of the sale to such persons of those shares, unpaid dividends and claims for damages of various kinds relating to such shares. The mandate was further amended by the Order made by Madame Justice Pepall on November 22, 2010 to authorize the Representative Counsel to act in support of the Interim Operating Officer (the "IOO") and to assist in the preparation of a plan for the restructuring of the Applicant. With the approval of this Honourable Court, the Representative Counsel and his Special Counsel have actively assisted and supported the IOO in the preparation, presentation, approval and sanctioning of the Plan of Arrangement of the Applicant that was approved and sanctioned by the Order of Justice Morawetz made on April 21, 2011 (the "Sanction Order").

3. The purpose of this Report is to advise the Court of the activities of the Representative Counsel and his Special Counsel through the completion of his functions as assigned by the Orders of this Honourable Court. Capitalized terms used in this Report and not otherwise defined have the meaning attributed or assigned to them in the Plan of Compromise and Arrangement approved and sanctioned by the Order of Justice Morawetz made on April 21, 2011.

Activities of the Representative Counsel

4. The activities of the Representative Counsel from his appointment up to April 16, 2011 are reported in the First Report dated November 3, 2010, the Second Report dated November 15, 2010, the Third Report dated November 29, 2010 and the Fourth Report dated April 16, 2011 and filed with this Honourable Court. The Representative Counsel confirms each of those reports.

5. The Representative Counsel has reviewed and confirms the contents of the Third Report of the IOO dated August 8, 2011.

6. On April 21, 2011, this Honourable Court issued an order approving and sanctioning the Plan of Compromise and Arrangement of Nelson Financial Group Ltd. dated February 11, 2011 and amended as presented to the meeting of creditors held on April 16, 2011, with further technical and typographic corrections approved by this Honourable Court (the "Sanction Order"). The Sanction Order also directed the filing of Articles of Reorganization pursuant to section 186 of the Ontario *Business Corporations Act*. The Articles of Reorganization changed the name of the Applicant from Nelson Financial Group Ltd. to Provider Capital Group Inc., amended the capital structure of the Applicant by cancelling all existing authorized and issued share capital and authorizing new share capital to be issued in implementation of the Plan of Compromise and Arrangement, and appointed a board of directors.

7. In accordance with the Sanction Order, the Articles of Reorganization were filed with the Ontario Ministry of Government Services on April 21, 2011. A meeting of the board of directors designated in the articles was held later on April 21, 2011 and the board of directors appointed officers and enacted a new general by-law for the Corporation. The board further authorized and directed the officers of Provider Capital Group Inc. to proceed forthwith to implement the Plan of Compromise and Arrangement in accordance with the Sanction Order.

8. The board of directors at its meeting on April 21, 2011 elected Sherry Townsend as the president of Provider Capital Group Inc. and appointed her as its chief executive

officer. The Applicant has proceeded to implement the Plan of Compromise and Arrangement by distributing the required documentation to each of the Creditors with proven claims, processing payments to creditors electing the Cash Exit Option and issuing Capital Recovery Debentures, New Special Shares, and common shares to Creditors in accordance with the terms of the Plan of Compromise and Arrangement.

9. The conditions of implementation of the Plan set out in Article 6.2 of the Plan have all been satisfied or waived by the Applicant as permitted under the terms of the Plan. The Representative Counsel's Certificate dated May 31, 2011, substantially in the form of Schedule "A" to the Plan, has been filed with this Honourable Court.

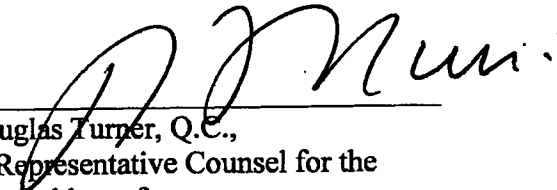
Discharge of the Representative Counsel

10. All of the responsibilities and mandate of the Representative Counsel as set out in the Orders of the Honourable Madam Justice Pepall made on June 15, August 27, and November 22, 2010 and as amended or supplemented by the subsequent orders of this Honourable Court, including the Order made by the Honourable Madam Justice Pepall on December 9, 2010, have been performed. The functions assigned to the Representative Counsel by the terms of the Plan have also been performed. There are no outstanding functions or duties of the Representative Counsel under any orders of this Honourable Court or the Plan. All of the Noteholders of the Applicant have, under the terms of the Plan and the Sanction Order been paid their Proven Claims or become holders of debentures or shares of Provider Capital Group Inc. in accordance with the the terms of the Plan. There remain no interests *qua* noteholders that require representation in this proceeding.

11. Since November 22, 2010, the IOO has reviewed and approved all accounts rendered by the Representative Counsel and by his Special Counsel. The board of directors of the Applicant has since April 21, 2011 unanimously approved all of the acts and activities of the Representative Counsel and his Special Counsel and all of the accounts rendered by each of them for the services rendered up to and including April 21, 2011. All such accounts have been paid in full. The Applicant, Provider Capital Group Inc., by such unanimous decision of its board of directors, consents to the discharge of the Representative Counsel and his Special Counsel on the terms of the draft order attached to the notice of motion.

12. It is appropriate that the Representative Counsel and his Special Counsel should be discharged on and subject to the terms of the draft order attached to the Representative Counsel's notice of motion dated August 8, 2011.

The foregoing Fifth Report is respectfully submitted this 8th day of August, 2011.



Douglas Turner, Q.C.,
as Representative Counsel for the
Noteholders of
Nelson Financial Group Inc.

**IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c.C-36, AS AMENDED
AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF NELSON FINANCIAL GROUP LTD.**

Court File No. CV-10-8630-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

**FIFTH REPORT
OF DOUGLAS TURNER, Q.C.
in his capacity as the Representative Counsel
for the Noteholders of the Applicant**

Richard B. Jones
Barrister & Solicitor
Suite 1201, 100 Yonge Street
Toronto, ON M5C 2W1
T. 416-863-0576
F. 416-863-0092
E. richard.jones@sympatico.ca

Special Counsel for the Representative Counsel

TAB 10

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

**THE HONOURABLE MISTER) DAY, THE
JUSTICE MORAWETZ) DAY OF , 2011**

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT
OF NELSON FINANCIAL GROUP LTD.

Applicant

**ORDER
(Discharge of Representative Counsel)**

THE MOTION, made by Douglas Turner, Q.C., in his capacity as the Representative Counsel for the Noteholders of Nelson Financial Group Ltd. appointed by this Court (the "Representative Counsel"), was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Notice of Motion and the Motion Record, including the Report of the Representative Counsel dated August 8, 2011, and on hearing the submissions of the Representative Counsel, the Special Counsel for the Representative Counsel, counsel for the Monitor, no other persons appearing although duly served, and having considered the consent of the Applicant;

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Motion Record in respect of this motion be and it is hereby abridged and the service of the Notice of Motion and Motion Record herein as effected by the Applicant is hereby validated in all respects and any further service is dispensed with.

 2. **THIS COURT ORDERS** that the activities of the Representative Counsel, as set out in his reports dated November 3, November 15, and November 29, 2010 and April 16 and August 8, 2011 be and the same are hereby approved;

 3. **THIS COURT ORDERS** that the Representative Counsel of the Noteholders of the Applicant and his Special Counsel be and they are hereby discharged and released of and from all duties, authorities and responsibilities imposed upon the Representative Counsel pursuant to the Order of the Honourable Madam Justice Pepall made on June 15, 2010 as amended by her Order of August 27, 2010 and her further Order of November 22, 2010, provided however that notwithstanding his discharge the Representative Counsel and his Special Counsel shall continue to have the benefit of the provisions of all Orders made in this proceeding, including all approvals, protections and stays of proceedings in favour of the Representative Counsel and the Special Counsel as such and in respect of all acts done in their capacity as such.
-

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT
OF NELSON FINANCIAL GROUP LTD.
Applicant

Court File No. 10-8630-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

ORDER
(Discharge of Representative Counsel)

RICHARD B. JONES
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Special Counsel for the Representative Counsel

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

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT
OF NELSON FINANCIAL GROUP LTD.**

Court File No. CV-10-8630-00CL

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

**MOTION RECORD
(Discharge of Representative Counsel)**

Richard B. Jones
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Special Counsel for the Representative Counsel