

CANADA
PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

SUPERIOR COURT
Commercial Division

No.: 500-11-063165-233

IN THE MATTER OF THE COMPANIES
CREDITORS ARRANGEMENT ACT OF:

KPMG INC.

Applicant / Monitor

- and -

13517985 CANADA INC.

Debtor

- and -

HIGHCREST LENDING CORPORATION

Secured Creditor

- and -

THE REGISTRAR FOR THE REGISTER OF
PERSONAL AND MOVABLE REAL RIGHTS
(QUÉBEC), having its head of office at 1,
Notre-Dame East, in the district and city of
Montréal, province of Québec, H2Y 1B6

Mise-en-cause

APPLICATION FOR THE ISSUANCE OF
AN APPROVAL AND REVERSE VESTING ORDER¹

(Sections 11 and 36 of the *Companies' Creditors Arrangement Act*)

TO THE HONOURABLE JUSTICE LOUIS J. GOUIN OF THE SUPERIOR COURT,
SITTING IN COMMERCIAL DIVISION, IN AND FOR THE JUDICIAL DISTRICT OF
MONTREAL, THE APPLICANT RESPECTFULLY SUBMITS THE FOLLOWING:

1. **ORDERS SOUGHT**

1. By the present application (the "**Application**"), KPMG Inc. ("**KPMG**" or the "**Monitor**"), in its capacity as Monitor of the debtor, 13517985 Canada Inc., doing business as Wholesale Express ("**WE**" or the "**Debtor**"), seeks the issuance of an

¹ Capitalized terms which are not otherwise defined in this application have the meaning ascribed to them in the Amended and Restated Initial Order dated December 28, 2023.

approval and reverse vesting order substantially in the form of the draft order communicated in support of the Application as **Exhibit R-1** (the “**Approval and Reverse Vesting Order**”)² under the *Companies’ Creditors Arrangement Act*, R.S.C., 1985, c. C-36 (the “**CCAA**”):

- (a) Approving the purchase and sale transaction, pre-closing reorganization and other transactions (collectively, the “**Transaction**”) contemplated under the *Investment Agreement* (the “**Agreement**”) entered into on January 9, 2024, between (i) 15449189 Canada Inc. (the “**Investor**”), and (ii) the Monitor, for and on behalf of the Debtor (the “**Company**”). A copy the Agreement is communicated herewith, under seal, as **Exhibit R-2**; and
 - (b) providing, *inter alia*, for the vesting of all the Excluded Assets and Excluded Contracts (as these terms are defined in the Agreement) in a corporation to be formed prior to closing (“**ResidualCo 1**”) and the Excluded Liabilities (as defined in the Agreement) in a separate corporation to be formed prior to closing (“**ResidualCo 2**”), as well as such other ancillary relief which may be required to ensure the implementation of the Transaction.
2. The Transaction results from extensive pre-filing and post-filing negotiations between, *inter alios*, the Debtor, the Investor, Trade X Group of Companies Inc., Highcrest Lending Corporation (“**HLC**”) and the Monitor, as well as their respective counsel.
3. As will be further explained below, the “reverse structure” of the Transaction is essential in order to allow Debtor’s operations to continue as a going concern. The Debtor’s business consists of selling pre-owned cars to registered dealers in Quebec, Ontario, Eastern Canada and the United States. Licenses and permits which would not otherwise be assignable or transferrable in a timely manner have been issued to the Debtor in each of those jurisdictions, and the “reverse structure” allows these licenses and permits to remain in place (collectively, the “**Permits**”).
4. In addition, certain payment mechanisms in place between the Debtor and the dealers that transact on its platform, including thousands of pre-authorized debit agreements, could not, in practice, be assigned nor put in place in a timely manner outside the “reverse structure” of the proposed Transaction.
5. The Monitor submits that implementing a going concern sale in accordance with the Agreement and Approval and Reverse Vesting Order will yield more significant realization proceeds than a traditional sale of the Debtor’s assets.
6. In the Monitor’s view, the approval of the Transaction is in the best interest of the Debtor’s stakeholders as it is the only available transaction which will allow the operations of the Debtor to be preserved, for the benefit of its stakeholders.
7. As further detailed below, the Monitor supports the Transaction and submits that the issuance of the Approval and Reverse Vesting Order is reasonable, appropriate, and justified in the circumstances.

² A blackline version of the Approval and Reverse Vesting Order against the model Approval and Vesting Order developed by the Liaison Committee of the Commercial Division of the Superior Court is communicated herewith as **Exhibit R-1A**.

2. PROCEDURAL BACKGROUND

8. On November 20, 2023, HLC filed an *Application for the Issuance of a First Day Initial Order and an Amended and Restated Initial Order* (the "**Initial Application**") in the present proceedings (the "**CCAA Proceedings**").
9. On November 22, 2023, the Court postponed the hearing on the Initial Application to November 29, 2023 and issued an order (the "**November 22 Order**"), *inter alia*:
 - (a) staying any Proceeding, including the exercise of any right or remedy against WE, its Business or its Property (as such terms are defined in the November 22 Order) until November 29, 2023 (the "**Stay Period**"); and
 - (b) appointing KPMG as Information Officer of WE with the powers set forth in the November 22 Order.
10. On November 28, 2023, the Debtor filed a contestation pursuant to which it sought to have the Initial Application dismissed or in the alternative, adjourned.
11. On November 29, 2023, the Court postponed the hearing to December 20, 2023 and renewed the November 22 Order until December 20, 2023.
12. On December 20, 2023, the Court granted the Initial Application and issued a first day initial order (the "**First Day Order**"):
 - (a) appointing KPMG as the Monitor of the Debtor in these CCAA Proceedings;
 - (b) providing for the extension of the Stay Period until December 29, 2023;
 - (c) ordering that the Monitor, acting for and on behalf of the Debtor, be empowered to borrow by way of a revolving credit or otherwise from HLC, some monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed \$2 million at any time and granting an Interim Lender's Charge (as defined in the First Day Order) to secure the amounts payable to HLC in accordance with the First Day Order;
 - (d) granting an Administration Charge and a Directors' Charge; and
 - (e) ordering the sealing of certain confidential exhibits.
13. On December 28, 2023, the Court issued an Amended and Restated Order extending the Stay Period until February 28, 2023.
14. On January 9, 2024, the Investor and the Monitor, for and on behalf of the Debtor were able to agree on the terms and conditions of the Agreement and the Transaction contemplated thereunder and executed same.

3. THE TRANSACTION³

15. The Transaction is structured as a “reverse vesting” transaction and remains conditional on the issuance of an order substantially similar to the draft Approval and Reverse Vesting Order (Exhibit R-1).
16. Subject to the terms set forth in the Agreement, exhibit R-2 (under seal), the Transaction provides for the following terms and conditions:
 - (a) Payment, by the Investor, of a Subscription Price, which consists of:
 - (i) The payment of the Cash Subscription Price to the Monitor, for and on behalf of the Company, in an amount specified at section 2.2(a) of the Agreement;
 - (ii) The assignment and contribution by the Investor of the Trade X Shareholder Loans to the Company; and
 - (iii) The issuance of an interest-free promissory note by the Investor, which shall be held by the Monitor for and on behalf of the Company (and, ultimately, ResidualCo 2) in the amount specified at section 2.2(c) of the Agreement.
 - (b) A transaction in the form of a “reverse vesting” transaction providing for the following:
 - (i) A pre-closing reorganization that will take place as further described in paragraph 19 below.
 - (ii) As a result of this pre-closing reorganization, the Investor will own all of the equity interest of WE free and clear of all Encumbrances other than the Permitted Encumbrances;
 - (iii) The vesting in ResidualCo 1 of all of the Debtor’s Excluded Assets and Excluded Contracts;
 - (iv) The vesting in ResidualCo 2 of all of the Debtor’s Excluded Liabilities. As such, all creditors of the Debtor that do not form part of the Assumed Liabilities will be creditors of ResidualCo 2;
 - (v) The emergence of the Debtor from the CCAA Proceedings (WE after having emerged, being “**WE 2.0**”).
 - (c) The assumption of all Assumed Liabilities, which include, *inter alia*:
 - (i) All accounts payable incurred by the Debtor in the ordinary course of business;

³ Capitalized terms used in this section and not otherwise defined shall have the meaning ascribed to them in the Agreement, Exhibit R-2.

- (ii) Any amounts of liabilities owing or payable to the Employees of the Debtor;
 - (iii) Liabilities of the Debtor which relate to the Business under any Retained Contracts, Permits, Licenses or Permitted Encumbrances arising out of events that occur after Closing; and
 - (iv) Cure Costs in relation to Retained Contracts and Pre-Filing Trade Amounts, if any.
- (d) The only material conditions precedent to closing the Transaction are (i) the issuance of the Approval and Reverse Vesting Order, and (ii) the closing of the Investor's financing with its lender, Canadian Imperial Bank of Commerce, which is itself conditional upon the issuance of the Approval and Reverse Vesting Order.
17. In short, following the Transaction:
- (a) WE 2.0 shall own, to the exclusion of all other persons, free and clear of and from any Encumbrances other than the Permitted Encumbrances, all rights, title and interest in and to all obligations, contracts, assets and other property of the Debtor, other than the Excluded Liabilities, the Excluded Contracts and the Excluded Assets which shall be owned by or assigned to ResidualCo 1 or ResidualCo 2, as applicable; and
 - (b) The Excluded Contracts and Excluded Assets will be owned by ResidualCo 1. The transfer of the Excluded Contracts and Excluded Assets does not affect any creditors of the Debtor;
 - (c) The Excluded Liabilities will be transferred to ResidualCo 2, and the Debtor's creditors will become creditors of ResidualCo 2.
18. The Monitor plans to implement a claims process with respect to the Excluded Liabilities shortly after the issuance of the Approval and Reverse Vesting Order. Excluded Liabilities will become claims against ResidualCo 2, which is the same entity that will ultimately hold the remaining proceeds of the Transaction following the Pre-Closing Reorganization and Closing summarized hereafter.
19. The steps of the Pre-Closing Reorganization are detailed in section 7.2 of the Agreement (Exhibit R-2) and can be summarized as follows:
- (a) First, the Investor shall terminate the Amended SPA (signed prior to the issuance of the Initial Order) and provide notice thereof in writing to Trade X;
 - (b) Second, the Investor shall pay the Subscription Price in accordance with section 2.2 of the Agreement;
 - (c) Third, the Monitor shall transfer to the Company an amount sufficient to cover the Required Working Capital-Post Closing;
 - (d) Fourth, the Company shall be deemed to: (i) transfer to ResidualCo 1 the Excluded Assets and the Excluded Contracts and (ii) transfer to

ResidualCo 2 the Excluded Liabilities. The Company shall also (i) issue the Excluded Assets and Contracts Promissory Note to ResidualCo 1, (ii) issue the Excluded Liability Promissory Note to ResidualCo 2 and (iii) assign the Promissory Note to ResidualCo 2;

- (e) Fifth, the Existing Shares as well as any agreement, contract, plan, indenture, deed, certificate, subscription rights, conversion rights, pre-emptive rights, options (including stock option or share purchase or equivalent plans), or other documents or instruments governing and/or having been created or granted in connection with the share capital of the Company shall be deemed terminated and cancelled for no consideration;
- (f) Sixth, all directors and officers of the Debtor shall be deemed to have resigned;
- (g) Seventh, the Debtor shall issue the Subscribed Shares and the Investor shall subscribe for and purchase the Subscribed Shares;
- (h) Eighth, the Monitor shall satisfy the Excluded Assets and Contracts Promissory Note by paying \$1 to ResidualCo 1 and the Excluded Liability Promissory Note to ResidualCo 2 by paying the amount thereof to ResidualCo 2 and assigning the Promissory Note to ResidualCo 2;
- (i) Ninth, the Monitor, for and on behalf of ResidualCo 2, shall repay from the proceeds received on account of the Excluded Liability Promissory Note, the professional fees and disbursements that benefit from the Administration Charge forming part of the CCAA Charges outstanding at Closing; and
- (j) Tenth, the Monitor, for and on behalf of ResidualCo 2, shall repay from the proceeds received on account of the Excluded Liability Promissory Note, the Highcrest Facility.

4. GROUNDS FOR THE APPROVAL OF THE TRANSACTION

20. The Monitor respectfully submits that the Transaction should be approved by this Court, for the following reasons, which will be subject to an analysis by the Monitor in its upcoming report (the “**Monitor’s Report**”) in support of this Application:
- (a) The Subscription Price (as defined in the Agreement) payable in connection with the Transaction represents the most favorable and only offer concerning the assets/business of the Debtor;
 - (b) A sale and investment solicitation process was conducted by Cannacord Genuity, as mandated by the Debtor’s shareholder, Trade X Group of Companies Inc., in the Spring of 2023. In the course of that sale process, 40 parties were canvassed but none of them showed significant interest and no offers were received;
 - (c) In this context, the Transaction is the only transaction which will allow the continuation of the Debtor’s operations as a going concern;

- (d) The Investor has been in contact with the Debtor's management and the Monitor has been advised that the management supports the Transaction;
 - (e) Highcrest Lending Corporation, as the sole senior ranking secured creditor of the Debtor, supports the Transaction;
 - (f) The Transaction is beneficial to the Debtor's creditors and other stakeholders in that, among other things, it will also allow the continuation of the Debtor's operations; and
 - (g) The Transaction is not conditional upon any further due diligence and closing may occur shortly after the issuance of the Approval and Vesting Order sought herein.
21. In the circumstances, the recourse to a reverse vesting order is appropriate and reasonable because, *inter alia*:
- (a) The "reverse vesting" allows the Permits, which are essential to the Debtor's operations, to stay in place. This includes, among others, those Permits delivered to the Debtor by the Office de la protection du consommateur (OPC) and managed by the Société de l'assurance automobile du Québec (SAAQ) in accordance with the provisions of the Highway Safety Code, CQLR c C-24.2 (Section 161.1) and the Consumer Protection Act, CQLR c P-40.1 (Sections 321 (e) and ff)).
 - (b) The transfer of these Permits in a traditional asset sale would involve a complex transfer and/or new application process of indeterminate risk, delay, and additional cost, which could interrupt or delay the continued operations of the Debtor and jeopardize the Transaction, as well as the value of the business.
 - (c) The Investor informed the Monitor that it does not benefit from sufficient time to carry out an orderly transfer of the employees, assets and various certificates and authorizations required to continuously operate the business within the extremely tight time frame imposed in the current CCAA Proceedings and the need for liquidity, with the fact the Debtor operates in multiple jurisdictions appearing to be a source of additional complications.
 - (d) Without the issuance of the relief sought, particularly in light of the constraints, pressure and timeline imposed by the circumstances, there is a risk that the Transaction will not be able to close, thereby affecting potential distributions to creditors and the value of the potential recovery.
22. In light of the foregoing, the Monitor submits that it is appropriate for this Court to approve the proposed Transaction and to issue the proposed Approval and Reverse Vesting Order.
23. Given the delays for closing, the benefits of completing the restructuring as soon as possible, the Monitor requests that the proposed Approval and Reverse Vesting Order be rendered executory notwithstanding appeal.
24. The present Application is well-founded in fact and in law.

WHEREFORE, MAY THIS COURT:

GRANT this *Application for the Issuance of an Approval and Reverse Vesting Order* (the "Application");

ISSUE an order substantially in the form of the draft Approval and Reverse Vesting Order communicated as Exhibit **R-1**;

WITHOUT COSTS, save and except in case of contestation.

Montréal, this January 9, 2024

Fasken Martineau DuMoulin LLP

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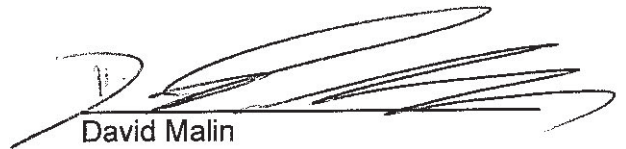
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SWORN STATEMENT

I, the undersigned, David Malin, having my principal place of business at 600, boul. de Maisonneuve West, Suite 1500, solemnly declare the following:

1. I am a partner at KPMG Inc.; and
2. All the facts alleged in the *Application for the Issuance of an Approval and Reverse Vesting Order* are, to the best of my knowledge, true.

AND I HAVE SIGNED


David Malin

**Solemnly declared before me, by technological means,
at Montreal, on the 9th day of January 2024**



Commissioner for Oaths for the Province of Québec



NOTICE OF PRESENTATION

TO: Service List

TAKE NOTICE that the *Application for the Issuance of an Approval and Vesting Order* will be presented for adjudication the Honourable Louis J. Gouin, J.C.S., of the Superior Court of Quebec, Commercial Division, at the Montréal Courthouse located at 1 Notre-Dame Street East, at a date and time to be determined and communicated to the service list.

DO GOVERN YOURSELVES ACCORDINGLY.

Montréal, this January 9, 2024

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**LIST OF EXHIBITS IN SUPPORT OF THE APPLICATION FOR THE ISSUANCE OF
AN APPROVAL AND VESTING ORDER**

(Section 36 of the *Companies' Creditors Arrangement Act*)

Exhibit R-1:	Draft Approval and Reverse Vesting Order.
Exhibit R-1A:	Comparison between the Approval and Reverse Vesting Order and the model approval and vesting order developed by the Liaison Committee of the Commercial Division of the Superior Court.
Exhibit R-2: (under seal)	<i>Investment Agreement.</i>

Montréal, this January 9, 2024

Fasken Martineau DuMoulin LLP

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**APPLICATION FOR THE ISSUANCE OF
AN APPROVAL AND REVERSE VESTING
ORDER, LIST OF EXHIBITS R-1 AND R-1A**

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