

CANADA  
PROVINCE OF QUÉBEC  
DISTRICT OF MONTRÉAL

SUPERIOR COURT  
(Commercial Division)  
(Bankruptcy and Insolvency Act, R.S.C. 1985,  
c. B-3)

No.: 500-11-059209-20)

IN THE MATTER OF THE BANKRUPTCY  
OF :

**4298632 CANADA LIMITED**, a corporation  
existing under the laws of Canada, having  
its head office at 1 Place Ville-Marie, Suite  
4000, in the City of Montréal, Province of  
Québec, H3B 4M4

Debtor

and

**KPMG INC.**, in its capacity as trustee in  
bankruptcy of MF Global Canada Co.,  
having its head office at 333 Bay Street,  
Suite 4600, in the City of Toronto, Province  
of Ontario, M5H 2S5

Petitioner

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**APPLICATION FOR A BANKRUPTCY ORDER**  
(Sections 42 and 43 of the *Bankruptcy and Insolvency Act* (the "BIA"))

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TO ONE OF THE HONOURABLE JUDGES OF THE SUPERIOR COURT OF THE  
COMMERCIAL DIVISION, IN AND FOR THE DISTRICT OF MONTREAL, AND/OR TO  
THE REGISTRAR OF THIS COURT, PETITIONER HEREBY RESPECTFULLY  
SUBMITS:

**I. BACKGROUND & PARTIES**

1. On November 4, 2011, Petitioner, KPMG Inc., (the "**Petitioner**" or the "**MF Trustee**") was appointed as trustee in bankruptcy of the estate of MF Global Canada Co. ("**MF Global**"), a creditor of 4298632 Canada Limited (the "**Debtor**") and, prior to its bankruptcy, a securities firm.
2. The Debtor is the sole shareholder of MF Global and was dissolved for non-compliance of its obligations under the *Canada Business Corporations Act* (the "**CBCA**") on February 11, 2014, the whole as appears from a copy of its Federal

Corporation Information report as of November 19, 2020, communicated herewith as **Exhibit R-1**.

3. The MF Trustee has completed the liquidation of MF Global's assets and the distribution of the proceeds to all of creditors who filed provable claims.
4. Notwithstanding the repayment to all creditors of 100% of their claims, including interest, the MF Trustee estimates that a surplus in the approximate amount of \$4,8 millions will remain in MF Global's estate following the payment of the remaining professional fees and other costs (the "**Surplus Funds**"), the whole as appears from a copy of the *Tenth Report of the Trustee* dated January 18, 2018 (the "**MF Trustee Report**"), communicated herewith as **Exhibit R-2**.
5. As sole shareholder of MF Global, the Debtor would legally be entitled to the Surplus Funds. However, even if the Debtor collects the Surplus Funds, the MF Trustee estimated that the Debtor would be insolvent since its assets consist solely of inter-company investments in MF Global and its total liabilities amount to over US\$7,5 millions, as noted in the MF Trustee Report.
6. The searches conducted by the MF Trustee did not reveal any creditors who may have secured claims against the Debtor, the whole as appears from a the certified statements of rights registered at the RPMRR, communicated herewith as **Exhibit R-3**.
7. Considering the state of insolvency of the Debtor, the issuance of a bankruptcy Order is necessary to appoint a licensed trustee to the Debtor's estate to distribute the Surplus Funds to the Debtor and ultimately to its creditors.
8. In pursuit of this objective, the MF Trustee applied to the Ontario Superior Court of Justice (Commercial List) to obtain an order authorizing the MF Trustee to, among other things, apply to the Director appointed under the *Canada Business Corporation Act* for a revival of the Debtor and to proceed with issuance of the present application against the Debtor (the "**MF Trustee Motion**").
9. On January 26, 2018, Mr. Justice Morawetz granted the relief sought under the MF Trustee Motion and issued an order authorising the MF Trustee to pursue the issuance of an Application for a Bankruptcy Order against the Debtor, subject to completing its revival under the CBCA (the "**Order**"), a copy of which is communicated herewith as **Exhibit R-4**.
10. Since the issuance of the Order (Surplus Funds), the Petitioner has applied for the revival of the Debtor and has obtained a Certificate of Revival effective May 27, 2020, the whole as appears from a copy of such certificate, communicated herewith as **Exhibit R-5**.

## II. AMOUNTS OWING TO MF GLOBAL BY DEBTOR

11. The Debtor owes to the estate of MF Global an amount of approximately US\$101,039.41, which represent an inter-company receivable (the "Receivable"), the whole as appears from the MF Trustee Report (Exhibit R-2).
12. The Debtor also owes an amount of approximately US\$7,544,490.55 to MF Global Finance Europe Limited and an amount of approximately US\$13,526.78 to MF Global Inc. (Delaware).
13. Should a Bankruptcy Order be issued against the Debtor, the MF Trustee will waive the right to receive a dividend from the estate, in order to maximize the distributions to other creditors of the Debtor.

## III. ACT OF BANKRUPTCY

14. As per Section 42 paragraph (j) of the BIA, the Debtor committed an act of bankruptcy in that it has ceased to meet its liabilities generally as they become due, including without limitation, payment to MF Global of the Receivable, and has continued to do so for the last six (6) months.
15. Moreover, the Debtor was dissolved in 2014 for non-compliance and does not conduct any activities whatsoever.

## IV. CONCLUSIONS

16. It is therefore in the interests of the creditors of the Debtor that the present Application be granted and that a Bankruptcy Order be rendered against Debtor, which shall allow the appointment of a trustee.
17. KPMG Inc. (Maxime Codère) doing business at 600 De Maisonneuve Blvd W Suite 1500, Montreal, Quebec H3A 0A3, is qualified to act as trustee of the Debtor' estate and accepts to act as such.
18. The Petitioner was authorized to act as trustee in the bankruptcy of the Debtor pursuant to the Order (Exhibit R-3).
19. The present application is well founded in facts and in law.

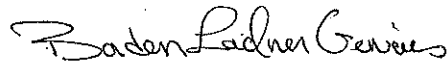
**WHEREFORE, THE PETITIONER PRAYS, BY JUDGMENT TO INTERVENE HEREIN, THIS HONORABLE COURT TO:**

- [1] **GRANT** the present *Application for a Bankruptcy Order* (the "Application");
- [2] **ORDER** that the time for service of the present Application be abridged and that the Application is properly presentable and **DECLARE** that the service of the Application constitutes good and sufficient service on all persons and further

**DECLARE** that all parties are relieved of any further requirement for service of the Application;

- [3] **ISSUE** a Bankruptcy Order against 4298632 Canada Limited (the "**Debtor**");
- [4] **DECLARE** the Debtor bankrupt;
- [5] **DESIGNATE** KPMG Inc. (Maxime Codère) doing business at 600 De Maisonneuve Blvd W Suite 1500, Montreal, Quebec H3A 0A3, trustee in bankruptcy of the Debtor;
- [6] **ORDER** the provisional execution, notwithstanding appeal and without having to provide any guarantee or security for costs whatsoever; and
- [7] **THE WHOLE** with costs against the estate of the Debtor.

Montréal, November 23<sup>rd</sup>, 2020



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**Borden Ladner Gervais LLP**  
Lawyers for Petitioner  
**KPMG Inc., in its capacity of trustee to  
the estate of MF Global Canada Co.**

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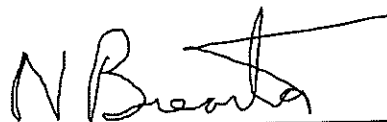
**AFFIDAVIT**

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I, the undersigned, **NICHOLAS BREARTON**, Partner with KPMG Inc., having its head office 333 Bay Street, Suite 4600, Bay Adelaide Centre in the City of Toronto, Province of Ontario, M5H 2S5, having been duly sworn, do depose and solemnly affirm that:

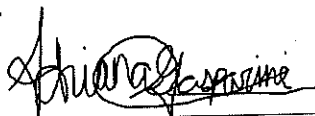
1. I am a representative of the Petitioner and duly authorized for the purposes hereof;
2. All the facts alleged in the *Application for Bankruptcy Order* to which this affidavit is attached are, within my own knowledge, true.

**AND I HAVE SIGNED**



\_\_\_\_\_  
**NICHOLAS BREARTON**

SWORN BEFORE ME over video )  
teleconference this 24<sup>th</sup> day of )  
November, 2020. The affiant was )  
located in Toronto, Ontario, while the )  
commissioner, Mariela Adriana )  
Gasparini, was located in Vaughan, )  
Ontario. )



\_\_\_\_\_  
**A Commissioner for Taking )  
Affidavits in and for the Province of )  
Ontario )**

LSO Licence no.: P14458 )

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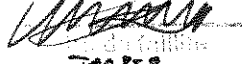
## NOTICE OF PRESENTATION

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**TO: 4298632 CANADA LIMITED**  
c/o Stéphane Rozier, director  
16, Les Sorbiers Street  
Laval, Qc H7R 1E3

**KPMG INC.**  
c/o Maxime Codère, PAIR, SAI, CPA, CA  
600 De Maisonneuve Blvd West  
Suite 1500  
Montreal, Qc H3A 0A3  
[mcodere@kpmg.ca](mailto:mcodere@kpmg.ca)  
[nbrearton@kpmg.ca](mailto:nbrearton@kpmg.ca)

**Office of the Superintendent of  
Bankruptcy**  
1155 Metcalfe  
Suite 950  
Montreal, Qc H3B 2V6  
[lc.osbservice-  
bsfservice.ic@canada.ca](mailto:lc.osbservice-<br/>bsfservice.ic@canada.ca)

Déposé à Montréal  
Province de Québec  
le 27 jour du mois  
de novembre 2020  
  
JACISS

### 1. PRESENTATION OF THE APPLICATION

**TAKE NOTICE** that the *Application for Bankruptcy Order* shall be virtually presented in the Practice Division of the Commercial Division of the Superior Court, in room 16.10 of the Montréal Courthouse situated at 1, Notre-Dame Street East, Montréal, the 10<sup>th</sup> day of December, 2020, at 8:45 a.m., or as soon as counsel may be heard.

### 2. HOW TO JOIN THE VIRTUAL CALLING OF THE ROLL IN PRACTICE DIVISION

The coordinates to join the calling of the roll in room 16.10 are as follows:

a) **Using Teams:** to open the permanent link established for room 2.16, click [here](#)<sup>1</sup>;

You must then fill in your name and click "Join Now". In order to facilitate the process and the identification of the parties, we invite you to fill in your name in the following manner:

Attorneys: Mtre. Name, Surname (name of the party being represented)

Trustees: Name, Surname (trustee)

Superintendent: Name, Surname (superintendent)

Parties not represented by an attorney: Name, Surname (specify: Plaintiff, Defendant or other)

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<sup>1</sup> The permanent links for the Montreal courthouse rooms can also be found in the document entitled *Liens TEAMS pour rejoindre les salles du Palais de justice de Montréal en matière commerciale, civile et familiale* under the heading *Audiences virtuelles* found on the Superior Court of Québec website at : <http://www.tribunaux.qc.ca/c-superieure/index-cs.html>.

For persons attending a public hearing: you can simply indicate "public".

b) **By telephone:**

Canada (Toll free number): (833) 450-1741

Canada, Québec (Charges will apply): +1 581-319-2194

Conference ID: 820 742 874#

c) **By videoconference:** [teams@teams.justice.gouv.qc.ca](mailto:teams@teams.justice.gouv.qc.ca)

VTC Conference ID: 11973653703

d) **In person**, if and only if the above-mentioned means are not available.

**3. FAILURE TO ATTEND THE CALLING OF THE ROLL IN PRACTICE DIVISION**

**TAKE NOTICE** that should you wish to contest the proceeding you must advise the applicant in writing at least 48 hours before the hearing in order to participate to the virtual calling of the roll. Should you fail to do so, a judgment could be rendered at the hearing, without further notice or delay.

**4. OBLIGATIONS**

4.1 Duty of cooperation

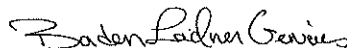
**TAKE NOTICE** that you are duty-bound to co-operate and, in particular, to keep one another informed at all times of the facts and particulars conducive to a fair debate and to make sure that relevant evidence is preserved. (*Code of Civil Procedure*, art. 20).

4.2 Dispute prevention and resolution processes

**TAKE NOTICE** that before referring your dispute to the courts, you must consider private dispute prevention and resolution processes which are negotiation between the parties, and mediation and arbitration, in which the parties call on a third person to assist them (*Code of Civil Procedure*, art. 1 and 2).

**DO GOVERN YOURSELVES ACCORDINGLY.**

Montreal, November 23<sup>rd</sup>, 2020



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**BORDEN LADNER GERVAIS LLP**  
Attorneys for the Petitioner  
KPMG Inc.

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**LIST OF EXHIBITS**

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- EXHIBIT R-1:** Copy of its Federal Corporation Information report as of November 19, 2020;
- EXHIBIT R-2:** Copy of the *Tenth Report of the Trustee* dated January 18, 2018;
- EXHIBIT R-3:** Certified statements of rights registered at the RPMRR;
- EXHIBIT R-4:** Copy of the Order (Surplus Funds) rendered on January 26, 2018 by Mr. Justice Morawetz;
- EXHIBIT R-5:** Copy of the Certificate of Revival effective May 27, 2020;

Montreal, this November 23<sup>rd</sup>, 2020



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**BORDEN LADNER GERVAIS LLP**  
Attorneys for the Petitioner  
KPMG Inc.





# OneSpan Sign Electronic Evidence Summary

## Signing Ceremony ID:

ID: tnjJTj0HVHdmOT5RtNNMwzb6HHs=  
Name: Application for Bankruptcy Order  
Created: 2020-Nov-24 20:39:06 (GMTZ) GMT  
Completed: 2020-Nov-24 21:13:03 (GMTZ) GMT  
Summary document generated: 2020-Nov-24 21:14:55 (GMTZ) GMT

## Sender:

Name: Adriana Gasparini  
agaspardini@blg.com

## Documents:

Electronic Disclosures and Signatures Consent 2 pages  
Application for a Bankruptcy Order - 4298632 9 pages  
Canada Ltd.  
OneSpan Sign Electronic Evidence Summary 3 pages

## Recipients:

**Name:** Nicholas Brearton  
**Email:** nbrearton@kpmg.ca  
**Role:** Recipient1  
**ID:** 95ea5fe4-4dbb-4b2e-917d-6e52aee48a64  
Electronic Disclosures and Signatures Consent 1 accept  
Application for a Bankruptcy Order - 4298632 1 capture  
Canada Ltd.

**Name:** Adriana Gasparini  
**Email:** agaspardini@blg.com  
**Role:** Owner  
**ID:** plfnprHOS6IU  
Application for a Bankruptcy Order - 4298632 1 capture  
Canada Ltd.

## Audit Trail:

Date and Time	Recipient	Action	Document	IP	Other
2020-Nov-24 21:03:20 (GMTZ) GMT	Nicholas Brearton	Login	N/A	204.50.172.132	

2020-Nov-24 21:03:20 (GMTZ) GMT	Nicholas Brearton	Signing Session For Recipient	N/A	204.50.172.132	Signing session for recipient: nbrearton@kpmg.ca(Nicholas Brearton)
2020-Nov-24 21:03:23 (GMTZ) GMT	Nicholas Brearton	Login	N/A	54.87.118.141	
2020-Nov-24 21:03:24 (GMTZ) GMT	Nicholas Brearton	Signing Session For Recipient	N/A	54.87.118.141	Signing session for recipient: nbrearton@kpmg.ca(Nicholas Brearton)
2020-Nov-24 21:03:24 (GMTZ) GMT	Nicholas Brearton	View	Electronic Disclosures and Signatures Consent	204.50.172.132	
2020-Nov-24 21:03:26 (GMTZ) GMT	Nicholas Brearton	View	Electronic Disclosures and Signatures Consent	54.87.118.141	
2020-Nov-24 21:04:40 (GMTZ) GMT	Nicholas Brearton	Login	N/A	23.82.16.26	
2020-Nov-24 21:04:40 (GMTZ) GMT	Nicholas Brearton	Signing Session For Recipient	N/A	23.82.16.26	Signing session for recipient: nbrearton@kpmg.ca(Nicholas Brearton)
2020-Nov-24 21:07:29 (GMTZ) GMT	Nicholas Brearton	Accept	Electronic Disclosures and Signatures Consent	204.50.172.132	Approval: d1b112e9-5919-4e3a-91bd-32a11585028b
2020-Nov-24 21:07:29 (GMTZ) GMT	Nicholas Brearton	Confirm	Electronic Disclosures and Signatures Consent	204.50.172.132	
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2020-Nov-24 21:11:30 (GMTZ) GMT	Nicholas Brearton	Capture Signature	Application for a Bankruptcy Order - 4298632 Canada Ltd.	204.50.172.132	Approval: y7lyUugHDA8D
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2020-Nov-24 21:12:34 (GMTZ) GMT	Adriana Gasparini	Signing Session For Recipient	N/A	204.138.127.13	Signing session for recipient: agasparini@big.com(Adriana Gasparini)

2020-Nov-24 21:12:45 (GMTZ) GMT	Adriana Gasparini	View	Application for a Bankruptcy Order - 4298632 Canada Ltd.	204.138.127.13	
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2020-Nov-24 21:13:12 (GMTZ) GMT	Adriana Gasparini	Download	Application for a Bankruptcy Order - 4298632 Canada Ltd.	204.138.127.13	

**SUPERIOR COURT**  
(Commercial Division)  
(Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3)  
**DISTRICT OF MONTREAL**  
No.:

**IN THE MATTER OF THE BANKRUPTCY OF:**  
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v.  
Debtor

**KPMG INC., in its capacity as trustee in  
bankruptcy of MF Global Canada Co.**  
Petitioner

**APPLICATION FOR A BANKRUPTCY  
ORDER**  
(Section 42 and 43 of the *Bankruptcy and Insolvency Act*)

ORIGINAL

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Fax: 514.954.1905  
Borden Ladner Gervais  
mduchesne@blg.com  
S.M. 2545

**BLG**

Mre. Marc Duchesne  
File: 098171-000014