

Court No. BK-23-02975175-0031
Estate File No. 31-2975175

**ONTARIO
SUPERIOR COURT OF JUSTICE
IN BANKRUPTCY AND INSOLVENCY
(COMMERCIAL LIST)**

**IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL UNDER
THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, c. B-3, AS AMENDED
OF DATATAX BUSINESS SERVICES LIMITED, A CORPORATION FORMED UNDER
THE LAWS OF ONTARIO**

FACTUM OF DATATAX BUSINESS SERVICES LIMITED
(SALE APPROVAL AND TERMINATION MOTION, OCTOBER 11, 2023)

October 10, 2023

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TO: **THE SERVICE LIST**

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PART I - INTRODUCTION

1. Datatax Business Services Limited ("**Datatax**" or the "**Company**") bring two motions for the following orders in these NOI proceedings: (1) an Approval and Vesting Order, among other things, approving the Transaction and Stalking Horse APA (each defined below); and (2) a Distribution, Termination and Fee Approval Order (together with the Approval and Vesting Order, the "**Orders**"), among other things, addressing the remaining steps that need to be taken in the NOI proceedings.

2. The draft Approval and Vesting Order is located at Tab 5 of the Motion Record and, among other things:

- (a) if necessary, abridging the time for service, filing and hearing of the Notice of Motion and Motion Record and dispensing with further service thereof;
- (b) approves the transaction (the "**Transaction**") contemplated in the asset purchase agreement (the "**Stalking Horse APA**") between Datatax and 2872802 Ontario Inc. (the "**Stalking Horse Bidder**") dated August 11, 2023, which was previously approved to act as the stalking horse bid in the SSP (defined below) by Order granted by Justice Cavanagh on August 17, 2023 (the "**August 2023 Order**");
- (c) seals the Confidential Appendices to the Second Report (each defined below) until the Termination Certificate (defined below) has been filed; and
- (d) upon the delivery to the Stalking Horse Bidder of a certificate (the "**Proposal Trustee's Vesting Certificate**") and its filing by KPMG Inc. ("**KPMG**") in its

capacity as proposal trustee of Datatax (in such capacity, the “**Proposal Trustee**”), vests all right, title and interest in assets being sold under the Stalking Horse APA (the “Purchased Assets” under the Stalking Horse APA) to the Stalking Horse Bidder free and clear of all Encumbrances (as defined in the Approval and Vesting Order);

- (e) amends the August 2023 Order such that the stay of proceedings in favour of the Datatax Subsidiaries will expire on the earlier of: (i) October 28, 2023; and (ii) the filing of Proposal Trustee’s Vesting Certificate; and
- (f) permits, after the closing of the Transaction, Datatax to: (i) file and execute articles of amendment or such other documents or instruments as may be required to change its legal name, and such articles, documents or other instruments shall be deemed to be duly authorized, valid and effective without any requirement to obtain shareholder or partner consent; and (ii) upon the official change contemplated in the foregoing (i) the name of Datatax in the within title of proceedings shall be deleted and replaced with the new legal name of Datatax, and any document filed thereafter in these proceedings (other than the Proposal Trustee’s Vesting Certificate and the Termination Certificate (defined below)) shall be filed using such revised title of proceedings.

3. The draft Distribution, Termination and Fee Approval Order is located at Tab 4 of the Motion Record and, among other things:

- (a) if necessary, the abridging the time for service, filing and hearing of the Notice of Motion and Motion Record and dispensing with further service thereof;
- (b) authorizes and directs the Proposal Trustee, following the closing of the Transaction, to make the distributions (collectively, the "**Distributions**") to the creditors Bank of Montreal ("**BMO**") and Fiera Private Debt Fund VI L.P. ("**Fiera**") in accordance with the proposed scheme of distribution set forth in the Second Report of the Proposal Trustee dated October 5, 2023 (the "**Second Report**");
- (c) amends the August 2023 Order such that the time within which Datatax is to make a proposal pursuant to section 62(1) of the *Bankruptcy and Insolvency Act* (Canada) (the "**BIA**"), and the corresponding stay of proceedings provided for in section 69 of the BIA (the "**Stay of Proceedings**"), expires on the earlier of: (i) October 28, 2023; or (ii) the filing of a certificate by the Proposal Trustee certifying that, among other things, the Distributions have been made and that the Proposal Trustee has completed the Remaining Matters (as defined in the Second Report) (the "**Termination Certificate**");
- (d) authorizes the termination, upon the filing of the Termination Certificate, of Brent Houlden ("**Houlden**") as a director of the Company and Naveed

Manzoor (“**Manzoor**”) as the interim CEO of the Company and approves the releases contemplated therein;

- (e) vacates and releases the Administration Charge, the DIP Charge and the D&O Charge (each as defined in the August 2023 Order) upon the filing of the Termination Certificate;
- (f) authorizes and empowers KPMG to act as the trustee in bankruptcy of Datatax;
- (g) approves the fees and disbursements of the Proposal Trustee and its counsel, Bennett Jones LLP (“**Bennett Jones**”); and
- (h) approves the Reports (defined below) and the activities of the Proposal Trustee described therein.

PART II - SUMMARY OF FACTS

A. Background

4. Datatax, through its subsidiaries, carries on the business of providing certain bookkeeping, income tax and consulting services. Datatax holds all of the issued shares in Farm Business Consultants Inc. (“**Farm**”), FBC Financial & Estate Planning Services Inc. (“**FBC Financial**”) and Wheatland Accounting Services Ltd. (“**Wheatland**”, together with Farm and FBC Financial, the “**Datatax Subsidiaries**”, and the Datatax Subsidiaries together with Datatax, the “**Datatax Companies**”).¹

¹ Affidavit of Brent Houlden affirmed October 4, 2023 (“**Houlden Affidavit**”), at para.1.

5. The full factual background regarding the circumstances which led to this proceeding as well as a description of the Stalking Horse APA and sales solicitation process (“**SSP**”) were provided in detail in the motion materials and the factum filed in support of the motion heard August 17, 2023 and are repeated in the Second Report.² All capitalized term used but not defined herein have the meanings ascribed to them in the Second Report.

B. Sales Process

6. Since the August 2023 Order was granted approving the SSP and the related Bidding Procedures, the Proposal Trustee, Datatax and their respective advisors have worked diligently and in good faith to carry out the SSP in accordance with its terms. In accordance with the SSP, the Proposal Trustee has managed all communications with Potential Bidders, both before and after the receipt of bids, including responding to inquiries from Potential Bidders and managing the data room for those Potential Bidders who executed the required non-disclosure agreement.³

7. The Proposal Trustee is supportive of the position that the SSP was carried out in accordance with its terms and the August 2023 Order, and the relief being sought by the Company by the Approval and Vesting Order and the Distribution, Termination and Fee Approval Order and has recommended that the Court grant the Orders in its Second

² Second Report of the Proposal Trustee dated October 5, 2023 (“**Second Report**”), at paras. 10 – 21.

³ Houlden Affidavit at para. 8

Report.⁴ The Second Report provides greater details of the efforts undertaken during the SSP. A summary of some of the key features of the SSP are:⁵

- (a) commencing on August 18, 2023, the Proposal Trustee contacted 59 potential interested parties (collectively, the “**Interested Parties**”), including 20 financial parties, with regards to the transaction opportunity and the SSP. Each of the interested parties received an email containing background information on the proceedings, a copy of a non-confidential overview of Datatax and the key dates pursuant to the Bidding Procedures, the non-disclosure agreement (the “**NDA**”) and information on next steps to explore the opportunity;
- (b) Interested Parties looking to obtain additional information regarding the Datatax opportunity were required to execute the NDA to obtain access to the VDR maintained by the Proposal Trustee. A total of 6 parties executed the NDA (collectively, the “**Potential Bidders**”);
- (c) the VDR contained financial, operational and other pertinent information related to Datatax, as well as copies of the August Order, the Bidding Procedures and an electronic copy of the Stalking Horse APA to be used by Potential Bidders to submit an offer in the SSP;
- (d) over the course of the SSP, the Proposal Trustee followed up with the Interested Parties to confirm their receipt of the email communication with

⁴ Second Report at para. 6(h).

⁵ Second Report at para. 32.

respect to the SSP, and to gauge their potential interest in pursuing the transaction opportunity. The Proposal Trustee also offered to arrange calls with any Potential Bidder to discuss the Bidding Procedures or inquire about any other aspects of the SSP; and,

- (e) throughout the course of the SSP, the Proposal Trustee kept Datatax apprised on the status of the SSP and any diligence requests received from Potential Bidders.

8. As detailed in the materials filed in support of the August 2023 Order and the first report of the Proposal Trustee dated August 16, 2023 (the “**First Report**”), the Bidding Procedures set out the minimum requirements that each Bid submitted in the SSP had to meet in order to be considered to be a “Qualified Bid” that would be considered by the Proposal Trustee and the Company (see paragraph 52(c) of the First Report). Those requirements included, but were not limited to, the following:⁶

- (a) *Deadline* – The Bid had to be filed on or before the deadline of September 29, 2023 (the “**Bid Deadline**”);
- (b) *Deposit* – The SSP required that a cash deposit of not less than 10% of the offered purchase price be provided to the Proposal Trustee;
- (c) *Purchase Price* – The purchase price provided for in the Bid could not be not less than the amount offered under the Stalking Horse APA, plus: (i) an

⁶ Houlden Affidavit at para. 10.

amount equivalent to the break fee of \$400,000; and (ii) a minimum overbid amount of \$150,000;

- (d) *Binding Offer* – The Bid had to be a duly executed binding offer;
- (e) *Capacity to Close* – The Potential Bidder had to demonstrate an ability to close the transaction contemplated in the Bid by the Outside Date of October 16, 2023; and
- (f) *Unconditional* – The Bid had to be unconditional.

9. Despite the efforts of the Proposal Trustee, as of the Bid Deadline, no other Qualified Bids were received. As a result, the Stalking Horse Bidder was deemed to be the Successful Bid.⁷

10. Consequently, the consideration provided for under the Stalking Horse APA represents the highest price offered for the Property and Business of Datatax and the Transaction contemplated in the Stalking Horse APA provides the best result for the Company's stakeholders in the circumstances.⁸ Accordingly, the Company requests that this Honourable Court grant the Approval and Vesting Order approving the Transaction and authorize and direct the Company and the Proposal Trustee to take the steps necessary to close the Transaction.

⁷ Second Report at para. 36.

⁸ Second Report at para. 71.

11. The key features of the Stalking Horse APA are:
- (a) *Purchased Assets*: substantially all of the assets of Datatax, including the shares of Datatax Subsidiaries, save and except for the Company's minute books, corporate records and all contracts other than the Assumed Contracts (as defined in the Stalking Horse APA);
 - (b) *Assumed Liabilities*: (i) all obligations and liabilities of Datatax relating to the Purchased Assets from and after the Closing Date, and (ii) the \$3.5 million promissory note dated June 22, 2022 to Steven Ibbotson (the "**Ibbotson Note**");
 - (c) *Purchase Price*: the total purchase price is estimated to be approximately \$40.7 million (the "**Purchase Price**"), which is comprised of:⁹
 - (i) the amount to be paid in cash which consists of the sum of:
 - A. a non-refundable deposit in the amount of \$0.2 million (the "**Non-Refundable Deposit**") advanced by the Stalking Horse Bidder on August 11, 2023;
 - B. the portion of the refundable deposit in excess of the amount drawn on the DIP Facility (the full amount of the "**Refundable Deposit**" being the amount of \$3.4 million which was advanced by the Stalking Horse

⁹ Second Report at para. 37.

Bidder on August 11, 2023). The Remaining Refundable Deposit is estimated to be \$0.9 million, which will be applied on closing against payment of the Cash Purchase Price;

- C. an amount up to \$2.0 million plus any fees, costs, and unpaid interest accrued to the Closing Date on account of the BMO Debt. The outstanding amount of the BMO Debt is estimated to be \$2.0 million on Closing; and
- D. an amount equal to the Fiera Debt (being an approximately equal to \$32,005,634¹⁰) plus any interest at 7% commencing on July 15, 2023 until the Closing Date less (1) the Remaining Refundable Deposit (per B above); and (2) any amount by which the BMO Costs (as defined in the Stalking Horse APA) exceed \$25,000.

- (ii) assignment to and assumption of the Ibbotson Note; and
- (iii) the DIP Amount, which is estimated to be \$2.5 million on Closing.

- (d) *Name Change*: following the Closing Date, Datatax will change its name to one that does not use, alone or in combination with any other words, the

¹⁰ Second Report at para. 56.

words "Datatax", "Wheatland", "Farm Business Consultants", "FBC Financial and Estate Planning Services", "Harvest" and "FBC".

12. The Stalking Horse Bidder requested some changes to the closing mechanics of the Transaction. The requested changes do not impact the economics provided for under the Stalking Horse APA and only address the request that certain of the Company assets be transferred to a related-party entity of the Stalking Horse Bidder. The requested changes do not modify the purchase price, or the assets being acquired nor do the requested changes amend, supplement or modify any other material terms of the Stalking Horse Bid. The Company and the Stalking Horse Bidder are of the view that the requested changes are contemplated by the Stalking Horse APA and can be implemented following the granting of the Approval and Vesting Order and prior to the Closing of the Transaction without amendment to the Stalking Horse APA or Approval and Vesting Order.¹¹

13. In connection with the Second Report, the Proposal Trustee has filed certain appendices (the "**Confidential Appendices**") that contain sensitive topics that, if disclosed, could impact Datatax and its stakeholders if the Transaction does not close.¹² The Confidential Appendices include documents and information regarding the bidding process and the other bid that was received. Until such time as the Transaction is actually closed, it would be detrimental to the Company's efforts to implement a sale of its assets and the undermine the integrity of the process if such information was disclosed prior to the conclusion of these proceedings. The Company is requesting that the Court grant the

¹¹ Houlden Affidavit at para. 13.

¹² Houlden Affidavit at para. 14.

sealing relief contemplated in the Approval and Vesting Order until such time these proceedings are terminated as evidenced by the filing of the Termination Certificate.

PART III - SUMMARY OF ISSUES

14. The issues on these two motions are whether the Court should grant: (1) the proposed Approval and Vesting Order; and (2) the proposed Distribution, Termination and Fee Approval Order. These issues give rise to the following sub-issues:

- (a) *Regarding the Approval and Vesting Order.* (i) Should the Transaction be approved?; and (ii) Should the Court grant the request to seal the Confidential Appendices?

- (b) *Regarding the Distribution, Termination and Fee Approval Order.* (i) Should the Distribution be approved?; (ii) Should the fees and activities of the Proposal Trustee and its counsel be approved?; (iii) Should the releases in favour of Houlden and Manzoor be granted?; and (iv) Should the vacating/releasing of the Charges (defined below) be granted?

PART IV - LAW AND ARGUMENT

A. The Approval and Vesting Order Should be Granted

i. The Transaction Should be Approved

15. This Court has the authority and jurisdiction pursuant to subsections 65.13(1) and (7) of the BIA to grant approval and vesting orders selling the assets of a debtor company outside of the ordinary course of business.¹³

16. Section 65.13(4) of the BIA provides a non-exhaustive list of criteria for the Court to consider when deciding to approve a proposed transaction including:¹⁴

- (a) whether the process leading to the proposed sale or disposition was reasonable in the circumstances;
- (b) whether the trustee approved the process leading to the proposed sale or disposition;
- (c) whether the trustee filed with the court a report stating that in its opinion the sale or disposition would be more beneficial to the creditors than a sale or disposition under a bankruptcy;
- (d) the extent to which the creditors were consulted;
- (e) the effects of the proposed sale or disposition on the creditors and other interested parties; and

¹³ *Bankruptcy and Insolvency Act*, [R.S.C. 1985, c. B-3](#) ("BIA"), sections 65.13(1) and (7).

¹⁴ BIA at section 65.13(4).

- (f) whether the consideration to be received for the assets is reasonable and fair, taking into account their market value.

17. In *Royal Bank of Canada v Soundair Corp.*, which was decided before s. 65.13 of the BIA was enacted, the Ontario Court of Appeal set the following criteria for approving a sale of an insolvent person or entity's assets generally:¹⁵

- (a) whether a sufficient effort was made to get the best price and whether the parties acted improvidently;
- (b) the interests of all parties;
- (c) the efficacy and integrity of the process by which offers are obtained; and
- (d) whether there has been unfairness in the process.

18. The Transaction between Datatax and the Stalking Horse Bidder satisfies the criteria set out in s. 65.13 of the BIA for the following reasons:

- (a) good faith efforts were made to market the Datatax Companies pursuant to the SSP, which was approved by the Court and run exclusively by the Proposal Trustee;
- (b) the one offer that was received from other parties as a result of the SSP was not a Qualified Bid under the SSP;

¹⁵ *Royal Bank of Canada v Soundair Corp.*, [1991 CanLII 2727 \(ON CA\)](#), at pages 8 and 9.

- (c) the duration of the SSP was sufficient to allow interested parties to perform diligence and submit offers. Additionally, the duration of the SSP was approved by the Court pursuant to the August 2023 Order;
- (d) the stakeholders of the Company are best served by the implementation of the Transaction;
- (e) the Proposal Trustee and the Company had engaged and consulted with the key creditors of the company, including the fulcrum creditor;
- (f) completing the Transaction will permit effect a going concern transaction, including transfer of shares of operating subsidiaries;
- (g) completing the Transaction will permit secured lender BMO to be paid in full; secured lender Fiera to receive funds in accordance with the Transaction and in satisfaction of its secured debt; and permit the assumption of the next ranking debt being the Ibbotson Note;
- (h) Proposal Trustee supports the approval of the Stalking Horse APA; and
- (i) completing the Transaction will allow these proceedings to be completed.

19. Furthermore, at this time, the Company does not have any further options for continuing in business. It has no further funding to continue to carry on business, and does not have any other viable proposal that it can put to its creditors.

20. Accordingly, it is appropriate for the Court to authorize the Company to complete the Transaction and approve the Approval and Vesting Order.

ii. The Court Should Approve the Sealing Request

21. Pursuant to the *Courts of Justice Act*, the Court has the discretion to order that any document filed in a civil proceeding be treated as “confidential”, sealed and not form part of the public record.¹⁶

22. In *Sherman Estate v. Donovan*, the Supreme Court of Canada confirmed the common law test for the granting of a sealing orders in civil matters. The three core considerations when the Court is deciding to grant a sealing order are: (i) court openness poses a serious risk to an important public interest; (ii) the order sought is necessary to prevent this serious risk to the identified interest because reasonably alternative measures will not prevent this risk; and (iii) as a matter of proportionality, the benefits of the order outweigh its negative effects.¹⁷

23. *Sherman Estate* followed an earlier Supreme Court decision, *Sierra Club of Canada v Canada (Minister of Finance)*, in recognizing that commercial interests such as preserving confidential information or avoiding a breach of a confidentiality agreement are an “important public interest” for the purposes of the three core considerations noted above.¹⁸

¹⁶ *Courts of Justice Act*, [R.S.O. 1990, c C.43](#), s. 137(2).

¹⁷ *Sherman Estate v. Donovan*, [2021 SCC 25](#) at para. 38.

¹⁸ *Sierra Club of Canada v Canada (Minister of Finance)*, [2002 SCC 41](#) at para. 53; *Sherman Estate* at paras. 38 and 43.

24. Courts have applied *Sierra Club* and *Sherman Estate* to the insolvency context and authorized sealing orders over confidential or commercially sensitive documents to protect the interests of debtors.¹⁹

25. The Company submits that the threshold contemplated by the considerations is satisfied here. The sealing of the Confidential Appendices relates only to the release of commercially sensitive information prior to the closing of the Transaction, which could prejudice a future sale process if the Transaction fails to close.²⁰ The redacting the sensitive information in the Confidential Appendices is in the public interest to ensure to ensure the integrity of any future sales process.

26. Further, it is only proposed that the Confidential Appendices be sealed until the closing of the Transaction and the filing of the Termination Certificate. Accordingly, the sealing request is proportional in the circumstances, and the benefits of the sealing of the Confidential Appendices for a short period of time until the closing of the Transaction (the closing, if approved, is expected to occur not long after the granting of the Approval and Vesting Order) outweighs any negative effects.

B. The Distribution, Termination and Fee Approval Order Should be Granted.

i. The Distribution Should Be Approved

27. The Proposal Trustee has been provided with a security opinion from its counsel, Bennett Jones, which confirms, subject to standard assumptions and qualifications, the validity of Fiera and BMO's secured claims. The proceeds from the Transaction will be

¹⁹ See, for example, *Ontario Securities Commission v Bridging Finance Inc*, [2021 ONSC 4347](#) at paras 23-28.

²⁰ Second Report; Houlden Affidavit at para. 14.

insufficient to repay Fiera in full or distribute proceeds to any other subordinate creditors but represents the maximum possible realization of the Datatax assets, as outlined in the Second Report. Therefore, the distribution of funds to the Company's secured creditors Fiera and BMO, in accordance with the distribution process contemplated the Second Report, is appropriate and required pursuant to the terms of the SSP. It is well established that courts grant distributions to creditors in the course of a court-supervised insolvency process.

28. With the Stalking Horse APA being the only Qualified Bid under the SSP, it is necessary and appropriate to finalize and conclude the Transaction and proceed with the distributions to Fiera and BMO – which results in the best possible path forward in the circumstances for the Company and its stakeholders, including the employees of the Datatax Companies while at the same time maximizing the recoveries for the Company's creditors.²¹

ii. The Fees and Activities of the Proposal Trustee and its Counsel Should Be Approved

29. Pursuant to section 47.2 of the BIA, the Court has authority to make any order respecting fees and disbursements of the Proposal Trustee.²² The activities of the Proposal Trustee described in the Second Report were all necessary and undertaken in

²¹ See for example: *Re Harte Gold Corp.*, [2022 ONSC 653](#) at para. 64; *Nortel Networks Corporation (Re)*, [2015 ONSC 2987](#) at para. 254 – 255 and *Canada (Attorney General) v. Fleet National Bank*, [2005 CanLII 21 \(ON CA\)](#) at para. 8; *Re Nortel Networks Corporation et al*, [2017 ONSC 673](#) at para. 6.

²² BIA section 47.2.

good faith in accordance with the SSP and the August 2023 Order, in the best interests of the Company's stakeholders more generally.²³

30. The Proposal Trustee is seeking approval of the professional fees incurred by it and its legal counsel. In each case, the professional fees were required to implement the SSP and meet the test set out in the case law of being "fair and reasonable", with an emphasis on the value provided and what was accomplished.²⁴

31. In *Re Target Canada Co.*, Morawetz R.S.J. (as he then was) stated that a request to approve a court-appointed officer's report "is not unusual"²⁵ and that "there are good policy and practical reasons"²⁶ for the court to approve a court-appointed officer's report and activities to provide a "level of protection during the [*Companies' Creditors Arrangement Act*] process".²⁷ While Justice Morawetz made these observations in the context of a Monitor's activities under the *Companies' Creditors Arrangement Act*, they apply equally to the activities of a proposal trustee under the BIA.

32. Justice Morawetz continued that court approval of the Monitor's activities satisfies the following objectives:²⁸

- (a) It allows the Monitor to move forward with the next steps in the CCAA proceedings;

²³ Houlden Affidavit, para. 8.

²⁴ *Bank of Nova Scotia v. Diemer*, [2014 ONCA 851](#), at paras. 44-45.

²⁵ *Target Canada Co. (Re)* ["**Target**"], [2015 ONSC 7574](#) at para. 2.

²⁶ *Target* at para. 22.

²⁷ *Target* at para. 22.

²⁸ *Target* at para. 23.

- (b) It brings the Monitor's activities before the Court;
- (c) It allows an opportunity for the concerns of the stakeholders to be addressed, and any problems to be rectified;
- (d) It enables the Court to satisfy itself that the Monitor's activities have been conducted in prudent and diligent manners;
- (e) It provides protection for the Monitor not otherwise provided by the CCAA;
and
- (f) It protects the creditors from the delay and distribution that would be caused by:
 - (i) re-litigation of steps taken to date, and
 - (ii) potential indemnity claims by the Monitor.

33. In the present case, the Proposal Trustee's Reports, and the conduct and activities of the Proposal Trustee referred to therein should be approved. The Proposal Trustee has acted responsibly and carried out its activities in a manner consistent with the provisions of the BIA and in compliance with the SSP, and its efforts were instrumental in achieving the positive outcome in this case. No party has put forward evidence to the contrary.

iii. The Releases in Favour of Houlden and Manzoor Should Be Granted

34. The proposed releases in favour of Houlden and Manzoor are permitted under section 4.2(2) of the BIA,²⁹ and it is customary to grant releases to professionals working on the corporate reorganizations where the claims to be released are rationally connected to the restructuring.³⁰ The appointment of Houlden and Manzoor to their respective roles with the Datatax Companies were confirmed and authorized pursuant to the Order granted by Justice Cavanaugh November 7, 2022, which appointments marked the commencement of the efforts to stabilize and restructure the Datatax Companies.

35. As noted above, the proceeds from the Transaction will be insufficient to repay Fiera in full or to distribute proceeds to any other subordinate creditors but represents the maximum possible realization of the Datatax assets, as outlined in the Second Report, and will result of the continuation of the businesses for the benefit of employees, their creditors, clients and other stakeholders. Upon the filing of the Termination Certificate, there will be no further steps for Houlden and Manzoor to take in their capacities with the Company. Given that Houlden and Manzoor's appointment derived from the November 2022 Order and their efforts have been, and will continue to be, instrumental to the successful completion of the Transaction and these proceedings, it is appropriate that the Distribution, Termination and Fee Approval Order provide for their termination and release upon the filing of the Termination Certificate and the distribution of funds.

²⁹ BIA section 4.2(2).

³⁰ *Re Green Relief Inc.*, [2020 ONSC 6837](#), at para. 27.

iv. The Vacating of Charges is Appropriate

36. The Administration Charge, the DIP Charge and the D&O Charge (together, the “Charges”) were granted pursuant to the August 2023 Order. Following the distributions and the termination of these proceedings, the Charges will no longer be necessary. In order to ensure that there is no conflict between the Charges and any charges or priority that the trustee in bankruptcy may be entitled to, it is appropriate that the Distribution, Termination and Fee Approval Order provide that the Charges be vacated once any amounts owing in respect of such Charges are paid to the relevant beneficiaries and the Termination Certificate is filed.

C. Conclusion

37. The two motions seeking approval of the Approval and Vesting Order and the Distribution, Termination and Fee Approval Order are being brought at this time to conclude the SSP, close the Transaction in a timely fashion to the benefit of the Datatax Companies and their stakeholders, distribute the sales proceeds and terminate these proceedings.

38. Datatax seeks the Court’s assistance to conclude the SSP and close the Transaction. The granting of the Orders will facilitate an orderly and cost-effective method of dealing with Datatax’s assets and commercial obligations under the SSP.

PART V - ORDERS REQUESTED

39. Datatax therefore requests that the Court grant the proposed Orders.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 10th day of October, 2023.



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**SCHEDULE “A”
LIST OF AUTHORITIES**

1. *Bank of Nova Scotia v. Diemer* [2014 ONCA 851](#)
2. *Canada (Attorney General) v. Fleet National Bank* [2005 CanLII 21 \(ON CA\)](#)
3. *Harte Gold Corp. (Re)*, [2022 ONSC 653](#)
4. *Ontario Securities Commission v Bridging Finance Inc.* [2021 ONSC 4347](#)
5. *Re Green Relief Inc.* [2020 ONSC 6837](#)
6. *Re Nortel Networks Corporation* [2015 ONSC 2987](#)
7. *Re Nortel Networks Corporation et al* [2017 ONSC 673](#)
8. *Royal Bank of Canada v Soundair Corp.* [1991 CanLII 2727 \(ON CA\)](#)
9. *Sherman Estate v. Donovan* [2021 SCC 25](#)
10. *Sierra Club of Canada v Canada (Minister of Finance)* [2002 SCC 41](#)
11. *Target Canada Co. (Re)* [2015 ONSC 7574](#)

SCHEDULE “B”
TEXT OF STATUTES, REGULATIONS & BY-LAWS

Bankruptcy and Insolvency Act, RSC 1985, c B-3.

Good faith — powers of court

- **(2)** If the court is satisfied that an interested person fails to act in good faith, on application by any interested person, the court may make any order that it considers appropriate in the circumstances.

Orders respecting fees and expenses

- **47.2 (1)** If an appointment of an interim receiver is made under section 47 or 47.1, the court may make any order respecting the payment of fees and disbursements of the interim receiver that it considers proper, including an order giving the interim receiver security, ranking ahead of any or all secured creditors, over any or all of the assets of the debtor in respect of the interim receiver’s claim for fees or disbursements, but the court shall not make such an order unless it is satisfied that all secured creditors who would be materially affected by the order were given reasonable advance notification and an opportunity to make representations to the court.

Restriction on disposition of assets

- **65.13 (1)** An insolvent person in respect of whom a notice of intention is filed under section 50.4 or a proposal is filed under subsection 62(1) may not sell or otherwise dispose of assets outside the ordinary course of business unless authorized to do so by a court. Despite any requirement for shareholder approval, including one under federal or provincial law, the court may authorize the sale or disposition even if shareholder approval was not obtained.

- **Factors to be considered**

65.13(4) In deciding whether to grant the authorization, the court is to consider, among other things,

- **(a)** whether the process leading to the proposed sale or disposition was reasonable in the circumstances;
- **(b)** whether the trustee approved the process leading to the proposed sale or disposition;
- **(c)** whether the trustee filed with the court a report stating that in their opinion the sale or disposition would be more beneficial to the creditors than a sale or disposition under a bankruptcy;
- **(d)** the extent to which the creditors were consulted;
- **(e)** the effects of the proposed sale or disposition on the creditors and other interested parties; and

- (f) whether the consideration to be received for the assets is reasonable and fair, taking into account their market value.
- **Assets may be disposed of free and clear**

65.13(7) The court may authorize a sale or disposition free and clear of any security, charge or other restriction and, if it does, it shall also order that other assets of the insolvent person or the proceeds of the sale or disposition be subject to a security, charge or other restriction in favour of the creditor whose security, charge or other restriction is to be affected by the order.

Courts of Justice Act, RSO 1990, c C.43

Sealing documents

(2) A court may order that any document filed in a civil proceeding before it be treated as confidential, sealed and not form part of the public record.

IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A
PROPOSAL UNDER THE *BANKRUPTCY AND INSOLVENCY*
ACT, R.S.C. 1985, c. B-3, AS AMENDED OF DATATAX BUSINESS
SERVICES LIMITED, A CORPORATION FORMED UNDER THE
LAWS OF ONTARIO

Court No. BK-23-02975175-0031
Estate File No. 31-2975175

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

Proceeding commenced at TORONTO

FACTUM OF DATATAX BUSINESS SERVICES LIMITED
(Sale Approval and Termination Motion, October 11, 2023)

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