

**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