

Court File No. & Estate No. CV-19-627184-00CL (31-2560674)
CV-19-627185-00CL (31-2560984)
and CV-19-627186-00CL (31-2560986)

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

IN THE MATTER OF THE BANKRUPTCY OF QUADRIGA FINTECH
SOLUTIONS CORP., WHITESIDE CAPITAL CORPORATION AND 0984750
B.C. LTD. D/B/A QUADRIGA CX AND QUADRIGA COIN EXCHANGE

FOURTH REPORT OF THE TRUSTEE

October 7, 2019

STIKEMAN ELLIOTT LLP

Barristers & Solicitors
5300 Commerce Court West
199 Bay Street
Toronto, Canada M5L 1B9

Elizabeth Pillon LSO#: 35638M

Tel: (416) 869-5623

Email: lpillon@stikeman.com

Maria Konyukhova LSO#: 52880V

Tel: (416) 869-5230

Email: mkonyukhova@stikeman.com

Lee Nicholson LSO#: 66412I

Tel: (416) 869-5604

Email: leenicholson@stikeman.com

Fax: (416) 947-0866

Lawyers for the Trustee-in-Bankruptcy

INTRODUCTION

1. On February 5, 2019 (the “**Filing Date**”), Quadriga Fintech Solutions Corp., Whiteside Capital Corporation and 0984750 B.C. Ltd. (“**Quadriga**”) d/b/a Quadriga CX and Quadriga Coin Exchange (collectively, the “**Companies**”) were granted protection from their creditors by the Nova Scotia Supreme Court (the “**Nova Scotia Court**”) under the *Companies’ Creditors Arrangement Act* (the “**CCAA**”). Pursuant to an Order of Justice Wood dated February 5, 2019, Ernst & Young Inc. was appointed as the monitor (the “**Monitor**”) of the Applicants.
2. On February 28, 2019, the Nova Scotia Court issued an Order (the “**Rep Counsel Order**”) appointing Miller Thomson LLP and Cox & Palmer as representative counsel (“**Representative Counsel**”) of the affected users of the Quadriga platform except for certain individuals who opt-out of representative in accordance with the Rep Counsel Order (the “**Affected Users**”).
3. On April 11, 2019, a Termination and Bankruptcy Assignment Order was issued by Justice Wood approving the process by which the Applicants’ CCAA proceedings would transition to bankruptcy proceedings (the “**Bankruptcy Proceedings**”) under the *Bankruptcy and Insolvency Act* (the “**BIA**”).
4. On April 15, 2019, each of the Applicants were assigned into bankruptcy. Ernst & Young Inc. consented to act as Trustee-in-Bankruptcy (the “**Trustee**”) of each bankrupt estate, which role was affirmed at the First Meeting of Creditors held on May 2, 2019. Five individuals were named as Estate Inspectors (the “**Inspectors**”) at the First Meeting of

Creditors including four (4) members of the Committee of Affected Users (the “**Official Committee**”) and one (1) individual from their legal team.

5. On September 10, 2019, the Nova Scotia Court granted an order transferring the Bankruptcy Proceedings to the Ontario Superior Court of Justice (Commercial List). On September 24, 2019, the Office of the Superintendent of Bankruptcy issued revised certificates of appointment in respect of the Companies’ estates confirming the division and district of the Bankruptcy Proceedings had been transferred to Toronto, Ontario.
6. Capitalized terms not otherwise defined in this Report are defined in the Settlement Agreement dated October 3, 2019 (the “**Settlement Agreement**”) between the Trustee, Jennifer Robertson, Jennifer Robertson in her capacity as executor of the estate of Gerald Cotten (the “**Estate**”), Thomas Beazley and certain entities party thereto.

PURPOSE

7. The purpose of the Fourth Report of the Trustee (the “**Fourth Report**”) is to provide the Court and stakeholders with the Trustee’s recommendation regarding the Settlement Agreement and to support the Trustee’s request for an Order (the “**Settlement Approval Order**”) that, among other things:
 - (a) Approves the Settlement Agreement;
 - (b) Approves and ratifies the execution of the Settlement Agreement by the Trustee, and Representative Counsel on behalf the Official Committee in respect of certain release provisions, and authorizes and directs the Trustee take such additional

steps and execute such additional documents as may be necessary or desirable in order to complete the transactions contemplated by the Settlement Agreement;

- (c) Declares that all transfers of the Settlement Assets by Quadriga to Jennifer Robertson, the Estate/Gerald Cotten, Thomas Beazley and the Controlled Entities (collectively, the “**Settling Parties**”) are “transfers at undervalue” and voided and set aside as against the Trustee;
- (d) Declares that any Settlement Assets that were not directly transferred by Quadriga to the Settling Parties, were acquired with assets/property or proceeds of assets/property that were transferred to the Settling Parties by Quadriga and such transactions are “transfers at undervalue” and voided and set aside as against the Trustee, and as such, the Settlement Assets of the Settling Parties are property of the Quadriga estate vested in the Trustee (including any accrued income forming part of the Settlement Assets);
- (e) Approves the compromises, releases, and injunctions set out in the Settlement Agreement; and
- (f) Varies the Asset Preservation Order of the Nova Scotia Court dated April 11, 2019 to reflect the terms and effect of the Settlement Agreement, and orders continuation of the disclosure obligations by third parties set out in the Asset Preservation Order.

TERMS OF REFERENCE

8. In preparing this Fourth Report, the Trustee has relied upon unaudited financial information, the Company's limited books and records and financial information prepared by the Company (the "**Information**"). The Trustee has not audited, reviewed or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would wholly or partially comply with Generally Accepted Assurance Standards pursuant to the *Chartered Professional Accountants Canada Handbook*, and accordingly the Trustee expresses no opinion or other form of assurance in respect of the Information.
9. Except as otherwise stated, the Trustee's understanding of factual matters expressed in this Report concerning the Applicants and their business is based on the Information, and not independent factual determinations made by the Trustee.
10. The Trustee has relied upon the information available to it from Quadriga, its independent contractors and other parties with historical involvement with Quadriga. The Trustee has attempted to independently review and corroborate the information received, where possible.
11. Unless otherwise stated, all monetary amounts contained herein are expressed in Canadian dollars.

BACKGROUND

12. During the CCAA proceedings, the Monitor commenced an investigation of Quadriga's business and affairs pursuant to section 23(1)(c) of the CCAA. The investigation was

preliminarily reported on in the Fifth Report of the Monitor dated June 19, 2019 (the “**Fifth Report**”), a copy of which is attached to this Fourth Report as Appendix “A”.

13. The Fifth Report outlined various concerns of the Monitor regarding the activities of Quadriga and Gerald Cotten, the Companies’ former chief executive officer. The concerns included, among other things:
 - (a) The Monitor was unable to locate traditional books and records, and the limited records available for review and limited parties available with institutional knowledge, made the investigation of Quadriga’s business and affairs challenging;
 - (b) Quadriga’s operating infrastructure was significantly flawed from a financial reporting and operational control perspective;
 - (c) The Monitor was unable to locate basic corporate records or accounting records, including records documenting the location of Quadriga’s cryptocurrency and fiat currency reserves between third party payment processors, bank accounts, wallet addresses and third party exchanges;
 - (d) There appeared to be no segregation of assets between funds of Quadriga and funds of Affected Users;
 - (e) Quadriga engaged in significant “cash” transactions and the Monitor was unable to verify if cash deposits were properly recorded;

- (f) The Monitor was unable to locate any records for security passwords associated with wallet addresses meant to hold cryptocurrency reserves or adequate safeguard procedures to transfer passwords which were solely held by Mr. Cotten;
- (g) Quadriga relied extensively upon the services of third party payment processors to administer its fiat treasury functions. It did not appear there were adequate governance arrangements, oversight or reporting functions in relation to fiat currency maintained by these third parties. For example, there appeared to be no segregation between funds of Affected Users and Quadriga funds held by these third party payments processors and Quadriga appears to have had no ability to track and reconcile funds held by third party payment processors;
- (h) Cryptocurrency of Affected Users was not maintained exclusively in Quadriga's hot and cold wallets. Significant volumes of cryptocurrency from Quadriga's platform were transferred to competitor exchanges, some of which was transferred into personal accounts controlled by Mr. Cotten. In addition, substantial amounts of cryptocurrency were transferred to wallet holders whose identity the Monitor has been unable to confirm;
- (i) It appears that cryptocurrency of Affected Users was transferred off the Quadriga platform to these exchanges and traded on these exchanges and in some circumstances used as security for a margin trading account established by Mr. Cotten. Trading losses incurred and incremental fees charged by exchanges adversely affected Quadriga's cryptocurrency reserves;

- (j) Mr. Cotten created certain accounts (the “**Identified Accounts**”) on the Quadriga platform under aliases where it appears that fictitious cryptocurrency and fiat funds were deposited and used to trade within the Quadriga platform resulting in inflated revenue figures, artificial trades with Affected Users and ultimately the withdrawal of cryptocurrency deposited by Affected Users;
 - (k) Substantial funds were transferred to Mr. Cotten personally and other related parties; and
 - (l) Substantial fiat funds and cryptocurrency reserves expected to be held by Quadriga on behalf of Affected Users are unable to be located.
14. As set out above, the Monitor’s investigation revealed that Mr. Cotten periodically transferred significant cryptocurrency and other funds outside of Quadriga. In certain instances, these transfers were for significant amounts of fiat currency directed to Mr. Cotten personally and used to fund personal expenses and the purchase of personal assets. In other instances, transfers were made directly to Ms. Robertson and used to pay personal expenses and purchase personal assets in her name or the name of companies which Ms. Robertson controlled.
15. As examples of the transfers of property from Quadriga to fund the purchase of personal assets of Mr. Cotten and Ms. Robertson, the Trustee is aware of the following:
- (a) Third party payment processors, which held deposits from Affected Users, were instructed on various occasions by Mr. Cotten to distribute significant amounts of funds directly to Mr. Cotten, Ms. Robertson or related companies;

- (b) In a particular instance, a bank account of Mr. Cotten was solely funded with transfers from a third party payment processor and the account still held significant funds at the time of Mr. Cotten's death;
 - (c) In at least one instance, the funds from a third party payment processor were directed to a solicitor that acted for Mr. Cotten and Ms. Robertson in connection with a real estate acquisition in the week following the transfer;
 - (d) Quadriga transferred various funds to Ms. Robertson who in turn lent the funds to Robertson Nova Property Management Inc. ("**RNPM**") to fund the purchase of the real estate owned by that company;
 - (e) Mr. Cotten instructed Affected Users in certain instances to fund their accounts on the Quadriga platform by transferring funds to a bank account of a separate company personally owned by Mr. Cotten; and
 - (f) The Identified Accounts were used in certain instances to transfer cryptocurrency from Quadriga to personal wallet addresses of Mr. Cotten.
16. At the time of Mr. Cotten's death, he and Ms. Robertson owned, directly or indirectly, significant cash holdings, 16 real estate properties in Nova Scotia, real estate property in British Columbia, vehicles, a sailing vessel and a personal aircraft amongst other assets. Moreover, Mr. Cotten and Ms. Robertson incurred significant personal, living and travel related expenses.
17. Most of these transfers from Quadriga and subsequent purchases of personal assets by Mr. Cotten and Ms. Robertson with funds originating from Quadriga occurred within

three (3) years of the CCAA filing. For example, of the 16 real estate properties owned by the Estate, Ms. Robertson and RNPM, the first was purchased on May 12, 2016 and 14 of the real estate properties were purchased after January 1, 2017.

18. To the Monitor's knowledge, neither Mr. Cotten nor his wife had any material sources of income other than the funds they received from Quadriga. As reported in the Fifth Report, the Monitor was unable to locate any documents indicating compensation properly distributed to Mr. Cotten (either in the form of salary, dividends or otherwise) except for an employment agreement from 2015 indicating an annual salary for Mr. Cotten of \$65,000 per annum.
19. The Monitor understands that Mr. Cotten did not file personal tax returns for 2014, 2015 or 2017, and although Mr. Cotten did file a tax return in 2016, no income from Quadriga was reported in that year. Tax returns filed for 2017 and 2018 subsequent to Mr. Cotten's death as part of the probate estate process also reported no income from Quadriga.
20. Tax returns filed by Ms. Robertson in 2015 and 2016 reported total income less than \$60,000 per year. In 2017, Ms. Robertson reported total income of less than \$5,000 to the CRA. None of the reported income was income from Quadriga.

ASSET PRESERVATION ORDER

21. On April 11, 2019, the Monitor obtained an asset preservation order (the "**Asset Preservation Order**") issued by the Nova Scotia Court. The Asset Preservation Order was obtained with the consent of Ms. Robertson. The Asset Preservation Order required Ms. Robertson, the Estate and various other related entities to disclose all of their

respective assets to the Trustee and refrain from selling or disposing of such assets except with the consent of the Monitor. A copy of the Asset Preservation Order is attached to this Fourth Report as Appendix “B”.

22. In the Fifth Report, the Monitor indicated that due to its findings, it intended to seek the recovery of the assets subject to the Asset Preservation Order as it appeared the assets originated from the Companies and constituted preferences or transfers at undervalue under the BIA or may be subject to other causes of action asserted by the Trustee. The Fifth Report indicated that the Monitor had engaged in initial discussions with Ms. Robertson regarding the assets subject to the Asset Preservation Order. The Second Report of the Trustee dated August 26, 2019 also indicated that the Trustee had been engaged in productive discussions with counsel to Ms. Robertson regarding the recovery of the assets. Ms. Robertson has been cooperative with the Trustee in administering the terms of the Asset Preservation Order.

THE SETTLEMENT AGREEMENT

23. Shortly after filing the Fifth Report and following on earlier conversations, counsel to Ms. Robertson presented the Trustee with a settlement offer that involved returning most of her assets, the assets of the Estate and the assets of entities owned by Ms. Robertson or the Estate (the “**Controlled Entities**”) to the Trustee. Subsequent negotiations between the parties produced an agreement acceptable to the Trustee and the Inspectors. The Trustee was of the view that a negotiated settlement was preferable to pursuing claims through litigation if it could achieve acceptable terms with Ms. Robertson as any litigation would likely result in the Quadriga estate incurring significant legal expenses

and may only result in a recovery for the estate after an extended timeline necessary to obtain a determination in respect of the Trustee's claims.

24. The Trustee consulted with Representative Counsel and the Inspectors throughout the negotiations. The Trustee also engaged with the Official Committee as any agreement was likely to result in a release provided on behalf of Affected Users to ensure finality for the Settling Parties.
25. The settlement negotiations were extensive and conducted at arm's length and ultimately resulted in the Settlement Agreement whereby nearly all of the assets of Ms. Robertson, the Estate, and the Controlled Entities will be transferred to the Trustee, along with a vehicle being returned to the Quadriga estate by Ms. Robertson's step father.
26. When the Trustee takes possession of the Settlement Assets, its intention is to liquidate them for the benefit of Quadriga's stakeholders, including the Affected Users. In the case of certain rental properties, a new property manager has been engaged by RNPM. The property management contract will be assigned to the Trustee should the Settlement Agreement be approved by the Court and the property manager will manage the portfolio of real estate until the Trustee is able to sell such properties. The net rental income will accrue for the benefit of the Quadriga estate. Further, in accordance with the Asset Preservation Order, certain of the assets have already been liquidated with the cooperation of Ms. Robertson and the consent of the Trustee and Representative Counsel. The proceeds of such dispositions have been deposited into accounts with counsel to Ms. Robertson. If the Settlement Agreement is approved, those funds would be transferred to the Quadriga estate.

SUMMARY OF THE SETTLEMENT AGREEMENT

27. The Settlement Agreement is attached to this Fourth Report as Appendix “C”.
28. The primary objective of the Settlement Agreement is to facilitate the return of the assets of Ms. Robertson, the Estate and the Controlled Entities to the Quadriga estate. The Settlement Agreement achieves this objective as the Quadriga estate will acquire nearly all of the assets currently owned by Ms. Robertson, the Estate, and the Controlled Entities. Through the Settlement Agreement, the Trustee will also obtain continued cooperation from Ms. Robertson on various issues, including asset and information disclosure matters that may assist with additional recovery efforts by the Trustee. Further, the Quadriga estate will also recover certain assets from Mr. Beazley.
29. The key terms of the Settlement Agreement are summarized below in the following chart:

Settlement Agreement Summary	
Parties to the Settlement Agreement	<ul style="list-style-type: none">• The Trustee• Robertson• Robertson, in her capacity as the executor of the Estate• Beazley• Controlled Entities (including, RNPM, Robertson Nova Consulting Inc., Megacorp Incorporated, 2379164 Ontario Inc., and Jennifer Robertson as trustee of The Seaglass Trust)• Official Committee (in respect of certain provisions providing releases on behalf of Affected Users)
Effective Date	The Settlement Agreement becomes effective when all of its conditions have been satisfied and the Trustee delivers a certificate to this effect.

Settlement Agreement Summary	
Settlement Assets	<p><i>Robertson Settlement Assets</i></p> <p>Other than the Excluded Assets, Robertson will transfer to the Trustee, her right, title and interest in all assets including cash, investments, vehicles, loans (and related security), real estate (including the Kinross Property, which is to be vacated by October 31, 2019), personal belongings, and any further assets identified in the future.</p> <p><i>Estate Settlement Assets</i></p> <p>Other than the Excluded Assets, the Estate will transfer to the Trustee, its right, title and interest in all assets, including cash, investments, vehicles (including all boats, planes and cars), precious metals, claims and refunds (namely, those with respect to probate taxes), and any further assets identified in the future.</p> <p><i>Controlled Entities Settlement Assets</i></p> <p>The Controlled Entities will transfer to the Trustee any assets, their right, title and interest in all assets, including cash, investments, real estate, loans (and related security), vehicles, and any further assets identified in the future.</p> <p><i>Beazley Settlement Assets</i></p> <p>Beazley will transfer to the Trustee any assets (a) transferred to Beazley by the Companies and/or Cotten either directly or indirectly; or (b) purchased using proceeds of assets transferred to Beazley by Quadriga and/or Cotten either directly or indirectly, including a 2017 Toyota Tacoma truck.</p>

Settlement Agreement Summary	
Excluded Assets	<p>Robertson and the Estate will retain certain Excluded Assets. Robertson's Excluded Assets are limited to:</p> <ul style="list-style-type: none">(i) Cash, in the amount of \$90,000 plus the cash in one account where she received distributions under the Asset Preservation Order up to a maximum of \$10,000;(ii) Investments contained in Robertson's registered retirement savings account with a current market value of approximately \$20,000;(iii) A 2015 Jeep Cherokee with an estimated black book value of \$19,000;(iv) Certain jewellery, including her wedding band, with an estimated aggregate fair market value of \$8,700;(v) Personal furnishings, up to a maximum aggregate appraised value of \$15,000;(vi) Clothing and similar personal effects; and(vii) Issued and outstanding shares of the Controlled Entities and Quadriga Fintech Solutions Corp. <p>The Excluded Assets to be retained by the Estate are solely the issued and outstanding shares of the Controlled Entities (for greater certainty, which includes CX Solutions) and Quadriga Fintech Solutions Corp.</p>
Disclosure Obligations	<p>Robertson is to provide the Trustee with a sworn statement describing, among other things, the nature, value and location of (i) present assets owned by herself, the Estate and the Controlled Entities or any affiliates or related parties of each of them; and (ii) past assets owned by herself, the Estate and the Controlled Entities in the past five (5) years.</p> <p>Beazley is to provide the Trustee with a sworn statement describing, among other things, the nature, value and location of (i) present assets that were transferred to Beazley by the Companies and/or Cotton or purchased using proceeds of assets transferred from the Companies, Cotten and Robertson; and (ii) past assets that were transferred to Beazley by the Companies and/or Cotton or purchased using proceeds of assets transferred from the Companies, Cotten and Robertson in the past five (5) years.</p> <p>Robertson and Beazley agree to each be examined under oath by the Trustee pursuant to section 163 of the BIA.</p>

Settlement Agreement Summary	
Miscellaneous Agreements	<ul style="list-style-type: none"> (i) The Trustee agrees to the unfreezing of the Excluded Assets and any of Robertson’s credit cards. (ii) The Quadriga estate agrees to pay the reasonable legal fees and disbursements of Robertson’s legal counsel in connection with the implementation of the Settlement Agreement and the Cooperation Obligations, among other things. (iii) Potential reimbursement by the Quadriga estate to Ms. Robertson in respect of (a) income tax liabilities of RNPM for net rental income to a maximum amount of \$7,500; and (b) income tax liabilities of the Estate in respect of investment income earned by Mr. Cotten up to a maximum amount of \$200,606, in the event that she is personally liable for the tax liabilities, the tax liabilities rank in priority to the Trustee’s claims against RNPM and the Estate, as applicable, and the amounts are due and payable upon the earlier of the discharge of the Trustee and December 31, 2020. Other than these specified liabilities, the Trustee and the Companies’ estates have no responsibility for any tax liabilities of Ms. Robertson, the Estate, Mr. Beazley or the Controlled Entities. (iv) The Quadriga estate agrees to reimburse Robertson up to a maximum of \$25,000 for actual and documented out-of-pocket expenses incurred within six (6) months of the Effective Date in respect of (a) preparing and filing Tax Returns on behalf of the Estate and the Controlled Entities; or (b) any bankruptcy, liquidation or wind-up proceedings in respect of the Controlled Entities.
Conditions to the Settlement Agreement	<p>The following are conditions to the Settlement Agreement and occurrence of the Effective Date:</p> <ul style="list-style-type: none"> (i) Court approval of the Settlement Agreement; (ii) Assignment of a loan made by RNPM and Ms. Robertson which is secured by a charge over real property in Calgary, Alberta; (iii) Ratification and approval of the Settlement Agreement by the Inspectors; (iv) Robertson and Beazley must satisfy their disclosure obligations; and (v) Mr. Beazley and his wife must deliver to the Trustee a release of

Settlement Agreement Summary	
	any and all rights and claims to the Estate Settlement Assets.
Releases	<p>In broad terms, the Trustee and the Official Committee on behalf of Affected Users will release and forever discharge Robertson, the Estate, the Controlled Entities and Beazley of and from any and all claims related to receipt of the Settlement Assets and the Excluded Assets and any involvement or conduct with respect to the Companies and/or Cotten.</p> <p>Robertson, the Estate, the Controlled Entities and Beazley will release and forever discharge (a) the Companies and Trustee of and from various claims and (b) all rights and claims to the Settlement Assets. Further, Robertson, the Estate, the Controlled Entities and Beazley will not be entitled to file a proof of claim in the BIA proceedings against estates of the Companies.</p>
Conditional Nature of Release	<p>The releases provided by the Trustee and the Official Committee may be rescinded and voided if it is determined by this Court that:</p> <ul style="list-style-type: none"> (i) Robertson wilfully failed to disclose assets that were required to be disclosed under the Settlement Agreement; (ii) Beazley wilfully failed to disclose assets that were required to be disclosed under the Settlement Agreement; (iii) Robertson and/or Beazley identify or become aware of any assets which were required to be disclosed under the Settlement Agreement and fail to notify the Trustee of such assets or fail to take reasonable steps to assist with transferring such assets to the Trustee if such assets are Settlement Assets; or (iv) Robertson and/or Beazley breach any of their Cooperation Obligations following the Effective Date.
No Further Claims	<p>The Trustee and the Affected Users agree to not start, continue or participate in any claims against Robertson, the Estate, the Controlled Entities or Beazley in any way related to receipt of Settlement Assets and the Excluded Assets, any involvement or conduct with respect to the Companies and/or Cotten.</p> <p>Robertson, the Estate, the Controlled Entities and Beazley agree to not start, continue or participate in any claims against the Trustee or the Companies in any way related to, among other things, the Settlement Assets.</p>
Cooperation Obligations	The Settlement Agreement includes certain ongoing Cooperation Obligations for Robertson, the Estate, the Controlled Entities and Beazley, including

Settlement Agreement Summary	
	<p>among other things:</p> <ul style="list-style-type: none">(i) Robertson, the Estate, the Controlled Entities and Beazley shall cooperate with the Trustee as reasonably requested to implement the Settlement Agreement, including the transfer of the Settlement Assets;(ii) To facilitate the implementation of the Settlement Agreement, Robertson agrees to (a) remain as a director of any Controlled Entities where she previously held a role as director; and (b) to remain in her role as executor of the Estate;(iii) Robertson and/or the Estate agree to file a motion in a California court to obtain data from Google LLC;(iv) Robertson, the Estate and the Controlled Entities agree to provide, among other things, documents and information specified in the Asset Preservation Order;(v) To the extent not already provided, Robertson and Beazley agree to provide the Trustee with (a) documents and information related to the business of the Companies, (b) certain communications, and (c) encryption keys or passwords to access such documents and information; and(vi) Robertson agrees to provide the Trustee with any additional reasonable cooperation determined to be reasonably necessary by the Trustee.

APPROVAL OF THE SETTLEMENT AGREEMENT

30. The Trustee is requesting Court approval of the Settlement Agreement as the relief set out in the Settlement Approval Order is required to fully implement the transactions contemplated by the Settlement Agreement. For example, the Representative Counsel Order of the Nova Scotia Court provided that the Official Committee could “reach any settlement agreements... and compromise rights, entitlements or claims of Affected Users, *subject to approval of the Court* [emphasis added].” The Trustee and other parties to the Settlement Agreement, also believe Court approval is appropriate in respect of

these arrangements due to the importance of the Settlement Agreement to the Bankruptcy Proceedings.

31. The Trustee believes that the Settlement Agreement provides significant benefits to the Quadriga estate, Affected Users and other stakeholders and should be approved by this Court. The benefits of the Settlement Agreement include, among other things:
- (a) Realization of the Settlement Assets will materially improve the expected distributions to Quadriga's stakeholders as their estimated cumulative net realizable value is approximately \$12 million;
 - (b) The Settlement Agreement allows the Trustee to avoid the significant cost of litigating its claims against Ms. Robertson, the Estate and the Controlled Entities;
 - (c) The value of the Excluded Assets being retained by Ms. Robertson is relatively minimal and includes a number of items that the Trustee expected to generate minimal value in a liquidation. The estimated aggregate net realizable value of the Excluded Assets is likely less than the costs that would have been incurred in pursuing the Trustee's claims against Ms. Robertson, the Estate and the Controlled Entities;
 - (d) The Settlement Agreement will permit the Trustee to realize on the Settlement Assets in a timely manner whereas prolonged litigation could result in delayed recovery and ultimately delayed distributions to Quadriga's stakeholders and/or result in the depreciation of the value of certain Settlement Assets while the litigation was ongoing;

- (e) Following implementation of the Settlement Agreement, Ms. Robertson will no longer be entitled to payments under the Asset Preservation Order which may have continued during any litigation with Ms. Robertson;
 - (f) The Settlement Agreement secures certain cooperation obligations from Ms. Robertson and Mr. Beazley which will assist with (i) the Trustee's investigation; (ii) efficiently transferring and monetizing the Settlement Assets; (iii) avoiding the costs associated with replacing the executor of the Estate which may have been necessary outside of a negotiated settlement; and (iv) identifying and pursuing potential other sources of recovery for the Quadriga estate and Affected Users; and
 - (g) Avoids any cost and delay in respect of any determination of the validity of the secured loan provided by Ms. Robertson immediately prior to the initial application to finance the CCAA proceedings.
32. As noted above, the Trustee also negotiated the Settlement Agreement in consultation with Representative Counsel, the Inspectors and the Official Committee, which are representative of Quadriga's most significant stakeholder group, the Affected Users. The Trustee understands that each of these parties support the approval of the Settlement Agreement and the Official Committee (which includes the Inspectors) has approved the Settlement Agreement.

THE SETTLEMENT APPROVAL ORDER

Transfers at Undervalue

33. The Settlement Approval Order includes certain declarations that prior transfers of assets or property to the Settling Parties are “transfers at undervalue” under the BIA and therefore voided and set aside as against the Trustee. Additionally, as a result of the declarations and findings, the Quadriga estate will be deemed to have a property interest in the Settlement Assets, including Settlement Assets of the Settling Parties acquired with other assets or property transferred by Quadriga to the Settling Parties and Settlement Assets which are the result of income earned by the Settling Parties on assets or property transferred by Quadriga.

34. Sections 96(1) and 98 of the BIA provide the following:

96 (1) On application by the trustee, a court may declare that a transfer at undervalue is void as against, or, in Quebec, may not be set up against, the trustee — or order that a party to the transfer or any other person who is privy to the transfer, or all of those persons, pay to the estate the difference between the value of the consideration received by the debtor and the value of the consideration given by the debtor — if

...

(b) the party was not dealing at arm’s length with the debtor and

(i) the transfer occurred during the period that begins on the day that is one year before the date of the initial bankruptcy event and ends on the date of the bankruptcy, or

(ii) the transfer occurred during the period that begins on the day that is five years before the date of the initial bankruptcy event and ends on the day before the day on which the period referred to in subparagraph (i) begins and

(A) the debtor was insolvent at the time of the transfer or was rendered insolvent by it, or

(B) the debtor intended to defraud, defeat or delay a creditor.

...

98 (1) If a person has acquired property of a bankrupt under a transaction that is void or voidable and set aside or, in the Province of Quebec, null or annulable and set aside, and has sold, disposed of, realized or collected the property or any part of it, the money or other proceeds, whether further disposed of or not, shall be deemed the property of the trustee.

(2) The trustee may recover the property or the value thereof or the money or proceeds therefrom from the person who acquired it from the bankrupt or from any other person to whom he may have resold, transferred or paid over the proceeds of the property as fully and effectually as the trustee could have recovered the property if it had not been so sold, disposed of, realized or collected.

35. The Trustee believes the transfer at undervalue tests under the BIA and related remedies, are supported by the results of the investigation to date, and the affidavit evidence to be provided by Ms. Robertson in connection with this motion regarding her knowledge of the source of the Settlement Assets.
36. The results of the Trustee's investigation and Ms. Robertson's evidence support a finding that the Settlement Assets originated from Quadriga and/or were funded with property that originated from Quadriga as no other source of funding for significant asset accumulation is apparent to the Trustee based on evidence reviewed to date. The Trustee believes it has a property interest in the Settlement Assets under the provisions governing transfers at undervalue set out in the BIA. The requested relief in the Settlement Approval Order would establish that interest in a manner consistent with the relief that

the Trustee believes it would have obtained if it had pursued its claims against the Settling Parties through litigation.

37. In the Fifth Report, the Monitor made the following observations regarding the potential profitability of Quadriga:

102. As the Company appears to have failed to maintain traditional books and accounting records and produced no accounting reports or financial statements since 2015, the Monitor is unable to estimate the profitability of Quadriga. However, the Monitor has analyzed the limited information available and notes certain information below.

103. The Platform did not track operating costs, however, it does appear to track fee revenues charged on individual transactions. The Monitor notes that given the lack of reporting capability, the Monitor is unable to assess the reasonableness of these numbers.

104. Attached below is a summary of the Quadriga fee revenues reported within the Platform for the period 2014 through 2019 adjusted to remove fees earned on transactions processed through the Identified Accounts. Fiat fees (CDN and USD) have been adjusted to Canadian equivalent dollars and the Cryptocurrency fees are reported in the currency earned.

	Currency	2014	2015	2016	2017	2018	2019	Total
Deposit Fees	CDN	\$3,138	\$46,500	\$116,380	\$5,677,680	\$4,606,313	\$29,822	\$10,479,833
Withdrawal Fees	CDN	-	\$6,713	\$109,085	\$1,537,760	\$2,402,319	\$5,323	\$4,061,200
Trade Fees	CDN	\$13,304	\$130,807	\$286,168	\$9,546,762	\$8,396,152	\$89,620	\$18,462,813
		\$16,442	\$184,020	\$511,633	\$16,762,202	\$15,404,784	\$124,765	\$33,003,846

	Currency	2014	2015	2016	2017	2018	2019	Total
Trade Fees	BTC	37	338	344	870	429	12	2,030
	ETH			1,564	9,618	3,050	131	14,363
	LTC				6,640	4,393	119	11,152
	BCH				587	206	10	803
	BTG				156	469	48	673
	BSG					25	5	30

105. It appears that Quadriga generated modest revenues between 2014 and 2016. The popularity of Cryptocurrency and the commodity value appreciation served as a catalyst for Quadriga's rapid revenue growth and the fees earned in 2017 and 2018.

106. Although operating expenses appear not to have been tracked or accounted for the Monitor has been able to identify a series of obligations incurred or costs which the organization would likely have funded including:

- (a) TPP fees (\$11.8 million paid to two processors between 2017 and 2018); quantum paid to other TPPs is unknown;
- (b) Ethereum Classic splitter contract loss of 67,000 ethereum (approximately \$13 million at the time of the loss) associated with an Ethereum Classic splitter contract in 2017);
- (c) Operating costs including legal fees, independent contractor fees, general operating costs including technology services and AWS server fees and corporate taxes (if applicable) although not filed;
- (d) Amounts paid or transferred to Mr. Cotten or Ms. Robertson and related entities;
- (e) Fees and trading losses associated with Cryptocurrency transferred to external Exchanges including Cryptocurrency transition sites; and
- (f) Fees and trading losses associated with margin accounts.

107. It is possible that the above obligations or costs exceeded the fee revenue earned by Quadriga and resulted in a deficiency in Funds held on behalf of Users. In addition, the freezing of Fiat through the CIBC Interpleader Motion described in the Initial Affidavit and First Report created additional liquidity issues, impacting Quadriga's ability to fund withdrawal requests from Users.

38. In addition, the Monitor described in the Fifth Report the use of Identified Accounts. The most significant of the Identified Accounts was an account held in the name of Chris Markay (the "**Chris Markay Identified Account**"). As noted in the Fifth Report, the

Identified Accounts were credited with significant unsupported deposits, and subsequently significant transfers of cryptocurrency were then made from the Chris Markay Identified Account off the Quadriga platform, including to other exchanges where the cryptocurrency was liquidated for unaccounted for cash and used for margin trading that resulted in significant losses. An estimate of the transferred cryptocurrency was noted in the Fifth Report as follows:

93. In addition to trades within the Quadriga Platform, the Monitor independently verified through blockchain analysis that large volumes of Cryptocurrency were withdrawn from Quadriga through the Chris Markay Account. It appears that although the Chris Markay Account may have been funded with Unsupported Deposits, real Cryptocurrency was transferred out.

94. A summary of the Chris Markay Cryptocurrency withdrawal values by year and by currency follows:

Currency	2016	2017	2018	Total
Btc	6,753.11	4,972.48	6,087.54	17,813.13
Eth	402,749.17	602,482.22	68,573.33	1,073,804.72
Ltc	-	25,298.93	165,365.67	190,664.60
Bch	-	9,512.40	4,927.72	14,440.12
Btg	-	-	1,800.00	1,800.00
Etc	34,459.13	-	-	34,459.13

39. In the Third Report of the Monitor dated March 1, 2019 (the “**Third Report**”), which is appended to this Fourth Report as Appendix “D”, the Monitor analyzed Quadriga’s known bitcoin reserves (the most significant cryptocurrency traded on the Quadriga platform) using public blockchain information. The Third Report noted that it appeared Quadriga did not have any bitcoin reserves in its cold wallets since April 2018 and never had bitcoin reserves equal to the amount bitcoin owed to Affected Users as of the Filing Date. Specifically, the Third Report noted the following:

45. The Monitor understands that prior to the Filing Date, the Applicants made significant efforts to identify and locate any additional cold wallet addresses or other wallet addresses that may contain cryptocurrency reserves. However, to date, the Applicants have not been able to identify any other wallet addresses that may have been used to store reserves of bitcoin or other cryptocurrencies. The Monitor continues to work with representatives of the Applicants and internal blockchain resources to determine if any other cold wallet addresses or other wallet addresses with cryptocurrency reserves exist.

46. The Monitor has commenced a preliminary review of the transactional activity of the Identified Bitcoin Cold Wallets utilizing public blockchain records. This analysis conducted by the Monitor indicates the following:

(a) From April 2014 to approximately April 2018, aggregate bitcoin month end balances in the Identified Bitcoin Cold Wallets ranged from a low of nil to a peak of approximately 2,776 bitcoin. The average aggregate month end balance over the four-year period was approximately 124 bitcoin. In April 2018, the remaining bitcoin in the Identified Bitcoin Cold Wallets was transferred out bringing the balances down to nil. Other than the Sixth Wallet, there have been no deposits into the Identified Bitcoin Cold Wallets since April 2018 except for the inadvertent transfer of bitcoin by the Applicants as disclosed in the First Report.

(b) Post April 2018, the Sixth Wallet appears to have been used to receive bitcoin from another cryptocurrency exchange account and subsequently transfer the bitcoin to the Quadriga hot wallet. As of the date of the Third Report, the Sixth Wallet contains no cryptocurrency. The last transaction from the Sixth Wallet was initiated on December 3, 2018.

(c) Certain of the bitcoin in the Identified Bitcoin Cold Wallets appear to have been transferred to accounts at other cryptocurrency exchanges. As set out at paragraph 38 of the Third Report it is not possible to ascertain with absolute certainty from public information who the owner of an address is, however, the tools and sources utilized by the Monitor indicate that certain receiving wallet addresses from transactions in the Identified Bitcoin Cold Wallets are

wallet addresses associated with identifiable cryptocurrency exchanges. As indicated above, the Monitor has reached out to various cryptocurrency exchanges to identify possible accounts controlled by Quadriga or Mr. Cotten and receive transactional information in respect of any such accounts.

47. The Monitor has made inquiries of the Applicants as to the reason for the lack of cryptocurrency reserves in the Identified Bitcoin Cold Wallets since April 2018. To date, the Applicants have been unable to identify a reason why Quadriga may have stopped using the Identified Bitcoin Cold Wallets for deposits in April 2018, however, the Monitor and Management will continue to review the Quadriga database to obtain further information.

40. As set out above, the Trustee is also aware of material acquisitions in the name of one or more of the Settling Parties, in each of 2016, 2017 and 2018, including acquisition of real estate properties, vehicles, jewellery, and funds gifted or loaned to other parties. The acquisition of such significant assets using Quadriga's funds, likely deposited by Affected Users, would have further reduced the available funds to satisfy the liabilities owed to Affected Users.
41. Based on the cumulative information available to the Trustee, the Trustee believes that it is reasonable to reach the conclusion that "the debtor was insolvent at the time of the transfer or was rendered insolvent by it" as contemplated in section 96(1)(a) of the BIA.

Variation of the Asset Preservation Order

42. As part of the Settlement Approval Order, the Trustee is requesting this Court amend the Asset Preservation Order of the Nova Scotia Court to unfreeze the Settlement Assets and the Excluded Assets to permit the transactions contemplated by the Settlement Agreement to occur. As part of the Orders of the Nova Scotia Court dated September 10, 2019 (the "**Transfer Orders**") transferring the Bankruptcy Proceedings to Ontario, the

Nova Scotia Court declared that this Court “may seize any matter related to or ancillary to the [Bankruptcy] Proceedings.” Copies of the Transfer Orders are attached to this Fourth Report as Appendix “E”.

43. With that authorization, the Trustee believes it would be appropriate for this Court to amend an order of the Nova Scotia Court to permit implementation of the Settlement Agreement in an efficient manner and avoid the cost and delay associated with seeking separate relief from the Nova Scotia Court.

CONCLUSION

44. For the reasons set out in this Fourth Report, the Trustee recommends that the Court approve the Settlement Agreement and grant the other relief requested in the Settlement Approval Order.

All of which is respectfully submitted this 7th day of October 2019.

ERNST & YOUNG INC.

Licensed Insolvency Trustee

acting in its capacity as Trustee in Bankruptcy
of Quadriga Fintech Solutions Corp., Whiteside Capital Corporation and
0984750 B.C. Ltd. and not in its personal capacity



Sharon S. Hamilton
Senior Vice President



George Kinsman
Senior Vice President