

**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

**THIRD REPORT OF THE TRUSTEE**

**September 11, 2019**

**INTRODUCTION**

1. On February 5, 2019 (the “**Filing Date**”), Quadriga Fintech Solutions Corp., Whiteside Capital Corporation and 0984750 B.C. Ltd. (“**Quadriga**” or the “**Company**”) d/b/a Quadriga CX and Quadriga Coin Exchange (collectively, the “**Applicants**”) 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 (the “**Initial Order**”), Ernst & Young Inc. (“**EY**”) was appointed as the monitor (the “**Monitor**”) of the Applicants.

2. On March 5, 2019, the Nova Scotia Court approved the engagement of Grant Thornton Limited as the Chief Restructuring Officer (the “**CRO**”) further to a motion brought by the Applicants.
3. On April 11, 2019, a Termination and Bankruptcy Assignment Order (the “**Termination 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 “**User Committee**”) and one (1) individual from their legal team.
5. On September 10, 2019, the Bankruptcy Proceedings were transferred from Nova Scotia to Ontario pursuant to an order of the Nova Scotia Court.
6. Capitalized terms not otherwise defined in this Report are defined in the Fifth Report of the Monitor dated June 19, 2019.

## **PURPOSE**

7. The purpose of the Third Report of the Trustee (the “**Third Report**”) is to provide the Court with further detail with respect to the Trustee’s request for directions in connection with the activities of law enforcement officials and regulatory agencies.

## **TERMS OF REFERENCE**

8. In preparing this Third 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 ("**GAAS**") 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.

## **ACTIVITIES OF LAW ENFORCEMENT AND REGULATORY AGENCIES**

12. The Second Report of the Trustee provides an initial description of the Monitor and Trustee's cooperation with law enforcement and regulatory agencies. Additional

information relating to the Trustee's investigation of Quadriga's business and affairs is described in the Monitor's Fifth Report. The Trustee is separately filing a Confidential Supplement to this Report (the "**Confidential Supplement**") with respect to matters which are subject to confidentiality restrictions.

13. As noted in the Fifth Report, the Trustee has responded to communications from regulatory agencies and law enforcement and engaged in extensive discussions with a view to complying with requests where made, pending resolution of the issues set out in this Report. The nature and extent of those requests and the Trustee's necessary time and resources to respond have increased significantly since the Bankruptcy Proceedings. The Trustee has received and anticipates receiving competing requests for information and access to the Devices (as defined below) which may be in the form of a summons, production order, search warrant, general warrant or other order of a Court of competent jurisdiction in Canada (collectively, a "**Production Demand**"). The Trustee anticipates these Production Demands will place significant demands on the Trustee's time and the resources of the bankrupts' estates. As such, the Trustee believes it is necessary to seek the Court's direction at this time.
14. The following provides this Court with a summary of communications with law enforcement officials and regulatory agencies which are not subject to any confidentiality restrictions.

#### **Royal Canadian Mounted Police**

15. The Trustee has engaged in various communications with representatives of the Royal Canadian Mounted Police (the "**RCMP**").

16. As set out in the Second Report of the Trustee dated August 26, 2019, the Trustee has received a formal request from the RCMP through the Crown Attorney assigned to the matter (the “**Crown**”) with respect to the preservation of the original Encrypted and/or Unencrypted Devices as defined in the Fifth Report (collectively the “**Devices**”). The Trustee expects that a more fulsome request for Quadriga information will come in the form of a Production Demand. The Trustee understands that the RCMP will not be seeking any of the Trustee’s work product.
17. In addition to documents in the possession of the Trustee, the anticipated RCMP Production Demand may include a demand for production of the Devices. The Trustee notes that other law enforcement agencies may be also be seeking the original Devices. The Monitor was given access to the Devices under specific terms as set out by counsel to Jennifer Robertson as described further below.
18. Subject to the approval of the Court, the Trustee proposes to produce any requested Devices only to the RCMP pursuant to a Production Demand, if granted, and to refer any other law enforcement agencies and / or regulators requesting access to the devices to the RCMP. The Trustee has communicated with the RCMP through the Crown and expects that, subject to the direction of this Court, the Trustee should be able to produce the requested documents and the Devices to the RCMP on a timely basis.
19. The Trustee notes that to the extent the RCMP is able to access the information on the Encrypted Devices, it may be of assistance to the Trustee in maximizing recovery and realization activities for the estates that a copy of the information be provided to the

Trustee. The Trustee asks that this Court reserve the Trustee's right to address that issue before this Court if the RCMP is not amenable to doing so on consent.

20. The RCMP has also asked the Trustee to preserve the Quadriga platform (the "**Platform**"). The Trustee expects that at a later date, the RCMP may make a Production Demand for access to the Platform. There are technological and other issues relating to such a request. As a result, the Trustee may need to seek further direction from the Court with respect to any request to access the Platform.
21. Once the anticipated RCMP Production Demand is received, if the Trustee has any concerns not identified in this Report or requires further direction from the Court, the Trustee will advise the Court accordingly.

#### **United States Department of Justice and Federal Bureau of Investigation**

22. In early March 2019, the Monitor was contacted by a representative of the United States Department of Justice (the "**DOJ**").
23. The Trustee understands that on June 3, 2019, the Federal Bureau of Investigation (the "**FBI**") launched a website indicating that the FBI, the DOJ, the Internal Revenue Service - Criminal Investigation and United States Attorney's Office for the District of Columbia are conducting ongoing investigations into Quadriga. The FBI appears to be seeking, through its website, Affected Users willing to come forward and identify themselves as victims in the Quadriga investigation by filling out a questionnaire.
24. To date, the Trustee has not received a formal subpoena or any further information request from the DOJ. The Trustee expects that future information requests, if any, from

the DOJ or the FBI would be arranged through the RCMP in accordance with the procedures set out in the applicable Mutual Legal Assistance Treaty or other similar protocols.

### **Canada Revenue Agency**

25. The Trustee received a letter from the Canada Revenue Agency Audit Division (“**CRA Audit**”) dated August 15, 2019 advising that the corporate income tax returns of QuadrigaCX from October 1, 2015 to September 30, 2018 have been selected for audit. CRA Audit has made a significant request for documentation and information from the Trustee in relation to their audit.
26. The Trustee will discuss the request for information with CRA Audit and their counsel and will return to Court for further direction if necessary.

### **Other Parties**

27. The Trustee has received one or more other requests for information. These requests are subject to confidentiality restrictions and accordingly, further detail is set out in the Confidential Supplement.

### **PRIVACY CONSIDERATIONS**

28. The requests made by law enforcement agencies and regulators include requests for documents which would include Affected Users’ personal information.
29. The Trustee notes that the Nova Scotia Court has previously issued orders in both the CCAA and Bankruptcy Proceedings modifying the normal provisions of the CCAA and BIA with respect to disclosing creditor names and addresses and ordering that all

personal information with respect to Affected Users be kept confidential in an attempt to protect the Affected Users' personal information and preserve anonymity as requested by the Affected Users.

30. During the course of the CCAA proceedings and Bankruptcy Proceedings, the issue of maintaining Affected Users' privacy has arisen on various occasions and been raised before the Nova Scotia Court as well as directly to the Monitor/Trustee by Affected Users. The issue of privacy was first raised at the hearing of the initial application for CCAA protection and as a result the Nova Scotia Court specified in the Initial Order that the list of creditors was not required to be publicly posted by the Monitor.
31. Subsequently, the Monitor was contacted by a number of Affected Users reiterating their concerns with respect to keeping the identity of the Affected Users confidential. Several Affected Users filed affidavits in connection with the motion to establish the User Committee and appoint representative counsel to the User Committee ("**Rep Counsel**") setting out user privacy as an important concern. In addition, the Monitor noted in its First Report dated February 12, 2019 that:

*"37 (d) The Applicants and Monitor have been approached by various Affected Users expressing concerns regarding possible disclosure of their personal information during the CCAA proceedings. The Monitor notes that the motion materials filed by the Applying Rep Counsel also speak to this consideration. The Monitor suggests that wherever possible, the terms of the order appointing Rep Counsel should limit the dissemination of private information of Affected Users to Rep Counsel only."*

32. As a result, Justice Wood of the Nova Scotia Court issued an endorsement following the User Committee / Rep Counsel motion stating:

*“[14] There are more than 100,000 affected users. They range from small creditors who are owed \$100, to others who are owed many millions. Privacy is a great concern and many users do not wish to be publicly identified in any fashion.”*

33. The Nova Scotia Court also issued the Representative Counsel Appointment Order which states:

*“11. The Applicants shall provide to Representative Counsel, subject to confidentiality arrangements satisfactory to the Applicants and the Monitor, each acting reasonably, without charge, in machine-readable format, the names, last known addresses and last known email addresses (if any) of all the Affected Users (the “Affected User Information”), excluding Opt-Out Individuals, if any, who have opted out prior to delivery of the Affected User Information. The Affected User Information shall be kept confidential by Representative Counsel and shall not be disclosed to any other person, including the Official Committee of Affected Users and the Committee Members, unless ordered otherwise by the Court.”*

34. At the time of seeking the Termination Order, the Monitor/Trustee sought modifications to the BIA requirement to make available to all creditors a listing including the names, addresses and amounts owed to all creditors, again to address privacy concerns that had been raised. The Monitor noted in its Fourth Report dated April 1, 2019, that it was requesting the following relief:

*“22. (i) iii. Modifying the manner in which notice is to be provided to creditors pursuant to section 102 of the BIA and the maintenance of creditor listings, in light of the earlier notice to creditors provided in the CCAA proceedings, the involvement of Representative Counsel and privacy concerns previously articulated by the Affected Users in respect of their identities (paras. 21, 23 and 25);”*

35. As a result, the Termination Order provides:

*“20. For purposes of satisfying its obligations under Section 102(2) of the BIA, the list of creditors prepared by the Trustee shall contain a single line noting the number of Affected Users and the aggregate amount of the Affected Users claims. For greater clarity, the Trustee shall keep the identity and any other personal or identifiable information of individual Affected Users confidential.”*

36. Finally, when seeking the Claims Process Order on June 27, 2019, the Trustee sought modifications to the BIA procedure for disclosing proofs of claim to creditors. The Claims Process Order provides:

*“4. Pending further Order of the Court, the Trustee shall maintain the identity of any Affected Users that submit User Proofs of Claim confidential and shall not disclose their identity to any third party. Any creditor or Affected User requesting to examine a User Proof of Claim pursuant to section 126 of the BIA, shall receive such User Proof of Claim on an anonymous basis without any personal or identifiable information of the submitting Affected User and to the extent a creditor or Affected User requires the redacted information in any User Proof of*

*Claim, such creditor or Affected User shall seek an Order of the Court on at least seven (7) days notice to the Trustee and Representative Counsel authorizing and directing the Trustee to disclose the information to the creditor or Affected User. Notwithstanding the above, the Trustee is entitled to disclose the identity of any Affected User that submits a User Proof of Claim to Representative Counsel on a confidential basis. Representative Counsel shall not disclose the identity of the person submitting the User Proof of Claim to any other person, including the Official Committee of Affected Users, unless otherwise ordered by the Court.”*

37. As set out above, the Trustee is currently bound by the provisions of the various orders issued in these proceedings requiring the Trustee to keep the personal information of Affected Users confidential. The Trustee has also indicated on various occasions that it intended to keep such information confidential. However, the Trustee understands that the Nova Scotia Court’s primary concern in granting these orders was to protect the Affected Users’ personal identification information from being disclosed publicly. The Trustee is not aware of any explicit discussion in respect of disclosure to law enforcement officials or regulatory agencies pursuant to a Production Demand. The Trustee does not object to the disclosure of the personal information to law enforcement officials or regulatory agencies including the CRA Audit. However, in light of the broad nature of the provisions in the Nova Scotia Court’s previous orders, the Trustee seeks the specific direction of this Court with respect to disclosure of documents which include Affected User information.

## **SOURCE OF DOCUMENTS IN TRUSTEE'S POSSESSION**

38. A Monitor pursuant to the CCAA and a Trustee pursuant to the BIA each generally have various rights to information of the debtor. The Initial Order and governing statutes provide for information to be available to the Monitor. In respect of the Trustee, by virtue of its appointment, the Trustee has the ability to access and to have possession of information that belongs to the bankrupt. Information provided by third parties in the CCAA or Bankruptcy Proceedings may be subject to terms in respect of its use.
39. In these proceedings, while Quadriga's contractors provided some information and other information was obtained from company email servers and other sources, the overall scope of information in the possession of Quadriga was limited since, as previously set out, Quadriga does not appear to have maintained basic corporate books and records. It appears that accounts or contracts that were reasonably expected to be in Quadriga's name were in the name of Mr. Cotten personally resulting in inadequate separation between the affairs of Quadriga and Mr. Cotten. Quadriga was unable to obtain bank accounts and accordingly, used the services of various third party payment processors ("TPPs") extensively. This resulted in Quadriga's data being in the hands of third parties as opposed to Quadriga.
40. As a result, the Monitor and Trustee relied upon provisions of the CCAA and BIA and associated orders in these proceedings requiring third parties to produce information relevant to Quadriga to the Monitor and Trustee. As described further below, the Nova Scotia Court issued several orders specifically directing third parties to deliver documents, information and records to the Monitor/Trustee. In addition, the Monitor and

Trustee communicated with various parties and obtained access to information for the purpose of conducting its investigation into Quadriga and carrying out its duties.

41. As a result, the Trustee is in possession of documents and information that came from a number of sources, all of which may be subject to one or more of the Production Demands from law enforcement agencies or regulators. The Trustee seeks the Court's direction to confirm that the Trustee is authorized to produce documents provided to the Monitor or to the Trustee by various third parties. A summary of the primary sources of information is set out below.

**Data Contained Within the Platform**

42. The Monitor obtained access to the Platform which holds data related to Affected Users' personal information and transaction history. The Platform was hosted by Amazon Web Services, Inc. ("AWS") and accessible through the internet to Affected Users who accessed it to create and maintain Quadriga accounts, initiate deposits, conduct trades and make withdrawal requests. The AWS account was established in the name of Mr. Cotten personally not Quadriga. The Monitor was able to obtain access the Platform by a combination of the Applicants' representatives providing credentials and access rights to the Monitor and the Monitor obtaining an Order from the Nova Scotia Court requiring AWS to provide account credentials for the account that hosts the Platform. The Order directing AWS to provide the Applicants and the Monitor with access to the account in Mr. Cotten's name provided the following:

*"1. Amazon Web Services, Inc. and any of its affiliates (collectively "AWS") are hereby authorized and directed to grant full and complete access to the*

*Applicants and the Monitor to (1) the AWS account #301135479418 in the name of Gerald Cotten; and (2) any other AWS accounts in the name of the Applicants or Gerald Cotten that were created on behalf of the Applicants (collectively, the "AWS Accounts"). AWS is obligated to conduct only a one-time reasonable search for the AWS Accounts, but AWS will also grant access to the Applicants and the Monitor to AWS Accounts subsequently identified by AWS, the Applicants or the Monitor. AWS will grant access to the AWS Accounts by providing the Applicants and the Monitor with (a) root user credentials for the AWS Accounts, and (b) the agreements governing access to and use of the AWS Accounts (the "AWS Agreements"), unless the AWS Agreements are only the AWS Customer Agreement available at <https://aws.amazon.com/agreement/>."*

43. While technological challenges exist with respect to production of the Platform itself, the Trustee does not perceive any issues with providing data that came from the Platform to law enforcement and regulatory agencies pursuant to a Production Demand and proposes to do so.

**Documents Provided by Former Legal Counsel to Quadriga**

44. The Trustee has been provided with certain documents and records previously in the possession of Quadriga's former corporate legal counsel and litigation counsel. The Trustee is of the view that Quadriga has a right to such information and therefore, does not perceive any issues with providing these to law enforcement or regulatory agencies in connection with any Production Demand, subject to any claim of privilege. The Trustee proposes to produce source documents obtained from legal counsel but not any privileged

communications. The Trustee has not and is not proposing to waive Quadriga's privilege at this time.

**Third Party Payment Processors and Cryptocurrency Exchanges**

45. The Monitor/Trustee has obtained various records and documents from a number of TPPs and cryptocurrency exchanges in connection with Mr. Cotten's trading activities (the "Exchanges").

46. The Initial Order in the CCAA proceedings provided that:

*"28. Any person in possession of any of the Property wherever situate, including any Third Party Payment Provider, shall forthwith advise the applicants and the Monitor of the existence of the Property in such person's possession or control and shall grant immediate and continued access to the Property and information and documentation related thereto to the Applicants and the Monitor".*

47. Shortly after the commencement of the CCAA proceedings, the Monitor wrote to the known TPPs requesting they provide information in their possession related to Quadriga as required by the Initial Order. The Monitor's efforts to obtain information from the TPPs are described in detail in the Monitor's Fourth Report dated April 1, 2019. Certain information and documents from TPPs were delivered to the Monitor following the initial request without requiring any Court order. However, certain TPPs refused to provide the requested information and documents.

48. On April 11, 2019, the Monitor sought and obtained from the Nova Scotia Court an order (the "**Third Party Payment Processor Order**") requiring several named TPPs to deliver

books, documents, account records and other information with respect to any accounts that may have held Quadriga funds to the Monitor. Orders were not obtained against TPPs that initially cooperated (Vopay International Inc., Robertson Nova Consulting Inc., and 700964 N.B. Inc.), however, these TPPs were discussed in the Monitor's Fourth Report.

49. The Third Party Payment Processor Order generally provided the following:

*“Within ten (10) business days of the Order, [TPP Name] shall deliver copies of all books, documents, and accounting records, and any other papers, records and information related to Property that [TPP Name] holds or previously held, including account statements in respect of bank accounts that hold or held Property, deposit and withdraw transaction information related to the Property that [TPP Name] holds or held, the identities of depositors of Property and recipients of Property that [TPP Name] holds or held, directions received by [TPP Name] from the Applicants in respect of distributions of Property and other information and documents reasonably required to ascertain the location of the Applicants' Property.”*

50. With respect to the Exchanges, one exchange responded to the Monitor's initial request to provide information and documents related to Mr. Cotten's trading activities.

51. The Trustee is aware that several TPPs have taken the view that the information provided belongs to them and that they have only provided the information as a result of being directed to pursuant to these orders and for the purpose of assisting the Monitor/Trustee

in identifying and taking possession of Quadriga related funds in connection with the CCAA proceedings.

52. In light of the position of the TPPs, the Trustee seeks direction from this Court to confirm that the Trustee is authorized to provide any documents or other information received from TPPs and Exchanges to law enforcement agencies or regulators pursuant to a Production Demand.

**Electronic Devices Belonging to Gerald Cotten**

53. As noted above, the Trustee is in possession of various electronic Devices which it understands belonged to Mr. Cotten. Specifically, the Monitor/Trustee recovered the following Devices:

- (a) Four cell phones - two unencrypted cell phones, one unresponsive cell phone, and one without a battery or SIM card;
- (b) Four laptops - one unencrypted laptop, two encrypted laptops and one laptop without a hard drive;
- (c) Three USB devices – one encrypted and two unencrypted; and
- (d) One desktop computer – encrypted.

54. The Devices have been imaged by the Monitor/Trustee, to the extent possible and the information on the Unencrypted Devices has been accessed, recovered and loaded into an eDiscovery document review platform maintained by the Trustee which is accessible only to the Trustee and its counsel.

55. The Monitor received all of the Devices with the exception of the desktop computer, shortly after the commencement of the CCAA proceedings from a consultant hired by the Applicants to access the devices. The desktop computer was received by the Monitor from Ms. Robertson. The Applicants, including the directors (i.e. Jennifer Robertson), were aware and consented to the Monitor taking the Devices into its possession.
56. The Monitor sought and received Ms. Robertson's written consent prior to accessing and searching the Devices. The confirmation letter sent by the Monitor, attached as Appendix "A", requests that the estate of Gerald Cotten "*please confirm that the Estate formally consents to the search and investigation by the Monitor of such Devices and accounts*". Counsel to Ms. Robertson wrote to the Monitor consenting to a search by the Monitor "*provided such investigations relate to the business and assets of QuadrigaCX.*" The letter also stated that "*[w]e assume any personal information related to Gerry, such as his personal web browsing history, that might be found on those Devices would be held in confidence and not disclosed in a Monitor's report*". A copy of the response is attached as Appendix "B".
57. The Unencrypted Devices that were able to be accessed contained a significant amount of information which the Trustee was able to recover, including text messages, instant message data, pictures, and documents.
58. The Trustee's review of certain recovered documents identified a mix of personal information of Mr. Cotten or Ms. Robertson unrelated to the business and affairs of Quadriga and information directly related to Mr. Cotten's management of the Company. The Trustee is not proposing to do a relevance review of the documents for production to

law enforcement agencies. To separate the personal information and information related to the business and affairs of Quadriga would be a difficult, if not impossible task and would be extremely costly to the estates.

59. Given that the Devices belonged to Mr. Cotten personally and the circumstances in which the Trustee was provided access to this data, the Trustee seeks direction from this Court to confirm that the Trustee is authorized to produce any information or documents from the Devices to law enforcement and/or regulators in response to a Production Demand.

### **Fastmail**

60. Shortly after the commencement of the CCAA proceedings, the Monitor became aware that the Applicants used Fastmail Pty (“**Fastmail**”), a third party email service, to send, receive and store company emails. A contacted representative of Quadriga provided credentials for the company email accounts with Fastmail and relying upon its general powers pursuant to the terms of the Initial Order and the CCAA in terms of access to records, the Monitor obtained copies of all Quadriga emails stored within Fastmail on approximately March 13, 2019.
61. The CRO consented to the collection of the information and executed the agreement for the service provider that collected the Fastmail emails on behalf of the Monitor/Trustee. The collected emails included emails sent and received by Quadriga employees and independent contractors using their company email addresses. The Trustee notes that some of the emails contain Affected User Information.

62. Accordingly, the Trustee seeks the direction of this Court to confirm that the Trustee is authorized to produce the Fastmail documents which may include Affected User information to law enforcement or regulators pursuant to a Production Demand.

**Information Provided by Independent Contractors and Ms. Robertson**

63. The Monitor/Trustee obtained information from various independent contractors of Quadriga relating to the Quadriga business and operations. Pursuant to the terms of the Initial Order, the independent contractors were required to cooperate with the Monitor/Trustee and provide information to the Monitor/Trustee.
64. Ms. Robertson and her counsel also provided information to the Monitor during the CCAA proceedings. Ms. Robertson was a director of each of the Applicants and may have been providing certain information in that capacity. However, Ms. Robertson also provided certain information related to her personal affairs and Mr. Cotten's personal affairs and information related to the DIP facility which she provided at the outset of the CCAA.
65. Ms. Robertson and her counsel also provided information to the Monitor/Trustee in response to the Asset Preservation Order which provides:

*...Robertson shall prepare and provide to the Monitor, within ten (10) days of the date of this Order: (a) a sworn statement describing the nature, value, and location of the assets worldwide of the Preserving Parties, including cash on hand balances wherever situated, whether in their respective names or not and whether solely or joint or beneficially owned; (b) answers to any outstanding*

*questions from the Monitor's letters to RNC, Roberts and the Estate dated February 22, 2019 and February 25, 2019; and (c) copies of Robertson's personal income tax return, and the income tax return for each of RNC, RNPM, and Seaglass, for the past three (3) years.*

66. The Trustee seeks the Court's direction confirming that documents or information produced or provided by the independent contractors or Jennifer Robertson may be produced to law enforcement or regulatory agencies pursuant to a Production Demand.

**Tax Returns / Canada Revenue Agency Information**

67. Subsequent to the commencement of the CCAA proceedings, the Monitor made a request of the CRA to confirm the status of tax returns filed by each of the Applicants. Ms. Robertson, in her position as director signed a business consent appointing the Monitor to act as an Authorized Representative for purposes of dealing with CRA on Quadriga's behalf. CRA responded to this request and verbally provided information with respect to the status of corporate tax returns and GST / HST filings for each of the companies.

**Information Produced pursuant to the Asset Preservation Order**

68. On April 11, 2019, the Monitor sought and obtained the Asset Preservation Order from the Nova Scotia Court which provided that certain financial institutions were required to provide documents relating to accounts held by Gerald Cotten, Jennifer Robertson, Robertson Nova Consulting Inc., Robertson Nova Property Management Inc., 2379164 Ontario Inc., Megacorp Incorporated and Jennifer Robertson as Trustee of the Seaglass

Trust (collectively, the “**Preserving Parties**”). Specifically, the Asset Preservation Order provided the following:

*“13. Royal Bank of Canada, TD Bank Group, The Bank of Nova Scotia (“BNS”), BMO Financial Group, Canadian Imperial Bank of Commerce, Canadian Tire Bank, Canadian Western Bank, East Coast Credit Union, Questrade Financial Group Inc. and Manulife Financial Corporation (collectively, the “Banks”) to forthwith freeze and prevent any removal or transfer of monies or assets of the Preserving Parties held in any account or on credit on behalf of the Preserving Parties with the Banks, except as outlined pursuant to the terms of this Order, in particular transfers to the Preservation Accounts contemplated by paragraph 3 of this Order and disbursements made from the accounts in paragraph 14 of this Order, or with a written direction from the Monitor and the applicable Preserving Party, or further Order of the Court.”....*

*“15. The Preserving Parties consent to all Banks holding assets of the Preserving Parties or which formerly held assets of the Preserving Parties, in any account or on credit on behalf of the Preserving Parties to disclosure and delivery to the Monitor by the Banks of any and all records and statements held by the Banks concerning the Preserving Parties’ assets and accounts, including the existence, nature, value and location of any monies or assets or credit, wherever situate, including all records and statements held by the Banks concerning any assets and accounts of the Preserving Parties formerly held by the Banks, and the Banks shall forthwith provide such information and documentation to the Monitor.”*

69. As a result of productions made by the financial institutions, the Trustee is in possession of personal financial information of the Preserving Parties.
70. Pursuant to the Asset Preservation Order, Ms. Robertson also consented to providing the Trustee with copies of her personal tax returns and those of Mr. Cotten for the last three years to the extent filed. The Trustee is now in possession of this information.
71. Again, it is unclear whether the Preserving Parties may have expected that the information would only be used by the Monitor / Trustee in respect of any action as between the Quadriga estate and the Preserving Parties and whether they had an expectation that the information could be provided to law enforcement officials or regulatory agencies. Accordingly, the Trustee seeks the direction of the Court to confirm that the Trustee is authorized to produce documents related to the Preserving Parties to law enforcement and regulators pursuant to a Production Demand.

#### **PRIVILEGE CONSIDERATIONS**

72. As set out above, the Trustee has information and documents in its possession that were obtained from various sources. Given that not all of these documents belonged to Quadriga, it is possible that these documents may be subject to claims of privilege by various parties.
73. The Trustee is in the process of undertaking a privilege review of the documents in its possession which may relate to the privilege of Quadriga or any other person. The Trustee is not making any determinations as to whether there has been any waiver of

privilege as a result of the communication being in the possession of the Trustee or the manner in which it came into its possession.

74. It is expected that given the volume of documents and that the Trustee does not have first-hand knowledge of the documents, some documents in respect of which a person may claim privilege may be inadvertently produced. Accordingly, the Trustee seeks an order that there should be no waiver of privilege in the event of any inadvertent production.

#### **MONITOR OR TRUSTEE WORK PRODUCT**

75. To date, the Trustee has taken the position that the Trustee's own work product should not be produced including any analysis undertaken by the Trustee or any notes taken by the Trustee in meetings or interviews. In some cases, it is unclear whether the requests made by law enforcement agencies or regulators are intended to include Monitor or Trustee work product. As a result, the order sought by the Trustee includes a provision which states that "nothing in this Order shall require the Trustee to produce any documents or data created by the Monitor or Trustee."
76. To the extent that any Production Demand by a law enforcement agency may include a request for Monitor or Trustee work product, the Trustee may request the further assistance of the Court.

#### **STATUS OF DOCUMENT REVIEW**

77. Lenczner Slaght was retained by the Trustee to assist with dealing with the law enforcement requests and to assist with the document production. The team is led by

Monique Jilesen who is working with the Stikeman Elliot team on the law enforcement inquiries. In addition, Sarah Millar, Discovery Counsel, is leading and managing the document production and privilege review project to ensure the documents produced are responsive to the requests made, that the production is complete and the work is performed in a manner that is as cost efficient as possible while having regard to the Trustee's obligations to comply. The Trustee has not yet sought approval for this retainer from the Inspectors given that the Trustee has been prevented from disclosing details with respect to the formal requests driving this process due to confidentiality restrictions. Accordingly, the Trustee seeks this Court's approval with respect to the Lenczner Slaght retainer.

78. The Trustee is maintaining an eDiscovery database of documents. Subject to direction being provided by the Court to make production, the Trustee intends to produce requested documents or categories of documents from the database. The database now contains documents from the following sources:
- (a) certain document extracted from the Platform;
  - (b) the Devices;
  - (c) Fastmail;
  - (d) documents received from Quadriga's external legal counsel;
  - (e) documents received from Third Party Processors;
  - (f) documents received from Exchanges;

- (g) documents produced from financial institutions;
- (h) documents produced from Jennifer Robertson; and
- (i) documents produced by other third parties.

79. The Trustee has also engaged in collecting and organizing documents responsive to specific law enforcement requests.
80. As noted above, the Trustee expects to be in a position to respond to the RCMP requests on a timely basis.
81. It is not expected that the Trustee will be in a position to respond to the CRA Audit request at this time. However, as noted above the Trustee intends to discuss the request for information with CRA Audit and their counsel and will return to Court for further direction, if necessary.

## **COST AND FEES**

82. The demands and information request of law enforcement and regulatory agencies has caused the Trustee to undertake a significant amount of work. The document collection, organization and review project has been a very significant project and it is anticipated that there will be a need for further communications with law enforcement and regulatory agencies including further document production in the coming months.
83. The Trustee notes that the cost of responding to Production Demands from law enforcement and regulators may be significant and accordingly, may impact amounts ultimately available for distribution to creditors in the Bankruptcy Proceedings.

However, the Trustee is of the view that there appears to be no legal basis upon which the Trustee could decline to respond to these requests. The Trustee notes that even in the absence of the Bankruptcy Proceedings, Quadriga would have been obligated by law to respond to such requests. Accordingly, the Trustee is focussed on conducting its document collection, organization, review and production efforts in as cost effective a manner as possible.

84. In light of the confidential nature of some of the requests and communications, the Trustee seeks an order confirming that the Trustee is entitled to charge its fees and expenses, the fees and expenses of counsel to the Trustee (Stikeman Elliott and Lenczner Slaght) to the bankruptcy estate with respect to such activities, providing that with respect to the fees:

- (i) the Trustee shall redact the details of the time spent in relation to law enforcement activities and provide Inspectors / Creditors / OSB or any other party only with a summary of total hours and total fees without disclosing specific law enforcement and regulatory agencies by name or disclosing specifics of information requests or responses;
- (ii) the Trustee may present its fees and that of its counsel to the Inspectors for approval based upon the summary and redacted invoices or in the alternative, the Trustee may seek approval of the fees from this Court with detailed dockets under seal.

85. The Trustee seeks this order to address and balance the confidentiality issues relating to law enforcement and regulatory activities with the rights of the Inspectors to review the Trustee's accounts.

## CONCLUSION

86. The Trustee is requesting direction from this Court with respect to Production Demands from law enforcement and regulatory agencies in light of the previous orders of the Nova Scotia Court, the personal information contained in the documents and the other issues identified in this Report and the Confidential Supplement.

87. The Trustee has made an effort to anticipate issues which may arise from law enforcement or regulatory agency Production Demands which may not yet have been delivered, but given that it is possible that other issues may materialize, the Trustee notes that it may be required to return for further direction.

All of which is respectfully submitted this 11<sup>th</sup> day of September 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

# Appendix "A"

Elizabeth Pillon  
Direct: +1 416 869 5623  
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Email: lpillon@stikeman.com

March 21, 2019  
File No.: 121128.1016

**By E-mail**

Richard Niedermayer  
Stewart McKelvey  
Purdy's Wharf Tower One  
1959 Upper Water Street  
Suite 900  
Halifax NS B3J 3N2

Richard:

**Re: Quadriga**

As outlined in the Monitor's letters of February 22 and 25, 2019, the Monitor has been requesting information from your client in her capacity as Third Party Processor, Executor of the Estate of Gerald Cotten (the "**Estate**") and in her personal capacity. Thank you for your letter of March 20, 2019 which provides responses to some of the questions. We will prepare draft orders to incorporate the proposed preservation of assets, however, as discussed we require further financial disclosure in order to finalize those terms. Also the issue of preservation of assets should the proceeding evolve to BIA proceedings remains.

**Third Party Processors**

Your letter of March 20, 2019 notes that Robertson Nova Property Management was never a payment processor and Robertson Nova Consulting was a former payment processor but that role was completed in 2017. As previously requested (from all of Quadriga's Third Party Processors), we require the historical bank statements for each of the bank accounts used by Ms. Robertson or Robertson Nova Consulting as Quadriga's payment processor.

**Information in respect of Cryptocurrency held on other exchanges**

We appreciate Ms. Robertson recently located and provided potential wallet information to the Monitor, who is following up on these potential leads.

We are aware that you have written to other exchanges, on behalf of the Estate, to obtain information relating to any cryptocurrency held on those exchanges. Ms. Robertson has previously confirmed that any cryptocurrency held on such exchanges will be returned to Quadriga. We ask that you provide copies of all communications with those exchanges so that the Monitor can be updated on the status of these requests. We ask that Ms. Robertson provide consent to the exchanges that they may discuss these matters directly with the Monitor, so that we can proceed with all future asset recovery measures. If you or Ms. Robertson do continue to communicate with the exchanges, please ensure that the Monitor is copied on all communications to ensure complete transparency to the Quadriga estate regarding potential asset recovery.

**Passwords**

During the course of the CCAA Proceedings, including through the delivery of the Report of Chris McBryan (the "**McBryan Report**"), delivery of Mr. Cotten's devices (the "**Devices**") and interviews with

Quadriga's contractors, the Monitor has been provided with passwords relating to accounts in the name of Gerald Cotten, including email, messaging and cryptocurrency exchange accounts. As you and your client are aware, it appears that Mr. Cotten had been utilizing the Devices and personal accounts for corporate activity. As the investigation progresses, it is the Monitor's intention to review and access (or attempt to access) Mr. Cotten's personal Devices and the accounts referenced in the McBryan Report and/or contained on the Devices to confirm, inter alia, potential sources of Quadriga Property and other potential sources of recovery for Quadriga's stakeholders. As you have suggested that the Monitor review the Devices and accounts, please confirm that the Estate formally consents to the search and investigation by the Monitor of such Devices and accounts. If your client has changed any passwords in respect of Mr. Cotten's accounts or devices, we ask that you provided the updated information forthwith.

### **Preservation of Documents**

As you know, the Monitor's understanding is that there was not always a clear distinction between Quadriga and the holdings used and controlled by Mr. Cotten in his personal capacity, and furthermore that Ms. Robertson's personal holdings or some portion thereof may be attributable to Quadriga. The Monitor is seeking information relating to any potential property or former property of Quadriga which may have been transferred to the Estate, transferred directly or indirectly to Ms. Robertson from Quadriga, held jointly by Mr. Cotten at the time of his death with his spouse or other parties, and/or transferred to corporate entities in which Mr. Cotten or Ms. Robertson held an interest.

We ask that Ms. Robertson take all reasonable steps to preserve all documents which may be potentially relevant to this matter. The Monitor requests that your client take all reasonable steps to preserve all documents<sup>1</sup> in her possession, power and control relating to these matters including but not limited to documents regarding Mr. Cotten's assets and finances at the date of his death, and any transfers of assets, property, funds, and/or cryptocurrency from Quadriga to Mr. Cotten or from either of them to Ms. Robertson or her corporations at any time from 2013 to present. Please ensure that all such documents are not modified and remain accessible. In particular, please ensure documents are not destroyed as part of any routine or automated document destruction process.

Yours truly,



Elizabeth Pillon

EP/as

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<sup>1</sup> "Document" has a very broad meaning. The obligation to preserve documents extends not only to paper documents but also to such things as emails, computer files, sound recordings, video recordings, film, photographs, charts, maps, plans, books, surveys and web content.

These documents may be stored in a tangible form or may be electronic. For example, email messages, text messages, instant messages, web chat messages, voice-mail messages, Excel spreadsheets, Outlook calendars, Word documents, computer databases and information contained on or related to the Quadriga platform are all examples of documents needing to be preserved. The information may be stored on networks, desktop computers, laptops, personal digital assistants (PDAs), cell phones, Blackberries, smartphones, back-up media, external hard drives, USB drives and other similar devices or storage media.

This includes preservation of documents stored on your client's behalf by third parties (such as banks, professionals (e.g., accountants or lawyers), insurers, third party service providers, affiliated companies, data warehouses or internet service providers) and documents stored on personal equipment and devices of applicable individuals. In the case of electronically stored information (and metadata), please ensure that relevant data is preserved intact and unmodified in its original electronic form.

# Appendix "B"



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File Reference: SM055740-00001

March 27, 2019

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RNiedermayer@stewartmckelvey.com

**VIA EMAIL (lpillon@stikeman.com)**

Elizabeth Pillon  
Stikeman Elliott LLP  
5300 Commerce Court West  
199 Bay Street  
Toronto ON M5L 1B9

Dear Liz:

**Re: Quadriga - Estate of Gerald Cotton**

Thank you for your letter of March 21. I confirm we are working on responding to the more detailed information requests set out in George Kinsman's letters of February 22 and 25, including information for Robertson Nova Consulting.

With respect to crypto currency held on other exchanges, I believe all that information was provided to the Monitor through a copy of the briefing memo we provided to Peter Wedlake as CRO which outlined all of the status of contacts with various exchanges. We don't anticipate contacting any additional exchanges unless directed by the Monitor. If you need us to resend that information please advise. I note that the communications the Estate had with exchanges were on behalf of QuadrigaCX in those efforts towards asset recovery were conducted under the matter billed to QuadrigaCX previously.

With respect to passwords, I confirm that the Estate consents to the search and investigation by the Monitor of the Devices noted in your letter, provided such investigations relate to the business and assets of QuadrigaCX. We assume any personal information related to Gerry, such as his personal web browsing history, that might be found on those Devices would be held in confidence and not disclosed in a Monitor's report. Other than what is disclosed in the McBryan report, Jennifer has not changed any passwords and has not had physical possession of those Devices since early December.

Finally, we note the request for preservation of documents and I have passed that on to Jennifer in her personal capacity and in respect of the Estate.

Elizabeth Pillon  
March 27, 2019  
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We will get back to you in due course with formal replies to the information requests. I note they may take some time to fully assemble (particularly with respect Robertson Nova Consulting which has not been an active company for over two years), and we may provide partial information as it is assembled.

Yours truly,



Richard Niedermayer

RSN/vg

cc client  
George Kinsman