

**THE QUEEN'S BENCH**  
In Bankruptcy and Insolvency  
Winnipeg Centre

IN THE MATTER OF:                   **THE *BANKRUPTCY AND INSOLVENCY ACT*,**  
  **R.S.C. 1985, c. B-3, AS AMENDED**

AND IN THE MATTER OF:           **THE PROPOSAL OF SCHROEDER FREIGHT INC.**

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**ORDER**

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In Bankruptcy and Insolvency  
Winnipeg Centre

THE HONOURABLE                    )  
  )  
MR. JUSTICE CHARTIER            )       Friday, the 13<sup>th</sup> day of January, 2017.

IN THE MATTER OF:               **THE *BANKRUPTCY AND INSOLVENCY ACT*,**  
  **R.S.C. 1985, c. B-3, AS AMENDED**

AND IN THE MATTER OF:       **THE PROPOSAL OF SCHROEDER FREIGHT INC.**

**ORDER**

THIS MOTION, made by SCHROEDER FREIGHT INC. ("SFI") for, *inter alia*, an order extending the time within which it may make a proposal, was heard this day at the Law Courts Building, 408 York Avenue at Kennedy Street, in Winnipeg, Manitoba.

ON READING the proceedings herein, the Affidavit of Robert Schroeder affirmed January 11, 2017, and the first report of the MNP Ltd. (the "Proposal Trustee") dated

Original Court Copy

January 11, 2017, and on hearing the submissions of counsel for SFI, the Proposal Trustee, and The Toronto Dominion Bank (“TD Bank”), with no one appearing for any of the other creditors named in the Service List, although all duly served as appears from the Affidavit of Service affirmed January 11, 2017.

### **SERVICE VALIDATED**

1. THIS COURT ORDERS that the time for service of the Notice of Motion and the supporting material is hereby abridged and/or validated so that the motion is properly returnable today, and hereby dispenses with further service thereof.

### **EXTENSION OF TIME**

2. THIS COURT ORDERS that the time within which SFI/the Proposal Trustee may file a proposal with the Official Receiver be and the same is extended to 11:59 PM on Wednesday, March 1, 2017.

### **ADMINISTRATION CHARGE**

3. THIS COURT ORDERS that the Proposal Trustee, its counsel and counsel to SFI shall be entitled to the benefit of and are hereby granted a charge (the “Administration Charge”) on all of SFI’s property, assets, and undertaking (the “Property”) which charge shall not exceed an aggregate amount of \$150,000.00, as security for their professional fees and disbursements incurred at their standard rates and charges, both before and after the making of this Order in respect of these proceedings. The Administration Charge hereby granted shall extend to and apply for the benefit of the Proposal Trustee and such counsel in the event of a bankruptcy of

SFI, and in any bankruptcy proceedings taken in respect thereof under the *Bankruptcy & Insolvency Act* R.S.C. 1985, c. B-3, as amended (the "BIA"), and for those purposes having the priority provided for by the further terms of this Order. The Administration Charge shall have the priority set out in paragraph 5 hereof.

#### **VALIDITY AND PRIORITY OF CHARGE CREATED BY THIS ORDER**

4. THIS COURT ORDERS that the filing, registration or perfection of the Administration Charge shall not be required, and that the said charge shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the said charge coming into existence, notwithstanding any such failure to file, register, record or perfect.

5. THIS COURT ORDERS that the Administration Charge shall constitute a charge on the Property and such charge shall rank in priority to all other security interests, trusts, liens, charges and encumbrances, claims of secured creditors, statutory or otherwise (collectively, the "Security Interests"), of any person or entity except for:

(a) the security interests of TD Bank in respect of specific collateral (not subject to claims in the nature of general security interests, if any) described in registrations made at The Personal Property Registry (Manitoba) (the "PPR") as at the date of the filing of the Notice of Intention to Make a Proposal (the "NOI") in these proceedings, jointly describing TD Equipment Finance Canada as a secured party;

(b) the Security Interests of Daimler Truck Financial, Mercedes-Benz Financial Services Canada Corporation, Paccar Financial Services Ltd.,

and Dell Financial Services Canada Limited in respect of specific collateral (and not claims in the nature of general security interests, if any) described in registrations made at the PPR in their respective favours as at the date of the filing of the NOI in these proceedings; and

- (c) any statutory Security Interest existing as at the date of the filing of the NOI herein in favour of any person or entity which is a “secured creditor”, as defined in the BIA, in respect of (A) any amounts under the Wage Earners’ Protection Program that are subject to a priority claim under the BIA, including source deductions from wages, employer health tax, workers compensation, vacation pay and banked overtime for employees, and (B) any amounts that are subject to priority claims pursuant to Section 81.5(1) of the BIA and subsections 227(4) and (4.1) of the Income Tax Act, subsections 23(3) and (4) of the Canada Pension Plan and subsection 86(2) and (2.1) of the Employment Insurance Act.

6. THIS COURT ORDERS that except as otherwise expressly provided for herein, or as may be approved by this Court, SFI shall not grant any encumbrance, charge or interest over any of its Property unless SFI first obtains the prior written consent of the Proposal Trustee.

7. THIS COURT ORDERS that the Administration Charge shall not be rendered invalid or unenforceable, and the rights and remedies thereunder, shall not otherwise be limited or impaired in any way, by: (i) the pendency of these proceedings and the declarations of insolvency made herein; (ii) any application(s) for bankruptcy order(s) issued pursuant to BIA, or any bankruptcy order made pursuant to such applications;

(iii) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (iv) the appointment of a receiver, receiver-manager, interim receiver or any other officer of the court; (v) the provisions of any federal or provincial statutes; or (vi) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of encumbrances, contained in any existing loan documents, lease, sublease, offer to lease or other agreement (collectively, an "Agreement") which binds SFI, and notwithstanding any provision to the contrary in any Agreement:

- (a) neither the creation of the and the Administration Charge shall create or be deemed to constitute a breach by SFI of any Agreement to which it is a party;
- (b) the payments made by SFI pursuant to this Order and the granting of the Administration Charge do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

#### **SERVICE AND NOTICE OF THIS ORDER**

8. THIS COURT ORDERS that notice of this Order shall be mailed by the Proposal Trustee within seven (7) days of the date hereof by ordinary mail to all creditors of SFI known to the Proposal Trustee. The Proposal Trustee shall also post this Order on its website.

9. Any party affected hereby shall be at liberty to seek to set aside or vary this Order by way of a notice of motion returnable before this Court setting out the grounds therefore and providing at least four (4) days' notice to SFI and the Proposal Trustee.

Date: January 13, 2017

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Chartier, J.