

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

THE HONOURABLE
JUSTICE PENNY

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TUESDAY, THE 19TH
DAY OF MARCH, 2024

B E T W E E N:

(Court Seal)

CANADIAN WESTERN BANK

Applicant

and

**INDEX HOLDING GROUP INC., INDEX GROUP OF COMPANIES INC., INDEX
INTERNATIONAL INC., INDEX FOODS INC., 2640179 ONTARIO INC.,
11030434 CANADA LTD., 2700774 ONTARIO INC., 2700767 ONTARIO INC.,
2683960 ONTARIO LTD., 11030418 CANADA INC., 2723710 ONTARIO INC.,
2718366 ONTARIO INC., 2737332 ONTARIO INC., 2737334 ONTARIO INC.,
2723714 ONTARIO INC., 2723716 ONTARIO INC., 2737338 ONTARIO INC.,
2790760 ONTARIO INC., 2775290 ONTARIO INC., 2775296 ONTARIO INC.,
421 WHARNCLIFFE LTD. and 425 WHARNCLIFFE ROAD INC.**

Respondents

**IN THE MATTER OF AN APPLICATION UNDER SECTION 243(1) OF THE
*BANKRUPTCY AND INSOLVENCY ACT, RSC 1985, c. B-3, AS AMENDED; AND
SECTION 101 OF THE
COURTS OF JUSTICE ACT, RSO 1990, c. C.43, AS AMENDED***

DISTRIBUTION ORDER

THIS MOTION, made by MNP Ltd. in its capacity as the Court-appointed receiver (the “Receiver”) of Index Foods Inc., Index International Inc., Index Holding Group Inc., Index Group of Companies Inc., 2640179 Ontario Inc., 11030434 Canada Ltd., 2700767 Ontario Inc., 2683960 Ontario Ltd., 11030418 Canada Inc., 2723710 Ontario Inc., 2718366 Ontario Inc., 2737332 Ontario Inc., 2737334 Ontario Inc., 2723714 Ontario Inc., 2723716 Ontario Inc., 2737338 Ontario Inc., 2790760 Ontario Inc., 2775290 Ontario Inc., 2775296 Ontario Inc., 421 Wharncliffe Ltd.,

and 270074 Ontario Inc. (collectively, the “**Debtors**”), for an order approving a distribution by the Receiver of the proceeds realized from the sale of certain assets of the Respondents, and other relief as set out in the Notice of Motion, was heard this day via judicial video conference, at Toronto, Ontario.

ON READING the Fifth Report and on hearing the submissions of counsel for the Receiver, counsel for the Applicant, Canadian Western Bank, no one appearing for any other person on the service list, although served as appears from the affidavit of Jennifer Samuels sworn March 13, 2024, filed:

1. THIS COURT ORDERS that that the time for service of the Receiver’s Notice of Motion and Motion Record is hereby abridged and validated so that this motion is properly returnable today and hereby dispenses with further service thereof.
2. THIS COURT ORDERS AND DECLARES that the service upon Abdul Muqet of the Order of the Honourable Justice Steele dated February 20, 2024, and all other documents in this proceeding and in the bankruptcy proceedings of the Appendix F Companies (as defined in the Fifth Report) in the manner described in the Fifth Report is hereby approved and validated.
3. THIS COURT ORDERS that the Fifth Report and the activities of the Receiver set out in the Fifth Report be and are hereby approved.
4. THIS COURT ORDERS that only the Receiver, in its personal capacity and only with respect to its own personal liability, shall be entitled to rely upon or utilize in any way the approval of the Fifth Report detailed in paragraph 3 hereof.
5. THIS COURT ORDERS that the Receiver’s Interim Statement of Receipts and Disbursements for the period May 8, 2023 to March 1, 2024 is hereby approved.

6. THIS COURT ORDERS that the fees and disbursements of the Receiver for the period January 24, 2023 to October 31, 2023 in the amount set out in the Fifth Report are hereby approved.

7. THIS COURT ORDERS that the fees and disbursements of Dickinson Wright LLP, counsel for the Receiver, for the period from March 28, 2023 to February 29, 2024 in the amounts set out in the Fee Affidavit of John Leslie are hereby approved.

8. THIS COURT ORDERS that after payment of the Receiver's fees and disbursements and those of its counsel, and subject to the Reimbursement Agreement, and the Receiver retaining the Holdback (each as defined in the Fifth Report), the Receiver is hereby authorized and directed to pay all funds available to the Receiver from the assets of the Debtors and the proceeds thereof to Canadian Western Bank as partial payment of Canadian Western Bank's secured claim against the Debtors in accordance with Canadian Western Bank's loan and security documents in respect of the Debtors.

9. THIS COURT ORDERS that subject to the Reimbursement Agreement (as defined in the Fifth Report), each of the payments and distributions provided for in this Order shall be made free and clear of all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise, including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Order of the Honourable Justice Penny in the within proceedings dated May 8, 2023; and (ii) all charges, security interests, liens, trusts, or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal property or real property registry system.

10. THIS COURT ORDERS that, notwithstanding:

- (a) the pendency of these proceedings;
- (b) any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) in respect of the Debtors or any one or more of them and any bankruptcy order issued pursuant to any such application; and
- (c) any assignment in bankruptcy made or having been made in respect of the Debtors or any one or more of them;

any payment or distributions made pursuant to this Order are final and irreversible and shall be binding on any trustee in bankruptcy that may be appointed or has been appointed in respect of the Debtors or any one or more of them and shall not be void or voidable by creditors of the Debtors, nor shall it constitute nor be deemed to be a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the *Bankruptcy and Insolvency Act* (Canada) or any other applicable federal or provincial legislation, nor shall they constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

11. THIS COURT ORDERS that this Order shall have full force and effect in all provinces and territories in Canada.

12. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal and regulatory or administrative bodies, having jurisdiction in Canada or in any other foreign jurisdiction, to give effect to this Order and to assist the Receiver and its respective agents in carrying out the terms of this Order. All courts, tribunals and regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the

Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its respective agents in carrying out the terms of this Order.



CANADIAN WESTERN BANK
Applicant

-and- INDEX HOLDING GROUP INC. et al.
Respondents

Court File No. CV-23-00698447-00CL

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

PROCEEDING COMMENCED AT
TORONTO

DISTRIBUTION ORDER

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