

**BODKIN FINANCIAL CORPORATION INC., BODKIN  
LEASING CORPORATION INC., AND BODKIN  
CAPITAL CORPORATION INC.**

**REPORT OF THE PROPOSED RECEIVER**

**OCTOBER 3, 2011**

Court File No. \_\_\_\_\_

**ONTARIO  
SUPERIOR COURT OF JUSTICE - COMMERCIAL LIST**

BETWEEN:

BANK OF MONTREAL

Applicant

- AND -

BODKIN FINANCIAL CORPORATION INC., BODKIN LEASING CORPORATION INC.,  
BODKIN CAPITAL CORPORATION INC.,

Respondents

APPLICATION UNDER SECTION 243(1) OF THE BANKRUPTCY AND INSOLVENCY  
ACT, R.S.C. 1985, c. B-3, AS AMENDED AND SECTION 101 OF THE COURTS OF  
JUSTICE ACT, R.S.O. 1990, c. C.43, AS AMENDED

**REPORT OF PRICEWATERHOUSECOOPERS INC.  
IN ITS CAPACITY AS PROPOSED RECEIVER OF  
BODKIN FINANCIAL CORPORATION INC., BODKIN LEASING CORPORATION INC., AND  
BODKIN CAPITAL CORPORATION INC.**

**OCTOBER 3, 2011**

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## I. INTRODUCTION

1. PricewaterhouseCoopers Inc. (“**PwC**”) understands that an application will be made before the Ontario Superior Court of Justice – Commercial List (the “Court”) by the Bank of Montreal (“**BMO**” or the “**Bank**”) for an order (the “**Receivership Order**”) appointing PwC as a receiver, pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the “**BIA**”), and section 101 of the *Courts of Justice Act* R.S.O. 1990 c. C.43, as amended (the “**Receiver**”), without security, of all the assets, properties and undertakings (the “**Property**”) of Bodkin Financial Corporation Inc., Bodkin Leasing Corporation Inc., and Bodkin Capital Corporation Inc. (collectively referred to as “**Bodkin**” or the “**Company**”).
2. PwC was previously retained by the Company to act as a financial advisor to Bodkin to assist in addressing liquidity concerns, provide strategic advice and work with the Company’s lender, BMO.
3. PwC is a licensed trustee within the meaning of section 2 of the BIA and has consented to act as Receiver in these proceedings in the event that this Court grants the relief sought by the Bank. We are writing this report as Proposed Receiver of Bodkin (the “**Proposed Receiver**”) in the same manner as if we had already been appointed as Receiver by this Court.
4. Certain pricing information has been omitted from the Proposed Receiver’s report (the “**Report**”) and redacted from certain appendices to this Report, as should the proposed transactions not close, it would be prejudicial to the interests of the creditors of the Company if such information became available to future prospective purchasers or liquidators of Bodkin’s assets. A supplementary report to this Report (the “**Supplementary Report**”), which includes the omitted pricing information and certain unredacted appendices, and which appends the liquidation analysis of the Company’s business and assets prepared by the Proposed Receiver, will be filed with this Court on a sealed and confidential basis to prevent this information from becoming publicly available.

## II. PURPOSE OF REPORT

5. The purpose of this Report is to:

a) Provide this Court with background information on:

- (i) An overview of the Company, including its corporate structure and operations;
- (ii) The Company's debt structure and a summary of the Company's sources of funding from its primary lender, BMO, and its securitization funder, Sun Life Assurance Company of Canada ("**Sun Life**"); and
- (iii) The Company's current financial position and liquidity.

b) Outline the proposed sale transactions which have been negotiated, including:

- (i) The marketing and sales process undertaken by the Company to refinance or effect a sale of its assets;
- (ii) The marketing and sales process undertaken by the Company's advisor, PricewaterhouseCoopers Corporate Finance Inc. ("**PwCCF**"), to refinance or effect a sale of the Company's assets;
- (iii) Providing information regarding the proposed asset transaction ("**Asset Transaction**"), including the proposed offer to purchase (the "**APA**") to be entered into between the Receiver, 7762895 Canada Inc. (the "**Book 3 Purchaser**"), and 7834209 Canada Inc. (the "**Servicer**", and together with the Book 3 Purchaser, the "**Purchasers**");
- (iv) Providing information regarding the proposed cash reserve sharing agreement (the "**RSA**") to be entered into between the Receiver and 7834209 Canada Inc. (the "**Servicer**");
- (v) Providing information regarding the proposed portfolio transaction ("**Portfolio Transaction**"), including the proposed asset purchase and security agreement (the "**APSA**") to be entered into between the Receiver and Sun Life;
- (vi) Providing information regarding the proposed administration agreement (the "**Administration Agreement**") and the proposed amended and restated master reserve fund agreement (the "**Restated Reserve Agreement**") to be entered into between the Receiver, Sun Life, and the Servicer; and
- (vii) Providing the Proposed Receiver's recommendation regarding the Asset Transaction with the Purchasers pursuant to the APA, the wind down of the Sun Life lease portfolios pursuant to Administration Agreement, and the Portfolio Transaction pursuant to the APSA (collectively the "**Transactions**").

- c) Provide this Court with a summary of the security opinion prepared by Aird & Berlis LLP (“**Aird & Berlis**”), independent counsel to the Proposed Receiver in this matter.
- d) Summarize the results of a liquidation analysis prepared by the Proposed Receiver.
- e) Recommend that, in the event this Court appoints PwC as Receiver, the Court issue an order:
  - (i) Approving the Transactions, and authorizing and directing the Receiver to execute such documents and take such additional steps as are necessary to complete the Transactions;
  - (ii) Approving the RSA, and authorizing and directing the Receiver to execute such documents and take such additional steps as are necessary to complete the RSA;
  - (iii) Approving the Administration Agreement, and authorizing and directing the Receiver to execute such documents and take such additional steps as are necessary to complete the Administration Agreement;
  - (iv) Sealing the Supplementary Report as well as unredacted copies of the APA, the RSA and the Administration Agreement;
  - (v) Vesting in the Purchasers, as at closing, the purchased assets as identified in the APA, free and clear of all liens, charges, security interests and other encumbrances, other than permitted encumbrances (as identified in the APA);
  - (vi) Vesting in Sun Life, as at closing, all of the Company’s right, title and interest in and to the purchased assets identified in the APSA, free and clear of all liens, charges, security interests and other encumbrances, other than permitted encumbrances (as identified in the APSA);
  - (vii) Authorizing the Receiver to distribute the proceeds associated with the Transactions, less reserves required by the Receiver for the administration of the receivership, to the Bank until such time as the indebtedness owed to the Bank shall have been paid in full;
  - (viii) Authorizing the Receiver to occupy the Company’s premises at 2150 Dunwin Drive, Unit No. 1-3, Mississauga, Ontario (the “**Head Office**”); and
  - (ix) Authorizing the Receiver to terminate the Company’s lease for 4370 Dominion Street, Suite 108, Burnaby, British Columbia (the “**Burnaby Office**”) pursuant to the Receivership Order.

### III. QUALIFICATIONS

6. In preparing this Report, PwC has relied upon unaudited financial information, the Company's books and records, financial information prepared by the Company and discussions with management and legal counsel to the Company. PwC has not audited, reviewed, or otherwise attempted to verify the accuracy or completeness of the information and, accordingly, PwC expresses no opinion or other form of assurance with respect to the information contained in this Report. An examination of the Company's financial forecasts in accordance with the *Canadian Institute of Chartered Accountants Handbook* has not been performed. Future-oriented financial information relied upon in this Report is based on management's assumptions regarding future events. Actual results achieved may vary from this information and these variations may be material. PwC expresses no opinion or other form of assurance with respect to the accuracy or completeness of any financial information contained herein.
7. Unless otherwise noted, all monetary amounts contained in this Report are expressed in Canadian Dollars.

### IV. BACKGROUND

8. Reference is made to the Affidavit of Paul James Findlay, sworn October 3, 2011, in support of BMO's appointment of PwC as receiver over all of the property, assets and undertakings of the Company (the "**Findlay Affidavit**").

#### Company Overview

9. Founded in 1950, Bodkin is an industrial finance company that focuses on providing vehicle and equipment financing to a wide range of commercial customers, with an emphasis on financing the acquisition of both new and used assets up to \$100,000 in value. The average Bodkin leasing transaction is approximately \$40,000 in value.
10. The Company maintains a presence across Canada. However, currently the majority of funded lease volumes originate in Ontario, New Brunswick and Alberta. As at July 2011, approximately 45% of funded lease volumes came from Ontario, 18% from Alberta, and 11% from New Brunswick, with the remaining balance coming from Nova Scotia, Quebec, British Columbia, Manitoba, Newfoundland, Saskatchewan and Prince Edward Island.
11. The Company's head office is located in Mississauga, Ontario. In addition to staff located at the Head Office, Bodkin has sales, credit and collection staff located across the country

working from home offices. Bodkin currently leases two locations, the Head Office location and the Burnaby Office, which has been sublet to a third-party tenant.

12. Bodkin's key management ("**Management**") includes Mr. Paul Royds, President and CEO, Mr. John D. Mitchell, Executive Vice-President and Secretary, Mr. William Patton, Executive Vice-President, Sales and Marketing, and Mr. Rajkumar Singh, Senior Vice-President, Corporate Development.
13. In addition to Management (4 employees), Bodkin employs 31 full-time employees and 4 contract consultants for a total headcount of 39 as at September 29, 2011. The Proposed Receiver understands that none of Bodkin's employees or consultants are represented by a union and the Company does not sponsor a pension plan for any of its employees or consultants.

### **Company Structure**

14. Bodkin is comprised of five entities: i) Bodkin Financial Corporation ("**BFC**") (ii) Bodkin Capital Corporation ("**BCC**"), iii) Bodkin Leasing Corporation ("**BLC**"), iv) Bodkin Vehicle Leasing Corporation Inc. ("**BVLC**"); and v) Disc Automotive Software Systems Inc. ("**DASS**"). Currently, Bodkin's day-to-day operations are carried out in BCC and BLC, with no active operations occurring in BVLC or DASS. BFC is the parent company of these entities. The Company's corporate chart is attached hereto as **Appendix "A"**.
15. In December 2005, certain members of the Company's management team acquired BFC, the parent company of Bodkin, for a total purchase price of \$6.9 million (the "**Acquisition**") from its former shareholder, Mr. Don Bodkin. The \$6.9 million purchase price was comprised of \$4.25 million in cash proceeds and \$2.65 million of Class A, 8% cumulative preferred shares issued to 3657655 Canada Inc., a company owned and controlled by Mr. Don Bodkin ("**Donco**"). In connection with the Acquisition, the Management team collectively invested personally approximately \$1.0 million, Sun Life advanced \$3 million in subordinated debt financing (the "**Sub-Debt**"), with the balance of the cash proceeds coming from BFC's cash holdings. The Proposed Receiver understands that on or before December 31, 2010, the Sub-Debt was repaid to Sun Life out of the cash reserve (to be discussed in greater detail below) with the consent of the Bank and the Company.
16. As a result of the Acquisition, four shareholders, who are all members of Management, currently control directly or indirectly 89.8% of BFC's issued and outstanding common shares, with the remaining 10.2% of the common shares being owned by other Bodkin employees.



17. On August 31, 2010 as part of the Company's restructuring efforts, a holding company owned and controlled Mr. Paul Royds acquired the common and special shares held by Mr. John D. Mitchell in BFC resulting in a change of control of BFC and all of its subsidiaries. The change of control allowed Bodkin to write-down the value of its undepreciated capital cost ("UCC") pools to fair value, thereby generating sufficient tax losses to offset current/future taxes owing and allow the Company to recapture certain tax refunds.

## **Company Operations**

18. Approximately 90% of the Company's business is generated by a network of approximately 20 independent brokers. The 8 largest brokers represent approximately 70% of the Company's annual lease-writing volume.
19. BCC leases new and used industrial equipment to its customers, whereas BLC leases new and used vehicles (passenger vehicles, trailers and light, medium and heavy duty trucks) to its customers.

## ***Sun Life***

20. Bodkin acts as an agent for Sun Life and is responsible for managing the day-to-day operations of Sun Life's lease portfolios purchased from Bodkin pursuant to a Master Purchase and Assignment Agreement entered into with Sun Life (the "**MPAA**"). The Sun Life securitization facility is a vital component of Bodkin's leasing business, representing approximately 94%, 91% and 87% of the Company's total leasing portfolio for fiscal years 2008, 2009 and 2010, respectively. The amount and terms surrounding the financing available under the Sun Life securitization facility is determined by annual term sheets entered into by Sun Life and Bodkin, the most recent of which was dated February 24, 2010 (the "**Sun Life Term Sheet**").
21. Equipment or vehicles leased to customers by either BCC or BLC are funded by the Company by drawing down on its operating line with BMO during the month. Subsequently, on a monthly basis, the Company presents leases to Sun Life for bulk purchase. Sun Life purchases leases once per month and the funding for such purchases is remitted to the Company, less an initial cash reserve holdback, which immediately reduces the Company's outstanding borrowings from BMO under the operating line.
22. Leases securitized by the Sun Life facility are held in one of two securitized portfolios. The first portfolio ("**Book 1**") had an outstanding balance owed to Sun Life of approximately \$14.2 million, on a net present value ("**NPV**") basis, as at August 31, 2011. Book 1 was closed

for funding in November 2008 and is currently being run-off. The second Sun Life portfolio (“**Book 2**”) had an outstanding balance of approximately \$128.9 million, on an NPV basis, owed to Sun Life as at August 31, 2011 and has been used by Sun Life to fund the bulk purchases of leases underwritten by the Company since December 2008.

23. As previously noted, Sun Life holds a cash reserve (the “**Reserve**”) to provide for potential delinquencies or credit losses experienced by Sun Life in respect of Book 1 and Book 2. As of August 31, 2011, the Reserve, which is held in trust by Sun Life Trust, totaled approximately \$13.6 million (Book 1 - \$4.1 million and Book 2 - \$9.5 million). Since May 2008, the Reserve has been used on a monthly basis to fund delinquent accounts and buy out Sun Life debt associated with the delinquent leases in Book 1 and Book 2. Any recoveries made on the respective delinquent accounts by the Company are then remitted back into the Reserve. Per the Sun Life Term Sheet, should the Reserve cash balance reach 8.5% of the NPV of Book 1 or Book 2, Sun Life was to refund the excess amounts to the Company on a quarterly basis (the “**Reserve Release**”) provided the Company is in compliance with certain ratios (collectively, the “**Reserve Lockup Triggers**”) as follows:

- (a) 3 month rolling average delinquency ratio in Book 1 cannot exceed 3.0%;
- (b) 3 month rolling average delinquency ratio in Book 2 cannot exceed 3.0%;
- (c) For Book 1:
  - (i) 3 month rolling average loss ratio cannot exceed 3.5%; and
  - (ii) 12 month rolling average loss ratio cannot exceed 2.5%.
- (d) For Book 2:
  - (i) 3 month rolling average loss ratio cannot exceed 2.5%; and
  - (ii) 12 month rolling average loss ratio cannot exceed 2.0%.

24. If the Company is in breach of any of the Reserve Lockup Triggers, Sun Life has the contractual ability to avoid refunding the Reserve Release to the Company. The Proposed Receiver understands that Sun Life advised Bodkin in February 2010 (the “**Notification**”) that the Company had breached the Reserve Lockup Triggers as of the fiscal year ended August 31, 2009 and, therefore, the subsequent release of the Reserve Release by Sun Life to the Company was at the sole discretion of Sun Life (to be discussed in greater detail below).

## ***Bank of Montreal***

25. In the event leases are not presented to or purchased by Sun Life, the leases are transferred from the BMO operating line to one of the BMO term facilities (to be discussed in greater detail below). These leases represent a portion of the remaining total leasing portfolio not associated with Sun Life, as referenced above.

## **Causes of Insolvency**

26. Primary factors contributing to the Company's financial difficulties are summarized as follows:
- a) The global economic recession and, more specifically, significant and prolonged weakness in financial and credit markets, which led to a significant reduction in the Company's securitization volumes and credit availability;
  - b) A significant increase in historical lease delinquencies, particularly in Alberta where the Company had a high concentration of leases to oil and gas companies, which negatively impacted operating performance;
  - c) Significantly reduced liquidity and the Company's ability to borrow under the BMO revolving facility, as discussed below, or obtain new financing in order to fund operations; and
  - d) Previous years operating losses, which were a culmination of the above factors, significantly impacted their covenants with BMO.
27. The above factors have contributed to Bodkin's prolonged margin deficit position on its operating line with BMO, inability to service its debt obligations to BMO and its inability to remain in compliance with its financial covenants under its financing arrangements with both BMO and Sun Life, as discussed further below.

## **Restructuring & Liquidity Constraints**

28. Sun Life continued to support the Company since the Notification. However, as a result of the Company's weak performance, Sun Life enforced certain of its rights under its existing securitization agreement, including, (i) reducing the cap on its securitization facility with Bodkin from \$120 million in 2008 to \$80 million in 2010, (ii) increasing the Reserve holdback level from 5.25% to 6.75%, and (iii) increasing the Reserve Release threshold for Book 1 and Book 2. Further impacting the Company's liquidity, Sun Life, as per its rights under its securitization agreement with Bodkin, locked up the Reserve, which had a

significant impact on the Company's working capital as the Reserve Release was traditionally a source of funds for the Company.

29. The Company has undertaken extensive cost reduction programs over the past 30 months including:
- a) A reduction in office locations from four to two, one of which is currently sublet (the Burnaby Office);
  - b) Significant salary cuts ranging between 40-60% for all management employees, including the aforementioned Management team;
  - c) Employee terminations, layoffs and/or attrition resulting in headcount reduction of approximately 40%, from 65 to 39; and
  - d) Wage and salary rollbacks of up to 5% for other employees.
30. In addition, the Company deferred approximately \$6.0 million in immediate tax liabilities which the Proposed Receiver understands arose as a result of the aforementioned change of control transaction. This transaction, however, resulted in the recovery of an additional \$350,000 in taxes paid for fiscal 2008, which the Company has received.
31. The Proposed Receiver understands that the above implemented cost reductions and cash flow enhancement initiatives have been insufficient to reverse the continued margin deficits with the Bank and provide a solid platform for growth in a competitive industry.
32. Attached as **Appendix "B"** is a copy of the monthly margin report prepared by Management detailing the Company's margin position for the period August 2009 to July 2011 (the "**Bodkin Margin Report**"). As detailed in the Bodkin Margin Report, the Company's month end margin deficit position has been at \$1 million or greater since November 2009. Further, the average intra-month peak margin deficit position between March 2010 and July 2011 has been approximately \$2.7 million.
33. Further, attached as **Appendix "C"** is a copy of the Company's forecasted margin position to December 2, 2011 as prepared by Management (the "**Bodkin Margin Forecast**"). As detailed in the Bodkin Margin Forecast, the Company is projected to remain in a margin deficit position through to December 2, 2011.
34. BMO has continued to support the Company throughout its restructuring process in order to sustain the Company's operations and meet payroll obligations. However, the Company's forbearance agreement with BMO expired on October 27, 2010 and the Company has been in a *de facto* day-to-day forbearance with the Bank since that date, operating on biweekly term

sheets approved by BMO, pending further developments in connection with the potential sale of the Company's business.

### **Company's Forbearance Agreements**

35. The Proposed Receiver understands that BMO, Sun Life and Donco have all provided accommodations to the Company in order to sustain operations and meet obligations. A summary of these accommodations are as follows:

#### ***Bank of Montreal***

36. The Proposed Receiver understands that BMO has been in discussions with the Company since August 2009 regarding its financial difficulties and BMO has been monitoring the Company's restructuring efforts during that period.
37. The Proposed Receiver understands that the Company has been in breach of certain financial covenants in favour of BMO since August 31, 2009. As referenced in the Findlay Affidavit and discussed above, BMO, without waiving the defaults, agreed to forbear from taking any action in connection with the defaults until October 27, 2010. Subsequently, BMO agreed to forbear on a day-to-day basis, pending further developments in connection with the potential sale of the Company's business.
38. The Proposed Receiver understands that BMO required that the Company perform daily recalculations to the Company's operating credit facility borrowing margin since March 17, 2010.
39. The Proposed Receiver understands that in order to assist the Company meet its obligations and write new leases, BMO permitted the Company to maintain pre-defined margin deficits on the operating credit facility up to and including the date of this Report, pursuant to various term sheets entered into between BMO and Bodkin during that time period.

#### ***Sun Life***

40. The Proposed Receiver understands that the Company was in breach of the Reserve Lockup Triggers as of the fiscal year ended August 31, 2009. As a result, the Reserve was in lockup and the release of the Reserve Release was at the sole discretion of Sun Life.
41. The Company's securitization facility with Sun Life experienced an event of termination (the "EOT") as the Sun Life facility is cross-defaulted with the BMO loans. As a result of the EOT, Sun Life, in its sole discretion, had the ability to immediately halt additional funding, lockup the Reserve and potentially terminate the securitization facility.

42. The Proposed Receiver understands that Sun Life has, without waiving the defaults, continued to provide securitization financing to the Company under the Sun Life Term Sheet which expired on January 31, 2011. The Proposed Receiver understands that Sun Life has not renewed its securitization facility with Bodkin and since that date Sun Life has purchased equipment and vehicle leases under the MPAA on a monthly basis as the Company has continued to look for a purchaser (discussed in greater detail below).

***Donco***

43. The Proposed Receiver understands that Donco also reached an agreement with the Company to postpone payment of any interest and principal owed on the \$2.65 million preferred shares held by Donco until April 30, 2011. The Proposed Receiver understands that although a forbearance extension has not been documented as at the date of this Report, Donco has not made any demands for such payment as at the date of this Report.
44. On September 19, 2011, Donco, through its financial advisor, approached both the Company and the Proposed Receiver whether BMO would be amendable to making an initial payment of \$100,000 to Donco, at the time of closing, for Donco's support of these Transactions. This initial payment would subsequently be repaid to BMO from any recovery on funds that may be available to Donco as part of the estate realizations. The Proposed Receiver advised Donco, through Donco's financial advisor, that BMO would not consent to making such a payment.
45. On September 23, 2011, Donco, through its financial advisor, approached the Company and the Proposed Receiver on whether the name "*Bodkin*" was to be used by the prospective Purchasers. On September 27, 2011, the Proposed Receiver advised Donco and its advisors that the name "*Bodkin*" would be sold to the Purchasers pursuant to the proposed APA. Donco's advisors responded on the same date to advise the Proposed Receiver and the Company that any attempt to use the name "*Bodkin*" in a NewCo would be challenged vigorously. On the same day, the Company's legal counsel informed Donco and its advisors that the name "*Bodkin*" does belong to the Company and can be subject to sale. The Company's legal counsel advised Donco of the contractual provisions in the aforementioned Acquisition transaction whereby Donco had released its interest in the name and agreed not to interfere with or challenge the Company's use of the name. A copy of the Acquisition Agreement stating as such will be attached to the Supplementary Report.
46. The Proposed Receiver is unaware as to whether Donco and/or its advisors will appear at the time of closing to challenge the sale of the "*Bodkin*" name, or any other such issues.

47. Despite the accommodations described above with BMO, Sun Life and Donco, the Company has been unsuccessful in addressing its financial situation and, as stated, remains in a margin deficit position.

48. As a result of the continuation of various defaults and the challenges with substantially reversing the adverse financial position of the Company in a timely manner, BMO demanded payment of all obligations owing to it by the Company by way of letter dated September 2, 2011 (the “**Demand**”), and that day BMO issued its Notice of Intention to Enforce Security pursuant to section 244 of the BIA (the “**BIA Notices**”) to the Company. On the same day, BMO notified Sun Life and Donco that it had issued the Demand and the BIA Notices.

## V. FINANCIAL POSITION

### Historical Operating Results

49. The Company’s most recent year-to-date (“**YTD**”) financial statements are presented as at July 31, 2011.

50. Set out below is a summary of the Company’s income statement for: (i) the fiscal period ending 2009; (ii) the fiscal period ending 2010 (unaudited); and (iii) YTD July 31, 2011 (unaudited).

<b>Bodkin Financial Corporation</b>							
Consolidated statement of income							
(\$000)							
	Eleven months ended July 31, 2011		Year ended August 31, 2010		Year ended August 31, 2009		
Securitization Income	\$	6,144	60%	\$ 6,191	57%	\$ 5,276	54%
Financial Income		2,624	26%	2,405	22%	1,133	12%
Gain on sale of vehicles and equipment		1,398	14%	2,351	21%	3,423	35%
	\$	10,166	100%	\$10,947	100%	\$ 9,832	100%
Expenses							
Interest		924	9%	1,078	10%	552	6%
Write-down of equipment held for lease/sale		320	3%	1,134	10%	1,014	10%
Provision for credit losses and impaired leases		3,030	30%	3,876	35%	3,479	35%
	\$	4,274	42%	\$ 6,088	56%	\$ 5,045	51%
Contributions from leasing operations	\$	5,892	58%	\$ 4,859	44%	\$ 4,787	49%
Overhead and administrative expenses		5,274	52%	5,406	49%	5,584	57%
<b>Income before income taxes</b>	\$	618	6%	\$ (547)	-5%	\$ (797)	-8%
Income taxes		179		(175)		(297)	
<b>Net income</b>	\$	439	4%	\$ (372)	-3%	\$ (500)	-5%

51. The income statement summary indicates that the Company had negative earnings before taxes (“**EBT**”) of \$(0.8) million and \$(0.5) million in fiscal 2009 and 2010, respectively. Further, expenses related to the write-down of equipment values and provisions for credit losses averaged 45% of revenue in both fiscal 2009 and fiscal 2010 as compared to historical averages of approximately 30%.
52. The Company’s financial performance YTD has improved as compared to the previous two fiscal years as the rate of defaults and delinquencies YTD have begun to return to historical levels. The Proposed Receiver has been advised by Management that the Company forecasts positive net income for fiscal 2011.
53. The Proposed Receiver understands that the above results include materially reduced payroll and overhead expenses which are likely not sustainable in the long-term. Furthermore, the Company was able to continue operations YTD as a result of the accommodations provided by the Company’s key stakeholders, as previously noted. The Company will be challenged to continue to service its obligations to BMO and Donco without continued support from these stakeholders. Based on its discussions with BMO and Sun Life, the Proposed Receiver is of the view that such accommodations are unlikely to continue.
54. Since October 27, 2010, BMO has only committed to funding biweekly as they monitor development in connection with the current sales process. The Sun Life Term Sheet expired on January 31, 2011 and Sun Life has made no commitment to continue with the securitization facility in the future should the sale to the Purchasers not be completed. Accordingly, in the absence of securitization funding by Sun Life and continued funding by BMO, Bodkin would be unable to continue to carry on its business.
55. Set out below is a summary of the Company’s unaudited balance sheet as at July 31, 2011:



**Bodkin Financial Corporation**

Consolidated balance sheet as at July 31, 2011

(\$000)

<b>ASSETS</b>		<b>LIABILITIES AND SHAREHOLDER'S EQUITY</b>	
<b>Current Assets</b>		<b>Current Liabilities</b>	
Cash	\$ -	Bank indebtedness	\$ 9,565
Accounts receivable	973	Accounts payable and accrued liabilities	1,613
Due from related parties	-	Income taxes payable	55
Vehicles and equipment held for lease or sale	329	Current portion of long-term lease financing	2,160
Prepaid expenses	76	Deferred securitization income	755
Net investment in leases	5,540	<b>Total Current Liabilities</b>	<b>\$ 14,148</b>
<b>Total Current Assets</b>	<b>\$ 6,918</b>		
Deferred finance costs	\$ -	Long-term lease financing	5,169
Net investment in leases	12,082	Note payable	-
Property, plant and equipment	218	Future income taxes	2,908
Securitization proceeds receivable	9,123	Deferred securitization income	690
Goodwill	250	<b>Total Liabilities</b>	<b>\$ 22,915</b>
<b>Total Assets</b>	<b><u>\$ 28,591</u></b>	<b>Shareholders' Equity</b>	
		Common shares	-
		Preference shares	3,695
		Retained Earnings	1,981
		<b>Total Shareholders' Equity</b>	<b>\$ 5,676</b>
		<b>Total Liabilities and Shareholders' Equity</b>	<b><u>\$ 28,591</u></b>

56. As per the Company's July 31, 2011 balance sheet, the Company's largest asset is its "Net investment in leases". This asset represents the aggregate net book value of all of Bodkin's company-owned leases as well as those financed by BMO, but excludes all leases already securitized with Sun Life. The current portion of this asset, approximately \$5.5 million as at July 31, 2011, represents those leases with a schedule maturity date within the next 12 months, whereas the long-term portion, approximately \$12.1 million as at July 31, represents those leases with scheduled maturities greater than 12 months. Both the current and long-term portions of this asset fluctuate during the month based on the timing of Sun Life securitization financing, as well the funding of new leases.

57. The July 31, 2011 balance sheet reflects that the book value of the Company's current liabilities is approximately \$7.2 million greater than the book value of its current assets. While the book value of the Company's total assets exceeds the book value of its total liabilities, the Proposed Receiver understands that one of the Company's largest assets, the \$9.1 million in "Securitization proceeds receivable" relates to the aforementioned Reserve held in trust by Sun Life Trust. As previously noted, the Reserve is currently in lockup due to the EOT triggered by the Company's default on its BMO loans, and therefore, is not available to the Company to service liabilities as they come due.

## Ability to Continue as a Going Concern

58. The Proposed Receiver understands that the Company's financial results YTD have improved as compared to fiscal 2010, and have begun to show signs of stabilizing. However, based on its discussions with BMO and Sun Life, the Proposed Receiver is of the view that Bodkin will continue to experience challenges in operating as a going concern due to the following:

- a) Sun Life continues to review its support of Bodkin on a monthly basis and with the continued EOT and margin deficit with BMO, it is highly likely that absent the Transactions, Sun Life will withdraw its support from Bodkin. As noted above, Sun Life is the Company's primary securitization agent and a withdrawal of their support, would result in material adverse change for the Company;
- b) BMO has supported the Company in a margin deficit position since March 2010. Although the Company's income statement is improving, it still lacks sufficient liquidity to address normal growth in operations along with amounts owing to BMO and Donco. The Company continues to forecast a margin deficit position to December 2, 2011. Management has advised this margin deficit position is unlikely to reverse after December 2, 2011;
- c) The Company's broker network has expressed concerns to Management with respect to the financial ability of the Company and certain members of that Network could potentially switch to competitors, which would have a detrimental impact on the Company's operations, its value, and viability going forward; and
- d) The Company has had challenges in retaining its employees due to the Company's current financial position and uncertainty in its dealings with BMO and Sun Life.

## VI. CREDITORS

59. The Proposed Receiver understands the Company's secured debt facilities consist of revolving and term loans made available by BMO (the "**BMO Facilities**"), as well as a BMO corporate credit card facility.

60. The outstanding balances owing to BMO as at September 30, 2011 are:

<b>Bodkin Financial Corporation</b>	
Secured debt summary as at September 30, 2011 (estimated) (\$000)	
BMO revolving facility <sup>(1)</sup>	\$ 4,549
BMO term facilities	\$ 6,762
	<u>\$ 11,311</u>
<i>(1) The BMO revolving facility balance fluctuates throughout the month, reaching its lowest balance near month end when securitization funding from Sun Life is received.</i>	

## BMO Facilities

61. Since May 2004, BMO has provided credit facilities to Bodkin to finance the Company's operations pursuant to various term sheets and lending agreements, the most recent of which is a term sheet dated September 20, 2011. Pursuant to the terms of the September 20, 2011 term sheet, the Company's secured debt facilities with BMO consist of 5 facilities with a total credit limit of approximately \$15.9 million: (i) operating credit facility (credit limit - \$9.0 million), (ii) wholesale leasing term line (credit limit - \$3.3 million), (iii) heavy duty truck and trailer term line (credit limit - \$2.8 million), (iv) new equipment leasing term line (credit limit - \$0.8 million), and (v) corporate credit card (credit limit - \$5,000). The Proposed Receiver understands that the BMO Facilities are secured by a general security agreement representing a first charge over all assets of Bodkin, subject, in some cases, to the security created by Bodkin in favour of Sun Life, as stipulated in the intercreditor agreements between Sun Life and BMO. We understand the above term sheet details may change prior to October 7, 2011 as BMO will be issuing a new sheet prior to October 7, 2011.

## Potential Priority Claims

62. Based on information provided by Management on September 29, 2011, potential priority claims total approximately \$1.2 million, and are comprised of the following:

<b>Bodkin Financial Corporation</b>	
Estimated Priority Claims as at October 7, 2011 (\$000)	
Source Deductions	\$ 33
Net Wages and Salary	63
Vacation Pay	458
Sales Taxes Due	<u>700</u>
	\$ 1,253

63. As will be discussed below, the proposed APA contemplates certain accrued vacation liabilities will be assumed by the Book 3 Purchaser for those employees that are offered continued employment upon approval and closing of the Transactions. The Proposed Receiver estimates that the value of these assumed liabilities is approximately \$25,000 for those individuals (excluding directors) that accept employment with the Book 3 Purchaser, which will be reconciled upon the closing of the proposed Transactions.
64. The Proposed Receiver understands that Bodkin, with the support of BMO, will fund all outstanding employee wages prior to the closing of the Transactions. If appointed as Receiver, the Proposed Receiver will comply with the provisions of the Wage Earner Protection Program Act subsequent to its appointment.

### **Unsecured Trade Creditors**

65. The Proposed Receiver understands that the Company had unsecured trade payables and accrued liabilities owing of approximately \$1.6 million as at July 31, 2011. The following table summarizes the amounts owing to unsecured creditors:

<b>Bodkin Financial Corporation</b>	
Unsecured creditors as at July 31, 2011	
(\$000)	
Trade payables	\$ 292
AP Clearing	(66)
Sun life payables	886
Accrued liabilities	268
Taxes payable	(6)
Vacation pay accrual	187
Security deposit liability	52
	<u>\$ 1,613</u>

66. The accrued liabilities of approximately \$268,000 relate to accruals for restructuring fees, audit fees and other standard business expenses.
67. Approximately \$886,000 in Sun Life payables relates to liabilities for early lease buyouts and is part of the Company's normal course obligations. The Proposed Receiver also understands that this liability decreases to zero when funds are transferred to Sun Life on the first of the month and this will form part of the proposed APSA.
68. Approximately \$292,000 of the \$1.6 million in total payables and accrued liabilities relates to trade payables. The Proposed Receiver understands that the Company has been diligent in paying its trade creditors under normal terms and that the majority of all of the trade

payables were current as at July 31, 2011. As detailed in the proposed APA below, and subject to the approval of the Transactions, certain of these trade payables may be paid on or before closing, which is anticipated to occur on October 7, 2011 (“**Closing**”), or within 30 days of Closing if it meets the requirement as defined in the proposed APA (i.e. critical vendors). The amount that may be paid is unknown at this time and is subject to reconciliation by the Purchasers and the Proposed Receiver post-Closing.

## **VII. PRE-FILING SALE PROCESS**

69. Since May 2009, Management has been trying find a new equity investor and/or sell the Company. Management held discussions with 6 strategic parties and was unable to close a transaction. Management’s efforts to sell the Company were known to BMO, Sun Life and Donco.
70. On August 27, 2010 the Company retained the services of PwCCF to assist Management with either raising additional capital or selling the Company. PwCCF’s services included:
- a) Developing a marketing strategy;
  - b) Identifying and approaching potential investors or acquirers;
  - c) Preparing marketing material such as a teaser, confidential information memorandum, NDA, and electronic data-room;
  - d) Coordinating management presentations and investor due diligence; and
  - e) Analyzing and negotiating offers.
71. The Proposed Receiver understands from discussions with PwCCF and Management that it was determined that an outright sale of the outstanding equity and/or assets of the Company would likely result in the highest proceeds. PwCCF and the Company have both advised the Proposed Receiver that a recapitalization of the business in this challenging financial market would likely not be feasible after a review of the Company’s financial position and its dealings with BMO and Sun Life.
72. PwCCF, with the assistance of Management, identified 58 potential buyers, of which 45 were strategic buyers, and 13 were financial buyers. The 58 potential buyers were contacted by PwCCF beginning September 8, 2010, and were solicited to sign confidentiality agreements. A total of 15 executed confidentiality agreements were received, 11 from strategic buyers and 4 from financial buyers, and each potential buyer was sent a confidential information memorandum (“**CIM**”) that provided an overview of the acquisition opportunity.

73. The Proposed Receiver was advised by Management and PwCCF that the above process resulted in 4 Letters of Intent or Expressions of Interest (collectively “**LOI**”), including an LOI from Equirex Leasing Corp., the parent company of the Purchasers.
74. The three LOIs that were not accepted did not contain binding offers to purchase the Company or its assets. The first LOI did not proceed as the potential purchaser was uncomfortable with the Company’s dependence on a limited number of funding sources without a multi-year financing commitment, which was not attainable given the current financial situation of the Company. The second LOI proposed a purchase structure and price that was unacceptable to the Company and Sun Life. The third LOI was accepted by the Company’s shareholders and the Company provided the issuer with exclusivity to complete significant financial and operational due diligence. Upon completion of its due diligence, the issuer of the third LOI submitted a revised offer, which was less attractive and not accepted by the Company.
75. Upon the termination of the exclusivity period for the third LOI, the Company engaged in discussions and negotiations with Equirex Leasing Corp., which resulted in the negotiation of the APA and related document that are discussed further below.

## VIII. TRANSACTIONS

76. The proposed Transactions detailed below involve a tri-party transaction between the Receiver, Sun Life and the Purchasers. The Transactions are governed by the following four key agreements:
- (i) The Proposed Offer to Purchase from the Purchasers to acquire Bodkin’s furniture and fixtures, intellectually property, and certain other intangible assets (i.e. “*Bodkin*” name, as well as Bodkin’s interest in all Sun Life leases;
  - (ii) The Proposed Reserve Sharing Agreement between the Receiver and the Servicer, which will define how the Reserve will ultimately be distributed between the respective parties as Book 1, Book 2 and the leases purchased by Sun Life pursuant to the APSA (collectively the “**Lease Portfolio**”) are run-off;
  - (iii) The Proposed Asset Purchase and Security Agreement between the Receiver and Sun Life which outlines the form of the final bulk purchase of the leases encompassed on the BMO Facilities at Closing; and

- (iv) The Proposed Administration Agreement between the Receiver, Sun Life and the Servicer which sets the terms and conditions for how the Servicer will manage and run-off the Lease Portfolio.

**(i) Proposed Offer to Purchase**

77. The Purchasers have offered to purchase Bodkin's interest in all Sun Life assigned leases and assets pertaining to those leases, as well as the Company's intellectual property, goodwill, licenses and permits, furniture and equipment and certain other assets as defined in the APA (the "**Purchased Assets**") for a fixed cash purchase price (the "**Asset Transaction Purchase Price**"), which Asset Transaction Purchase Price is detailed in the Supplementary Report.
78. The Asset Transaction Purchase Price will be paid on Closing. On Closing, the Purchased Assets are to be conveyed to the Purchasers by vesting Order, on an "as is, where is" basis, and subject to the usual terms and conditions contained in such a transaction, and subject to this Court's approval.
79. Additionally the Servicer has offered to service the remaining BMO leases not purchased by Sun Life in the APSA (noted below) and collect any accounts receivable still outstanding at the time of Closing that relate to the monthly lease rentals and residuals that were paid up to Sun Life prior to Closing. The Servicer will receive a fixed monthly fee per lease, along with reimbursement for third-party collection and recovery costs, to administer and manage the wind down of the remaining BMO leases.
80. The Purchaser is also assuming certain liabilities ("**Assumed Liabilities**"). The Assumed Liabilities are as follows:
- a) Continuing employment will be offered to approximately 26 of Bodkin's employees on substantially the same terms and conditions as they are currently employed, with any vacation pay entitlement accrued and not used since January 1, 2011 in the course of their employment with Bodkin to be recognized and assumed by the Purchaser;
  - b) Obligations of Bodkin owing for certain contracts as set out in the APA;
  - c) Obligations of Bodkin owing for licenses, permits, approvals, consents, registrations, and certificates, all as outlined within the APA;
  - d) Lessee overpayments received and currently held by Bodkin as at Closing from leases that were previously funded; and

- e) Any amounts owing to Bodkin's trade creditors that the Purchaser, in its sole discretion, chooses to assume.

- 81. As included in the proposed APA, it is the Receiver's intention, with the approval of this Court, to reimburse certain pre-filing equipment vendors and brokers for amounts owing on specific equipment related to transactions that are partially completed at Closing but relate to equipment leases purchased by Sun Life pursuant to the proposed APSA. Further, it is the Receiver's intention to reimburse certain bailiffs and external legal service providers for recovery related costs incurred by Bodkin prior to Closing. BMO has consented for the Receiver to use part of the proceeds to pay for these pre-filing costs. The amount that will actually be paid is uncertain at this time and is subject to reconciliation by the Receiver post-closing.
- 82. Included as part of the proposed APA, at Closing, the Receiver will enter into a transition agreement with the Book 3 Purchaser for the Book 3 Purchaser to occupy the Head Office location until January 7, 2012, unless an earlier date is subsequently agreed to by the Receiver and the Book 3 Purchaser.
- 83. Attached as **Appendix "D"** is the form of proposed APA to be entered into between the Receiver and the Purchaser, subject to the Court's approval, with all pricing information redacted. An unredacted copy of the APA will be appended to the Supplementary Report.

## **(ii) Proposed Reserve Sharing Agreement**

- 84. As part of the proposed APA with the Purchaser, the Receiver will also enter into an RSA with the Servicer on Closing. In summary, the RSA is a predetermined allocation of the Reserve that details how the release of that part of the Reserve to which the Bodkin is ultimately entitled, will be distributed between the Purchaser and the Servicer as the Lease Portfolio is run-off.
- 85. The release of Reserve funds, held by Sun Life, will be applied by the Receiver on a waterfall basis, summarized as follows:
  - a) The Servicer's monthly remuneration to administer the leases in the Lease Portfolio;
  - b) The Servicer's defined out-of-pocket costs associated with administering the leases in the Lease Portfolio;
  - c) Reimbursement to BMO for any increase in the Reserve holdback (beyond 6.75% to a maximum of 8.5%) in connection with the leases subject to the proposed APSA; and



d) The balance of the Reserve is to be split between the Receiver and the Servicer according to the allocation detailed in the Supplementary Report, which allocation will include graduated reductions of the Servicer's share if the Servicer has been removed as servicer pursuant to the Administration Agreement before certain dates, and a cancellation of the Servicer's share where there has been proven gross negligence, fraud or willful misconduct on the part of the Servicer.

86. The final amount of the Reserve that will be split between the Receiver and the Servicer will be dependent upon the delinquency rates and costs associated with winding down the Lease Portfolio. These two factors could positively or negatively impact the realizations of BMO and other creditors.

87. Attached as **Appendix "E"** is the form of proposed RSA to be entered into between the Receiver and the Servicer, subject to the Court's approval, with all pricing information redacted. An unredacted copy of the RSA will be appended to the Supplementary Report.

### **(iii) Proposed Asset Purchase and Security Agreement**

88. Sun Life will complete a final bulk purchase of substantially all leases encompassed on the BMO Facilities, subject to a 30 day adjustment period to account for any in-process lease deals not funded as at Closing (collectively the **"Purchased Leases"**). Sun Life will purchase the Purchased Leases primarily under the same terms and conditions as it normally purchases leases that sit on the BMO operating credit facility, subject to this Court's approval. The Purchased Leases will be conveyed to Sun Life by vesting Order.

89. The total purchase price will be primarily the aggregate of the present value of the consolidated cash flows of the Purchased Leases, calculated at a discount rate to be determined prior to Closing. On Closing, Sun Life will pay 8.00% of the total purchase price to the Reserve and the balance in cash to the Receiver for distribution to BMO, as detailed below (the **"Portfolio Transaction Cash Purchase Price"**). The Proposed Receiver understands that the Portfolio Transaction Cash Purchase Price, prior to any potential set-offs by Sun Life, is estimated to be approximately \$8 million, approximately \$7 million of which would be payable on Closing and balance within 30 days of Closing. This final amount will be dependent upon the amount outstanding on the BMO Facilities at Closing.

90. Attached as **Appendix "F"** is the form of proposed APSA to be entered into between the Receiver and Sun Life, subject to the Court's approval.

#### (iv) Proposed Administration Agreement

91. Immediately following the Closing, Sun Life will engage the Servicer as a servicer to manage and run-off the Lease Portfolio pursuant to the Administration Agreement.
92. The Servicer will invoice and collect monthly payments related to lease payments or early terminations of leases included in the Lease Portfolio. The Servicer will maintain all collections in a segregated bank account and remit the funds received to Sun Life on a monthly basis.
93. For any lease that becomes delinquent or defaults during the administration (as defined in the Administration Agreement), the Servicer will notify Sun Life of its intention to withdraw from the Reserve an amount equal to Sun Life's NPV on the delinquent lease and pay off the Sun Life debts associated with those respective leases. Any subsequent recoveries, net of collection and recovery costs as defined in the Administration Agreement, received by the Servicer on these delinquent leases shall be remitted back to the Reserve.
94. The Servicer will receive a monthly servicing fee per lease (which fee will be detailed in the Supplementary Report) plus reimbursement of collection and recovery costs to administer and manage the leases in the Lease Portfolio. The Servicer's fees and expenses will be paid from the Reserve on a monthly basis.
95. When the NPV of the Lease Portfolio is less than \$5 million, the Servicer has the option to purchase the remaining portfolio from Sun Life at a price mutually agreeable to the Receiver, Sun Life and the Servicer. If Sun Life is bought out at this point, the Reserve funds held by Sun Life will be released to the Receiver to be disbursed per the aforementioned waterfall basis pursuant to and in accordance with the terms of the RSA.
96. When the NPV of the Lease Portfolio is less than the lesser of \$1 million or the balance in the Reserve, the Receiver must purchase the remaining portfolio from Sun Life at a price as set out in the Administration Agreement. When Sun Life is bought out at this point, the Receiver shall assume, from Sun Life, the role of trustee and manager of the Reserve.
97. Attached as **Appendix "G"** is the form of proposed Administration Agreement to be entered into between the Receiver, Sun Life, and the Servicer, with all pricing information redacted. An unredacted copy of the form of Administration Agreement will be appended to the Supplementary Report.
98. At Closing, the Receiver, Sun Life and the Servicer will enter into a Restated Reserve Agreement that will govern the administration of the Reserve during the run-off of the Lease

Portfolio pursuant to the Administration Agreement. The form of Restated Reserve Agreement is attached as **Appendix “H”** hereto.

99. BMO has reviewed copies of the APA, RSA, APSA, the Administration Agreement, the Restated Reserve Agreement, and the liquidation analysis prepared by PwC, as discussed below. The Proposed Receiver understands that both Sun Life and BMO (BMO may incur a shortfall on its outstanding loans) support these Transactions.

## **IX. LIQUIDATION ANALYSIS**

100. The Proposed Receiver conducted a liquidation analysis of the Company’s assets taking into account such things as the:
- a) Quality of the leases securitized with Sun Life in Book 1 and Book 2;
  - b) Quality of the leases in the Bodkin portfolio not associated with Sun Life’s securitization program and financed under the BMO Facilities;
  - c) Quality of accounts receivable and inventory not associated with Sun Life’s securitization program;
  - d) Reserve held by Sun Life relating to Book 1 and Book 2 leases;
  - e) Potential priority claims and other amounts that may need to be paid by the Receiver; and
  - f) Collection and operating costs related to realizing on the lease portfolios and assets, including professional fees.
101. A copy of the Liquidation Analysis prepared by the Proposed Receiver will be filed with the Court on a sealed and confidential basis as an appendix to the Supplementary Report.
102. The Liquidation Analysis reflects that BMO will incur a shortfall on its advances to the Company should the Company’s business and assets be liquidated and not sold as a going concern as proposed in the Transactions. Detailed assumptions to the liquidation analysis are also provided in the appendices to the Supplementary Report.

## **X. SECURITY OPINION**

103. PwC has obtained an independent legal opinion on BMO’s security from Aird & Berlis. Aird & Berlis has provided an opinion to PwC that the security interests of BMO, on the assets of Bodkin, are valid and enforceable and have been properly perfected in Ontario, subject to the standard assumptions, qualifications and limitations contained in the opinion. The Proposed

Receiver understands BMO has registered its security in all provinces and territories, in priority to all other registrants except (in most jurisdictions) for Sun Life, and that such registrations are in good standing.

104. PwC has also obtained an independent legal opinion on Sun Life's security from Aird & Berlis. Aird & Berlis has provided an opinion to PwC that the security interests of Sun Life, in the assets of BLC and BCC pledged to Sun Life pursuant to the MPAA (the "**Sun Collateral**"), are valid and enforceable and have been properly perfected in Ontario, subject to the standard assumptions, qualifications and limitations contained in the opinion. The Proposed Receiver understands Sun Life has registered its security in all provinces and territories, in priority to all other registrants except, in two provinces, BMO, and that such registrations are in good standing.

105. BMO, Sun Life, Industrial Alliance Insurance and Financial Services Inc. ("**Industrial Alliance**") and Bodkin are parties to a priority/intercreditor agreement dated as of December 12, 2005 (the "**Intercreditor Agreement**"). Under the Intercreditor Agreement, BMO subordinates its security interest to the security interest of Sun Life in the Sun Collateral, and releases its interest in those assets sold to Sun Life pursuant to the MPAA. BMO remains, however, in priority to Sun Life in respect of all other Bodkin property other than the Sun Collateral. Both BMO and Sun Life also subordinate their interests to the security interest of Industrial Alliance in any vehicles and equipment financed by, and pledged to, Industrial Alliance, but there are currently no such vehicles pledged to Industrial Alliance.

## **XI. URGENCY**

106. The Company continues to operate with a margin deficit and as detailed in the Bodkin Margin Forecast, this position is not expected to reverse prior to December 2011. The Proposed Receiver does not expect a significant reversal of the margin deficit position in the foreseeable future.

107. Absent the continued support of BMO (i.e. margin deficits) and Sun Life (i.e. continued securitization funding), the Company is without sufficient liquidity to continue operations. Based on its discussions with BMO and Sun Life, the Proposed Receiver is of the view that such support is unlikely to continue. The Company operates in a time sensitive industry, and should the Company lose its ability to fund new leases, the Company's broker network would likely move quickly to competitors. This action would have a detrimental impact on the Company's operations and viability going forward. Without the certainty resulting from the

Transactions, the Company will not be able to continue to operate as a going concern in the foreseeable future.

108. The Purchasers proposed offer to purchase the Purchased Assets pursuant to the proposed APA expires on October 7, 2011.

## **XII. PROPOSED DISTRIBUTION TO BMO**

109. As stated, Aird & Berlis has provided a written opinion to the Proposed Receiver confirming the validity and enforceability of the BMO security, and the perfection of the security interests created thereby, subject to standard assumptions, qualifications and limitations contained therein. The total proceeds from the Transactions will be comprised of the proceeds from the APA, APSA and RSA. The proceeds from the APSA will be dependent upon the present value of the leases financed by the BMO Facilities and securitized with Sun Life as at the date of the Transactions.
110. BMO is seeking an interim distribution of the proceeds of the Transactions, but is agreeable to a holdback of \$2,600,000 to be held by the Proposed Receiver (the “**Holdback**”) to cover costs and expenses incurred or accruing. PwC is satisfied that this Holdback amount will leave sufficient funds in the estate to pay in full any and all amounts that rank, or may rank, in priority to BMO, including professional fees subject to the Receiver’s Charge. The Receiver estimates that the first proposed distribution would be approximately \$4,700,000.
111. Based on current BMO advances of \$11.3 million as at September 30, 2011, BMO may suffer a shortfall on its advances to the Company. The Proposed Receiver requests that this Court allow the Receiver to provide future distributions to BMO, without seeking the further approval of this Court, up to the amount of the indebtedness owing to BMO, assuming the Receiver is comfortable that a sufficient reserve exists to cover off other liabilities ranking in priority to BMO’s claims, and subject to any reserve requirements as outlined in the Transactions and to take into account holdback requirements as defined in the RSA.
112. In the event that there is a surplus in asset realizations from the Reserve in excess of what is owed to BMO, the Receiver will update the Court and seek appropriate direction at that time.
113. Prior to making any distribution to BMO, PwC intends to enter into a reimbursement agreement with BMO (“**Reimbursement Agreement**”). Pursuant to the Reimbursement Agreement, BMO will be required to reimburse the Receiver should there be insufficient funds remaining in the estate to satisfy any claims ranking in priority to BMO. BMO has

agreed to enter into a Reimbursement Agreement for this purpose. The form of the Reimbursement Agreement is attached as **Appendix “I”** hereto.

### **XIII. RECOMMENDATION**

#### **Transactions**

114. The Proposed Receiver recommends that this Court issue an order approving the Transactions for the following reasons:

- a) The Company has attempted to informally restructure since 2009;
- b) With the assistance of PwCCF, the Company has marketed Bodkin and its assets since August 2010;
- c) The sales process facilitated by PwCCF to date was commercially reasonable and involved the participation of multiple interested parties, yielding no third party purchaser that was interested in purchasing all or part of the assets of Bodkin on acceptable terms;
- d) The Company’s limited liquidity substantially eliminates an opportunity to further market the business for sale without putting the Transactions at risk;
- e) There is no additional funding available to support an extension of the current sales process or another sales process;
- f) The Transactions offer a return to BMO that is higher than may be achieved in a non-orderly liquidation of the assets;
- g) The Transactions allow for the continued employment of approximately 26 employees;
- h) The Proposed Receiver understands that BMO and Sun Life support the sales process undertaken to date, the offer proposed by the Purchaser and the Transactions generally; and
- i) Absent an immediate sale of the Bodkin assets, the Company’s operations would be discontinued.

115. Upon issuance of the order appointing PwC as Receiver, and the Order approving the APA, the APSA, the RSA, the Administration Agreement and the Restated Reserve Agreement,

PwC, as the Receiver, shall forthwith enter into such agreements and carry out the Transactions contemplated therein.

### **Distributions and Holdback**

116. PwC respectfully recommends that this Court issue an order authorizing and directing:

- a) An initial distribution from the sale proceeds to BMO, less the Holdback, and authorizing the Receiver's to make further distributions to BMO without seeking approval from the Court until such time as the indebtedness owed to the Bank shall have been paid in full;
- b) The retention by the Receiver, if appointed, of the Holdback; and
- c) Payment by the Receiver to it and its counsel for professional fees owing from the Holdback, subject to approval by the Court.

Dated the 3<sup>rd</sup> day of October, 2011.

**RESPECTFULLY SUBMITTED,**



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**Paul van Eyk, CA·CIRP, CA·IFA**  
Senior Vice-President

PricewaterhouseCoopers Inc.  
as the Proposed Receiver of  
Bodkin Financial Corporation Inc. and its subsidiaries  
and not in its personal capacity

