

District of Ontario
Division No. 09 - Toronto
Court File No. 31-1543925

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

**IN THE MATTER OF THE PROPOSAL OF ENCORE SALES,
A PARTNERSHIP FORMED UNDER THE LAWS OF THE PROVINCE OF
ONTARIO BETWEEN 1326281 ONTARIO LIMITED AND 1326282 ONTARIO
LIMITED, WITH A HEAD OFFICE IN TORONTO,
IN THE PROVINCE OF ONTARIO**

APPLICANT

FIRST REPORT OF THE PROPOSAL TRUSTEE

SEPTEMBER 30, 2011

1. On September 27 2011, Encore Sales (“**Encore**” or the “**Debtor**”) filed a Notice of Intention to make a Proposal (“**NOI**”) under Section 50.4 of the Bankruptcy and Insolvency Act (the “**BIA**”). A. Farber & Partners Inc. (“**Farber**”) was named as Trustee in the NOI filed by Encore (the “**Proposal Trustee**”). Attached as **Appendix A** is a copy of the NOI.
2. Encore is a privately-owned distributor of general and seasonal merchandise to retailers throughout North America. Encore Sales is a partnership originally formed by Encore Sales Limited, 1326281 Ontario Limited and 1326282 Ontario Limited. Encore Sales Limited ceased being a partner in 2004.
3. Encore’s operations are run out of a head office located at 333 North Rivermede Road, in Concord, Ontario which also houses a 180,000 square foot distribution warehouse which handles general merchandise. In addition, Encore also operates a 140,000 square foot seasonal distribution warehouse located within close proximity. Both facilities are leased.
4. Encore supplies Canadian and US retailers with high volume general (described hereinafter as “**Everyday**”) and seasonal (described hereinafter as “**Seasonal**”) merchandise. These Everyday and Seasonal products are sold to a diverse mix of approximately 1,500 retail customers.
5. As at July 31, 2011 Encore employed approximately 170 employees including approximately 95 hourly employees and 75 salaried employees. The hourly warehouse workers are members of Local 9197 of the United Steelworkers’ Union. Encore also uses 30 commission based sales agents in Canada and the US.
6. Over the course of the last three years, Encore has experienced declining sales and margins, which are attributed in large part to the global economic downturn. In an effort to help increase sales volumes and cover overheads, the Debtor merged its operations with a competitor, UWG Global Inc., in 2009. However the hoped for synergies and increased volumes were not fully achieved.
7. Callidus Capital Corporation (“**Callidus**”) is Encore’s principal secured creditor pursuant to the terms of an Amended Loan Agreement dated December 15, 2009 (the “**Loan**”).

- Agreement**”). On August 3, 2011, Callidus made demand for payment of the outstanding indebtedness in the amount of approximately \$16 million and delivered Notices of Intention to Enforce Security pursuant to section 244(1) of the BIA.
8. The Debtor, with the assistance of its financial advisor RSM Richter Corporate Finance Inc. (“**Richters**”) reviewed various restructuring alternatives and determined that Richters be engaged to conduct a sale process for Encore’s property, assets and undertakings (the “**Sales Process**”) commencing early August 2011. The Sales Process was commenced as part of a dual track restructuring, wherein Encore would consider both a going concern sale while continuing to pursue a restructuring of its business and affairs. The Sales Process is described in Richters Report dated September 27, 2011 (“**Richters Report**”) attached as Exhibit ”F” to the Affidavit of Howard Bloomberg dated September 28, 2011 (described hereinafter as the “**Bloomberg Affidavit**”), filed in support of the motion returnable October 5, 2011.
 9. The Sales Process, has culminated in Encore entering into an Asset Purchase Agreement with CTG Brands Inc. (“**CTG**”) on September 19, 2011 (the “**CTG APA**”) for the sale of the Everyday “Stationary”, “Signature Kitchen” and “Pet” product lines and related inventory, goodwill and intellectual property (“**IP**”). It is contemplated by the Debtor that the Sales Process will be continued to identify a purchaser or purchasers of the remaining property, assets and undertakings of Encore.
 10. Encore will bring a motion returnable October 5, 2011 for an order to, among other things:
 - (a) Approve the CTG APA and grant a vesting order in favour of CTG with respect to the purchased assets described therein, upon closing of the transaction; and
 - (b) Approve the continuation of the Sales Process by the Proposal Trustee with the assistance of Richters.

PURPOSES OF THIS REPORT

11. The purposes of this report are to:
 - (a) Provide Farber’s recommendations with respect to the CTG APA;

- (b) Report on the contemplated extension of the Sales Process to complete the sale of remaining assets and business of Encore;
- (c) Seek approval of a professionals charge; and
- (d) Recommend payment to Richters of a \$75,000 Sales Process performance fee.

DISCLAIMER

12. For the purposes of this report, Farber has relied upon the financial records of the Debtor, as well as other information supplied by management. Farber's procedures and enquiries did not constitute any audit or review engagement. Farber assumes no responsibility or liability for loss or damage occasioned by any party as a result of the circulation, publication, reproduction or use of this report. Any use which any party, other than the Court, makes of this report, or any reliance on or a decision made based upon it, is the responsibility of such party.

BACKGROUND

13. Founded in 1964, Encore supplies Canadian and US retailers with high volume Everyday and Seasonal merchandise. Encore distributes over 7,000 product items listed in 40 different product categories over a diverse line of products including such categories as stationery, toys/crafts, hardware, housewares as well as seasonal products from Valentine's Day to Christmas. These Everyday and Seasonal products are sold to a diverse mix of approximately 1,500 retail customers. Revenues for the most recent fiscal year end (November 30, 2010) were \$62.8 million. Year to date revenues for the eight months ended July 31, 2011 were \$35.0 million.
14. Over the years, Encore has built an extensive supply chain to source product for both the Everyday and Seasonal categories. Part of Encore's business model has been to continuously introduce new products into the market, and secure exclusive supply of various brands that are recognized across Canada and the United States. These brands are often considered a low cost alternative to other popular name brands.
15. Unlike many of its competitors who tend to focus on one season or light coverage across a number of seasons, Encore has developed significant expertise with all Seasonal offerings from Valentine's Day to Christmas. Encore management has perfected the

- highly time sensitive annual business cycle and has been successful in providing high perceived value goods to ensure high profitability and sell through rates for its customers.
16. As a result of reduced sales, the global recession in 2008/2009 and continuing poor conditions in the market place, Encore, after extensive review of its restructuring options, in consultation with Richters, decided in early August 2011 that it would exit the Everyday business to focus on its perceived strength in Seasonal product.
 17. As a result of this change in direction, Encore commenced offering discounts in early August 2011 on its Everyday lines in order to make room for the Seasonal merchandise. Encore's goal at that time was to focus exclusively on the Seasonal business and items related to the Seasonal business until the sale of the remaining Everyday inventory was completed.
 18. Coincident with the decision to exit the Everyday business lines, Encore, with the assistance of Richters, commenced the Sales Process to canvass the market for parties interested in purchasing the business either en-bloc or for specific product lines. That process has culminated in the CTG APA, which is for the purchase of the inventory, goodwill and IP of the Everyday "Stationary", "Signature Kitchen" and "Pet" product lines. These product lines represent approximately 25% of Encore's annual sales. Encore and Richters are continuing to consider offers for other segments of the business, including its Seasonal product lines business. The Sales Process is reported on more fully below.

ACTIVITIES OF THE PROPOSAL TRUSTEE

19. In advance of its appointment as Proposal Trustee, Farber was appointed consultant to Callidus in early August 2011, to monitor the ongoing financial position of Encore, as well as the Sales Process underway through August and September 2011.
20. Farber has also worked with Encore to prepare updated cash flow projections for the period through to the end of November 2011 and will be working with Encore to file the prescribed cash flow projections pursuant to the BIA. Following its appointment as Proposal Trustee, Farber has monitored the business and affairs of the Debtor and examined their property in accordance with the provisions of the BIA. The ongoing

monitoring activities will focus on the continued Sales Process and reviewing and tracking Encore's daily and weekly cash flow performance against forecast.

21. On September 30, 2011 the Proposal Trustee mailed to all known creditors of the Debtor an information package advising of the filing of the NOI.

THE DEBTOR'S ASSETS AND LIABILITIES

22. Summarized below are the significant assets and liabilities of Encore, based on a review of the Debtor's most recent borrowing base report to Callidus and the Debtor's financial statements.

ASSETS

23. As at September 23, 2011, Encore's principal assets comprised:
 - (a) Accounts receivable of approximately \$11.05 million (net of bad debt provisions);
 - (b) Inventory of approximately \$8.86 million, comprising Everyday inventory of \$3.33 million; Seasonal inventory of \$4.46 million and goods in transit of \$1.07 million; and
 - (c) Fixed Assets with a net book value of \$743,000.

LIABILITIES

Callidus

24. The Debtor is indebted to Callidus pursuant to the Loan Agreement dated December 15, 2011. The Debtor's indebtedness to Callidus is secured by, *inter alia*, general security agreements covering all of the Debtor's assets.
25. As at September 23, 2011 the Debtor's indebtedness to Callidus was approximately \$15.27 million. Set out below is a table summarizing the break down of the total Loan at that date:

Callidus Capital Corporation	
Loan Schedule (in \$000's)	
Facility A	10,045
Facility C	355
Overadvance	1,700
Facility D	3,169
Total	15,269

Related Party Loans

26. In addition to the Callidus loans, Encore has secured loans from certain related parties which are subordinated to the Callidus debt. These include loans from four individuals (Lorne Bloomberg, Stephen Bloomberg, David Bloomberg and Jordan Bloomberg) and three corporations (Shel-Lorne Holdings Inc., Crinis Holdings (1990) Limited, and Wolgo Holdings (1990) Limited (hereinafter referred to as “**Related Party Loans**”). As at September 23, 2011 these Related Party Loans totalled approximately \$7.895 million. The table below summarizes those loans:

Related Party Loans	
in \$000's)	
David Bloomberg	300
Jordan Bloomberg	300
Lorne Bloomberg	205
Stephen Bloomberg	350
Shel-Lorne Holdings Inc.	1,345
Crinis Holdings (1990) Limited	2,575
Wolgo Holdings (1990) Limited	2,820
Total	7,895

27. All of these Related Party Loans are secured by general security agreements, which provide for charges over all of the Debtor’s assets.

Security Opinion

28. Counsel for Farber, Chaitons LLP (“**Chaitons**”), has provided a legal opinion to Farber confirming that, subject to the usual assumptions and qualifications in opinions of this kind, as follows:

- (a) Callidus holds valid and enforceable security against all present and future assets, property and undertaking of the Debtor and all proceeds thereof;
- (b) the Related Parties hold valid and enforceable security against all present and future assets, property and undertaking of Debtor and all proceeds thereof; and
- (c) the indebtedness and security held by the Related Parties is subordinated and postponed in favour of the indebtedness and security held by Callidus.

Attached hereto as **Appendix B** is a copy of the opinion letter from Chaitons.

Other Secured Creditors

29. According to searches conducted under the *Personal Property Security Act* (Ontario) (“PPSA”), other parties appear to have security over specific assets. The Bloomberg affidavit sets out the details of those parties and nature and extent of PPSA registrations.

Priority Payables

30. Farber has reviewed potential priority payables with the Debtors' management.
31. Wage and payroll related liabilities are reported as current. Payroll deductions at source are remitted by an external payroll service (ADP), coincident with the bi-weekly payrolls.
32. According to management, HST/GST liabilities effective September 23, 2011 stand at \$611,443 while effective that same date, QST payable is at \$76,217.
33. Farber is not aware of any other material priority payables currently outstanding.

Other Creditors

34. Based on the creditors listing provided by the Debtor to Farber effective September 23, 2011 the unsecured claims total approximately \$7.1 million.

SALES PROCESS

35. Encore engaged Richters to conduct the Sales Process on behalf of Encore. The details of the Sales Process are set out the Richters Report which is appended to the Bloomberg Affidavit.

36. Since the commencement of the Sale Process, Richters has undertaken the following:
- (a) In concert with Encore and Callidus, compiled a listing of prospective purchasers with 69 parties to be contacted including all major competitors;
 - (b) On August 3, 2011, distributed to prospective purchasers a solicitation letter detailing the sale and attaching a confidentiality agreement (“CA”). Thirty (30) parties signed the CA;
 - (c) Prepared a Confidential Information Memorandum (“CIM”) and made it available to any prospective purchaser that executed the CA. Prospective purchasers that executed the CA had the opportunity to review information on an on-line “data room”;
 - (d) Made follow up calls to all prospective purchasers on the distribution list to ensure that they received the solicitation letter and to respond to any questions they had;
 - (e) Facilitated site visits and meetings between Encore’s management and prospective purchasers that executed the CA;
 - (f) In concert with legal counsel for Encore, drafted and circulated to prospective purchasers that executed a CA, a draft form of offer; and
 - (g) Required prospective purchasers to submit expressions of interest by August 29, 2011.
37. Ultimately, seven prospective purchasers submitted offers by August 29, 2011. No en bloc offer was made for the business.
38. After extensive negotiations between Encore (represented by Richters) and CTG, a revised offer was accepted, (hereinafter referred to a “**Revised Offer**”) which provided for the sale of the significant Everyday “Stationery”, “Signature Kitchen” and “Pet” product lines, which represents close to 25% of Encore’s annual sales. In addition, the offer provides for a \$300,000 payment for goodwill and requires the Encore shareholders to execute a non-compete agreement, which we understand they have agreed in principle to provide.

39. Richters recommended that Encore accept the CTG Revised Offer, as such offer was the highest and best offer for the estate as a whole, and is commercially reasonable.

THE CTG APA

40. The CTG APA was negotiated and finalized on September 19, 2011. Encore's legal counsel will provide a copy of the CTG APA to the Court as a Confidential Exhibit. Key terms of the CTG APA are as follows:

- The Purchased Assets comprise inventory and goodwill for the "Stationery", "Signature" and "Pet" product lines. Inventory includes goods in transit;
- Inventory is to be valued based on a formula to be applied according to the aging of inventory. Both inventory on hand and goods in transit will be subject to a final count and valuation, with the CTG APA providing an adjustment mechanism for under/over adjustments;
- Payment for goodwill of \$300,000;
- A deposit of \$50,000;
- CTG will allow Encore to continue selling its open orders received prior to September 2, 2011, allowing Encore to continue earning gross margin on sales made;
- Title to be transferred by way of a vesting order; and
- Closing to occur immediately after Court approval.

RECOMMENDATION

41. In its capacity as Proposal Trustee, Farber believes that the transaction under the CTG APA is commercially reasonable in the circumstances and recommends approval of the transaction for the following reasons:

- The market has been extensively canvassed as set out in the Richter's Report.

- The purchase price is the highest and best offer received for these assets, is close to the overall book value and is significantly higher to what would be achieved in a bankruptcy liquidation (A copy of the Gordon Brothers Appraisal dated June 13, 2011 will be made available as a **Confidential Appendix 1** for the Court's review.)
- Throughout August and September 2011, Farber as prospective Proposal Trustee was kept apprised of the Sales Process.
- Callidus as senior secured creditor was consulted and advised throughout the Sales Process.
- Callidus supports the CTG APA transaction.
- The Related Party Secured Creditors, with subordinate ranking security support the transaction.
- Time is of the essence to complete the CTG APA transaction based on the CTG's timetable as well as to minimize holding and operating costs.
- The proceeds from the CTG APA will partially pay-down the Callidus loans.
- This transaction represents the sale of significant business lines in the Everyday business segment, which Encore had determined it would exit in August 2011. There remains scope for an en-bloc transaction to purchase the Seasonal Business segment and Encore's perceived strength, which preserves the prospect of a going concern sale and related employment.

CONTINUATION OF SALES PROCESS

42. Both Richter and Encore continue to negotiate with the parties interested in other product lines, including the strong Seasonal segment. All of these parties were identified as part of the Sales Process conducted through August 2011. However, more time is required to conduct further due diligence and negotiate terms and conditions of any offer. Farber has been monitoring the progress of these negotiations.

43. Callidus as the senior lender remains supportive of these efforts, during which time Encore will also focus on operating the business in the normal course, including servicing the Seasonal sales for Halloween and Christmas.
44. Callidus has requested and Encore supports that Farber, as Proposal Trustee, be authorized and directed to continue the Sales Process, and to use the services of Richters, where appropriate, to complete the Sales Process.

PERFORMANCE FEE

45. Pursuant to the Sales Process engagement terms negotiated with Encore, on the closing of one or more transactions, Richters was entitled to a partial contingency fee (“**Performance Fee**”) of \$75,000 (plus HST). The fee is payable once the CGT APA transaction closes. This Performance Fee is consented to by Encore, as well as Callidus, in its capacity as senior lender.

PROFESSIONALS CHARGE

46. In order to protect the fees and expenses of the Proposal Trustee, its counsel, Richters and Encore’s legal counsel, the Proposal Trustee seeks a charge on the property and assets of the Debtors pursuant to s. 64.2(1) of the BIA, ranking in priority to claims of all secured and unsecured creditors, to secure payment of reasonable fees and expenses of the Proposal Trustee, its counsel, Richters and Encore’s legal counsel, to a maximum of \$500,000 (the “**Professionals Charge**”).

RECOMMENDATIONS

47. For the reasons set out above, the Proposal Trustee respectfully recommends that this Honourable Court:
 - (a) Approve the Proposal Trustee’s First Report and the activities described therein;
 - (b) Grant an Order approving the CTG APA;
 - (c) Authorize and direct the Proposal Trustee to continue the Sales Process with the assistance of Richters, where applicable;

- (d) Grant an order approving the Professionals Charge; and
- (e) Grant an order approving the Richter Performance Fee payment.

All of which is respectfully submitted this 30th day of September, 2011.

**A. FARBER & PARTNERS INC., in its
capacity as Trustee acting *in re* the proposal of
Encore Sales**

A. Farber & Partners Inc.,

Appendix A



Office of the Superintendent
of Bankruptcy Canada

An Agency of
Industry Canada

Bureau du surintendant
des faillites Canada

Un organisme
d'Industrie Canada

District of Ontario
Division No. 09 - Toronto
Court No. 31-1543925
Estate No. 31-1543925

In the Matter of the Notice of Intention to make a
proposal of:

ENCORE SALES

Insolvent Person

A. FARBER & PARTNERS INC.

Trustee

Date of the Notice of Intention: September 27, 2011

CERTIFICATE OF FILING OF A NOTICE OF INTENTION TO MAKE A PROPOSAL
Subsection 50.4 (1)

I, the undersigned, Official Receiver in and for this bankruptcy district, do hereby certify that the aforementioned insolvent person filed a Notice of Intention to Make a Proposal under subsection 50.4 (1) of the *Bankruptcy and Insolvency Act*.

Pursuant to subsection 69(1) of the Act, all proceedings against the aforementioned insolvent person are stayed as of the date of filing of the Notice of Intention.

Date: September 28, 2011, 10:07

E-File/Dépôt Electronique

Official Receiver

25 St. Clair Avenue East, 6th floor, Toronto, Ontario, Canada, M4T1M2, (877)376-9902

Canada

IN THE MATTER OF THE PROPOSAL OF
ENCORE SALES, A PARTNERSHIP FORMED UNDER THE LAWS
OF THE PROVINCE OF ONTARIO BETWEEN
1326281 ONTARIO LIMITED AND 1326282 ONTARIO LIMITED
OF THE CITY OF VAUGHAN, IN THE PROVINCE OF ONTARIO

NOTICE OF INTENTION TO MAKE A PROPOSAL

TAKE NOTICE THAT:

1. The undersigned Encore Sales, A Partnership, an insolvent person, pursuant to Subsection 50.4(1) of the *Bankruptcy and Insolvency Act*, intends to make a Proposal to its creditors.
2. A Farber & Partners Inc., of 150 York Street, Suite 1600, Toronto, Ontario, a licensed Trustee, has consented to act as Trustee under the Proposal and a copy of the Consent is attached hereto.
3. A list of the names of the known creditors with claims amounting to \$250 or more and the amounts of their claims is attached.
4. Pursuant to Section 69 of the *Bankruptcy and Insolvency Act*, all proceedings against the company are stayed as of the date of filing this Notice with the Official Receiver in its locality.

DATED AT TORONTO this 27 day of September, 2011.

ENCORE SALES, A PARTNERSHIP

Per: Howard Bloomberg

Appendix B



September 28, 2011

A. Farber & Partners Inc.
150 York Street, Suite 1600
Toronto, ON M5H 3S5

Attention: Gary Lifman

Re: *Encore Sales (the "Partnership"), a partnership between 1326281 Ontario Limited ("281") and 1326282 Ontario Limited ("282" and together with 281, the "Partners" and each a "Partner")*

Dear Mr. Lifman,

In accordance with your instructions, we have reviewed the documents described below to determine their validity and enforceability against a trustee in bankruptcy of the estate of the Partnership.

Callidus Capital Corporation ("Callidus"), as assignee of HSBC Bank Canada ("HSBC")

HSBC made certain credit facilities available to the Partnership. The Partnership's indebtedness to HSBC under these credit facilities is secured by, *inter alia*, a General Security Agreement dated May 27, 2009 (the "**GSA**"). Pursuant to an Assignment Agreement dated August 14, 2009 among Callidus, HSBC, the Partnership and others, HSBC sold, transferred, conveyed and assigned all of its right, title and interest in and to, *inter alia*, the GSA to Callidus effective as at August 14, 2009 and the indebtedness secured thereby. The GSA, as assigned to Callidus, is hereinafter referred to as the "**Callidus Security**".

Wolgo Holdings 1990 Limited ("Wolgo")

General Security Agreement dated October 28, 2002 granted by the Partnership in favour of Wolgo (the "**Wolgo Security**").

Crinis Holdings (1990) Limited ("Crisis")

General Security Agreement dated October 28, 2002 granted by the Partnership in favour of Crinis (the "**Crisis Security**").

Lorne Bloomberg ("Lorne")

General Security Agreement dated October 28, 2002 granted by the Partnership in favour of Lorne (the "**Lorne Security**").

David Bloomberg (“David”)

General Security Agreement dated October 28, 2002 granted by the Partnership in favour of David (the “**David Security**”).

Jordon Bloomberg (“Jordon”)

General Security Agreement dated October 28, 2002 granted by the Partnership in favour of Jordon (the “**Jordon Security**”).

Stephen Bloomberg (“Stephen”)

General Security Agreement dated October 28, 2002 granted by the Partnership in favour of Stephen (the “**Stephen Security**”).

The Callidus Security, the Wolgo Security, the Crinis Security, the Lorne Security, the David Security, the Jordon Security and the Stephen Security are hereinafter collectively referred to as the “**Security**”. Callidus, Wolgo, Crinis, Lorne, David, Jordon and Stephen are hereinafter collectively referred to as the “**Secured Lenders**” and each a “**Secured Lender**”.

Opinion

Subject to the assumptions and qualifications hereinafter set out, we are of the opinion that:

Callidus Security

1. The Callidus Security creates a security interest in favour of Callidus as assignee of HSBC in all present and future undertaking and personal property (as defined in the *Personal Property Security Act* (Ontario) (the “**PPSA**”) of the Partnership and all proceeds thereof, including without limitation all goods, accounts, chattel paper, documents of title, instruments, intangibles, money and securities (as those terms are defined in the PPSA).
2. The Callidus Security secures the repayment and discharge of all indebtedness, obligations and liabilities of the Partnership to Callidus.
3. Pursuant to the terms of Acknowledgement and Confirmation of Security agreements dated August 14, 2009 and December 15, 2009, the Partnership confirmed and agreed, *inter alia*, that (a) all references to “Indebtedness” in the GSA shall mean all indebtedness, obligations and liabilities of the Partnership to HSBC, as assigned to Callidus and/or directly to Callidus and (b) the Callidus Security continues to be valid and enforceable against it in accordance with its terms.
4. A financing statement was registered by HSBC against the Partnership pursuant to the PPSA on February 15, 1999 as registration no. 19990215 1637 8028 6044 (file number 848461185), perfecting HSBC's security interest in the Partnership's

personal property located in Ontario, other than consumer goods. Pursuant to a financing change statement registered on August 18, 2009 as registration no. 20090818 0950 1862 3530, reflecting the assignment to Callidus. Accordingly, the Callidus Security is valid and enforceable against a trustee in bankruptcy of the estate of the Partnership.

5. Pursuant to Subordination Agreements each dated May 27, 1999 granted by each of Encore Sales Limited, Howard Bloomberg, 281, 282, Wolgo, Crinis, Shel-Lorne Holdings Inc. and Irving Bloomberg (collectively, the **"Original Subordinate Lenders"**) and Subordination and Postponement Agreements each dated October 24, 2008 granted by each of Stephen, Jordon, David and Lorne (collectively with the Original Subordinate Lenders, the **"Subordinate Lenders"**), each of the Subordinate Lenders agreed that, *inter alia*, (a) all amounts owed to them by the Partnership are postponed and subordinated to and in favour of all amounts owed by the Partnership to Callidus, as assignee of HSBC and (b) all existing and future security delivered by the Partnership to the respective Subordinate Lender is postponed and subordinated to and in favour of any present and future security delivered by the Partnership to Callidus.
6. Pursuant to the terms of Acknowledgement and Confirmation of Security agreements dated August 14, 2009 and December 15, 2009, each Partner confirmed and agreed, *inter alia*, that (a) all references to "Bank Indebtedness" in its respective subordination agreement shall mean all indebtedness, obligations and liabilities of the Partnership to HSBC, as assigned to Callidus and/or directly to Callidus, (b) all references to "Bank Securities" in its respective subordination agreement shall mean all security or securities held by HSBC as assigned to Callidus and/or directly by Callidus for the Bank Indebtedness and (c) its respective subordination agreement continues to be valid and enforceable against it in accordance with its respective terms.

Wolgo Security:

7. The Wolgo Security creates a security interest in favour of Wolgo in all present and future undertaking, assets, and property, both real and personal, of the Partnership, including without limitation, all accounts receivable, inventory, equipment, chattel paper, documents of title, securities and instruments, intangibles, books and records, substitutions (as those terms are defined in the PPSA) and all proceeds of the foregoing.
8. The Wolgo Security secures the payment and satisfaction of all obligations of the Partnership to Wolgo, including without limitation the Indebtedness (as such term is defined in a Restated Loan Agreement and Guarantee between Wolgo and the Partnership dated October 28, 2002).
9. A financing statement was registered by Wolgo against the Partnership pursuant to the PPSA on August 19, 2011 as registration no. 20110819 1949 1531 5711 (file number 672338178), perfecting Wolgo's security interest in the Partnership's

personal property located in Ontario, other than consumer goods. Accordingly, the Wolgo Security is valid and enforceable against a trustee in bankruptcy of the estate of the Partnership.

Crinis Security:

10. The Crinis Security creates a security interest in favour of Crinis in all present and future undertaking, assets, and property, both real and personal, of the Partnership, including without limitation, all accounts receivable, inventory, equipment, chattel paper, documents of title, securities and instruments, intangibles, books and records, substitutions (as those terms are defined in the PPSA) and all proceeds of the foregoing.
11. The Crinis Security secures the payment and satisfaction of all obligations of the Partnership to Crinis, including without limitation the Indebtedness (as such term is defined in a Restated Loan Agreement and Guarantee between Crinis and the Partnership dated October 28, 2002).
12. A financing statement was registered by Crinis against the Partnership pursuant to the PPSA on August 19, 2011 as registration no. 20110819 1949 1531 5712 (file number 672338187), perfecting Crinis's security interest in the Partnership's personal property located in Ontario, other than consumer goods. Accordingly, the Crinis Security is valid and enforceable against a trustee in bankruptcy of the estate of the Partnership.

Lorne Security:

13. The Lorne Security creates a security interest in favour of Lorne in all present and future undertaking, assets, and property, both real and personal, of the Partnership, including without limitation, all accounts receivable, inventory, equipment, chattel paper, documents of title, securities and instruments, intangibles, books and records, substitutions (as those terms are defined in the PPSA) and all proceeds of the foregoing.
14. The Lorne Security secures the payment and satisfaction of all obligations of the Partnership to Lorne, including without limitation the Indebtedness (as such term is defined in a Restated Loan Agreement and Guarantee between Lorne and the Partnership dated October 28, 2002).
15. A financing statement was registered by Lorne against the Partnership pursuant to the PPSA on August 19, 2011 as registration no. 20110819 1949 1531 5707 (file number 672338133), perfecting Lorne's security interest in the Partnership's personal property located in Ontario, other than consumer goods. Accordingly, the Lorne Security is valid and enforceable against a trustee in bankruptcy of the estate of the Partnership.

David Security:

16. The David Security creates a security interest in favour of David in all present and future undertaking, assets, and property, both real and personal, of the Partnership, including without limitation, all accounts receivable, inventory, equipment, chattel paper, documents of title, securities and instruments, intangibles, books and records, substitutions (as those terms are defined in the PPSA) and all proceeds of the foregoing.
17. The David Security secures the payment and satisfaction of all obligations of the Partnership to David, including without limitation the Indebtedness (as such term is defined in a Restated Loan Agreement and Guarantee between David and the Partnership dated October 28, 2002).
18. A financing statement was registered by David against the Partnership pursuant to the PPSA on August 19, 2011 as registration no. 20110819 1949 1531 5709 (file number 672338151), perfecting David's security interest in the Partnership's personal property located in Ontario, other than consumer goods. Accordingly, the David Security is valid and enforceable against a trustee in bankruptcy of the estate of the Partnership.

Jordon Security:

19. The Jordon Security creates a security interest in favour of Jordon in all present and future undertaking, assets, and property, both real and personal, of the Partnership, including without limitation, all accounts receivable, inventory, equipment, chattel paper, documents of title, securities and instruments, intangibles, books and records, substitutions (as those terms are defined in the PPSA) and all proceeds of the foregoing.
20. The Jordon Security secures the payment and satisfaction of all obligations of the Partnership to Jordon, including without limitation the Indebtedness (as such term is defined in a Restated Loan Agreement and Guarantee between Jordon and the Partnership dated October 28, 2002).
21. A financing statement was registered by Jordon against the Partnership pursuant to the PPSA on August 19, 2011 as registration no. 20110819 1949 1531 5708 (file number 672338142), perfecting Jordon's security interest in the Partnership's personal property located in Ontario, other than consumer goods. Accordingly, the Jordon Security is valid and enforceable against a trustee in bankruptcy of the estate of the Partnership.

Stephen Security:

22. The Stephen Security creates a security interest in favour of Stephen in all present and future undertaking, assets, and property, both real and personal, of the Partnership, including without limitation, all accounts receivable, inventory, equipment, chattel paper, documents of title, securities and instruments, intangibles, books and records, substitutions (as those terms are defined in the PPSA) and all proceeds of the foregoing.
23. The Stephen Security secures the payment and satisfaction of all obligations of the Partnership to Stephen, including without limitation the Indebtedness (as such term is defined in a Restated Loan Agreement and Guarantee between Stephen and the Partnership dated October 28, 2002).
24. A financing statement was registered by Stephen against the Partnership pursuant to the PPSA on August 19, 2011 as registration no. 20110819 1949 1531 5710 (file number 672338169), perfecting Stephen's security interest in the Partnership's personal property located in Ontario, other than consumer goods. Accordingly, the Stephen Security is valid and enforceable against a trustee in bankruptcy of the estate of the Partnership.

Searches

1. A Business Names Report produced on September 15, 2011 by the Ministry of Consumer and Business Services Company and Personal Property Security Branch indicates that the Partnership is a general partnership whose name was registered under the *Business Names Act* (Ontario) on November 30, 1998 as "Encore Sales". It also reveals that the Partnership's partners are 281 and 282. The Partnership does not appear to have a French-form of name. The Security evidences that the Partnership originally had three partners being, 281, 282 and Encore Sales Limited. The Partnership's accountant has advised that Encore Sales Limited ceased to be a partner effective as at November 30, 2004.
2. A Corporation Profile Report produced on September 16, 2011 by the Ministry of Consumer and Business Services Company and Personal Property Security Branch indicates that 281 was incorporated on November 19, 1998 as "1326281 Ontario Limited". 281 does not appear to have changed its name since the date of incorporation and does not appear to have a French-form of name.
3. A Corporation Profile Report produced on September 16, 2011 by the Ministry of Consumer and Business Services Company and Personal Property Security Branch indicates that 281 was incorporated on November 19, 1998 as "1326282 Ontario Limited". 282 does not appear to have changed its name since the date of incorporation and does not appear to have a French-form of name.
4. We obtained a enquiry response certificate from the Ontario Personal Property Security Registration System in respect of registrations under the *Personal Property*

Security Act (Ontario) (“**PPSA**”) which were outstanding as at September 14, 2011 against the Partnership. The certificate reveals the registration of the financing statements and financing change statements against the Partnership described in Schedule “A” hereto.

5. We also performed a search in the Province of Ontario for notices of intention registered pursuant to the *Bank Act* (Canada) against the Partnership at September 15, 2011. This search revealed no *Bank Act* (Canada) registrations against the Partnership.

Scope of Review, Assumptions and Qualifications

Our opinion expressed herein is limited to the laws of Ontario and to the laws of Canada applicable therein. This opinion is based solely on a review of copies of the Security and our searches of the governmental records referred to above. We have not reviewed any other documentation or made any other enquiries about matters which may affect the validity and enforceability of the Security.

For the purposes of this opinion we have assumed that:

1. “Encore Sales” is the correct name as set out in the aforementioned Business Names Report and that the Partnership does not have a French form of name;
2. the Security was duly authorized, executed and delivered by the Partners on behalf of the Partnership to the respective Secured Lender;
3. the genuineness of all signatures (whether on originals or copies of documents), the conformity to original documents submitted to us as notarial, certified, conformed, photostatic or telecopies copies thereof and the authenticity of the originals of such documents;
4. there are no agreements or other facts which might affect the validity or enforceability of any of the Security which are not apparent from a review of the Security;
5. consideration/value was given by the respective Secured Lender to the Partnership;
6. the Partnership and the Partners each has rights in its respective personal property so that attachment occurred within the meaning of the PPSA;
7. neither Partner has any right, title and interest in and to any assets properties and undertakings, other than the assets, properties and undertakings of the Partnership;
8. the chief executive office of the Partnership and each Partner was located in Ontario at all relevant times for the purposes of the PPSA;

9. the Partnership has the capacity to borrow money in Ontario, to provide the Security, to execute and deliver the Security and to perform the covenants contained therein on its part to be performed;
10. all applicable securities laws and regulations have been complied with in the granting and issuance of the Security;
11. the financial assistance by corporation provisions previously contained in section 20 of the *Business Corporations Act* (Ontario) and since repealed, do not apply to any part of the transactions being commented upon herein to impact upon the validity and enforceability of the Security; and
12. the indices and filing systems at the public offices where we have searched or enquired or have caused searches or enquiries to be completed were accurate, current and complete.

The opinions expressed herein are also subject to the following qualifications:

1. we express no opinion on whether the Security can be attacked under the *Bankruptcy and Insolvency Act* (Canada) or any other federal or provincial legislation as a fraudulent conveyance, preference, transaction at undervalue or otherwise;
2. we express no opinion as to the priority of the Security including, but not limited to as against unregistered statutory trusts or liens;
3. we express no opinion as to the validity of any security interest in any contractual rights or Crown debts, which, by their terms, cannot be the subject of a security interest without the consent, authorization or approval of third parties;
4. we express no opinion with respect to the creation or perfection of a security interest pursuant to the *Canada Shipping Act* (Canada), the *Copyright Act* (Canada), the *Industrial Design Act* (Canada), the *Integrated Circuit Topography Act* (Canada), the *Patent Act* (Canada), and the *Plant Breeders' Rights Act* (Canada), the *Railway Act* (Canada), the *Trade Marks Act* (Canada) or the consequences of compliance or non-compliance with such statutes;
5. enforceability of the Security may be limited by bankruptcy, insolvency, reorganization, receivership, moratorium, arrangement or winding-up laws or other similar laws affecting the enforcement of creditors' rights generally;
6. enforceability of the Security may also be limited by equitable principles including the principle that equitable remedies such as specific performance and injunction may only be granted in the discretion of a court of competent jurisdiction;
7. the PPSA imposes certain obligations on secured creditors which cannot be varied by contract. The PPSA may also affect the enforcement of certain rights and remedies contained in the Security to the extent that those rights and remedies are inconsistent with and contrary to the PPSA; and



8. this opinion is not to be taken as relating to any property or assets which are located outside the Province of Ontario, or as to the validity or enforceability of the Security insofar as it relates to such property.

We trust the above is satisfactory for your purposes. Should you have any questions, please contact the undersigned.

Yours truly,
CHAITONS LLP

Chaitons LLP



SCHEDULE "A"

See attached.

**REGISTRATIONS PURSUANT TO THE
PERSONAL PROPERTY SECURITY ACT (ONTARIO)**

AGAINST

Encore Sales

(Date of Searches: September 14, 2011)

SECURED PARTY	DEBTOR(S)	REGISTRATION NO./ FILE NO.	REGISTRATION PERIOD	COLLATERAL CLASSIFICATION/ DESCRIPTION
Hongkong Bank of Canada 170 Attwell Drive Etobicoke, ON M9W 5Z5	Encore Sales Ltd.	19960614 1752 1513 7281 / 822704373	2 years	A, O
		19980504 1756 1513 7670	3 years	Renewal: 3 years
		19990610 1718 8028 6613		Transfer by debtor to Encore Sales
		20010507 1448 1530 4643	5 years	Renewal: 5 years
Callidus Capital Corporation Royal Trust Tower 77 King Street West Suite 4320, P.O. Box. 212 Toronto, ON M5E 1K2		20060524 1949 1531 9579	5 years	Renewal: 5 years
		20090818 0950 1862 3531		Assignment by secured party to Callidus Capital Corporation
		20101020 1012 1862 3900	3 years	Renewal: 3 years
Hongkong Bank of Canada 170 Attwell Drive Etobicoke, ON M9W 5Z5	Encore Sales Limited	19990215 1637 8028 6045 / 848461194	5 years	A, O

		20040206 1947 1531 0902	5 years	Renewal: 5 years
		20090115 1944 1531 1098	5 years	Renewal: 5 years
Callidus Capital Corporation Royal Trust Tower 77 King Street West Suite 4320, P.O. Box. 212 Toronto, ON M5E 1K2		20090818 0950 1862 3529		Assignment by secured party to Callidus Capital Corporation
Hongkong Bank of Canada 170 Attwell Drive Etobicoke, ON M9W 5Z5	Encore Sales	19990215 1637 8028 6044 / 848461185	5 years	I, E, A, O, MV
		20040206 1947 1531 0894	5 years	Renewal: 5 years
		20090115 1944 1531 1090	5 years	Renewal: 5 years
Callidus Capital Corporation Royal Trust Tower 77 King Street West Suite 4320, P.O. Box. 212 Toronto, ON M5E 1K2		20090818 0950 1862 3530		Assignment by secured party to Callidus Capital Corporation
G.N. Johnston Equipment Co. Ltd. 5990 Avebury Road Mississauga, ON L5R 3R2	Encore Sales Limited	20060113 1541 1097 2371 / 622004598	9 years	E, MV MV: 2005 Ramond lift truck, 7400-R45TT, 740-05-CA04095 GCD: Ref. 6082
CBSC Capital Inc. #100, 1235 North Service Road West	Encore Sales Limited	20060123 1402 1462 6984 / 622181637	6 years	E, O GCD: all goods supplied by the

Oakville, ON L6M 2W2					secured party pursuant to a lease between the debtor and the secured party, together with all parts and accessories thereto and accessions thereto and all replacements or substitutions for such goods and proceeds thereof (proceeds as defined in the PPSA (ON)) and any insurance proceeds resulting therefrom.
G.N. Johnston Equipment Co. Ltd. 5990 Avebury Road Mississauga, ON L5R 3R2	Encore Sales Limited	20061128 1152 1097 2690 / 630953991	5 years	E, MV MV: 2006 Raymond lift truck, 8400-FRE60L, 840-06-69771 2006 Raymond lift truck, EASI-R30TT, ET-F-06-15293 2006 Raymond lift truck, EASI-R30TT, ET-F-06-15295 2006 Raymond lift truck, EASI-R30TT, ET-F-06-15296 2006 Raymond lift truck, EASI-R30TT, ET-F-06-15297 2006 Raymond lift truck, EASI-R30TT, ET-F-06-15298 2006 Raymond lift truck, EASI-R30TT, ET-F-06-15299 GCD: Ref. 6829 and 6824	

G.N. Johnston Equipment Co. Ltd. 5990 Avebury Road Mississauga, ON L5R 3R2	Encore Sales Limited	20061208 1419 1097 2705 / 631284525	5 years	E, MV MV: 2006 Raymond lift truck, 7400- RT5TT, 740-06-CA06713 GCD: Ref. 6825
CBSC Capital Inc. #100, 1235 North Service Road West Oakville, ON L6M 2W2	Encore Sales Limited	20070712 1941 1531 7901 / 637239474	5 years	E, O
G.N. Johnston Equipment Co. Ltd. 5990 Avebury Road Mississauga, ON L5R 3R2	Encore Sales Limited	20070831 1000 1097 3000 / 638671131	5 years	E, MV MV: 2007 Raymond lift truck, 7400- R45TT, 740-07-CB08919 GCD: Ref. 7416
G.N. Johnston Equipment Co. Ltd. 5990 Avebury Road Mississauga, ON L5R 3R2	Encore Sales Limited	20080409 1534 1097 3251 / 644055453	5 years	E, MV MV: 2008 Raymond lift truck, 8400- FRE80L, 840-08-76556 2008 Raymond lift truck, 8400- FRE80L, 840-08-76557 GCD: Lease #8001. (1) battery stand.

G.N. Johnston Equipment Co. Ltd. 5990 Avebury Road Mississauga, ON L5R 3R2	Encore Sales Limited	20080409 1528 1097 3250 / 644055336	5 years	E, MV MV: 2008 Raymond lift truck, 8400- FRE60L, 840-08-76300 2008 Raymond lift truck, 8400- FRE60L, 840-08-76302 GCD: Lease #7998.
G.N. Johnston Equipment Co. Ltd. 5990 Avebury Road Mississauga, ON L5R 3R2	Encore Sales Limited	20080430 1314 1097 3302 / 644685471	5 years	E, MV MV: 2008 Raymond lift truck, 7400- R45TT, 740-08-CB10757 2008 Raymond lift truck, 7400- R45TT, 740-08-CB10754 2008 Raymond lift truck, 7400- R45TT, 740-08-CB10759 GCD: Lease #8000.
G.N. Johnston Equipment Co. Ltd. 5990 Avebury Road Mississauga, ON L5R 3R2	Encore Sales Limited	20080613 1215 1097 3336 / 646073127	5 years	E, MV MV: 2008 Raymond lift truck, EASI- R30TT, ET-F-08-16250 GCD: Lease #7999.

Ford Credit Canada Leasing, a division of Canadian Road Leasing Company P.O. Box 2400 Edmonton, AB T5J 5C7	Encore Sales Limited	20080925 1949 1531 8720 / 648796752	3 years	E, O, MV MV: 2009 Ford Flex, 2FMEK62C29BA30716
De Lage Landen Financial Services Canada Inc. 100-1235 North Service Rd W Oakville, ON L6M 2W2	Encore Sales Limited	20081118 1945 1531 5105 / 650020212	6 years	E, O, MV GCD: all goods supplied by the secured party, all parts and accessories thereto and all accessions thereto and all replacements or substitutions for such goods. Proceeds accounts, chattel paper, money, intangibles, goods, documents of title, instruments, securities (all as defined in the PPSA (ON) and insurance proceeds.
Toyota Credit Canada Inc. 80 Micro Court, Suite 200 Markham, ON L3R 9Z5	Encore Sales Limited David Bloomberg	20081121 1045 1529 1301 / 650079765	4 years	E, O, MV Date of Maturity: 11/19/2012 MV: 2009 Toyota Highlander, JTEES42A592112142
	1326282 Ontario Limited	20090105 1934 1531 4655		Amendment: change debtor name to 1326282 Ontario Limited.

Nissan Canada Inc. 5290 Orbitor Drive Mississauga, ON L4W 4Z5	Encore Sales Encore Sales Ltd. Encore Sales	20090218 1045 1529 5203 / 651576537	4 years	E, O, MV Date of Maturity: 2/7/2013 Amount: \$68,573 MV: 2009 Nissan Pathfinder, 5N1AR18B69C601250
Financialinx Corporation 2001 Sheppard Ave E 6 th Floor Toronto, ON M2J 4Z8	Encore Sales Limited	20090801 1947 1531 9370 / 655998111	3 years	E, O, MV Amount: \$64,633 MV: 2010 Jaguar XF, SAJXA0FA1AH56314
DCFS Canada Corp. 2680 Matheson Blvd. East, Ste 500 Mississauga, ON L4W 0A5 Mercedes-Benz Financial 2680 Matheson Blvd. East, Ste 500 Mississauga, ON L4W 0A5	Encore Sales Ltd.	20090917 1950 1531 9774 / 656364672	3 years	E, O, MV MV: 2010 Mercedes-Benz E350W4M, WDDHF8HB4AA066641
VW Credit Canada Inc. 3333 Cote Vertu Suite 500 St. Laurent, QC H4R 2N1	1326282 Ontario Limited Encore Encore Sales	20100618 1449 1530 0495 / 662291154	4 years	E, O, MV Amount: \$50,564 MV: 2010 Audi A5 Coup 2.0T Quat, WAUDFBR8AA075586

G.N. Johnston Equipment Co. Ltd. 5990 Avebury Road Mississauga, ON L5R 3R2	Encore Sales Limited	20100908 1453 1097 4024 / 664273548	7 years	E, MV MV: 2010 Raymond lift truck, 420-C35QM, 410-10-18992 GCD: Ref. 107600
G.N. Johnston Equipment Co. Ltd. 5990 Avebury Road Mississauga, ON L5R 3R2	Encore Sales Limited	20100908 1449 1097 4023 / 664273368	7 years	E, MV MV: 2010 Raymond lift truck, 5200-OPC30TT, 520-10-02736 2010 Raymond lift truck, 520- OPC30TT, 520-10-02737 GCD: Ref. So. 107628
G.N. Johnston Equipment Co. Ltd. 5990 Avebury Road Mississauga, ON L5R 3R2	Encore Sales Limited	20101130 1415 1097 4093 / 666241434	6 years	E, MV MV: 2010 Raymond lift truck, 520-OPC30TT, 520-10-02764 2010 Raymond lift truck, EASI- R30TT, ET-10-FF20155 GCD: Ref. So. 107636 and 117585
G.N. Johnston Equipment Co. Ltd. 5990 Avebury Road Mississauga, ON L5R 3R2	Encore Sales Limited	20110424 0856 1097 4194 / 669367359	6 years	E, MV MV: 2011 Raymond lift truck, 7400-R45TT, 740-11-CB23203 2011 Raymond lift truck, 7400- R45TT, 740-11-CB23204 2011 Raymond lift truck, 7400-

					R45TT, 740-11-CB23205 2011 Raymond lift truck, 5200- OPC30TT, 520-11-02814 2011 Raymond lift truck, 5200- OPC30TT, 520-11-02815 2011 Raymond lift truck, 5200- OPC30TT, 520-11-02816 GCD: Ref. So. 136773 and 136759
Crisis Holdings (1990) Limited 31 Cheval Drive Toronto, ON M3B 1R5	Encore Sales 1326281 Ontario Limited 1326282 Ontario Limited	20110819 1949 1531 5712 / 672338187	3 years	I, E, A, O, MV	
Wolgo Holdings (1990) Limited 570 Bedford Park Avenue Toronto, ON M5M 1K3	Encore Sales 1326281 Ontario Limited 1326282 Ontario Limited	20110819 1949 1531 5711 / 672338178	3 years	I, E, A, O, MV	
Stephen Bloomberg 35 Westover Hill Road Toronto, ON M6C 3J6	Encore Sales 1326281 Ontario Limited 1326282	20110819 1949 1531 5710 / 672338169	3 years	I, E, A, O, MV	

	Ontario Limited				
David Bloomberg 16 Helena Gardens Thornhill, ON L4J 7A7	Encore Sales 1326281 Ontario Limited 1326282 Ontario Limited	20110819 1949 1531 5709 / 672338151	3 years	I, E, A, O, MV	
Jordon Bloomberg 142 Dunblain Avenue Toronto, ON M5M 2S3	Encore Sales 1326281 Ontario Limited 1326282 Ontario Limited	20110819 1949 1531 5708 / 672338142	3 years	I, E, A, O, MV	
Lorne Bloomberg 566 Cranbrooke Avenue Toronto, ON M5M 1P1	Encore Sales 1326281 Ontario Limited 1326282 Ontario Limited	20110819 1949 1531 5707 / 672338133	3 years	I, E, A, O, MV	
Shel-Lorne Holdings Inc. 333 North Rivermede Road Concord, ON L4K 3N7	Encore Sales 1326281 Ontario Limited 1326282 Ontario Limited	20110819 1949 1531 5706 / 672338124	3 years	I, E, A, O, MV	