Court File No. CV-23-00696017-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF LOYALTYONE, CO.

Applicant

SUPPLEMENTARY RECORD
(ENFORCEABILITY OF TAX MATTERS AGREEMENT)

May 1, 2024

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AND TO: **THE SERVICE LIST**

Court File No. CV-23-00696017-00CL

ONTARIO
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IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

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Applicant

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TAB 1

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ONTARIO
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Applicant

AFFIDAVIT OF CYNTHIA HAGEMAN
(Affirmed May 1, 2024)

I, **CYNTHIA HAGEMAN**, of the city of Dallas, in the State of Texas, in the United States of America, MAKE OATH AND SAY:

1. As set out in my affidavits of November 9, 2023 ("**November 9 Affidavit**") and March 8, 2024 ("**March 8 Affidavit**") from April 2006 until November 5, 2021, I was employed as internal legal counsel in a number of different positions by an affiliate of Alliance Data Systems Corporation, now known as Bread Financial Holdings, Inc. ("**ADS**" until March 23, 2022, and "**Bread**" thereafter). As such, I have personal knowledge of the matters contained in this Affidavit. Where I do not have personal knowledge, I have stated the source of my information and, in all such cases, believe it to be true.

2. This Affidavit is made in reply to the affidavit of Joseph L. Motes III affirmed March 25, 2024 ("**Second Motes Affidavit**"). Where not otherwise expressly defined in this Affidavit, I repeat and rely upon the defined terms in my November 9 Affidavit and March 8 Affidavit. Unless otherwise indicated, all references to currency in this Affidavit are references to Canadian dollars. Where I do not otherwise explicitly refer to a portion of the Second Motes Affidavit, it should not

be understood to be agreement with it. I note in this regard that Mr. Motes has engaged in significant editorial commentary with respect to the import of certain “facts”. I have confined this Affidavit to any additional factual context and let that speak for itself.

3. Mr. Motes has attempted to place certain characterizations on my role at ADS. The factual elements of that role that he refers to in paragraphs 3-7 of the Second Motes Affidavit have already been directly or indirectly disclosed in my prior affidavits. Mr. Motes is incorrect in his restatement of those facts with respect to the scope of my purview on the BrandLoyalty acquisition. While I was involved in the financing transactions for the acquisition, I was not involved in the M&A.

4. At paragraphs 8-11 of the Second Motes Affidavit, Mr. Motes entitles his evidence “Hageman’s Mischaracterizations of ADS’ Contributions to LoyaltyOne” and refers to various contributions made by the PeopleSoft ERP software platform as well as capital flows from ADS. I do not dispute that PeopleSoft was available to LoyaltyOne. It simply was not available to LoyaltyOne independent of the ADS corporate umbrella other than by its rental in the Transition Services Agreement, which clearly demonstrates that ADS’ investment did not in fact belong to LoyaltyOne or accrue to the benefit of either LVI or LoyaltyOne in the Spin Transaction – a fact aptly demonstrated by the difficulties in moving LoyaltyOne to BMO during this proceeding. It remains the case that LoyaltyOne’s primary operational functions for the purpose of conducting its own business took place at the LoyaltyOne level, including through its system of record for the Air Miles program.

5. Similarly, Mr. Motes asserts that the capital contribution of US$170 million was repaid by LoyaltyOne (in part) to entities other than ADS in the corporate chain. That is correct – but those entities had no operations or use for the funds. The loan structure did have the benefit of avoiding dividend taxes on payments that could otherwise only have flowed out of LoyaltyOne as such.

Ultimately the need for the “loan” was still precipitated by ADS’ decision to expire reward miles and reversal of that decision in the face of expected legislation.

6. Turning to the heading at paragraphs 12-13 which asserts “Dividends and Share Repurchases Normal Course Transactions”, Mr. Motes makes various assertions about what is normal or not normal for a parent company to do with its subsidiaries for its own benefit.

7. I have never disputed what parent companies can do or not do for their own benefit in general terms. My evidence was provided in reply to evidence from Bread that claimed the debt placed on LoyaltyOne was justified by ADS’ corporate history. My evidence provides context for that assertion by demonstrating that the amount of debt spun off with LVI was not commensurate with the amount of debt that went into creating LoyaltyOne’s (or BrandLoyalty’s) asset bases. Given ADS’ history of share re-purchases to support its share price it is fair to say that far more debt – or opportunity cost – was incurred in those pursuits than in developing the assets that were spun out.

8. The same lack of context is present in Mr. Motes’ assertions that the “Spinoff Transaction was Initiated by the LVI Team” and the “LVI Team was Optimistic about BrandLoyalty”. The prior evidence and documents already speak to the control of the Spin Transaction and the diminishing opportunities at ADS. While it is true that Mr. Motes and I discussed my possible departure for other general counsel positions before the Spin Transaction, we only did so because of the evident lack of opportunities in the future at ADS for me, given the corporate direction I have described.

9. Under the heading “The LVI Team Prepared the EY, Rating Agency and Lender Information and Presentations”, Mr. Motes attempts to shift any blame for deficiencies in information to the SpinCo Team. It is correct that the SpinCo Team had the mechanical task of assembling the necessary data at first instance. However, all communications with EY in

particular were deliberately controlled by Mr. Beberman and the ADS board in a fashion that precluded the SpinCo Team from generally knowing what final product was conveyed and what questions were being asked. More generally, Mr. Chesnut, Mr. Tusa and Mr. Taffe would have in the ordinary course anticipated review and comment by ADS executives to reflect additional knowledge and concerns regarding matters that would have been unknown to Mr. Chesnut, Mr. Tusa and Mr. Taffe. For instance, and as discussed elsewhere, they had little visibility to the depth of the Sobeys departure issue.

10. Equally incorrect is Mr. Motes' persistent attempt to argue that the "LVI Team Removed the Solvency Opinion Requirement". As previously outlined, I – and the rest of the SpinCo Team – had carriage of many mechanical aspects of the Spin Transaction. However, every step of significance was dictated by ADS. This was necessarily the case given the direct control of pricing and other fundamental matters that Mr. Motes, Mr. Beberman and the ADS Board (particularly the audit committee) insisted on asserting so that they could ensure ADS's goals were met. In this context it was not feasible for any member of the SpinCo Team to direct the removal of a step such as a solvency opinion. Equally we would not have verbally provided assurance of any purported appropriateness or comfort in doing so.

11. In this regard I note that Mr. Motes still does not correctly describe the drafting sequence despite the fact that at Exhibit Y to the March 8 Affidavit I produced a more complete version of the communications being discussed. The fully expanded comment boxes indicate that Joshua Pittell, the Davis Polk lawyer indicated as "PJB" in the mark-up made the following changes:

(a) PJB25 crossed out Section 3.01(x); and

(b) PJB26 crossed out HC24,

both on September 10, 2021 at 10:15 am. As such these changes occurred between the draft circulated at 2:00 am and the re-circulated draft at 2:25 pm on September 10, 2021.

12. To be clear, I commented on the document raising the question on June 26, 2021. My next comment on the document was on September 13, 2021 after the sequence of deletion that I have just described. I do not know the source of direction for that deletion, but I am personally aware from my involvement from time to time with the document, involvement Mr. Motes was not present for, that I did not excise the portions relating to a solvency opinion.

13. Finally, I understand that for valuation purposes ADS is taking the position in this proceeding that LoyaltyOne would have only been expected to make payments in respect of the LVI loans in case of default, and therefore certain beneficial tax attributes would arise if payments were made in connection with the LVI debt by LoyaltyOne.

14. I do not share that understanding. Prior to the Spin Transaction, LoyaltyOne routinely moved funds to ADS by way of dividends and had to pay withholding tax in the usual course. Moving forward from the Spin Transaction, it was evident that LoyaltyOne was going to have to supply the funds to allow LVI to make interest and principal payments in the ordinary course. That is because LVI had no operating business and BrandLoyalty had little free cash flow from operations. That expectation became fact after the Spin Transaction. LoyaltyOne did indeed provide all of the funds to LVI to make interest and principal payments and did so by way of dividends, which is the usual practice.

15. Equally, it would have been anticipated and was in fact the case that because the debt did not belong to LoyaltyOne and was not incurred for the purpose of its own operations, LoyaltyOne could not and did not obtain a tax deduction for the interest payments. The SpinCo Team made efforts to highlight this issue at the time but ADS chose to take no steps to ameliorate the problem. After the Spin Transaction, LVI and LoyaltyOne examined whether the debt obligation could be

moved to the LoyaltyOne level for these reasons. We concluded that it could but that it would require tens of millions of dollars in transaction fees and withholding taxes. There were, however, no funds available after the Spin Transaction to undertake such a step. I have spoken with Mr. Fair who was our Senior Vice President, Tax, and he has confirmed these understandings.

AFFIRMED by videoconference by Cynthia Hageman at the City of San Francisco, in the State of California, in the United States of America, before me at the City of Toronto, in the Province of Ontario, on May 1, 2024, in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

Kiyan Jamal

Commissioner for Taking Affidavits
(or as may be)

Cynthia L. Hageman

CYNTHIA HAGEMAN

Commissioner Name: Kiyan Jamal
Law Society of Ontario Number: 87594N

Court File No. CV-23-00696017-00CL

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED
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ONTARIO
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PROCEEDING COMMENCED AT
TORONTO

AFFIDAVIT OF CYNTHIA HAGEMAN
AFFIRMED MAY 1, 2024

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TAB 2

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Applicant

AFFIDAVIT OF ANDREW HARINGTON
(Affirmed May 1, 2024)

I, **ANDREW HARINGTON**, of the City of Toronto, in the Province of Ontario, MAKE OATH AND SAY:

1. I am a Principal at The Brattle Group, Inc.

2. I have been retained by Cassels Brock & Blackwell LLP on behalf of their client, LoyaltyOne, Co., ("**LoyaltyOne**"), and Goodmans LLP on behalf of their client, the Monitor in the within proceeding, to provide an expert report with respect to certain financial matters in dispute between LoyaltyOne and Bread Financial Holdings, Inc.

3. Attached as **Exhibit "A"** to this affidavit is a copy of the Expert Report of Andrew Harington dated May 1, 2024 (the "**Second Harington Report**").

AFFIRMED by videoconference by Andrew Harington at the City of Montreal, in the Province of Quebec, before me at the City of Toronto, in the Province of Ontario, on May 1, 2024, in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

Kiyan Jamal

Commissioner for Taking Affidavits
(or as may be)

Commissioner Name: Kiyan Jamal
Law Society of Ontario Number: 87594N

ANDREW HARINGTON

This is Exhibit "A" referred to in the Affidavit of Andrew Harington, affirmed before me May 1, 2024.

Kiyan Jamal

Commissioner for Taking Affidavits (or as may be)

KIYAN JAMAL

LoyaltyOne Co.

SECOND REPLY EXPERT REPORT

Ontario Superior Court of Justice Court File No. CV-23-00696017-00CL

PREPARED BY

Andrew C. Harington, CPA, CA, CFA, CBV

MAY 1, 2024

Brattle

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<u>Appendix</u>

Schedules

Exhibit

Brattle

PRIVATE & CONFIDENTIAL

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May 1, 2024

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Attention: Mr. Peter Ruby

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Attention: Mr. Timothy Pinos

Re: LoyaltyOne Co. (CV-23-00696017-00CL)

I. Introduction

1. Counsel to LoyaltyOne, Co. ("LoyaltyOne"), Cassels Brock & Blackwell LLP, and counsel to KSV Restructuring Inc. in its capacity as the monitor of LoyaltyOne, Goodmans LLP (collectively "Counsel"), had previously requested me to review the Report Concerning Fairness and Solvency Issues dated February 14, 2024 authored by A. Scott Davidson and Katie Gosnell of Kroll Canada Ltd ("Kroll" and the "Kroll Report") and respond to the findings and conclusions in the Kroll Report.

2. Pursuant to that request, I prepared an expert reply report dated March 13, 2024. On April 16, 2024, I submitted an amended expert reply report incorporating revised citations to the

Hageman Affidavit to reflect revisions to that affidavit (collectively the "Harington Initial Report").

3. On April 15, 2024, Kroll delivered a report titled "Expert Report in Reply to Brattle Group Report dated March 13, 2024" (the "Kroll Reply Report").[1]

4. This report should be read in conjunction with the Harington Initial Report, the Kroll Report and the Kroll Reply Report, as important background and other information is provided in those reports.

5. I have adopted the same terms as used in the Harington Initial Report and, where possible, the Kroll Report and the Kroll Reply Report. However, for ease of reference, I have redefined those terms where appropriate. Where the Kroll Report and the Kroll Reply Report have used a different definition, I have specified the definition adopted in this report.

6. This report constitutes an Expert Report as defined by the Canadian Institute of Chartered Business Valuation (the "CICBV") and is prepared in the context of an "Investigate and forensic accounting engagement" as defined in the "Standard Practices for Investigate and Forensic Accounting Engagements" issued by CPA Canada (formerly the Chartered Accountants of Canada), and has been prepared in conformity with those standards by persons acting independently and objectively.[2] The fees payable under the terms of my engagement agreement are not contingent upon any action or event resulting from the use of my report. See the Restrictions and Limitations section of this report for further discussion.

7. Unless otherwise indicated, all figures in this report are in United States dollars.

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1 Kroll Reply Report, page 1, attached as Exhibit "A" of Affidavit of A. Scott Davidson, affirmed April 15, 2024.

2 I have prepared this report with the assistance of other professionals under direction and supervision, and references herein to "we" or "our" are intended to be interpreted as such.

II. Mandate and Instructions

8. Counsel has provided me with the following two mandates:

Mandate 1 Review the Kroll Reply Report and any other new information that I have received since preparing the Harington Initial Report and, to the extent required, revise my conclusions and calculations in the Harington Initial Report; and

Mandate 2 Provide my comments on the Kroll Reply Report.

III. Summary of Conclusions

SUMMARY RESPONSE TO MANDATE 1 – REVIEW THE KROLL REPLY REPORT AND ANY OTHER NEW INFORMATION THAT I HAVE RECEIVED SINCE PREPARING THE HARINGTON INITIAL REPORT AND, TO THE EXTENT REQUIRED, REVISE MY CONCLUSIONS AND CALCULATIONS IN THE HARINGTON INITIAL REPORT

New Information

9. Since the date of the Harington Initial Report, the parties have produced additional documents, some of which provide further information concerning the foreseeability of the loss of Sobeys. In my opinion, these additional documents further support the reasonability of the assumption that, as of November 5, 2021 ("Spin Date"), it was foreseeable that Sobeys would cease to be a sponsor of the Air Miles Program and that it would be inappropriate to include any income from Sobeys after the contractual termination date. In any event, should any Sobeys income be included beyond that date, the discount rate, or earnings multiple, applied to those earnings would need to be significantly adjusted to reflect the uncertainty relating to that earnings stream.

10. These additional documents are summarized further in Section VII.B.1.[3]

Kroll Reply Report

11. I have reviewed the Kroll Reply Report and the only adjustment that I conclude is required to my conclusions in the Harington Initial Report is to incorporate the costs required to operate LoyaltyOne on a stand-alone basis as considered by PricewaterhouseCoopers LLP ("PwC").

12. Under the balance sheet solvency test, I agree with Kroll that it is appropriate to reflect only LoyaltyOne standalone costs. This is because the balance sheet test is based on a fair market value standard which contemplates a hypothetical transaction between a willing buyer and a willing seller and the resulting "separation" of the business to be a standalone company. Since, the hypothetical buyer would no longer be bound by the current LVI structure, it is appropriate to only reflect the standalone costs required to operate LoyaltyOne.

13. However, I disagree with Kroll's adjustment to only adopt the $2 million of standalone costs under the cash flow solvency test. The cash flow solvency is a test of whether a company is unable to meet its obligations as they generally become due. Specifically, it does not contemplate a sale of the company with a restructuring so as to make the company a standalone company. Put another way, it considers a "take the company as you find it" scenario and, in this scenario, the actual operating costs of LVI are as reflected in the Spin Date Projections and would be borne, in large part, by LoyaltyOne.

14. Accordingly, my conclusions under the cash flow solvency test set out in the Harington Initial Report are unchanged. For convenience, I have replicated Tables 29 and 30 from the Harington Initial Report below.

[3] Certain other new documents are also referred to in other sections.

[redacted]

TABLE 30: LOYALTYONE CASH FLOW TEST AFTER SPIN DATE ADJUSTMENTS

	Projected Cash Flows Reflecting Spin Date Adjustments					
Figures in US$ Million, For the year ended December 31,	**Nov 5- Dec 31 2021**	**2022**	**2023**	**2024**	**2025**	**2026**
LoyaltyOne Net Cash From Operating Activities						
LoyaltyOne earnings before interest and tax (per Kroll)	19	127	125	128	133	135
Less: Operating Profit Spin Date Adjustments	(1)	(27)	(76)	(77)	(82)	(81)
Loyalty EBIT after Spin Date Adjustments	18	100	49	51	51	54
Loyaltyone earnings after tax at the rate of 27%	13	73	36	37	37	39
Adjustment for depreciation, stock compensation, working capital (per Kroll)	36	81	38	32	32	34
Net cash from operating activities	**49**	**154**	**73**	**69**	**69**	**74**
Net cash from Investing Activities (per Kroll)	**(45)**	**(87)**	**(42)**	**(37)**	**(38)**	**(33)**
Interest adjustments	(5)	(31)	(32)	(31)	(29)	(26)
Principal repayments of LVI debt	-	(51)	(51)	(51)	(51)	(51)
Tax on dividends	(0)	(4)	(4)	(4)	(4)	(4)
Total net cash flows	**(2)**	**(18)**	**(55)**	**(54)**	**(52)**	**(40)**
Cash (beginning)	**66**	**64**	**46**	**(9)**	**(64)**	**(116)**
Cash (ending)	**64**	**46**	**(9)**	**(64)**	**(116)**	**(156)**
Consolidated total leverage ratio*		**3.6x**	**4.2x**	**3.4x**	**2.8x**	**2.3x**

*Assuming BrandLoyalty achieves its EBITDA projections as per Spin Date Projections.

15. My revised calculations of the valuations of LoyaltyOne under the balance sheet solvency test are set out in Section VI and summarized in Table 43,[4] below.[5]

TABLE 43: SUMMARY OF REVISED BALANCE SHEET SOLVENCY TESTS

Figures in USD Millions	Range of Enterprise FMV		Actual and	Pass / Fail
Description of Test	**Per Harington Initial Report**	**Revised**	**Contingent Debt**	**Solvency Test**
Cash Flow Solvency				
Base Case				Fail
Sensitivity Test				Fail
Fair Market Value Balance Sheet Solvency				
Open market offers approach (Project Angus)	\$287 to \$405		675	Fail
Discounted cash flow approach	\$397 to \$568	\$459 to \$656	675	Fail
Comparable companies approach	\$402 to \$549	\$452 to \$616	675	Fail
Precedent transactions approach	\$369 to \$516	\$415 to \$579	675	Fail
Other indicators of value				
Sale to BMO in June 2023	\$160			

Source: Schedule 1 of Harington Initial Report and Schedule R1.

16. As can be seen from Table 43 above, even after making the above change relating to the decrease in LoyaltyOne standalone costs, the range of enterprise fair market values under all approaches is still significantly below the actual and contingent debt amount of \$675 million.[6] Accordingly, the above revision in the balance sheet solvency test results in no change in my conclusion regarding the solvency of LoyaltyOne using the balance sheet solvency test.

SUMMARY RESPONSE TO MANDATE 2 – PROVIDE MY COMMENTS ON THE KROLL REPLY REPORT.

17. In the Harington Initial Report, I made eleven adjustments to the Spin Date Projections for calculating the cash flows / EBITDA used under the cash flow solvency test and the balance

4 For ease of reference, I have continued the table numbering from the Harington Initial Report.

5 For ease of reference, I have also included my conclusion for the cash flow test, although that conclusion remains unchanged from the Harington Initial Report.

6 As mentioned in paragraph 29 above, if PwC's one-time costs for LoyaltyOne are considered in the balance sheet solvency tests, it would reduce the enterprise fair market values.

sheet solvency test. I also provided an extensive critique of the discount rates used by Kroll and pointed out related adjustments that needed to be applied to the valuation multiples determined from somewhat comparable company and precedent transactions to reflect the higher risk associated with LoyaltyOne, even after making all of the adjustments to the Spin Date Projections.

18. Table 44 below summarizes these adjustments and the extent to which Kroll has reflected those adjustments in the Kroll Reply Report. Specifically:

a. Green shaded items appear to have been accepted by Kroll and, accordingly, are no longer a difference between us. To assist the Court, I have also included items in this category which, while not accepted by Kroll, do not have a material effect on the result;

b. Yellow shaded items appear to have been partially accepted by Kroll but still remain a difference between us; and

c. Red shaded items are those items that represent the most significant differences between us.

TABLE 44: SUMMARY OF KROLL RESPONSES TO ITEMS FROM THE HARINGTON INITIAL REPORT

Harington Initial Report Reference	Particulars	Relevant Solvency Test[7]	Kroll Response	Brattle Position
Adj. 1.	LoyaltyOne's Share of LVI Corporate Costs	CF & BS	Kroll accepts but reduces from $10m to $2m per year.	Generally agree with Kroll for BS; not CF
Adj. 2, 3, 4, 5	Loss of Sobeys – direct profit impact, impact on collectors, impact on other sponsors	CF & BS	Kroll incorporates minimum loss estimate for each calculation that results in LoyaltyOne passing that test. Adds comments on assumed operating costs savings, working capital savings and hypothetical mitigation.	Do not agree with Kroll. Documents do not support assumption that any Sobeys income should be included without significant increase in risk (i.e., increase in discount rate / reduction in multiples)
Adj. 6.	Commitment fee	CF & BS	Kroll accepts calculations in Harington Initial Report.	No longer issue

[7] CF refers to Cash Flow and BS refers to Balance Sheet.

Harington Initial Report Reference	Particulars	Relevant Solvency Test[7]	Kroll Response	Brattle Position
Adj. 7. & 8.	Reflection of the cost of known litigation	CF & BS	Kroll does not accept adjustment but it has an immaterial impact on the solvency analysis.	No longer issue
Adj. 9.	LVI interest payments are not tax deductible to LoyaltyOne	CF	Kroll does not accept adjustment. Takes assumption / instruction that interest is, or could be, tax deductible.	Maintain position from Harington Initial Report
Adj. 10.	Interest rate correction	CF	Kroll accepts calculations in Harington Initial Report.	No longer issue
Adj. 11.	Withholding tax on dividends to LVI for interest and principal payments	CF	Kroll does not accept adjustment. Takes assumption / instruction that withholding tax is avoided through restructuring.	Maintain position from Harington Initial Report
Section XI.B.2	Discount rate	BS DCF method	Kroll ignores all the risks to LoyaltyOne and the Spin Date Projections highlighted in the Harington Initial Report.	Maintain position from Harington Initial Report
Section XI.B.3 and Section XI.B.4	Adjusts valuation multiples from somewhat comparable company and precedent transactions to reflect the higher risk associated with LoyaltyOne earnings assumptions, even after eliminating the Sobeys income	BS	Kroll utilizes multiples from the Harington Initial Report but applies those multiples to earnings incorporating approximately 50% of the Sobeys earnings and thereby raises the risk of those earnings estimates	Do not agree with Kroll. Documents do not support assumption that any Sobeys income should be included without significant increase in risk (i.e., reduction in multiples)

19. The remaining differences between Kroll and I are discussed in detail in Section VII.

IV. Assumptions

20. All assumptions are as set out in this report and the Harington Initial Report, including in the footnotes to the Schedules and Exhibits (where applicable).

V. Scope of Review

21. In addition to the documents listed in Appendix C of the Harington Initial Report, for purposes of this report, I have reviewed the additional documents listed in Appendix A.

22. Except as otherwise noted herein, I have not audited or otherwise verified the information listed in Appendix A. My conclusions are dependent upon the accuracy of this information. Where I have cited to a source, I have assumed the accuracy of that source.

VI. Mandate 1: Review of Kroll Reply Report and Revisions to Harington Initial Report

NEW INFORMATION

23. Since the date of the Harington Initial Report, the parties have produced additional documents, some of which provide further information concerning the foreseeability of the loss of Sobeys. In addition to my response to the statements concerning Sobeys in the Kroll Reply Report, I summarize these additional documents in Section VII.B.1.

THE KROLL REPLY REPORT

24. I have reviewed the Kroll Reply Report and the only adjustment that I conclude is required to my conclusions in the Harington Initial Report is to incorporate the costs required to operate LoyaltyOne on a stand-alone basis as considered by PwC in its quality of earnings analysis.

25. In the Harington Initial Report, I described that Kroll made the error of omitting LoyaltyOne's standalone costs and share of LVI's corporate costs from the Spin Date Projections. Accordingly, to adjust for Kroll's omission of the standalone costs, I reduced LoyaltyOne's financial projections by my estimate of LoyaltyOne's share of the LVI costs incurred to support LoyaltyOne, which I estimated to be approximately $10 million per year.

26. I had estimated LoyaltyOne's standalone costs based on an allocation of LVI's annual corporate costs between BrandLoyalty and LoyaltyOne using the share of projected EBITDA.[8] Section XI.A.2 of the Harington Initial Report includes the detailed background on the nature of these costs and calculation of this adjustment.

27. While Kroll agrees with me that it is appropriate to incorporate operating costs that are incurred by LVI that are necessary for the operation of LoyaltyOne in the solvency tests of LoyaltyOne, Kroll uses a lower amount of stand-alone costs of LoyaltyOne of $2 million[9] per year based on an analysis by PwC undertaken in respect of the twelve months ending June 2020[10] in connection with Project Angus (the "PwC Angus Analysis").[11]

8 See Harington Initial Report, Schedule 4.3.

9 Note that the Kroll Reply Report refers to "$2 million" and all calculations shown in the Kroll Reply Report are in millions of dollars, without decimals. I note, however, that the PwC Angus Analysis is denominated in Canadian Dollars (Angus QoE PW Angus2020.pdf, page 5) and that Kroll states in the Kroll Reply Report that this amount was converted to USD (Kroll Reply Report, Schedule 4, footnote 3). Accordingly, the actual amount is $ 1.6 million.

10 Angus QoE PW Angus2020.pdf, page 7.

11 Kroll Reply Report, paragraph 8.18.

LOYALTYONE STAND-ALONE COSTS UNDER THE BALANCE SHEET SOLVENCY TEST

28. Under the balance sheet solvency test, subject to the qualifications set out below, I agree with Kroll's reliance on the PwC Angus Analysis[12] for the LoyaltyOne standalone costs. This is because the balance sheet test is based on a fair market value standard which contemplates a hypothetical transaction between a willing buyer and a willing seller. Since, the hypothetical buyer would no longer be bound by the current LVI structure, it is appropriate to only reflect the standalone costs required to operate LoyaltyOne.

29. For ease of reference for the Court, I have adopted the standalone costs included in the PwC Angus Analysis. However, my reflection of that level of cost, and my conclusions that result from this use, are conservative for the following reasons:

   a. While Kroll refers to the PwC analysis as being "contemporaneous"[13], it in fact considered financial data that was 18 months prior to the Spin Date[14] and the amount would need to be increased to reflect any changes in that time including, at a minimum, an adjustment on account of inflation from that date and for all years in the forecast; and

   b. While Kroll refers to the lower incremental costs estimated by PwC to operate LoyaltyOne on a standalone basis, I note that PwC also detailed CAD$4.5 million to CAD$6.8 million[15] of one-time costs that a purchaser would be required to incur in order to separate LoyaltyOne from LVI. As such, any valuation of LoyaltyOne that incorporates the lower standalone operating costs must therefore also be reduced on account of the one-time costs required to achieve those lower operating costs. Kroll has omitted these one-time costs from its analysis.

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[12] Angus QoE PW Angus2020.pdf.

[13] Kroll Reply Report, paragraph 8.18.

[14] Specifically, it reflected the required adjustment for standalone costs for the TTM (trailing twelve months) ending June 2020 (Angus QoE PW Angus2020.pdf, page 7) while the Spin Date was November 5, 2021.

[15] Angus QoE PW Angus2020.pdf, page 56.

30. As previously indicated, I have adopted the adjustment of lower standalone costs reflected in the Kroll Reply Report for the purpose of LoyaltyOne's balance sheet solvency test without adjustment for either of the above two items.[16]

31. Below I have revised the balance sheet solvency test of LoyaltyOne to reflect these lower standalone costs.

REVISED BALANCE SHEET SOLVENCY TESTS

32. As mentioned in the Harington Initial Report, I undertake the balance sheet solvency test using four approaches:[17]

    a. The open market offers for LoyaltyOne in Project Angus;

    b. The discounted cash flow valuation approach;

    c. The "somewhat comparable companies" approach; and

    d. The "somewhat comparable precedent transactions" approach.

33. Each approach other than the Project Angus open market offers approach, relies on a forecast of standalone earnings for LoyaltyOne. Accordingly, I have revised my calculations under the discounted cash flow valuation approach, "somewhat comparable companies" approach and "somewhat comparable precedent transactions" approach to reflect LoyaltyOne's standalone costs of $1.6 million per year as per the PwC Angus Analysis. The effect of this change is to increase the free cash flows / EBITDA of LoyaltyOne and increase the enterprise fair market value under these three approaches.

34. A summary of the revised fair market value of LoyaltyOne under each of the balance sheet solvency test approaches are summarized in Table 45 below.

[16] I note, however, that incorporating the one-time costs would reduce the value of LoyaltyOne for purposes of the Balance Sheet Solvency Tests.

[17] Harington Initial Report, paragraph 200.

TABLE 45: SUMMARY OF REVISED BALANCE SHEET SOLVENCY TESTS

Description of Test	Range of Enterprise FMV: Harington Initial Report	Range of Enterprise FMV: Revised	Actual and Contingent Debt
Fair Market Value Balance Sheet Solvency			
Open market offers approach (Project Angus)	$287 to $405	$287 to $405	$675
Discounted cash flow approach (revised)	$397 to $568	$459 to $656	$675
Comparable companies approach (revised)	$402 to $549	$452 to $616	$675
Precedent transactions approach (revised)	$369 to $516	$415 to $579	$675

Source: Schedules R2, R3, and R4. Schedules 3.1, 3.2, 3.3 and 3.4 of the Harington Initial Report.

35. As can be seen from Table 45 above, even after making the above change relating to the decrease in LoyaltyOne standalone costs, the range of enterprise fair market values under all approaches is still significantly below the actual and contingent debt amount of $675 million.[18] Accordingly, the above revision in the balance sheet solvency test results in no change in my conclusion regarding the insolvency of LoyaltyOne using the balance sheet solvency test. For further details see Schedule R1.

LOYALTYONE STAND-ALONE COSTS UNDER THE CASH FLOW SOLVENCY TEST

36. While, as described above, I agree with Kroll that, under the valuations of LoyaltyOne undertaken under the balance sheet solvency test, it is appropriate to consider the costs of operating LoyaltyOne on a standalone basis, I disagree with Kroll's assumption to also adopt the $2 million of standalone costs under the cash flow solvency test.[19]

37. The cash flow solvency test contemplates whether a company is unable to meet its obligations as they generally become due. Specifically, it does not contemplate a sale of the company with a restructuring so as to make the company a standalone company. Put another way, it considers a

[18] As mentioned in paragraph 29 above, if PwC's one-time costs for LoyaltyOne are considered in the balance sheet solvency tests, it would reduce the enterprise fair market values.

[19] Kroll Reply Report, Schedules 5 and 6.

"take the company as you find it" scenario and, in this scenario, the actual operating costs of LVI are as reflected in the Spin Date Projections.

38. As I highlighted in the Harington Initial Report, LVI has no income generating operations of its own. LVI incurred certain corporate general and administrative costs to both operate as a public company and provide services to LoyaltyOne and BrandLoyalty. These costs primarily comprised of payroll and benefits, data processing / equipment, occupancy, consulting / professional, legal and auditing, and other. These services provided to LoyaltyOne by LVI were essential for LoyaltyOne to operate its business and LoyaltyOne would need to fund its share of these costs, likely by way of a service fee.[20]

39. As of the Spin Date, LVI was projected to incur between $15 million to $17 million of annual corporate expenses over the forecast period of FY2022 to FY2026.[21] These projected expenses were essential to operate LVI, LoyaltyOne and BrandLoyalty and need to be incurred to operate the LVI structure, and not just the LoyaltyOne entity. Accordingly, LoyaltyOne would need to fund its share of $15 million to $17 million annual costs.

40. Accordingly, my opinion is that using $10 million of standalone costs based on LVI's projected corporate costs is the correct approach for purposes of the cash flow solvency test.

41. Accordingly, I make no adjustment to the LoyaltyOne standalone costs already adjusted for in the cash flow solvency test included in the Harington Initial Report and my opinion, as set out in the Harington Initial Report, remains unchanged that LoyaltyOne fails the cash flow solvency test.[22] See Section XI.A.11 of the Harington Initial Report for the overall conclusion of the LoyaltyOne cash flow solvency test.

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[20] Harington Initial Report, paragraph 118.

[21] Harington Initial Report, Schedule 4.3.

[22] Harington Initial Report, paragraph 196.

VII. Mandate 2: Response to the Kroll's Reply Report

42. In this section, I provide my detailed response to each aspect of the Kroll Reply Report. Note that this section only summarizes those items where Kroll and I disagree.[23] The Kroll Reply Report makes the statement that "For brevity and to focus this reply on more material issues, our responses in this Second Kroll Report have been limited only to selected significant matters raised in the Brattle Report. Our silence in this report in respect of other matters raised in the Brattle Report should not be misinterpreted as our agreement with Brattle's positions or reasoning in respect of those other matters." To the extent that there are other items beyond those listed in the Kroll Reply Report where Kroll disagrees with my statements or conclusions set out in the Harington Initial Report but did not state them in the Kroll Reply Report, I am unable to address them in this report.

43. For ease of reference, I address each calculation undertaken in the analysis of solvency of LoyaltyOne by both Kroll and me. Themes that are common to multiple approaches, and other comments on the Kroll Reply Report, are set out in Section VII.B.

[23] Note that Kroll has fully adopted the adjustment in the Harington Initial Report relating to Revolver Commitment Fees (Adjustment 6 of the Harington Initial Report), and Interest Rate Correction (Adjustment 10 of the Harington Initial Report). See Kroll Reply Report, Schedule 4.

VII.A. Comments to each Approach to Solvency Analysis of LoyaltyOne

VII.A.1. Cash flow solvency test

44. I disagree with the conclusions in the Kroll Reply Report that LoyaltyOne is still solvent under the cash flow solvency test assuming only a 75% likelihood of the loss of Sobeys (i.e., Kroll continues to include 25% of the Sobeys income) for each of the following reasons:

a. Kroll's conclusion that LoyaltyOne is solvent under an assumption of a 75% probability of Sobeys departure is highly speculative;

b. The cash flow solvency test does not contemplate a sale of the company with a restructuring so as to make the company a standalone company. Put another way, it considers a "take the company as you find it" scenario and, accordingly, it is necessary to reflect LoyaltyOne's share of the actual operating costs of LVI as reflected in the Spin Date Projections rather than the standalone costs to operate LoyaltyOne; and

c. I believe the assumption in the Kroll Reply Report that LoyaltyOne would likely structure the payments so as to be able to obtain a tax deduction and require no withholding taxes, even if such an option were technically possible, to be unreasonable. Accordingly, there is no reason or valid basis to change the approach set out in the Harington Initial Report.

45. Each of these items is discussed below.

<u>KROLL'S CONCLUSION THAT LOYALTYONE IS SOLVENT UNDER AN ASSUMPTION OF A 75% PROBABILITY OF SOBEYS DEPARTURE IS HIGHLY SPECULATIVE</u>

46. Kroll makes two adjustments to the LoyaltyOne forecast from that set out in the Harington Initial Report, specifically:

a. Kroll assumes that LoyaltyOne would only be responsible for paying the share of LVI costs that are specific to LoyaltyOne and LVI fund the balance of those costs; and

b. Kroll was instructed to assume that LoyaltyOne would be able to restructure the LVI debt so as to be able to qualify for a tax deduction for the interest payments[24] and increase its cash flows on account of the lower tax cost.

47. Reflecting the above assumptions, Kroll concluded that LoyaltyOne would still be able to pass the cash flow solvency test if there was only a 75% probability of a Sobeys departure (i.e. if Kroll included 25% of the Sobeys income).

48. Even reflecting the above assumptions, which I disagree with as discussed below, in my opinion it is highly speculative to conclude that LoyaltyOne is solvent in this case for the following reasons:

a. To assume that there is a 25% probability that it will remain and include that portion of profit from Sobeys is not reasonable, from a business perspective. At such a low probability, the more appropriate approach is to eliminate the Sobeys profit, as I did and to assume any higher probability (or even a 25% probability) is not reasonable based on the information that I considered in the Harington Initial Report, even before the additional new documents that I have reviewed and which further support my conclusion as set out below;

b. In Kroll's calculations, LoyaltyOne is projected to generate <u>negative cash flows in every year from 2023 to 2031</u>. To conclude that a company is solvent in such a situation is too optimistic as the company has no ability to handle any uncertainty, including all of the operating risks that I describe in the Harington Initial Report, at paragraphs 242 to 248 and 253 to 258; and

c. Kroll's analysis projects that the minimum level of working capital that EY concluded was required would be eliminated and replaced with additional debt, further weakening the company. It is worth noting that the cash balances shown in the Kroll analysis are only those at the end of the year and do not account for seasonal fluctuations in the business.

[24] Kroll Reply Report, paragraph 8.8.

<u>KROLL'S ASSUMPTION THAT LOYALTYONE WOULD ONLY BE RESPONSIBLE FOR PAYING A FRACTION OF THE LVI COSTS</u>

49. With respect to the LVI costs, as set out above in paragraphs 36 to 40, I disagree with Kroll's adjustment to only adopt the $2 million of standalone costs under the cash flow solvency test. The cash flow solvency test is a test of whether a company is unable to meet its obligations as they generally become due. Specifically, it does not contemplate a sale of the company with a restructuring so as to make the company a standalone company. Put another way, it considers a "take the company as you find it" scenario and, in this scenario, the actual operating costs of LVI are as reflected in the Spin Date Projections. Kroll is, in effect, assuming that, in the ordinary course, LoyaltyOne would only fund a small fraction of the LVI costs and, somehow, LVI would fund the balance.

50. As I highlighted in the Harington Initial Report and as is clear from all of the financial documents I reviewed, LVI had no income generating operations of its own. As mentioned earlier, LVI incurred certain corporate general and administrative costs to both operate as a public company and provide services to LoyaltyOne and BrandLoyalty amounting to between $15 million and $17 million annually. These projected expenses were essential to operate LVI, LoyaltyOne and BrandLoyalty and needed to be incurred to operate the LVI structure, and not just the LoyaltyOne entity. Accordingly, LoyaltyOne would need to fund its share of $15 million to $17 million annual costs.

51. I conclude that, for purposes of the cash flow solvency test, using $10 million of standalone costs based on LVI's projected corporate costs, as I did in the Harington Initial Report, is the correct and most reasonable approach.

Kroll was instructed to assume that LoyaltyOne is able to restructure the LVI debt so as to be able to qualify for a tax deduction for the interest payments

52. In the Kroll Reply Report, Kroll states that “in the First Kroll Report, we reduced LoyaltyOne’s income taxes in the projection period to give effect to the tax deductibility of LoyaltyOne’s payment of interest on the LVI debt pursuant to the guarantee. This had a positive effect on projected cash flows because less income tax was projected to be paid.”[25]

53. Kroll then states “it seems reasonable” to them that “that the flow of funds contemplated by Brattle [i.e., from LoyaltyOne to LVI] is not consistent with the flow of funds that would arise in the circumstance of LoyaltyOne being called upon under the debt guarantee”[26] and that, instead “LoyaltyOne would pay the lenders directly under the guarantee.”[27]

54. Kroll is then instructed to assume, on this basis, “that it would likely be possible to structure those arrangements such that LoyaltyOne would, for its own income tax purposes, obtain a deduction for tax purposes of an amount equal to at least some, if not all, of the interest portion of the guarantee payments that it made. On that basis, whereas Brattle models no such deduction, we have modeled a full deduction.”[28]

55. I disagree with this premise. The cash flow test does not reflect the interest and debt payments caused by LoyaltyOne being called upon under the guarantee. It reflects the interest and debt payments because, under the going concern assumption that both Kroll and I assume for LoyaltyOne, LVI has no other means of making the interest and debt payments.[29]

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[25] Kroll Reply Report, paragraph 8.4.

[26] Kroll Reply Report, paragraph 8.6.

[27] Kroll Reply Report, paragraph 8.7.

[28] Kroll Reply Report, paragraph 8.8.

[29] This is consistent with the language used in the resolutions of board of directors of LoyaltyOne which state that “LVI has advised the Company that LVI does not have sufficient funds to make the January 26 Payment”. (Source: LYO3981390.pdf)

56. Kroll and I both assume that LoyaltyOne is a going concern.[30] The cash flow solvency test is prepared on this basis and does not assume that LoyaltyOne has been called upon under the debt guarantee. Rather, it reflects (as I have stated before) that "LVI does not have any operations from which to generate cash flows to fund either the interest or the principal payments on the debt"[31] and also reflects the statements in the Affidavit of Cynthia Hageman affirmed March 8, 2024, paragraphs 24 and 25 regarding BrandLoyalty's historical dividend history and its inability to fund debt payments. Regardless of this, I understand that … a solvency test should be determined with regard to "the company's stated liabilities and identified contingent liabilities."[32] I note that the issue of debt payments being funded by LoyaltyOne is further addressed in the Affidavit of Cynthia Hageman affirmed May 1, 2024.[33]

57. Accordingly, absent any evidence of LoyaltyOne being called upon under the debt guarantee, I assume that the only method by which LoyaltyOne would pay the interest and principal owed by LVI is "as occurred in the real world, after-tax earnings of LoyaltyOne must be distributed as dividends to LVI to provide it with the necessary cash to fund both the interest and principal payments and such dividend distributions are subject to a 5% withholding tax on those dividends."[34]

58. The debt remains that of LVI and, regardless of whether the guarantee is called on or not, from a business perspective, absent a debt restructure, the debt issued by LVI does not result in the generation of income in Canada by LoyaltyOne and therefore no deduction would be allowable.[35]

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30 Kroll Report, Appendix D, paragraph 1.3 and Harington Initial Report, paragraph 75.ii.

31 Harington Initial Report, paragraph 48.a.

32 Harington Initial Report, footnote 104.

33 Affidavit of Cynthia Hageman, affirmed May 1, 2024, at paragraphs 13-15.

34 Harington Initial Report, paragraph 190. The dividends were paid by LoyaltyOne to an intermediate subsidiary of LVI, and from there to LVI.

35 As noted by the Board of Directors of LoyaltyOne, "this Board has been advised by its professional advisors that the occurrence of a default could cause irreparable damage to the continuation of the Company's business and operations." (Source: LYO3981390.pdf) Should this result in LoyaltyOne no longer being a going concern, there are likely to be negative (downward) implications on all of the valuation conclusions set out in the Harington Initial Report.

59. Further, regarding Kroll's assumption of a debt restructuring, I note that, in its tax update of December 13, 2021, LVI noted the following:[36]

    a. "Estimated Effective Tax Rate for 2021 is approximately 35% … No benefit for US losses currently … Withholding taxes on Canadian dividends driving rate up significantly"; and

    b. "Debt push-down plans to Canada and Netherlands on/around January 1, 2022…$490M Canadian / $160M Dutch … Avoids more significant US NOL's, savings significant foreign taxes … Debt-push down <u>comes with Canadian withholding tax, but pays for itself within 2 years</u>" (emphasis added).

60. While the cost of implementing this debt structure is not explicitly stated, I calculated that the tax deduction and avoidance of withholding taxes incurred by LoyaltyOne were approximately $12 million per year[37]. Assuming that, per the quotation above, this pays for itself within 2 years, the cost would have been up to $24 million.

61. I am instructed by Counsel to assume that under Kroll's assumption of a debt restructuring, it would be necessary to reflect this cost in the cash flow solvency test. Under the tight cash constraints that LoyaltyOne faced, even if the restructuring could be undertaken, in my opinion it would be too speculative to assume, in these circumstances, that LVI and LoyaltyOne would have had the financial ability to incur this payment. I am also instructed to assume that such a debt restructuring would have required the approval of the debt holders. Whatever security may have been provided by BrandLoyalty would be lost under such an arrangement and, accordingly, from a business and economic perspective, I do not believe it is reasonable to assume that such approval would be forthcoming without further conditions or expenses.

62. Given the above, there is no reason or valid basis to change the approach set out in the Harington Initial Report.

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[36] LYO1551397.pptx.

[37] Comprising $8 million of tax effect and $4m of tax on dividends. (See Harington Initial Report, Table 11).

<u>WORKING CAPITAL</u>

63. The Kroll Reply Report states that the exit of Sobeys would result in a release of (or lower investment in) working capital.[38]

64. As discussed in more detail below at paragraph 96, to the contrary, the exit of Sobeys is more likely to result in an increased working capital requirement and, accordingly, the cash flows would be worse than what are indicated in my cash flow solvency test.

VII.A.2. Balance sheet solvency test – open market approach

65. In the Harington Initial Report, I set out in detail my analysis of the open market expressions of interest for LoyaltyOne in Project Angus.[39] Other than observing[40] that I adjusted those offers for Sobeys related adjustments and used a different bidder set,[41] Kroll provides no further commentary on the open market approach.

66. Since the date of the Harington Initial Report, the parties have produced additional documents, one of which provides 'Draft Key Talking Points" from Morgan Stanley to Air Miles for a call with Sobeys.[42] One of these items was to give Sobeys a heads-up that the two Project Angus buyers[43] were seeking "to speak with a Sobeys representative for their commercial due diligence" and the request for the name of the "right person at Sobeys who can speak with the two buyers about the relationship and how they should think about the program for the future…" This provides evidence that, for their second round bids, these bidders had at least some information

38 Kroll Reply Report, paragraph 8.31.

39 Harington Initial Report, paragraph 204 to 224.

40 Kroll Reply Report, paragraph 6.15.

41 For discussion of this, see Harington Initial Report, paragraphs 210 to 213.

42 LYO3941045.pdf.

43 Presumably Bidder #2 and Bidder #3 as this document was created on December 6, 2020 which is shortly before the second round bids were received from these bidders (10 - December 17, 2020. Bidder #3 Project Angus.pdf and 11 - December 17, 2020. Bidder #2 Project Angus.pdf) and predicates the subsequent bid from Bidder #7 (12 - January 13, 2021. Bidder #7 Angus Proposal Letter.pdf).

concerning Sobeys intentions as reflected in the downward revisions in the value of their offers[44] and their inclusion of conditions regarding sponsor losses and a Sobeys renewal.[45]

67. Accordingly, there is no reason or valid basis to revise my conclusion in the Harington Initial Report that, under this approach, LoyaltyOne fails the balance sheet solvency test.

VII.A.3. Balance sheet solvency test – discounted cash flow approach

68. The Kroll Reply Report states that the WACC used in the Harington Initial Report "is increased to account for risks identified, primarily related to Sobeys."[46] This is an inaccurate and oversimplified summary. In fact, to the contrary, the majority of risk associated with Sobeys was removed in the Harington Initial Report because the direct cash flow impact of the loss of Sobeys was removed from the cash flow forecasts of LoyaltyOne. This is clearly described in the Harington Initial Report, which stated:[47]

> *In my opinion, LoyaltyOne faced three very significant risks, <u>in addition to the foreseeable direct impact of the loss of Sobeys</u>: (emphasis added)*
>
> a. *significant customer concentration risk;*
>
> b. *other impacts from the loss of Sobeys that were not reasonably foreseeable and that degree of uncertainty would have required additional risk considerations; and*
>
> c. *other operational risks.*

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[44] See Harington Initial Report, paragraph 209.

[45] See Harington Initial Report, paragraph 214.

[46] Kroll Reply Report, paragraph 6.15.

[47] Harington Initial Report, paragraph 243.

69. The Harington Initial Report sets out, over 14 pages,[48] risks that existed for LoyaltyOne that were not considered by Kroll and/or did not exist for LoyaltyOne at the time that EY prepared its estimate of the WACC for LoyaltyOne. These include:

Risk	**Considered by Kroll**	**Existed at time of EY WACC in July 2021**
Significant customer concentration risk[49]	No	Yes
Uncertainty resulting from the loss of Sobeys[50]	No	EY do not appear to have been aware of it
The risk associated with the level of debt[51]	No	No
The risk associated with the fact that the debt is at a variable interest rate[52]	No	No
Other operational risks associated with separation from ADS[53]	No	No

70. I also indicated technical issues with the Kroll approach to estimating the WACC.[54]

71. As a result, in my opinion, there is material uncertainty in the cash flows of LoyaltyOne that is not captured in the discount rates used by Kroll, which is understated, resulting in an overstatement of value. Kroll further increases this risk when it includes any additional income from Sobeys in the cash flows.

72. Since the date of the Harington Initial Report, the parties have produced additional documents, one of which provides further information concerning the <u>business risks that were identified by</u>

[48] Harington Initial Report, pages 83 to 96.
[49] Harington Initial Report, paragraph 245.
[50] Harington Initial Report, paragraph 248.
[51] Harington Initial Report, paragraph 255.
[52] Harington Initial Report, paragraph 257.
[53] Harington Initial Report, paragraph 258.
[54] Harington Initial Report, paragraph 249.

a prospective purchaser at the time. Specifically, on November 25, 2020, during due diligence, Bidder #3 provided a summary to Morgan Stanley:[55]

> *"Rob – per my text, a few additional points (not trying to be overly negative here, just points we've heard from Loyalty experts):*
>
> - *…*
> - ***No Plan B**: if Sobeys goes away it's "game over", there is no plan B for this business if a major anchor spins out*
> - ***Program Economics**: they don't work for them to be able to survive long term*
> - *…*
> - ***Long-Term**: "can't see Air Miles surviving long term""*

73. Kroll fails to address all of these factors and continues to use a discount rate range of 8.5% to 9.5% for DCF calculations that results in a material overestimate of the fair market value of LoyaltyOne.

74. In fact, by reintroducing some portion of Sobeys cash flows, Kroll further increases the risk associated with the LoyaltyOne cash flow forecasts and, rather than reverting down to the discount rates in the Kroll Report, should be increasing the discount rate to account for the higher risk in the cash flows.

VII.A.4. Balance sheet solvency test – "somewhat comparable companies" and "somewhat comparable precedent transactions" approaches

75. I disagree with the conclusions in the Kroll Reply Report as to the solvency of LoyaltyOne under the "somewhat comparable companies" and "somewhat comparable precedent transactions" approaches because Kroll inappropriately increases the cash flows without acknowledging that,

[55] LYO3601700.msg

by doing so, it has significantly increased the risk associated with those cash flows but makes no adjustment to the multiples that it uses.

76. Specifically, in the Kroll Report, Kroll correctly states, in its Restrictions section, that "The preparation of a financial analysis is a complex process that generally is not susceptible to partial analysis. Alteration of any one part of the analysis may change the observations set out in this report. We recommend consideration of the observations, commentary, and calculations as a whole so that the analysis can be best understood."[56]

77. However, this is exactly what Kroll has done in the Kroll Reply Report with respect to both the "somewhat comparable companies" approach and the "somewhat comparable precedent transactions" approach.

78. Specifically, this approach estimates value by applying an earnings multiple to an estimate of normalized earnings. Put another way, it is mathematically calculated as A times B, where A is normalized earnings and B is a multiple of those earnings. The only difference between the "somewhat comparable companies" approach and the "somewhat comparable precedent transactions" approach is that:

   a. Under the "somewhat comparable companies" approach the multiple used to apply to the earnings is determined with reference to publicly traded companies that are considered comparable to the company being valued; and

   b. Under the "somewhat comparable precedent transactions" approach the multiple used to apply to the earnings is determined with reference to observed transactions involving target companies that are considered comparable to the company being valued.

79. However, in each case, the earnings multiples applied may need to be adjusted to reflect differences between the reference publicly traded companies or target companies and the company being valued, which includes differences in the risk inherent in the earnings of the

[56] Kroll Report, paragraph 13.2.

company to which the multiple is being applied and those reference companies. For example, in relation to the risk inherent in the range of multiples, Johnson states that:[57]

> *"the higher multiple should be applied against the lower EBITDA to reflect the lower degree of risk in generating that level of income, and vice versa."*

80. In the Harington Initial Report, I identified numerous such risks as set out at paragraphs 242 to 258 and made adjustments to the multiples to reflect these risks. Most importantly, however, I then applied these adjusted multiples to earnings that <u>excluded any earnings associated with Sobeys</u>, to reflect the reasonably foreseeable loss of Sobeys.

81. In the Kroll Reply Report, Kroll reintroduces over 50% of those Sobeys earnings,[58] and therefore significantly increases the risk and uncertainty associated with those earnings, but applies the same range multiples that I concluded would be reasonable if the Sobeys earnings were eliminated.[59] Further, the high end multiples used by Kroll assume no adjustment to the observed multiples for any of the risks I identified in the Harington Initial Report.

[57] Business Valuation in Canada, Howard E. Johnson, chapter 4.

[58] Note that, as Kroll states, "the Sobeys Exit Percentages are the percentage probabilities (as at the Spin Date) of a Sobeys exit, at which LoyaltyOne and LVI are still solvent." To be clear, Kroll does not appear to be opining that these are the appropriate percentages, merely that it has calculated whatever the minimum percentage is required in order to provide a value that, all else the same, results in LoyaltyOne appearing solvent. (Kroll Reply Report, paragraph 2.3)

[59] Kroll Reply Report, paragraph 9.7 and schedule 6. Kroll further states that they disagree with my adjustments to the multiple and that any adjustments should be made to their observed multiples. Put another way, they disagree that LoyaltyOne faces any of the risks that I set out in the Harington Initial Report without providing any basis for this statement (Kroll Reply Report, paragraph 9.7).

82. Accordingly, in my opinion:

a. The high end of the calculated value of LoyaltyOne in the Kroll Reply Report under the "somewhat comparable companies" approach and the "somewhat comparable precedent transactions" approach are not meaningful as they:

i. reflect absolutely no adjustment to the observed third party multiples for any of the risks that I observed for LoyaltyOne; and

ii. further increase the risk by including some portion of Sobeys income (in some cases 50% of that income). Specifically, the uncertainty, or risk, reflected in a selected normalized income needs to "match" the valuation multiple applied to those earnings. If the selection of a higher level of income, achieved by the addition of higher risk income, changes that risk, it must result in a revision of the valuation multiple applied to that higher level of earnings. Kroll makes no such adjustment; and

b. The low end of the calculated value of LoyaltyOne in the Kroll Reply Report under the "somewhat comparable companies" approach and the "somewhat comparable precedent transactions" approach are more meaningful as they do reflect adjustment to the observed third party multiples for any of the risks that I observed for LoyaltyOne. However, I applied these multiples to earnings that did not include any Sobeys income. As above, the inclusion of any Sobeys income changes the risk associated with that level of income and a related adjustment must be made to the valuation multiple applied to that income.

83. Reflecting the above adjustment, LoyaltyOne fails the Balance sheet solvency test under both the "somewhat comparable companies" and "somewhat comparable precedent transactions" approaches.

VII.B. Other comments on the Kroll Reply Report

VII.B.1. Sobeys

84. Since the date of the Harington Initial Report, the parties have produced additional documents, some of which provide further information concerning the foreseeability of the loss of Sobeys. In my opinion, these additional documents further support the reasonability of my assumption that, at the Spin Date, it is foreseeable that Sobeys would cease to be a sponsor of the Air Miles Program and that it would be highly speculative to include any income from Sobeys after the contractual termination date and that, should any Sobeys income be included beyond that date, the discount rate, or earnings multiple, applied to those earnings would need to be significantly adjusted to reflect the uncertainty relating to that earnings stream.

85. In this section I summarize that additional information and explain how Kroll has included varying percentages of Sobeys income in its analysis so as to provide a cash flow or valuation result that appears to indicate a value in excess of the LoyaltyOne debt without any consideration of the significant increase in the risk of the earnings or cash flows that results from doing so.

NEW INFORMATION

86. As noted above, since the date of the Harington Initial Report, the parties have produced additional documents which, in my opinion, further support the reasonability of my assumption that, at the Spin Date, it is foreseeable that Sobeys would cease to be a sponsor of the Air Miles Program.

87. Specifically, I note the following (in chronological order):

   a. December 2, 2020 – correspondence between Air Miles to Sobeys which states, among other things that “I would like to discuss the following … Termination decision timeline/process … … I also understand and respect the contractual position we are in so I am hoping you can at least begin to share your thoughts on the timing of that decision and how you envision that process";[60]

b. January 5, 2021 – correspondence from Air Miles to Sobeys which states "Just a quick note to says (sic) thanks for the call today. Just personally wanted to say that I wish I could have delivered for you. Sobeys continues to be important in my heart as it was my first "real job" out of school in Stellarton. I understand the decision and will connect with Sandra for the follow up";[61]

c. January 19, 2021 – A presentation entitled "Project Legacy Update" notes that:[62]

- Two final bids received from (1) [Bidder #3] and [Bidder #2]
- While [Bidder #3] and BMO were discussing BMO's interest in taking a minority stake, Sobey's relayed its intention to terminate by the end of 2022
    - Sobey's has asked that AMRP cut its servicing fee of [redacted] for 2021 and 2022
    - AMRP pursing a new grocery sponsor – potentially Loblaws or a combination of Metro and Save-on-Foods";

d. January 22, 2021 – the minutes of the January 22, 2021, audit committee meeting of Alliance Data Systems Corporation stated that "Mr. Horn stated while management was facilitating [Bidder #2's] request for discussions with BMO as a minority investor, BMO indicated concerns with loss of a major Sponsor and impact on the sale process. Mr. Horn indicated management then received notice of Sobey's intent to terminate by the end of 2022, while also requesting significant reductions in its 2021 and 2022 servicing fees; management is identifying options for a new grocery sponsor";[63]

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60 LYO2605716.msg.

61 LYO3535712.msg.

62 07-BREAD-LVl-00115857.pdf, page 2.

63 22-BREAD-LVl-00256448.pdf, page 3.

e. March 5, 2021 – correspondence from Sobeys to Air Miles which states, among other things that:[64]

"We will send our document mark-up shortly, but by way of high level discussion points:

- *we agree Regions makes more sense and have reflected that; once a Region is turned off, all Stores within that Region will leave the program; you will see one nuance – we view Thrifty Foods as different than Western Canada so we have made it its own Region in case we elect to treat them separately*
- *we need to allow flexibility for Withdrawals to occur on a staggered basis rather than on just two set days; so we have set the earliest date (July) and committed that at least one major banner will be in the program until Feb*
- *regarding exclusivity, in order to allow you to plan we agree that it is fair for us to lose all exclusivity at the earlier of our first Withdrawal or September 1, 2022*
- *we have no issue consulting on timing/content of exit announcement and agreeing on communications plan beyond that";*

f. March 9, 2021 – correspondence between Air Miles and Sobeys concerning the timing of a public announcement and communication of Sobeys departure to other sponsors;[65] and

g. February 1, 2022 - correspondence between Air Miles and Sobeys concerning a proposed workback schedule with key activities attaching a document that was first created in September 29, 2021 indicating "Pathway to communication" timeline working back from "Roll off Region 1" indicating "Positioning Exercise (Air Miles / Sobeys) for all stakeholders".[66]

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[64] LYO3528490.msg. I note that this correspondence appears to have been exchanged as part of the negotiations underlying the March 2021 amendment to the agreement between LoyaltyOne and Sobeys.

[65] LYO2556711.msg.

[66] LYO2659933.msg (including LYO2659934.pptx being the attachment).

88. In my opinion, these additional documents further support the reasonableness of my assumption that, at the Spin Date, it is foreseeable that Sobeys would cease to be a sponsor of the Air Miles Program and that it would be highly speculative to include any income from Sobeys after the contractual termination date and that, should any Sobeys income be included beyond that date, the discount rate, or earnings multiple, applied to those earnings would need to be significantly adjusted to reflect the uncertainty relating to that earnings stream.

SOBEYS DIRECT CONTRIBUTION, IMPACT ON COLLECTORS AND BMO MARGIN (ADJUSTMENTS 2 TO 5 OF THE HARINGTON INITIAL REPORT)

89. In the Harington Initial Report, I was instructed to assume that, as at November 5, 2021, the loss of Sobeys as a sponsor of the Air Miles Reward Program ("Air Miles" or "Air Miles Program") was reasonably foreseeable ("Sobeys Departure Instruction").[67] Based on the analysis that I performed and review of documents available to me, I further concluded that this was a reasonable assumption. Accordingly, I revised the forecast used in the Kroll Report to reflect the loss of Sobeys as a sponsor.

90. As described the Harington Initial Report, I adjusted for three impacts from the loss of Sobeys (collectively the "Brattle Sobeys Adjustments"):[68]

a. the direct profit contributed to LoyaltyOne from Air Miles issued at Sobeys as a sponsor location;

b. the value of Sobeys to collectors as a location for redeeming Air Miles such that, with the loss of a national grocer as a key redemption option, collectors ceased to use the Air Miles Program; and

[67] Harington Initial Report, paragraph 10.

[68] Harington Initial Report, paragraph 126.

c. with the reduced appeal to collectors, the negotiation strength of LoyaltyOne with its other sponsors is reduced and contractual concessions have to be made to those companies.

91. The details relating to the Brattle Sobeys Adjustments are included in Sections XI.A.3, XI.A.4, and XI.A.5 of the Harington Initial Report. Other sections of the Harington Initial Report also discussed the significance of Sobeys to LoyaltyOne's business[69], and the reasonableness of the assumption that, as of November 5, 2021, the loss of Sobeys as a sponsor of the Air Miles Program was reasonably foreseeable.[70]

92. It does not appear from the Kroll Reply Report that Kroll disputes my estimate of the quantum of the losses from Sobeys sponsor loss.[71] However, Kroll adjusts the sum of Brattle Sobeys Adjustments for a probability percentage relating to the possibility of a Sobeys exit under the LoyaltyOne solvency tests ("Sobeys Exit Percentages"). For ease of reference, Kroll's summary table relating to Sobeys Exit Percentages is reproduced below:[72]

[69] Harington Initial Report, Section VIII.

[70] Harington Initial Report, Section XII.

[71] Kroll Reply Report, Schedule 4.

[72] Kroll Reply Report, paragraph 2.3.

Summary of Percentages of Probability of a Sobeys Exit At or Below Which LoyaltyOne and LVI are Still Solvent

	LoyaltyOne		LVI		
	Reference	Kroll Inputs	Reference	Brattle Inputs	Kroll Inputs
Projected Cash Flow Test	Sch. 4	75%	Sch. 1	100%	↑
Net Realizable Value Test					
Discounted cash flow approach	Sch. 5	80%*	Sch. 2	100%	↑
Comparable companies approach	Sch. 6	65%**	Sch. 3	100%	↑
Precedent transactions approach	Sch. 6	50%**	Sch. 3	100%	↑

**Based on Low Scenario discount rate from the First Kroll Report. Had the High Scenario or midpoint been used, the 80% would be even higher.*
***If multiples from the First Kroll Report were used, the percentages would be 85% and 75%, respectively.*

93. The Kroll Reply Report states that:[73]

> *"As stated in the title of the table, the Sobeys Exit Percentages are the percentage probabilities (as at the Spin Date) of a Sobeys exit, at which LoyaltyOne and LVI are still solvent. Hence there is also solvency at any exit probability below the indicated percentage amount"*

94. In relation to Kroll's probabilities applied to the Brattle Sobeys Adjustments, I note that:

   a. There is no basis for Kroll's Sobeys Exit Percentages. The Kroll Reply Report includes no quantitative or qualitative analysis to back-up the reliance on the stated Sobeys Exit Percentages for the solvency tests. As such, the Sobeys Exit Percentages are simply "reverse engineered" percentages which are intended to support Kroll's conclusion of LoyaltyOne's solvency as of the Spin Date. For instance, there is no reasoning included in the Kroll Reply Report to illustrate why 75% is a reasonable Sobeys exit probability (i.e., there is only a 25% likelihood that Sobeys would remain with LoyaltyOne) under the cash flow solvency test;

[73] Kroll Reply Report, paragraph 2.3.

b. The Kroll Report, for the purposes of performing stress tests for LVI, had assumed that there is a 100% likelihood of Sobeys departing as of the Spin Date;[74]

c. The Kroll Reply Report makes no comments on my analysis of reasonability of the Sobeys Departure Instruction included in the Harington Initial Report; and

d. Kroll also ignores that my estimate of Brattle Sobeys Adjustments conservatively considered the:

   i. mid impact scenario of Sobeys Impact on Collectors (Adjustment 3);[75] and

   ii. did not factor in approximately [redacted] lower cash flows due to contract renegotiations with Shell.[76]

95. Accordingly, due to the above-mentioned reasons, I disagree with Kroll's Sobeys Exit Percentages, and reiterate that LoyaltyOne's projections should be adjusted downward for 100% of the Brattle Sobeys Adjustments amount as calculated in the Harington Initial Report.

<u>WORKING CAPITAL RELEASE FROM THE LOSS OF SOBEYS</u>

96. The Kroll Reply Report states that the exit of Sobeys would result in a release of (or lower investment in) working capital.[77] However, Kroll does not quantify this amount. I also note that Kroll's stress test for LVI relating to Sobeys departure had no mention of a working capital release.[78]

97. While Kroll states that the exit of Sobeys would result in a release of accounts receivable which were projected to be around $200 million on December 31, 2022[79], it ignores that the exit of

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[74] Kroll Report, paragraph 8.50.

[75] Harington Initial Report, paragraph 154.

[76] Harington Initial Report, Schedule 4.8.

[77] Kroll Reply Report, paragraph 8.31.

[78] Kroll Report, paragraph 8.47 and Schedule 10.

[79] Kroll Reply Report, paragraph 8.33.

Sobeys would also have an impact on the current liabilities of LoyaltyOne including the deferred revenue liability.[80]

98. In the first Kroll Report, Kroll undertook an estimate of working capital for LoyaltyOne.[81] For ease of reference, I have included a copy of this analysis in Table 46, below.

TABLE 46: EXTRACT FROM KROLL REPORT, SCHEDULE 15, NOTE 3.

	Percent Attributable	9/30/21	12/31/21	12/31/22	12/31/23	12/31/24	12/31/25	12/31/26
LoyaltyOne working capital calculation								
Accounts receivable	68%	$ 197	$ 190	$ 201	$ 221	$ 240	$ 261	$ 278
Inventory balance	0%	-	-	-	-	-	-	-
Other current assets	42%	9	14	11	11	12	13	14
Right of Use Asset - Operating	32%	33	33	27	22	19	15	11
Deferred Tax Asset, Net	9%	7	7	7	8	8	9	10
Other Non-Current Assets	63%	2	2	2	2	2	2	2
Total LVI working capital assets		$ 247	$ 246	$ 248	$ 265	$ 282	$ 300	$ 314
Accounts payable	26%	20	19	19	21	23	25	26
Accrued expenses	41%	20	28	29	32	35	37	39
Current deferred revenue	100%	924	970	1,025	1,045	1,060	1,075	1,090
Non-current deferred revenue	100%	97	114	120	123	125	126	128
Other current liabilities	39%	51	31	30	32	34	36	37
Current Operating Lease Liability	22%	2	2	2	1	1	1	1
Deferred Tax Liability, Net	100%	0	(0)	(0)	(0)	-	-	-
Other Liabilities	60%	14	16	19	26	33	40	46
Long Term Operating Lease Liability	42%	44	44	37	31	26	21	16
Total LoyaltyOne working capital liabilities		$ (1,173)	$ (1,224)	$ (1,282)	$ (1,311)	$ (1,336)	$ (1,361)	$ (1,383)
Total LoyaltyOne working capital		$ (926)	$ (977)	$ (1,034)	$ (1,046)	$ (1,054)	$ (1,060)	$ (1,069)

99. As can be seen from Table 46 above, Kroll correctly notes that, with the loss of Sobeys, accounts receivable, which is approximately $200 million, would be reduced and "free up" capital. However, the value of the accounts receivable asset is dwarfed by the current deferred revenue liability which similarly would be reduced with the loss of Sobeys and would need to be "repaid". As Kroll calculated that the aggregate working capital is negative, the loss of a customer has the result of having the company <u>require</u> working capital rather than benefit, in terms of cash flow,

80 The deferred revenue liability is a contract liability which arises when cash payments are received in advance of performance. The deferred revenue liability is primarily impacted by two factors, i.e., the cash proceeds and the revenue recognized over time as Air Miles are redeemed by collectors. (Loyalty_Ventures_Inc_-_Form_10-K(Feb-28-2022).pdf, page F-15.)

81 Kroll Report, Schedule 15.

from the loss of that customer as Kroll indicates. Accordingly, Kroll is not correct that the loss of Sobeys would "free up" capital.

100. Accordingly, Kroll's comment on release of working capital due to the exit of Sobeys is incorrect as the decrease in accounts receivables would be offset by a reduction in deferred revenue liabilities and, if anything, the cash flows would be worse than what are indicated in my cash flow solvency test.

OPERATING COSTS SAVINGS FROM THE LOSS OF SOBEYS

101. The Kroll Reply Report mentions that due to the exit of Sobeys there would be cost savings over and above the [redacted] dollar savings already considered in the contribution margin analysis included in the Harington Initial Report.[82]

102. Kroll speculates, without providing any support, that LVI's operating expenses would reduce by $25 million due to an operational efficiency program initiated after the departure of Sobeys. It is important to note that these savings estimates are at the LVI level, and likely include operating savings from BrandLoyalty which are not relevant to LoyaltyOne's solvency tests.

103. Since, in the Harington Initial Report, I had already considered all cost savings directly associated with Sobeys,[83] I have not made an additional adjustment for further costs savings due to Sobeys departure.

MITIGATION OF THE LOSS OF SOBEYS

104. The Kroll Reply Report states that:[84]

> *"Similarly, even in the circumstances of a Sobeys exit, we have made no offsetting upward adjustment to projected cash flows for the possibility*

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[82] Harington Initial Report, Schedule 4.5.1.

[83] Harington Initial Report, Schedule 4.5.1.

[84] Kroll Reply Report, paragraph 8.22.

of a replacement for Sobeys. However, we observe that when Sobeys actually did exit, efforts were made to replace Sobeys (for example, we understand by Pattison Food Group, a Western Canadian regional grocer). Though we do not have specifics, as at the Spin Date there would presumably have been some expectation that the effect of a Sobeys exit could be mitigated to some degree."

105. The possibility of mitigating the loss of Sobeys was covered in the Harington Initial Report, whereby I concluded that there are no evident opportunities for LoyaltyOne to replace Sobeys as a national sponsor.[85] I note, in response to Kroll's speculation concerning The Pattison Food Group that it was only signed on as a "card-linked offers promotion". In comparison, Sobeys was an in-store cash partner which gave the collectors an opportunity to redeem Air Miles for cash while shopping at Sobeys. The Pattison Food Group only lets collectors earn Air Miles at its locations with no options to redeem Air Miles for cash.[86] This contrasts with Sobeys, which provided significant value to the Air Miles program as evidenced by the fact that Sobeys represented a significant percentage of total redemptions for the Air Miles Program, for example 63% in 2019.[87]

106. The following points further highlight why Air Miles' "card-linked" partnership with Pattison Food Group is not comparable to losing Sobeys as an Air Miles Program sponsor:

a. Sobeys had Canada-wide presence, while the Pattison Food Group operates exclusively in Western Canada where only 30% of Air Miles collectors are based.[88] Further, in 2018, Sobeys

85 Harington Initial Report, paragraph 73.

86 https://www.newswire.ca/news-releases/air-miles-adds-new-earning-opportunities-at-257-pattison-food-group-stores-863428750.html.

87 Harington Initial Report, paragraph 69.

88 Affidavit of Joseph L. Motes III affirmed February 9 2024.pdf, Exhibit K, page 20. 3 million collector accounts in Western Canada divided by 10 million total collector accounts in Canada.

had 21% market share among Canadian grocery retailers, as compared to only 3% of the Pattison Food Group's main brand, 'Save-on-Foods';[89]

b. Sobeys operated more than 1,500 stores across all 10 provinces at the end of 2021, [90] while the Pattison Food Group signed on with Air Miles Program for only 257 stores in Western Canada;[91]

c. Air Miles own analysis of the "impact on issuance" from the loss of Sobeys estimated that, while the loss of Sobeys would result in a loss of [redacted] miles, Save-On West (sic) could contribute only [redacted], or approximately [redacted]% of the loss;[92]

d. Sobeys, being an in-store cash partner, allowed all Air Miles Program collectors to earn and redeem Cash Miles[93]. On the other hand, the Air Miles "card-linked" partnership with Pattison Food Group only allows collectors who are 'Mastercard' cardholders to earn Air Miles.[94] Accordingly, this excludes all customers that used any form of payment other than 'Mastercard' including, but not limited to: 'Visa' cardholders or customers that paid using cash or debit;

e. At Sobeys, collectors could earn Air Miles on all purchases. At the Pattison Food Group, collectors can earn Air Miles only on limited time offers for 'eligible purchases';[95] and

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89 Retail Foods_Ottawa_Canada_6-26-2018.pdf, page 7. 'Overwaitea Food Group' renamed as 'Save-on-Foods' in 2018. (https://www.producebluebook.com/2019/08/21/overwaitea-food-group-changes-name-to-save-on-foods/).

90 2021-Empire-AR-English-SEDAR_compressed.pdf, page 14.

91 https://www.newswire.ca/news-releases/air-miles-adds-new-earning-opportunities-at-257-pattison-food-group-stores-863428750.html.

92 LYO3534132.msg, LYO3534133.xlsx and LYO3534134.pptx (the latter two documents being the attachments to the first document). [redacted]

93 Harington Initial Report, paragraph 57.

94 https://www.newswire.ca/news-releases/air-miles-adds-new-earning-opportunities-at-257-pattison-food-group-stores-863428750.html.

95 https://www.newswire.ca/news-releases/air-miles-adds-new-earning-opportunities-at-257-pattison-food-group-stores-863428750.html.

f. Sobeys had an exclusive loyalty program with Air Miles, while the Pattison Food Group also has its own loyalty program, 'More Rewards' which already has 3.5 million members.[96]

107. Table 47 below includes a summary comparison between Sobeys and the Pattison Food Group.

TABLE 47: COMPARISON OF SOBEYS AND PATTISON FOOD GROUP

	Sobeys	Pattison Food Group
Number of Stores	1,500	257
Geographic footprint	Canada-wide	Western Canada
Estimated market share % (2018)	21%	3%
% of Air Miles collectors covered across footprint	100%	30%
Type	In-store cash partner	Card-linked offers promotion
Own loyalty program	N/A	Yes (More Rewards)

108. Accordingly, the signing of the Pattison Food Group by the Air Miles Program could not replace the benefit provided by Sobeys. In conclusion, I reiterate that LoyaltyOne had no evident opportunities to replace Sobeys as a national sponsor, and no further adjustment is required for same.

VII.B.2. LVI's solvency is not relevant to the solvency of LoyaltyOne one

109. There is nothing in the Kroll Reply Report that causes me to revise the views I expressed in the Harington Initial Report about the relevance of the solvency of LVI.

[96] https://pattisonfoodgroup.com/customer-loyalty.
I note, in the "Fireside Chat" with a prospective purchaser at the time of Project Angus that a response to why Starbucks was not a Sponsor was because it had its own loyalty program. (LYO3953694.pdf)

VII.B.3. Alleged inconsistency

110. Kroll states that:[97]

> *[I]t is internally inconsistent that Brattle is effectively constructing a notional paradigm in which Brattle is proposing that, because of the guarantee, the focus of the LoyaltyOne solvency test must be limited to an examination of the degree to which only LoyaltyOne's projected cash flows can satisfy the debts of its parent LVI, with there being no consideration given to BrandLoyalty's projected cash flows that would otherwise also be available to LVI, yet at the same time effectively assuming that the normal course tax deductibility of the interest payments would not be available because those LoyaltyOne cash flows must be dividended up to LVI before being paid out under the guarantee.*
>
> *We say this because there is no normal course "obligation" on LoyaltyOne to pay dividends to LVI. Presumably, this situation could only arise if LVI were in distress and that gives rise to a LoyaltyOne "obligation" directly to the lenders under the guarantee in which case LoyaltyOne would satisfy that obligation directly.*

111. I do not agree that there is any inconsistency. The facts of this case are that LVI had no operations but was the entity that issued the funded debt obligations, received the loan proceeds and was principally responsible for payment of both the interest and principal debt payments. Kroll assumes that LoyaltyOne would only pay the loan principal and interest "if LVI were in distress". However, given the fact that LVI had no source of income of its own to make the payments, it would always be, to use Kroll's terminology, "in distress". It is clear from the facts I have reviewed that LoyaltyOne was always "obliged" to make the dividend payments to LVI to enable LVI to in turn make the principal and interest payments.

97 Kroll Reply Report, paragraphs 8.9 and 8.10.

VII.B.4. Litigation Costs (Adjustments 7 & 8 of the Harington Initial Report)

112. The Harington Initial Report included a $3 million adjustment for LoyaltyOne in FY2025 relating to costs of pursuing the CRA litigation. The details relating to this adjustment are included in Section XI.A.7 of the Harington Initial Report.

113. I understand that the Kroll Report reversed that deduction based on an instruction to Kroll that Bread, rather than LoyaltyOne, would ultimately bear those costs.[98]

114. I note that, while Kroll and I differ in this regard, this item has no material impact on the solvency analysis.

VIII. Restrictions and Limitations

115. This report is not intended for general circulation or publication nor is it to be reproduced or used for any purpose other than that outlined above without my written permission in each specific instance. The Brattle Group does not assume any responsibility or liability for losses occasioned to you or any other party as a result of the circulation, publication, reproduction, or use of this report contrary to the provisions in this paragraph.

116. I reserve the right (but will be under no obligation) to review and/or revise any and all assumptions and/or calculations included or referred to in this report and, if considered necessary, to revise any calculations in light of any information which becomes known to us after the date of this report.

117. This report was prepared for the Counsel, in accordance with The Brattle Group's engagement terms, and is intended to be read and used as a whole and not in parts.

[98] Kroll Reply Report, paragraph 8.14.

118. The report reflects the analyses and opinions of the authors and does not necessarily reflect those of The Brattle Group's clients or other consultants.

119. There are no third party beneficiaries with respect to this report, and The Brattle Group does not accept any liability to any third party in respect of the contents of this report or any actions taken or decisions made as a consequence of the information set forth herein.

Yours truly,

Andrew C. Harington
Principal
The Brattle Group

Appendix A: Supplemental Scope of Review

In reaching my conclusions, in addition to the documents listed in Appendix C of the Harington Initial Report, for purposes of this report, I have reviewed the following additional documents. Except as otherwise noted herein, I have not audited or otherwise verified the information contained in these documents. My conclusions are dependent upon the accuracy of this information.

1) Kroll Reply Report
2) Affidavit of Cynthia Hageman, affirmed May 1, 2024
3) Angus QoE PW Angus2020.pdf
4) 22-BREAD-LVl-00256448.pdf
5) LYO1551397.pptx
6) LYO2556711.msg
7) LYO2605716.msg
8) LYO2659933.msg
9) LYO2659934.pptx
10) LYO3528490.msg
11) LYO3534132.msg
12) LYO3534133.xlsx
13) LYO3534134.pptx
14) LYO3535712.msg
15) LYO3601700.msg

16) LYO3941045.pdf

17) LYO3953694.pdf

18) LYO3981390.pdf

19) Retail Foods_Ottawa_Canada_6-26-2018.pdf (https://apps.fas.usda.gov/newgainapi/api/report/downloadreportbyfilename?filename=Retail%20Foods_Ottawa_Canada_6-26-2018.pdf)

20) 2021-Empire-AR-English-SEDAR_compressed.pdf (https://www.empireco.ca/uploads/2022/08/2021-Empire-AR-English-SEDAR_compressed.pdf?var=2)

21) Cision, AIR MILES adds new earning opportunities at 257 Pattison Food Group Stores, September 22, 2022, https://www.newswire.ca/news-releases/air-miles-adds-new-earning-opportunities-at-257-pattison-food-group-stores-863428750.html

22) https://pattisonfoodgroup.com/customer-loyalty/

Ontario Superior Court of Justice Court File No. CV-23-00696017-00CL

Table of Contents - Schedules and Exhibits

To be read with The Brattle Group Report dated May 1, 2024

Ontario Superior Court of Justice Court File No. CV-23-00696017-00CL **Schedule R1**

Summary of Solvency Tests (Revised)

LoyaltyOne **To be read with The Brattle Group Report dated May 1, 2024**

Figures in USD Millions

Description of Test	Row	Schedule	Range of Enterprise Fair Market Value	Actual and Contingent Debt	Pass / Fail Solvency Test
Cash Flow Solvency					
Base Case	[1]	Schedule 2.1 of Harington Initial Report			Fail
Sensitivity Test	[2]	Schedule 2.1 of Harington Initial Report			Fail
Fair Market Value Balance Sheet Solvency					
Open market offers approach (Project Angus)	[3]	Schedule 3.1 of Harington Initail Report	$287 to $405	$675	Fail
Discounted cash flow approach (revised)	[4]	Schedule R2	$459 to $656	$675	Fail
Comparable companies approach (revised)	[5]	Schedule R3	$452 to $616	$675	Fail
Precedent transactions approach (revised)	[6]	Schedule R4	$415 to $579	$675	Fail
Other indicators of value					
Sale to BMO in June 2023	[7]		$160		

Sources and Notes:

[7]: 13 - March 10, 2023. Declaration of Charles Horn in Support of Chapter 11 Petitions and First Day Motions.pdf, page 23.

Balance Sheet Solvency Tests as of November 5, 2021 (Revised)

Discounted Cash Flow Valuation Approach (Revised)

To be read with The Brattle Group Report dated May 1, 2024

Figures in USD Millions

For the year ended December 31,		Row	5 - Dec 31 2021	2022	2023	2024	2025	2026	Terminal Year
			[A]	[B]	[C]	[D]	[E]	[F]	[G]
LoyaltyOne EBITDA after adjustments		[1]	22	134	82	84	87	87	
Adjustments to calculate free cash flow:									
Less: Income tax at	**27%**	[2]	(6)	(36)	(22)	(23)	(23)	(24)	
Less: Capex		[3]	(4)	(17)	(17)	(17)	(18)	(18)	
Add: Tax shield on capex		[4]	1	3	4	4	4	4	
Less: Increase in LoyaltyOne Working Capital (Add decrease)		[5]	32	56	13	7	7	9	
Less: Increase in Redemption Settlement Assets (Add decrease)		[6]	(41)	(70)	(25)	(20)	(20)	(15)	
Free cash flow		**[7]**	**4**	**70**	**35**	**35**	**37**	**44**	**45**
Year factors		**[8]**	0.08	0.65	1.65	2.65	3.66	4.66	
Discounted cash flow using high estimate of Kroll discount rates									
Terminal value		[8]							594
Discount rate and factors	**9.50%**	[9]	0.993	0.942	0.861	0.786	0.718	0.655	0.655
Discounted free cash flow, at present value as at November 5, 2021		**[10]**	**4**	**66**	**30**	**27**	**26**	**29**	**389**
Total of discounted free cash flow		**[11]**	**572**						

WACC sensitivity:

	572	**8.50%**	**9.00%**	**9.50%**	**10.00%**	**10.50%**	**11.00%**	**11.50%**
	27%	656	611	572	539	509	482	459

Balance Sheet Solvency Tests as of November 5, 2021 (Revised)

Discounted Cash Flow Valuation Approach (Revised)

To be read with The Brattle Group Report dated May 1, 2024

Figures in USD Millions

Sources and Notes:
Kroll Report, Schedule 15.
[1]: Schedule R5

Discount rate and terminal multiple:

	High	Low
WACC	8.50%	9.50%
Long-term growth rate	2.00%	2.00%
WACC-g	6.50%	7.50%
Terminal multiple	15.4x	13.3x

Balance Sheet Solvency Tests as of November 5, 2021 (Revised)

Somewhat Comparable Companies Approach (Revised)

To be read with The Brattle Group Report dated May 1, 2024

Figures in USD Millions

	Row	Low	Midpoint	High
		[A]	[B]	[C]
LoyaltyOne Normalized EBITDA	[1]	82		82
EBITDA Multiple as per Kroll Report	[2]	5.1x		9.9x
LoyaltyOne Enterprise Value	**[3]**	**419**		**814**
Midpoint	**[4]**		**616**	

Illustrative impact on enterprise value of changes to the EBITDA multiple for the factors increasing the LoyaltyOne risk above that reflected in "somewhat comparable companies" as described in Section XI.B.2:

Adjustment to Multiple	Resulting Low Enterprise Value Range	Resulting Midpoint Enterprise Value Range	Resulting High Enterprise Value Range
0.0	419	616	814
(0.5)	378	575	773
(1.0)	337	534	731
(1.5)	296	493	690
(2.0)	255	452	649

For ease of reference, I have shaded, in red, those valuations that are less than the debt and contingent debt of LoyaltyOne of $675 million.

Based on this analysis, LoyaltyOne was not solvent at the Spin Date

Sources and Notes:

[1]: Schedule R6

[2]: Kroll Report, Schedule 16.

[3]: [1] * [2].

Ontario Superior Court of Justice Court File No. CV-23-00696017-00CL **Schedule R4**

Balance Sheet Solvency Tests as of November 5, 2021 (Revised)

Somewhat Comparable Precedent Transactions Approach (Revised)

To be read with The Brattle Group Report dated May 1, 2024

Figures in USD Millions

	Row	Low	Midpoint	High
		[A]	[B]	[C]
LoyaltyOne Normalized EBITDA	[1]	82		82
EBITDA Multiple as per Kroll Report	[2]	5.8x		8.3x
LoyaltyOne Enterprise Value	**[3]**	**477**		**682**
Midpoint	**[4]**		**579**	

Illustrative impact on enterprise value of changes to the EBITDA multiple for the factors increasing the LoyaltyOne risk above that reflected in "somewhat comparable precedent transactions" as described in Section XI.B.2:

Adjustment to Multiple	Resulting Low Enterprise Value Range	Resulting Midpoint Enterprise Value Range	Resulting High Enterprise Value Range
0.0	477	579	682
(0.5)	436	538	641
(1.0)	394	497	600
(1.5)	353	456	559
(2.0)	312	415	518

For ease of reference, I have shaded, in red, those valuations that are less than the debt and contingent debt of LoyaltyOne of $675 million.

Based on this analysis, LoyaltyOne was not solvent at the Spin Date

Sources and Notes:

[1]: Schedule R6

[2]: Kroll Report, Schedule 18.

[3]: [1] * [2].

Ontario Superior Court of Justice Court File No. CV-23-00696017-00CL **Schedule R5**

Summary of Operating Profit Adjustments to Spin Date Projections (Revised)

To be read with The Brattle Group Report dated May 1, 2024

[redacted]

	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
		[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]							
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]		[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]		[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]		-	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]			[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]		[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]

Sources and Notes:

[1]: Kroll Report, Schedule 15.

[2]: Exhibit RI

[3]: Schedule 4.5. In line with the Sobeys amended contract, I assume that the Sobeys impact would start from July 1, 2022.

[4]: Schedule 4.6. Impact of the Sobeys loss on collectors is assumed to start from July 1, 2022

[5]: Schedule 4.7. While there would be less earnings impact immediately due to deferred revenue recognition policies, the full effect would be felt immediately in cash flows and normalized EBITDA. This is consistent with the 13 - March 10, 2023. Declaration of Charles Horn in Support of Chapter 11 Petitions and First Day Motions.pdf, page 18 that states that BMO renegotiated their contract resulting in a US$40 million less pre-tax cash flow than under the previous contract.

[6]: I understand that, while Metro and Shell also renegotiated more favourable contracts with LoyaltyOne after the departure of Sobeys, the timing of these contract negotiations were in the context of ordinary course renewals, as compared to the BMO renegotiation. While it is likely that the unfavourable outcomes of the contracts to LoyaltyOne were as a result of the departure of Sobeys, to be very conservative, I have not included the downward effect of these revised contracts in my estimate of normalized EBITDA reflecting the foreseeable effect of the departure of Sobeys. See 13 - March 10, 2023. Declaration of Charles Horn in Support of Chapter 11 Petitions and First Day Motions.pdf, page 17.

[7]: Schedule 2.2.2

[8]: Sum of [2] to [7].

[9]: [1] + [8].

Ontario Superior Court of Justice Court File No. CV-23-00696017-00CL **Schedule R6**

LoyaltyOne Annual Normalized 2021 EBITDA (Revised)

After Spin Date Adjustments **To be read with The Brattle Group Report dated May 1, 2024**

Figures in USD Millions

	Row	Normalized LoyaltyOne EBITDA
		[A]
[redacted]	[redacted]	[redacted]
[redacted]		
[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]

Sources and Notes:

[1]: 16 - L1 Model_August 2021_Aug Fcst_v10_BofA_vNewStructure_v3.xlsx.xlsx, Tab 'AirMiles (USD)'

[2]: Exhibit RI

[3]: Schedule 4.5.

[4]: Schedule 4.6.

[5]: 13 - March 10, 2023. Declaration of Charles Horn in Support of Chapter 11 Petitions and First Day Motions.pdf, page 18.

[6]: I understand that, while Metro and Shell also renegotiated more favourable contracts with LoyaltyOne after the departure of Sobeys, the timing of these contract negotiations were in the context of ordinary course renewals, as compared to the BMO renegotiation. While it is likely that the unfavourable outcomes of the contracts to LoyaltyOne were as a result of the departure of Sobeys, to be very conservative, I have not included the downward effect of these revised contracts in my estimate of normalized EBITDA reflecting the foreseeable effect of the departure of Sobeys. See 13 - March 10, 2023. Declaration of Charles Horn in Support of Chapter 11 Petitions and First Day Motions.pdf, page 17.

[7]: Sum of [1] to [6].

[8]: Schedule 2.2.1.

[9]: [7] + [8].

Ontario Superior Court of Justice Court File No. CV-23-00696017-00CL **Exhibit RI**

Stand-Alone costs and one-time costs estimated by PwC

To be read with The Brattle Group dated March 13, 2024 (Amended April 16, 2024)

Figures in USD Million

	[A]
Incremental costs (USD million):	
Technology - additional headcount and back-office application licenses	1.51
Finance - additional headcount and other expenses	0.53
Client services - additional headcount	0.34
Corporate - board of directors and insurance	0.10
HR adjustments - additional headcount and other expenses	0.00
Total incremental costs	**2.47**
Cost savings (USD million):	
Real estate	(0.75)
Marketing	(0.13)
Total cost savings	**(0.88)**
Net incremental costs (USD million)	**1.59**
One-time costs (mid) (USD Million)	4.22

Sources and Notes:

Angus QoE PW Angus2020.pdf

Figures converted from CAD to USD using an exchange rate of 0.7463.

Court File No. CV-23-00696017-00CL

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED
AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF LOYALTYONE, CO.

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

PROCEEDING COMMENCED AT
TORONTO

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