



Gateway Market Canada Inc. and Tobmar Investments International Inc.

Date: February 28, 2023

To: TTC Board

From: Chief Strategy and Customer Experience Officer

Summary

Gateway Market Canada Inc. (“Gateway”) and Tobmar Investments International Inc. (“Tobmar”) are retail tenants of the Toronto Transit Commission (“TTC”).

Gateway and Tobmar each filed a Notice of Intention to Make a Proposal (“NOI”) pursuant to section 50 of the Bankruptcy and Insolvency Act (the “BIA”) in respect of outstanding rent payments owed to the TTC. Neither Gateway nor Tobmar is bankrupt. NOI is a legal procedure that provides a corporation in financial distress the opportunity to restructure its financial affairs, under the assistance of a trustee, with creditor and court approval to continue in business. NOI enables the corporation to avoid bankruptcy while allowing creditors to receive some form of compensation for amounts owing to them by the corporation. In accordance with the BIA, at the time of filing the NOI, all liabilities of the corporation are stayed/frozen.

This report recommends approving the acceptance of the proposal, which will result in the TTC receiving approximately \$196,000 of the outstanding rent balance of \$5,303,773 for the time period of April 1, 2020 to April 19, 2022. The remaining balance of approximately \$5.1 million would be written off, noting, however, that \$4.4 million of this amount has been recovered through COVID relief funding (Phase 1 to 3 of Safe Restart Agreement) from the Province of Ontario. The remaining balance of \$0.7 million for the February 1, 2022 to April 19, 2022 time period has been included as part of the 2022 COVID relief funding claim (Safe Restart Agreement Phase 4) and is expected to be substantially recovered.

Recommendations

It is recommended that the TTC Board:

1. Approve acceptance of the proposal under the Notice of Intention to Make a Proposal of Gateway Market Canada Inc. in respect of the outstanding rent payments owed to the TTC on conditions satisfactory to the TTC General Counsel and the City of Toronto.

2. Approve acceptance of the proposal under the Notice of Intention to Make a Proposal of Tobmar Investments International Inc. in respect of the outstanding rent payments owed to the TTC on conditions satisfactory to the TTC General Counsel and the City of Toronto.
3. Authorize staff to request City of Toronto Corporate Real Estate Management, on behalf of TTC, to negotiate new lease agreements with Gateway Market Canada Inc. in respect of the cafés satisfactory to the TTC General Counsel, and report back to the TTC Board at its meeting in May.
4. Authorize staff to request City of Toronto Corporate Real Estate Management, on behalf of TTC and on conditions satisfactory to TTC, to negotiate new lease agreements with Tobmar Investments International Inc. in respect of the lotto booths and newsstands satisfactory to the TTC General Counsel, and report back to the TTC Board at its meeting in May.

Implementation Points

Upon acceptance by the TTC Board and the City of Toronto of the proposal under the NOI of each of Gateway and Tobmar, TTC staff will advise Gateway and Tobmar of the acceptance of the proposal under the Gateway NOI and the acceptance of the proposal under the Tobmar NOI, respectively, at the next scheduled meeting of the Gateway creditors and next scheduled meeting of the Tobmar creditors, respectively, or by voting letter in advance of each meeting.

In accordance with the Toronto Municipal Code Chapter 279, Toronto Transit Commission, where a proposed transaction does not meet the criteria set out in section 279-2.4B of the Chapter, the transaction shall be directed through the City's Real Estate Approval Process and the City of Toronto will enter into lease agreements on the TTC's behalf.

Financial Summary

History

Prior to the pandemic, Gateway and Tobmar (the "Tenants") accounted for approximately \$3.8 million in annual rent to the TTC, representing roughly 68% of the TTC's subway concessions lease revenue. The Tenants paid rent in accordance with the terms of the applicable lease until the onset of the COVID pandemic in March 2020 when the significant decrease in customers negatively impacted their revenue. The reduced ridership and overall foot traffic through stations resulted in many retailers struggling to satisfy their rent obligations from April 2020 to present day.

Notice of Intent period: April 2020-April 2022

On April 19, 2022, Gateway and Tobmar each filed a NOI pursuant to section 50 of the BIA in respect of approximately \$0.5 million and \$4.8 million in rents outstanding, respectively, as of that date. As of the filing of the NOIs, (i) the combined total amounts owing by Gateway and Tobmar was \$7.8 million; (ii) the TTC had received \$2.5 million; and (iii) the combined outstanding balance owing to the TTC was \$5.3 million (see Table 1).

Table 1: Rent owing by Gateway and Tobmar

	Gateway	Tobmar			Total Combined
Rent Owing (April 1, 2020 - April 19 2022)	Transit Cafés	Newstands	Lottery Kiosks	Total (Newstands + Lottery)	Gateway + Tobmar Int'l
Amount due up to April 19, 2022	\$ 909,078	\$ 6,343,124	\$ 587,573	\$ 6,930,697	\$ 7,839,774
Payments up to April 19, 2022	\$ (397,958)	\$ (1,873,244)	\$ (264,800)	\$ (2,138,044)	\$ (2,536,002)
Net Balance Owing	\$ 511,120	\$ 4,469,880	\$ 322,773	\$ 4,792,653	\$ 5,303,773

Under the NOIs, the TTC recovers an estimated combined amount of \$196,626. This is based on a combined total NOI proposal fund of \$300,000 and the status of the TTC as the largest creditor after payment of the trustee fees and disbursements (see Table 2).

Table 2: Proposed payback to TTC under NOI

	Gateway	Tobmar	Total
Amount owing as of NOI filing	511,120	4,792,653	5,303,773
Proposal Fund	\$ 100,000	\$ 200,000	\$ 300,000
Less: Trustee Fees & Disbursements (Approx.)	\$ (25,000)	\$ (50,000)	\$ (75,000)
Net Proposal Fund to Creditors	\$ 75,000	\$ 150,000	\$ 225,000
Creditor Claims filed (as at Dec 13, 2022)	\$ 783,711	\$ 4,866,860	\$ 5,650,571
TTC Claims filed	\$ 511,120	\$ 4,792,653	\$ 5,303,773
TTC Pro-rated claim to Proposal Fund	65%	98%	
Estimated payment to TTC through NOI	\$ 48,913	\$ 147,713	\$ 196,626
Uncollectible Balance	462,207	4,644,940	5,107,147

Of the remaining \$5.1-million outstanding combined balance, approximately \$4.4 million has been recovered through the COVID relief funding (Phase 1 to Phase 3 of Safe

Restart Agreement) from the Province of Ontario. The remaining combined balance of \$0.7 million for the period from February 2022 to April 19, 2022 has been included as part of the 2022 COVID relief funding claim (Phase 4 of Safe Restart Agreement) and is expected to be substantially recovered.

The Chief Financial Officer has reviewed this report and agrees with the financial impact information.

Equity/Accessibility Matters

No equity or accessibility impacts have been identified.

Decision History

At its meeting on January 21, 2009, the Board approved the lease for the lotto booths (Tobmar):

[Procurement Authorization - Lease of Lottery Kiosks in Various Subway Stations \(TTC Board, January 21, 2009\)](#)

At its meeting on April 27, 2009, the Board approved the leases for the cafés (Gateway) located at Bathurst and Warden (second café) stations:

[Purchase Authorization - Lease of Retail Space at Various Subway Stations \(TTC Board - April 27, 2009\)](#)

At its meeting on May 24, 2013, the Board approved the leases for the cafés (Gateway) located at Islington and Warden stations:

[Reconsideration - Gateway Lease \(Supplemental Report\) \(TTC Board, May 24, 2013\)](#)

The leases respecting the cafés and the lotto booths have expired. However, as the lease included an overhold provision, the cafés and lotto booths are currently operating on a month-to-month lease basis.

At its meeting on April 11, 2018, the Board approved the lease to Tobmar for the 69 newsstands in 65 subway station locations:

[Market Shops Retail Procurement Authorization \(TTC Board, April 11, 2018\)](#)

Issue Background

Gateway and Tobmar are existing retail tenants of the TTC. Gateway and Tobmar are affiliated corporations. The TTC has two leases with Gateway. One lease is with respect to a café located at each of Bathurst and Warden stations, and the other lease is with respect to a café located at each of Islington and Warden stations (the “Gateway Leases”). Each café is operated by a franchisee of Gateway.

The TTC has two leases with Tobmar. One lease is with respect to 69 newsstands at 65 stations (of which one location has been sublet to Tim Hortons) (the “Tobmar Newsstand Leases”). The other lease is with respect to seven lotto booths located at Bathurst, Bloor (North), Bloor (South), Kennedy, Sheppard West, Warden and Wilson

subway stations (the “Tobmar Lotto Leases”). Each location is operated by a franchisee of Tobmar.

When businesses were forced to close due to government orders in respect of COVID, the Government of Canada offered assistance payment called, Canadian Emergency Commercial Rent Assistance (“CECRA”), for the months April to September 2020. However, tenants with municipal landlords, such as the TTC, were ineligible for CECRA. In September 2020, the Government of Canada introduced the Canadian Emergency Rent Subsidy (“CERS”). Under CERS, the TTC tenants were eligible and permitted to apply and receive a subsidy, which was subsequently remitted to the TTC.

On April 19, 2022, Gateway and Tobmar each filed a NOI pursuant to section 50 of the BIA in respect of outstanding rent payments owed to the TTC. NOI is a legal procedure that provides a corporation in financial distress the opportunity to restructure its financial affairs, under the assistance of a trustee, with creditor and court approval to continue in business. NOI enables the corporation to avoid bankruptcy while allowing creditors to receive some form of compensation for amounts owing to them by the corporation.

The corporation that files a NOI is not bankrupt. Upon the filing of a NOI, a trustee is appointed by the court to assist the corporation with the development of a proposal to the corporation’s creditors and to communicate with the creditors as needed regarding the NOI procedure. However, in response to the NOI, each creditor may file a proof of claim in respect of any amounts owing to the creditor.

As of the filing of the NOI, the corporation is granted temporary protection from its creditors to enable the preparation of its proposal under the NOI. For certainty, no person may terminate or amend any agreement with the corporation, or claim an accelerated payment, or a forfeiture of the term, under any agreement with the corporation, by reason of the filing of the NOI, and any creditor who may have a remedy against the corporation is not permitted to commence or continue any action, execution, or other proceedings against the corporation. Therefore, at the time of filing the NOI by each of Gateway and Tobmar, all liabilities of Gateway and Tobmar are stayed/frozen.

As of the filing of the NOI by each of Gateway and Tobmar, Gateway and Tobmar owed to the TTC approximately \$0.5 million and approximately \$4.8 million in rental payments, respectively, for a combined total of \$5.3 million. Following the filing of the NOI by each of Gateway and Tobmar, Gateway and Tobmar each restructured its respective financial affairs and made proposals to its creditors, including the TTC, to provide it the ability to continue to operate under its existing agreements with its creditors. With respect to the leases between the TTC and Gateway and Tobmar, this will permit Tobmar to continue to carry on business and operate within the TTC system through to April 30, 2028, and permit Gateway the ability to continue to carry on business and operate within the TTC system on an overhaul basis until such time as lease amendments or new leases are negotiated.

In respect of the rents owed to the TTC by each of Gateway and Tobmar, the TTC is an unsecured creditor. However, TTC is the unsecured creditor with most amounts owing to it by Gateway and Tobmar.

It should be noted that should the TTC not accept, and vote against, the proposal under the NOI of each of Gateway and Tobmar, each of Gateway and Tobmar will likely file for bankruptcy and will likely cease operations (wind-up). This will result in the ceased operations of not only all Gateway and Tobmar operations (including those of Gateway and Tobmar franchisees) within the TTC subway system under lease with TTC, but also the Gateway and Tobmar operations (including those of Gateway and Tobmar franchisees) under lease with other landlords. The ceased operations of Gateway and Tobmar will result in the termination of the Gateway Leases, Tobmar Newsstand Leases and Tobmar Lotto Leases and the unemployment of all Gateway franchisees and Tobmar franchisees. The TTC will also not recover any of the outstanding rents and will not have any rents paid under the Gateway Leases, Tobmar Newsstand Leases and Tobmar Lotto Leases. The TTC would be presented with many vacancies throughout the subway system and no revenue for the number of months it will take to pursue and replace the Gateway Leases, Tobmar Newsstand Leases and Tobmar Lotto Leases within the TTC system.

Comments

The proposal under the NOI of each of Gateway and Tobmar is acceptable to TTC staff. Upon TTC Board approval of the acceptance of the proposal under the NOI of each of Gateway and Tobmar, the TTC will seek City of Toronto approval on the proposal under the NOI of each of Gateway and Tobmar. City staff have reviewed this report.

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Signature

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